IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
Penson Worldwide, Inc., et al.,	:	Case No. 13 – 10061 (PJW) Jointly Administered
Debtors.[1]	:	**Hearing Date: July 31 at 10:00 a.m.**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF FOURTH AMENDED JOINT LIQUIDATION PLAN OF PENSON WORLDWIDE, INC., AND ITS AFFILIATED DEBTORS, AND IN RESPONSE TO OBJECTIONS THERETO

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Dated: Wilmington, Delaware
July 29, 2013

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Penson Worldwide, Inc. (6356); SAI Holdings, Inc. (3657); Penson Financial Services, Inc. (3990); Penson Financial Futures, Inc. (6207); Penson Holdings, Inc. (4821); Penson Execution Services, Inc. (9338); Nexa Technologies, Inc. (7424); GHP1, Inc. (1377); GHP2, LLC (1374), Penson Futures (6207).

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Penson Worldwide, Inc., and each of the other debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") respectfully submit this memorandum of law in support of confirmation of the *Fourth Amended Joint Liquidation Plan of Penson Worldwide, Inc., and its Affiliated Debtors*, dated June 6, 2013 [Docket No. 592] (as may be modified and/or amended, the "Plan") and in response to the objections filed in connection therewith.[2]

PRELIMINARY STATEMENT

1. As described more fully in the *Third Amended Disclosure Statement with Respect to the Joint Liquidation Plan of Penson Worldwide, Inc., and Its Affiliated Debtors*, dated June 6, 2013 [Docket No. 593] (as may be modified and/or amended, the "Disclosure Statement"), the Plan is the result of extensive, arm's length negotiations among the Debtors and their key creditor constituencies, including the Committee, the Second Lien Noteholders Committee, and the Convertible Noteholders Committee. As a result of these negotiations, all of the Debtors' key constituencies support the Plan. Moreover, the Plan is widely supported by unsecured creditors and enjoys the support of all of the classes of creditors entitled to vote on the Plan. For these reasons as well as the reasons set forth below, the Plan satisfies each of the requirements for confirmation under section 1129 and other applicable provisions of the Bankruptcy Code, as set forth in the Declaration of Bryce B. Engel, the Debtors' President and Chief Operating Officer, in support of confirmation (the "Engel Declaration") and *Certification of Michael J. Hill with respect to the Tabulation of Votes on the Fourth Amended Joint Liquidation Plan of Penson Worldwide, Inc., and its Affiliated Debtors* (the "Voting

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan.

Declaration," and together with the Engel Declaration, the "Declarations"), and as will be further demonstrated at the Confirmation Hearing. In addition, the Plan has been proposed in good faith, is feasible, serves the best interests of the Debtors' creditors, and is fair and equitable. Accordingly, the Plan should be confirmed by this Court.

2. The following objections to confirmation of the Plan (each, an "Objection") and collectively, the "Objections") were submitted: (i) *Objection by the Internal Revenue Service to the Fourth Amended Joint Plan of Liquidation of Penson Worldwide, Inc., and Its Affiliated Debtors* [Docket No. 726]; (ii) *Missouri Department of Revenue Objection to Fourth Amended Joint Plan of Liquidation* [Docket No. 739]; (iii) *Texas Comptroller of Public Accounts' Objection to the Fourth Amended Joint Liquidation Plan of Penson Worldwide, Inc. and its Affiliated Debtors* [Docket No. 749]; (iv) *Grace Financial Group LLC's Objection to Confirmation of the Fourth Joint Liquidation Plan of Penson Worldwide, Inc. and its Affiliated Debtors* [Docket No. 731]; (v) *George E. Morris Revocable Trust's Objection to Confirmation of the Fourth Joint Liquidation Plan of Penson Worldwide, Inc. and its Affiliated Debtors* [Docket No. 730]; (vi) *Limited Objection by Andrzej Abraszewski to Fourth Amended Joint Plan of Penson Worldwide, Inc. and its Affiliated Debtors and Joinder to Certain Other Objections* [Docket No. 737]; (vii) *Joinder of NDV Investment Company, JM Property SP Z.O. SP K, Jerzy Mendelka and Adamba Imports International, Inc. to the Limited Objection by Andrzej Abraszewski to Fourth Amended Joint Plan of Penson Worldwide, Inc. and its Affiliated Debtors* [Docket No. 740]. The Debtors have attempted to resolve the Objections without the need for litigation. The Debtors have also worked diligently to resolve informal objections concerning the Plan. Of the Objections that were filed, the Debtors believe that they have reached an agreement in principle and/or resolved all of them other than the Objection by Andrzej

Abraszewki and the related joinder thereto, which are addressed in Section XVIII herein.[3] To the extent any Objection remains unresolved at the time of the Confirmation Hearing, the Debtors believe that they should be overruled.

OVERVIEW OF THE PLAN

3. The central goal of the Plan is to promptly make distributions from the liquidation of the Debtors' assets to the Debtors' creditors in accordance with the order of priority set forth in the Bankruptcy Code. The Plan contemplates, among other things, payment in full in cash to holders of Allowed Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and Non-Tax Priority Claims. Holders of Allowed Other Secured Claims will receive either payment in full in cash or receipt of their collateral. A chart summarizing the material terms, treatment and distributions to holders of all other Allowed Claims against, and Equity Interests in, each of the Debtors under the Plan is included in Article III of the Plan.

4. To implement the Plan, the existing Board of Directors for each corporate Debtor will be replaced with the Board of Managers of PTL, a newly formed limited liability company to which all assets of the Debtors will be conveyed and transferred. The Board of Managers of PTL will be comprised of two members appointed by the Second Lien Noteholders Committee, one member appointed by the Convertible Noteholders Committee and one member appointed by the Committee. Mr. Bryce B. Engel will be installed as the Chief Officer of PTL and will be responsible for winding-up the affairs of each Debtor.

[3] The Debtors have included language in the form of the confirmation order and have also made certain proposed modifications to the Plan to address aspects of the Objections. Prior to or at the Confirmation Hearing, the Debtors anticipate filing and/or presenting to the Bankruptcy Court a blackline of the Plan to illustrate the proposed modifications.

5. Finally, as discussed in more detail below, the Plan effectuates mutual releases by and between the Debtors and certain Released Parties, as well as by and among the non-Debtor Released Parties, and provides for exculpation of certain parties serving the Debtors' estates in fiduciary capacities during the Chapter 11 Cases.

PLAN SOLICITATION AND RESULTS THEREOF AND NOTICE OF CONFIRMATION HEARING

6. Following a period of negotiation between the Debtors, their secured creditors and certain other stakeholders, the Debtors initiated solicitations of the Plan on June 14, 2013. The Debtors solicited acceptances from Holders of Claims against the Debtors in the Classes listed below.

IMPAIRED CREDITORS ENTITLED TO VOTE	
Class	**Designation**
Class 3A	General Unsecured Claims Against PWI
Class 4A	Second Lien Note Claims Against PWI
Class 5A	Convertible Note Claims Against PWI
Class 3B	General Unsecured Claims Against PFSI
Class 4B	Subordinated Loan Claims Against PFSI
Class 3C	General Unsecured Claims Against SAI and PHI
Class 4C	Second Lien Note Guarantee Claims Against SAI and PHI
Class 3D	General Unsecured Claims Against Nexa
Class 3E	General Unsecured Claims Against Remaining Filed Subsidiary Debtors

7. The Debtors did not seek votes from the Holders of Securities Law Claims or Equity Interests in Classes 7A, 8A, 6B, 6C, 5D and 5E because those Claims and Interests are Impaired under the Plan and the Holders are receiving no distribution on account of such Claims and Interests. These Holders will be deemed to have voted to reject the Plan. See Voting

Declaration at ¶ 8. The Debtors' established July 24, 2013 at 5:00 p.m. (ET) (the "Voting Deadline") as the deadline for returning ballots accepting or rejecting the Plan, and the Debtors received unanimous acceptance of the Plan by the Voting Deadline.

8. On February 21, 2013, the Debtors filed their motion [Docket No. 206] (the "Disclosure Statement Motion") seeking approval of the Disclosure Statement, the procedures employed for soliciting confirmation of the Plan, and proposed procedures for providing notice of the hearing on approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing") and the deadline to object thereto (the "Objection Deadline"). On June 7, 2013, the Court entered an order [Docket No. 599] (the "Disclosure Statement Order") approving, in part, the Disclosure Statement Motion, including scheduling the Confirmation Hearing for July 31, 2013 at 10:00 a.m. (ET) and establishing the Objection Deadline as July 24, 2013 at 5:00 p.m. (ET). Pursuant to the Disclosure Statement Order, the Debtors served notice of the Confirmation Hearing and Objection Deadline on all known creditors and interest holders and other parties in interest on June 26, 2013. See Affidavit of Service [Docket No. 661]. In addition, the Debtors published notice of the same in the national edition of *The New York Times* on June 26, 2013. See Affidavit of Publication [Docket No. 662].

MODIFICATIONS TO THE PLAN

9. Since the Plan was solicited, the Debtors have modified certain provisions of the Plan (either through the revised Plan or the proposed Confirmation Order) to make technical, non-material changes and to address concerns filed or asserted by various parties (the "Plan Modifications"). Those modifications include the following:

- The Debtors have revised Section 2.04 (Priority Tax Claims) of the Plan to (i) specify the frequency of payments of Allowed Priority Tax Claims, (ii) provide for accrual of post-petition interest on the Allowed Administrative

Expense Claims and Allowed Priority Tax Claims of certain taxing authorities, and (iii) delete the provision about automatic disallowance of any Claims or demands for fines or penalties related to a Priority Tax Claim.

- The Debtors have revised Section 11.13 (Estimation of Claims; Certain Reserves) of the Plan to provide for establishment of reserves at the time of any Distribution based on the maximum amount asserted by any creditor, unless the Bankruptcy Court orders otherwise or the parties agree to a lesser amount.
- The Debtors have modified Section 14.03 (Term of Pre-Confirmation Injunctions or Stays) to provide that any stay or injunction with respect to Arbitration No. 12-02714 before the Financial Industry Regulatory Authority shall be terminated as of the Effective Date.
- The Debtors have modified Section 14.05 (Injunction) of the Plan to provide that nothing contained therein shall enjoin any suit, action or other proceeding against any customer of the Debtors, who is not a Released Party, regarding such customer's property.
- The Debtors have modified Section 17.07 (Books and Records) to indicate that the five-year period for the Debtors' retention of books and records may be extended upon reasonable request of a party in interest and add the Lead Plaintiff in the Putative Class Action as an additional notice party to be noticed before such books and records may be destroyed.
- The Debtors have added a reservation of rights for any Person covered by the D&O Insurance Policies in Section 17.13 (D&O Insurance Policies) of the Plan.
- The Debtors have clarified the treatment of and obligations to the IRS and other state taxing authorities under the Plan. Confirmation Order, at ¶¶ 25-29.
- The Debtors have clarified in the Confirmation Order that nothing in the Plan or the Confirmation Order shall be deemed to constitute a discharge of the Debtors in violation of Section 1141(d)(3) of the Bankruptcy Code. Confirmation Order, at ¶ 36.

10. Pursuant to section 1127(a) of the Bankruptcy Code, a plan proponent may modify the plan "at any time" prior to entry of a confirmation order so long as the modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and section 1127(d) of the Bankruptcy Code provides that all stakeholders that previously accepted the plan should also be deemed to have accepted the modified plan. Courts routinely allow plan proponents to

make changes to a plan that do not materially or adversely impact voting creditors without requiring the proponent to re-solicit the plan for acceptances.[4] The Debtors submit that the Plan Modifications do not affect the recoveries of creditors who voted on the Plan and, as such, the Plan can be confirmed without re-solicitation for Plan acceptances. *See* 11 U.S.C. § 1127(d).

ARGUMENT

I. The Plan Complies With The Requirements Of Section 1129(a) Of The Bankruptcy Code.

11. Section 1129 of the Bankruptcy Code governs the confirmation of a plan and sets forth the requirements that must be satisfied in order for a plan to be confirmed. The Debtors bear the burden of establishing that all elements necessary for confirmation of the Plan under section 1129(a) of the Bankruptcy Code have been met by a preponderance of the evidence. See Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. Ltd. II (In re Briscoe Enters., Ltd. II), 994 F.2d 1160, 1165 (5th Cir. 1993) (stating that the bankruptcy court must find that the Debtors have satisfied the provisions of section 1129 by a preponderance of the evidence); In re Alta+Cast, LLC, 2004 Bankr. LEXIS 219, *6 (Bankr. D. Del. Mar. 2, 2004) (same).

12. The determination of whether the Plan complies with section 1129(a)(1) of the Bankruptcy Code requires an analysis of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a chapter 11 plan.

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[4] See, e.g., In re New Power Co., 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("the bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated"); In re Calpine, 2007 WL 4565223, at *6 (Bankr. S.D.N.Y. Dec. 19, 2007) (approving immaterial modification to plan without requiring the debtors to resolicit the plan); In re Kmart Corp., 2006 WL 952042, at *27 (Bankr. N.D. Ill. Apr. 11, 2006) (if modification does not adversely change the treatment of claims, then resolicitation is not required); In re Winn-Dixie Stores, Inc., 356 B.R. 813, 823 (Bankr. M.D. Fla. 2006) (same).

Kane v. Johns-Mansville Corp., 843 F.2d 636, 648-49 (2d Cir. 1988); In re Century Glove, Inc., 1993 WL 239489, at *6 (D. Del. Feb. 10, 1993); H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978).

A. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

13. Section 1122(a) of the Bankruptcy Code provides that a plan *may* place a claim or interest in a particular class only if it is substantially similar to other claims or interests in the class. See In re Caldwell, 76 B.R. 643, 644 (Bankr. E.D. Tenn. 1987); see also 11 U.S.C. § 1122(a) (providing, in relevant part, that "a plan *may* place a claim or interest in a particular class. . . .") (emphasis supplied). Claims or interests in a class need not be identical, but should be similar in legal character or effect with respect to the debtor. See In re AOV Indus., Inc., 792 F.2d 1140, 1150-51 (D.C. Cir. 1986) (affirming plan confirmation where claims guaranteed by third party were grouped with non-guaranteed claims). Likewise, claims that are substantially similar need not be in the same class just because they may share some attributes. See, e.g., In re Jersey City Med. Ctr., 817 F.2d 1055, 1060 (3d Cir. 1987) ("[t]he express language of this statute explicitly forbids a plan from placing dissimilar claims in the same class; it does not, though, address the presence of similar claims in different classes."). The debtor must simply advance a legitimate reason supported by credible proof for the separate classification of claims. See Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. Inc. (In re U.S. Truck Co.), 800 F.2d 581, 585 (6th Cir. 1986) (affirming plan confirmation over objection by collective bargaining unit, finding that section 1122(a) "does not require that similar claims be grouped together, but merely that any group created must be homogenous"); Aetna Cas. & Sur. Co. v. Clerk, United States Bankr. Ct. (In re Chateaugay Corp.), 89 F.3d 942, 949 (2d Cir. 1996) (affirming plan confirmation where debtor offered business justification for dividing workers'

compensation claims into two classes); In re Heritage Org., L.L.C., 375 B.R. 230, 298 n.86 (Bankr. N.D. Tex. 2007) (finding that if creditors had different legal rights under principles of equitable subordination, then separate classification would be appropriate).

14. The classification scheme as set forth in Article III of the Plan complies with section 1122(a) of the Bankruptcy Code because each class contains only claims or interests that are substantially similar to each other. Furthermore, the classification scheme created by the Plan is based on the similar nature of claims or interests contained in each class and not on an impermissible classification factor. Similar claims have not been placed into different classes in order to affect the outcome of the vote on the Plan. The Debtors submit that the standard under section 1122(a) of the Bankruptcy Code has been met because the Plan does not reflect the grouping of dissimilar claims at all, let alone for inappropriate purposes.

15. Because each class consists of only substantially similar claims or interests, the Court should approve the classification scheme as set forth in the Plan as consistent with section 1122(a) of the Bankruptcy Code.

B. The Plan Satisfies the Requirements of Section 1123 of the Bankruptcy Code

16. The Plan meets the requirements of sections 1123(a)(1)-(7) of the Bankruptcy Code applicable to debtors who are not individuals,[5] which require that a plan: (1) designate classes of claims and interests; (2) specify unimpaired classes of claims and interests; (3) specify treatment of impaired classes of claims and interests; (4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest; (5) provide adequate means for

[5] 11 U.S.C. § 1123(a)(8) is applicable only in cases in which the debtor is an individual.

implementation of the plan; (6) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities, and (7) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.

17. Specifically, Article III of the Plan satisfies the first three requirements of section 1123(a) of the Bankruptcy Code by: (i) designating classes of claims and interests; (ii) specifying the classes of claims and interests that are unimpaired under the Plan; and (iii) specifying the treatment of each class of claims and interests that is impaired. The Plan also satisfies section 1123(a)(4) of the Bankruptcy Code because each claim or interest within a class is treated identically.

18. Section 1123(a)(5) of the Bankruptcy Code requires that a plan "provide adequate means for the plan's implementation," and provides examples of what may constitute "adequate means." Article IX of the Plan sets forth the means for implementation of the Plan, including formation of PTL, appointment of the Board of Managers and the Chief Officer of PTL, creation of the Liquidation Trust, establishment of the PTL Reserve, and the subsequent wind-up and dissolution of the Debtors' businesses. Accordingly, the Plan satisfies the fifth requirement of section 1123(a).

19. Under section 1123(a)(6) of the Bankruptcy Code, if the debtor is a corporation, the plan must provide for the inclusion in the charter of the debtor a provision prohibiting the issuance of nonvoting securities. The Debtors have also filed with the Bankruptcy Court a form of the PTL LLC Agreement as part of the Plan Supplement that

includes, without limitation, a prohibition against the issuance of non-voting securities. Accordingly, the Plan satisfies the sixth requirement of section 1123(a).

20. Section 1123(a)(7) of the Bankruptcy Code states that a plan shall "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7). Article X provides for the restructuring of the Debtors' management, including the resignation of all directors as of the Effective Date and appointment of the Board of Managers and the Chief Officer of PTL following the Effective Date. Other than Mr. Engel, who currently serves as the Debtors' President and Chief Operating Officer, no insiders will be employed or retained by PTL as of the date hereof.[6] Such provisions are consistent with public policy and the interests of creditors and equity security holders, and the Plan therefore complies with section 1123(a)(7) of the Bankruptcy Code.

C. The Discretionary Contents of the Plan are Appropriate

21. As contemplated by section 1123(b) of the Bankruptcy Code, the Plan contains certain discretionary provisions. For example, Article III of the Plan leaves certain Classes of Claims unimpaired and impairs certain other Classes of Claims and Equity Interests. In addition, as permitted by section 1123(b)(2) and section 365(d) of the Bankruptcy Code, Section 13.01 of the Plan provides that all executory contracts and unexpired leases that are not assumed and assigned by the Debtors shall be rejected, effective as of the Confirmation Date.

[6] PTL may seek to employ certain other personnel of the Debtors post-Effective Date.

22. Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." In that regard, Article XVI of the Plan provides that, among other things, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases. This provision is appropriate because the Bankruptcy Court otherwise has jurisdiction over all of these matters during the pendency of the Chapter 11 Cases, and case law establishes that a bankruptcy court may retain jurisdiction over the debtor or the property of the estate following confirmation.[7]

23. The Plan also contains a variety of releases. As more fully discussed below, these releases are supported by valuable consideration, are essential components of the Plan and are consistent with applicable Third Circuit Law.

D. The Direct Releases by the Debtors In Section 14.06(a) of the Plan are Appropriate and Consistent with Established Precedent and Therefore Should be Approved

24. Section 14.06(a) of the Plan provides for releases by each of the Debtors, in their individual capacities and as debtors in possession and PTL, as of the Effective Date, of the Released Parties, of, among other things, claims, causes of action and liabilities that arose on or prior to the Effective Date that such parties may have against the Released Parties (the "Debtor Releases").

25. Courts in this District have allowed releases by a debtor of third parties if the release is a valid exercise of the debtor's business judgment, fair, reasonable, and in the best interests of the estate. See, e.g., In re Spansion, Inc., et al., 426 B.R. 114 (Bankr. D. Del. 2010).

[7] See In re Jewekor Inc., 150 B.R. 580, 582 (Bankr. M.D. Pa. 1992) ("There is no doubt that the bankruptcy court's jurisdiction continues post confirmation to 'protect its confirmation decree, to prevent interference with the execution of the plan and to aid otherwise in its operation.'") (citations omitted).

Furthermore, section 1123(b)(3)(A) provides that a plan may provide for the settlement or adjustment of any claim belonging to the debtor or estate. 11 U.S.C. § 1123(b)(3)(A). Here, the propriety of the Debtor Releases is amply supported by applicable law. As set forth in the Engel Declaration, the Debtors are unaware of the existence of any claims against any of the third parties that are being released through the Debtor Releases. See Engel Declaration ¶¶ 44. Moreover, the Debtor Releases are important in that they remove the threat of litigation and allow all interested parties to put these cases behind them and move forward with the liquidation of the Debtors' Estates in a manner most beneficial to the Debtors' creditors and stakeholders. Id.

The Debtor Releases are also supportable under the factors set forth in In re Zenith Elecs. Corp., 241 B.R. 92, 105 (Bankr. D. Del. 1999) ("Zenith") that may be considered when reviewing the contemplated release by a debtor of certain claims against non-debtor third parties. The Zenith court noted that the following factors may be considered in determining whether a debtor's release of a third party is appropriate: (i) an identity of interest between the debtor and non-debtor; (ii) a substantial contribution to the plan by the non-debtor; (iii) the necessity of the release to the reorganization; (iv) the overwhelming acceptance of the plan and release by creditors and interest holders; and (v) the payment of all or substantially all of the claims of the creditors and interest holders under the plan. See Zenith, 241 B.R. at 110. This five-factor test is not a list of conjunctive requirements, nor is it an exhaustive list of considerations. See Spansion, 426 B.R. at 143, n.47 (referring to the factors as "helpful in weighing the equities of the particular case after a fact-specific review"); see also In re Wash. Mut., Inc., 442 B.R. 314, 346 (Bankr. D. Del. 2011) ("WaMu") (noting that the "factors are neither exclusive nor conjunctive requirements, but simply provide guidance in the Court's

determination of fairness"); In re Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 395 (Bankr. W.D. Mo. 1994) (finding that there is no "rigid test" to be applied in every circumstance and that the five factors are neither exclusive, nor conjunctive).

26. Here, the releases are appropriate for the following reasons. First, there is an identity of interest among the Debtors and many of the non-Debtor Released Parties (such as the Debtors' employees, directors and officers) arising out of certain indemnity relationships, which could result in a suit against such non-Debtor essentially equating to a suit against the Debtor. Second, each of the Released Parties has made substantial contributions to the Debtors' restructuring in formulating, negotiating at arm's length, preparing, implementing, and/or consummating the Plan. Third, the discharges, injunctions, releases, and exculpations are of an integral nature to the Plan as a whole, as well as to the Debtors' expeditious and successful navigation of the Chapter 11 Cases, which will ultimately result in meaningful distributions to the Debtors' creditors. Fourth, the Debtors' creditors overwhelmingly accepted the Plan. And fifth, the Plan provides for the payment of a meaningful portion of the Claims of those classes of creditors potentially affected by the discharges, injunctions, releases, and exculpations. Accordingly, the Debtor Releases satisfy the applicable legal standard and should be approved.

E. The Third-Party Releases Set Forth in Section 14.06(b) of the Plan are Appropriate and Consistent with Established Precedent and Therefore Should be Approved

(i) The Third-Party Releases are Consensual with Respect to All Affected Creditors

27. The Plan does not include non-consensual, third-party releases of Claims against the Released Parties. Rather, Section 14.06(b) of the Plan provides for consensual releases only by those holders of Claims who (i) are entitled to vote on the Plan and (ii) actually mark their ballots to grant such releases.

28. Courts have held that an "affirmative agreement" from an affected creditor will render a release consensual. See Zenith, 241 B.R. at 111. Although the parameters of what constitutes "affirmative agreement" are fact specific, courts have held that by simply voting in favor of a plan with non-debtor releases, a creditor will be found to have affirmatively agreed to such releases. See In re Coram Healthcare Corp., 315 B.R. 321, 336 (Bankr. D. Del. 2004) ("to the extent creditors or shareholders voted in favor of the Trustee's Plan, which provides for the release of claims they may have against Noteholders, they are bound by that"); Zenith, 241 B.R. at 111 (approving non-debtor releases for creditors that voted in favor of plan); In re West Coast Video Enters., Inc., 174 B.R. 906, 911 (Bankr. E.D. Pa. 1994) (stating that "each creditor bound by the terms of the release must individually affirm same, either with a vote in favor of a plan including such a provision or otherwise").

29. As noted above, the Plan goes one step further and provides creditors with the express option of granting releases to non-Debtor parties. Indeed, the release in Section 14.06(b) of the Plan does not apply to those creditors that received a Ballot but did not check the box to grant a release in favor of those Released Parties. By not "opting-in" to the releases, such creditor is deemed to preserve whatever direct (and therefore, non-derivative) claims it may have against the non-Debtor third parties under applicable law. Accordingly, with respect to those

creditors that received a Ballot and expressly "opted-in" to grant the releases by marking the appropriate box on their Ballot, the releases are consensual. See, e.g., In re Monroe Well Service, Inc., 80 B.R. 324, 334-35 (Bankr. E.D. Pa. 1987) (noting that releases were consensual when creditors had the option of granting them).

(ii) The Third Party Releases are Fair, Appropriate and Integral to The Plan

30. Because the third-party releases are consensual, no further justification for such releases is required. Nonetheless, the Debtors submit that the release provisions provided in Section 14.06(b) of the Plan are also appropriate because the Released Parties have substantially contributed, and will continue to substantially contribute, to the Debtors' efforts to proceed through these cases expeditiously and ultimately make meaningful distributions to creditors.

31. The Released Parties are parties who were actively and integrally involved in the Chapter 11 Cases. Several months prior to the Petition Date, the Debtors engaged in continuing discussions with the members of the Second Lien Noteholders Committee and the Convertible Noteholders Committee (collectively, the "Noteholder Committees") regarding a potential consensual wind-down of their businesses. After months of good faith and arms' length negotiations, the Debtors obtained the agreement of the Noteholder Committees to support the Plan. Thereafter, the Debtors and the Noteholder Committees have also engaged in negotiations with the Committee with respect to the Plan that resulted in the settlements currently embodied in the Plan, as discussed below. Accordingly, the Released Parties all made, and will continue to make, important contributions to these cases, including, among other things, (a) compromising claims and accepting diminished recoveries compared with what they otherwise may have been entitled to, (b) negotiating and supporting the Plan, and (c) in the case of officers and directors, their efforts on behalf of the Debtors prior to and throughout the Chapter 11 Cases. Without the releases as an incentive, many of the Released Parties would have been unwilling to

contribute to the Plan process, which would have reduced the enterprise value available for distribution to creditors and would have negatively impacted the restructuring of the Debtors. Therefore, there is ample basis for this Court to approve such releases.

(iii) An Identity of Interests Exists Between Many of The Released Parties and The Debtors

32. The propriety of the third-party releases for the benefit of the Debtors' employees, directors and officers is also supported by the "identity of interest" between such non-Debtor Released Parties and the Debtors arising out of certain indemnity relationships, which is one factor that courts have considered in approving non-debtor releases. See In re American Family Enterprises, 256 B.R. 377, 407 (D.N.J. 2000) (holding that a proper rationale for approving an injunction in a plan regarding released third parties is "an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate." (quoting In re Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994))); Rosenberg v. XO Commc'ns, Inc. (In re XO Commc'ns, Inc.), 330 B.R. 394, 441 (Bankr. S.D.N.Y. 2005) (same).

33. Here, an identity of interest exists between the Debtors and certain non-Debtor Released Parties that supports the appropriateness of the non-Debtor releases in that they eliminate additional unknown claims against the Debtors that would need to be resolved, likely to the detriment of unsecured creditors. Certain of the Debtors' directors and officers are parties to and beneficiaries of certain indemnification provisions, which require the Debtors to indemnify them in certain circumstances. Under these agreements, any claim asserted against a Released Party that the Debtors are obligated to indemnify would essentially be a claim against

the Debtors. Any such claim, even if ultimately unsuccessful, would further deplete finite estate resources. Accordingly, the non-Debtors releases are appropriate under the Plan.

(iv) The Releases are Narrowly Tailored

34. The releases in Section 14.06(b) of the Plan are only being granted "to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date," and expressly exclude the release of acts involving "fraud, willful misconduct or gross negligence", among other exceptions. Section 14.08 of the Plan also provides for a limitation on the releases to the extent any Person being released under the Plan has knowingly or willfully failed to disclose, knowingly or willfully improperly disclosed, or intentionally or willfully provided insufficient disclosure of, any material fact. Accordingly, the releases in Section 14.06(a) and (b) of the Plan are not only integral to the implementation of the Plan and the Debtors' restructuring, but are also narrowly tailored, appropriate and fair.

35. Based on the foregoing, the Debtors submit that the third-party releases in Article XIV of the Plan should be approved.

F. The Plan's Exculpation Provision is Appropriate

36. Courts have held that provisions, like the exculpation provision set forth in Section 14.07 of the Plan (the "Exculpation Provision"), are appropriate when the parties are released or exculpated for acts or omissions in connection with or related to the chapter 11 cases, "the pursuit of confirmation of the Plan, the consummation of the Plan or the Administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence . . . ." In re PWS Holding Corp., 228 F.3d 224, 246 and 245-47 (3d Cir. 2000) (holding that release of, among others, debtors and creditor committees, including such parties as officers, directors, employees, professionals and advisors, was appropriate where it was activity related to the pursuit of the chapter 11 plan and excluded willful misconduct and gross

negligence); Western Mining & Inv., LLC v. Bankers Trust Co., 2003 WL 503403 at * 4 (D. Del. Feb. 19, 2003) (noting there is nothing inherently suspect about a plan provision releasing, among others, the postpetition lenders, bank lenders, and the committee, from any liability for past, present, and future actions taken or omitted to be taken in connection with the sale and liquidation of the debtors' assets, other than because of gross negligence or willful misconduct); In re Granite Broad. Corp., 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (approving exculpation clause that excludes gross negligence and intentional misconduct); In re Oneida Ltd., 351 B.R. 79, 94, n. 22 (Bankr. S.D.N.Y. 2006); see also Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.), 326 B.R. 497, 504 (S.D.N.Y. 2005) (upholding exculpation provisions of plan that were "reasonable and customary and in the best interests of the estates").

37. It is generally accepted that without protection from liability relating to, or in connection with, the prosecution of a chapter 11 case and a chapter 11 plan, at least from direct claims that may be held by a debtor or from standard exculpatory safe harbors, key personnel might be unwilling or abandon efforts to restructure a debtor's affairs. This realization has served as at least a partial basis for the approval of releases in similar cases. See Enron Corp., 326 B.R. at 503 (noting that exculpation is appropriate because "parties participated in the creation of the Plan under the guarantee that they would receive some limited protection for participating in one of the largest and most complex bankruptcy filings"). Indeed, although inapplicable here, even a debtor's release of claims that are "questionable" in value is permissible. In re Texaco Inc., 84 B.R. 893, 904 (Bankr. S.D.N.Y. 1988). In these cases, the Debtors are not aware of any meritorious Claims that will be waived or released pursuant to the Exculpation Provision.

38. Section 14.07 of the Plan exculpates and limits, generally, the liability of the Debtors, PTL, the Board of Managers, the individual members of the Board of Managers, the Committee, the Indenture Trustees, the individual members of the Committee, or any of their respective current members, partners, officers, directors, employees, advisors, professionals, affiliates, or agents and advisors of any of the foregoing (including any attorneys, financial advisors, investment bankers and other professionals retained by such Persons, but solely in their capacities as such) for acts and omissions in connection with the Chapter 11 Cases, the Canadian Proceeding, the Prepetition Restructuring, the negotiation and execution of the Plan, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of the Plan, and the property to be distributed under the Plan. Section 14.07 of the Plan expressly excludes from the scope of the Exculpation Provision fraud, willful misconduct and gross negligence. Accordingly, the Exculpation Provision is appropriate and should be approved.

G. The Plan's Injunction Provision is Appropriate

39. Section 14.09 of the Plan (the "Injunction Provision") provides that all parties are permanently enjoined from commencing or prosecuting in any matter, a claim or cause of action or liability that has been released or exculpated pursuant to the Plan. This injunction is necessary to preserve and enforce the releases in the Plan and the Exculpation Provision and it is narrowly tailored to achieve that purpose. Accordingly, the Injunction Provision should be approved.

40. In sum, the Debtors submit that the releases, exculpations, and injunctions contained in the Plan are integral to the Plan as a whole, which will ultimately result in meaningful distributions to the Debtors' creditors. The threat of litigation – and any litigation that ultimately came to fruition, no matter how baseless – would be a significant distraction to

the Released Parties, the result of which would be the incurrence of potentially tremendous cost, time and labor, all of which would be better spent on an orderly liquidation of the Debtors. Accordingly, the Debtors believe that, under the specific facts and equities of these Chapter 11 Cases, the releases, exculpations, and injunctions contained in the Plan constitute a valid exercise of the Debtors' business judgment and should be approved.

II. The Plan Complies with Section 1129(b) Requirements

41. Section 1129(b) of the Bankruptcy Code permits confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity interests. Section 1129(b)(1) provides, in pertinent part:

> Notwithstanding section 510(a) of this title, if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirements contained in section 1129(a)(8) of the Bankruptcy Code] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims and interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

Thus, under section 1129(b) of the Bankruptcy Code, the Court may "cram down" the Plan over the deemed rejection of the Deemed Rejecting Classes (as defined below) as long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to such Classes.

42. As set forth in the Engel Declaration and as discussed above, the Plan and the Debtors, as applicable, satisfy all of the applicable requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8) with respect to Classes 6A, 7A, 8A, 5B, 6B, 5C, 6C, 4D, 5D, 4E, and 5E. These Classes consist of Intercompany Claims, Securities Law Claims, and Equity Interests against various Debtors as detailed below (the "Deemed Rejecting Classes")

and are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code provides that a plan shall be confirmed, notwithstanding that section 1129(a)(8) is not satisfied with respect to one or more classes, "if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1). Thus, to confirm a plan that has not been accepted by all impaired classes, the plan proponent must show that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes. See In re Zenith Elecs. Corp., 241 B.R. 92, 105; see also John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d 154, 157 n.5 (3d Cir. 1993). The plan proponent bears the burden of proof by a preponderance of the evidence. In re Vencor, Inc., 2001 WL 34135323, at *2 (Bankr. D. Del. 2001).

43. The section 1129(b)(1) "unfair discrimination" standard does not prohibit all types of discrimination among holders of impaired, dissenting classes; it merely prohibits *unfair* discrimination. In re Leslie Fay Cos., Inc., 207 B.R. 764, 791 n.37 (Bankr. S.D.N.Y. 1997); In re Buttonwood Partners, Ltd., 111 B.R. 57, 62 (Bankr. S.D.N.Y. 1990). This requirement focuses on the treatment of such dissenting class relative to other classes consisting of similar legal rights. See H.R. Rep. No. 95-595 at 416-17 (1977) as reprinted in 1978 U.S.C.C.A.N. 5963, 6372-73 ("The plan may be confirmed . . . if the class is not unfairly discriminated against with respect to equal classes"). Section 1129(b)(2)(C) provides that a plan is fair and equitable with respect to a class of interests if the plan provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property." 11 U.S.C. § 1129(b)(2)(C). Particularly, under section 1129(b)(2)(C)(ii), a plan is fair and equitable with respect to a dissenting class of

interests as a matter of law if no class junior to such class receives or retains any property under the plan on account of its prepetition interest. 11 U.S.C. § 1129(b)(2)(C)(ii). In addition, the retention of property by a junior interest is only retained "on account of" the junior interest holder's prepetition interest if there is "a causal relationship between holding the prior claim or interest and receiving or retaining property" under the plan. See Bank of Am. Nat'l Trust and Savings Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 451 (1998).

44. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan should be confirmed notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan because the Plan is fair and equitable with respect to, and does not unfairly discriminate against, the Deemed Rejecting Classes.

(v) The Plan Does Not Discriminate Unfairly with Respect to the Holders of Claims and Equity Interests in the Deemed Rejecting Classes

45. As stated above, section 1129(b)(1) does not prohibit discrimination between classes. Rather, it prohibits unfair discrimination amongst impaired dissenting classes. The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment. See, e.g., In re Greate Bay Hotel & Casino, Inc., 251 B.R. 213, 228 (Bankr. D.N.J. 2000); In re Kennedy, 158 B.R. 589, 599 (Bankr. D.N.J. 1993); Buttonwood Partners, 111 B.R. at 62. Accordingly, as between two classes of claims or two classes of interests, there is no unfair discrimination if, taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. See, e.g., Buttonwood Partners, 111 B.R. at 63; In re Rivera Echevarria, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

46. Based on the foregoing standards, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes. Classes 6A, 5B, 5C, 4D, and 4E consist of Intercompany Claims and, as such have different legal entitlements than the other Classes under the Plan. Class 7A consists of Securities Law Claims and, as such, has different legal entitlements than the other Classes of Claims under the Plan. Classes 8A, 6B, 6C, 5D, and 5E consist of Equity Interests in the Debtors and, as such, have different legal entitlements than the other Classes of Claims under the Plan. Therefore, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes.

(vi) The Plan is Fair and Equitable with Respect to Holders of Claims and Equity Interests in the Deemed Rejecting Class

47. A plan is "fair and equitable" with respect to a non-accepting impaired unsecured class if a junior unsecured creditor or interest holder does not receive or retain property through a plan on account of its prepetition claim or interest. 11 U.S.C. § 1129(b)(2)(B)(ii). The Plan is "fair and equitable" with respect to the Deemed Rejecting Classes because: (i) no Classes of Claims senior to the Intercompany Claims, Securities Law Claims or Equity Interests shall receive more than full payment on account of the Claims in such Classes; (ii) no holders of Claims junior to the Intercompany Claims, Securities Law Claims or Equity Interests shall receive or retain any property under the Plan;[8] and (iii) the holders of the Intercompany Claims, Securities Law Claims or Equity Interests would not receive or retain any property on account of such Claims or Equity Interests in a liquidation of the Debtors under

[8] Although the Disclosure Statement indicates that holders of Equity Interests in Class 6B may potentially recover 0 to $35.7 million on account of such Interests, the Plan does not unfairly discriminate with respect to holders of the Intercompany Claims in Cass 5B senior to Class 6B because such Intercompany Claims are being disallowed under the Plan.

chapter 7 of the Bankruptcy Code. See Engel Declaration ¶¶ 31, 32. For this reason, the Plan meets the fair and equitable requirements of section 1129(b) and should therefore be confirmed.

III. The Settlements Embodied in the Plan Should be Approved Pursuant to Section 1123(b)(3) and Bankruptcy Rule 9019

48. The Plan embodies certain settlements (collectively, the "Settlements") that were achieved by the Debtors, the Noteholder Committees and the Committee in connection with the Chapter 11 Cases. Specifically, the Plan provides for settlement of the PWI Subordinated Loan and the SAI Subordinated Loan among the Second Lien Noteholders and the Convertible Noteholders (the "Intercompany Claims Settlement"). As set forth in the Disclosure Statement, under the terms of the Intercompany Claims Settlement, in recognition of the arguments that the Second Lien Noteholders and the Convertible Noteholders have made with respect to the PWI Subordinated Loan and the SAI Subordinated Loan, the Claims on account of the PWI Subordinated Loan Note shall be Allowed in the amount of $45 million and the Claims on account of the SAI Subordinated Loan shall be Allowed in the amount of $12 million. The Intercompany Claims Settlement does not affect distributions to the subsidiary unsecured creditors because such unsecured creditors would get paid in full before any amounts would be paid on account of the PWI Subordinated Loan and the SAI Subordinated Loan. Accordingly, the Debtors believe that the Intercompany Claims Settlement is fair, reasonable, and in the best interests of the Debtors and their creditors.

49. In addition, the Debtors and the Noteholder Committees have also engaged in good faith and arm's length negotiations with the Committee in an attempt to resolve various issues raised by the Committee with respect to the Plan. Those negotiations resulted in a settlement regarding these issues, as described in the Disclosure Statement and incorporated into the version of the Plan filed on June 6, 2013. Specifically, the parties have reached mutual

agreement with respect to, among other things, (i) specific allocation of assets by Debtor entity as set forth on Exhibit 8 attached to the Disclosure Statement and a mechanism to resolve any potential issues with respect to the allocation of any other assets not included on Exhibit 8; (ii) the structure of the Board of Managers of PTL; (iii) preservation of certain estate causes of action, as outlined in the Disclosure Statement; and (iv) payment of post-Effective Date interest on the amounts outstanding on Allowed General Unsecured Claims in Class 3B against PFSI Estate, as set forth in the Plan.

50. The Settlements described above should be approved pursuant to section 1123(b)(3) of the Bankruptcy Code, which provides that a chapter 11 plan may include "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3).[9] When analyzing settlements contained in plans, courts employ the standards for approval of settlements under Bankruptcy Rule 9019. See In re Nutritional Sourcing Corp., 398 B.R. 816, 832 (Bankr. D. Del. 2008) ("standards for approving settlements as part of a plan of reorganization are the same as the standards for approving settlements under Fed. R. Bankr. P. 9109.").

51. Under Bankruptcy Rule 9019(a), the Court has the authority to approve a settlement if it is fair and equitable and in the best interests of the estate. See In re Louise's Inc., 211 B.R. 798, 801-02 (D. Del, 1997); Fischer v. Pereira (In re 47-49 Charles St., Inc.), 209 B.R.

[9] As described in the Disclosure Statement, the Debtors have also entered into a settlement with SunGard with respect to the SunGard Claim, which the Bankruptcy Court has already approved. Pursuant to the SunGard Settlement Agreement, the SunGard Claim shall be allowed as a general unsecured claim against PFSI in the aggregate amount of $16.0 million and will be classified and treated with other General Unsecured Claims against PFSI. On June 7, 2013, the Debtors filed their *Motion Pursuant to Section 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Authorizing the Debtors to Enter into a Settlement Agreement with SunGard* [Docket No. 601] (the "SunGard Settlement Motion"). By order dated June 27, 2013, the Bankruptcy Court approved the SunGard Settlement Agreement [Docket No. 665].

618, 620 (S.D.N.Y. 1997). In considering whether to approve a compromise or settlement, a court must assess and balance the value of the claim that is being compromised against the value to the estate of accepting the compromise. In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). Among other things, a bankruptcy court should consider: "1) The balance between the likelihood of success compared to the present and future benefits offered by the settlement; 2) Prospect of complex and protracted litigation if settlement is not approved; . . . and [3)] The extent to which settlement is the product of arm's length bargaining." Fischer v. Pereira, 209 B.R. at 620 (quoting Nellis v. Shugrue, 165 B.R. 115, 122 (S.D.N.Y. 1994)).

52. The Debtors believe that the compromises embodied in the Settlements are in the best interests of the Debtors, their creditors and their estates. The Settlements embody reasonable compromises of the rights and obligations of the parties and allow the Debtors to avoid what would likely be costly and time-consuming litigation. Furthermore, the Settlements were part of the Debtors' good faith and arm's-length negotiations with their key creditor constituencies that resulted in a consensual restructuring and avoided the potential delay of the confirmation process, which will result in timelier distributions to creditors. Finally, the Settlements are the product of arm's-length negotiations among represented parties, and constitute a fair and reasonable result for all parties involved. Based on the foregoing, the Settlements are well above the lowest point in the range of litigation possibilities and each of the applicable Martin factors weighs in favor of approving the Settlements embodied in the Plan. Accordingly, the Debtors submit that the Settlements are reasonable, represent a valid exercise of the Debtors' business judgment and should be approved pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

IV. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

53. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent comply with the applicable provisions of title 11. A principal purpose of section 1129(a)(2) is to ensure that qualified proponents have complied with the requirements of the Bankruptcy Code and Bankruptcy Rules regarding disclosure and the solicitation of acceptances of a plan of reorganization. See H.R. Rep. No. 95-595, 1st Sess. at 412 (1977). The Debtors have complied with the provisions of sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018 regarding the Disclosure Statement and the Plan solicitation. Accordingly, the Debtors believe that the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

V. The Plan has been Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3))

54. Section 1129(a)(3) of the Bankruptcy Code requires a plan to have been "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "To meet this standard, the Third Circuit has stated that a plan must 'fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Wash. Mut., Inc., 461 B.R. 200, 239 (Bankr. D. Del. 2011) (quoting In re PWS Holding Corp., 228 F.3d 224, 242 (3d Cir. 2000)). "[T]he plan proponent must establish that '(1) [the plan] fosters a result consistent with the Code's objectives . . ., (2) the plan has been proposed with honesty and good intentions and with a basis for expecting that reorganization can be effected . . ., and (3) there was fundamental fairness in dealing with the creditors.'" Id. (quoting In re Genesis Health Ventures, Inc., 266 B.R. 591, 609 (Bankr. D. Del. 2001)). In determining whether a plan has been proposed in good faith, courts have recognized that they should avoid applying any hard and inflexible rules, but should instead evaluate each case on its own merits. See In re Century Glove, Civ. No. 90-400-SLR,

1993 WL 239489 at *4 (D. Del. Feb. 10, 1993) (good faith should be evaluated in light of the totality of circumstances surrounding confirmation); In re Cellular Info. Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) (same).

55. The Debtors proposed the Plan in good faith and not by any means forbidden by law. The Plan is the product of extensive arm's length negotiations among the Debtors and their key creditor constituencies. As discussed above, the Debtors negotiated extensively with the Committee and the Noteholder Committees regarding the terms of the Plan. The overwhelming support for the Plan received from almost all of the Voting Classes provides independent evidence of good faith. The Debtors and their directors, officers, managers, employees, agents, affiliates and professionals (acting in such capacity) have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code, thereby satisfying the "good faith" requirement of section 1129(a)(3) of the Bankruptcy Code. For these reasons, the Plan was filed in good faith to promote the objectives and purposes of the Bankruptcy Code, and therefore satisfies the requirements of §1129(a)(3) of the Bankruptcy Code.

VI. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (Section 1129(a)(4))

56. Section 1129(a)(4) of the Bankruptcy Code requires that all post-petition professional fees promised or received in the Chapter 11 Cases remain subject to the Court's review.[10] Courts have construed this provision to require that all payments of professional fees

[10] See In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992).

using funds from estate assets be subject to review and approval by the Court as to their reasonableness.[11]

57. In accordance with section 1129(a)(4) of the Bankruptcy Code, and as set forth in Article II of the Plan, payments made or to be made by the Debtors for services rendered and expenses incurred in connection with the Chapter 11 Cases prior to Confirmation, including, without limitation, all Claims for professional fees but excluding Restructuring Support Agreement Professionals Fees, will be paid only after allowance of such Claims by the Court to the extent not already approved and paid in accordance with orders of the Court. In addition, the Court will retain jurisdiction after the Effective Date to grant or deny applications for allowance of Claims for professional fees or reimbursement of expenses authorized pursuant to orders of the Court, the Bankruptcy Code or the Plan. Thus, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code. Further, as disclosed in the Disclosure Statement and as provided in the Plan, Restructuring Support Agreement Professionals Fees payable under the Restructuring Support Agreement and the Plan shall be paid by the Debtors prior to or on the Effective Date without any further notice to or action, order, or approval of the Court. Because payment of such fees is provided for in the Plan and disclosed in the Disclosure Statement, they will have been approved by the Court in accordance with section 1129(a)(4).

VII. The Debtors Have Disclosed All Necessary Information Regarding Directors, Officers and Insiders (Section 1129(a)(5))

58. Section 1129(a)(5) of the Bankruptcy Code contains three requirements. First, pursuant to section 1129(a)(5)(A)(i), the proponent of a plan must disclose "the identity

[11] See In re Chapel Gate Apartments, Ltd., 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (Before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation.").

and affiliations of any individual proposed to serve, after confirmation of the plan, as a director [or] officer. . . [of] a successor to the debtor under the plan." 11 U.S.C. § 1129(a)(5)(A)(i). The Plan satisfies this requirement because the Debtors have disclosed the identities and affiliations of any known Person designated to serve as a manager of PTL. Specifically, in the Plan Supplement the Debtors have disclosed the appointment of Mr. Bryce B. Engel as the Chief Officer of PTL as well the identities and affiliations of the initial Board of Managers of PTL.[12]

59. Second, section 1129(a)(5)(A)(ii) of the Bankruptcy Code requires that the appointment or continuance in office of each director or officer must be "consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5)(A)(ii). The Plan provides for the appointment of the Chief Officer and the Board of Managers of PTL, comprised of two members appointed by the Second Lien Noteholders Committee, one member appointed by the Convertible Noteholders Committee and one member appointed by the Committee. The Debtors submit that this arrangement is in the best interest of the Debtors' creditors and interest holders because all major constituencies are represented. The Debtors also believe that this arrangement is consistent with public policy and thus, the Plan satisfies this requirement.

[12] As of the date hereof, one of the managers of PTL to be appointed by the Consenting Second Lien Noteholders and the Creditors' Committee manager of PTL have not yet been selected. The Plan and PTL LLC Agreement, however, disclose the process for selecting the managers for PTL. A plan proponent need only disclose "the identities of the known directors" where seats remain vacant, in addition to the process for identifying the directors to be selected. In re Charter Commc'ns, 419 B.R. 221, 260 n.30 (Bankr. S.D.N.Y. 2009); see also In re Am. Solar King Corp., 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988) ("The debtor's inability to specifically identify future board members does not mean that the debtor has fallen short of the requirements imposed by [§ 1129(a)(5)] because the debtor at this point" had disclosed all known directors) (emphasis in original). Because the Debtor has disclosed all known directors and because the process by which the remaining managers will be selected is described in the Plan and the Plan Supplement, the Plan complies with Section 1129(a)(5).

60. Third, section 1129(a)(5)(B) of the Bankruptcy Code requires that the plan proponent 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." 11 U.S.C. § 1129(a)(5)(B). The Plan Supplement satisfies this requirement because it discloses employment of Mr. Engel, the only insider that will be employed by PTL as of the date hereof, as the Chief Officer of PTL following the Effective Date, and the nature of compensation to be paid to the Chief Officer.

61. Accordingly, the Debtors believe that these disclosures and arrangements satisfy the requirement of section 1129(a)(5) of the Bankruptcy Code.

VIII. The Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission (Section 1129(a)(6))

62. Bankruptcy Code section 1129(a)(6) requires that any regulatory commission having jurisdiction over the rates charged by the reorganized debtor in the operation of its business approve any rate change provided for in the plan. As the Plan does not provide for the Debtors to continue business operations, nor contemplate any rate change that would require the approval of any regulatory agency, section 1129(a)(6) of the Bankruptcy Code is inapplicable in these Cases.

IX. The Plan is in the Best Interests of Creditors and Interest Holders (Section 1129(a)(7))

63. The "best interests" test set forth in section 1129(a)(7) of the Bankruptcy Code requires that each holder of a claim or interest in an impaired class either accept the plan or receive or retain property that is not worth less, as of the effective date of the plan, than the amount that such holder of the claim or interest would receive or retain if the debtor were liquidated under chapter 7. 11 U.S.C. § 1129(a)(7). With respect to Claims in Classes 1A, 2A,

1B, 2B, 1C, 2C, 1D, 2D, 1E, and 2E, which consist of Non-Tax Priority Claims and Other Secured Claims against the Debtors, section 1129(a)(7) is not implicated because the creditors in these Classes are unimpaired. Claims and Interests in the remaining Classes are impaired under the Plan, and the "best interests" test must be applied to such Classes.

64. Here, the Plan satisfies the best interests test as demonstrated by comparing the projected recoveries set forth in the Debtors' liquidation analysis (the "Liquidation Analysis"), attached as Exhibit 5 to the Disclosure Statement. As demonstrated by the Liquidation Analysis, the projected recoveries in these Chapter 11 Cases are higher than they would be if the Debtors were liquidated under Chapter 7. See Engel Declaration at ¶ 29.

65. As described in the Engel Declaration, the Liquidation Analysis is the product of careful analysis by the Debtors and KPMG, the Debtors' Chief Restructuring Officer, of, among other things, the liquidation value of the Debtors' assets, the time it would take a chapter 7 trustee or similar liquidating agent to monetize such assets, and the increase in claims against the Debtors' estates that would arise upon a liquidation. The methodology used and assumptions made therein were carefully constructed and are consistent with industry practice for this type of valuation. Id. at ¶ 25.

66. The Liquidation Analysis was prepared using the Debtors' books and records, unaudited financial information, certain independent appraisals prepared in conjunction with financings and valuation information prepared in conjunction with the Plan. It is based on a number of estimates and assumptions that are inherently subject to significant economic, competitive and operational uncertainties and contingencies. Id. at ¶ 26. Further details concerning the Liquidation Analysis are set forth in the Disclosure Statement.

67. Accordingly, the Debtors believe that the Plan satisfies the "best interests" test set forth in section 1129(a)(7).

X. The Plan has Been Accepted by All Classes Entitled to Vote on the Plan (Section 1129(a)(8))

68. Section 1129(a)(8) of the Bankruptcy Code, when read together with section 1129(b)(1) of the Bankruptcy Code, requires that each class of claims or interests must either accept a plan or be unimpaired thereunder, or the debtor must satisfy the so-called "cramdown" provisions of section 1129(b) with respect to such claims or interests. Pursuant to section 1126(c) of the Bankruptcy Code, a class of impaired claims accepts a plan if the holders who vote to accept the plan constitute (i) at least two-thirds in dollar amount and (ii) more than one-half in number of the claims in that class that actually vote to accept or reject the plan. A class that is not impaired under a plan, and each holder of a claim or interest in such class, is conclusively presumed to have accepted the plan. Conversely, a class is conclusively deemed to have rejected a plan if the plan provides that the claims or interests of such class do not receive or retain any property under the plan on account of such claims or interests.

69. As set forth in the Voting Declaration, the Impaired Classes of Claims in Classes 3A, 4A, 5A, 3B, 4B, 3C, 4C, 3D, and 3E that are entitled to vote to accept or reject the Plan have voted overwhelmingly to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. Classes 6A, 7A, 8A, 5B, 6B, 6C, 4D, 5D, and 5E are conclusively deemed to have rejected the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Debtors seek confirmation of the Plan despite the deemed rejection by those classes pursuant to section 1129(b) of the Bankruptcy Code. As discussed above, the Debtors submit that the Plan satisfies the requirements of section 1129(b) and should therefore be confirmed.

XI. The Plan Provides for Payment in Full of All Allowed Priority Claims (Section 1129(a)(9))

70. Section 1129(a)(9) of the Bankruptcy Code requires a chapter 11 plan to provide that all persons holding claims entitled to priority under section 507(a) of the Bankruptcy Code will be fully compensated for their claims in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim. As required by section 1129(a)(9) of the Bankruptcy Code, Article II of the Plan provides for full payment in Cash of all Allowed Administrative Claims and full payment of Allowed Priority Tax Claims. Therefore, the Plan complies with section 1129(a)(9) of the Bankruptcy Code.

XII. At Least One Class of Impaired Claims has Accepted the Plan (Section 1129(a)(10))

71. Section 1129(a)(10) of the Bankruptcy Code requires at least one class of impaired claims to accept the Plan, not counting the votes of any insiders. The impaired Classes entitled to vote on the Plan have unanimously accepted the Plan, not counting the votes of any insiders in them. The Plan therefore meets the requirements of section 1129(a)(10) of the Bankruptcy Code.

XIII. The Plan Meets the Feasibility Requirement of Section 1129(a)(11) of the Bankruptcy Code

72. Section 1129(a) of the Bankruptcy Code provides that a plan of reorganization may only be confirmed if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial 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). This requirement, commonly known as the "feasibility" standard, usually encompasses two interrelated determinations: (i) the debtor's ability to consummate the provisions of the plan, and (ii) the debtor's ability to reorganize as a viable entity. In re Lakeside

Global II, Ltd., 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (stating that the definition of feasibility "has been slightly broadened and contemplates whether [a] debtor can realistically carry out its Plan . . . and [b] whether the Plan offers a reasonable prospect of success and is workable").

73. Since the Plan expressly provides for the liquidation of the Debtors, section 1129(a)(11) of the Bankruptcy Code is satisfied. The Plan is a plan of liquidation designed to maximize the value of the Debtors' remaining assets and to distribute the proceeds in an orderly and efficient manner. The Plan provides that the Debtors' remaining assets are to be liquidated and the proceeds thereof are to be distributed to holders of Allowed Claims in accordance with the priority scheme of the Bankruptcy Code. As demonstrated by the Liquidation Analysis, the Debtors will have sufficient cash to ensure that holders of Allowed Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and Non-Tax Priority Claims will receive the distributions required under the Plan. Therefore, the Plan is feasible pursuant to the requirements of section 1129(a)(11) of the Bankruptcy Code.

XIV. All Statutory Fees Have Been or Will be Paid (Section 1129(a)(12))

74. Section 1129(a)(12) of the Bankruptcy Code provides that a court may confirm a plan only if "[a]ll fees payable under § 1930 of Title 28, as determined by the court at the hearing on confirmation of the Plan have been paid or the plan provides for the payment of all such fees on the effective date of the plan." Section 17.09 of the Plan provides for the payment by the Debtors of any quarterly fees due to the United States Trustee, as well as compliance with the reporting requirements proscribed by the United States Trustee. The Plan therefore meets the requirements of section 1129(a)(12) of the Bankruptcy Code.

XV. Treatment of Retiree Benefits (Section 1129(a)(13))

75. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the continued payment of certain retiree benefits "for the duration of the period that the debtor has obligated itself to provide such benefits." The Debtors have no retiree benefit plans, and therefore, the requirements of section 1129(a)(13) of the Bankruptcy Code are inapplicable.

XVI. The Plan Satisfies the "Only One Plan" Requirement (Section 1129(c))

76. Section 1129(c) of the Bankruptcy Code provides that "the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144" of the Bankruptcy Code. No other plan has been confirmed in these Chapter 11 Cases, and therefore section 1129(c) is satisfied.

XVII. The Plan Satisfies the "Principal Purpose of the Plan" Requirements (Section 1129(d))

77. Section 1129(d) of the Bankruptcy Code provides that "on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes of the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the Plan not be confirmed on the grounds that the primary purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, and the primary purpose of the Plan is not the avoidance of taxes of avoidance of the requirements of section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d).

XVIII. The Objections To The Plan Have Been Resolved Or Should Be Overruled

78. The Debtors have worked diligently to resolve all formal and informal objections to the Plan and have reached agreement in principle and/or resolved all Objections other than the *Limited Objection by Andrzej Abraszewski to Fourth Amended Joint Plan of*

Penson Worldwide, Inc. and its Affiliated Debtors and Joinder to Certain Other Objections [Docket No. 737] and the related *Joinder of NDV Investment Company, JM Property SP Z.O. SP K, Jerzy Mendelka and Adamba Imports International, Inc. to the Limited Objection by Andrzej Abraszewski to Fourth Amended Joint Plan of Penson Worldwide, Inc. and its Affiliated Debtors* [Docket No. 740].

79. On July 1, 2013, Andrzej Abraszewki (the "Claimant") filed the *Motion of Andrej Abraszewki to Allow Claim Because he was a Known Creditor who was not served with Notice of the Bar Date or, Alternatively, to Allow a Late Filed Proof of Claim* [Docket No. 669] (the "Late Claim Motion") and in connection therewith, served the Debtors with discovery requests. See Docket Nos. 675, 676. The Debtors have objected to the Claimant's Late Claim Motion and the related discovery requests. See Docket Nos. 707, 7112. Through its limited objection to confirmation of the Plan, the Claimant is attempting to argue the merits of its Late Claim Motion by alleging that the Debtors are failing to "furnish information" as required by Section 704(a)(7) of the Bankruptcy Code. The Debtors submit that the Claimant's issues with respect to his Late Claim Motion do not involve confirmation issues and should be reserved for resolution at the appropriate time, which is at the time of the resolution of the Late Claim Motion and related discovery dispute.

80. The Claimant also objects to the injunction provisions of the Plan on the grounds that the Claimant was not allegedly provided notice of the bankruptcy filing, the bar date notice or notice of or an ability to vote for or against confirmation of the Plan. The Debtors submit that all the required notices, including *Notice of Establishment of Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims* [Docket No. 178] and *Notice of (I) Approval of Disclosure Statement, (II) Deadline for Voting on Plan, (III) Hearing to Consider*

Confirmation of Plan, and (IV) Deadline for Filing Objections to Confirmation Of Plan [Docket No. 606] have been filed and served on all known creditors and interest holders and other parties in interest and that no further notices are required. See Affidavits of Service [Docket Nos. 231, 233, 250, 324, 327, 661]. Furthermore, as an unknown creditor, Claimant was only required to receive publication notices and the Debtors published all the required notices in the national edition of the *New York Times.* See Docket Nos. 188 and 662. Because the Debtors have provided all the required notices to all unknown and known creditors and parties in interest, this portion of the Objection should be overruled.

81. The Claimant also objected to the injunction provision to the extent "it suggests that the Debtors are receiving a discharge." For the avoidance of doubt, the Debtors have included language in the Confirmation Order stating that nothing in the Plan or Confirmation Order shall be deemed to constitute a discharge of the Debtors in violation of Section 1141(d)(3) of the Bankruptcy Code. Accordingly, this portion of the Claimant's Objection should be overruled.

82. Based on the foregoing, the Claimant's Objection and the related joinder thereto should be overruled in their entirety.

CONCLUSION

The Plan complies with all applicable provisions of the Bankruptcy Code, including those provisions of section 1129(a) and 1129(b). Accordingly, the Debtors respectfully request that this Court confirm the Plan.

Dated: Wilmington, Delaware
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