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Proposed Counsel to Debtors
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Vewd Software USA, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 21-12065 (MEW) (Jointly Administered)

DECLARATION OF COLIN ADAMS IN SUPPORT OF CONFIRMATION OF THE AMENDED JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF VEWD SOFTWARE USA, LLC, AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, Colin Adams, hereby declare under penalty of perjury:

[1] The Debtors in these chapter 11 cases, for which joint administration has been granted, along with the last four digits of their tax identification numbers, are as follows: Vewd Software USA, LLC (9013); Vewd Software AS (8011); and Last Lion Holdco AS (4926).

1. I submit this declaration (this "Declaration") in support of confirmation of the *Amended Joint Prepackaged Chapter 11 Plan of Reorganization of Vewd Software USA, LLC, and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 95] (as may be amended, supplemented, or modified from time to time, the "Plan"), including the agreements and other documents set forth in the *Plan Supplement* dated January 27, 2022 [Docket No. 97] (as may be amended, modified, or supplemented in accordance with the terms of the Plan, the "Plan Supplement").[2]

2. I am a Senior Managing Director of M3 Advisory Partners, LP ("M3") and Chairman of the board of directors for each of the Debtors. I am familiar with the operations, business affairs, financial performance, and restructuring efforts of the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors").

3. I graduated from Duke University with a bachelor's degree in Economics & History, and from UCLA School of Law with a Juris Doctor degree. I have over 20 years of restructuring experience and have led complex financial restructurings in the U.S. and Europe as both an advisor and as a principal.

4. I have worked with and/or advised various companies in chapter 11, including Allegiance Telecom, American Airlines; Cengage Learning; Chemtura Corp.; Colt Defense; Cornerstone Propane; Essar Steel; Extended Stay Hotels; General Motors; Green Valley Ranch; Mood Media (Europe); Opera TV (Norway); Puerto Rico (TRANS); Relativity Media; Skillsoft; Solutia; Tronox; Turnberry Resorts; TXU (EFIH); and United Airlines., as well as numerous other matters.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the *Disclosure Statement for the Amended Joint Chapter 11 Plan of Reorganization of Vewd Software USA, LLC, and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 16] (the "Disclosure Statement"), as applicable.

5. Since July 2021, I have been serving as an independent director and Chairman on the boards of Debtors Last Lion Holdco AS ("LLH AS"), Vewd Software AS ("Vewd AS"), and Vewd Software USA, LLC ("Vewd USA"). I was appointed to those boards after the Prepetition Agent, acting at the direction of the Prepetition Lenders, exercised its rights and remedies under the Prepetition Credit Agreement and related collateral documents as a result of the occurrence of multiple events of default that were continuing thereunder. Prior to my appointment as an independent director to those boards, I served as a director on the board of the Debtors' non-Debtor parent, Last Lion Holdings Limited ("LTD").

6. On April 26, 2021, I was nominated by the Prepetition Lenders to serve as one of the members of the three-member special committee (the "Special Committee") of the board of directors of the Debtors' non-Debtor parent, Last Lion Holdings Limited ("LTD"). Since my appointment to the boards of directors of each of the Debtors, I have worked closely with the Debtors' board members, management, and advisors to evaluate and implement certain restructuring objectives, including the approval and filing of these chapter 11 cases.

7. Based on my work with the Debtors and my oversight of the Debtors' restructuring efforts thus far, my review of relevant documents, and my discussions with members of the Debtors' management team, I am familiar with the Debtors' operations and business and financial affairs.

8. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, information supplied to me by members of the Debtors' management teams and the Debtors' professional advisors, or my opinion based on my

experience, knowledge, and information concerning the Debtors' operations and financial condition.

9. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the statements set forth in this Declaration, as the information in this Declaration is accurate to the best of my knowledge.

THE PLAN

10. I have reviewed the contents of the Plan. I believe the Plan provides the Debtors a clear path to emergence from chapter 11 and enables the Debtors to satisfy their obligations contemplated in the Plan. The Plan, with the support of 100% of the Debtors' prepetition secured lenders (the "Prepetition Lenders"), will substantially deleverage the Debtors' balance sheet, preserve jobs, and position the Debtors for long-term success and to meet their long-term strategic goals. This will maximize long-term value for the Debtors' stakeholders.

11. The Plan contemplates a conversion of the Prepetition Lenders' outstanding prepetition debt arising under the Prepetition Credit Agreement into the equity of the Reorganized Debtors. In addition, in order to sustain the Debtors' operations upon emergence from these chapter 11 cases, the Plan contemplates the conversion of the DIP Facility into an exit facility[3] of at least $25 million (including $5 million of new capital provided by certain DIP Lenders or their affiliates) plus up to $20 million of new capital (of which $8 million will be issued on the Effective Date) through the issuance of preferred stock[4] by the Reorganized Debtors to certain DIP Lenders or their affiliates and Otello Corporation ASA ("Otello"), if

[3] The terms of the Exit Facility are detailed in Exhibit C, Exit Loan Note Issuance Agreement, attached to the Plan Supplement.

[4] The terms of the Reorganized Debtors' preferred stock issuance are detailed in Exhibit D, Subscription Agreement, attached to the Plan Supplement.

Otello elects to participate in a future issuance of Preferred Stock pursuant to the terms of the Otello Settlement Agreement.[5] Pursuant to the Plan, the Debtors' stakeholders will receive the following recoveries, among others:

- Holders of Allowed Claims arising under the DIP Facility will receive their Pro Rata share of Exit Term Loans in the aggregate principal amount equal to the amount of Allowed DIP Claims;
- Holders of Allowed Claims arising under the Prepetition Credit Agreement will receive their Pro Rata share of 100% of the Reorganized Common Stock (subject to dilution, if any, by the Management Incentive Plan);
- Holders of Allowed General Unsecured Trade Claims will continue to be paid by the Debtors in the ordinary course of business or receive such distribution acceptable to the Required Consenting Lenders as necessary to render such Allowed General Unsecured Trade Claims Unimpaired; and
- Holders of Allowed General Unsecured Claims, Subordinated Claims, Vewd AS Interests, and LLH AS Interests will have their Claims and Interests released, discharged, cancelled, and extinguished, as applicable, as of the Effective Date, and Holders of such Claims and Interests will not receive any distribution on account of such Claims and Interests.

12. In addition, the Plan seeks approval of each of the Settlement Agreements (as defined herein) reached between the Debtors and the Moore Parties and Otello in an effort to prevent costly and potentially burdensome litigation from delaying the Debtors' restructuring efforts and destroying the value of the Debtors' estates, and the approval of a Debtor Release and Third Party Release in connection therewith that are integral to the comprises and settlements embodied in the Plan and necessary for the resolution of these chapter 11 cases. Indeed, the Debtor Release and the Third Party Release were core negotiation points and offer appropriate protections to parties that participated constructively in the Debtors' restructuring. Notably, as I understand it, the Debtor Release is limited solely to claims or causes of action that belong to the

[5] The Otello Settlement Agreement is attached as Exhibit B to the Plan.

Debtors and that the Debtors deemed appropriate to release. After conducting a thorough analysis, the Debtors, with the assistance of their advisors, concluded that the Debtor Release is justified.

13. Without the Debtors' agreement to provide releases, I believe the Debtors' stakeholders would not have participated in the negotiations and compromises that led to the Plan, including the Settlement Agreements as contemplated therein. Further, several of the Released Parties–including the Prepetition Lenders–made concessions and contributions to the chapter 11 cases that I believe are significant. Because the Debtor Release underlies the Plan and the Settlement Agreements, and avoids expensive and protracted litigation, I believe it helps to maximize the value of the Debtors' Estates and inures to the benefit of all stakeholders.

14. Likewise, the Third Party Release is consensual and is an integral part of the Plan and the Settlement Agreements. In addition to being consensual, the Third Party Release is narrowly tailored such that Otello and the Moore Parties are not releasing claims against each other. For months prior to the commencement of these chapter 11 cases and throughout the pendency of these chapter 11 cases, the Released Parties worked constructively with the Debtors to negotiate and implement a value-maximizing reorganization that resolves potential litigation and enables the Reorganized Debtors to emerge from these chapter 11 cases with the ability to continue as a successful going concern. Further, the Prepetition Lenders have made substantial contributions to the negotiation, implementation and success of the Plan, including, as applicable, providing postpetition financing that permitted, among other things, the Debtors to pay administrative costs of these chapter 11 cases and the payments authorized by the Court pursuant to certain orders, agreeing to the consensual use of cash collateral, providing exit financing that will permit the Debtors to make all distributions under the Plan, including

payment in full of all General Unsecured trade Claims, agreeing to exchange their prepetition secured debt for equity in the Reorganized Debtors, actively supporting the Plan and the chapter 11 cases, and waiving substantial rights and claims against the Debtors and other parties under the Plan (including their unsecured deficiency claims). As to the Debtors' directors and officers specifically, the Debtors' current directors and officers supported the Plan and the chapter 11 cases, actively participated in meetings, negotiations, and implementation of the business plan during the chapter 11 cases, and have provided other valuable consideration to the Debtors to facilitate the Debtors' reorganization.

15. In connection with the Debtors' negotiation of the Plan and entry into the Settlement Agreements, the Debtors reviewed and investigated the potential claims and causes of action subject to the Debtor Release and the Third Party Release to ensure that such releases are justified, provided in exchange for good and valuable consideration, and in the best interests of the Debtors' Estates and stakeholders. As part of such investigation, the Debtors collected and analyzed relevant documents and conducted discussions with key Company personnel regarding such potential claims and causes of action. The Debtor Release and the Third Party Release are the culmination of such investigation, and I believe they are in the best interests of the Debtors' Estates, as they reflect the important contributions, concessions, and compromises made by the Released Parties.

16. The Plan, and the settlements and releases contemplated therein, is the product of extensive good faith, arm's length negotiations with the Debtors' key constituents on the terms of this restructuring, including the Prepetition Lenders and the Settlement Parties, each of whom support the Plan as currently contemplated. I believe the Plan, including the settlements and releases embodied therein, was proposed in good faith with the goal of maximizing the value of

the Debtors' Estates and ensuring the Debtors' successful emergence from these chapter 11 cases, and represents the best path forward for a successful emergence from chapter 11. Based on my understanding of the Plan, as well as discussions I have had with the Debtors' professionals, advisors, and management team, I believe that the Plan satisfies the relevant confirmation requirements of the Bankruptcy Code and should be confirmed.

SETTLEMENT AGREEMENTS

17. As part of Confirmation of the Plan, the Debtors seek approval of two settlement agreements (together, the "Settlement Agreements"), as described in Articles IV.C and IV.D of the Plan, that form an integral part of the Plan. Prior to the Petition Date, the Debtors entered into a settlement agreement with the Moore Parties. After the Petition Date, the Debtors entered into a settlement agreement with Otello (together with the Moore Parties, the "Settlement Parties"). Importantly, the Settlement Agreements resolve all potential outstanding disputes between the Debtors and each of the Settlement Parties, and the potential objections of the Settlement Parties to the Plan without the need for prolonged and costly litigation. Each of the Settlement Agreements includes, among other things: (i) unanimous support of the Plan by the Settlement Parties, and (ii) a Confirmation process that is consensual among the Debtors, each of the Settlement Parties, and the Prepetition Lenders, who were afforded the opportunity to review and approve the Settlement Agreements.

I. The Moore Settlement Agreement

18. As detailed in the *Declaration of Aneesh Rajaram, Chief Executive Officer of Vewd Software AS, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the "Rajaram First Day Declaration"), since April 2018, LTD, Otello, and Moore Frères & Company, LLC ("MFC")—the indirect majority equity owner of the Debtors through its 70%

shareholding in LTD—have been embroiled in the litigation known as *Otello Corporation ASA v. Moore Freres & Company, LLC and Last Lion Holdings Limited* (BL-2018-000940 / CR-2018-003052) (the "Shareholder Litigation") before the Business and Property Court of England and Wales (the "English High Court"). In April 2021, as part of the Shareholder Litigation, the English High Court ordered the appointment of the Special Committee to the board of directors of LTD, in lieu of the appointment of a court-appointed receiver for the Company. The Special Committee was to pursue a sale of the Company (or substantially all of its assets or its equity interests) or, alternatively, a recapitalization transaction. Subsequently, on July 8, 2021, as a result of the occurrence of multiple events of default under the Prepetition Credit Agreement, the Prepetition Agent, on behalf of the Prepetition Lenders, accelerated the debt owed thereunder by the Company and exercised certain rights and remedies, including removing Mr. Martez Moore ("Mr. Moore") from the boards of directors of Debtors LLH AS and Vewd AS. At that time, Mr. Moore, Chairman and CEO of MFC, was chairman and member of certain boards of directors of Company entities, including LLH AS and Vewd AS. The members of the Special Committee were then appointed as independent directors directly to the boards of LLH AS, Vewd AS, and Vewd USA and accepted such appointments and resigned from the board of LTD.

19. On July 12, 2021, after Mr. Moore's removal from the boards of directors of certain of the Debtors, MFC submitted an invoice to Debtors LLH AS and Vewd AS in an aggregate amount of $14,129,140.73 for (i) indemnification and reimbursement of costs and expenses in connection with the Shareholder Litigation and (ii) costs and expenses incurred in LLH AS's original acquisition of Vewd AS. Mr. Moore, who controls MFC, contended that payment of these expenses was appropriate pursuant to the reimbursement and indemnification

provisions of a letter agreement between MFC and LLH AS dated December 19, 2016 with respect to MFC's 2016 acquisition of a 70% interest in LTD (the "Closing Agreement") and an Advisory Services Agreement (the "ASA") that LTD, Vewd AS, and Last Lion Management LLC ("LL Management") entered into on December 19, 2016.

20. On July 26, 2021, Mr. Moore sent a second letter to LLH AS and Vewd AS claiming payment in the amount of $24,258,156.73. In this letter, Mr. Moore asserted that MFC was entitled to a payment in the amount of $5,129,016.00 because a "Change of Control" under the ASA had occurred as result of the actions taken by the Prepetition Lenders, including his removal as director from LLH AS and Vewd AS on July 8, 2021. Additionally, Mr. Moore claimed that MFC was also entitled to be paid a "Lump Sum Fee" in the amount of $5,000,000.00 as a result of the alleged termination of the ASA, which Mr. Moore asserted occurred under the ASA upon a "Change of Control."

21. In response to these requests, the Debtors conducted an investigation into the prepetition transactions between the Debtors, MFC, and other entities under Mr. Moore's control. The Debtors prepared a lengthy complaint against Mr. Moore, MFC and LL Management relating to the actions of the Moore Parties under the Closing Agreement, ASA, Mr. Moore's employment agreement with Vewd AS dated November 1, 2017, pursuant to which Moore was employed as the Executive Chairman of Vewd AS (the "Moore Employment Agreement"), and a Consulting Agreement with Mr. Moore's late wife, Charlita Cardwell (the "Cardwell Agreement" and together with the Closing Agreement, ASA, and Moore Employment Agreement, the "Moore Agreements"). The Debtors were prepared to assert numerous causes of action, including, among others, (i) that certain of the Moore Agreements were void *ab initio* under applicable Norwegian law, (ii) unjust enrichment related to each of the

Moore Agreements, (iii) avoidance and recovery of constructive and intentional fraudulent transfers under certain of the Moore Agreements, (iv) avoidance and recovery of preference period transfers under certain of the Moore Agreements, (v) that Mr. Moore breached his fiduciary duty to the Debtors, and (iv) statutory and equitable subordination of the Moore Parties' claims.

22. Although the Debtors and the Moore Parties continued to threaten to advance their claims and causes of action against the other in the weeks leading up to the Petition Date, ultimately they were able to reach a settlement, the terms of which are embodied in the Moore Settlement Agreement and are supported by the Prepetition Lenders. Specifically, pursuant to the Moore Settlement Agreement, as set forth in the Plan, the Moore Parties and the Debtors have agreed to the settlement of all claims, interests, and causes of action between the Moore Parties and the Debtors in consideration for the releases granted by the Moore Parties and the Debtors to each other and the other Released Parties (to the extent set forth in the Plan) and other benefits provided under the Plan. Key terms of the Moore Settlement Agreement include:

- resolution and release of more than $24 million of claims asserted by the Moore Parties against the Debtors, and more than $7 million of litigation claims the Debtors were prepared to assert against the Moore Parties;
- the Reorganized Debtors will enter into a consulting agreement with Mr. Moore pursuant to which the Reorganized Debtors will pay Mr. Moore a $4 million nonrefundable retainer on the Effective Date of the Plan plus $880,000 payable over 12 monthly installments and Mr. Moore will provide consulting services to the Reorganized Debtors and agree not to compete with the Reorganized Debtors on the terms set forth in the Moore Settlement Agreement; and
- the Debtors will reject Mr. Moore's existing employment agreement on the Effective Date of the Plan.

II. The Otello Settlement Agreement

23. As explained above and in the Rajaram First Day Declaration, in April 2018, Otello commenced the Shareholder Litigation against LTD and MFC before the English High

Court. As part of the Shareholder Litigation, the English High Court, on September 14, 2018, (i) concluded that Otello had been the victim of unfair conduct on the part of MFC to obstruct the sale of Otello's minority equity interest in LTD (the "Otello Minority Interest") and that MFC had breached LTD's articles of association, and (ii) granted injunctive relief to Otello requiring the LTD Board to immediately approve Otello's proposed buyer as a potential transferee of the Otello Minority Interest pursuant to Article 13.2 of LTD's articles of association (the "Original Order").[6] MFC and the board of directors of LTD failed to comply with the Original Order.

24. As a result, the English High Court, among other things, ordered MFC to purchase (i) the Otello Minority Interest from Otello for $48 million and (ii) a $5 million promissory note issued to Otello by LL Management in connection with MFC's 2016 acquisition of a 70% interest in LTD, including any accrued but unpaid interest due under the note (the "Damages Order").[7] Thereafter, on April 1, 2021, the English High Court approved the appointment of the Special Committee to the board of directors of LTD to pursue and approve the sale of the Company's assets or, alternatively, a recapitalization of the Company.[8] The proceeds of any sale or recapitalization would first repay the Prepetition Lenders' claims under the Prepetition Credit Agreement in full and second pay the amounts awarded to Otello under the Damages Order.[9]

25. However, despite the Debtors' best efforts, no viable sale or recapitalization transaction arose, and as a result, to preserve the going-concern value of the Debtors' business,

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6 *See Otello Corporation ASA vs. Moore Frères & Company and Last Lion Holdings Limited*, [2018] EWHC 2347 (Ch) (English High Court of Justice, 14 September 2018), at ¶ 184.

7 *See Otello Corporation ASA vs. Moore Frères & Company and Last Lion Holdings Limited*, [2020] EWHC 3261 (Ch) (English High Court of Justice, 30 November 2020), at ¶ 324.

8 *See Otello Corporation ASA vs. Moore Frères & Company and Last Lion Holdings Limited*, [2021] EWHC (Ch) (English High Court of Justice, 1 April 2021), at ¶ 1.

9 *Id.* at Annex 1.

maximize recoveries available to all stakeholders, and protect the jobs of the Debtors' employees, the Debtors commenced these chapter 11 cases on December 15, 2021.

26. Shortly after the filing of these chapter 11 cases, on December 30, 2021, Otello sent a notice (the "Otello Notice") to the Debtors in which it advised the Debtors that Otello was a secured creditor of LL Management under a promissory note (the "Otello Promissory Note"), and that its security included LL Management's "accounts," including any amounts payable to LL Management from Vewd AS under the ASA, asserting that such amounts had been assigned to Otello. On January 5, 2021, Otello filed a proof of claim (the "Otello Proof of Claim") asserting that Otello was entitled to certain fees and costs that Vewd AS was obligated to pay LL Management under the ASA, including the Transaction Advisory Fee, the Ongoing Advisory Fees, and Out-of-Pocket Expenses (each as defined in the ASA) (the "ASA Obligations") because LL Management granted a security interest to Otello in its accounts to Otello and that LL Management assigned its rights to receive the ASA Obligations to Otello. Importantly, Otello asserted that the Debtors' entry into the Moore Settlement Agreement may be potentially invalid in certain respects, including LL Management's release of claims against the Debtors. Additionally, Otello served extensive discovery requests upon the Debtors and their advisors in connection with potential objections to Confirmation of the Plan and the Moore Settlement Agreement, including the valuation of the Debtors underlying the Plan and the Debtors' decision to enter into the Moore Settlement Agreement.

27. To prepare for litigation with Otello, the Debtors served discovery requests upon Otello and its advisors, including, among other things, discovery related to prepetition actions taken by Otello in connection with the entry into the Moore Agreements, payments made by any of the Debtors to the Moore Parties following the entry into the Moore Agreements, the potential

sale or refinancing of LTD between November 1, 2020 and April 1, 2021, the value of Otello's equity interest in LTD and public communications related thereto, and the Otello Notice and Otello Promissory Note. Additionally, on January 10, 2022, the Debtors filed the *Debtors' Motion to Enforce the Automatic Stay and for Imposition of Costs, Attorneys' Fees, and Punitive Damages Against Otello Corporation ASA* [Docket No. 56] (the "Stay Enforcement Motion") in which the Debtors asserted that Otello, through the Otello Notice, had interfered with Debtor Vewd AS's contractual rights under the Moore Settlement Agreement in violation of the automatic stay. At the same time, the Debtors were preparing to litigate Otello's potential objections to confirmation of the Plan, including the valuation underlying the Plan and the Debtors' reasonableness in entering into the Moore Settlement Agreement.

28. Although the Debtors and Otello were preparing to litigate these issues in connection with Confirmation of the Plan, they each recognized that a settlement of such issues would provide meaningful value for each side and save significant cost and expense associated with litigation. Accordingly, on January 14, 2022, the Debtors and Otello entered into the Otello Settlement Agreement, which is also supported by the Prepetition Lenders. Pursuant to the Otello Settlement Agreement, as set forth in the Plan, Otello and the Debtors have agreed to the settlement of all claims, interests, and causes of action between Otello and the Debtors in consideration for the releases granted by Otello and the Debtors to each other and the other Released Parties (to the extent set forth in the Plan) and other benefits provided under the Plan. Key terms of the Otello Settlement Agreement include:

- Otello and the Debtors agreed to withdraw the Otello Proof of Claim and the Stay Enforcement Motion, respectively;
- Otello and the Reorganized Debtors will enter into an advisory services agreement pursuant to which the Reorganized Debtors will pay Otello $250,000.00 in twelve monthly installments of $20,833.33 and Otello will provide

advisory services to the Reorganized Debtors, and Otello agrees not to compete with the Reorganized Debtors as set forth in the Otello Settlement Agreement;

- pursuant to such advisory services agreement, upon a Change of Control (as defined therein), Reorganized Vewd AS will pay Otello a transaction fee within three business days equal to 2.0% of the Net Disposition Proceeds (as defined in the Exit Facility Credit Agreement) if the Net Disposition Proceeds exceed $140 million; and

- on the Effective Date of the Plan, and for the six-month period thereafter, Otello shall have the option to participate in any further issuance of Preferred Stock that is unsubscribed at the time at which the written notice to exercise the option is delivered in an amount equal to the lesser of $9,000,000.00 and the face amount of any unsubscribed Preferred Stock at such time.

29. As further discussed in herein, I believe the benefits that each of the Settlement Agreements provide to the Debtors, their stakeholders, and their Estates are considerable. With the Settlement Agreements in place, the Debtors have avoided months of protracted and expensive litigation that would have been detrimental to their business, and the Debtors are positioned to successfully consummate the Restructuring Transactions contemplated by the Plan.

III. Approval of the Settlement Agreements Pursuant to Confirmation of the Plan

30. The Settlement Agreements are the culmination of the Debtors' efforts to avoid protracted litigation with both the Moore Parties and Otello that would jeopardize the Debtors' restructuring efforts. To that end, as discussed above, the Debtors and the Moore Parties engaged in good faith, arm's length negotiations in the weeks leading up to the Petition Date. At the same time, the Debtors kept Otello apprised of the Debtors' likely chapter 11 filing.

31. Following the Debtors' entry into the Moore Settlement Agreement, the Debtors' liquidity situation necessitated a chapter 11 filing and approval of debtor in possession financing to continue to operate their business in the ordinary course on a postpetition basis. Shortly after the Petition Date, Otello served discovery on the Debtors related to the Moore Settlement and the Plan. Thereafter, although the Debtors and Otello each prepared to litigate

certain substantive objections Otello had to the Plan and the Moore Settlement, engaged in substantial discovery, held several conferences in furtherance thereof, and the Debtors filed the Stay Enforcement Motion, the Debtors and Otello, as discussed above, were ultimately able to resolve their disagreements and potential claims and defenses against each other through entry into the Otello Settlement Agreement. Notably, the Settlement Agreements incorporate a revised Debtor Release and Third Party Release that are integral to the compromises and settlements embodied in the Plan and necessary for the resolution of these chapter 11 cases. It is my belief that the Debtor Release and the Third Party Release were core negotiation points and offer appropriate protections to parties that participated constructively in the Debtors' restructuring.

32. In connection with the Debtors' decision to enter into both Settlement Agreements, the Debtors sought and received the support of the Prepetition Lenders as any cash payment to the Moore Parties or Otello under the terms of the Settlement Agreements would have to be financed by Prepetition Lenders from cash collateral or exit financing. In addition, the Prepetition Lenders, as the owners of the Reorganized Debtors, will benefit from the Moore Consulting Agreement and the Otello Advisory Services Agreement as both Mr. Moore and Otello are experienced investors and participants in the Debtors' industry and have historical knowledge of the Debtors' business. With the support of the Prepetition Lenders, the Settlement Agreements therefore resolve a series of highly contentious, complex, multiparty disputes that risked a contested confirmation between the Settlement Parties and the Debtors and potentially protracted and costly litigation that would be detrimental to the value of the Debtors' business and recoveries available to creditors.

33. In deciding to enter into the Settlement Agreements, the Debtors, with the assistance of their advisors, conducted a thorough analysis of the Debtors' claims and defenses

against the Moore Parties and Otello, the cost of litigating such matters, the likelihood of success on the merits, and the range of possible outcomes and their effect on the value of the Debtors' business. The Debtors, with the assistance of their advisors, concluded that the benefits provided by the Settlement Agreements, including the releases embodied in the Plan, outweighed the costs associated with the Settlement Agreements, including the payments to be made following the Effective Date of the Plan. Specifically, the Debtors determined the cost of litigating each of the disputes identified above would be significant and, on this basis alone, the Settlement Agreements would be justified. Moreover, when factoring in the detrimental effects and uncertainty of protracted litigation on the Debtors' business, and the potential for adverse outcomes in such litigation, the Debtors determined that entering into each of the Settlement Agreements was not just reasonable, but the prudent action to take and the best decision for the Debtors' business. Accordingly, the Debtors concluded that the Settlement Agreements, and the releases contemplated therein, were in the best interests of the Debtors, their creditors, and all other stakeholders.

34. In addition, prior to the Debtors' entry into the Settlement Agreements, the Debtors' boards of directors reviewed the Settlement Agreements. Each of the boards of directors approved the Settlement Agreements after determining that such agreements were in the best interests of the Debtors' Estates due to the considerable benefits provided to the Debtors' restructuring efforts and post-emergence business operations, as detailed further herein. The boards' decisions were based on a determination that litigating the disputes resolved pursuant to the Settlement Agreements risked the potential for the value of the Debtors' business to deteriorate, adversely affecting the Debtors' restructuring efforts to the detriment of all stakeholders.

35. The Debtors' goal from the outset of these chapter 11 cases has been to maximize the value of their assets for the benefit of all stakeholders. The Settlement Agreements, as provided in the Plan, enable the Debtors to accomplish this goal and to successfully emerge from these chapter 11 cases, while avoiding any inconvenience and delay, with attendant expenses that would otherwise be caused by protracted litigation. Furthermore, it is my understanding that each day the Debtors remain in chapter 11 they incur significant administrative and professional costs. Conversely, emerging quickly from chapter 11 will enable the Debtors to successfully emerge as a going concern to implement the Restructurings Transactions contemplated under the Plan and preserve significant value for the benefit of their stakeholders.

36. Accordingly, I am confident that the Plan, and the compromises and settlements embodied therein, will preserve the going-concern value of the Debtors' business, maximize recoveries available to all stakeholders, and protect the jobs of the Debtors' employees.

CONCLUSION

37. For the reasons set forth herein, I believe that the Plan, and the Settlement Agreements embodied therein, is in the best interests of the Debtors' Estates, creditors, and stakeholders, and represents the Debtors' best path forward to a successful emergence from chapter 11. As such, I believe that the Plan should be confirmed by the Bankruptcy Court.

[*Remainder of page intentionally left blank*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: January 27, 2022
New York, New York

/s/ Colin Adams
Colin Adams
Senior Managing Director
M3 Advisory Partners, LP