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)

OBJECTION OF ARENA ENERGY, LLC AND ARENA OFFSHORE, LP TO CONFIRMATION OF JOINT PREPACKAGED PLAN OF REORGANIZATION FOR SUPERIOR ENERGY SERVICES, INC. AND ITS AFFILIATE DEBTORS

Arena Energy, LLC and Arena Offshore, LP (collectively, "Arena") submit this objection (this "Objection") to the confirmation of the *Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 11] (the "Plan").[2] In support of this Objection, Arena respectfully states as follows:

Preliminary Statement

1. Arena holds certain Class 6 General Unsecured Claims against Superior Energy Services, Inc. (the "Parent") arising from a contractual performance guaranty dated February 13, 2004, pursuant to which the Parent serves as guarantor of the obligations of its wholly-owned subsidiary, SPN Resources, LLC ("SPN"), to Arena as a predecessor in title to certain oil and gas

[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.

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

interests. The facts and circumstances of Arena's claims are set forth in two proofs of claim filed on December 31, 2020 [Claim Nos. 213 and 214].

2. In October 2020, Arena Energy, LLC and certain affiliates recently completed their own chapter 11 reorganization. Arena, therefore, is cognizant of how debtors in possession may use the Bankruptcy Code process to maximize value for all stakeholders and allocate it fairly among them. Unfortunately, the proposed Plan is deficient in several key respects, including the classification of senior notes claims and other general unsecured claims against the Parent, which the Debtors appear to have gerrymandered into two separate classes without any business purpose other than to obtain the support of an impaired accepting class at the Parent. The Court should not condone the Debtors' naked gerrymandering maneuver. The Court should therefore deny confirmation of the Plan.

3. The holders of the Prepetition Notes have claims against the Parent and each of the other Debtors, which are defined as the Affiliate Debtors under the Plan. Class 7 sets forth the treatment for Prepetition Notes Claims against the Affiliate Debtors. Class 7 provides that holders of Prepetition Notes Claims will receive their recovery in the form of 100 percent of the new common stock of the Reorganized Parent in exchange for their Class 7 Prepetition Notes Claims against Affiliate Debtors for a projected recovery of $819 to $988 million (i.e., 63.0%–76.0% of the outstanding $1.3 billion of Prepetition Notes Claims). *See* Plan, Art. III.B. (attached hereto as **Exhibit A**). Class 8 provides that all non-bondholder general unsecured claims against the Affiliate Debtors will ride through the bankruptcy process unimpaired.

4. Arena does not object to the treatment of the Prepetition Notes and other non-bondholder general unsecured claims against the Affiliate Debtors. However, Arena objects to the proposed classification of the Prepetition Notes and other non-bondholder claims against

the Parent. Specifically, the Plan separately classifies Prepetition Notes Claims against the Parent (which are classified in Class 5) from other *pari passu* prepetition general unsecured claims against the Parent (which are classified in Class 6). The Plan further provides that holders of Allowed Claims in both Class 5 and Class 6 are to receive their pro rata share of the $125,000 Parent GUC Recovery Cash Pool. However, the holders of Prepetition Notes Claims have agreed to waive their distribution of the Parent GUC Recovery Cash Pool.

5. While section 1122 of the Bankruptcy Code permits separate classification of substantially similar claims, a debtor's discretion is not unlimited: a debtor must demonstrate a legitimate business reason for separate classification ***other than*** the mere desire to obtain the consent of an impaired accepting class. Here, upon information and belief, Arena submits that no legitimate business reason exists for separate classification of Class 5 and Class 6 claims against the Parent, other than the Debtors' simple desire to obtain the support of an impaired accepting class at the Parent. Arena submits that this is evident due to—among other reasons—the fact that holders of claims in Class 5 and Class 6 are entitled to receive the same recovery on account of their claims against the Parent but the noteholders in Class 5 have voluntarily agreed to forego that distribution. Upon information and belief, if the Prepetition Notes Claims against the Parent were classified with other general unsecured claims against the Parent, there would not be an accepting vote. The functional outcome of gerrymandering Class 5 is to deprive the holders of Class 6 claims of value they would otherwise receive at the Parent, including $884,723.20 in cash and certain other causes of action. To the extent the Plan is confirmed at the Parent, Arena should receive more than a pro rata share of $125,000.

6. Furthermore, to the extent that separate classification of the Prepetition Notes from other non-bondholder claims against the Parent is permitted, Class 5 (i.e., Prepetition Notes Claims

against the Parent) has deemed to reject the Plan and is therefore incapable of serving as the impaired accepting class with respect to the Parent. Specifically, section 1126(g) of the Bankruptcy Code provides that "a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." Here, Class 5 expressly provides that the Prepetition Notes are "waiv[ing]" any right to a recovery against the Parent. Therefore, Class 5 is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

7. Additionally, the Plan fails to provide for surety bond commitments for plugging and abandonment and other environmental liability claims against the Parent and thus does not meet the feasibility standard of section 1129(a)(11) of the Bankruptcy Code. Accordingly, Arena submits that the Plan does not satisfy the confirmation requirements of section 1129 of the Bankruptcy Code and should not be confirmed.

Objection

I. The Plan Should Not Be Confirmed Because It Appears Class 5 Was Designed Solely to Obtain an Affirmative Vote of an Impaired Class.

8. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1). The principal goal of this provision is to ensure compliance with the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and interests and the contents of a chapter 11 plan. Accordingly, the determination of whether the Plan complies with section 1129(a)(1) of the Bankruptcy Code requires an analysis of sections 1122 and 1123 of the Bankruptcy Code.

9. "Although [section] 1122(a) by its terms 'only governs permissible *inclusions* of claims in a class rather than requiring that all similar claims be grouped together,' it is nevertheless settled law in [the Fifth] Circuit and elsewhere that, 'ordinarily "substantially similar claims," those which share common priority and rights against the debtor's estate, should be placed in the same class.'" *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 298 (Bankr. N.D. Tex. 2007) (quoting *Phoenix Mutual Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1278 (5th Cir. 1991)).

10. Section 1129(a)(10) of the Bankruptcy Code requires that, if any class of claims is impaired under a chapter 11 plan, at least one such impaired class must vote to accept the plan for it to be confirmed. *See* 11 U.S.C. § 1129(a)(10). The primary concern with a debtor's classification scheme is whether the debtor's classes were designed to gerrymander votes to guarantee an impaired accepting class to satisfy section 1129(a)(10) of the Bankruptcy Code. *See Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) ("[I]n [*Greystone*] we held that a plan proponent cannot gerrymander creditor classes *solely* for purposes of obtaining the impaired accepting class necessary to satisfy § 1129(a)(10)."); *Greystone*, 995 F.2d at 1279 ("[T]he one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification [is]: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan."); *Heritage Org., LLC*, 375 B.R. at 303 ("[T]he only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan."); *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (recognizing that section 1122 is broadly permissive of any classification scheme that is not specifically proscribed and that substantially similar claims may be separately classified

where separate classification has a basis independent of the plan proponent's efforts to secure a class of claims that will accept the plan).

11. Here, upon information and belief, Arena submits that the Plan impermissibly classifies nearly identical claims in different classes—manipulating classifications to obtain a favorable vote, as evidenced by the fact that the holders of Prepetition Notes Claims against the Parent are waiving their recovery. At the Parent level, two classes of claims are impaired and thus entitled to vote on the Plan: (a) Class 5 Prepetition Notes Claims and (b) Class 6 General Unsecured Claims. Pursuant to the Plan, holders of Allowed Claims in both Class 5 and Class 6 are to receive their pro rata share of the $125,000 Parent GUC Recovery Cash Pool. *See* Plan, Art. III.B. However, the holders of Prepetition Notes Claims have agreed to waive their distribution of the Parent GUC Recovery Cash Pool. *Id.* If the Prepetition Noteholders are waiving their distribution, there appears to be no reason to place these holders into a separate class. Indeed, since the Prepetition Noteholders are waiving their distribution from the Parent in full, then, upon information and belief, there is no legitimate basis to place them in *any* class—except of course for the Plan proponent to use these waived claims solely to gerrymander an impaired voting class.[3]

12. Class 5 and Class 6 are each comprised of general unsecured claims of the same legal priority, arising out of a guaranty by the Parent of the obligations of one or more subsidiaries. As detailed in proofs of claim 213 and 214, the basis of Arena's Class 6 General Unsecured Claims is the contractual performance guaranty made by the Parent in favor of Arena Offshore, LLC and Triumph Energy, LLC, which are party to a certain purchase and sale agreement with SPN, a

[3] Courts in the Fifth Circuit and other jurisdictions have also found that discretionary impairment can offend a plan proponent's duty of good faith under section 1129(a)(3) of the Bankruptcy Code. *See Vill. at Camp Bowie*, 710 F.3d 239 (acknowledging that section 1129(a)(10) must be scrutinized in light of the good faith requirements of section 1129(a)(3)). Arena reserves the right to assert lack of good faith at the Confirmation Hearing.

wholly-owned subsidiary of the Parent. Similarly, the Parent and certain subsidiaries of Debtor SESI, L.L.C. ("SESI"), all of which are Debtors in these chapter 11 cases, have guaranteed SESI's obligations under the Prepetition Notes Indentures, pursuant to which SESI issued two tranches of senior unsecured notes—the Prepetition Notes. *See* Disclosure Statement, Art. II.C. Claims arising from, under, or in connection with the Prepetition Notes or the Prepetition Notes Indentures are classified as Class 5 Prepetition Notes Claims under the Plan. *Id.* at Art. II.A.

13. While there is a narrow exception to the rule that a debtor should classify substantially similar claims together—if a debtor can articulate a legitimate business justification for separate classification, the Debtors have articulated no such reason. *See Matter of Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1167 (5th Cir. 1993) (recognizing that "there may be good business reasons to support separate classification"). Simply put, the claims of both Arena and the holders of the Prepetition Notes arise from simple contractual guaranties and thus the underlying legal rights and remedies (and priority) are *identical* in every way. Therefore, upon information and belief, the Debtors separately classified the claims in Class 5 and Class 6 solely in order to satisfy section 1129(a)(10) of the Bankruptcy Code as to the Parent in violation of section 1122 of the Bankruptcy Code and the rule in *Greystone*. Accordingly, there is not an impaired accepting class at the Parent, and the Plan is not confirmable as to the Parent.

II. By Waiving the Right to Recovery Against the Parent, Class 5 Is Deemed to Reject the Plan and Therefore Cannot Serve as the Required Impaired Accepting Class.

14. To the extent that separate classification of the Prepetition Notes from other non-bondholder claims against the Parent is permitted, Class 5 (i.e., Prepetition Notes Claims against the Parent) has deemed to reject the Plan and is therefore incapable of serving as the impaired accepting class with respect to the Parent. Specifically, section 1126(g) of the Bankruptcy Code provides that "a class is deemed not to have accepted a plan if such plan

provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." 11 U.S.C. § 1126(g). Here, Class 5 expressly provides that the Prepetition Notes are "waiv[ing]" any right to a recovery against the Parent. Therefore, Class 5 is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. *See In re Real Wilson Enters., Inc.*, No. 11-15697-B-11, 2013 WL 5352697, at *4–5 (Bankr. E.D. Cal. Sept. 23, 2013) (holding that because "Class 5B creditors will not receive or retain any property under the Plan," the court "cannot count their accepting votes as the entire class is conclusively deemed to have rejected the Plan" and "[t]hus, none of the impaired classes have accepted the Plan, and the Debtor has not satisfied this confirmation requirement under § 1129(a)(10)"); *see also In re Briscoe Enters. Ltd., II*, 138 B.R. 795, 815 (N.D. Tex. 1992), *rev'd on other grounds*, 994 F.2d 1160 (5th Cir. 1993) (finding that a class of interest holders was "deemed not to have accepted the Plan" because the holders "did not receive or retain any property under the Plan"); *In re Egan*, 142 B.R. 730, 732 (Bankr. E.D. Pa. 1992) (disregarding acceptance vote from a class that would receive nothing under the plan); *In re Waterways Barge P'ship*, 104 B.R. 776, 783 (Bankr. N.D. Miss. 1989) (stating that the legislative history pertinent to section 1126(g) of the Bankruptcy Code "indicates that it is not even necessary to solicit votes from a class whose members are to receive or retain nothing" since they are deemed to have already rejected the plan).

III. The Plan Is Not Feasible Due to the Failure to Provide for Surety Bonding Commitments for Plugging and Abandonment and Other Environmental Liability Claims Against the Parent.

15. "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.'" *In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) (quoting 11 U.S.C. § 1129(a)(11)).

16. When evaluating the feasibility of a chapter 11 plan, courts consider, among other factors, (a) whether the debtor will have the ability to meet its requirements for capital expenditures and (b) any matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. *See In re M & S Assocs., Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992) (listing common factors considered by courts when evaluating feasibility); *see also S.O.S. All.*, 632 F.3d at 173 (stating that there is no requirement that the court consider all factors).[4]

17. The Debtors and their indirect subsidiaries, as oilfield services providers, have decommissioning liabilities associated with their oil and gas properties and related assets, including liabilities related to the plugging of oil wells, removal of platforms and equipment, and site restoration. Pursuant to the Disclosure Statement, the Debtors had decommissioning liabilities of $141.6 million as of October 31, 2020. *See* Disclosure Statement, Art. II.C.3. In addition, the Parent may be exposed to contingent liabilities to the extent that asset retirement obligations are matured for any leases supported by the Legacy Parent Guarantees and the predecessors in title who are the beneficiaries of the Legacy Parent Guarantees become liable for such obligations. *See id.* at Art. II.C.4.

18. It is unclear if environmental claims such as the Debtors' decommissioning liabilities can be discharged in bankruptcy. *See Midlantic Nat'l Bank v. N.J. Dep't of Env't Prot.*, 474 U.S. 494, 507 (1986) (holding that "a bankruptcy trustee may not abandon property in contravention of state statute or regulation that is reasonably designed to protect the public health

[4] The other factors include: (a) the soundness and adequacy of the capital structure and working capital for the business which the debtor will engage in post-confirmation; (b) the prospective earnings of the business or its earning power; (c) the prospective availability of credit; (d) economic and market conditions; and (e) the ability of management and the likelihood that the same management will continue.

or safety from identified hazards"); *In re H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998) (stating that Texas and federal law places an "inescapable obligation" on a bankruptcy trustee to plug unproductive wells and recognizing that environmental obligations cannot be abandoned because failing to honor such obligations may "operate[] as a legal liability on the estate, a liability capable of generating losses in the nature of substantial fines every day the wells remain[] unplugged"). Given the size of these potential claims, the fact that such claims are treated as administrative expenses (as discussed below) can threaten the Debtors' ability to fashion a plan for the benefit of all creditors. Therefore, the Debtors need to provide some level of surety bonding commitments or other insurance for the decommissioning and other potential environmental liabilities of the Parent, as a lack of such commitments may have a direct impact on the recoveries available to the Debtors' stakeholders.

19. The Plan, however, does not provide evidence that the Debtors have obtained the requisite surety bonding commitments nor does it demonstrate that the Debtors' existing surety providers are willing to support the Plan and to continue to provide surety bonding. Accordingly, the Plan is not feasible. *See S.O.S. All.*, 632 F.3d at 172–73 (finding that the debtor's plan was not feasible because the debtor had not demonstrated a sufficiently firm commitment from its donors to contribute $60,000 to the charitable fund contemplated by the plan to be distributed to the debtor's unsecured creditors and stating that oral assurances of voluntary pledges were too speculative to provide evidence of feasibility).

IV. Expenses Related to the Debtors' Plugging and Abandonment and Decommissioning Obligations Create an Administrative Claim Entitled to Priority of Payment.

20. Pursuant to section 503(b) of the Bankruptcy Code, "actual and necessary costs and expenses of preserving the estate" are given priority over the claims of other unsecured creditors as administrative expenses. 11 U.S.C. 503(b)(1)(A). Courts in the Fifth Circuit have held that

plugging and abandonment obligations arising postpetition are considered administrative expense claims and receive priority status. *See H.L.S. Energy*, 151 F.3d 434 (5th Cir. 1998) (holding that costs to satisfy plugging and abandonment obligations arising postpetition are actual and necessary costs of managing a debtor's estate and are entitled to priority as an administrative expense); *In re Am. Coastal Energy, Inc.*, 399 B.R. 805, 816–17 (Bankr. S.D. Tex. 2009) (expanding on this concept and holding that postpetition expenditures satisfying prepetition plugging and abandonment obligations are also entitled to administrative priority status); *see also In re ATP Oil & Gas Corp.*, No. 12-36187, 2014 WL 1047818, at *7–8 (Bankr. S.D. Tex. Mar. 18, 2014). Here, the Plan states that Administrative Claims will be paid in full. *See* Plan, Art. II.B.1. However, there is no evidence that this is feasible as to the Parent given that the Parent does not own any material assets other than its equity interests in its direct subsidiary, SESI, which is primarily liable for over $1.3 billion of Prepetition Notes Claims. *See* Disclosure Statement, Art. II.A.

21. Given the estimated enterprise value of the Reorganized Debtors is between $710 million and $880 million, SESI is worth substantially less than the face amount of the Prepetition Notes Claims and, in turn, the Parent has no residual value for its creditors other than the $125,000 distribution from the Parent GUC Recovery Cash Pool. Accordingly, the Plan needs to account for a per diem administrative claim for expenses related to satisfying decommissioning liabilities of the Parent arising both pre- and post-postpetition.

Opt-Out of Third Party Release

22. Arena opts out of the Third Party Release contained in Article X.B.2 of the Plan and has affirmatively elected to do so in Arena's Class 6 General Unsecured Claims ballot.

Joinder

23. In addition to the foregoing, Arena joins in *Chevron U.S.A. Inc., Union Oil Company of California and Chevron Midcontinent, L.P.'s Objections to Debtors' Joint Plan of Reorganization Chapter 11 of the Bankruptcy Code and Final Approval of Debtors' Disclosure Statement* [Docket No. 227] and *Apache Corporation's Joinder to Chevron U.S.A. Inc., Union Oil Company of California and Chevron Midcontinent, L.P.'s Objections to Debtors' Joint Plan of Reorganization Chapter 11 of the Bankruptcy Code and Final Approval of Debtors' Disclosure Statement* [Docket No. 236] and adopts the legal arguments and authorities cited therein.

Reservation of Rights

24. Arena files this Objection with a full reservation of rights, including the right to amend or supplement this Objection in all respects at any point in advance of the Confirmation Hearing and to raise additional arguments at the Confirmation Hearing.

For the foregoing reasons, Arena respectfully requests that the Court deny confirmation of the Plan unless the deficiencies in the Plan are remedied and grant such other and further relief as is appropriate under the circumstances.

Houston, Texas
January 13, 2021

Respectfully Submitted,

/s/ Zack A. Clement

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Certificate of Service

I certify that on January 13, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zack A. Clement
Zack A. Clement

Exhibit A

Plan Treatment of Classes 5–8

(d) *Voting:* Class 4 is an Unimpaired Class, and the Holders of Claims in Class 4 shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 4 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 4 will be provided a Notice of Non-Voting Status solely for purposes of affirmatively opting out of the Third Party Releases

5. Class 5 – Prepetition Notes Claims Against Parent

(a) *Classification:* Class 5 consists of the Prepetition Notes Claims against Parent only.

(b) *Allowance*: The Prepetition Notes Claims against Parent are deemed Allowed in the aggregate principal amount of $1.30 billion, plus accrued and unpaid interest thereon, consisting of:

(i) $800 million in aggregate principal amount, plus accrued and unpaid interest on account of the 2021 Notes; and

(ii) $500 million in aggregate principal amount, plus accrued and unpaid interest on account of the 2024 Notes.

(c) *Treatment:* On, or as soon as reasonably practicable after, the Effective Date, each Holder of an Allowed Prepetition Notes Claim against Parent shall 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 Parent shall waive any distribution from the Parent GUC Recovery Cash Pool.

(d) *Voting:* Class 5 is Impaired, and Holders of Claims in Class 5 are entitled to vote to accept or reject this Plan.

The foregoing is offered to Class 5 solely for settlement purposes under Rule 408 of the Federal Rules of Evidence and analogous state law, and such settlement is conditioned on the Bankruptcy Court confirming this Plan and the occurrence of the Effective Date.

6. Class 6 – General Unsecured Claims Against Parent

(a) *Classification:* Class 6 consists of the General Unsecured Claims against Parent only.

(b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the Effective Date, each Holder of an Allowed General Unsecured Claim against Parent shall 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.

(c) *Voting:* Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject this Plan.

The foregoing is offered to Class 6 solely for settlement purposes under Rule 408 of the Federal Rules of Evidence and analogous state law, and such settlement is conditioned on the Bankruptcy Court confirming this Plan and the occurrence of the Effective Date.

7. Class 7 - Prepetition Notes Claims Against Affiliate Debtors

(a) *Classification:* Class 7 consists of the Prepetition Notes Claims against any Affiliate Debtor.

(b) *Allowance*: 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, consisting of:

(i) $800 million in aggregate principal amount, plus accrued and unpaid interest on account of the 2021 Notes; and

(ii) $500 million in aggregate principal amount, plus accrued and unpaid interest on account of the 2024 Notes.

(c) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Prepetition Notes Claim against any Affiliate Debtor shall 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.

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 may no longer be transferable.

Notwithstanding anything to the contrary herein, 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 shall 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.

Voting: Class 7 is Impaired, and Holders of Claims in Class 7 are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims Against Affiliate Debtors

(a) *Classification:* Class 8 consists of the General Unsecured Claims against any Affiliate Debtor.

(b) *Treatment:* 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.

(c) *Voting:* Class 8 is an Unimpaired Class, and the Holders of Claims in Class 8 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 8 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 8 will be provided a Notice of Non-Voting Status solely for purposes of affirmatively opting out of the Third Party Releases.

9. Class 9 – Intercompany Claims

(a) *Classification*: Class 9 consists of the Intercompany Claims.

(b) *Treatment:* Subject to the Restructuring Transactions, the Intercompany Claims shall be adjusted, reinstated, compromised, or cancelled in such manner as is acceptable to the Required Consenting Noteholders, in consultation with the Debtors.

(c) *Voting:* Class 9 is an Unimpaired Class and the Holders of Claims in Class 9 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 9 are not entitled to vote to accept or reject this Plan.