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)
Debtors.	:	(Jointly Administered)

MEMORANDUM OF LAW IN SUPPORT OF (I) APPROVAL OF DEBTORS' DISCLOSURE STATEMENT AND (II) CONFIRMATION OF FIRST AMENDED JOINT PREPACKAGED PLAN OF REORGANIZATION FOR SUPERIOR ENERGY SERVICES, INC. AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: January 15, 2021

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Superior Energy Services, Inc. (9388), SESI, L.L.C. (4124), Superior Energy Services-North America Services, Inc. (5131), Complete Energy Services, Inc. (9295), Warrior Energy Services Corporation (9424), SPN Well Services, Inc. (2682), Pumpco Energy Services, Inc. (7310), 1105 Peters Road, L.L.C. (4198), Connection Technology, L.L.C. (4128), CSI Technologies, LLC (6936), H.B. Rentals, L.C. (7291), International Snubbing Services, L.L.C. (4134), Stabil Drill Specialties, L.L.C. (4138), Superior Energy Services, L.L.C. (4196), Superior Inspection Services, L.L.C. (4991), Wild Well Control, Inc. (3477), and Workstrings International, L.L.C. (0390). The Debtors' address is 1001 Louisiana Street, Suite 2900, Houston, Texas 77002.

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The above-captioned debtors and debtors-in-possession (collectively, "**Superior**," the "**Company**," or the "**Debtors**") hereby submit this memorandum of law and omnibus reply (this "**Memorandum**") in support of their request for entry of an order (a) approving the *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* [Docket No. 12] (the "**Disclosure Statement**") and (b) confirming the *First Amended Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as amended, modified, or supplemented from time to time, the "**Plan**")[2] [Docket No. 263], including the agreements and other documents set forth in the *First Plan*

[2] Capitalized terms used and not defined herein shall have the same meanings ascribed to such terms in the Plan, the Disclosure Statement, or the Solicitation Procedures Motion (as herein defined), as applicable.

Supplement for the Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 150] (the "**First Plan Supplement**") and the *Second Plan Supplement for the Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 214] (the "**Second Plan Supplement**" and, collectively, as amended, modified, or supplemented from time to time, the "**Plan Supplement**").

PRELIMINARY STATEMENT

1. The Plan is overwhelmingly supported by all voting classes, including the Prepetition Notes Claims against all Debtors, as well as the General Unsecured Claims at the Parent. This tremendous result is not surprising since the Plan preserves the Debtors' business and operations, enhances their value by substantially deleveraging the Debtors' balance sheet, and provides for the unimpairment of all trade and general unsecured claims against all Debtors (except for claims against the Parent). Among other things, the Plan eliminates approximately $1.30 billion of the Debtors' funded debt obligations, which will allow the Debtors to focus on their long-term growth prospects and competitive position in the market, and emerge from the Chapter 11 Cases as a stronger company, less burdened by debt service obligations.

2. The Plan is the product of good-faith, arm's-length negotiations. The Plan and broader restructuring were made possible through rigorous negotiations with the holders of Prepetition Notes, including, most notably, the agreement of the holders of approximately 85% of the outstanding principal amount of the Prepetition Notes (the "**Consenting Noteholders**") to support the Plan and accept 100% of the Reorganized Parent's equity in exchange for their claims, while permitting the unimpairment of general unsecured creditors holding claims against all Debtors except the Parent. This agreement was memorialized in the Amended and Restated

Restructuring Support Agreement dated December 4, 2020 (as amended, modified, or supplemented, the "**Restructuring Support Agreement**"), pursuant to which the Consenting Noteholders agreed to support the Plan and the restructuring contemplated thereby, paving the way for an expeditious and value-maximizing prepackaged bankruptcy case.

3. The Plan is overwhelmingly supported by the three Voting Classes: (a) Prepetition Notes Claims against Parent in Class 5; (b) General Unsecured Claims against Parent in Class 6; and (c) Prepetition Notes Claims against Affiliate Debtors in Class 7. Thus, the Plan has the approval of an impaired Class of creditors both with respect to the Parent and the Affiliate Debtors. On January 15, 2021, the Debtors filed the *Declaration of James Lee Regarding Solicitation of Votes and Tabulation of Ballots Cast on Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 265], which reports the voting results for the Plan (the "**Voting Certification**"). The strong support for the reorganization contemplated by the Plan by the vast majority of voting creditors speaks volumes as to its fairness, the good faith efforts that culminated in its proposal, and its compliance with the Bankruptcy Code.

4. The Debtors received eight informal comments and 11 formal objections to the Plan and either addressed such comments and objections through discussions, addressed certain objections herein, or have included language in the proposed order confirming the Plan that fully resolves any concerns. As shown in the response charts attached hereto as Exhibit A and Exhibit B, most of these objections and comments have been resolved.

5. Chevron U.S.A. Inc., Union Oil Company of California and Chevron Midcontinent L.P. (collectively, "**Chevron**") filed an objection to the Plan [Docket No. 227], to which Hess Corporation ("**Hess**") and Apache Corporation ("**Apache**") have filed joinders [Docket Nos. 230

and 236] (collectively, the "**Chevron Objection**"), which assert, among other things, that the Plan discriminates unfairly and does not satisfy the best interest test. The Parent Guarantee Objections[3] are based on certain of the Legacy Parent Guarantee Claims dating back approximately 15 years, related to decommissioning and asset retirement obligations associated with certain offshore oil and gas assets, for which the Parent serves as guarantor, as further described the Disclosure Statement. There are no amounts currently owed under the contractual guarantees and it is not certain there will ever be any amounts owed. The Legacy Parent Guarantee Claims are presently contingent and unliquidated claims against only the Parent. Unlike the Prepetition Notes Claims which are liquidated claims against the Parent and every Affiliate Debtor, the Parent Guarantee Objections are only based on claims against the Parent. As a result, the Prepetition Notes Claims are structurally senior to the Legacy Parent Guarantee Claims and, as supported by the Valuation Analysis and Liquidation Analysis, there is no scenario in which value would flow up to the Parent from the Affiliate Debtors for the benefit of creditors of the Parent. Similarly, General Unsecured Claims in Class 8 against the Affiliate Debtors (which are unimpaired, and being paid in cash or reinstated) are structurally senior to General Unsecured Claims in Class 6 against the Parent and, in turn, must get paid in full before creditors of the Parent are entitled to receive any recovery. Therefore, as discussed more fully in paragraphs 143-152 below, Chevron's objection appears to promote a different type of plan that advocates a higher recovery for Parent creditors that violates the absolute priority rule and should be overruled.

6. Arena Energy, LLC and Arena Energy Offshore, LP (together, "**Arena**"), who also holds Legacy Parent Guarantee Claims, have filed a narrower objection to the Plan in connection

[3] "**Parent Guarantee Objections**" refers collectively to the Chevron Objection, the Arena Objection (as defined herein) and the Marathon Objection (as defined herein).

with such claims [Docket No. 242] (the "**Arena Objection**"). As discussed more fully in paragraphs 153-157 below, the Arena Objection is based on a faulty reading of the Plan and should likewise be overruled.

7. Marathon Oil Company ("**Marathon**"), who also holds Legacy Parent Guarantee Claims, has also filed an objection to the Plan in connection with such claims [Docket No. 250] (the "**Marathon Objection**"). Marathon objects to the Plan on two grounds, each substantially similar to one of Chevron's arguments and one of Arena's arguments, respectively. As discussed more fully in paragraphs 148 and 154 below, the Marathon Objection should be overruled for substantially the same reasons as the Chevron Objection and the Arena Objection. Given the deficiencies of the Parent Guarantee Objections, and the resolution of the remaining comments and objections, the Debtors' Plan, including all its component parts, which is overwhelmingly supported by all Voting Classes, should be confirmed and approved, allowing the Debtors to emerge from these Chapter 11 Cases as expeditiously as possible.

8. For the reasons set forth herein and in the Confirmation Declarations (as herein defined), the Disclosure Statement satisfies the requirements of Sections 1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018. Furthermore, the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code. Accordingly, the Disclosure Statement should be approved and the Plan should be confirmed. A proposed order approving the Disclosure Statement and confirming the Plan has been filed contemporaneously herewith (the "**Proposed Confirmation Order**").

I. BACKGROUND

A. The Restructuring Support Agreement

9. On December 4, 2020, the Debtors and the Consenting Noteholders entered into the Restructuring Support Agreement, whereby the Consenting Noteholders committed to support

the Plan. The Plan contemplates the discharge of all amounts outstanding under the Debtors' Prepetition Notes Indenture and the refinancing of the amounts outstanding under the Prepetition Credit Agreement through the Exit Facility. In exchange for agreeing to the discharge of its claims, each holder of Prepetition Notes will receive its pro rata share of the following: (a) the Cash Payout or, (b) if such holder elects to be a Cash Opt-Out Noteholder, (i) 100% of the New Common Stock Pool, subject to dilution from and after the effective date of the Plan on account of the New MIP Equity, and (ii), to the extent such Holder is an Accredited Cash Opt-Out Noteholder, Subscription Rights to participate in an equity rights offering (the "**Equity Rights Offering**").

10. As described in more detail in the Disclosure Statement, on September 29, 2020, the Debtors and the Consenting Noteholders had entered into an earlier version of the Restructuring Support Agreement (the "**Original Restructuring Support Agreement**"), which contemplated that Holders of Old Parent Interests would receive 2.0% of Reorganized Parent's equity issued upon emergence from these Chapter 11 Cases, while Prepetition Noteholders would receive 98% of the Reorganized Parent's equity. However, after the Original Restructuring Support Agreement was executed, and given certain developments in the chapter 11 cases of Fieldwood Energy LLC, which are currently pending before this Court, the Ad Hoc Noteholder Group became concerned with the likelihood and amount of certain historical guarantees issued by Parent with respect to certain oil and gas interest obligations (as more fully set forth in Exhibit G of the Disclosure Statement) (the "**Legacy Parent Guarantees**"), which could expose the Parent to liability for the Legacy Parent Guarantee Claims (i.e., asset retirement obligations). Given the uncertainty and magnitude of such potential liabilities, and despite continued efforts by the Debtors to negotiate a recovery for the Holders of the Old Parent Interests, the Ad Hoc Noteholder Group could no longer agree to support a chapter 11 plan that allowed structurally junior potential Legacy

Parent Guarantee Claims to "ride through" these Chapter 11 Cases. Accordingly, the Original Restructuring Support Agreement was amended on December 4, 2020 to eliminate any recovery to and discharge of claims held by Holders of Old Parent Interests to allow for a recovery to the creditors of the Parent, including Holders of the Legacy Parent Guarantee Claims. As a result, pursuant to the Restructuring Support Agreement, the Holders of Prepetition Notes will receive 100% of the New Common Stock Pool.

B. The Prepetition Solicitation Process

11. On December 5, 2020, prior to commencing the Chapter 11 Cases, and as more fully described in the Solicitation Procedures Motion,[4] the Debtors commenced the solicitation of votes on the Plan from Eligible Holders of Prepetition Notes Claims in Classes 5 and 7 (the "**Prepetition Solicitation**"). Specifically, the Debtors, through their claims, balloting, and noticing agent, Kurtzman Carson Consultants L.L.C. (the "**Voting and Claims Agent**"), transmitted copies of a solicitation package (the "**Prepetition Solicitation Package**")[5] to Eligible Holders of such Claims. The Prepetition Solicitation Package contained (a) the Disclosure Statement, including the Plan and other exhibits thereto, (b) one or more Prepetition Noteholder Ballots (as defined below),[6] as applicable, and (c) a cover letter from the Debtors explaining the solicitation process and urging the Holders of Claims in Classes 5 and 7 to vote to accept the Plan.

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[4] *See Debtors' Emergency Motion for Entry of an Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing on (A) Adequacy Of Disclosure Statement, and (B) Confirmation of Plan, (III) Establishing Deadline to Object to Disclosure Statement and Plan and Form of Notice Thereof, (IV) Approving (A) Solicitation Procedures, (B) Forms of Ballots and Notices of Non-Voting Status, and (C) Equity Rights Offering Materials, (V) Conditionally Waiving Requirement of Filing Schedules and Statements and of Convening Section 341 Meeting of Creditors, with respect to Certain Debtors, and (VI) Granting Related Relief* [Docket No. 20] (the "**Solicitation Procedures Motion**"). The facts and the legal arguments set forth in the Solicitation Procedures Motion are incorporated herein by reference in their entirety.

[5] *See Certificate of Service of Peter Walsh re: Solicitation Materials Served on December 5, 2020*, dated December 7, 2020 [Docket No. 42] (the "**Prepetition Affidavit of Service**").

[6] On a prepetition basis, and with respect to Holders of Claims in Classes 5 (Prepetition Notes Claims Against Parent) and 7 (Prepetition Notes Claims Against Affiliate Debtors), the Debtors distributed two forms of Ballots:

12. In addition to permitting Holders of Claims in Classes 5 and 7 to vote on the Plan, the Prepetition Noteholder Ballots also allowed such Holders to affirmatively opt-out of the Third-Party Release contained in Article X of the Plan. The Prepetition Solicitation Package was sent to all Holders of Prepetition Notes Claims in Classes 5 and 7 via electronic mail.[7] The Disclosure Statement, among other case-related pleadings and information, was also made available on the Voting and Claims Agent's case website, www.kccllc.net/superior. Similarly, the Prepetition Noteholder Ballots also allowed Holders of Claims in Class 7 to affirmatively opt-out of the Cash Payout and thereby become Cash Opt-Out Noteholders eligible to receive a pro rata portion of the New Common Stock and, if eligible, to exercise their Subscription Rights.

13. Among other things, the Prepetition Solicitation Package also advised applicable recipients that (a) the date for determining which Holders of Claims in the Voting Classes were entitled to vote to accept or reject the Plan was December 3, 2020 (the "**Voting Record Date**"), and (b) the voting deadline for Holders Claims in the Voting Classes was January 8, 2021 at 5:00 p.m. (prevailing Central Time) (the "**Voting Deadline**"). The Prepetition Solicitation Package further advised recipients that Prepetition Noteholder Ballots must be returned to the Voting and Claims Agent by electronic mail, regular mail, hand delivery, or overnight courier to an address specified on the Prepetition Noteholder Ballot. Each Prepetition Noteholder Ballot also contained detailed instructions regarding how to complete it and how to make any applicable elections contained therein. The Noteholder Voting Record Date and the Noteholder Voting

(a) a form of Ballot for beneficial owners holding Prepetition Notes in Classes 5 and 7 as of the Voting Record Date through a nominee, which shall include, but is not limited to any bank, brokerage firm, or the agent thereof (collectively, "**Nominees**") as the entity through which the holder of a beneficial interest (the "**Beneficial Holder**") holds the Prepetition Notes, or as record holder in its own name, a copy of which is attached to the Solicitation Procedures Order as Exhibit 4A (the "**Prepetition Beneficial Owner Ballot**"); and (b) a form of Ballot for a Nominee that is the registered holder of a Prepetition Notes Claim (or agent thereof) to transmit the votes of one or more beneficial owners, a copy of which is attached to the Solicitation Procedures Order as Exhibit 4B (the "**Prepetition Master Ballot**" and together with the Prepetition Beneficial Owner Ballot, the "**Prepetition Noteholder Ballots**").

7 *See* Prepetition Affidavit of Service.

Deadline were clearly identified in the Disclosure Statement and each of the Prepetition Noteholder Ballots.

14. The materials in the Prepetition Solicitation Package also established and communicated how the Voting and Claims Agent would tabulate the votes and elections contained in the Ballots. Those tabulation rules provided, among other things, that the following Ballots would not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of the Claim; (b) any Ballot cast by or on behalf of an entity that does not hold a Claim in one of the Voting Classes; (c) any Ballot cast for a Claim listed in the Schedules as contingent, unliquidated or disputed for which the applicable bar date has passed and no proof of claim was timely filed; (d) any Ballot that (i) is properly completed, executed and timely filed, but does not indicate an acceptance or rejection of the Plan, (ii) indicates both an acceptance and rejection of the Plan, or (iii) partially accepts and partially rejects the Plan; (e) any Ballot cast for a Claim that is subject to a pending objection (except as otherwise provided in the Disclosure Statement or to the extent such Claim has been temporarily allowed for voting purposes pursuant to Bankruptcy Rule 3018(a)); (f) any Ballot sent to the Debtors, the Debtors' agents/representatives (other than the Voting and Claims Agent), any indenture trustee, or the Debtors' financial or legal advisors; (g) any unsigned Ballot; or (h) any Ballot not cast in accordance with the procedures described in the Disclosure Statement.[8] These tabulation rules and procedures followed by the Debtors with respect to all three Voting Classes were consistent with the requirements of Bankruptcy Rule 3018, as further described herein.

[8] *See* Solicitation Procedures Motion, ¶ 61.

C. The Postpetition Solicitation Process

15. On December 7, 2020 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code and commenced the Chapter 11 Cases. Among other things, the Debtors also filed the Plan, the Disclosure Statement, and the Solicitation Procedures Motion on the Petition Date. Pursuant to the Solicitation Procedures Motion, the Debtors sought Court approval of the process by which the Debtors would solicit votes on the Plan from Holders of General Unsecured Claims against the Parent in Class 6 and Non-Eligible Holders of Prepetition Notes Claims in Classes 5 and 7 on a postpetition basis (the "**Postpetition Solicitation**").

16. On December 8, 2020, the Court entered an order granting the Solicitation Procedures Motion [Docket No. 98] (the "**Solicitation Procedures Order**"). The Solicitation Procedures Order, among other things, (a) scheduled a combined hearing (the "**Combined Hearing**") on January 19, 2021 at 12:00 p.m. (prevailing Central Time) to (i) approve the adequacy of the Disclosure Statement and (ii) consider confirmation of the Plan, (b) established January 12, 2021 at 5:00 p.m. (prevailing Central Time), as the deadline to file objections to the adequacy of the Disclosure Statement or confirmation of the Plan (the "**Objection Deadline**"), (c) approved the Solicitation Procedures with respect to the Plan, including the forms of Ballots, (d) approved the form and manner of the Notice of Non-Voting Status, (e) approved the form and manner of the Combined Notice[9] of (i) the commencement of the Debtors' Chapter 11 Cases, (ii) the Combined Hearing and (iii) the Objection Deadline, (f) conditionally approved the Disclosure Statement, (g) so long as the Plan is confirmed on or before February 5, 2021

[9] A copy of the Combined Notice is annexed as Exhibit 1 to the Solicitation Procedures Order (the "**Combined Notice**").

(i) directed the Office of the United States Trustee for the Southern District of Texas not to convene a Section 341 Meeting with respect to the Affiliate Debtors and (ii) waived the requirement that the Debtors file Statements and Schedules with respect to the Affiliate Debtors, and (h) granted related relief.

17. Following the entry of the Solicitation Procedures Order, the Debtors took steps to serve the various solicitation materials on all Holders of Class 6 General Unsecured Claims against the Parent, Non-Eligible Holders of Prepetition Notes Claims in Classes 5 and 7, and, out of an abundance of caution, all parties that had filed Claims against the Parent thus far. On December 10, 2020, the Debtors caused the Voting and Claims Agent to serve on such Holders (a) the Combined Notice and (b) the Class 6 Ballots,[10] Postpetition Beneficial Owner Ballots, and Postpetition Master Ballots (the "**Postpetition Ballots**") (collectively, the "**Postpetition Solicitation Package**" and together with the Prepetition Solicitation Package, a "**Solicitation Package**").[11] The Debtors also caused the Combined Notice to be published in the *Houston Chronicle* on December 12, 2020 and the national edition of *USA Today* on December 14, 2020 (the "**Publication Notice**").[12]

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[10] With respect to holders of Class 6 General Unsecured Claims against the Parent, the Debtors distributed a single form of Ballot, a copy of which is attached as Exhibit 5A to the Solicitation Procedures Order (the "**Class 6 Ballot**"), and together with the Prepetition Noteholder Ballots and the Postpetition Ballots, the "**Ballots**").

[11] *See Certificate of Service of Rossmery Martinez re: Solicitation Materials Served on or Before December 11, 2020* [Docket No. 164] ("**Postpetition Affidavit of Service**").

[12] *See Affidavit of Publication of the Notice of (I) Commencement of Chapter 11 Bankruptcy Cases, (II) Combined Hearing on Disclosure Statement, Confirmation of Joint Prepackaged Chapter 11 Plan, and Related Matters, and (III) Objection Deadlines, and Summary of Debtors' Joint Prepackaged Chapter 11 Plan in the Houston Chronicle*, dated December 12, 2020 [Docket No. 171] and *Affidavit of Publication of the Notice of (I) Commencement of Chapter 11 Bankruptcy Cases, (II) Combined Hearing on Disclosure Statement, Confirmation of Joint Prepackaged Chapter 11 Plan, and Related Matters, and (III) Objection Deadlines, and Summary of Debtors' Joint Prepackaged Chapter 11 Plan in USA Today*, dated December 12, 2020 [Docket No. 174] (together, the "**Affidavits of Publication**").

18. The Solicitation Procedures Order set forth the procedures and deadlines for the Postpetition Solicitation. Specifically, the Postpetition Solicitation Package advised recipients that Postpetition Ballots must be returned to the Voting and Claims Agent by electronic mail, regular mail, hand delivery, or overnight courier to an address specified on such Ballots. Each Postpetition Ballot also contained detailed instructions on how to complete it and how to make any applicable elections contained therein. The Voting Record Date and the Voting Deadline were clearly identified in the Postpetition Solicitation Package.

19. Like the Prepetition Noteholder Ballots, the Class 6 Ballots also allowed Holders of Class 6 General Unsecured Claims against the Parent to affirmatively opt-out of the Third-Party Release contained in Article X of the Plan. The Class 6 Ballots also clearly informed such Holders that any contingent, disputed, or unliquidated Class 6 Claims would be assigned a value of $1.00 for voting purposes, as is customary. No party filed a motion to estimate its contingent, disputed, or unliquidated Class 6 Claims for voting purposes pursuant to Bankruptcy Rule 3018.

20. The materials in the Postpetition Solicitation Package also established how the Voting and Claims Agent would tabulate the votes and elections contained in the Postpetition Ballots. Those tabulation rules provided, among other things, the same criteria for Ballots that would not be counted as those in the Prepetition Solicitation Package, described in paragraph 14 hereof.

D. Voting Results

21. As a result of the Prepetition Solicitation and the Postpetition Solicitation, as of the date hereof, the Debtors have received votes in favor of the Plan from (a) 99.99% in amount of the Class 5 Prepetition Notes Claims that voted and 99.28% in number of Holders of Class 5 Prepetition Notes Claims that voted, (b) 78.56% in amount of the Class 6 General Unsecured Claims against the Parent that voted and 60% in number of Holders of Class 6 General Unsecured

Claims against the Parent that voted, and (c) 99.99% in amount of the Class 7 Prepetition Notes Claims that voted and 99.28% in number of Holders of Class 7 Prepetition Notes Claims that voted.[13]

E. The Plan Supplement

22. On December 11, 2020 and January 8, 2021, the Debtors filed with the Court the First Plan Supplement and Second Plan Supplement, respectively, which included the following exhibits: (a) Amended/New Organizational Documents; (b) Exit Facility Credit Agreement; (c) New Board Disclosure; (d) Corporate Governance Term Sheet; (e) Retained Causes of Action; (f) schedule of rejected Executory Contracts and Unexpired Leases; and (g) Reorganization Steps Overview.

F. The First Amended Plan

23. On January 15, 2021, the Debtors filed with the Court (i) the *First Amended Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 263] (the "**First Amended Plan**"), and (ii) a redline copy of the First Amended Plan showing the modifications to the initial version of the Plan filed on the Petition Date. None of the modifications to the Plan will materially adversely affect the treatment of those Classes of Claims that accepted the Plan.[14] Thus, as further described herein, the modifications do not require the Debtors to re-solicit acceptances for the Plan.

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[13] *See* Voting Certification.

[14] 11 U.S.C. § 1127(a) ("The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.").

G. Non-Voting Classes

24. The Plan provides that specific classes of Claims against and Equity Interests in the Debtors are presumed to accept or reject the Plan. Specifically, the Plan provides that Holders of Claims and Equity Interests in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), Class 4 (Prepetition Credit Agreement Claims), Class 8 (General Unsecured Claims Against Affiliate Debtors), Class 9 (Intercompany Claims), and Class 11 (Intercompany Equity Interests) are Unimpaired. Pursuant to Section 1126(f) of the Bankruptcy Code, each holder of a claim or equity interest in an unimpaired class is "conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class . . . is not required."[15] Accordingly, Holders of Claims and Equity Interests in each of Classes 1-4, 8, 9, and 11 are conclusively presumed to accept the Plan and their votes were not solicited (collectively, with Holders of Old Parent Interests in Class 10 and 510(b) Equity Claims in Class 12, the "**Non-Voting Classes**," and the holders of such Claims or Equity Interests, collectively, the "**Non-Voting Holders**").

25. In addition, Holders of Old Parent Interests in Class 10 and 510(b) Equity Claims in Class 12 are not expected to receive any recovery on account of their Claims or Equity Interests and are thus deemed to reject the Plan. Pursuant to Section 1126(g) of the Bankruptcy Code, each holder of a claim or equity interest "is deemed not to have accepted a plan if such plan provides that the claims or equity interests of such class do not entitle the holders of such claims or equity interests to receive or retain any property under the plan on account of such claims or equity interests."[16]

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[15] 11 U.S.C. § 1126(f).

[16] 11 U.S.C. § 1126(g).

26. Thus, the holders of Claims and Equity Interests in each of the above-mentioned Non-Voting Classes are conclusively presumed to either accept or reject the Plan, as applicable, and their votes were not solicited. The Notice of Non-Voting Status, which included an Opt-Out Release Form to allow members of Non-Voting Classes to opt out of the Third Party Release if they so choose, was served on the Non-Voting Classes by the Voting and Claims Agent commencing on December 10, 2020 and concluding on December 11, 2020.[17]

II. OVERVIEW OF THE PLAN

27. As noted above, the restructuring contemplated in the Plan results in a significant deleveraging of the Debtors' capital structure, as a result of the exchange of approximately $1.30 billion in Prepetition Notes Claims for New Common Stock and certain subscription rights to an equity rights offering.

28. The following table provides a summary of the classification and treatment of Claims and Equity Interests and the projected recoveries to Holders of Allowed Claims and Equity Interests under the Plan.

[17] *See* Postpetition Affidavit of Service.

SUMMARY OF EXPECTED RECOVERIES

Class	Claim/Equity Interest	Treatment of Claim/Equity Interest	Projected Recovery Under the Plan
1	Other Priority Claims Expected Amount: $0	Each Holder of an Allowed Class 1 Claim will receive in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtors or Reorganized Debtors, as applicable: • Cash equal to the amount of such Allowed Class 1 Claim; • Such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or • Such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however*, that Class 1 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business following the occurrence of the Effective Date by the applicable Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.	100%
2	Other Secured Claims Expected Amount: $0	Each Holder of an Allowed Class 2 Claim will receive in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtors or Reorganized Debtors, as applicable: • Cash equal to the amount of such Allowed Class 2 Claim; • Such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim will have agreed upon in writing; • The Collateral securing such Allowed Class 2 Claim; or • Such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided*, *however*, that Class 2 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business following the occurrence of the Effective Date by the applicable Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.	100%
3	Secured Tax Claims Expected Amount: $0	Each Holder of an Allowed Class 3 Claim will receive in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors or Reorganized Debtors, as applicable: • Cash equal to the amount of such Allowed Class 3 Claim;	100%

		• Such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 3 Claim will have agreed upon in writing; • The Collateral securing such Allowed Class 3 Claim; • Such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; or • Pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable nonbankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided*, *however*, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business following the occurrence of the Effective Date by the applicable Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (D) or (E) above will be made in equal quarterly Cash payments beginning on the Effective Date (or as soon as reasonably practicable thereafter), and continuing on a quarterly basis until payment in full of the applicable Allowed Class 3 Claim.	
4	Prepetition Credit Agreement Claims Expected Amount: $47,357,274.86	The Allowed Prepetition Credit Agreement Claims, other than Prepetition Credit Agreement Claims related to any outstanding letters of credit will, in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Claims, be indefeasibly paid in full in Cash. To the extent any Prepetition Credit Agreement Claims related to letters of credit issued and outstanding, cash management obligations, or hedging obligations, in each case, as of the Effective Date under the Prepetition Credit Agreement, have not been deemed outstanding under the DIP Facility pursuant to the DIP Orders, such Claims will in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Claims either be (i) in the case of Claims in respect of letters of credit, 105% cash collateralized, (ii) be deemed outstanding under the Exit ABL Facility, or (iii) receive such other treatment as may be acceptable to the Debtors, the Prepetition Credit Agreement Agent, the Issuing Lenders if applicable (as defined in the Prepetition Credit Agreement) and the Required Consenting Noteholders.	100%

SUMMARY OF EXPECTED RECOVERIES

5	Prepetition Notes Claims Against Parent Expected Amount: $1,300,000,000	The Prepetition Notes Claims are deemed Allowed in the aggregate principal amount of $1.30 billion, plus accrued and unpaid interest thereon. On, or as soon as reasonably practicable after, the Effective Date, each Holder of an Allowed Prepetition Notes Claim against Parent will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share (calculated together with the Claims in Class 6) of the Parent GUC Recovery Cash Pool; *provided* that the Holders of the Prepetition Notes Claims against the Parent will waive any distribution from the Parent GUC Recovery Cash Pool.	63.0%-76.0%[18]
6	General Unsecured Claims Against Parent Expected Amount: Contingent and Undetermined	Subject to Article VIII of the Plan, on, or as soon as reasonably practicable after, the Effective Date, each Holder of an Allowed General Unsecured Claim against Parent will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share (calculated together with the Claims in Class 5) of the Parent GUC Recovery Cash Pool.	Undetermined but > 0%
7	Prepetition Notes Claims Against Affiliate Debtors Expected Amount: $1,300,000,000	The Prepetition Notes Claims against any Affiliate Debtor are deemed Allowed in the aggregate principal amount of $1.30 billion, plus accrued and unpaid interest thereon. On the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Prepetition Notes Claim against any Affiliate Debtor will receive, in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share of: • (i) the Cash Payout, or • (ii) solely to the extent that such Holder timely and validly elects to be a Cash Opt-Out Noteholder on the Ballot provided to such Holder or is otherwise deemed to be a Cash Opt-Out Noteholder, (A) 100% of the New Common Stock Pool, subject to dilution from and after the Effective Date on account of the New MIP Equity, and (B), to the extent such Holder is an Accredited Cash Opt-Out Noteholder, Subscription Rights. **IF THE EQUITY RIGHTS OFFERING IS CONSUMMATED, THE DEFAULT TREATMENT FOR HOLDERS OF PREPETITION NOTES CLAIMS THAT ARE NOT PARTY TO THE RESTRUCTURING SUPPORT AGREEMENT UNDER THE PLAN IS A CASH PAYOUT, WHICH IS DEFINED UNDER THE PLAN AS AN AGGREGATE AMOUNT EQUAL TO 2.00% OF THE PRINCIPAL DUE UNDER THE PREPETITION NOTES HELD BY ALL CASH PAYOUT NOTEHOLDERS. IF HOLDERS OF PREPETITION NOTES CLAIMS WISH TO RECEIVE A PRO RATA SHARE OF THE NEW COMMON STOCK INSTEAD OF A CASH RECOVERY,**	63.0%-76.0%

[18] This recovery under the Plan applies collectively to Holders of Claims in both Class 5 and Class 7; it does not represent the recovery for Holders of Claims in Class 5 alone.

SUMMARY OF EXPECTED RECOVERIES

		THEY MUST AFFIRMATIVELY OPT OUT OF THE CASH PAYOUT ON THE BALLOT PROVIDED TO THEM. In order to opt-out of the Cash Payout with respect to all or any portion of its Allowed Prepetition Notes Claim, such applicable Prepetition Noteholder will be required to tender the underlying Prepetition Notes into a contra-CUSIP pursuant to DTC's ATOP procedures at the time such Holder submits its Ballot, and Prepetition Notes that are tendered into the contra-CUSIP will no longer be transferable. Notwithstanding anything to the contrary in the Plan, the Cash Payout is contingent upon the consummation of the Equity Rights Offering, and in the event that the Equity Rights Offering is not consummated, no Cash Payout will be distributed to any Holder of an Allowed Prepetition Notes Claim and each Holder of Allowed Prepetition Notes Claims will receive the distribution set forth in subsection (ii) above, regardless of whether such Holder timely and validly elected to be a Cash Opt-Out Noteholder.	
8	General Unsecured Claims Against Affiliate Debtors Expected Amount: $48,345,700[19]	The legal, equitable, and contractual rights of the holders of General Unsecured Claims against any Affiliate Debtor are unaltered by this Plan. Except to the extent that a holder of a General Unsecured Claim against any Affiliate Debtor agrees to a different treatment, on and after the Effective Date, the Debtors shall continue to pay (if Allowed) or dispute each General Unsecured Claim against any Affiliate Debtor in the ordinary course of business in accordance with applicable law.	100%
9	Intercompany Claims	Subject to the Restructuring Transactions, the Intercompany Claims will be adjusted, reinstated, compromised, or cancelled to the extent determined appropriate by the Debtors, with the consent of thein such manner as is acceptable to the Required Consenting Noteholders, in consultation with the Debtors.	N/A
10	Old Parent Interests	The Old Parent Interests will be discharged and terminated on and as of the Effective Date without any distribution or retaining any property on account of such Equity Interests.	0%
11	Intercompany Equity Interests	Subject to the Restructuring Transactions, the Intercompany Equity Interests will remain effective and outstanding on the Effective Date and will be owned and held by the same applicable Person or Entity that held and/or owned such Intercompany Equity Interests immediately prior to the Effective Date.	N/A
12	510(b) Equity Claims	The 510(b) Equity Claims will be discharged and terminated on and as of the Effective Date without any distribution or retaining any property on account of such Claims.	N/A

[19] These amounts were paid both under the relief the Bankruptcy Court granted the Debtors on December 8, 2020, and on an ongoing basis in the ordinary course of business.

ARGUMENT

29. This memorandum is divided into three parts. Part I addresses the Disclosure Statement and the Solicitation Procedures and their satisfaction of the applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"). Part II addresses the applicable requirements for confirmation of the Plan under Section 1129 of the Bankruptcy Code and demonstrates the satisfaction of each such requirement and achievement of the objectives of chapter 11. Part III sets forth the Debtors' response to the only remaining unresolved confirmation objections.

30. The Debtors respectfully refer the Court to:

- the Plan;
- the Disclosure Statement;
- the Voting Certification;
- *the Declaration of Joshua Cummings in Support of Confirmation of the First Amended Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 267] (the "**Cummings Declaration**");
- the *Declaration of Ryan Omohundro in Support of Confirmation of the First Amended Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 268] (the "**Omohundro Declaration**");
- the *Declaration of Westervelt T. Ballard in Support of Confirmation of the First Amended Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 266] (the "**Ballard Declaration**" and together with the Omohundro Declaration and Cummings Declaration, the "**Confirmation Declarations**," all filed substantially contemporaneously herewith);
- the Affidavit of Service of Solicitation Materials (regarding the service of the Combined Notice); and

- the record of the Chapter 11 Cases for an overview of the Debtors' business and other relevant facts that may bear on approval of the Disclosure Statement and confirmation of the Plan.

The Confirmation Declarations and any testimony and other declarations that may be adduced or submitted at or in connection with the Combined Hearing are herein incorporated in full.

I. APPROVAL OF THE DISCLOSURE STATEMENT IS WARRANTED.

A. Creditors Received Sufficient Notice of the Hearing and Objection Deadline for Approval of the Disclosure Statement.

31. Under Bankruptcy Rule 3017(a), a hearing on the adequacy of a disclosure statement generally requires twenty-eight (28) days' notice.[20] Similarly, Bankruptcy Rule 2002(b) provides that parties in interest should receive twenty-eight (28) days' notice of the objection deadline and the hearing to consider approval of the disclosure statement.[21] Courts in the Fifth Circuit and elsewhere have adopted the general rule that due process requires "notice reasonably calculated, under all the circumstances, to inform interested parties of the pendency of a proceeding."[22] When evaluating the notice and the sufficiency thereof, courts will consider "[f]irst, whether the notice apprised the claimant of the pendency of the action, and second, whether it was sufficiently timely to permit the claimant to act."[23] Whether a particular method of notice is reasonably calculated to inform interested parties is determined on a case-by-case basis.[24]

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[20] *See* FED. R. BANKR. P. 3017(a) ("the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest . . . to consider the disclosure statement and any objections or modifications thereto").

[21] *See* FED. R. BANKR. P. 2002(b).

[22] *In re Placid Oil Co.*, 753 F.3d 151, 154 (5th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

[23] *Sequa Corp. v. Christopher (In re Christopher)*, 249 F.3d 383, 518 (5th Cir. 2001) (applying two-part test); *In re Texas Tamale Co., Inc.*, 219 B.R. 732, 739-40 (Bankr. S.D. Tex. 1998) (same).

[24] *See In re Hunt*, 146 B.R. 178, 182 (Bankr. N.D. Tex. 1992) ("Whether a particular method of notice is reasonably calculated to reach interested parties depends upon the particular circumstances of each case").

32. As noted above, on December 8, 2020, the Court entered the Solicitation Procedures Order, which, among other things, scheduled the Combined Hearing, established certain objection and reply deadlines, and approved the Combined Notice and manner of service thereof.[25] The Combined Notice informed recipients of, among other things: (a) the commencement of the Chapter 11 Cases; (b) the date and time set for the Combined Hearing; and (c) the Objection Deadline.[26] On December 10, 2020, the Combined Notice was served upon the Debtors' entire Creditor Matrix, the Debtors' Master Service List, and on all Holders of Claims in the Voting Classes and Non-Voting Classes. Accordingly, the Debtors submit that all parties in interest had notice of the proposed approval of the Disclosure Statement at least forty (40) days prior to the Combined Hearing and thirty-three (33) days prior to the Objection Deadline, in compliance with both Bankruptcy Rule 3017(a) and Bankruptcy Rule 2002(b).[27]

33. Further, the Debtors caused the Publication Notice to be published in the *Houston Chronicle* on December 12, 2020 and the national edition of *USA Today* on December 14, 2020.[28] Both the Combined Notice and Publication Notice included instructions regarding how to obtain the Plan and the Disclosure Statement free of charge through the Voting and Claims Agent's website for the Chapter 11 Cases, www.kccllc.net/superior.

B. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code and Should be Approved.

34. To determine whether a prepetition solicitation of votes to accept or reject a plan should be approved, the Court must determine whether the solicitation complied with Sections

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25 *See* Solicitation Procedures Order.

26 *See* Postpetition Affidavit of Service.

27 *See* Postpetition Affidavit of Service.

28 *See* Affidavits of Publication.

1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rules 3017(d), 3017(e), 3018(b), and 3018(c).

35. Section 1125(g) of the Bankruptcy Code provides that:

> [A]n acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.[29]

36. Section 1126(b) of the Bankruptcy Code provides that:

> [A] holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or (2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.[30]

37. Prepetition solicitations must, therefore, either comply with applicable federal or state securities laws and regulations (including the registration and disclosure requirements thereof) or, if such laws and regulations do not apply, the solicited holders must receive "adequate information" as defined in Section 1125(a) of the Bankruptcy Code. As discussed below, the Debtors satisfied Sections 1125(g) and 1126(b), as applicable, of the Bankruptcy Code.

1. The Debtors' Prepetition Solicitation of Votes on the Plan Complied with Applicable Nonbankruptcy Law.

38. The Debtors solicited votes on the Plan over the course of thirty-four (34) days from all Holders of Prepetition Notes Claims and Holders of General Unsecured Claims against the Parent in compliance with all applicable bankruptcy and nonbankruptcy requirements. Section 1126(b) of the Bankruptcy Code expressly permits a debtor to solicit votes from holders of claims

[29] 11 U.S.C. § 1125(g).

[30] 11 U.S.C. § 1126(b).

and equity interests prepetition without a court-approved disclosure statement if the solicitation complies with applicable nonbankruptcy law—including generally applicable federal and state securities laws or regulations—or, if no such laws exist, the solicited holders receive "adequate information" within the meaning of Section 1125(a) of the Bankruptcy Code.

39. The Debtors' Prepetition Solicitation was exempt from securities law registration requirements pursuant to Section 4(a)(2), Regulation D, and/or Regulation S of the Securities Act. Specifically, Section 4(a)(2) of the Securities Act creates an exemption from the registration requirements under the Securities Act for certain transactions not involving a "public offering," including where the transaction involves only "accredited investors" or "qualified institutional buyers", and Regulation S of the Securities Act creates an exemption from the registration requirements under the Securities Act for offers and sales of securities that occur outside of the United States.[31]

40. The Debtors have complied with the requirements of Section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S thereunder, as applicable, with respect to the requirements for transactions exempt from the registration requirements under the Securities Act. Ballots sent to Holders of Prepetition Notes Claims as part of the Prepetition Solicitation Package stated that such Holders must certify that they are (a) located inside the U.S. and are (i) "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) or (ii) "accredited investors" (as defined in Rule 501(a) of Regulation D under the Securities Act) or (b) located outside the U.S. and are persons other than "U.S. persons" (as defined in Rule 902 under the Securities Act).[32] Therefore, the Prepetition Solicitation meets the requirements of applicable

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[31] *See* Securities Act, 15 U.S.C. § 77d(a)(2); *see also* Regulation D, 17 C.F.R. § 203.506.

[32] *See, e.g.*, Regulation D, 17 C.F.R. § 230.506 (deeming a transaction a non-public offering under Section 4(a)(2) of the Securities Act if the transaction only involves accredited investors, provided certain other conditions are

nonbankruptcy law and, thus, complies with Section 1126(b)(1) of the Bankruptcy Code. Moreover, no party in interest has objected to the Disclosure Statement on account of noncompliance with applicable nonbankruptcy law.

2. The Disclosure Statement Contains Adequate Information.

41. The Prepetition Solicitation also complies with Section 1126(b)(2) of the Bankruptcy Code, as it complied with Section 1125(a) of the Bankruptcy Code.[33] In addition, and for the same reason (i.e., compliance with Section 1125(a)), the Postpetition Solicitation complies with Section 1125(b) with respect to the Postpetition Solicitation, which provides that a disclosure statement must be transmitted to holders of claims or interests whose votes are being solicited after the commencement of the Chapter 11 Cases.

42. Section 1125(a) requires that a disclosure statement provide material information, or "adequate information," that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.[34] "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[35] Courts within the Fifth

satisfied); Regulation S, 17 C.F.R. § 230.903 (deeming a transaction occurring outside the United States, and, therefore, not subject to Section 5 of the Securities Act, if the transaction only involves purchasers who are not a U.S. person, provided certain conditions are satisfied).

33 11 U.S.C. § 1126(b)(2).

34 11 U.S.C. § 1125(a)(1); *see, e.g., In re J.D. Mfr., Inc.*, 2008 WL 4533690, at *2 (Bankr. S.D. Tex. Oct. 2, 2008) ("Adequacy of information is a determination that is relative both to the entity (e.g. assets/business being reorganized or liquidated) and to the sophistication of the creditors to whom the disclosure statement is addressed."); *In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) ("The purpose of the disclosure statement is . . . to provide enough information to interested persons so they may make an informed choice."); *In re Applegate Prop., Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991) ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for themselves what impact the information might have on their claims and on the outcome of the case.") (emphasis in original).

35 *See, e.g.*, 11 U.S.C. § 1125(a)(1) ("'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records."); *Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 518 (5th Cir. 1998) ("The legislative history of § 1125 indicates that, in determining what constitutes adequate information with respect to a particular disclosure statement . . . the kind and form of information are left essentially to the judicial discretion of the court and that the information required will necessarily be governed by the circumstances of each case.") (internal citations omitted); *Floyd v. Hefner*, 2006 WL 2844245, at *30 (S.D. Tex. Sept. 29, 2006) (noting that what constitutes "adequate information" is a flexible standard); *In re Applegate Prop.*, 133 B.R.

Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying Section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[36] Section 1125 also states that information must be adequate for a typical hypothetical investor who, among other things, is able to obtain relevant information on the debtor in addition to what the disclosure statement provides.[37] Such is the case here, as the Debtors make regular public filings disclosing material information on their businesses and financial statements.

43. Courts may consider various factors when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

(a) the events that led to the filing of a bankruptcy petition;

(b) the relationship of a debtor with the affiliates;

(c) a description of the available assets and their value;

(d) the anticipated future of the company;

(e) the source of information stated in the disclosure statement;

(f) the present condition of a debtor while in chapter 11;

(g) the claims asserted against a debtor;

(h) the estimated return to creditors under a chapter 7 liquidation;

(i) the future management of a debtor;

(j) the chapter 11 plan or a summary thereof;

(k) the financial information, valuations, and projections relevant to the claimants' decision to accept or reject the plan;

(l) the information relevant to the risks posed to claimants under the plan;

(m) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

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at 829 ("The issue of adequate information is usually decided on a case by case basis and is left largely to the discretion of the bankruptcy court.").

[36] *See, e.g., In re Cajun Elec. Power Coop.*, 150 F.3d at 518 (holding that courts are vested with wide discretion to determine whether disclosure statement contains "adequate information" within meaning of Section 1125(a) of the Bankruptcy Code); *Tex. Extrusion Corp. v. Lockheed Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.").

[37] 11 U.S.C. § 1125(a)(2)(C).

(n) the litigation likely to arise in a nonbankruptcy context; and

(o) the tax attributes of a debtor.[38]

44. The Disclosure Statement is extensive and comprehensive and meets the criteria set forth in *Metrocraft*. It contains descriptions of, among other things: (a) the Plan; (b) an overview of the Debtors' business; (c) key events leading to the commencement of the Chapter 11 Cases; (d) anticipated events during the Chapter 11 Cases; (e) financial information, financial projections and valuations that would be relevant to a determination of whether to accept or reject the Plan; (f) a liquidation analysis setting forth the estimated return that Holders of Claims and Equity Interests would receive in a hypothetical chapter 7 liquidation (the "**Liquidation Analysis**"); (g) risk factors concerning the Debtors, their industry, and the Plan (and the distributions to be made thereunder); and (h) federal tax law consequences of the Plan. Additionally, the Disclosure Statement contained a copy of the Plan, the Restructuring Support Agreement, the Liquidation Analysis, and other key documents. It is also worth noting that the Debtors included the Valuation Analysis in the Disclosure Statement despite not being required to do so by section 1125 of the Bankruptcy Code.[39]

45. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of Section 1125(a) of the Bankruptcy Code, in satisfaction of Sections 1125(b) and 1126(b)(2), and should be approved.

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[38] *See In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 597 (Bankr. N.D. Ga. 1984) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *see also In re U.S. Brass Corp.*, 194 B.R. at 424-25; *In re Westland Dev. Corp. v. MCorp Mgmt. Solutions, Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993). Disclosure regarding all topics is not necessary in every case. *See, e.g., In re U.S. Brass Corp.*, 194 B.R. at 425; *In re Phx. Petroleum*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

[39] *See* 11 U.S.C. § 1125(b) ("The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.).

C. The Debtors' Prepetition and Postpetition Solicitation of Votes Complied with the Bankruptcy Code, the Bankruptcy Rules, and Solicitation Procedures Order.

46. Prior to the Petition Date, the Debtors distributed the Prepetition Solicitation Packages to all Eligible Holders of Prepetition Notes Claims and began soliciting votes from such Holders to accept or reject the Plan. Following the entry of the Solicitation Procedures Order, in which, among other things, this Court approved the Postpetition Solicitation, the Debtors distributed the Postpetition Solicitation Package, which included the Postpetition Ballots and cover letter, and solicited votes from Non-Eligible Holders of Prepetition Notes Claims and Holders of General Unsecured Claims against the Parent to accept or reject the Plan. Both the Prepetition Solicitation and the Postpetition Solicitation were in accordance with Sections 1125 and 1126 of the Bankruptcy Code and applicable nonbankruptcy law (as discussed above in connection with the Prepetition Solicitation).[40]

1. Creditors Received Sufficient Notice of the Combined Hearing and the Objection Deadline.

47. Bankruptcy Rule 2002(b) provides that parties in interest should receive twenty-eight (28) days' notice of the objection deadline and the hearing to consider confirmation of a plan of reorganization.[41] As noted in paragraph 27 above, the Debtors served the Combined Notice on parties-in-interest forty (40) days prior to the Combined Hearing and thirty-three (33) days prior to the Objection Deadline, in compliance with Bankruptcy Rule 2002(b),[42] and provided further

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[40] *Id* (debtors may solicit votes following filing if the holders of claims or interested solicited are sent a summary of the plan and an approved disclosure statement); 11 U.S.C. § 1125(g) (debtors may commence solicitation prior to filing chapter 11 petitions); 11 U.S.C. § 1126(b)(2) (holders of claims or interests that accepted or rejected a plan before the commencement of a chapter 11 case are deemed to accept or reject the plan so long as the solicitation provided adequate information).

[41] *See* FED. R. BANKR. P. 2002(b).

[42] *See* Postpetition Affidavit of Service, ¶ 2. In addition, on December 5, 2020, the Debtors transmitted copies of the Prepetition Solicitation Package, which included the Plan and the Disclosure Statement, to all Eligible Holders of Prepetition Notes Claims. *See* Prepetition Affidavit of Service, ¶ 2.

notice by publication.[43] The Combined Notice provided that copies of the Plan and the Disclosure Statement could be obtained by written or phone request to the Voting and Claims Agent, or by accessing the case website free of charge at www.kccllc.net/superior. The Combined Notice also set forth the date, time, and place of the Combined Hearing to consider approval of the Disclosure Statement and confirmation of the Plan.

48. Accordingly, the Debtors submit that the notice of the Combined Hearing and Objection Deadline satisfies the requirement of Bankruptcy Rule 2002(b).

2. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Bankruptcy Rules.

43. Bankruptcy Rule 3017(d) requires the Debtors to transmit a form of ballot, which substantially conforms to Official Form No. 314, only to "creditors and equity security holders entitled to vote on the plan."[44] Bankruptcy Rule 3018(c) provides that, "[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity holder or an authorized agent, and conform to the appropriate Official Form."[45] As set forth in the Prepetition Affidavit of Service and the Postpetition Affidavit of Service, Ballots were transmitted to all Holders of Class 5 and Class 7 Prepetition Notes Claims and Class 6 General Unsecured Claims against the Parent.[46] The forms of Ballots complied with the Bankruptcy Rules and are consistent with Official Form No. 314. Moreover, the forms of Ballots were approved by the Court in the Solicitation Procedures Order.[47] Further, there have been no

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43 *See* Affidavits of Publication.

44 FED. R. BANKR. P. 3017(d).

45 FED. R. BANKR. P. 3018(c).

46 *See* Postpetition Affidavit of Service; Prepetition Affidavit of Service.

47 *See* Solicitation Procedures Order, ¶ 15.

objections to the sufficiency of the Ballots. Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rules 3017(d) and 3018(c).

3. The Noteholder Voting Record Date Complied with Bankruptcy Rules.

44. In a prepetition solicitation, the holders of record of the applicable claims against and interests in a debtor entitled to receive ballots and related solicitation materials are to be determined "on the date specified in the solicitation."[48] The Disclosure Statement and Ballots clearly identify December 3, 2020 as the Voting Record Date, and no party in interest has objected to the Voting Record Date.[49] Therefore, the Debtors respectfully request that the Court approve December 3, 2020 as the Voting Record Date.

4. The Debtors' Solicitation Period Complied with Bankruptcy Rule 3018(b).

45. The Debtors' solicitation period for Holders of Prepetition Notes Claims and General Unsecured Claims against the Parent complied with Bankruptcy Rule 3018(b). First, as set forth above, the Plan and Disclosure Statement were transmitted to all Eligible Holders of Prepetition Notes Claims prior to the Petition Date.[50] Second, the solicitation periods – which lasted from December 5, 2020 through January 8, 2021 for Eligible Holders of Prepetition Notes Claims, and from December 8, 2020 through January 8, 2021 for Non-Eligible Holders of Prepetition Notes Claims and Holders of General Unsecured Claims against the Parent – were adequate under the particular facts and circumstances of this case and were not "unreasonably

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48 FED. R. BANKR. P. 3018(b).

49 In an effort to provide Holders of Prepetition Notes Claims with additional time to opt-out of the Cash Payout, the Debtors extended the deadline for Prepetition Noteholders to tender their notes. Further, to provide increased transparency, the Debtors filed a *Notice of Cash Opt-Out Election Deadline Extension and Instructions Regarding Cash Opt-Out Election* [Docket No. 215] announcing that the opt-out deadline was extended to January 15, 2021. The Voting Record Date for purposes of voting to accept or reject the plan remained the same.

50 *See* Prepetition Affidavit of Service, ¶ 2.

short." Finally, there have been no objections to the length of the solicitation period. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 3018(b).[51]

5. The Debtors' Vote Tabulation was Appropriate.

46. The Debtors request that the Court approve the tabulation procedures. As described in the Solicitation Procedures Motion, the Voting and Claims Agent used standard tabulation procedures in tabulating votes from Holders of Claims. Specifically, the Voting and Claims Agent reviewed all Ballots received in accordance with the procedures described in the Solicitation Procedures Motion and the Disclosure Statement.[52]

6. Waiver of Certain Solicitation Package Mailings is Reasonable and Appropriate.

47. As further described in the Solicitation Procedures Motion, certain Holders of Claims and Equity Interests were not provided a Solicitation Package because (a) such Holders are Unimpaired under, and conclusively presumed to accept, the Plan under Section 1126(f) of the Bankruptcy Code, or (b) such Holders are not entitled to receive or retain any property under the Plan on account of such Claims or Equity Interests based on the Company's enterprise valuation[53] and are, therefore, conclusively deemed to reject the Plan under Section 1126(g) of the Bankruptcy Code. In the Solicitation Procedures Order, the Court approved the Debtors' Solicitation Procedures, which provided that the Debtors would not mail a copy of the Solicitation Package to

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[51] Courts in this district and others have approved significantly shorter solicitation periods. *See, e.g.*, *In re Transcoastal Corp.*, No. 15-34956 (Bankr. N.D. Tex. Dec. 18, 2015) (approving solicitation procedures with voting period of two days); *In re Cross Canyon Energy Corp*., No. 10-30747 (Bankr. S.D. Tex. Mar. 11, 2010) (approving solicitation procedures with voting period of one day where holders of claims and interests entitled to vote were familiar with the restructuring efforts and the plan); *In re Davis Petroleum Corp*., No. 06-20152 (Bankr. S.D. Tex. Mar. 10, 2006) (approving solicitation procedures with voting period of five days).

[52] *See* Voting Certification.

[53] *See* Cummings Declaration, ¶ 12.

Holders of Claims and Equity Interests presumed to accept or deemed to reject the Plan.[54] As set forth above, the Court-approved Combined Notice was sent to the Debtors' entire Creditor Matrix and provided instructions for obtaining copies of the Disclosure Statement and Plan, which are available at no cost on the Voting and Claims Agent's website. In addition, the Court-approved Notice of Non-Voting Status was sent to all Holders of Claims and Equity Interests in Non-Voting Classes in accordance with the Solicitation Procedures Order.[55]

7. Solicitation of the Plan Complied with the Bankruptcy Code and was in Good Faith.

48. Section 1125(e) of the Bankruptcy Code provides that "a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.[56]

49. As set forth in the Confirmation Declarations and the Solicitation Procedures Motion, the parties to the Restructuring Support Agreement at all times engaged in arm's-length, good-faith negotiations,[57] and all parties, including the Voting and Claims Agent, took appropriate actions in connection with the solicitation of the Plan in compliance with Section 1125 of the Bankruptcy Code. Therefore, the Debtors respectfully request that the Court grant these parties the protections provided under Section 1125(e) of the Bankruptcy Code.

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54 *See* Solicitation Procedures Order, ¶ 10.

55 *See id.*

56 11 U.S.C. § 1125(e).

57 *See* Omohundro Declaration, ¶¶ 9-11.

II. THE PLAN SATISFIES THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE AND SHOULD BE APPROVED

50. To obtain confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies the applicable provisions of Section 1129 of the Bankruptcy Code by a preponderance of the evidence.[58] Through filings with the Court, the Confirmation Declarations, and any evidence that may be adduced at the Combined Hearing, the Debtors will demonstrate, by a preponderance of the evidence, that all applicable subsections of Section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan.

A. Section 1129(a)(1): the Plan Complies with all Applicable Provisions of the Bankruptcy Code.

51. Section 1129(a)(1) of the Bankruptcy Code provides that a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of Section 1129(a)(1) informs that this provision encompasses the requirements of Sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively.[59] As demonstrated below, the Plan fully complies with the requirements of Sections 1122 and 1123 and all other applicable provisions of the Bankruptcy Code.

B. Section 1122: the Plan's Classification Structure is Proper.

52. Section 1122(a) of the Bankruptcy Code provides in pertinent part as follows:

> Except as provided in subsection (b) of this Section, a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

11 U.S.C. § 1122(a).

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[58] *See In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof under both § 1129(a) and in a cramdown."); *In re Cypresswood Land Partners I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009).

[59] H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977).

53. Additionally, Section 1122(b) of the Bankruptcy Code expressly permits separate classification of certain claims for purposes of administrative convenience. 11 U.S.C. § 1122(b). For a classification structure to satisfy Section 1122 of the Bankruptcy Code, it is not necessary that all substantially similar claims or interests be designated to the same class, but only that all claims or interests designated to a particular class be substantially similar to each other.[60]

54. The Plan provides for the separate classification of Claims and Equity Interests based upon differences in the legal nature and/or priority of such Claims and Equity Interests. The Plan designates the following twelve Classes of Claims and Equity Interests:[61] Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), Class 4 (Prepetition Credit Agreement Claims), Class 5 (Prepetition Notes Claims Against Parent), Class 6 (General Unsecured Claims Against Parent), Class 7 (Prepetition Notes Claims Against Affiliate Debtors), Class 8 (General Unsecured Claims Against Affiliate Debtors), Class 9 (Intercompany Claims), Class 10 (Old Parent Interests), Class 11 (Intercompany Equity Interests) and Class 12 (510(b) Equity Claims). The Plan contemplates there being a separate plan of reorganization for each Debtor entity; therefore, the Plan does not contemplate substantive consolidation of the Debtors. Instead, each Class of creditors is being treated under the Plan on a per-Debtor basis.[62] Therefore, it is appropriate for the Debtors to classify the General Unsecured Creditors at the Parent separate and apart from the General Unsecured Creditors at the Affiliate Debtors.

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[60] *In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 596 (Bankr. S.D. Tex. 1991) ("A classification scheme satisfies section 1122(a) of the Bankruptcy Code when a reasonable basis exists for the choices made and all claims within a particular class are substantially similar.").

[61] Administrative Claims, Professional Fee Claims, DIP Facility Claims, and Priority Tax Claims are not classified and are separately treated under the Plan.

[62] *See* Preamble to Plan ("Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Equity Interests in each Debtor pursuant to the Bankruptcy Code. This Plan is not premised upon the substantive consolidation of the Debtors with respect to the Classes of Claims or Equity Interests set forth in the Plan.")

55. A plan proponent is afforded significant flexibility in classifying claims and interests into different classes, provided that there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar.[63] The classification structure of the Plan is rational and complies with the Bankruptcy Code. All Claims and Equity Interests within a Class have the same or similar rights against the Debtors. The Plan provides for the separate classification of Claims against and Equity Interests in each Debtor based upon the differences in legal nature and/or priority of such Claims and Equity Interests. Moreover, the classification scheme generally tracks the Debtors' prepetition capital structure and divides Claims and Equity Interests into Classes based on the underlying instruments giving rise to such Claims and Equity Interests.

56. While Prepetition Notes Claims against the Parent and General Unsecured Claims against Parent are classified in two separate classes–Class 5 and Class 6, respectively–such classification is appropriate. First, as stated above, plan proponents are afforded significant flexibility in classifying claims where there is a rational legal or factual basis for doing so.[64] Claims in Class 5 are fixed and liquidated, while Claims in Class 6 are contingent and unliquidated.

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63 *See In re Pisces Energy LLC*, No. 09-36591, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009) ("[A] plan proponent is afforded significant flexibility in classifying claims under section 1122(a) of the Bankruptcy Code provided there is a reasonable basis for the classification scheme and all claims within a particular class are substantially similar."); *In re Sentry Op. Co. of Tex., Inc*., 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (noting that "[section] 1122 is permissive of any classification scheme that is not proscribed, and that substantially similar claims may be separately classified") (emphasis in original); *In re Eagle Bus Mfg*., 134 B.R. at 596 ("A classification scheme satisfies section 1122(a) of the Bankruptcy Code when a reasonable basis exists for the choices made and all claims within a particular class are substantially similar."); *see also In re Vitro Asset Corp.*, No. 11-32600, 2013 WL 6044453, at *5 (Bankr. N.D. Tex. Nov. 14, 2013) ("[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or interests . . . ."); *In re Mirant Corp*., No. 03-46590, 2005 WL 6443614, at *19 (Bankr. N.D. Tex. Dec. 9, 2005).

64 *See supra* notes 57, 59.

The separation of fixed and liquidated claims, on the one hand, and contingent and unliquidated claims, on the other hand, is a rational basis for the placement of claims into two separate classes.[65]

57. Furthermore, assuming *arguendo* that Classes 5 and 6 should be combined into a single class, such a class would still have voted overwhelmingly to accept the Plan since the $1.3 billion in Prepetition Notes Claims in Class 5 would outnumber all of the General Unsecured Claims in Class 6, as reflected in the Voting Certification.[66] And this result stands even if, for voting purposes, Claims in Class 6 were set at their asserted contingent and unliquidated amounts, as opposed to the customary $1.00 for such Claims.[67]

58. Accordingly, the classification scheme of the Plan complies with Section 1122 of the Bankruptcy Code, and in any event, does not affect the outcome of the votes on the Plan.

C. Section 1123(a): the Plan Complies with all Requirements of Section 1123(a) of the Bankruptcy Code.

59. Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which every chapter 11 plan must comply. *See* 11 U.S.C. § 1123(a). As demonstrated herein, the Plan fully complies with each enumerated requirement.

1. Section 1123(a)(1): Designation of Classes of Claims and Equity Interests.

60. Section 1123(a)(1) requires that a plan must designate classes of claims and classes of equity interests subject to Section 1122 of the Bankruptcy Code. As discussed above, Article III

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65 *See In re Save Our Springs (S.O.S.) All., Inc.*, 388 B.R. 202, 235-36 (Bankr. W.D. Tex. 2008) (citing separation of liquidated and unliquidated claims as a valid reason but finding both sets of claims in question to be liquidated); *In re Adelphia Communications Corp.*, 368 B.R. 140, 247 (Bankr. S.D.N.Y. 2007) (finding that separate classification of trade claims was proper where they were "generally liquidated" and other unsecured claims were "primarily unliquidated litigation and rejection damage Claims").

66 *See* Voting Certification, Ex. A.

67 *See* Voting Certification, Ex. G.

of the Plan designates Classes of Claims and Equity Interests as required under Section 1123(a)(1). Accordingly, the Plan satisfies the requirements of Section 1123(a)(1) of the Bankruptcy Code.

2. Section 1123(a)(2): Specification of Classes that are not Impaired by the Plan.

61. Section 1123(a)(2) requires a plan to specify which classes of claims or interests are unimpaired by the plan. Article III of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), Class 4 (Prepetition Credit Agreement Claims), Class 8 (General Unsecured Claims Against Affiliate Debtors), Class 9 (Intercompany Claims) and Class 11 (Intercompany Equity Interests) (all as defined in the Plan) are Unimpaired. Accordingly, the Plan satisfies the requirements of Section 1123(a)(2) of the Bankruptcy Code.

3. Section 1123(a)(3): Treatment of Classes that are Impaired by the Plan.

62. Section 1123(a)(3) requires a plan to specify how classes of claims or interests that are impaired by the plan will be treated. Article III of the Plan sets forth the treatment of Impaired Claims in Class 5 (Prepetition Notes Claims Against Parent), Class 6 (General Unsecured Claims Against Parent), and Class 7 (Prepetition Notes Claims Against Affiliate Debtors). Accordingly, the Plan satisfies the requirements of Section 1123(a)(3) of the Bankruptcy Code.

4. Section 1123(a)(4): Equal Treatment within Each Class.

63. Section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder agrees to receive less favorable treatment than other class members. Pursuant to the Plan, the treatment of each Claim against or Equity Interest in the Debtors, in each respective Class, is the same as the treatment of

each other Claim or Equity Interest in such Class.[68] Accordingly, the Plan satisfies the requirements of Section 1123(a)(4) of the Bankruptcy Code.

5. Section 1123(a)(5): Adequate Means for Implementation of Plan.

64. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide "adequate means for the plan's implementation."[69] Article V of the Plan provides adequate and proper means for the implementation of the Plan, including, among other things: (a) the continued corporate existence of the Debtors and the vesting of assets in the Reorganized Debtors under Articles V.B and V.C of the Plan; (b) the adoption of the amended organizational documents that will govern the Reorganized Debtors and the process for appointment of the initial board of directors of the Reorganized Debtors, as provided in Articles V.M and V.N of the Plan and the Plan Supplement; (c) the issuance of New Common Stock for distribution in accordance with the terms of the Plan, as detailed in Articles V.E and V.F of the Plan; (d) the entry by the Reorganized Debtors into the

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[68] As set forth in the Plan, holders of Class 5 Prepetition Notes Claims against the Parent have waived any distributions from the Parent GUC Recovery Cash Pool, and thus will not receive the same recovery as holders of Class 6 General Unsecured Claims against the Parent.

[69] *See* 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) requires a plan to provide for "adequate means" for the plan's implementation, "such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of property of the estate … among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose."

Exit Facility Loan Documents, as detailed in Articles V.D of the Plan; (e) the consummation of the Equity Rights Offering, as detailed in Article V.V of the Plan; (f) the full release, termination, extinguishment and discharge of all notes, indentures, instruments, certificates, agreements and other documents evidencing or relating to any Impaired Claim (including, for the avoidance of doubt and without limitation, the Prepetition Notes Indentures and the Prepetition Notes, or any Claim being paid in full in Cash under this Plan), will be fully released, terminated, extinguished and discharged (including, in respect of DIP Documents, any duties or obligations of the DIP Agent thereunder), in each case, to the extent provided in the Plan as detailed in Article V.O; (g) the release and discharge of all Liens, except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, as detailed in Article V.K of the Plan; (h) the preservation of certain causes of action by the Reorganized Debtors pursuant to Article X.F of the Plan; (i) the various discharges, releases, injunctions, indemnifications and exculpations provided in Article X of the Plan; (j) the implementation of the New Management Incentive Plan and continuation of certain employee benefits, as described in Article V.H of the Plan; and (k) the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases to which any Debtor is a party, as detailed in Article VI of the Plan.

65. The transactions contemplated by the Plan are designed to maximize the value of the Debtors' business and assets. Accordingly, the Plan, together with the documents and agreements contemplated by the Plan and the Plan Supplement, provide the means for implementation of the Plan as required by and in satisfaction of Section 1123(a)(5) of the Bankruptcy Code.

6. Section 1123(a)(6): Amendment of the Reorganized Debtors' Corporate Governance Documents.

66. Section 1123(a)(6) prohibits the issuance of non-voting equity securities, and requires amendment of a debtor's corporate governance documents to so provide. It also requires that a corporations' governance documents provide an appropriate distribution of voting power among the classes of securities possessing voting power. The Plan does not provide for the issuance of non-voting equity securities, and the form of amended and restated organizational documents for Reorganized Parent, attached as Exhibit E to the Second Plan Supplement, prohibits the issuance of non-voting capital stock of any class, series, or other designation to the extent prohibited by Section 1123(a)(6). Accordingly, the Plan satisfies Section 1123(a)(6) of the Bankruptcy Code.

7. Section 1123(a)(7): Provisions Regarding Directors and Officers.

67. Section 1123(a)(7) of the Bankruptcy Code requires that a plan "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." Article V.M of the Plan provides that the New Board of Reorganized Parent will initially consist of directors, who will be designated in accordance with the terms and conditions of the Plan. The Debtors will disclose, before the Confirmation Hearing or as soon as reasonably practicable thereafter, the identity of those Persons proposed to serve on the initial board of directors of each of the Reorganized Debtors or the Plan provides the mechanism by which the Debtors will select those Persons, and, to the extent such Person is an insider other than by virtue of being a director or an officer, the nature of any

compensation for such Person.[70] The Debtors have disclosed that the Debtors' existing officers will continue to serve the Reorganized Debtors subject to the terms of Article V.M of the Plan.[71] All such directors and officers are qualified for their respective positions and capable of carrying out their duties under applicable law. The manner of selecting the officers and directors of the Reorganized Debtors is consistent with the Bankruptcy Code, the interests of creditors and equity security holders, and public policy. Therefore, the Plan satisfies the requirements of Section 1123(a)(7) of the Bankruptcy Code.

D. Section 1123(b): The Plan Incorporates Certain Permissive Provisions.

68. Section 1123(b) of the Bankruptcy Code sets forth certain permissive provisions that may be incorporated into a chapter 11 plan. Among other things, Section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11.[72] The contents of the Plan are consistent with these provisions.

1. Section 1123(b)(1): Impairment/Unimpairment of Claims and Equity Interests.

69. Section 1123(b)(1) of the Bankruptcy Code provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). In these Chapter 11 Cases, Claims in Class 5 (Prepetition Notes Claims Against Parent), Class 6 (General Unsecured Claims Against Parent), Class 7 (Prepetition Notes Claims

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70 Second Plan Supplement, Exhibit D.

71 *Id.*

72 *See* 11 U.S.C. § 1123(b)(1)–(3), (6).

Against Affiliate Debtors), Class 10 (Old Parent Interests), and Class 12 (510(b) Equity Claims) are Impaired, and Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), Class 4 (Prepetition Credit Agreement Claims), Class 8 (General Unsecured Claims Against Affiliate Debtors), Class 9 (Intercompany Claims) and Class 11 (Intercompany Equity Interests) are Unimpaired. Accordingly, the Plan is consistent with Section 1123(b)(1) of the Bankruptcy Code.

2. Section 1123(b)(2): Assumption or Rejection of Executory Contracts and Unexpired Leases.

70. Section 1123(b)(2) of the Bankruptcy Code allows a plan to provide for assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to Section 365 of the Bankruptcy Code. Article VI.A of the Plan provides that, as of the Effective Date, the Debtors shall be deemed to have assumed each Executory Contract and Unexpired Lease to which it is a party unless such Executory Contract or Unexpired Lease (a) has been assumed or rejected by prior order of the Court, (b) is the subject of a motion to reject that is pending on the Effective Date, (c) is identified by the Debtors (with the consent of the Required Consenting Noteholders) and Filed in the Second Plan Supplement or (d) is rejected or terminated pursuant to the terms of the Plan.[73] These provisions of the Plan are permitted by Section 1123(b)(2) of the Bankruptcy Code.

3. Section 1123(b)(3): Retention of Claims or Interests by the Debtors.

71. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to

[73] Out of an abundance of caution, the Debtors listed in the Plan Supplement any guarantees to which the Parent is a party which are to be discharged, but this does not constitute an admission by the Debtors that such guarantees are executory contracts.

the estate."[74] As discussed in greater detail below, Article X.B.1 of the Plan provides for a release of certain Claims and Causes of Action owned by the Debtors.

72. Section 1123(b)(3)(B) of the Bankruptcy Code provides that a plan may provide for "*the retention and enforcement by the debtor*, by the trustee, or by a representative of the estate appointed for such purpose" any claim or interest.[75] In this case, the Plan preserves the Reorganized Debtors' rights to enforce any Claims, rights, or Causes of Action that the Debtors may hold against any person or entity, except those Causes of Action that are explicitly released under the Plan. *See* Plan, Art. X.F. A non-exclusive list of such preserved and retained Litigation Claims was included in the Second Plan Supplement. *See* Plan Supplement, Exhibit B. These provisions of the Plan are expressly permitted by Section 1123(b)(3) of the Bankruptcy Code and, for the reasons discussed more fully below, are appropriate in these Chapter 11 Cases.

4. Section 1123(b)(5): Modification of Rights of Holders.

73. Section 1123(b)(5) of the Bankruptcy Code provides that a plan may modify the rights of holders of secured claims or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.[76] As permitted by Section 1123(b)(5) of the Bankruptcy Code, the Plan modifies the rights of holders of Claims or Equity Interests in the Impaired Classes, and leaves unaffected the rights of holders of Claims or Equity Interests in the Unimpaired Classes.

5. Section 1123(b)(6): Other Plan Provisions not Inconsistent with the Bankruptcy Code.

74. Section 1123(b)(6) of the Bankruptcy Code permits a plan to "include other appropriate provisions not inconsistent with the applicable provisions of" the Bankruptcy Code.

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74 11 U.S.C. § 1123(b)(3)(A).

75 11 U.S.C. § 1123(b)(3)(B) (emphasis added).

76 11 U.S.C. § 1123(b)(5).

11 U.S.C. § 1123(b)(6). Here, all provisions of the Plan are consistent with the Bankruptcy Code including, but not limited to, (a) the provisions exempting securities to be issued under the Plan from securities law registration requirements and (b) the release, discharge, injunctive and exculpatory provisions of the Plan.

75. Article V.J of the Plan provides that the offer, distribution and issuance, as applicable, of the Plan Securities under the Plan shall be exempt from registration, pursuant to Section 1145 of the Bankruptcy Code, and such securities may be resold without registration pursuant to Section 4(a)(1) of the Securities Act; *provided*, *however*, that the New Common Stock issued to Cash Opt-Out Noteholders in the Equity Rights Offering pursuant to Article V of the Plan will be issued and distributed pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder. Section 1145(a)(1) of the Bankruptcy Code provides:

> Except with respect to an entity that is an underwriter as defined in subsection (b) of this Section, Section 5 of the Securities Act of 1933 and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in, a security do not apply to . . . the offer or sale under a plan of a security of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan . . . in exchange for a claim against, interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate.

11 U.S.C. § 1145(a)(1).

Section 4(a)(2) of the Securities Act provides:

> The provisions of section 5 shall not apply to . . . transactions by an issuer not involving any public offering.

15 U.S.C. § 77d(a)(2)

76. Each of the Debtors, the Reorganized Debtors, the Consenting Noteholders, and their respective Affiliates is relying on Section 1145(a)(1) of the Bankruptcy Code (or in the case of New Common Stock issued to Cash Opt-Out Noteholders in the Equity Rights Offering, Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder) to exempt the offer and

delivery of the Plan Securities from the registration requirements of the Securities Act and state securities and "blue sky" laws insofar as: (a) the securities are issued by a debtor, an affiliate of a debtor, or a successor to a debtor under a plan approved by a bankruptcy court; (b) the recipients of securities hold a claim against, an interest in, or a claim for administrative expense in the case concerning the debtor or such affiliate; and (c) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or are issued "principally" in such exchange and "partly" in exchange for cash or property.

77. Persons or Entities who purchase securities pursuant to the exemption from registration set forth in Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder shall acquire "restricted securities." Resales of such restricted securities would not be exempted by Section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Holders of restricted securities would, however, be permitted to resell Plan Securities without registration if they are able to comply with the applicable provisions of Rule 144 promulgated under the Securities Act or Rule 144A under the Securities Act or any other applicable registration exemption under the Securities Act, or in a transaction that is registered with the SEC.

78. Accordingly, such securities (including New Common Stock issued in connection with the Equity Rights Offering) may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by Section 4(1) of the Securities Act, unless the holder of such securities is an "underwriter" with respect to such securities, as that term is defined in Section 1145(b) of the Bankruptcy Code. In addition, subject to applicable law,

such securities generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.[77]

79. Article X of the Plan contains certain release, discharge, exculpation, and injunction provisions that are essential to the reorganization and consistent with the applicable provisions of the Bankruptcy Code and the law in this circuit.

80. The Plan provides for releases of Claims by the Debtors and their Estates as well as releases of Claims held by certain creditors of the Debtors. These provisions comply with the Bankruptcy Code and applicable law because, among other things, they are fair and equitable, are given for valuable consideration, are the product of extensive good faith, arm's length negotiations, were a material inducement for parties to enter into the Restructuring Support Agreement, and are in the best interests of the Debtors and the Chapter 11 Cases and, in the case of the Third Party Release (as defined below), is fully-consensual, as all impaired creditors and interest holders were given an opportunity to "opt out" of such release.[78] None of the release, discharge, exculpation, or injunction provisions are inconsistent with the Bankruptcy Code and, thus, the requirements of Section 1123(b) of the Bankruptcy Code are satisfied.

6. Debtors' Release Is Appropriate And Should Be Approved.

81. The Plan provides for a release of the Released Parties (as defined below), their respective Related Persons (as defined below), and their respective assets and properties, by the Debtors and Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, as more fully set forth in Article X.B.1 of the Plan (the "**Debtor Release**"). Under the

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[77] Notwithstanding the foregoing, Section IX of the Disclosure Statement urges any Persons who receive securities under the Plan to consult their own counsel with respect to restrictions applicable under the Securities Act and any appropriate rules and the circumstances under which securities may be sold in reliance upon any such rules.

[78] *See* Omohundro Declaration ¶ 35.

Plan, the terms "Released Parties," "Related Persons" and "Excluded Parties are defined in Article I.B as follows:

> "**Released Parties**" means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Lenders; (d) the DIP Agent; (e) the DIP Lenders; (f) the Prepetition Notes Indenture Trustee; (g) the Ad Hoc Noteholder Group and the members thereof in their capacities as such; (h) the Consenting Noteholders; (i) the Delayed-Draw Commitment Parties; (j) the Distribution Agents; (k) each Exit Facility Agent; (l) the Exit Facility Lenders; (m) the Releasing Old Parent Interestholders; and (n) with respect to each of the foregoing Entities in clauses (a) through (m), each such Entity's Related Persons, in each case solely in their capacity as such; *provided, however,* that the Released Parties shall not include any Excluded Parties.
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> "**Related Persons**" means, with respect to any Person or Entity, such Person's or Entity's respective predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including ex officio members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory or subcommittee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, and any Person or Entity claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees; *provided*, *however*, that no insurer of any Debtor shall constitute a Related Person.
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> "**Excluded Parties**" means, collectively, (i) any director, officer, manager, or employee of the Debtors that did not serve in such capacity on or after the Restructuring Support Agreement Effective Date or (ii) any other entity named as a defendant in a pending suit by the Debtors.

Plan, Art. I.B (emphasis added).

82. Pursuant to the Debtor Release, the Debtors have determined to release their own Causes of Action, Claims and Litigation Claims (and any derivative actions and claims) against the Released Parties. Importantly, the Debtor Release expressly excludes "any Causes of Action

arising from willful misconduct, fraud, or gross negligence, in each case as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction."[79]

83. Section 1123(b)(3)(A) provides that a plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. §1123(b)(3)(A). Thus, the Debtors may release estate causes of action as consideration for concessions made by their various stakeholders pursuant to the Plan.[80] In considering the appropriateness of such releases, courts consider whether the release is (a) "fair and reasonable" and (b) "in the best interests of the estate."[81] The "fair and equitable" prong is generally interpreted, consistent with that term's usage in Section 1129(b) of the Bankruptcy Code, to require compliance with the Bankruptcy Code's absolute priority rule.[82] Courts generally determine whether a release is "in the best interest of the estate" by reference to the following factors:

a. The probability of success of litigation, with due consideration for the uncertainty in fact and law;
b. The complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection;
c. The paramount interest of the creditors and a proper deference to their respective views;

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79 *See* Plan, Art. X.B.1.

80 *See, e.g.*, *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan"); *see also In re Heritage Org., L.L.C.*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007); *In re Mirant Corp*., 348 B.R. 725, 737-39 (Bankr. N.D. Tex. 2006); *In re Gen. Homes Corp*., 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991).

81 *See In re Jackson Brewing Co*., 624 F.2d 599, 602 (5th Cir. 1980) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)); *In re Bigler* LP, 442 B.R. at 543 n.6; *In re Derosa-Grund*, 567 B.R. 773, 784–85 (Bankr. S.D. Tex. 2017); *see also In re Mirant Corp*., 348 B.R. at 738; *In re Heritage Org*., 375 B.R. at 259.

82 *See Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355-56 (5th Cir. 1997) ("The words 'fair and equitable' are terms of art—they mean that senior interests are entitled to full priority over junior ones.") (citations omitted); *see also In re Mirant Corp*., 348 B.R. at 738 ("'[F]air and equitable' translates to the absolute priority rule.").

d. The extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and

e. All other factors bearing on the wisdom of the compromise.[83]

84. In determining whether a settlement is appropriate and should be approved, "a bankruptcy court need not 'conduct a mini-trial' [but] [r]rather . . . must 'apprise [itself] of the relevant facts and law so that [it] can make an informed and intelligent decision.'"[84] Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, "the [debtor's] burden is not high."[85] Indeed, the court "need only determine that the settlement does not 'fall beneath the lowest point in the range of reasonableness.'"[86] Ultimately, courts afford debtors some discretion in determining for themselves the appropriateness of granting plan releases of estate causes of action.[87] The Debtor Release meets the controlling standard.

85. In addition to being fair and equitable, the Debtor Release is in the best interest of the Estates: (a) the Debtors are not aware of the existence of any Claims or Causes of Action of material value by the Debtors being released;[88] (b) all three Voting Classes have voted in favor of the Plan, including the Debtor Release; (c) holders of General Unsecured Claims against all Debtors except the Parent are Unimpaired under the terms of the Plan and are not bound by either

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[83] *See In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010); *In re Foster Mortg. Corp*., 68 F.3d 914, 917-18 (5th Cir. 1995); *see also In re Derosa-Grund*, 567 B.R. at 784-85; *In re Roqumore*, 393 B.R. 474, 479-80 (Bankr. S.D. Tex. 2008).

[84] *See In re Age Refining, Inc.*, 801 F.3d 530, 541 (5th Cir. 2015) (citations omitted).

[85] *In re Roqumore*, 393 B.R. at 479-80.

[86] *See In re Idearc Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009), *subsequently aff'd sub nom*; *In re Roqumore*, 393 B.R. at 480 ("The Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives.'").

[87] *See In re Gen. Homes*, 134 B.R. at 861 ("[T]he court concludes that such a release is within the discretion of the Debtor.").

[88] For the avoidance of doubt, this does not include claims against the Excluded Parties, which have been carved out from the Debtor Release.

the Debtor Release nor are they bound by the Third-Party Release to the extent they opt out of the Third Party Release; (d) the Plan, including the Debtor Release, was negotiated by sophisticated entities that were represented by able advisors and who each conditioned their support for the Plan and entry into the Restructuring Support Agreement, among other things, on the grant of the Debtor Release; and (e) most importantly, the Debtor Release has provided a material benefit to the Debtors' estates by securing the votes in favor of the Plan by Voting Classes who executed the Restructuring Support Agreement, in return for the Third-Party Releases discussed below. The resulting compromise reflects a true arm's-length negotiation process. Accordingly, the Debtor Release is fair, equitable, and in the best interest of their Estates, is justified under the controlling Fifth Circuit standard, and should be approved.

7. Third Party Releases are Consensual, Appropriate, Comply with Applicable Law, and Should be Approved.

86. In addition to the releases granted by the Debtors in Article X.B.1 of the Plan Article X.B.2 of the Plan provides for the consensual release of the Released Parties, their respective Related Persons, and their respective assets and properties, from any Causes of Action, Claims and Litigation Claims held by each Non-Debtor Releasing Party that does not affirmatively opt out of such release on its respective Ballot (the "**Third-Party Release(s)**").[89] Importantly, the Third-Party Release expressly excludes "any Causes of Action arising from willful misconduct,

[89] The Plan defines "**Non-Debtor Releasing Parties**" as, collectively: (a) the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Lenders; (b) the DIP Agent; (c) the DIP Lenders; (d) the Prepetition Notes Indenture Trustee; (e) the Ad Hoc Noteholder Group and the members thereof; (f) the Consenting Noteholders; (g) the Delayed-Draw Commitment Parties; (h) the Distribution Agents; (i) each Exit Facility Agent; (j) the Exit Facility Lenders; (k) those Holders of Claims presumed to accept this Plan that do not affirmatively opt out of the Third Party Release; (l) the Holders of Claims and Old Parent Interests that vote to accept this Plan; (m) the Releasing Old Parent Interest holders; and (n) the Prepetition Noteholders that are not Consenting Noteholders and do not affirmatively opt out of the Third Party Release. *See* Plan Art. 1.B.

fraud, or gross negligence, in each case as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction."[90]

87. Although certain Fifth Circuit decisions limit the allowance of *nonconsensual* third-party releases, these decisions do not prohibit *consensual* third-party releases.[91] In *Republic Supply Co. v. Shoaf*, the Fifth Circuit held that the Bankruptcy Code does not preclude a third-party release provisions where "it has been accepted and confirmed as an integral part of a plan," and ultimately concluded that the third-party release provision at issue was binding and enforceable.[92]

88. As courts in this circuit have noted, "[t]he validity of a consensual release is primarily a question of contract law because such releases are 'no different from any other settlement or contract.'"[93] Accordingly, under Fifth Circuit law, third-party releases that are, as here, (a) consensual, (b) specific in language, (c) integral to the plan, (d) a condition of the settlement, and (e) given for consideration, do not violate the Bankruptcy Code and should be allowed and included in the plan.[94] The critical factor in determining whether a release is consensual is whether–after the Debtors' due process obligations of providing appropriate notice–

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90 *See* Plan, Art. X.B.2.

91 *See In re Bigler LP*, 442 B.R. at 543-44 ("The recognition that Pacific Lumber does not restrict the availability of settlements of claim under § 1123(b)(3)(A) thus provides an avenue for a Chapter 11 plan to provide for releases of liability for non-debtors. But, such releases . . . would require consent and consideration . . . ."); *see also In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701-02 (Bankr. W.D. Tex. 2011) ("[T]he Fifth Circuit does allow permanent injunctions so long as there is consent . . . .") (emphasis in original).

92 *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050, 1053 (5th Cir. 1987).

93 *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775-76 (Bankr. N.D. Tex. 2007) (citation omitted).

94 *See id*. at 775-76 (citing *Republic Supply*, 815 F.2d at 1050); *see also FOM Puerto Rico S.E. v. Dr. Barnes Eyecenter Inc.*, 255 Fed. Appx. 909, 911-12 (5th Cir. 2007).

"the affected creditor *timely objects* to the provision."[95] Courts in this district have routinely adopted this standard articulated in *Wool Growers*.[96]

89. The Third-Party Releases satisfy the standard set forth in *Shoaf*, *Wool Growers*, and their progeny. First, the Third-Party Releases are fully consensual as the Ballots explicitly state (in bold and all caps) that "**BY NOT CHECKING THE [OPT OUT] BOX BELOW YOU ELECT TO GRANT THE THIRD PARTY RELEASE . . . YOU MUST AFFIRMATIVELY CHECK THE BOX BELOW IN ORDER TO OPT-OUT OF THE THIRD PARTY RELEASE**." Further, each Ballot, and the Combined Notice, restates the Third Party Release set forth in the Plan in its entirety.[97] In addition, the Opt-Out Form, which was provided to the only Non-Voting Class bound by the Third-Party Releases also expressly included in bold font the terms of the Third-Party Releases. In addition, the release and injunction provisions, including the Third-Party Releases, were emphasized with bold font in the Plan, the Disclosure Statement, the Ballots, the Combined Notice, and the Notice of Non-Voting Status.[98] Courts in this district have approved similar release provisions when parties received sufficient notice of their ability to opt-out or object to the release.[99]

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[95] *See In re Wool Growers Cent. Storage*, 371 B.R. at 776 (citing *In re Zale Corp.*, 62 F.3d 746, 760-61 (5th Cir. 1995)) (emphasis added).

[96] *See* Conf. Hr'g Tr. at 14 (D.I. 352), *In re Warren Res., Inc.*, No. 16-32760 (MI) (Bankr. S.D. Tex. Sept. 14, 2016) ("If there are third-party releases that are negotiated between the Debtor and third parties as part of their deal, that doesn't seem to me to really run afoul of anything.").

[97] *See, e.g., In re Colo. 2002B Ltd. P'ship*, No. 16-33743, 2017 WL 2270012, at *8 (Bankr. N.D. Tex. May 23, 2017) (finding that ballots providing holders of equity interests entitled to vote an opportunity to opt-out of releases was sufficient to bind claimants who did not opt-out).

[98] *See*, *e.g.*, *In re Erickson Inc.*, No. 16-34393, 2017 WL 1091877, at *7 (Bankr. N.D. Tex. Mar. 22, 2017) ("The releases are consensual because they were conspicuously disclosed in boldface type in the Plan, the Disclosure Statement, and on the Ballots, which provided parties in interest with sufficient notice of the releases, and the holders of Claims or Interests entitled to vote on the Plan were given the option to opt-out of the Releases.").

[99] *See*, *e.g.*, *In re Expro Holdings US Inc*., No. 17-60179 (DRJ) (Bankr. S.D. Tex. Jan. 25, 2018) (D.I. 212) ¶ 22; *In re GenOn Energy, Inc.*, No. 17-33695 (DRJ) (Bankr. S.D. Tex. Dec. 12, 2017) (D.I. 1250) ¶ 42; *In re Ameriforge Grp. Inc.*, No. 17-32660 (DRJ) (Bankr. S.D. Tex. May 22, 2017) (D.I. 142) ¶ 30; *see also In re Ultra Petrol. Corp*., No. 16-32202 (MI) (Bankr. S.D. Tex. Mar. 14, 2017) (D.I. 1324) ¶ 44 ("[T]he Third Party Release is consensual as

90. Second, the Third-Party Releases are sufficiently specific to put the Releasing Parties on notice of the released Claims. The Third-Party Releases describe the nature and type of Claims being released, including, among other things, with respect to the (a) the Chapter 11 Cases, the Disclosure Statement, the Plan, the Plan Supplement, the Restructuring Support Agreement, the Restructuring Documents, the Prepetition Debt Documents, and the DIP Documents, (b) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, (c) the business or contractual arrangements between any Debtor and any Released Parties, (d) the negotiation, formulation or preparation, dissemination, entry into or filing of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, the Prepetition Debt Documents, the DIP Documents, or related agreements, instruments or other documents, (e) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (f) the purchase, sale or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (g) the Confirmation or Consummation of the Plan or the solicitation of votes on the Plan or the issuance or distribution of Plan Securities pursuant to the Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties.

91. Third, the Third-Party Releases are an integral part of the Plan and a condition of the settlement set forth therein. The Third-Party Releases facilitated the participation of the Consenting Noteholders in both the Plan and the chapter 11 process, and were critical in reaching consensus to support the Plan. As such, the Third-Party Releases were a core negotiation point

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the parties in interest were provided notice of the chapter 11 proceedings, the Plan, and the deadline to object to confirmation of the Plan . . . [and] were given the opportunity to opt in or opt out of the Third Party Release, and the release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the ballots."); *In re Goodrich Petrol. Corp.*, No. 16-31975 (MI) (Bankr. S.D. Tex. Sept. 28, 2016) (D.I. 531) ¶ 27 ("The ballots sent to all holders of Claims entitled to vote . . . unambiguously stated that the Plan contains the Third-Party Release and provided such holders of Claims with the opportunity to opt-out of the Third Party Release.").

and appropriately offer certain protections to parties that constructively participated in the Restructuring.

92. Fourth, the Third-Party Releases are given for consideration. The Released Parties have played an extensive and integral role in the Restructuring Transactions. All parties in interest benefit from the Restructuring Transactions contemplated by the Plan and the significant contributions of the Released Parties in furtherance thereof, including, among other things, (a) the agreement of the Consenting Noteholders to enter into the Restructuring Support Agreement and support the Plan, (b) the Consenting Noteholders' agreement to accept their recovery in New Common Stock while allowing all unsecured claims against the Debtors (except from Parent) to remain unimpaired and providing a distribution on account of unsecured claims against the Parent, (c) the DIP Agent's and DIP Lenders' financing accommodations to the Debtors during the Chapter 11 Cases through the DIP Facility, and (d) the Exit Facility Agent and Exit Facility Lenders' agreement to provide an Exit Facility with up to $200 million of availability to support the Debtors' post-emergence liquidity needs.

93. Based on the foregoing, the Third-Party Releases comply with the applicable Fifth Circuit standards, are appropriate and justified under the circumstances, and should therefore be approved.

8. The Exculpation Clause of the Plan is in Good Faith and Should be Approved.

94. It is well established that exculpation is appropriate in chapter 11 cases[100] and specifically for parties that provide a benefit to the bankruptcy estate.[101] Courts have extended

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[100] *See In re PWS Holding Corp.*, 228 F.3d 224, 245-46 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code").

[101] *In re Yellowstone Mountain Club, LLC*, 460 B.R. 254, 277 (Bankr. D. Mont. 2011) (approving exculpation provisions for parties integral to negotiation of terms of settlement incorporated into plan of reorganization proposed

exculpation provisions to other parties with significant beneficial involvement in a debtor's chapter 11 case, even when exculpation is contested.[102]

95. Unlike the Third-Party Releases, the Exculpation provision does not affect the liability of third parties *per se*, but rather sets a standard of care of fraud, willful misconduct, gross negligence, or criminal conduct in hypothetical future litigation against an Exculpated Party for acts arising out of the Debtors' restructuring.[103] A bankruptcy court may approve an exculpation provision in a chapter 11 plan because a bankruptcy court cannot confirm a chapter 11 plan unless it finds that the plan has been proposed in good faith.[104] As such, an exculpation provision represents a legal conclusion resulting from certain findings a bankruptcy court must reach in confirming a plan.[105] Indeed, once the court makes its good faith finding, it is appropriate to set the standard of care of the fiduciaries involved in the formulation of that chapter 11 plan.[106] Exculpation provisions appropriately prevent future collateral attacks against fiduciaries of the Debtors' Estates.

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by debtors, including the debtors and reorganized debtors, the DIP lenders, first lien lenders and first lien agent, the committee, current equity owners, and the debtors' largest creditor); *see also In re A.P.I. Inc*., 331 B.R. 828, 868 (Bankr. D. Minn. 2005) (exculpation provision does not discharge third parties of debtor's liabilities; "such clauses are an expression of an immunity from suit granted to a debtor as plan proponent, the parties who supported it and participated in structuring the plan, and the agents of all of them"); *In re Chemtura Corp.*, 439 B.R. 561, 610 (S.D.N.Y. 2010) ("exculpation provisions are included so frequently in chapter 11 plans because stakeholders all too often blame others for failures to get the recoveries they desire; seek vengeance against other parties; or simply wish to second guess the decision makers in the chapter 11 case.").

[102] *See*, *e.g.*, *In re Premier Int'l Holdings*, 2010 WL 2745964, at *20, 25 (Bankr. D. Del. Apr. 29, 2010) (exculpating prepetition lenders, backstop purchasers, and ad hoc committee over objection of the U.S. Trustee's office); *In re ACG Holdings*, Case No. 08-11467 (Bankr. D. Del. Aug. 26, 2008) (exculpating noteholders and indenture trustee); *In re Lisbon Valley Mining Co. LLC*, 2009 WL 2843339, at *4 (Bankr. D. Utah Aug. 31, 2009) (approving exculpation provision that included DIP lender and plan sponsor); *In re Ramsey Holdings, Inc*., No. 09-13998 (Bankr. N.D. Okla. June 16, 2010) (approved plan exculpated the debtors' prepetition lenders).

[103] *See*, *e.g.*, *In re PWS Holding Corp*., 228 F.3d at 246.

[104] *See* 11 U.S.C. § 1129(a)(3).

[105] *See* 11 U.S.C. § 157(b)(2)(L).

[106] *See In re PWS Holding Corp*., 228 F.3d at 246-47 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . .").

96. The exculpation provision set forth in Article X.E of the Plan was an integral part of the negotiations among and the global settlement between the Debtors and their constituents, which culminated in the consensual Plan. By requesting that the Court approve the exculpation in Article X.E of the Plan, the Debtors are essentially asking the Court to make a finding of fact that the Exculpated Parties[107] have participated in good faith with respect to the Chapter 11 Cases, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan.

97. The Debtors believe that the Exculpated Parties have, and will continue to participate, in all of the foregoing in good faith. Further, the scope of the exculpation is targeted and has no effect on liability resulting from gross negligence, actual fraud, or willful misconduct, as determined by a Final Order. Thus, the Debtors believe that the exculpation provision is consistent with applicable law and should be approved in connection with the Confirmation of the Plan.

9. Injunction Clause of the Plan is Necessary and Narrowly Tailored.

98. Article X.G of the Plan provides that Confirmation of the Plan shall have the effect of permanently enjoining all entities from (a) commencing or continuing any suit, action or other proceeding; (b) enforcing, attaching, collecting, or recovering any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a setoff or right

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[107] The Plan defines "**Exculpated Parties**" as, collectively, (a) the Debtors; (b) the Reorganized Debtors; (c) the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Lenders; (d) the DIP Agent; (e) the DIP Lenders; (f) the Prepetition Notes Indenture Trustee; (g) the Ad Hoc Noteholder Group and the members thereof; (h) the Consenting Noteholders; (i) the Delayed-Draw Commitment Parties; (j) the Distribution Agents; (k) each Exit Facility Agent; (l) the Exit Facility Lenders; and (m) with respect to each of the foregoing Persons and Entities in clauses (a) through (l), each such Person's and Entity's respective Related Persons, in each case solely in their capacity as such. *See* Plan, Article I.B.

of subrogation of any kind; or (e) commencing or continuing any action or other proceeding, in each case on account of or with respect to any Claims or Causes of Action released, exculpated, settled, or discharged pursuant to the Plan or the Confirmation Order against any entity released, discharged, or exculpated party under the Plan. The injunction is necessary to preserve and enforce the releases and exculpation granted by the Plan, and it is narrowly tailored to achieve that purpose.

99. Based upon the foregoing, the Plan complies fully with Sections 1122 and 1123, and, therefore, satisfies the requirements of Section 1129(a)(1) of the Bankruptcy Code.

E. Section 1129(a)(2): the Debtors, as Plan Proponents, Have Complied with Applicable Provisions of the Bankruptcy Code.

100. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). The legislative history of Section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under Sections 1125 and 1126 of the Bankruptcy Code.[108] As discussed in greater detail in Part I of this brief, the Debtors have complied with such provisions in all respects.

1. Section 1125: Adequate Information Provided to Stakeholders.

101. Section 1125(b) of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). It ensures

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[108] *See* H.R. Rep. No. 95-595, at 412 (1977) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as Section 1125 regarding disclosure."); *In re Star Ambulance Serv.*, LLC, 540 B.R. 251, 262 (Bankr. S.D. Tex. 2015) ("Courts interpret [Section 1129(a)(2)] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code §§ 1125 and 1126.").

that parties in interest have sufficient information regarding the debtor and the plan to allow them to make an informed decision whether to approve or reject the plan.[109]

102. As discussed in Part I, the Debtors received conditional approval of the Disclosure Statement, approval of their Solicitation Procedures, and complied with the notice and solicitation requirements of Section 1125 of the Bankruptcy Code, and no party has asserted otherwise.[110]

2. Section 1126: Acceptance of Plan by Solicited Voting Parties.

103. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a chapter 11 plan and determining acceptance thereof. Pursuant to Section 1126, only holders of allowed claims or equity interests, as the case may be, in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan. 11 U.S.C. § 1126(a), (f), (g).

104. As set forth in Part I above, the Debtors solicited acceptances of the Plan only from the holders of Claims in the Voting Classes.[111] The Debtors did not solicit votes to accept or reject the Plan from the holders of Claims and Equity Interests in the Non-Voting Classes – all of which are either Unimpaired and, therefore, deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code, or with respect to Classes 10 and 12, was deemed to reject the Plan.

105. Section 1126(c) of the Bankruptcy Code specifies that holders of an impaired class of claims must vote in favor of a plan by "at least two-third in amount and more than one-half in

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[109] *See In re Cajun Elec. Power Coop.*, 150 F.3d at 518 ("adequate information" includes "information of a kind, and in sufficient detail, as far as is reasonably practicable . . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan."); *see also In re Applegate Prop.*, 133 B.R. at 831 ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for themselves what impact the information might have on their claims and on the outcome of the case.").

[110] *See* Solicitation Procedures Order; Voting Certification.

[111] Voting Certification.

number of the allowed claims of such class" to accept the plan.[112] Section 1126(d) of the Bankruptcy Code specifies that holders of an impaired class of equity interests must vote in favor of a plan by "at least two-third in amount of the allowed interests of such class" to accept the plan.[113] The holders of Allowed Claims in all three Voting Classes voted in favor of the Plan, giving the Debtors acceptances from impaired Classes of Claims against both the Parent and the Affiliate Debtors.[114] Accordingly, the Debtors submit that the requirements of Sections 1125 and 1126 of the Bankruptcy Code have been satisfied with regard to both the Parent and the Affiliate Debtors, and thus, that the Debtors have satisfied the requirements of Section 1129(a)(2) of the Bankruptcy Code.

F. Section 1129(a)(3): the Plan has been Proposed in Good Faith and not by any Means Forbidden by Law.

106. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law."[115] Good faith is determined through consideration of whether the plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success."[116] The plan must also achieve a result consistent with the Bankruptcy Code.[117] The good faith standard is "viewed in light of the totality of circumstances surrounding establishment of a chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code to give debtors a reasonable opportunity to make a fresh start."[118]

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112 *See* 11 U.S.C. § 1126(c).

113 *See* 11 U.S.C. § 1126(d) .

114 Voting Certification.

115 11 U.S.C. § 1129(a)(3).

116 *In re Sun Country Dev., Inc*., 764 F.2d 406, 408 (5th Cir. 1985).

117 *See In re Block Shim Dev. Co-Irving*, 939 F.2d 289, 292 (5th Cir. 1991).

118 *In re Sun Country Dev*., 764 F.2d at 408; *In re Vill. at Camp Bowie I, L.P*., 710 F.3d 239, 247 (5th Cir. 2013) ("Good faith should be evaluated 'in light of the totality of the circumstances' . . . mindful of the purposes underlying

107. The Debtors have met their good faith obligation under the Bankruptcy Code. The Plan, Plan Supplement, and all documents necessary to effect the Plan were developed after months of analysis and negotiations between the Debtors and other key constituents and were proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates and effectuating a successful reorganization of the Debtors.

108. The acceptance of the Plan by the holders of Claims in all Voting Classes that voted on the Plan reflects the Plan's inherent fairness and good faith efforts to achieve the objectives of chapter 11. Furthermore, the Plan is "not by any means forbidden by law," and indeed, is in full compliance with the Bankruptcy Code and applicable nonbankruptcy law. Accordingly, the Debtors have proposed the Plan in good faith in compliance with Section 1129(a)(3) of the Bankruptcy Code.

G. Section 1129(a)(4): the Payment for Certain Services or for Certain Costs and Expenses is Subject to Court Approval.

109. Section 1129(a)(4) of the Bankruptcy Code states that "any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."[119] Section 1129(a)(4) has been construed to require that all payments of professional fees made from estate assets be subject to review and approval as to their reasonableness by the court.[120] This is a "relatively open-ended standard" involving a case-by-

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the Bankruptcy Code.") (citing *In re Cajun Elec. Power Coop.*, 150 F.3d at 519); *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997).

[119] 11 U.S.C. § 1129(a)(4).

[120] *See In re Cajun Elec. Power Coop.*, 150 F.3d at 518 ("Section 1129(a)(4) by its terms requires court approval of '[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case.'").

case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged.[121] Here, all payments made or to be made by the Debtors on account of Professional Fee Claims are subject to Court approval. Pursuant to Article II.A.1 of the Plan, Professionals and other Entities asserting Professional Fee Claims must file with the Court an application for final allowance of such Professional Fee Claim. Furthermore, all compensation of Professionals by the Debtors prior to final allowance of such Professional Fee Claims have been or will be approved by the Court.

H. Section 1129(a)(5): Necessary Information Regarding Directors And Officers Of The Debtors Under The Plan Has Been Disclosed.

110. Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor; that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtor.[122] Additionally, the Bankruptcy Code provides that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[123] Section 1129(a)(5)(A)(ii) directs the Court to ensure that the post-confirmation governance of the Reorganized Debtors is in "good hands," which courts have interpreted to mean: (a) that management has experience in the reorganized debtor's business and

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121 *See In re Cajun Elec. Power Coop.*, 150 F.3d at 518 (finding with respect to routine legal fees and expenses that have been approved, "the court will ordinarily have little reason to inquire further with respect to the amount charge").

122 *See* 11 U.S.C. § 1129(a)(5).

123 *See* 11 U.S.C. § 1129(a)(5)(A)(ii).

industry;[124] (b) that management has experience in financial and management matters;[125] (c) that the debtor and creditors believe control of the entity by the proposed individuals will be beneficial;[126] and (d) that the post-confirmation governance does not "perpetuate[] incompetence, lack of discretion, inexperience, or affiliations with groups inimical to the best interests of the debtor."[127] The "public policy requirement would enable [the court] to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed management."[128]

111. Article V.M of the Plan provides that the New Board shall initially consist of directors who shall be designated in accordance with the terms and conditions of the Restructuring Support Agreement. The identity of these directors will be disclosed prior to the Confirmation Hearing or as soon as reasonably practicable thereafter. After the initial directors of the New Board are selected, future directors will be appointed in accordance with the terms of the Amended/New Corporate Governance Documents. The Debtors' existing officers will continue to serve as officers of the Reorganized Debtors. Any proposed directors and officers of the Reorganized Debtors will have significant knowledge and business and industry experience, will be competent, and will give the Reorganized Debtors continuity in running their businesses.

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124 *See In re Rusty Jones, Inc*., 110 B.R. 362, 372, 375 (Bankr. N.D. Ill. 1990) (stating that 1129(a)(5) not satisfied where management had no experience in the debtor's line of business); *In re Toy & Sports Warehouse, Inc*., 37 B.R. 141, 149-50 (Bankr. S.D.N.Y. 1984) (continuation of debtors' president and founder, who had many years of experience in the debtors' businesses, satisfied Section 1129(a)(5)).

125 *See In re Stratford Assocs. Ltd. P'ship*, 145 B.R. 689, 696 (Bankr. D. Kan. 1992); *In re Sherwood Square Assoc.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989).

126 *See In re Landing Assocs*., 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993) ("In order to lodge a valid objection under § 1129(a)(5), a creditor must show that a debtor's management is unfit or that the continuance of this management post-confirmation will prejudice the creditors); *see also In re Apex Oil Co.*, 118 B.R. 683, 704-05 (Bankr. E.D. Mo. 1990).

127 *In re Beyond.com Corp*., 289 B.R. 138, 145 (Bankr. N.D. Cal. 2003).

128 7 Collier on Bankruptcy ¶ 1129.02[5][b] (Richard Levin & Henry J. Sommer eds., 16th ed.).

112. The Reorganized Debtors' appointment or continuance of officers, directors, and managers is "consistent with the interests of creditors and equity security holders and with public policy."[129] The Debtors believe control of the Reorganized Debtors by the proposed individuals will be beneficial, and no party in interest has objected to the Plan on these grounds. The Debtors submit that the requirements of Section 1129(a)(5)(A)(ii) of the Bankruptcy Code are satisfied. Finally, the Debtors satisfied Section 1129(a)(5)(B) of the Bankruptcy Code because the Debtors publicly disclosed herein the identity of all insiders that the Reorganized Debtors will employ or retain and the nature of the compensation to be paid employees of the Reorganized Debtors who are insiders other than by virtue of being a director or officer. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(5) of the Bankruptcy Code.

I. Section 1129(a)(6) of the Bankruptcy Code is not Applicable.

113. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable to these Chapter 11 Cases, as the Plan does not provide for any rate changes.

J. Section 1129(a)(7): the Plan Satisfies the Best Interests Test.

114. Section 1129(a)(7) of the Bankruptcy Code requires that each individual holder of an impaired claim or equity interest has either accepted the plan or will receive or retain property having, as of the effective date of the plan, a present value of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time—commonly referred to as the "best interests" test. *See* 11 U.S.C. § 1129(a)(7). The best interests

[129] 11 U.S.C. § 1129(a)(5)(A)(ii).

test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor's plan or reorganization that rejects the plan.[130]

115. As Section 1129(a)(7) makes clear, the liquidation analysis applies only to non-accepting impaired claims or equity interests. As described more fully in the Omohundro Declaration, the Debtors completed their liquidation analysis after extensive due diligence and it includes a detailed description of the assumptions, analysis, and result of a hypothetical chapter 7 liquidation of the Debtors. The Liquidation Analysis, including a complete description of the process and the results of the Liquidation Analysis, is set forth in Exhibit C to the Disclosure Statement.

116. As stated in the Liquidation Analysis, subject to the assumptions and limitations described therein, the proceeds from a hypothetical chapter 7 liquidation of the Debtors and non-Debtor subsidiaries would yield approximately (a) $404.6 million to $495.3 million in net proceeds (after taking into account liquidation expenses) for the Affiliate Debtors' claimants and (b) $400,000 for the Parent's claimants. Thus, as set forth in the Liquidation Analysis, after subtracting liquidation expenses, the proceeds from a hypothetical chapter 7 liquidation would provide each Impaired Class with the estimated recoveries set forth in the table below. As shown therein, none of these estimated chapter 7 recoveries is more than the estimated recoveries as set forth in the Plan.

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[130] *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 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."); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1159 n.23 (5th Cir. 1988) (noting that a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation).

Class	Claim	Low Estimated Chapter 7 Recovery	High Estimated Chapter 7 Recovery	Estimated Plan Recovery[131]
5	Prepetition Notes Claims Against Parent	0%	0%	63%-76%
6	General Unsecured Claims Against Parent	0%	0%	Pro rata share of $125,000
7	Prepetition Notes Claims Against Affiliate Debtors	16%	22%	63%-76%
10	Old Parent Interests	0%	0%	0%
12	510(b) Equity Claims	N/A	N/A	N/A

117. As demonstrated by the Liquidation Analysis, if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code, the value that creditors would recover would significantly diminish (except, of course, for those Classes receiving no distribution under the Plan, who would also receive no recovery in that scenario). Furthermore, the Parent has no residual value for its creditors or equity holders since its direct subsidiary SESI is worth substantially less than the face amount of the Prepetition Notes Claims against SESI.[132] The existence of the Parent GUC Recovery Cash Pool is not indicative of any residual value that would naturally flow to the creditors or equity holders of the Parent. The Debtors, therefore, submit that the best interests test established pursuant to Section 1129(a)(7) of the Bankruptcy Code is satisfied, both with regard to the Parent and the Affiliate Debtors.[133]

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131 The range of recoveries corresponding to the Prepetition Notes Claims against Parent (Class 5) and the Prepetition Notes Claims against Affiliate Debtors (Class 7) is presented herein on a combined basis for both of those Classes.

132 *See* Disclosure Statement, Ex. E.

133 *See* Omohundro Declaration ¶¶ 19-24.

K. Section 1129(a)(8): Acceptance By All Impaired Classes.

118. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either accept the plan or not be impaired by a plan. A class of claims or interests that is not impaired under a plan is "conclusively presumed" to have accepted the plan and need not be further examined under Section 1129(a)(8).[134] A class of claims accepts a plan if the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in the number of claims in the class vote to accept the plan, counting only those claims whose holders actually vote to accept or reject the plan.[135] A class of interests accepts a plan if the holders of at least two-thirds (2/3) in dollar amount of interests in the class vote to accept the plan, counting only those interests whose holders actually vote to accept or reject the plan.[136]

119. Class 5 (Prepetition Notes Claims against Parent), Class 6 (General Unsecured Claims against Parent) and Class 7 (Prepetition Notes Claims against Affiliate Debtors) were eligible to vote, and each voted to accept the Plan. Class 10 (Old Parent Interests) and Class 12 (510(b) Equity Claims) were deemed to reject the Plan. The Plan, therefore, does not satisfy Section 1129(a)(8) of the Bankruptcy Code with respect to Classes 10 and 12. However, the Plan is confirmable because, as discussed below, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the rejecting Classes. It is worth noting that the Plan would still be confirmable pursuant to section 1129(b) even if Class 6 had voted to reject the Plan (though Class 6 clearly exceeded the vote requirement for acceptance of the Plan) because Class 5 would be the required impaired accepting class at the Parent and the Plan can otherwise be crammed down on Class 6 as described more fully in paragraphs 129-137 below.

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134 *See* 11 U.S.C. § 1126(f).

135 11 U.S.C. § 1126(c).

136 11 U.S.C. § 1126(d).

L. Section 1129(a)(9): The Plan Provides for Payment in Full of Allowed Administrative and Priority Claims.

120. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, Section 1129(a)(9) of the Bankruptcy Code requires a plan to satisfy administrative claims, priority unsecured claims and priority tax claims in full in cash. The treatment of Administrative Claims (Article II.A), DIP Facility Claims (Article II.B), and Priority Tax Claims (Article II.C), under the Plan is, in each case, consistent with Section 1129(a)(9).

M. Section 1129(a)(10): the Plan has been Accepted by at Least One Impaired Class that is Entitled To Vote.

121. Section 1129(a)(10) of the Bankruptcy Code is an alternative requirement to Section 1129(a)(8)'s requirement that each class of claims or interests must either accept the plan or be unimpaired under a plan. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, excluding acceptance by any insider.[137] Here, the Debtors have met this standard because all Voting Classes have voted to accept the Plan, as determined without including any acceptance of the Plan by any insider holding a Claim in those Classes.[138] Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(10) of the Bankruptcy Code.

N. Section 1129(a)(11): the Plan is Feasible.

122. Section 1129(a)(11) of the Bankruptcy Code requires that, as a condition to confirmation, the Court determine that a plan is feasible. Specifically, the Court must determine that:

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137 11 U.S.C. § 1129(a)(10).

138 *See* Voting Certification, Exhibit A.

> Confirmation 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).

123. Section 1129(a)(11) does not require a guarantee of a plan's success to demonstrate a plan's feasibility.[139] Rather, courts will find that a plan is feasible if a debtor offers a reasonable assurance that consummation of the plan is not likely to be followed by a further need for financial reorganization.[140]

124. While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence, which means presenting proof that a given fact is "more likely than not."[141]

125. In assessing feasibility, courts have identified, among others, the following factors: (a) the adequacy of the capital structure; (b) the earning power of the business; (c) the economic conditions; (d) the ability of management; (e) the probability of the continuation of the same management; and (f) any other matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[142]

126. Applying the foregoing legal standards, the Plan satisfies the feasibility requirement of Section 1129(a)(11) of the Bankruptcy Code. In this regard, the Debtors and their advisors have analyzed the ability of the Reorganized Debtors to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their businesses based on

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139 *See In re Briscoe Enters*., 994 F.2d 1160, 1166 (5th Cir. 1993) ("[T]he [bankruptcy] court need not require a guarantee of success . . . [o]nly a reasonable assurance of commercial viability is required.")

140 *See In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) ("To obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'").

141 *See In re T-H New Orleans*, 116 F.3d 790, 801 (5th Cir. 1997); *In re Briscoe Enters*., 994 F.2d at 1164.

142 *See, e.g.*, *In re M&S Assocs., Ltd*., 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992).

the financial projections, attached as Exhibit D to the Disclosure Statement (the "**Financial Projections**"). As illustrated by the Financial Projections, the Reorganized Debtors are projected to generate unlevered free cash flow of approximately $46 million in the remainder of 2021, and approximately $53 million and $75 million in 2022 and 2023, respectively, which will be more than sufficient to continue conducting ongoing business operations as a going-concern. The Reorganized Debtors' liquidity will be further supported by their borrowing base under the Exit ABL Facility, which is expected to grow from approximately $84 million at emergence to in excess of $90 million at the end of 2023. In addition, while the Court must independently determine the feasibility of the Plan, it is telling that the Plan was overwhelmingly and nearly unanimously supported by sophisticated financial institutions or investment funds who meticulously evaluated, have endorsed, both by their votes on the Plan and their commitment to provide new financing to the Reorganized Debtors, the likelihood of the Plan's success. In general, as illustrated by the Financial Projections and as discussed more fully in the Confirmation Declarations, the Debtors believe that the Plan is feasible and satisfies the requirement of Section 1129(a)(11) of the Bankruptcy Code.[143]

O. Section 1129(a)(12): the Plan Provides for Full Payment of Statutory Fees.

127. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under Section 1930 [of title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan."[144] Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [Section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses.[145] In accordance with these provisions,

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143 *See* Omohundro Declaration ¶ 18.

144 11 U.S.C. § 1129(a)(12).

145 11 U.S.C. § 507(a)(1).

Article XII.B of the Plan provides that all fees payable pursuant to Section 1930 of title 28 of the United States Code shall be paid when due. All such fees payable after the Effective Date shall be paid in the ordinary course of business. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(12) of the Bankruptcy Code.

P. Sections 1129(a)(13) through 1129(a)(16) do not Apply.

128. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to Section 1114 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(13). The Debtors are not obligated to pay any such benefits, and Section 1129(a)(13) is not applicable. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtors are not subject to any domestic support obligations, and, as such, this Section of the Bankruptcy Code does not apply. Section 1129(a)(15) applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). None of the Debtors is an "individual." Finally, Section 1129(a)(16) of the Bankruptcy Code provides that property transfers by a corporation or trust that is not a moneyed, business or commercial corporation or trust be made in accordance with applicable provisions of nonbankruptcy law; however, as the Debtors are moneyed, business, or commercial corporations, this Section is not applicable.

Q. Section 1129(b): Confirmation of the Plan over Nonacceptance of Impaired Classes.

129. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity interests. This mechanism is known colloquially as "cram down." Section 1129(b) provides in pertinent part:

> [I]f all of the applicable requirements of [Section 1129(a) of the Bankruptcy Code] other than [the requirement contained in Section 1129(a)(8) that a plan must be

> accepted by all impaired classes] 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 or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

130. Thus, under Section 1129(b) of the Bankruptcy Code, the Court may "cram down" a plan over rejection by impaired classes of claims or equity interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes.[146]

131. Class 10 (Old Parent Interests) and Class 12 (510(b) Equity Claims) are Impaired under the Plan and have been deemed to reject the Plan. The Plan may nonetheless be confirmed over the rejection by such Classes pursuant to Section 1129(b) of the Bankruptcy Code because the Plan does not discriminate unfairly and is fair and equitable with respect to all non-accepting Impaired Classes. In addition, although unfair discrimination and fair and equitable are not applicable to Class 6 since that class voted to accept the Plan, the Plan nonetheless satisfies those requirements as to Class 6 assuming they were applicable (which they are not).

1. The Plan Does Not Discriminate Unfairly.

132. Section 1129(b)(1) does not prohibit discrimination between classes. Rather, it prohibits discrimination that is unfair. Under Section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly situated classes are treated differently without a reasonable basis for the disparate treatment.[147] As between two classes of claims or two classes of equity interests, there is no unfair discrimination if (a) the classes are comprised of dissimilar claims or

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146 *See* 11 U.S.C. § 1129(b)(1).

147 *See In re WorldCom Inc*., Case No. 02-13533 (AJG), 2003 WL 23861928, at *59 (Bankr. S.D.N.Y. Oct 31, 2003) (citing *In re Buttonwood Partners, Ltd*., 111 B.R 57, 63 (Bankr. S.D.N.Y. 1990); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1986), *aff'd sub nom, Kane v. Johns-Manville Corp*., 843 F.2d 636 (2d Cir. 1988)).

interests,[148] or (b) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment.[149]

133. The Plan does not discriminate unfairly against Class 10 (Old Parent Interests) or Class 12 (510(b) Equity Claims) because, here, there is no other class of Claims or Equity Interests similarly situated to the Claims or Interests in Classes 10 and 12. Holders of Old Parent Interests hold common stock in the Parent, while the only other Class of Equity Interests is Class 11 (Intercompany Interests), which interests are entirely different. Similarly, holders of 510(b) Equity Claims are Claims arising under a particular section of the Bankruptcy Code that does not apply to Claims in any other Class. Accordingly, because there is no Class similarly situated to Classes 10 and 12, Classes 10 and 12 are not being unfairly discriminated against under the Plan.

134. Additionally, although Classes 6 and 8 both contain general unsecured claims, the Plan separates them and impairs Class 6 while leaving Class 8 unimpaired. This, however, does not constitute unfair discrimination. As described more fully in the Disclosure Statement, the Parent's only direct subsidiary is SESI, L.L.C., which in turn holds interests in all Debtor and non-Debtor subsidiaries of the Company.[150] As a result, all Claims against the Parent are structurally subordinated to Claims against the Affiliate Debtors, as illustrated by the chart below which appeared in the Disclosure Statement.

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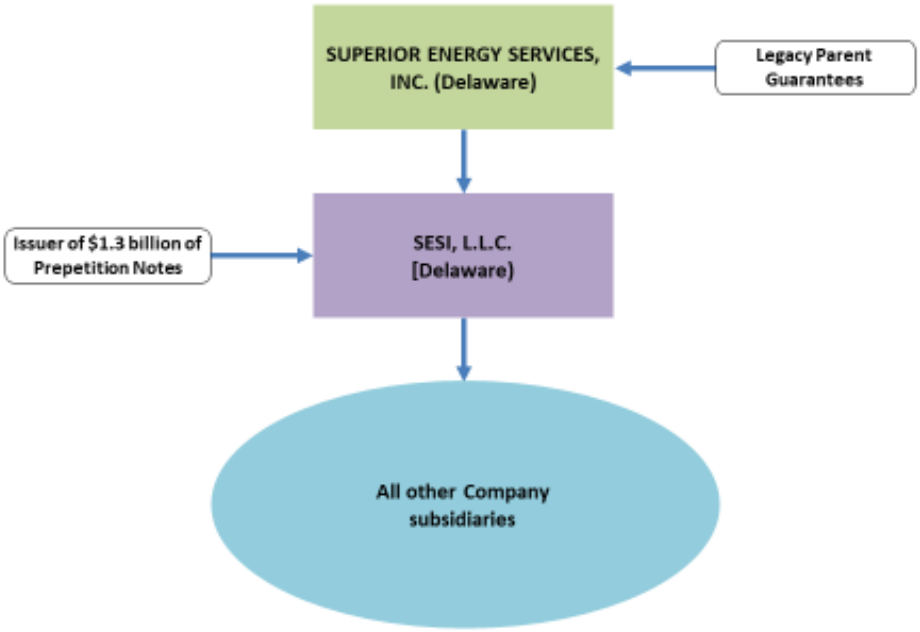
148 *See, e.g., In re Johns-Manville Corp.*, 68 B.R. at 636.

149 *See, e.g., In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 714, 715 (Bankr. S.D.N.Y. 1992) (separate classification and treatment was rational where members of each class "possess[ed] different legal rights").

150 Disclosure Statement, Art. II.A, Ex. F.



Payment in full of General Unsecured Claims against Affiliate Debtors (Class 8) prior to payment in full of General Unsecured Claims against the Parent (Class 6) is not an arbitrary choice by the Debtors—it is required given the structure of the Company. Payment of creditors at the Affiliate Debtors is required before value could flow up to creditors of the Parent. A chapter 11 plan that requires payment to General Unsecured Creditors at the Parent without paying creditors at SESI, L.L.C. in full (and creditors at other Debtor entities) would be a patently uncomfirmable Plan.

2. The Plan is Fair and Equitable.

135. Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if under the plan no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest.[151]

[151] *See* 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii).

136. With respect to the Classes that are deemed to reject the Plan – (i.e., Class 10 (Old Parent Interests) and Class 12 (510(b) Equity Claims)), no Claim or Equity Interest junior to such Classes will receive a recovery under the Plan on account of such Claim or Equity Interest. Moreover, this same result would apply if Class 6 had voted to reject the Plan.

137. Accordingly, the Plan is "fair and equitable" and, therefore, consistent with the requirements of Section 1129(b) of the Bankruptcy Code.

R. Section 1129(c): Plan is only Plan Currently on File.

138. The Plan is the only plan currently on file in these Chapter 11 Cases and, accordingly, Section 1129(c) of the Bankruptcy Code does not apply.

S. Section 1129(d): Principal Purpose of Plan is not Avoidance of Taxes.

139. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of Section 5 of the Securities Act, and no party has objected on any such grounds. The Plan, therefore, satisfies the requirements of Section 1129(d) of the Bankruptcy Code.

T. Section 1129(e): Inapplicable Provisions.

140. The provisions of Section 1129(e) of the Bankruptcy Code apply only to "small business cases" as defined therein. The Chapter 11 Cases are not "small business cases." Accordingly, Section 1129(e) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

U. The Modifications to the Plan Do Not Require Resolicitation and Should Be Approved.

141. The Bankruptcy Code provides that a plan proponent may modify a plan "at any time" before confirmation.[152] It further provides that all stakeholders that previously have accepted a plan should also be deemed to have accepted such plan as modified.[153] The Bankruptcy Rules

[152] 11 U.S.C. § 1127(a).

[153] *Id.* § 1127(d).

provide that such modifications do not require resolicitation where the court determines, after notice and a hearing, "that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification."[154]

142. Only those modifications that are "material" require resolicitation.[155] A plan modification is not material unless it "so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance."[156] Thus, an improvement to the position of the creditors affected by the modification will not require resolicitation of a modified plan.[157] Nor will a modification that is determined to be immaterial require resolicitation.[158] In this case, the modifications are not material and, accordingly, the Debtors do not believe that resolicitation is required, especially given the existence of the Restructuring Support Agreement.

III. OBJECTIONS TO PLAN AND DISCLOSURE STATEMENT SHOULD BE OVERRULED

A. The Chevron Objection and the Marathon Objection

143. The Chevron Objection asserts that: (a) the Disclosure Statement contains inadequate information; (b) the Plan discriminates unfairly by separating general unsecured claims

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[154] FED. R. BANKR. P. 3019.

[155] *See In re Am. Solar King Corp.*, 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988) (approving plan modification with *de minimis* effect on creditor recoveries pursuant to Bankruptcy Rule 3019); *In re R.E. Loans, LLC*, No. 11- 35865 (BJH), 2012 WL 2411877 at *10 (Bankr. N.D. Tex. June 26, 2012) (finding that none of the modifications adversely changed the treatment of the claim of any creditor or the interest of any equity security holder so as to require resolicitation pursuant to Bankruptcy Rule 3019).

[156] *Am. Solar King*, 90 B.R. at 824.

[157] *See In re Mangia Pizza Invs., LP*, 480 B.R. 669, 689 (Bankr. W.D. Tex. 2012) ("[A]nyone who voted to accept the previous plan will be deemed to have accepted the modified plan if the modified plan 'does not adversely change the treatment of [that creditor's] claim.'" (citing *In re Dow Corning Corp.*, 237 B.R. 374, 378 (E.D. Mich. 1999)).

[158] *See Am. Solar King*, 90 B.R. at 826 ("if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well").

into four classes with differing treatments; (c) the Plan fails the best interests test; and (d) the Plan has not been proposed in good faith.[159] The Marathon Objection makes a substantially similar argument as the Chevron Objection with respect to unfair discrimination.[160] Each one of these objections is discussed in turn below.

1. The Disclosure Statement Contains Adequate Information.

144. As described in paragraph 45, the Disclosure Statement contains adequate information, as it indicates differences in nature and treatment of the unsecured claims that are separately classified, provides additional context for the classification and treatment of the Legacy Parent Guarantees, and complies with relevant provisions of section 1125 of the Bankruptcy Code. Among other things, Chevron asserts that the Disclosure Statement does not provide information necessary for Holders of Class 6 General Unsecured Claims against the Parent to make an informed decision when voting on the Plan.[161] However, the Disclosure Statement clearly describes what types of Claims comprise Class 6, and tells the reader that Holders of Class 6 Claims are entitled to a pro rata share of the $125,000 Parent GUC Recovery Cash Pool.[162] Chevron also asserts that the Disclosure Statement provides no explanation for the separation of unsecured Claims into four different Classes. However, the Disclosure Statement provides context regarding the Legacy Parent Guarantees and resulting Claims, as well as illustrating the significance of structural subordination in the classification of the Claims,[163] a point reiterated in paragraphs 134 and 146 herein.

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159 *See* Chevron Objection, p. 6.

160 Marathon Objection, ¶ 9.

161 Chevron Objection, ¶ 34.

162 Disclosure Statement, p. 36.

163 *See* Disclosure Statement §§ II.C.4, II.D.6, Ex.G.

2. The Separation of Classes of Claims under the Plan Does not Unfairly Discriminate Against Creditors.

145. As described in paragraphs 132-34 herein, while the Plan treats certain classes of unsecured Claims differently, it does not discriminate unfairly. Although the Fifth Circuit has not provided guidance on when discrimination is "unfair", courts have generally found that a plan discriminates unfairly when similarly situated classes are treated differently without a reasonable basis for the disparate treatment.[164] The Debtors have a reasonable basis.

146. First of all, as discussed in paragraph 54 herein, the Plan treats each Class of claimants on a per-Debtor basis, rather than substantively consolidated. Each Debtor, be it Parent or an Affiliated Debtor, has two Classes of unsecured Claims against it: Prepetition Notes Claims and General Unsecured Claims. For the Parent, these Classes are Class 5 (Prepetition Notes Claims against the Parent) and Class 6 (General Unsecured Claims Against the Parent). As set forth in the Plan and Disclosure Statement, both Class 5 and Class 6 are receiving a pro rata share of the $125,000 Parent GUC Recovery Cash Pool, but holders of Claims in Class 5 have waived their rights to such distribution.

147. For the Affiliate Debtors, these Classes are Class 7 (Prepetition Notes Claims against Affiliate Debtors) and Class 8 (General Unsecured Claims against Affiliate Debtors). Class 7 will receive either the Cash Payout or a combination of New Common Stock and Subscription Rights, while Class 8 will be unimpaired.

148. The classification and treatment of unsecured claims is proper at both the Parent and Affiliate Debtor level. When classifying two classes of claims, there is no unfair

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[164] *Idearc Inc.*, 423 B.R. at 171 (Bankr. N.D. Tex. 2009) ("The Bankruptcy Code does not provide a standard for determining when 'unfair discrimination' exists… Rather, courts may examine the facts and circumstances of the particular case to determine whether unfair discrimination exists."); *In re Mortg. Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 614-15 (bankr. W.D. Tex. 1990) ("for payment to be preferred to one creditor or class over others, the [c]ourt must find an articulable basis for the preference.").

discrimination if the classes contain dissimilar claims[165] or, taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment.[166] Chevron and Marathon argue that the Plan unfairly discriminates against Class 6, citing the larger recoveries by other Classes of unsecured Claims. However, the only other Class of unsecured Claims *against the Parent* is Class 5 which, as a result of its waiving recovery, will receive less than Class 6. Classes 7 and 8 will receive higher recoveries than Class 6, but they are both at the Affiliate Debtor level, and are therefore structurally senior. The Plan's treatment of unsecured Claims is entirely consistent with the absolute priority rule and the structural subordination of Claims at the Parent to Claims at the Affiliate Debtors, as described in paragraph 134 herein.

149. The Chevron Objection fails to take into account not only the Debtors' corporate structure, but also the realities of the Debtors' post-emergence business needs. Chevron asserts that the treatment of Classes 6 and 8 under the Plan is based on a "peculiar business philosophy."[167] That critique makes little sense. One reason the Plan was structured not to impair General Unsecured Claims against the Affiliate Debtors is because those parties (of which Chevron is one) are go-forward trade creditors with which the Reorganized Debtors wish to maintain good business relationships. Chevron's General Unsecured Claims at the Parent level, by contrast, do not arise from trade claims, but rather are legacy obligations from a parent guaranty that is approximately 15 years old. It is therefore perfectly rational for the Debtors to treat these two sets of claims differently, both from a legal and business perspective.

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165 *See In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988),

166 *See, e.g.*, In re Drexel Burnham Lambert Grp., Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992).

167 Chevron Objection, p. 5.

150. Courts have found good business reasons to support separate classification where the debtor's business was dependent on maintaining an ongoing business relationship with separately classified creditors.[168] Therefore, the classification of the Plan is completely appropriate as it classifies obligations that are necessary to the reorganized business in one class, matured debt obligations in another class, and contingent legacy guarantee claims in another class.

3. The Plan Satisfies the Best Interests Test.

151. As described in paragraphs 116-17 herein, the Plan satisfies the best interests test. The Chevron Objection asserts that without filed schedules showing the assets and liabilities of the Affiliate Debtors or documentation of the non-Debtor affiliates' assets and liabilities, there is insufficient information supporting the Liquidation Analysis. However, as described in paragraph 133 herein, all Claims against the Parent are structurally subordinated to Claims against the Affiliate Debtors because of the position of SESI, L.L.C. in the corporate structure. As a result of this structure, whereby all value must pass through SESI, L.L.C. ***first*** before reaching the Parent, the Liquidation Analysis takes into account SESI's ownership interests in all Affiliate Debtors and non-Debtor subsidiaries. Therefore, the Liquidation Analysis reflects the value of the entire enterprise, including Debtors and non-Debtor affiliates, and such value does not reach the Parent under any scenario, as reflected in the Liquidation Analysis and as stated in the Omohundro Declaration.

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[168] *See In re Bernhard Steiner Pianos*, 292 B.R. 109, 114 (separate classification of consignment creditors justified where consignment business had "historically been an important part of the [d]ebtor's business" and it was "contemplated to be an integral part of the [d]ebtor's future"); *In re Trimm, Inc.*, 2000 WL 33673795, at *5 (separate classification justified where debtors' continued business operation was dependent upon maintaining a continued commercial relationship with separately classified trade creditors).

4. The Plan Has Been Proposed in Good Faith.

152. Finally, with respect to the Chevron Objection's good faith argument, the Restructuring Support Agreement, the Plan and all documents necessary to effect the Plan are the result of months of analysis and negotiations and were proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates.[169] Further, the acceptance of the Plan by all Voting Classes reflects the Plan's inherent fairness and good faith efforts to achieve the objectives of chapter 11. Finally, it is unclear what Chevron is implying by its lack of good faith argument. Prior to the Holders of Prepetition Notes Claims receiving 100% of the Reorganized Equity Interests, the Restructuring Support Agreement provided that Old Parent Interests were receiving an equity tip and all General Unsecured Claims at the Parent were riding through unimpaired. As the Fieldwood Energy LLC bankruptcy case progressed, the likelihood and amount of potential liabilities at the Parent increased, and given the structurally senior nature of the Prepetition Notes Claims, the Restructuring Support Agreement was amended to discharge claims at the Parent and remove the equity tip. The parties to the Restructuring Support Agreement attempted to preserve the original nature of the deal, but given the structurally senior nature of the Prepetition Noteholder Claims, the Valuation Analysis, and the subordinated nature and potential magnitude of the Legacy Parent Guarantee Claims, the current Plan represents a structure that is acceptable to holders of structurally senior Prepetition Notes Claims. Therefore, Chevron's claims that the Plan was not proposed in good faith lack merit and the Chevron Objection should be overruled.

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[169] *See* Ballard Declaration, ⁋ 7; *supra* ⁋ 2.

B. The Arena Objection and the Marathon Objection

153. The Arena Objection argues that the separate classification of Classes 5 and 6 is improper. To support this argument, Arena asserts that: (a) if Classes 5 and 6 were one class, such a class would not have voted to accept the Plan; and (b) Class 5 is entitled to no recovery under the Plan and should therefore be deemed to reject the Plan. The Marathon Objection makes substantially the same argument as the Arena Objection with respect to the separation of Classes 5 and 6.[170]

1. The Plan's Separation of Classes 5 and 6 Is Appropriate.

154. As conceded by Arena, the Bankruptcy Code affords a debtor the discretion to classify substantially similar claims separately.[171] As previously described herein, Class 5 consists of fixed and liquidated Claims while Class 6 consists of contingent and unliquidated Claims, and such a difference is considered a rational basis for separate classification despite Arena's and Marathon's claims that no rational basis exists.[172]

155. Further, the Arena Objection speculates "upon information and belief" that if Classes 5 and 6 were one class, "there would not be an accepting vote."[173] Similarly, the Marathon Objection implies that the only reason to separate Classes 5 and 6 is the need to gerrymander those Classes for the sake of votes.[174] This is directly refuted by the voting data presented in the Voting Certification, as described in paragraph 57 herein. Specifically, the Voting Certification contains

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170 Marathon Objection, ¶ 7.

171 Arena Objection, ¶ 5.

172 *Supra* note 63.

173 Arena Objection, ¶ 5.

174 Marathon Objection, ¶ 7.

a hypothetical combined vote tally of Class 5 and Class 6, wherein the hypothetical class would still have overwhelmingly voted to accept the Plan.[175]

2. Class 5 Is Entitled to Recovery Under the Plan.

156. The Arena Objection next argues that since Class 5 is entitled to no recovery under the Plan, it should be deemed to reject the Plan pursuant to section 1126 of the Bankruptcy Code.[176] Arena cites the fact that Class 5 has waived its distribution from the Parent GUC Recovery Cash Pool, but there is a clear difference between voluntarily waiving one's recovery and not being entitled to recovery at all. Of course, this objection could be easily mooted by having Class 5 share in an additional $125,000 and then agree to contribute the cash back to the Reorganized Debtors as the 100% owners. Furthermore, members of Class 5, on a combined basis with Class 7, are entitled to an estimated recovery of between 63% and 76% of their Prepetition Notes Claims, as shown in the table in paragraph 116 herein. For the aforementioned reasons, the Arena Objection lacks merit and should be overruled.

3. The Plan is Feasible.

157. Arena asserts that the Plan is not feasible, but as described herein in paragraph 126, the Plan is feasible and is not likely to be followed by liquidation or the need for further reorganization. The Debtors have provided information, including the Financial Projections attached to the Disclosure Statement, that supports this assertion and will provide further evidence of feasibility in connection with the confirmation hearing.

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175 Voting Certification, Ex. C.

176 Arena Objection ¶ 6.

4. Administrative Claims are Already Addressed by the Plan.

158. Finally, Arena asserts that the Plan must account for an administrative claim for expenses related to decommissioning liabilities of the Parent. However, as described in paragraph 120 herein, the Plan provides clearly for Allowed Administrative Claims to be paid in full, as is customary with plans of reorganization. If a Claim is Allowed as an Administrative Claim, the Plan contains a mechanism for it to be satisfied. Therefore, Arena's concerns with the Plan are not warranted, and the Arena Objection should be overruled.

CONCLUSION

159. Accordingly, the Disclosure Statement and the Plan comply with all of the applicable requirements of the Bankruptcy Code, and the Debtors respectfully request that this Court enter the Proposed Confirmation Order to approve the Disclosure Statement and confirm the Plan, to grant related relief requested herein, and to grant such other and further relief as the Court may deem just and appropriate.

[Remainder of page intentionally left blank.]

Signed: January 15, 2021
Houston, Texas

Respectfully Submitted,

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Exhibit A

Response Chart – Resolved Objections

Party	Debtors' Responses
Filed Confirmation Objections	
Shell Offshore Inc. [Docket No. 204].	Shell Offshore Inc. ("**Shell**") filed a limited objection to the Plan solely to opt-out of the releases contained in Article X.B.1 thereof.
Channing Allen [Docket No. 228]	**Resolved** by adding the language in paragraph 50 of the Confirmation Order.
Automotive Rentals, Inc. and Ari Fleet LT [Docket No. 229]	**Resolved** by adding the language in paragraph 49 of the Confirmation Order.
Texas Taxing Authorities [Docket No. 231, 232, 233, 239]	**Resolved** by adding the language in paragraph 39 of the Confirmation Order.
Agua Dulce, LLC [Docket No. 237]	**Resolved** by adding the language in paragraph 51 of the Confirmation Order.
Informal Confirmation Objections	
Securities and Exchange Commission	**Resolved** by adding the language in paragraph 23 of the Confirmation Order.
Cigna Health and Life Insurance Company	**Resolved** by adding the language in paragraph 40 of the Confirmation Order.
Texas Commission on Environmental Quality	**Resolved** by adding the language in paragraphs 24 through 26 of the Confirmation Order.
Texas Comptroller of Public Accounts	**Resolved** by adding the language in paragraphs 27 through 31 of the Confirmation Order.
Governmental Units	**Resolved** by adding the language in paragraphs 32 through 38 of the Confirmation Order.
RLI Insurance Company	**Resolved** by adding the language in paragraph 42 of the Confirmation Order.
Liberty Mutual and Helmsman Management Services LLC	**Resolved** by adding the language in paragraphs 41 of the Confirmation Order.

U.S. Trustee	**Resolved** by adding the language in paragraph 22 of the Confirmation Order.
Cure Claim Objections	
Marathon Oil Company [Docket No. 249]	**Resolved** by adding the language in paragraph 44 of the Confirmation Order.
Microsoft Corporation and Microsoft Licensing [Docket No. 225]	**Resolved** by confirmation from the Debtors that they already paid the amounts owed. Objection has been withdrawn.
Chevron U.S.A., Inc. / Noble Midstreams Services, LLC / Noble Energy, Inc. [Docket No. 235]	**Resolved** by adding the language in paragraph 43 of the Confirmation Order.

Exhibit B

Response Chart – Parent Guarantee Objections[1]

Party	Summary of Objection and Debtors' Responses
Chevron U.S.A. Inc. / Union Oil Company of California / Chevron Midcontinent, L.P. [Docket No. 227] **Joinders**: Hess Corporation [Docket No. 230] Apache Corporation [Docket No. 236] Marathon Oil Company [Docket No. 250]	Addressed in paragraphs 144 through 152 of the Memorandum.
Arena Energy, LLC / Arena Offshore, LP [Docket No. 242]	Addressed in paragraphs 154 through 158 of the Memorandum.
Marathon Oil Company [Docket No. 250]	Addressed in paragraphs 148, 154, and 155 of the Memorandum.

[1] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the relevant Parent Guarantee Objection or the Memorandum, as applicable. For the avoidance of doubt, the Debtors reserve the right to respond to any and all unresolved objections, whether or not argued in the Memorandum or listed in this summary chart.