Docket #0574 Date Filed: 08/28/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
EIGER BIOPHARMACEUTICALS INC., *et al.*[1]	Case No. 24-80040 (SGJ)
Debtors.	(Jointly Administered)

DECLARATION
OF DOUGLAS STAUT,
CHIEF RESTRUCTURING OFFICER,
IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED JOINT PLAN OF LIQUIDATION OF EIGER BIOPHARMACEUTICALS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, Douglas Staut, hereby declare under penalty of perjury as follows:

1. I am the Chief Restructuring Officer ("CRO") of each of the above-captioned debtors (collectively, the "Debtors," or the "Company"). I am a Managing Director at Alvarez & Marsal ("A&M") with over seventeen (17) years of financial experience and nine (9) years of experience providing financial advisory services to healthcare clients nationwide. During my tenure with A&M, I have provided interim management, cash and financial forecasting, strategic planning, crisis management, turnaround consulting, refinancing advisory and operational improvement services to clients both in and out of court. I have also developed detailed cash flow and operating models, liquidation analyses, operational improvement analyses, and refinancing and business plan projections in preparation for restructurings and change-of-control transactions.

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Avenue, Dallas, Texas 75201.

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2. I am over the age of 18 years and am authorized to submit this declaration on behalf of the Debtors. If called to testify, I could and would testify competently to the facts set forth herein.

3. I submit this declaration in support of the request for entry of an order approving the Debtors' *Amended Disclosure Statement for Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 476-1] (as modified, amended, or supplemented from time to time hereafter, the "Disclosure Statement") and confirming the *Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 571-1] (as modified, amended, or supplemented from time to time hereafter, the "Plan").[2]

4. I am not being specifically compensated for this testimony other than through payments received by A&M as a professional retained by the Debtors.

5. Since A&M's initial engagement by the Debtors on February 8, 2024, I have worked closely with the Debtors' management and other professionals in assisting with the myriad requirements of these Chapter 11 Cases. Consequently, I have developed significant relevant experience and expertise regarding the Debtors, their operations, and the unique circumstances of these Chapter 11 Cases. Except where explicitly noted, all statements in this Declaration are based upon (a) my personal knowledge of the Debtors' operations, business affairs, financial performance, and restructuring efforts; (b) information learned in my review of relevant documents; and (c) information I have been provided from other members of the Debtors' management or advisors. Based on this knowledge and as set forth in more detail below, I believe

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

the Debtors proposed the Plan in good faith and that the Plan satisfies what I understand to be the requirements for confirmation under section 1129 of title 11 of the United States Code (the "Bankruptcy Code").

BACKGROUND

6. On April 1, 2024 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the "Court").

7. On July 15, 2024, the Debtors filed the *Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 424] and the *Disclosure Statement for Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 425], along with the Disclosure Statement Motion,[3] pursuant to which the Debtors sought conditional approval of the Disclosure Statement and the scheduling of a combined hearing for Disclosure Statement approval and confirmation of the Plan (the "Combined Hearing").

8. On July 28, 2024, the Debtors filed the *Notice of Filing of Amended Plan* [Docket No. 455] and the *Notice of Filing of Amended Disclosure Statement* [Docket No. 456], each attaching the Plan and Disclosure Statement, respectively, as amended.

9. On July 29, 2024, the Debtors filed the *Notice of Filing of Further Amended Disclosure Statement* [Docket No. 463], which attached the Debtors' further amended Disclosure Statement as Exhibit A.

[3] *See Debtors' Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426] (the "Disclosure Statement Motion").

10. Also on July 29, 2024, the Court held a hearing on the Disclosure Statement Motion (the "Conditional Disclosure Statement Hearing"), at which the Court approved the Disclosure Statement on a conditional basis and granted certain other relief requested in the Disclosure Statement Motion and the amended proposed order related thereto [Docket No. 457-1] (the "Proposed Disclosure Statement Order").

11. On July 30, 2024, the Court entered the Disclosure Statement Order[4] which, among other things: (a) scheduled the Combined Hearing for September 5, 2024 at 9:30 a.m. (prevailing Central Time); (b) conditionally approved the adequacy of the Disclosure Statement; (c) established August 30, 2024 at 4:00 p.m. (prevailing Central Time) as the deadline to object to the Plan (the "Plan Objection Deadline"); (d) approved the solicitation procedures set forth in the Disclosure Statement and the Proposed Disclosure Statement Order; and (d) approved the form and manner of the Combined Notice (as defined in the Disclosure Statement Order). Following entry of the Disclosure Statement Order, the Debtors filed solicitation versions of the Plan [Docket No. 475-1] and the Disclosure Statement [Docket No. 476-1].

12. The Debtors caused Kurtzman Carson Consultants, LLC dba Verita Global (the "Notice and Claims Agent") to serve the Combined Notice, the Non-Voting Packages, and the Solicitation Packages (each as defined in the Disclosure Statement Order), on or about August 2, 2024, all in accordance with the terms of the Disclosure Statement Order.[5] The Debtors caused the Combined Hearing Publication Notice (as defined in the Disclosure Statement Order) to be

[4] *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 473] (the "Disclosure Statement Order").

[5] *See Certificate of Service* [Docket No. 508].

published in *The New York Times* (national edition) and the *San Francisco Chronicle* on August 2, 2024.[6]

13. On August 15, 2024, the Debtors filed the *Notice of Filing of Second Amended Plan* [Docket No. 517], which attached the Debtors' further amended Plan as Exhibit A.

14. On August 16, 2024, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 525] (the "Initial Plan Supplement"), which included: (a) the Liquidation Analysis, (b) the Schedule of Assumed Executory Contracts and Unexpired Leases, (c) the Schedule of Retained Causes of Action, (d) the Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc., (e) the Liquidating Trust Agreement, (f) the Plan Administrator Agreement; and (g) the identity of any insider that will be employed or retained by the Plan Administrator, and caused such notice of filing of the Initial Plan Supplement to be delivered by first-class mail and electronic mail upon the parties receiving notice of the Disclosure Statement.[7]

15. [On August 28, 2024, the Debtors filed the *Notice of Filing of [Third] Amended Plan* [Docket No. [●]], which attached the Debtors' further amended Plan as Exhibit A.]

16. I believe confirmation of the Plan is in the best interests of the Debtors' estates and their stakeholders because, among other things, it provides for an orderly and efficient distribution of proceeds to creditors and provides sufficient liquidity to wind-down the Debtors' business.

17. As a result, in light of the foregoing and as discussed herein, I believe that prompt confirmation and consummation of the Plan is in the best interests of the Debtors, their creditors, and all parties in interest.

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[6] *See Affidavit of Publication of Notice of (I) Combined Hearing on the Amended Disclosure Statement and Confirmation of the Amended Joint Plan, and (II) Notice of Objection and Opt Out Rights in the New York Times and San Francisco Chronicle* [Docket No. 494].

[7] *See Certificate of Service* [Docket No. 508].

THE DISCLOSURE STATEMENT SHOULD BE APPROVED

18. I believe the Disclosure Statement contains "adequate information" for creditors to evaluate the Plan. Among other things, the Disclosure Statement includes a description of:

- the Plan, including the procedures for voting on the Plan and the projected recoveries thereunder;
- the statutory requirements for confirming the Plan;
- the Debtors' organizational structures, business operations, and financial obligations;
- the events leading to the filing of the Debtors' Chapter 11 Cases;
- the major events during the Chapter 11 Cases, including significant pleadings filed;
- the proposed bidding procedures and timeline for the sale of the Debtors' assets;
- certain risk factors that Holders of Claims or Interests should consider before voting to accept or reject the Plan;
- the classification and treatment of Claims or Interests under the Plan, including identification of the Holders of Claims or Interests entitled to vote on the Plan at the time of solicitation;
- the means for implementation of the Plan, the provisions governing distributions to certain Holders of Claims under the Plan, the procedures for resolving Disputed Claims, and other significant aspects of the Plan;
- the releases contemplated by the Plan, including the Third Party Release; and
- certain United States federal income tax consequences of the Plan.

19. I have reviewed the Disclosure Statement and I believe that the Disclosure Statement is correct and contains sufficient information to allow a creditor to vote to accept or reject the Plan. I also believe that the Debtors took all appropriate actions in connection with the solicitation of the Plan in compliance with the Disclosure Statement Order and my understanding of section 1125 of the Bankruptcy Code.

THE PLAN SATISFIES THE REQUIREMENTS FOR CONFIRMATION

20. I have been informed of the requirements of section 1129 of the Bankruptcy Code. Based on my understanding of these requirements and for the reasons below, I believe the Plan satisfies the applicable Bankruptcy Code requirements for confirmation.

I. The Plan Satisfies Section 1129(a)(1) of the Bankruptcy Code.

A. The Plan's Classification of Claims and Interests Complies with Section 1122 of the Bankruptcy Code.

21. Through discussions with the Debtors' advisors and my familiarity with the Plan, I understand that the Plan designates Claims against the Debtors into six (6) Classes, as set forth in Article III of the Plan, in addition to Administrative Claims, Professional Compensation Claims, Priority Tax Claims, and Statutory Fees, which are unclassified. Based on these discussions, I understand that the Claims or Interests assigned to each particular Class in the Plan are substantially similar to the other Claims or Interests in such Class, and the separate classification of Claims and Interests against the Debtors is based upon the legal or factual nature of those Claims and Interests and other relevant criteria. In addition, it is my belief that the classification scheme is rational and complies with the Bankruptcy Code. The Plan's classification scheme was not promulgated for any improper purpose and is necessary to implement the Plan. Accordingly, based upon the foregoing, I believe that the Plan satisfies section 1122(a) of the Bankruptcy Code.

B. The Plan Complies with Section 1123(a) of the Bankruptcy Code.

22. Based on my knowledge and review of the Plan, I believe that the Plan complies with each of the seven requirements of section 1123(a) of the Bankruptcy Code.

23. Section 1123(a)(1) of the Bankruptcy Code. Based on my review of the Plan, I understand that the Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code.

24. Section 1123(a)(2)–(4) of the Bankruptcy Code. Based on my review of the Plan, I understand that the Plan (i) identifies each Class of Claims that is not Impaired under the Plan as required by section 1123(a)(2) of the Bankruptcy Code; (ii) sets forth the treatment of Impaired Claims and Interests as required by section 1123(a)(3) of the Bankruptcy Code; and (iii) provides for the same treatment of each Claim or Interest in each respective Class (unless otherwise agreed to by a Holder of a particular Claim or Interest) as required by section 1123(a)(4) of the Bankruptcy Code.

25. Section 1123(a)(5) of the Bankruptcy Code. Based on my review of the Plan, I believe that the Plan, including the documents submitted in the Plan Supplement, provides adequate means for its implementation as required by section 1123(a)(5) of the Bankruptcy Code. Specifically, I understand the Plan provides for: (i) the general settlement of Claims and Interests; (ii) creation of the Liquidating Trust and appointment of the Liquidating Trustee and Liquidating Trust Oversight Committee; (iii) the authorization for the Debtors, the Wind-Down Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, to take all actions (including corporate actions), necessary or appropriate to implement or effectuate the Plan; (iv) the consummation of the Plan, including the Wind-Down and dissolution of the Debtors; (v) the sources of consideration for Plan Distributions, including the Sale Transactions, Use of Cash, and Retained Causes of Action; (vi) the preservation and vesting of the Retained Causes of Action in the Liquidating Trustee or the Plan Administrator, as applicable, as set forth on the Schedule of Retained Causes of Action; (vii) the authorization, approval, and entry of corporate actions under the Plan; (viii) the cancellation of existing securities and agreements; (ix) the effectuation and implementation of documents and further transactions; and (x) the continuity of the Sale Orders and Sale Transaction Documents.

26. Section 1123(a)(6) of the Bankruptcy Code. Based on my review of the Plan, including the wind down of the affairs and operations of the Debtors contemplated thereunder, it is my understanding that section 1123(a)(6) is inapplicable to the Plan.

27. Section 1123(a)(7) of the Bankruptcy Code. Based on my review of the Plan, I understand that, as of the Effective Date, the existing Board of Directors of Eiger BioPharmaceuticals, Inc. shall be deemed to have resigned and the employees or officers of the Debtors terminated without any further action required. It is my understanding that from and after the Effective Date, the Plan Administrator and the Liquidating Trustee, as applicable, shall be authorized to act on behalf of the Estates. The identity of the Plan Administrator, along with the nature of any compensation for such person or persons, is disclosed in the Plan Supplement. I believe that any provision of the Plan and Plan Supplement governing the manner and selection of any trustee or fiduciary under the Plan, including the Plan Administrator and the Liquidating Trustee, is consistent with the interests of creditors, equity interest holders, and public policy, all as required by section 1123(a)(7) of the Bankruptcy Code.

C. The Plan Complies with Section 1123(b) of the Bankruptcy Code.

28. Based on my knowledge and review of the Plan, I understand that section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan and, as discussed in more detail below, I believe the Plan is consistent with section 1123(b) of the Bankruptcy Code.

29. Section 1123(b)(1) of the Bankruptcy Code. It is my understanding that the Plan complies with section 1123(b)(1) of the Bankruptcy Code as Article III of the Plan leaves each Class of Claims or Interests Impaired or Unimpaired, respectively. I have been further informed that while Class 4 (General Unsecured Claims) were classified as Impaired under the version of the Plan used for solicitation, subsequent edits to the treatment of such Claims, first set forth in the

Second Amended Plan filed at Docket No. 517-1, result in the unimpairment of such Claims. Accordingly, the latest version of the Plan provides that Classes 1, 2, 3, 4, and 5 are Unimpaired and Class 6 is Impaired.

30. Section 1123(b)(2) of the Bankruptcy Code. It is my understanding that the Plan complies with section 1123(b)(2) of the Bankruptcy Code as Article V of the Plan provides for the assumption, rejection, or assignment of any Executory Contract or Unexpired Lease not previously rejected under section 365 of the Bankruptcy Code. I believe the Debtors exercised their sound business judgment in the treatment of these Executory Contracts and Unexpired Leases, as set forth in the Plan, because the Debtors will wind down after the Effective Date and only those Executory Contracts necessary for the wind down are being assumed. Finally, I have been informed that the Debtors provided non-Debtor counterparties to the Executory Contracts and Unexpired Leases with appropriate notice of the rejection of their respective contracts and leases by filing the Combined Notice on and serving it on all known non-Debtor counterparties to any Executory Contracts and Unexpired Leases, as well as all other known creditors, on August 2, 2024.[8] I have been informed that the Debtors received no objections to the proposed rejection of any of the Executory Contracts or Unexpired Leases. Accordingly, I believe the Plan satisfies sections 1123(b)(2) and 365 of the Bankruptcy Code.

31. Section 1123(b)(3) of the Bankruptcy Code. It is my understanding that the Plan release, exculpation, and injunction provisions satisfy section 1123(b)(3) of the Bankruptcy Code.

i. Debtor Releases.

32. Article IX.A of the Plan (the "Debtor Releases") provides for certain releases of Causes of Action held by the Debtors against the Released Parties. I believe the Debtor Releases

[8] *See Certificate of Service* [Docket No. 508].

are appropriate, justified, in the best interests of stakeholders, and an integral part of the Plan. The Released Parties' made significant contributions to a highly complex and contentious restructuring. In the face of numerous obstacles and challenges, the Debtors' directors and officers navigated the Debtors through a chapter 11 process that has been successful beyond any reasonable expectation. For example, the Debtors' highly successful Sale Transactions are evidence of the Released Parties' contributions. Recognizing the concern for patient health and the ability to maintain production of its life-saving products, the Released Parties consummated the Zokinvy sale within 32 days of the Petition Date and obtained a base purchase price that was approximately $20 million over the original Stalking Horse bid. This effort was followed up by another highly successful sale process for Avexitide, which yielded approximately $25 million over the original Stalking Horse bid, far exceeding stakeholders' expectations by generating enough cash to fund meaningful recovery to equity.

33. Further, parties related to the Debtors have indemnification rights against the Debtors with respect to claims subject to the Debtor Releases. As such, the indemnification claims asserted by Released Parties would directly affect the Debtors' estates and undermine attempts to collect on a released Cause of Action.

34. Additionally, each of the Released Parties has contributed to the negotiation, formulation, and ultimately, the effectuation of the transactions contemplated in the Plan, along with the compromises and settlements set forth therein. The Plan provides these parties with the global closure they deserve.

35. I believe that the Debtor Releases meet the applicable standard because they are fair, reasonable, and in the best interests of the Debtors' Estates under the facts and circumstances of these Chapter 11 Cases.

ii. Third Party Release.

36. Article IX.B of the Plan (the "Third Party Release") provides for a release of all Claims or Causes of Action held by the Releasing Parties—including all Holders of Claims or Interests that are not opted-out in the Plan or do not specifically opt-out to their inclusion as a Releasing Party—against the Released Parties that relate to or in any manner arise from the Debtors, the Debtors' restructuring efforts, or any of the transactions or actions taken in connection with these Chapter 11 Cases. I believe that the Third Party Release was important for bringing key stakeholders groups to the bargaining table or effectuate the value maximizing transactions contemplated by the Plan.

37. Moreover, the Third Party Release is consensual. The Plan expressly allowed any party in interest to opt out of the Third Party Release by either: (A) electing to opt out of the Third Party Release on the Release Opt-Out form; or (B) timely objecting to the Third Party Release, either through a formal objection filed on the docket in the Chapter 11 Cases or an informal objection provided to the Debtors by electronic mail, with such objection not withdrawn before confirmation. Based on my review of the docket, I believe that all parties in interest were provided with extensive notice of these Chapter 11 Cases, the Plan, the deadline to object to the Plan, and the deadline to opt out of the Third Party Release. Additionally, it is my understanding that the Ballots, the Combined Hearing Notice, and the Release Opt-Out forms all contained the full text of the Third Party Release.

38. Finally, the significant contributions of the Released Parties inured not only to the benefit of the Debtors, as described above, but also to the benefit of all stakeholders by allowing these Chapter 11 Cases to proceed in an efficient and expedient manner thus maximizing the proceeds from the Sale Transactions available for recovery. For all of the reasons above, I believe

that the Third Party Release is appropriate, justified, and necessary under the facts and circumstances of these Chapter 11 Cases.

iii. Exculpation Provision.

39. Article IX.C of the Plan (the "Exculpation Provision") provides for the exculpation of the Exculpated Parties of certain Causes of Action as set forth in the Plan. It is my understanding and belief that the Exculpation Provision is an integral piece of the overall settlement embodied by the Plan and is the product of good faith, arms'-length negotiations. Moreover, it is my understanding that the Exculpation Provision is narrowly tailored to exclude acts of actual fraud, willful misconduct, or gross negligence, relates only to acts or omissions in connection with, or arising out of the Debtors' restructuring transactions, and is limited to parties who have performed valuable services as fiduciaries of the Debtors' estates in connection with these Chapter 11 Cases. Accordingly, I believe the Exculpation provision is appropriate, justified, and necessary under the facts and circumstances of these Chapter 11 Cases.

iv. Injunction Provision.

40. I believe that the injunction provision in Article IX.D of the Plan (the "Injunction Provision") is a necessary part of the Plan because it implements the discharge, release, and exculpation provisions that are critically important to the Plan. In addition, the Injunction Provision is consensual as no party objected specifically thereto. As such, I believe the Injunction Provision should be approved.

41. Section 1123(b)(4) of the Bankruptcy Code. It is my understanding that the Plan complies with section 1123(b)(4) of the Bankruptcy Code as all of the Debtors' assets have been sold or will be sold pursuant to the Sale Transactions, the proceeds of which shall be for the benefit of stakeholders.

42. Section 1123(b)(5) of the Bankruptcy Code. It is my understanding that the Plan complies with section 1123(b)(5) of the Bankruptcy Code as Article III of the Plan modifies or leaves unaffected, as the case may be, the rights of certain Holders of Claims.

43. Section 1123(b)(6) of the Bankruptcy Code. It is my understanding that the Plan complies with section 1123(b)(6) of the Bankruptcy Code as the other provisions of the Plan are appropriate and are not inconsistent with the applicable provisions of the Bankruptcy Code.

II. The Plan Satisfies Section 1129(a)(2) of the Bankruptcy Code.

44. To the best of my knowledge and belief, I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and Plan solicitation.

III. The Debtors Proposed the Plan in Good Faith in Compliance with Section 1129(a)(3) of the Bankruptcy Code.

45. Based on my involvement in these Chapter 11 Cases, I believe the Debtors proposed the Plan in good faith and not by any means forbidden by law, with the legitimate and honest purpose of maximizing the value of the Debtors' estates, effectuating a comprehensive and efficient liquidation, and maximizing the recoveries of all stakeholders. Throughout these Chapter 11 Cases, the Debtors, their directors, and their management team have upheld their fiduciary duties to stakeholders and protected the interests of all constituents, including the general unsecured creditors. The Plan follows an extensive arms'-length negotiation among the Debtors, the Prepetition Term Loan Secured Parties, the Statutory Committees, and other parties interested in ensuring that stakeholders realize the highest possible recoveries under the circumstances. Indeed, the Debtors' management team and advisors expended countless hours to conduct comprehensive and complex evaluations and negotiations in furtherance of providing the most value for their stakeholders.

46. The Plan embodies a good-faith resolution of Claims, Interests, Causes of Action, and controversies related to the Debtors and these Chapter 11 Cases, many of which are highly uncertain, the pursuit of which could cause extensive delay, cost, and uncertainty in these Chapter 11 Cases. The Plan is designed to achieve a beneficial and efficient resolution of these Chapter 11 Cases for all parties in interest. I understand that the Debtors thoroughly analyzed those Claims, Interests, Causes of Action, and controversies and found that the Plan will maximize the value of the estates and maximize recoveries to Holders of Claims and Interests and is essential to the successful implementation of the Plan.

47. Finally, it is my understanding that none of the transactions contemplated by the Plan is forbidden by law. Based on the foregoing, I believe the Plan represents the best result the Debtors could have achieved under the circumstances, with the best possible outcome for all interested parties, and is consistent with the purposes of the Bankruptcy Code. Therefore, it is my belief the Plan has been proposed in good faith and satisfies section 1129(a)(3) of the Bankruptcy Code.

IV. The Plan Complies with Section 1129(a)(4) of the Bankruptcy Code.

48. It is my understanding based on Article II.B.1 of the Plan that all professionals requesting compensation pursuant to sections 327, 328, 329, 330, 331, 363, 503 or 1103 of the Bankruptcy Code for services rendered or reimbursement of costs, expenses or other charges incurred before the Effective Date must file a fee application for final allowance of its Professional Fee Claim no later than forty-five (45) days after the Effective Date. Any objections to any Professional Fee Claim must be filed and served no later than twenty-one (21) days after the filing of the final fee application with respect to the applicable Professional Fee Claim. Any such objections that are not consensually resolved may be set for hearing after notice. Accordingly, I believe that the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

V. The Debtors Complied with Section 1129(a)(5) of the Bankruptcy Code.

49. It is my understanding that the identities and affiliations of the persons proposed to serve as Plan Administrator and the Liquidating Trustee, as applicable, on and after the Effective Date, will be disclosed in the Plan Supplement. It is also my understanding and belief that the appointments of the Plan Administrator and Liquidating Trustee, as applicable, are consistent with the interests of the Debtors' creditors and equity interest holders and public policy. Finally, the identity of any insider who will be employed by the Plan Administrator and the nature of such insider's compensation, to the extent applicable, has or will be fully disclosed. Accordingly, I believe the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

VI. Section 1129(a)(6) of the Bankruptcy Code Does Not Apply.

50. The Plan does not provide for any rate changes by the Debtors, and therefore, section 1129(a)(6) of the Bankruptcy Code does not apply.

VII. The Plan Is in the Best Interests of Creditors as Required by Section 1129(a)(7) of the Bankruptcy Code.

51. I understand that the "best interests of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code requires that each holder of an impaired claim or interest either (a) accept the plan or (b) receive or retain under the plan property of a value, as of the effective date, that is not less than the value such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

52. To analyze the Plan's compliance with section 1129(a)(7) of the Bankruptcy Code, I and other A&M personnel working directly with me or under my supervision assisted the Debtors in preparing a liquidation analysis (as amended, modified, or supplemented from time to time, the "Liquidation Analysis"), which contains various estimates and assumptions, all of which are incorporated herein by reference.

53. For all of the reasons set forth in the Liquidation Analysis, and subject to the limitations and assumptions contained therein, I believe that, as of the Effective Date, Holders of Claims or Interests will receive on account of such Claim or Interest a greater recovery under the Plan than they would otherwise receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. In light of the foregoing, it is my belief that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

VIII. The Plan Is Expected to Satisfy the Requirements of Section 1129(a)(8) of the Bankruptcy Code.

54. Based on my review of the Plan, I understand that Classes 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 3 (Prepetition Term Loan Claims), and Class 5 (Intercompany Claims) are Unimpaired and thus deemed to accept the Plan under section 1126(f) of the Bankruptcy Code. At the time of solicitation, Classes 4 (General Unsecured Claims) and 6 (Existing Equity Interests) were Impaired and entitled to vote on the Plan. Following negotiations with the Unsecured Creditors Committee, the Debtors revised the treatment of the Claims in Class 4, resulting in the unimpairment of such Claims.

55. The Debtors await the results of the Voting Report, which will reflect the results of the voting process with respect to the only Class that remains Impaired—Class 6. While the Debtors have yet to receive the Voting Report, they anticipate that Class 6 will vote to accept the Plan. Based on the foregoing, I believe that the Debtors have satisfied the requirements of section 1129(a)(8) of the Bankruptcy Code.

IX. The Plan Complies with Section 1129(a)(9) of the Bankruptcy Code.

56. Based on my review of the Plan, I understand that, except to the extent that the Holder of a particular Allowed Claim or Interest has agreed to a different treatment of such Claim or Interest, Articles II and III of the Plan provide for the treatment required by section 1129(a)(9)

of the Bankruptcy Code for each of the various claims specified in sections 507(a)(1)–(8) of the Bankruptcy Code.

X. The Plan Complies with Section 1129(a)(10) of the Bankruptcy Code.

57. Based on my understanding from discussions with the Debtors' professionals and key stakeholders, I believe that at least one Impaired Class will vote to accept the Plan in the requisite number and amount required by the Bankruptcy Code, without including any acceptance of the Plan by an insider. Specifically, I believe that Holders of Interests in Class 6 (Existing Equity Interests), Impaired under the Plan, will vote to accept the Plan. Accordingly, it is my belief that the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

XI. The Plan Is Feasible and Satisfies Section 1129(a)(11) of the Bankruptcy Code.

58. It is my understanding that section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that the Plan is feasible prior to confirmation, *i.e.*, it is not likely to be followed by liquidation or the need for further financial reorganization. I understand that, in the context of the Plan, the feasibility test requires that the Court determine whether the Plan may be implemented and has a reasonable likelihood of success.

59. I believe that the Plan is feasible in that, at a minimum, there are adequate means of implementation. The Plan provides for reasonable procedures, by which, the Debtor and the Liquidating Trustee may make the necessary distributions under the Plan. Therefore, I believe the Plan is feasible because the Debtors have the funds, in cash, necessary to implement the Plan, fund the wind down process, and offer reasonable assurance that the Plan is workable and has a reasonable likelihood of success. Accordingly, based upon the foregoing, it is my belief that the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

XII. The Plan Complies with Section 1129(a)(12) of the Bankruptcy Code.

60. Based on my review of the Plan, I understand that Article II.D of the Plan provides for the payment of fees under 28 U.S.C. § 1930, and that such fees due and owing to the U.S. Trustee shall be paid on the Effective Date and shall be paid after the Effective Date if and when due and payable until the Chapter 11 Cases are closed, dismissed, or converted to cases under chapter 7 of the Bankruptcy Code. Accordingly, I believe that the Plan complies with section 1129(a)(12) of the Bankruptcy Code.

XIII. Sections 1129(a)(13)–1129(a)(16) Do Not Apply.

61. It is my understanding that sections 1129(a)(13) through 1129(a)(16) of the Bankruptcy Code are not applicable to the Plan.

XIV. Section 1129(b) of the Bankruptcy Code Is Inapplicable Because All Holders of Claims or Interests Are Unimpaired or Are Expected to Vote to Accept the Plan.

62. I understand that, under section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. So long as Class 6 votes to accept the Plan, all Holders of Claims or Interests under the Plan are either Unimpaired or they have accepted the Plan, I believe that the requirements of section 1129(a)(8) of the Bankruptcy Code are satisfied, and section 1129(b) of the Bankruptcy Code is therefore inapplicable.

XV. The Plan Complies with the Other Provisions of Section 1129 of the Bankruptcy Code (Sections 1129(c)-(e)).

63. I understand that the Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code.

64. Section 1129(c) of the Bankruptcy Code, which prohibits confirmation of multiple plans, is not implicated because there is only one proposed plan in these Chapter 11 Cases.

65. Based on my understanding of the Plan, I believe that the purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933, and no governmental unit or any other entity has thus far lodged an objection to the Plan on these grounds. Rather, I believe that the Debtors filed the Plan to accomplish their objective of efficiently and responsibly maximizing the value of their business and providing recoveries to their stakeholders. Therefore, I believe the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

66. Lastly, I understand that section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' Chapter 11 Cases is a "small business case." Thus, the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements.

XVI. Modifications to the Plan Should Be Permitted Without the Need for Further Solicitation of Votes on the Plan.

67. It is my understanding that section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. It is also my understanding that under Rule 3019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who previously accepted the plan, if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or interest of any equity security holder. I am advised and understand that the modifications to the Plan since the solicitation version of the Plan was filed are either clerical in nature or do not materially adversely change the treatment of any Holder of a Claim or Interest; instead, the modifications improve the treatment of certain creditors who were previously expected to receive no recovery on account of their Claims under the Plan and thus deemed to reject. Accordingly, I do not believe further solicitation would be beneficial or is required by the Bankruptcy Code.

XVII. Cause Exists to Waive the Stay of the Confirmation Order.

68. It is my understanding Bankruptcy Rule 3020(e) generally provides a 14-day stay of the effectiveness of an order confirming a chapter 11 plan, unless the Court orders otherwise. I understand a stay of such order will delay the Debtors' implementation of the Plan, extending the time that the Debtors must remain in chapter 11. The Plan (including all documents necessary to effectuate the Plan) is the product of extensive, good-faith negotiations among the Debtors and their key stakeholders. I believe that extending the length of time that the Debtors remain in chapter 11 would only serve to increase the administrative and professional costs incurred by the Debtors' estates to the detriment of all creditors and parties in interest. For all of these reasons, I believe the Court should grant the Debtors' request to waive the stay imposed by the Bankruptcy Rules so that the Court's order confirming the Plan may be effective immediately upon its entry.

CONCLUSION

69. In conclusion, it is my opinion that the Plan satisfies the requirements of confirmation and should be approved.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 28th day of August, 2024

/s/ Douglas Staut
By: Douglas Staut
Chief Restructuring Officer