IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
SUPERIOR ENERGY SERVICES, INC., *et al.*[1]	§	CASE NO. 20-35812 (DRJ)
	§	
	§	(Jointly Administered)
Debtors.	§	

CHEVRON U.S.A. INC., UNION OIL COMPANY OF CALIFORNIA AND CHEVRON MIDCONTINENT, L.P.'S OBJECTIONS TO DEBTORS' JOINT PLAN OF REORGANIZATION CHAPTER 11 OF THE BANKRUPTCY CODE AND FINAL APPROVAL OF DEBTORS' DISCLOSURE STATEMENT
[Related to Dkt. Nos. 11, 12]

Chevron U.S.A. Inc., Union Oil Company of California, and Chevron Midcontinent, L.P. (collectively, "Chevron"), creditors in the above-referenced bankruptcy cases, and pursuant to Bankruptcy Code sections 1123, 1125 and 1129, file this (i) Objection to the Joint Chapter 11 Plan of Reorganization of Superior Energy Services, Inc. ("Superior") and certain of its affiliates (collectively, "Debtors") under Chapter 11 of the Bankruptcy Code[2] [Dkt. 11] and (ii) Objection to Final Approval of Debtors' Disclosure Statement [Dkt. 12], and in support thereof would respectfully show the Court as follows:

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/superior. The Debtors' address is 1001 Louisiana Street, Suite 2900, Houston, Texas 77002.

[2] Terms not defined herein have the meaning ascribed to them in the Plan.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages

Cases

Statutes

I. PRELIMINARY STATEMENT

The Debtors' proposed Plan is premised on a rather peculiar business philosophy. Debtors intend to breach parent company guarantees ("Parent Guarantees") owed to some of their largest customers, while setting aside a pool of only $125,000 to address Guarantee-related claims. The modest cash amount set aside for such claimants would almost certainly result, at best, in compensation of pennies on the dollar. The lack of meaningful compensation to be paid to Parent Guarantee claimants stands in stark contrast to general unsecured creditors of affiliate Debtors under the Plan, which Debtors propose to pay in full.[3] As companies trying to restructure and emerge in one of the most challenging and difficult periods in the energy sector, this Plan foundation is puzzling. More directly, the Plan seeks to leave Parent Guarantee claimants, many of which are also Debtors' supply chain customers, with no meaningful compensation for their claims in violation of numerous basic confirmation requirements by (i) including unfair and discriminatory treatment for similarly situated creditors, (ii) failing to meet the best interests test, and (iii) failing to meet the good faith test.

The Bankruptcy Code is clear that a plan can only be confirmed if ***all*** of the applicable requirements set forth in Section 1129(a) of title 11 of the United States Code (the "Bankruptcy Code") are met. As demonstrated below, the Debtors' Plan falls far short of satisfying Section 1129(a). Moreover, in their zeal to force an expedited confirmation schedule on selected customer-creditors over the holiday period, the Debtors elected to proceed on only conditional approval for their Disclosure Statement, which is materially deficient and requires significant amendment and resolicitation. Despite the Debtors' attempt to rush to seek approvals, they cannot escape the fact that the Plan contains provisions that are not appropriate or confirmable.

[3] Parent Guarantee claimants' recovery is also very different than that of other unsecured creditors with claims against the Parent, which are estimated to recovery 63-76% on their claims, as set out in more detail below.

First, the Debtors' proposed Plan discriminates unfairly among the general unsecured creditors in at least two clear ways by (i) providing payment in full to all general unsecured creditors at certain subsidiary levels ***except*** those with claims against the parent company, Superior Energy Services, Inc. ("Parent") and (ii) selecting only unsecured noteholder claims as being permitted to exchange their debt for New Equity[4] (or even be eligible for the Cash Payout). Second, the Plan (and Disclosure Statement) fails to demonstrate how it provides creditors with a recovery of at least as much as they would receive in a liquidation of the Debtors' assets. Third, the Plan has not been proposed in good faith because the Debtors propose different and unfairly discriminatory treatment for similarly situated unsecured claims, ranging from paying Class 8 unsecured creditors in full to paying no effective recovery to Class 6 unsecured creditors. There is no good faith basis for Debtors to give different and/or preferential treatment to certain unsecured creditors over others.

In sum, Chevron requests that the Court sustain its objections and deny final approval of the Disclosure Statement and/or confirmation of the Plan.

II. FACTUAL BACKGROUND

A. The Bankruptcy Cases.

1. On December 7, 2020 (the "Petition Date"), the Debtors each filed pre-packaged voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court"), initiating the above-styled jointly-administered chapter 11 cases (the "Chapter 11 Cases").

[4] Defined terms have the same meanings as set forth in the Debtors'' proposed Plan (Dkt. No. 11) unless separately defined herein.

2. Also on December 7, 2020, the Debtors filed their *Disclosure Statement for the Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement")[5] and their Joint Prepackaged Plan of Reorganization for *Superior Energy Services, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the "Plan").[6]

3. On December 8, 2020, the Court entered its *Order Approving Debtors' Emergency Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement; (II) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Plan; (III) Establishing Deadline to Object to Disclosure Statement and Plan and Form of Notice Thereof; (IV) Approving the Solicitation Procedures and Forms of Ballots and Notices of Non-Voting Status; (V) Conditionally Waiving Requirement of Filing Schedules and Statements and of Convening Section 341 Meeting of Creditors; and (VI) Granting Related Relief*. (the "Disclosure Statement Order").[7]

4. The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. Notably, no official committee of unsecured creditors has been appointed in the cases.

B. The Parent Performance Guarantee Obligations.

5. As set forth in the Disclosure Statement, Debtor, Superior Energy Services, Inc., is the parent company of all of the Debtor companies in this chapter 11 case and all of their non-

[5] *See* Dkt. No. 12.

[6] *See* Dkt. No. 11.

[7] *See* Dkt. No. 98.

debtor affiliates.[8] Direct subsidiary Debtor, SESI, L.L.C. ("SESI") is the issuer of the entire amount of the prepetition notes, totaling over $1.3 billion. The Parent and Debtor entities guaranteed those notes. The Debtors allege, and their Disclosure Statement similarly states, that the Parent's only material assets are its equity interests in SESI. Per the information provided by the Debtors, including the corporate chart in the Disclosure Statement, SESI in turn owns equity interests in various debtor entities and a significant number of non-debtor entities.

6. According to the Debtors' filings, prior to commencing their chapter 11 cases, the Debtors entered into the Restructuring Support Agreement ("RSA") by and among selected creditors. That RSA provided for similar, non-discriminatory treatment among all unsecured creditors at parent and SESI level. However, as admitted in their filings, the RSA was later revised to single out and unfairly discriminate against the Parent's unsecured claimants by changing the intended treatment of the Parent's liabilities under certain performance guarantees. While all general unsecured creditors of the Parent were to be treated the same under the original RSA, the proposed treatment of Parent Guarantee claims under the amended RSA is now patently different and inequitable as compared to treatment of unsecured claims held by the noteholders.

7. Specifically, the Debtors' state in the Disclosure Statement that the Parent is a party to certain performance guarantees related to a legacy business that owned oil and gas interests and was sold in 2008. The Debtors' filings state that the Parent sold ownership interests in one of its subsidiaries, SPN Resources LLC ("SPN Resources"), to Dynamic Offshore Resources, LLC ("Dynamic") pursuant to a purchase agreement between certain Debtors and Dynamic dated as of February 25, 2008. Through a number of corporate transactions over the years, Fieldwood Energy LLC and certain of its affiliates (collectively, "Fieldwood") became Dynamic's ultimate successor

[8] *See* Debtors Joint Prepackaged Chapter 11 Plan of Reorganization of Superior Energy Services, Inc. [Dkt. 11] at p. 13.

in ownership of the interests acquired from the Parent. Consequently, Fieldwood and its direct and indirect subsidiaries are now party to a number of leases and Fieldwood is also the designated operator for certain properties now held by its subsidiaries, where Fieldwood and its subsidiaries have the power to designate the operator. As this Court is likely aware, Fieldwood is a "chapter 22 debtor" in another bankruptcy case pending before Judge Isgur, filed in early August 2020, after it emerged from its prior case filed in 2018.[9] Pursuant to Fieldwood's Joint Chapter 11 Plan and Disclosure Statement for that Plan filed on January 1, 2021, Fieldwood seeks to abandon and discharge its liability to perform decommissioning and plugging and abandonment obligations for certain of the leases underlying its Parent Guarantee obligations, including the Parent's Guarantee obligations owed to Chevron related to multiple federal leases.

8. The Parent Guarantees of the obligations of SPN Resources to certain predecessors, including Chevron, are set forth on Exhibit G to the Disclosure Statement. The Debtors allege that the Parent Guarantees expose the Parent to contingent liabilities to Chevron (and others) to the extent that associated asset retirement obligations mature and the predecessors in title that are the Parent Guarantee beneficiaries become liable for such obligations. Notably, among the deficiencies in the Plan and Disclosure Statement is the failure of Debtors to provide any information regarding the amount, scope, or timing of such Parent Guarantee obligations.

C. The Plan.

9. Through the Plan, the Debtors seek to confirm and implement the terms of the amended RSA. The Plan proposes the following treatment of claims:

[9] *See* Case No. 20-33948; *In re Fieldwood Energy LLC, et al*., In the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Summary of Classification and Treatment of Classified and Equity Interests[10]

Class	Claim/Equity Interest	Status	Voting Rights	Estimated Recovery
1	Other Priority Claims	Unimpaired	Presumed to Accept	100%
2	Other Secured Claims	Unimpaired	Presumed to Accept	100%
3	Secured Tax Claims	Unimpaired	Presumed to Accept	100%
4	Prepetition Credit Agreement Claims	Unimpaired	Presumed to Accept	100%
5	***Prepetition Notes Claims Against Parent***	***Impaired***	***Entitled to Vote***	***63% - 76%***
6	***General Unsecured Claims Against Parent***	***Impaired***	***Entitled to Vote***	***Undetermined but > 0%***
7	***Prepetition Notes Claims Against Affiliate Debtors***	***Impaired***	***Entitled to Vote***	***63% - 76%***
8	General Unsecured Claims Against Affiliate Debtors	Unimpaired	Presumed to Accept	100%
9	Intercompany Claims	Unimpaired	Presumed to Accept	N/A
10	Old Parent Interests	Impaired	Deemed to Reject	0%
11	Intercompany Equity Interests	Unimpaired	Presumed to Accept	N/A
12	510(b) Equity Claims	Impaired	Deemed to Reject	N/A

10. As demonstrated in the chart above, the Plan separately classifies and treats general unsecured claims against any affiliate debtors (Class 8) as unimpaired and to be ***paid in full***. However, holders of general unsecured claims against the Parent are gerrymandered into two classes with significantly different treatment: i) unsecured noteholders into Class 5 and ii) holders of other unsecured claims (i.e., Parent Guarantee claims) in Class 6. While both classes are impaired, the proposed treatment of claims in Class 5 is very different than treatment of similarly situated claims in Class 6. Class 5 receives the exclusive ability to convert its debt into equity (or

[10] *See* Disclosure Statement, Dkt. 12.

select the Cash Payout equal to two percent of the principle amount of their claim) and is estimated to recover 63% - 76% on account of their claims, while Class 6 receives pro rata payment from the $125,000 Parent GUC Recovery Cash Pool. Neither the Plan nor Disclosure Statement provides any information on the range of claim amounts in the gerrymandered Class 6, and it fails to provide any range of recovery other than ">0%." Based on the Plan and Disclosure Statement, it is clear that the gerrymandered classification and treatment is designed to ensure that Class 6 effectively receives no recovery. To be certain, any recovery by Class 6 creditors from the Parent GUC Recovery Cash Pool of $125,000 is not within the range of 63% -76% for Classes 5 and 7, or 100% recovery for Class 8. This incontrovertibly shows that treatment of Class 6 is far from fair and equitable.

11. No explanation or information is provided in the Plan for (i) why all general unsecured creditors will be paid in full ***<u>except</u>*** those holding claims against the Parent, (ii) why a Parent GUC Recovery Cash Pool was created for a selected group of less than a dozen unsecured creditors, or (iii) the methodology or basis for the $125,000.00 amount in the Parent GUC Recovery Cash Pool. Notably, although the impaired creditors all hold unsecured claims against the Debtors, the Plan puts them into 3 separate classes. Remarkably, the exact same group of unsecured noteholders, which are parties to the RSA and had full approval rights over the Plan, are separately classified into Class 5 and 7 and support this disparate treatment of unsecured creditors. With these gerrymandered classes, the Plan proposes a cram down whereby the Plan would be confirmed, even when/if Class 6 votes to reject the Plan. The same group of unsecured noteholders, voting in both Class 5 and 7, are contractually required to accept the Plan per the RSA.

12. The Disclosure Statement asserts that a "valuation analysis" of the Reorganized Debtors was performed and prepared by Ducera and Johnson Rice.[11] The Disclosure Statement then states that the going concern value of the Reorganized Debtors is between $710 million and $880 million. The Disclosure Statement states that this range was based, in part, upon review of the assets and liabilities of the Reorganized Debtors; but notably, to date, the only Debtor that has filed schedules is the Parent.[12] Neither SESI nor any of the other Subsidiary Debtors have filed schedules. Essential information is omitted such that it is impossible to understand what was analyzed or the manner in which it was analyzed. There is no information on the numerous non-debtor entities nor any information regarding any of the assumptions used in the "valuation analysis."

13. Critically, none of the underlying data, including the discounted cash flow analysis, discount rate, selected transactions that were analyzed or selected public companies that were analyzed is disclosed. Instead, the handful of pages constituting the "valuation analysis" is comprised of verbiage disclaiming any reliance on numbers and describing generically the methodology used. None of the information needed to understand what was analyzed, or how it was analyzed, is included or disclosed.

14. Given that Debtors have failed to disclose any information regarding the value of the Class 6 claims, it is challenging to estimate exactly how vast the disparity is between the classes of claims. However, based on the very limited information known about Parent Guarantee claims in advance of the ballot reports, it appears that the recovery by Parent Guarantee claimants will be well below 1%. As such, this means that certain unsecured claimants (in Class 6) will recover

[11] *See* Exhibit E to the Disclosure Statement.

[12] *See* Dkt. No. 24.

essentially nothing, while all other unsecured claimants are excepted to receive at least 63% (Class 5 and 7) of their claim value – and some as much as 100% (Class 8).

III. OBJECTIONS TO THE PLAN

15. Chevron hereby incorporates paragraph 1 through 14 above.

16. As the Plan proponent, the Debtors bear the burden of proving that the Plan satisfies the confirmation requirements contained in Section 1129(a) and, as applicable, the "cramdown" provisions of Section 1129(b). *See, e.g., In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009) ("The Debtor, as the proponent of the [plan], has the burden of proving that all elements of 11 U.S.C. § 1129(a) are satisfied."); *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 n.14 (D. Del. 2006) (plan proponent must establish by preponderance of the evidence the satisfaction of requirements of both Bankruptcy Code Section 1129(a) and 1129(b)); *In re Breitburn Energy Partners LP*, 582 B.R. 321, 349 (Bankr. S.D.N.Y. 2018) (citing *In re Quigley Co.*, 437 B.R. 102, 125 (Bankr. S.D.N.Y. 2010)) (same); *7 Collier on Bankruptcy* ¶ 1129.02[4] ("If nonconsensual confirmation is sought, the proponent of such a plan will have to satisfy the court that the requirements of section 1129(b) are also met. In either situation, the plan proponent bears the burden of proof by a preponderance of the evidence.").

17. The Debtors must carry their burden by a preponderance of the evidence. *See In re Briscoe Enters. Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993), cert. denied, 510 U.S. 992 (1993) ("[p]reponderance of the evidence is the debtor's appropriate standard of proof . . . under § 1129(a) . . . .); *In re T-H New Orleans Ltd. Partnership,* 116 F.3d 790, 801 (5th Cir. 1997); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 259 (Bankr. S.D. Tex. 2015) ("As proponent of the Plan, the Debtor must establish by a preponderance of the evidence that each of the confirmation requirements set forth in Bankruptcy Code § 1129 has been met.").

A. Debtors' Plan Fails to Satisfy the Requirements of Section 1129(a).

18. Pursuant to the confirmation requirements of the Bankruptcy Code, the Debtors must affirmatively demonstrate, among other things, that the Plan:

a. **Does not "discriminate unfairly"**:[13] Generally, this requires the Debtors to show that "a dissenting class will receive relative value equal to the value given to all other similarly situated classes." *See In re Tribune Company*, 972 F.3d 228, 240 (3d Cir. 2020); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001) ("A nonconsensual plan requires the proponent to prove all but one of the thirteen elements [of Section 1129(a)], that all classes consent or are unimpaired, 11 U.S.C. § 1129(a)(8), plus the additional requirements of section 1129(b), that the plan does not unfairly discriminate against dissenting classes and that treatment of such dissenting classes is fair and equitable."); *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 221 (Bankr. D.N.J. 2000).

b. **Satisfies the "best interests" test"**:[14] This requires that the Debtors demonstrate that the Plan provides creditors with a recovery of at least as much as such creditor would receive in a liquidation of the Debtors' assets. The best interests test applies to each individual, impaired creditor who did not accept the plan. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 442 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."). This test is typically evaluated by comparing what such creditor would receive in a hypothetical Chapter 7 liquidation versus what such creditor is receiving under the debtor's proposed Chapter 11 plan. *See In re Texas Extrusion Corp.*, 844 F.2d 1142, 1159 n. 23 (5th Cir.

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[13] *See* 11 U.S.C. § 1129(a).

[14] *See* 11 U.S.C. § 1129(a)(7).

1988) (best interests test required court to determine whether impaired creditor would receive at least as much under Chapter 11 plan as such creditor would receive in Chapter 7 liquidation); *In re Neff*, 60 B.R. 448, 452 (Bankr. N.D. Tex. 1985) aff'd, 785 F.2d 1033 (5th Cir. 1986) (best interests test means "creditors must receive distributions under the Chapter 11 plan with a present value at least equal to what they would have received in a Chapter 7 liquidation of the Debtor as of the effective date of the [p]lan"); *In re Lason, Inc*., 300 B.R. 227, 232 (Bankr. D. Del. Oct. 15, 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'").

c. **Has been proposed in "good faith"**:[15] This requires that the Debtors prove that the Plan "has been proposed in good faith and not by any means forbidden by law." The "good faith" requirement "is to be determined by the totality of the circumstances," and has generally been interpreted as requiring "honesty and good intentions" in formulating and proposing a Chapter 11 plan. *See In re Sandy Ridge Development Corp*., 881 F.2d 1346, 1353 (5th Cir. 1989) (citing *In re Texas Extrusion Corp*., 844 F.2d at 1160; *In re Jasik*, 727 F.2d 1379, 1383 (5th Cir.1984)); *Kane v. Johns–Manville Corp*., 843 F.2d 636, 649 (2d Cir. 1988) ("The good-faith test means that the plan was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected.").

19. Here, the Plan must be denied confirmation because it (i) discriminates unfairly; (ii) fails the best interests test; and (iii) was not proposed in good faith.

B. The Plan Unfairly Discriminates Against Certain Unsecured Creditors With Claims Against the Parent Company.

[15] *See* 11 U.S.C. § 1129(a)(3).

20. While the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts may examine the facts and circumstances of the particular case to determine whether unfair discrimination exists. *See In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) ("The language and legislative history of the statute provides little guidance in applying the 'unfair discrimination' standard."); *see, e.g., In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances"); *In re Aztec Co.*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (noting that courts "have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination").

21. At a minimum, however, the unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so. *See In re Greystone III Joint Venture*, 995 F.2d 1274 (5th Cir. 1992); *In re Johns-Manville Corp.*, 68 B.R. at 636 (segregating two similar claims into separate classes and providing disparate treatment for the classes is unfairly discriminatory); *see, e.g., In re Ambanc La Mesa Ltd. P'ship,* 115 F.3d 650, 656 (9th Cir. 1997); *Aztec*, 107 B.R. at 589-91.

22. Here, the Plan clearly unfairly discriminates because it segregates the general unsecured claims into four separate classes and then provides disparate treatment for certain of those classes.

- Class 6 has general unsecured claims against the Parent based on the Parent Guarantees. **The proposed payment for Class 6 consists solely of a pro rata share of the $125,000.00 Parent GUC Recovery Cash Pool. Class 6 will receive effectively no recovery.**

- Class 5 and 7 are noteholders that have the same claims as the Class 6 claimants: i.e., general unsecured claims against the Parent. However, Debtors have apparently decided to attempt to treat this class differently, despite the fact that they hold the same claims as the Class 6 claimants. **These classes are to receive exclusive right to exchange their debt for New Equity or select the Cash Payout which is disclosed to be equivalent to 63% - 76% recovery**.

- Class 8 is comprised of all other general unsecured claims. **Class 8, despite having the same general unsecured claims as Classes 5, 6, and 7, is deemed unimpaired, and the Debtors propose to pay such claims in full.**

23. The Debtors have provided no legally sufficient justification for the separate classification and discriminatory treatment of the claims of the similarly-situated unsecured creditors in these classes. Any recovery by Class 6 creditors from the Parent GUC Recovery Cash Pool of $125,000 is not within the range of 63% -76% for Classes 5 and 7 or 100% recovery for Class 8. Debtors fall far short of meeting the requirement that that treatment of Class 6 is fair or equitable. Such vastly inequitable treatment under the Plan is unfairly discriminatory.

C. The Plan Fails the Best Interests Test.

24. Section 1129(a)(7) requires a plan of reorganization meet the "best interests" test, which requires that each dissenting creditor receive at least as much as they would in a hypothetical Chapter 7 liquidation of the debtor. *See* 11 U.S.C. § 1129(a)(7)(A); *see also In re Pearl Res. LLC*, 622 B.R. 236 (Bankr. S.D. Tex. 2020).

25. The best interests test applies to individual dissenting holders of claims and interests, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan of reorganization. *See Bank of Am. Nat'l Trust & Sav. Ass'n*, 526 U.S. at 441 n.13 ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *In re Adelphia Commc'ns. Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (finding that section 1129(a)(7) is satisfied when an impaired holder of a claim would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation"); *In re Lason, Inc.*, 300 B.R. at 232 ("Section 1129(a)(7)(A) requires a

determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'"). As section 1129(a)(7) makes clear, the best interests test applies only to non-accepting holders of impaired claims or interests.

26. To satisfy the best interests test, the Debtors must demonstrate that each person holding a claim in an impaired voting class has either accepted the Plan or will receive at least as much under the Plan as that person would receive in a chapter 7 liquidation.

27. Here, the Debtors state their belief that the liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Plan. However, the Debtors will not file schedules disclosing the assets and liabilities of the Subsidiary Debtors, and certainly no information has been provided regarding the value of the non-Debtor subsidiaries comprised of approximately 50 companies. Thus, there is indisputably insufficient information available to determine the accuracy of the assumptions in the valuation analysis and/or accuracy of the liquidation analysis. Without such information and affirmative proof, the Debtors cannot meet their burden under section 1129(a)(7). To meet this threshold requirement for Plan Confirmation, Debtors would have to demonstrate that Class 6, whose collective claims are, upon information and belief, anticipated to amount to be (at a minimum) in excess of $50 million dollars, would receive less cents on the dollar than they are proposed to receive from the $125,000.00 currently set aside for them under the Plan.

D. The Plan Cannot Be Approved Because It Has Not Been Proposed In Good Faith.

28. Bankruptcy Code section 1129(a)(3) provides that a reorganization plan must be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Plan cannot comply with the "good faith" requirements of Section 1129(a)(3) because it compensates preferred parties differently. *See, e.g.*, *In re Quigley Co., Inc.*, 437 B.R. 102 (Bankr. S.D.N.Y. 2010) (plan process benefitting certain preferred creditors to the detriment of others not

proposed in "good faith"); *In re Greate Bay Hotel & Casino, Inc*., 251 B.R. at 240 ("Of course, the classification and treatment of classes of claims is always subject to the good faith requirements under § 1129(a)(3)."). Good faith necessarily means that the Debtors have complied with all the requirements of the Bankruptcy Code including Section 1123.

29. The Debtors propose different and unfairly discriminatory treatment for similarly situated unsecured claims, ranging from paying Class 8 general unsecured creditors to be paid in full to apparently in range of no effective recovery to Class 6, with the same group of noteholders (also similarly situated with general unsecured claims) segregated into two (2) separate classes receiving 63% - 76% recovery. There is no good faith basis for Debtors to differently-compensate and give preferential treatment to certain unsecured creditors versus other unsecured creditors. The gerrymandering and disparate treatment does not withstand scrutiny. Under these circumstances, the Debtors cannot demonstrate that they acted with "honesty and good intentions" in filing the Plan.

IV. OBJECTIONS TO DISCLOSURE STATEMENT

A. The Disclosure Statement Is Inadequate.

30. Chevron hereby incorporates paragraphs 1 through 29 above.

31. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement contain "adequate information." Adequate information is generally defined as information of a kind, and in sufficient detail, given the nature and history of the debtor and the condition of the debtor's financial records, that will enable the debtor's creditors and investors to make an informed judgment about the plan. *See* 11 U.S.C. § 1125(a)(1); *In re Tex. Extrusion Corp.*, 844 F.2d at 1157; *In re Divine Ripe, L.C.C.*, 554 B.R. 395, 401-02 (Bankr. S.D. Tex. 2016); *In re Applegate Prop., Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991). The determination of whether the

disclosure statement contains adequate information is made on a case-by-case basis. *See In re Tex. Extrusion Corp.*, 844 F.2d at 1157.

32. The obligation to provide adequate information is "pivotal." *Westland Oil Dev. v. MCorp Mgmt. Solutions, Inc.*, 157 B.R. 100, 102 (Bankr. S.D. Tex. 1993). For a creditor to fairly evaluate the results of a proposed plan, the court must ensure that a disclosure statement sets forth "all those factors presently known to the plan proponent that bear upon the success or failure of the proposals contained in the plan." *See In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986); *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (holding that a proper disclosure statement must "clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting their [sic] distribution."). Whether or not adequate information is given is left to the judicial discretion of the court and will necessarily be governed by the circumstances of the case. *See In re Cajun Elec. Power Coop, Inc.*, 150 F.3d 503, 518 (5th Cir. 1998).

33. Courts consider numerous factors when determining the sufficiency of the information in a disclosure statement, including, but not limited to, (i) a description of the available assets and their value, (ii) the estimated return to creditors under a chapter 7 liquidation, (iii) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the chapter 11 plan, (iv) information relevant to the risks posed to creditors under the plan, and (v) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers. *See In re Divine Ripe, L.L.C.*, 554 B.R. at 401-02 (listing 19 non-exhaustive factors set forth in *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)).

34. The Disclosure Statement fails to provide sufficient information necessary for unsecured creditors in Class 6 to make an informed decision when voting on the Plan. In its current form, the Disclosure Statement is both facially and substantively deficient with respect to critical

Plan-related issues, and thus fails to satisfy the basic disclosure requirements of Bankruptcy Code section 1125(a).

35. The glaring deficiencies in the Disclosure Statement include the lack of adequate information to support the separate classification and disparate treatment of unsecured creditors. The Plan creates four classes of general unsecured claims: Class 6 consists of General Unsecured Claims against the Parent which the Debtors propose to pay their pro shares of $125,000.00 Parent GUC Recovery Cash Pool; Classes 5 and 7 is comprised of the same group of unsecured noteholders, divided into two groups with no explanation, and receiving 63%-76% recovery in form of New Equity or Cash Payout; and Class 8 General Unsecured Claims, which the Debtors propose to pay in full. The Disclosure Statement includes no basis for providing for the separate classification or the vastly different treatment of the similarly-situated unsecured creditors in these four classes.

36. The Disclosure Statement also fails to disclose the range of claims in Class 6 or even how the Debtors determined the Parent GUC Recovery Cash Pool would be only $125,000.00, which will result in only a nominal recovery for Class 6 Claims. Among other basic features, a Disclosure Statement needs to provide information so that Class 6 voting creditors have some understanding of how, when, and in what amount they will be paid. None of that required information for Class 6 has been provided. The Disclosure Statement must specify the basis for separate classification and disparate treatment of the four classes of unsecured claims. Until such disclosure deficiency is addressed, the Disclosure Statement fails to provide critical and adequate information to creditors.

37. The Disclosure Statement also lacks adequate information about the assumptions underlying the liquidation and valuation analysis for the assets and liabilities of the Debtors and the non-Debtor entities. None of the underlying data that was analyzed was disclosed, and the

Disclosure Statement only generically describes the methodology used. Given that Debtors have failed to disclose any information regarding the value of the Class 6 claims, it is challenging to estimate exactly how vast the disparity is between the classes of claims. However, based on the very limited information we have about Parent Guarantee claims in advance of the ballot reports, it appears that the recovery by Parent Guarantee claimants will be well below 1%. As such, this means that certain unsecured claimants (in Class 6) will recovery essentially nothing, while all other unsecured claimants are excepted to receive at least 63% (Class 5 and 7) of their claim value – and some as much as 100% (Class 8)

38. In sum, the Disclosure Statement fails to provide adequate information under Bankruptcy Code section 1125 because it contains inaccuracies and omits critical information. Without complete and reliable information, creditors cannot fairly assess whether to accept or reject the Plan. The Disclosure Statement should be amended to address the objections and issues raised, failing which the Court should not authorize its dissemination.

B. The Disclosure Statement Cannot Be Approved Because the Plan Is Patently Unconfirmable.

39. Chevron hereby incorporates by reference paragraphs 1 through 38 above.

40. A disclosure statement for a facially defective plan cannot be approved as containing "adequate information" within the confines of Bankruptcy Code section 1125. *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 148 (3d Cir. 2012) (bankruptcy court can determine at the disclosure statement stage that a chapter 11 plan is unconfirmable). "If the disclosure statement describes a plan that is so 'fatally flawed' that confirmation is 'impossible,' the court should exercise its discretion to refuse to consider the adequacy of disclosures." *In re Allied Gaming Mgmt., Inc.*, 209 B.R. 201, 202 (Bankr. W.D. La. 1997) ("notwithstanding adequate disclosure of information required by section 1125(b), a disclosure statement should not be approved if the proposed plan, as a matter of law, cannot be confirmed.").

41. In this context, a plan is patently or facially unconfirmable where "(1) confirmation defects [cannot] be overcome by creditor voting results and (2) those defects concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing." *In re Am. Cap. Equip., LLC*, 688 F.3d at 154 (internal quotations omitted).

42. Evaluating confirmability at the disclosure statement stage avoids "engaging in a wasteful and fruitless exercise of sending the disclosure statement to creditors and soliciting votes on a plan when the plan is unconfirmable on its face. Such an exercise in futility only serves to further delay a debtor's attempts to reorganize." *In re Atlanta West VI*, 91 B.R. 620, 622 (Bankr. N.D. Ga. 1988).

43. Given the facial infirmities that plague the Plan, the Debtors must cure the defects embodied in the Plan before continuing with approval of the Disclosure Statement and solicitation of votes to accept or reject a plan.

V. CONCLUSION

WHEREFORE, for the reasons set forth above, Chevron U.S.A. Inc., Union Oil Company of California, and Chevron Midcontinent, L.P. respectfully request that the Bankruptcy Court deny confirmation of the Plan and grant all such other and further relief as is appropriate and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2021, a true and correct copy of the foregoing Objection was served via the Court's Electronic Notification System on all parties entitled to such notice.

/s/ Edward L. Ripley
EDWARD L. RIPLEY