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

	§	
In re:	§	**Chapter 11**
	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	
	§	
Debtors.[1]	§	**Jointly Administered**
	§	

BLACK DIAMOND CAPITAL MANAGEMENT, L.L.C.'S OBJECTION TO EMERGENCY MOTION OF DEBTORS FOR ENTRY OF ORDER (I) SCHEDULING COMBINED HEARING ON (A) ADEQUACY OF DISCLOSURE STATEMENT AND (B) CONFIRMATION OF PLAN; (II) CONDITIONALLY APPROVING DISCLOSURE STATEMENT; (III) APPROVING SOLICITATION PROCEDURES AND FORM AND MANNER OF NOTICE OF COMBINED HEARING AND OBJECTION DEADLINE; (IV) FIXING DEADLINE TO OBJECT TO DISCLOSURE STATEMENT AND PLAN; (V) APPROVING NOTICE AND OBJECTION PROCEDURES FOR THE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI) APPROVING PLAN SPONSOR SELECTION PROCEDURES; AND (VIII) GRANTING RELATED RELIEF

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

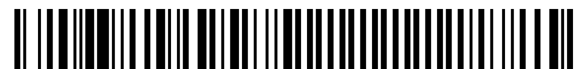
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TABLE OF CONTENTS

Page

Preliminary Statement.....1

Objection.....3

I. The Plan Is Patently Unconfirmable.....3

A. The Proposed Treatment of the Syndicated Facility Secured Claims Is Impermissible.....4

(i) The Plan Impairs the Syndicated Facility Secured Claims.....4

(ii) The Plan Violates Bankruptcy Code Section 1129(b)(2)(A) Because it Effects a Sale of the Prepetition Collateral Without Affording the Prepetition Secured Parties the Right to Credit Bid.....9

(a) The Plan Contemplates a Sale of the Debtors.....10

(b) Under RadLAX, the Prepetition Secured Parties Are Entitled to Credit Bid the Full "Allowed Claim.".....14

(iii) The Plan Impermissibly Abrogates the Prepetition Lenders' Rights against the Non-Debtor SFA Loan Parties.....16

B. The Proposed Classification and Treatment of General Unsecured Claims Is Impermissible.....19

(i) The Proposed Reinstatement of Intercompany Interests Violates the Absolute-Priority Rule.....19

(ii) The Separate Classification of Unsecured Trade Claims and "Other Unsecured Claims" Represents Impermissible Gerrymandering.....23

II. The Plan Sponsor Selection Procedures Are Improper.....25

A. The Plan Sponsor Selection Procedures Impermissibly Deny the Syndicated Facility Agent the Right to Credit Bid.....25

B. The Plan Sponsor Selection Procedures Inappropriately Purport to Establish the Amount of the Allowed SFA Secured Claim.....28

C. The Plan Sponsor Selection Procedures Unreasonably Require Prepetition Lenders with Existing Confidentiality Obligations to Enter into an Additional NDA.....30

D. The Criteria for a "Qualified Plan Sponsor Proposal" and the Plan Sponsor Proposal Factors Are Unduly Restrictive. 31

(i) The Minimum Bid Amount Is Excessive and Does not Reflect the Actual Value of the Centerbridge Proposal. 31

(ii) Prospective Plan Sponsors Should Be Permitted to Submit Proposals to Acquire the Debtors' Assets. 32

(iii) The Plan Sponsor Selection Procedures Should not Dictate the Application of the Required Base Cash Amount. 32

(iv) The Plan Sponsor Selection Procedures Require Unnecessary Disclosures. 33

(v) The Requirement that Competing Plan Sponsors Serve as the Back-Up Plan Sponsor for an Unlimited Period Is Unreasonable and Will Chill Bidding. 34

(vi) The Plan Sponsor Selection Procedures Should not Prohibit Multiple Bids. 34

E. The Marketing Period Is too Short to Attract Meaningful Competition. 35

F. The Plan Sponsor Selection Procedures Fail to Describe How the Debtors Will Conduct the "Final Selection Process." 36

G. The Plan Sponsor Selection Procedures Afford the Debtors Excessive Flexibility to Modify the Procedures. 36

III. The Disclosure Statement Is Inadequate. 37

A. The Disclosure Statement Lacks Sufficient Disclosure Concerning the Debtors' Valuation of the Prepetition Collateral. 38

B. The Disclosure Statement Contains Inadequate Information Concerning the Treatment of Unsecured Trade Claims and Other Unsecured Claims. 39

C. The Disclosure Statement Does not Adequately Disclose the Federal Income Tax Consequences of the Plan. 40

D. The Disclosure Statement Does not Adequately Disclose the Role of the Special Restructuring Committee in the Plan Selection Process. 41

IV. The Proposed Order Should Clearly and Fully Preserve Parties' Rights to Object to Approval of the Disclosure Statement and Confirmation of the Plan. 42

Conclusion 44

TABLE OF AUTHORITIES

Page

Cases

800 Bourbon St., L.L.C. v. Bay Bridge Bldg. Ltd. Co., L.L.C. (In re 800 Bourbon St., L.L.C.),
No. 19-30926, 2020 WL 5264697 (5th Cir. Sept. 3, 2020) 8

Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.),
701 F.3d 1031 (5th Cir. 2012) 18

Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship,
526 U.S. 434 (1999) 21

Bank of Am., N.A. v. Caulkett,
135 S. Ct. 1995 (2015) 7, 8

Bank of N.Y. Tr. Co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.),
584 F.3d 229 (5th Cir. 2009) .... passim

Bos. Post Rd. Ltd. P'ship v. FDIC (In re Bos. Post Rd. Ltd. P'ship),
21 F.3d 477 (2d Cir. 1994) 24

Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.),
432 F.3d 448 (3d Cir. 2006) 15, 16

Cole v. Nabors Corporate Servs., Inc. (In re CJ Holding Co.),
597 B.R. 597 (S.D. Tex. 2019) 18

Dever v. IRS (In re Dever),
164 B.R. 132 (Bankr. C.D. Cal. 1994) 9

Dewsnup v. Timm,
502 U.S. 410 (1992) 7, 8, 9, 18

DISH Network Corp. v. DBSD N. Am. Inc. (In re DBSD N. Am., Inc.),
634 F.3d 79 (2d Cir. 2011) 20, 21

Elixir Indus., Inc. v. City Bank & Tr. Co. (In re Ahern Enters., Inc.),
507 F.3d 817 (5th Cir. 2007) 8

Equitable Life Ins. Co. of Iowa v. Atlanta-Stewart Partners (In re Atlanta-Stewart Partners),
193 B.R. 79 (Bankr. N.D. Ga. 1996) 7

Gillman v. Cont'l Airlines (In re Cont'l Airlines),
203 F.3d 203 (3d Cir. 2000) 17

Hall v. Nat'l Gypsum Co.,
105 F.3d 225 (5th Cir. 1997) 17

In re ACEMLA de Puerto Rico Inc.,
No. 17-02021 ESL, 2019 WL 311008 (Bankr. D.P.R. Jan. 22, 2019) 4

In re Am. Capital Equip., LLC,
688 F.3d 145 (3d Cir. 2012).......... 3, 4

In re Arnold,
471 B.R. 578 (Bankr. C.D. Cal. 2012).......... 4

In re Batten,
141 B.R. 899 (Bankr. W.D. La. 1992).......... 4

In re CHL, LLC,
No. 18-00630-5-DMW, 2018 WL 3025310 (Bankr. E.D.N.C. June 14, 2018).......... 4

In re Crilly,
No. 20-11637-SAH, 2020 WL 3549848 (Bankr. W.D. Okla. June 30, 2020).......... 4

In re Curtis Ctr. Ltd. P'ship,
195 B.R. 631 (Bankr. E.D. Pa. 1996) 4

In re Deming Hosp., LLC,
No. 11-12-13377 TA, 2013 WL 1397458 (Bankr. D.N.M. Apr. 5, 2013) 4

In re E. Me. Elec. Coop., Inc.,
125 B.R. 329 (Bankr. D. Me. 1991).......... 4

In re Hawaiian Telecom Commc'ns, Inc.,
430 B.R. 564 (Bankr. D. Ha. 2009) 29

In re Ion Media Networks, Inc.,
419 B.R. 585 (Bankr. S.D.N.Y. 2009).......... 21, 22

In re Keisler,
No. 08-34321, 2009 WL 1851413 (Bankr. E.D. Tenn. June 29, 2009).......... 40

In re Metrocraft Publ'g Servs., Inc.,
39 B.R. 567 (Bankr. N.D. Ga. 1984) 38

In re NNN Parkway 400 26, LLC,
505 B.R. 277 (Bankr. C.D. Cal. 2014).......... 11, 15

In re Nw. Timberline Enters., Inc.,
348 B.R. 412 (Bankr. N.D. Tex. 2006).......... 24

In re Olde Prairie Block Owner, LLC,
464 B.R. 337 (Bankr. N.D. Ill. 2011) 13, 14, 41

In re Pecht,
57 B.R. 137 (Bankr. E.D. Va. 1986) 4

In re River Rd. Hotel Partners, LLC,
No. 09 B 30029, 2010 WL 6634603 (Bankr. N.D. Ill. Oct. 5, 2010) 4

In re Rogers,
No. 14-40219-EJC, 2016 WL 3583299 (Bankr. S.D. Ga. June 24, 2016) 4

In re Sentry Operating Co. of Tex., Inc.,
264 B.R. 850 (Bankr. S.D. Tex. 2001) 24

L & J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc. (In re L & J Anaheim Assocs.),
995 F.2d 940 (9th Cir. 1993) 5

Louisville Joint Stock Land Bank v. Radford,
295 U.S. 555 (1935) 18

Mabey v. Sw. Elec. Power Co. (In re Cajun Elect. Power Coop., Inc.),
150 F.3d 503 (5th Cir. 1998) 37

Marlow Manor Downtown, LLC v. Wells Fargo Bank (In re Marlow Manor Downtown, LLC),
No. AK-14-1122-JuKiKu, 2015 WL 667543 (B.A.P. 9th Cir. Feb. 6, 2015) 24

Norwest Bank Worthington v. Ahlers,
485 U.S. 197 (1988) 21

Palomar v. First Am. Bank,
722 F.3d 992 (7th Cir. 2013) 8

Phx. Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture),
995 F.2d 1274 (5th Cir. 1991) 23, 24, 25

RadLAX Gateway Hotel, LLC v. Amalgamated Bank,
566 U.S. 639 (2012) .... passim

River Rd. Hotel Partners, LLC v. Amalgamated Bank,
651 F.3d 642 (7th Cir. 2011) 13, 15, 29

Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.),
844 F.2d 1142 (5th Cir. 1988) 38, 40

Ultra Petroleum Corp. v. Ad Hoc Comm. of Unsecured Creditors of Ultra Res., Inc. (In re Ultra Petroleum Corp.),
943 F.3d 758 (5th Cir. 2019) 7, 9

United States v. Stribling Flying Serv., Inc.,
734 F.2d 221 (5th Cir. 1984) 17

W. Real Estate Equities, L.L.C. v. Vill. at Camp Bowie I, L.P. (*In re Vill. at Camp Bowie I, L.P.*),
710 F.3d 239 (5th Cir. 2013) 5

Woolsey v. Citibank, N.A. (In re Woolsey),
696 F.3d 1266 (10th Cir. 2012) 9

Wright v. Vinton Branch of Mountain Tr. Bank of Roanoke,
300 U.S. 440 (1937) 16

Statutes

11 U.S.C. § 1122 23

11 U.S.C. § 1123 .... 9, 14

11 U.S.C. § 1124 .... 5, 6, 9

11 U.S.C. § 1125 .... 38, 40

11 U.S.C. § 1129 .... 19, 20, 23, 33

11 U.S.C. § 1322 9

11 U.S.C. § 524 17

26 U.S.C. § 368 40

8 Del. C. § 281 20

Other Authorities

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Alter, *Merriam-Webster,* https://www.merriam-webster.com/dictionary/alter#synonyms (last
visited Oct. 16, 2020) 9

Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 213(d), 108 Stat. 4106 6

H.R. Rep. No. 103-835 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340 6

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Black Diamond Capital Management, L.L.C., on behalf of itself and certain of its affiliates ("**Black Diamond**"), respectfully submits this objection (this "**Objection**") to the *Emergency Motion of Debtors for Entry of Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Approving Plan Sponsor Selection Procedures; and (VIII) Granting Related Relief* [Docket No. 811] (the "**Disclosure Statement Motion**" or "**Disclosure Statement Mot.**").[1] In support of its Objection, Black Diamond respectfully states as follows:

PRELIMINARY STATEMENT

1. Since at least early August, these Chapter 11 Cases have been locked in a stalemate. The reason is clear: the Debtors' two largest prepetition lenders each hold a "blocking" position and cannot agree on a mutually acceptable emergence transaction. The right solution to this impasse is a fair, transparent, and open marketing process. Guided by their fiduciary duties, the Debtors should pursue the transaction that realizes the greatest overall value for their estates, favoring no particular creditor and not tilting the field for any particular bidder. Unfortunately, the Plan, Disclosure Statement, and proposed Plan Sponsor Selection Procedures filed on October 10, 2020, create the *appearance* of momentum and pay lip service to fair

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in: (a) the *Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* [Docket No. 810 (Ex. A)] (the "**Plan**"); or (b) the *Final Order (I) Authorizing Debtors to (A) Refinance their Postpetition Financing Obligations and (B) Use Cash Collateral, (II) Amending the Interim and Final Orders, and (III) Granting Related Relief* [Docket No. 777] (the "**Final DIP Order**").

competition, transparency, and value maximization, but, in reality perpetuate the same dynamics that have stymied progress in the first place.

2. Moreover, the Plan, Disclosure Statement, and Plan Sponsor Selection Procedures suffer fundamental legal infirmities and cannot be approved, even "conditionally." To begin, the Plan is a Rube Goldberg machine of impermissible provisions engineered to pay the Debtors' senior secured lenders cents on the dollar, while awarding control of the Debtors to a minority lender and affording a select group of favored unsecured creditors a handsome cash recovery. These provisions include the following:

- ***Impairment***. The Plan implausibly designates the Syndicated Facility Secured Claims "unimpaired" by purporting to terminate their Liens (including against the non-Debtor SFA Loan Parties) without providing anything approaching full cash payment of the obligations under the Syndicated Facility Agreement.

- ***Right to Credit Bid***. Under Fifth Circuit authority, the Plan constitutes a "sale" under the Bankruptcy Code's cram-down provisions. And, under *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012), the Prepetition Lenders cannot be crammed down under a sale plan unless the Syndicated Facility Agent (at the direction of the Required Lenders[2]) is first given the opportunity to credit bid.

- ***Reinstatement of Intercompany Interests***. To the extent the Plan were not a sale, its proposed reinstatement of Intercompany Interests would violate the absolute-priority rule, because a more senior class of claims—Class 4B Other Unsecured Claims—will not recover in full.

- ***Gerrymandering***. The separate classification of Unsecured Trade Claims and Other Unsecured Claims (including the Syndicated Facility Deficiency Claims) was plainly motivated by a desire to secure the acceptance of an impaired class of claims and therefore constitutes impermissible gerrymandering.

These facially improper terms render the Plan patently unconfirmable and require disapproval of the Disclosure Statement.

[2] As defined in the Syndicated Facility Agreement.

3. The Plan's defects are compounded and amplified by similar deficiencies in the Plan Sponsor Selection Procedures. The Plan Sponsor Selection Procedures create a mirage of competition but, in reality, establish an opaque and burdensome process that will deter participation and suppress value. As explained in more detail below, the Plan Sponsor Selection Procedures severely and improperly constrain the Syndicated Facility Agent's right to credit bid, afford competing bidders insufficient time to participate, impose other arbitrary and unnecessary bid qualification and selection criteria, lack transparent procedures for selecting the successful bidder, and reserve for the Debtors virtually unfettered flexibility to modify the procedures after approval. The procedures have little prospect of spurring genuine competition and should be denied unless substantially modified. Black Diamond's proposed modifications are attached as **Exhibit B** hereto.

4. Finally, for the reasons explained below, the Disclosure Statement itself is inadequate on multiple fronts. To the extent it is approved at all, it should first be modified to address the significant errors and omissions highlighted below.

OBJECTION

I. The Plan Is Patently Unconfirmable.

5. The Disclosure Statement describes a patently unconfirmable plan and, accordingly, should not be approved, even on a "conditional" basis. It is well established that a court may deny approval of a disclosure statement for a patently unconfirmable plan to spare the estate the delay and expense associated with solicitation of a futile plan. *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) ("[A] bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable."). "A plan is patently unconfirmable where (1) confirmation 'defects [cannot] be

overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'" *Id.* at 154–155 (alteration in original) (quoting *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987)). As discussed below, the Plan suffers from numerous facial defects that render it unconfirmable. Accordingly, this Court should deny conditional approval of the Disclosure Statement.[3]

A. The Proposed Treatment of the Syndicated Facility Secured Claims Is Impermissible.

(i) The Plan Impairs the Syndicated Facility Secured Claims.

6. To begin, the Plan's designation of the Syndicated Facility Secured Claims as "unimpaired" and "conclusively presumed to accept" is untenable. *See* Plan §§ 3.3, 4.3(b). The Plan alters "the legal, equitable, and contractual rights" of the Prepetition Lenders, 11 U.S.C. §

[3] Numerous courts have concluded that legal deficiencies of the sort described below render a plan patently unconfirmable and require disapproval of a disclosure statement. *See In re E. Me. Elec. Coop., Inc.*, 125 B.R. 329, 333–40 (Bankr. D. Me. 1991) (denying approval of disclosure statement because proposed plan violated the absolute-priority rule); *In re Rogers*, No. 14-40219-EJC, 2016 WL 3583299, at *1 (Bankr. S.D. Ga. June 24, 2016) (same); *In re CHL, LLC*, No. 18-00630-5-DMW, 2018 WL 3025310, at *4–5 (Bankr. E.D.N.C. June 14, 2018) (denying approval of disclosure statement because, among other reasons, proposed plan violated the absolute-priority rule); *In re ACEMLA de Puerto Rico Inc.*, No. 17-02021 ESL, 2019 WL 311008, at *21 (Bankr. D.P.R. Jan. 22, 2019) (same); *In re Arnold*, 471 B.R. 578, 614 (Bankr. C.D. Cal. 2012) (same); *In re Batten*, 141 B.R. 899, 908–09 (Bankr. W.D. La. 1992) (same); *In re Pecht*, 57 B.R. 137, 141 (Bankr. E.D. Va. 1986) (same); *In re Crilly*, No. 20-11637-SAH, 2020 WL 3549848, at *3 (Bankr. W.D. Okla. June 30, 2020) (noting that previous request for approval of disclosure statement had been denied because, among other reasons, proposed plan failed to comply with the absolute-priority rule); *In re Deming Hosp., LLC*, No. 11-12-13377 TA, 2013 WL 1397458, at *9 (Bankr. D.N.M. Apr. 5, 2013) (disapproving disclosure statement because the proposed plan "violate[d] *LaSalle*'s prohibition against 'providing junior interest holders with exclusive opportunities free from competition and without the benefit of market valuation'" (quoting *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 458 (1999))); *In re Curtis Ctr. Ltd. P'ship*, 195 B.R. 631, 642–43 (Bankr. E.D. Pa. 1996) (denying approval of disclosure statement where plan "gerrymander[ed]" plan classes by separately classifying deficiency claim); *see also In re River Rd. Hotel Partners, LLC*, No. 09 B 30029, 2010 WL 6634603, at *1–2 (Bankr. N.D. Ill. Oct. 5, 2010) (denying approval of sale procedures that sought to "circumvent" the right of secured creditors to credit bid), *aff'd sub nom. River Rd. Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642, 653 (7th Cir. 2011), *aff'd sub nom. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012).

(cont'd)

1124(1), by purporting to extinguish their liens prior to payment in full of the Syndicated Facility Claims, thereby rendering the Syndicated Facility Secured Claims impaired, *see* Plan § 10.6(c).

7. Under the Bankruptcy Code, a claim is "impaired," 11 U.S.C. § 1124(1), unless the plan "leaves unaltered the legal, equitable and contractual rights to which such claim . . . entitles the holder of such claim," *id.* § 1124(1), or the claim is reinstated, *id.* § 1124(2).[4] "[A]ny alteration of a creditor's rights, no matter how minor, constitutes 'impairment.'" *W. Real Estate Equities, L.L.C. v. Vill. at Camp Bowie I, L.P.* (*In re Vill. at Camp Bowie I, L.P.)*, 710 F.3d 239, 245 & n. 21 (5th Cir. 2013) (quoting *Windsor on the River Assocs., Ltd. v. Balcor Real Estate Fin., Inc. (In re Windsor on the River Assocs., Ltd.)*, 7 F.3d 127, 130 (8th Cir. 1993)); *see also L & J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc. (In re L & J Anaheim Assocs.)*, 995 F.2d 940, 943 (9th Cir. 1993) ("There is no suggestion [in the language of Bankruptcy Code § 1124] that only alterations of a particular kind or degree can constitute impairment."); 7 *Collier on Bankruptcy* ¶ 1124.03 (Richard Levin & Henry J. Sommer eds., 16th ed. 2020) ("Any alteration of these rights constitutes impairment . . . .").

8. The Plan's release of the Liens on the Effective Date alters the Prepetition Lenders' contractual rights. The SFA Loan Documents provide for the release of the Prepetition Liens on the "Final Determination Date"—the date on which (among other requirements) the Prepetition Credit Facility Debt "ha[s] been indefeasibly paid in full in cash." Prepetition Guarantee Agreement[5] § 7.14(a) (defining "Final Termination Date"); Syndicated Facility Agreement § 9.25 (providing for the automatic release of the Liens on the Final Termination

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[4] The Plan does not seek to reinstate the Syndicated Facility Secured Claims, making Bankruptcy Code section 1124(2) inapplicable. *See* Plan § 4.3. That leaves Bankruptcy Code section 1124(1) as the Debtors' only statutory basis on which to assert that the Syndicated Facility Secured Claims are unimpaired.

[5] "Prepetition Guarantee Agreement" means that certain Guarantee Agreement, among Speedcast International Limited, certain of its subsidiaries, and Credit Suisse AG, dated as of May 15, 2018.

Date). The Plan, in contrast, provides for the cancellation of the Liens in exchange for a fractional cash payment. *See* Plan § 10.6(c) (providing for the release of liens upon payment of the "secured potion" of the Syndicated Facility Claims). By purporting to extinguish the Liens prior to the full and indefeasible cash payment of the Syndicated Facility Claims, the Plan unambiguously alters the Prepetition Lenders' contractual rights and impairs the Syndicated Facility Secured Claim.[6]

9. The Debtors' anticipated response that the Plan proposes to pay the Prepetition Lenders' secured claims in the amount allowed by the Court under Bankruptcy Code section 506(a) is inadequate to establish that the Syndicated Facility Secured Claims are unimpaired. *Cf.* Disclosure Statement Mot. ¶ 31 (claiming, without citation to authority, that Syndicated Facility Secured Claims are unimpaired because the holders thereof will "receive full recovery under the Plan"). This is so for two reasons.

10. First, the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 213(d), 108 Stat. 4106, 4126, expressly eliminated the rule that payment "on the effective date of the plan" of "cash equal to . . . the allowed amount of such claim" (the treatment proposed here) leaves a claim unimpaired. 11 U.S.C. § 1124(3) (repealed 1994). The legislative history concerning the repeal of former section 1124(3) explains that "[a]s a result of this change, if a plan proposed to pay a class of claims in cash the full allowed amount of the claims, the class would be impaired, entitling creditors to vote for or against the plan of reorganization." H.R. Rep. No. 103-835, at 48 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3356–57; *see also Equitable Life Ins. Co. of*

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[6] Notably, as discussed in further detail below, *see* discussion *infra* Section I.A.(iii), the Plan purports even to release the guaranties provided by the non-Debtor SFA Loan Parties and the Liens on their property. To the extent it was somehow unclear that the deemed released of Liens on the Debtors' property constituted impairment, the Plan's interference with the contractual rights of the Prepetition Lenders *vis-à-vis* the non-Debtor SFA Loan Parties surely constitutes impairment.

Iowa v. Atlanta-Stewart Partners (In re Atlanta-Stewart Partners), 193 B.R. 79, 82 (Bankr. N.D. Ga. 1996) ("[T]he legislative history [of the repeal of former Bankruptcy Code § 1124(3)] demonstrates that Congress intended to do away with the concept that a creditor receiving payment in full is unimpaired.").

11. Second, Supreme Court and Fifth Circuit precedent establishes that the bifurcation of a secured creditor's claim under Bankruptcy Code section 506(a) does not automatically reduce the amount of the creditor's lien to the allowed amount of its secured claim. As such, the proposed release of the Liens is a function not of the Bankruptcy Code, but of the Plan itself, and therefore constitutes impairment. *See Ultra Petroleum Corp. v. Ad Hoc Comm. of Unsecured Creditors of Ultra Res., Inc. (In re Ultra Petroleum Corp.)*, 943 F.3d 758, 763 (5th Cir. 2019) (holding that "a creditor is impaired under § 1124(1) only if '*the plan*' itself alters a claimant's 'legal, equitable, [or] contractual rights'" (alteration in original) (quoting 11 U.S.C. § 1124(1)).

12. In *Dewsnup v. Timm*, 502 U.S. 410 (1992), the Supreme Court rejected the proposition that Bankruptcy Code section 506(d) allows a debtor to "strip down" a secured creditor's lien to match the judicially determined value of the creditor's secured claim under Bankruptcy Code section 506(a). *See Dewsnup*, 502 U.S. at 415–17. The Supreme Court held, rather, that Bankruptcy Code section 506(d) voids a secured creditor's lien only to the extent its claim is disallowed under Bankruptcy Code section 502. *See Dewsnup*, 502 U.S. at 415, 417. That is, the Supreme Court construed the phrase "allowed secured claim" in Bankruptcy Code section 506(d) *not* as "an indivisible term of art" that harkens back to Bankruptcy Code section 506(a), but rather on a "term-by-term" basis "to refer to any claim that is, first, allowed, and, second, secured." *Dewsnup,* 502 U.S. at 415; *see also Bank of Am., N.A. v. Caulkett*, 135 S. Ct.

1995, 1999 (2015) (explaining that "*Dewsnup* defined the term 'secured claim' in [11 U.S.C.] § 506(d) to mean a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim"). Thus, under *Dewsnup*, an "undersecured loan" is treated "as a 'secured claim' within the meaning of section 506(d)." *Palomar v. First Am. Bank*, 722 F.3d 992, 994 (7th Cir. 2013) (Posner, J.); *see also id.* (noting that "[t]he point of section 506(a) is not to wipe out liens").

13. Given the holding in *Dewsnup*, the proposed treatment of the entire Syndicated Facility Claim (*i.e.*, both the secured and undersecured portion) under the Plan necessarily constitutes impairment. The Debtors have stipulated that the claims under the Syndicated Facility Agreement are valid and secured by "valid, binding, enforceable, non-avoidable and properly perfected" liens on substantially all of their assets. Final DIP Order ¶ J. Thus, the Syndicated Facility Claim constitutes a claim that is "'allowed pursuant to § 502 of the [Bankruptcy] Code and [that] is secured by a lien with recourse to the underlying collateral." *Dewsnup*, 502 U.S. at 415. And because the Syndicated Facility Claim is an allowed claim pursuant to section 502 of the Bankruptcy Code, the proposed bifurcation of the Syndicated Facility Claim would not "strip down" the lien that secures it. *See Elixir Indus., Inc. v. City Bank & Tr. Co. (In re Ahern Enters., Inc.)*, 507 F.3d 817, 820 n.2 (5th Cir. 2007) ("In *Dewsnup*, the Court found that section 506(d) only serves to strip liens in cases where 'a claim secured by the lien itself has not been allowed.'" (quoting *Dewsnup*, 502 U.S. at 415–16)); *800 Bourbon St., L.L.C. v. Bay Bridge Bldg. Ltd. Co., L.L.C. (In re 800 Bourbon St., L.L.C.)*, No. 19-30926, 2020 WL 5264697, at *2 n.1 (5th Cir. Sept. 3, 2020) (per curiam) (rejecting debtor's argument in a chapter 11 case that Bankruptcy Code section 506(d) operated to reduce the value of a creditor's security interest "to the value of its collateral," noting that the argument "was expressly rejected by the Supreme

Court" (citing *Dewsnup*, 502 U.S. at 415, 417)). As such, the liens securing the Syndicated Facility Claims will survive the bifurcation of the Syndicated Facility Claim, and will be released (if at all) only because the Plan so provides. Thus, the "*[P]lan itself*" modifies the Prepetition Lenders' contractual rights, rendering the Syndicated Facility Secured Claim and the Syndicated Facility Deficiency Claim impaired. *See Ultra Petroleum*, 943 F.3d at 763.[7]

(ii) The Plan Violates Bankruptcy Code Section 1129(b)(2)(A) Because it Effects a Sale of the Prepetition Collateral Without Affording the Prepetition Secured Parties the Right to Credit Bid.

14. Because the Syndicated Facility Secured Claims are impaired, the Debtors can confirm the Plan over Class 3's rejection only by satisfying the "cram-down" requirements set forth in Bankruptcy Code section 1129(b)(2)(A). The Debtors cannot do so because the Plan contemplates a sale of the Debtors' business and the Prepetition Collateral but is premised on the denial of the Prepetition Lenders the opportunity to credit bid. The Debtors' attempt to forbid

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[7] Some courts have interpreted *Dewsnup*'s admonition that its holding be read narrowly, *see Dewsnup*, 502 U.S. at 416–17 (focusing "upon the case before us and allow[ing] other facts to await their legal resolution on another day"), as authority to permit lien stripping under chapter 11 and chapter 13 cases, *see Dever v. IRS (In re Dever)*, 164 B.R. 132, 137 (Bankr. C.D. Cal. 1994); *see also id.* at 145 ("Therefore, this Court holds that lien-stripping under Section 506(d) is available in Chapter 11."). Most courts recognize, however, that chapter 7 cases, on the one hand, and chapter 11 and 13 cases, on the other hand, differ in that the latter involve unique statutory provisions inapplicable in chapter 7 cases. *See, e.g.*, *Woolsey v. Citibank, N.A. (In re Woolsey)*, 696 F.3d 1266, 1275–78 (10th Cir. 2012). For example, Bankruptcy Code section 1123(b)(5) provides that a plan may "modify the rights of holders of secured claims." 11 U.S.C. § 1123(b)(5); *accord id.* § 1322(b)(2) (corollary provision of chapter 13). Thus, while some courts suggest that "lien stripping in reorganization cases" remains permissible after *Dewsnup*, what those cases mean, in context, is that the debtor in a chapter 11 or chapter 13 case may invoke "other statutory provisions particular to those chapters" to modify a secured creditor's lien in a manner that cannot be accomplished under Bankruptcy Code section 506(d) alone. *See Woolsey*, 696 F.3d at 1278; *see also id.* ("[I]t's no surprise that of all the circuit courts approving of lien stripping in reorganization cases, not a single one has taken up the [debtors'] invitation to do so using § 506(d)."); *see generally* 4 *Collier on Bankruptcy, supra* ¶ 506.06[1]. The important point for the instant case is that the statutory provisions that permit a chapter 11 plan to "modify the right of holders of secured claims," 11 U.S.C. § 1123(b)(5), by definition "alter," and therefore impair, such claims, *id.* § 1124(1); *see also Alter*, *Merriam-Webster,* https://www.merriam-webster.com/dictionary/alter#synonyms (last visited Oct. 16, 2020) (identifying "modify" and "alter" as synonyms).

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credit bidding in connection with the sale proposed by the Plan violates Bankruptcy Code section 1129(b)(2)(A)(ii) and renders the Plan patently unconfirmable.

(a) The Plan Contemplates a Sale of the Debtors.

15. The Debtors' characterization of the Plan as a mere "reorganization and not a sale" is subterfuge.[8] Under the Plan, Centerbridge will acquire the Debtors' business pursuant to a new-money equity investment in a newly formed acquisition vehicle—through what the Plan euphemistically calls the "Corporate Restructuring"[9] and the "Restructuring Transactions"—while the existing Syndicated Facility Claims will be cashed out and their liens released. *See* Plan §§ 3.3, 5.13. Under applicable case law, this amounts to a sale.

16. The term "sale," as used in Bankruptcy Code section 1129(b)(2)(A)(ii), bears its ordinary meaning, and courts accordingly determine whether a transaction contemplates a "sale"—as opposed to a mere "reorganization," "transfer," or "recapitalization"—by examining the economic substance of the proposed transaction. *See Bank of N.Y. Tr. Co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 245 (5th Cir. 2009). In

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[8] *See Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Refinance Their Postpetition Financing Obligations and (B) Use Cash Collateral, (II) Amending the Interim and Final Orders, and (III) Granting Related Relief* [Docket No. 686] ¶ 8.

[9] Notwithstanding the Debtors' present attempt to obfuscate what is actually happening under the Plan pursuant to the proposed "Corporate Restructuring" transaction—*i.e.*, the transaction whereby a sponsor would invest cash in a newly formed New Speedcast Parent, which would, in turn, acquire the assets of Speedcast Parent and its subsidiaries "free and clear" of liens and claims—this transaction structure is neither new to these Chapter 11 Cases nor particularly novel and has previously been described in "plain English" by the Debtors as effectuating an asset sale. *Compare* Plan § 1.1 ("***Corporate Restructuring*** means the reorganization of the Speedcast Entities' corporate structure to be implemented on or prior to the Effective Date as described in (and subject to the terms of) the Plan Sponsor Agreement, or, if not described therein, in the Plan Supplement, subject to the reasonable consent of the Plan Sponsor."), *with* [Docket No. 820-8 at § 1.1] (Debtors' markup of plan dated July 6, 2020) ("***Corporate Restructuring*** means the reorganization of the Speedcast Entities' corporate structure to be implemented on or prior to the Effective Date *through which certain assets of Speedcast Parent and its subsidiaries will be transferred to New Speedcast* or its designated subsidiaries as further described in the Plan Supplement.") (emphasis added), *and id.* § 5.14(c) ("*Pursuant to sections 363*, 1123(a)(5), *1123(b)(4)*, 1123(b)(6), 1145, and 1146(a) of the Bankruptcy Code, the *Confirmation Order shall authorize, but not direct, the Corporate Restructuring*.") (emphasis added).

Pacific Lumber, the Fifth Circuit, adjudicating a dispute concerning secured noteholders' right to credit bid, agreed that a similar plan sponsorship transaction was a "sale" of the noteholders' collateral within the meaning of Bankruptcy Code section 1129(b)(2)(A)(ii). *See Pac. Lumber*, 584 F.3d at 245. In that transaction, the debtors' secured lender collaborated with a strategic partner to sponsor the acquisition of the debtors' assets under a plan. *See id.* at 236–38. The sponsors created two new entities to effectuate the transaction and, collectively, acquired 100% of the equity interests of the new entities for a combination of cash and (in the case of the secured lender) the conversion of debt to equity. *See id.* at 237. Under the plan, the debtors' assets were transferred to the new entities. *See id.* The Fifth Circuit concluded that the transaction, despite its complexity, "fundamentally involved a sale of the Noteholders' collateral." *Id.* at 245. The court noted that the plan sponsors proposed to provide "cash and convert debt into equity in return for taking over [the debtors]" and that "[n]ew entities wholly owned by [the plan sponsors] received title to the assets in exchange for this purchase." *Id.* This, the court concluded, met the dictionary definition of a "sale." *See id.* (citing *Black's Law Dictionary* 1337 (7th ed. 1999); *cf. In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 288 (Bankr. C.D. Cal. 2014) (noting that *Pacific Lumber* may "provide some insight as to what is, in fact, a 'sale' to which credit bid rights clearly apply vs. a mere 'transfer,' which may not trigger such rights").[10]

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[10] The plan proponents pressed two responses to the secured noteholders' attempt to invoke Bankruptcy Code section 1129(b)(2)(A)(ii): first, as noted above, they argued that the plan transaction was not a "sale"; second, they argued that, even if the transaction were a sale, they could "cram down" the noteholders under Bankruptcy Code section 1129(b)(2)(A)(iii), by paying them cash on the effective date equal to the judicially determined value of their secured claim. *See Pac. Lumber,* 584 F.3d at 245–47. As noted, the Fifth Circuit rejected the plan sponsors' first response—finding that the transaction was, in fact, a sale. *See id.* at 245. However, it accepted the plan sponsors' alternative argument, concluding that a plan proponent can proceed under the "indubitable equivalent" prong of section 1129(b)(2)(A), even if the plan constitutes a sale. *See id.* at 245–47. As discussed below, this aspect of the *Pacific Lumber* decision was overruled by *RadLAX. See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 647 (2012) (holding that "debtors may not sell their property free of liens

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17. The Debtors' Plan proposes substantially the same structure that the Fifth Circuit found constituted a sale in *Pacific Lumber*. First, like the plan sponsors in *Pacific Lumber*, Centerbridge will acquire the equity interests of a newly formed entity—New Speedcast Parent—in exchange for a cash investment. *Compare* Plan § 5.9(a), *with Pac. Lumber*, 584 F.3d at 237, 245. Second, and again like the *Pacific Lumber* transaction, the Debtors will undertake a "Corporate Restructuring" that will result in Centerbridge's newly formed entity, New Speedcast Parent, owning, directly or indirectly, substantially all of the Debtors' assets (including equity interests in the subsidiary Debtors).[11] *Compare* Plan § 5.13, *with Pac. Lumber*, 584 F.3d at 237, 245. In short, under the Plan, Centerbridge will "tak[e] over" the Debtors in the same sense, and in substantially the same manner, as the *Pacific Lumber* plan sponsors had "tak[en] over" the *Pacific Lumber* debtors. *See Pac. Lumber*, 584 F.3d at 245.

18. The Debtors and Centerbridge may respond that the Plan cannot constitute a "sale" within the meaning of Bankruptcy Code section 1129(b)(2)(A)(ii) because the only assets Centerbridge will directly acquire in exchange for the Direct Investment Amount are the newly issued equity interests of a non-debtor entity. But *Pacific Lumber* forecloses this response. Like the Plan Sponsor here, the only assets the *Pacific Lumber* plan sponsors directly acquired in exchange for their cash investment and conversion of debt were the equity interests of the newly formed acquisition companies. *See Pac. Lumber*, 584 F.3d at 237, 245. All the same, the Fifth Circuit had no trouble concluding that, in substance, the plan sponsors "t[ook] over both

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under [section] 1129(b(2)(A) without allowing lienholders to credit bid, as required by clause (ii)"). Thus, if *Pacific Lumber* were decided today, the secured noteholders would have prevailed. The plan sponsors' first defense would have failed for the reasons the *Pacific Lumber* court explained; their second defense would have failed by virtue of *RadLAX*.

[11] The Corporate Restructuring will apparently consist of specific Corporate Restructuring Steps that will be disclosed in the Plan Supplement, *see* Plan § 1.1 (definition of "Corporate Restructuring Steps"), whereby New Speedcast Parent will own all of the Debtors' assets free and clear of claims and liens, *see id.* § 5.13(c), (d).

[debtors]" and "received title to the assets in exchange for [their] purchase. That the transaction is complex does not fundamentally alter that it involved a 'sale' of the Noteholders' collateral." *Id.* at 245.

19. *Pacific Lumber* coheres with other cases that, in assessing whether a transaction is a "sale," have prioritized substance over form and read Bankruptcy Code section 1129(b)(2)(A)(ii) in view of its underlying objective: to permit secured creditors to protect the value of their collateral through a credit bid. *See River Rd. Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642, 650–51 (7th Cir. 2011), *aff'd sub nom. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012). *In re Olde Prairie Block Owner, LLC*, 464 B.R. 337 (Bankr. N.D. Ill. 2011), is representative. The *Olde Prairie* court assigned "sale" its ordinary, dictionary meaning, *see id.* at 345, and suggested that "the economic substance of the transaction" determines whether it is a sale. *Id.* at 346. Consistent with the reasoning in *Pacific Lumber*, the *Olde Prairie* court's pragmatic construction of the statute yielded the conclusion that a sale occurs where "control of the Debtor itself would be transferred to entirely new entities," even where "[t]itle to the real estate held by the [debtor] would not change." *Id.* at 347. The *Olde Prairie* court stressed as well that Bankruptcy Code section 1129(b)(2)(A)(ii) should be read in light of the purpose of the statute. *Id.* at 346. It explained: "Allowing the Debtor here to circumvent requirements of § 1129(b)(2)(A)(ii) by labeling the transaction a 'recapitalization' that has precisely the same effect and consequence on the creditor as a sale of property free and clear of the lien would eviscerate [the secured creditor's] rights through a procedural device with a different name." *Old Prairie*, 464 B.R. at 346. In a nutshell, that is what the Debtors and Centerbridge seek to accomplish here. The Court should not countenance it.

20. While the Plan's character as a "sale" is clear from its structure and "economic substance," *Old Prairie*, 464 B.R. at 346, the Plan supplies further textual indicia that the contemplated transaction is a "free and clear" sale of the Syndicated Facility Agent's collateral. Specifically, section 5.13(c) of the Plan provides that "[p]ursuant to sections 1123(a)(5), *1123(b)(4)*, 1123(b)(6), and 1146(a) of the Bankruptcy Code, the Confirmation Order shall authorize and direct the Corporate Restructuring" Plan § 5.13(c) (emphasis added). Section 1123(b)(4) of the Bankruptcy Code, for its part, provides that a plan may "provide for *the sale of all or substantially all of the property of the estate*, *and the distribution of the proceeds of such sale* among the holders of claims or interests." 11 U.S.C. § 1123(b)(4) (emphasis added). Section 5.13(d) of the Plan goes on to provide that:

> [o]n the closing date of the Corporate Restructuring, all Assets held by or vested in New Speedcast Parent pursuant to the terms of the Plan and the Confirmation Order . . . shall be free and clear of all Claims, Equity Interests, Liens, charges, encumbrances, and other interests, other than other interests expressly provided or assumed pursuant to the Plan or the documents included in the Plan Supplement.

Plan § 5.13(d); *see also id.* § 10.2 ("[A]ll Assets . . . acquired by . . . New Speedcast Parent under or in connection with this Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims.").

(b) Under RadLAX*, the Prepetition Secured Parties Are Entitled to Credit Bid the Full "Allowed Claim."*

21. Because the Plan effects a sale, it cannot be confirmed unless the Prepetition Lenders are first afforded the right to credit bid. Under *RadLAX Gateway Hotel, LLC v. Amalgamated Bank,* 566 U.S. 639 (2012), a plan proponent that proposes a "sale" within the meaning of Bankruptcy Code section 1129(b)(2)(A)(ii) cannot elect instead to proceed under Bankruptcy Code section 1129(b)(2)(A)(iii) and seek to cram down the secured creditor by

providing it the "indubitable equivalent" of its secured claim. *See RadLAX*, 566 U.S. at 644–45, 649. Or, put differently, a plan that would "effect a sale but short circuit the right of a secured creditor [to credit bid]" cannot be confirmed. *NNN Parkway*, 505 B.R. at 287 (citing *RadLAX*, 566 U.S. at 644–45); *see also River Rd. Hotel,* 651 F.3d at 653 ("Sections 363(k) and 1129(b)(2)(A)(ii) [of the Bankruptcy Code] provide a secured creditor with the right to credit bid whenever a debtor attempts to sell the asset that secures the debt free and clear of its lien."). Section 1129(b)(2)(A)(ii) "a detailed provision that spells out the requirements for selling collateral free of liens," *RadLAX*, 566 U.S. at 646, applies to the disguised sale transaction contemplated by the Plan.

22. To be sure, the Syndicated Facility Agent (at the direction of the Required Lenders) is entitled to credit bid the "full face value of [its] secured claims under § 363(k)," *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 459–60 (3d Cir. 2006) (collecting cases) not merely the so-called Allowed SFA Secured Claim Amount. This is as true when assets are sold free and clear of liens under a plan as it is under a Bankruptcy Code section 363 sale.[12] The Debtors' attempt to judicially (under)value and "bifurcate" the Prepetition Lenders' claim under section 506(a) into a secured and undersecured portion is therefore irrelevant to whether the SFA Agent may credit bid up to the full amount of the claim. *See SubMicron,* 432 F.3d at 461 ("Section 363 [of the Bankruptcy Code] attempts to *avoid* the complexities and inefficiencies of valuing collateral altogether by substituting the theoretically preferable mechanism of a free market sale to set the price."); *see also River Rd. Hotel*, 651 F.3d

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[12] Centerbridge's counsel has acknowledged that "[a]fter *RadLAX*, the right to credit bid can no longer be limited more readily through a plan process than it is under section 363. Under both provisions of the Bankruptcy Code, credit bidding must be allowed when an asset is sold free and clear of liens, 'unless the court for cause orders otherwise.'" Wachtell, Lipton, Rosen & Katz, *Distressed Mergers and Acquisitions* 107 (2019) (citations omitted), https://www.wlrk.com/files/2019/DistressedMergers_Acquisitions.pdf.

at 650 (distinguishing "judicial valuation" and "fair market valuation of an asset's value" and noting that "by granting secured creditors the right to credit bid, the [Bankruptcy] Code promises lenders that their liens will not be extinguished for less than face value without their consent"). In other words, the credit-bid right set forth in Bankruptcy Code section 363(k) that must be satisfied pursuant to Bankruptcy Code section 1129(b)(2)(A)(ii) "speaks to the full face value of a secured creditor's claim, not to the portion of that claim that is actually collateralized as described in § 506." *SubMicron*, 432 F.3d at 461.[13]

23. The Plan is therefore unconfirmable unless the Syndicated Facility Agent, acting at the direction of the Required Lenders, is afforded an opportunity to credit bid the full amount of the Syndicated Facility Claims.

(iii) The Plan Impermissibly Abrogates the Prepetition Lenders' Rights against the Non-Debtor SFA Loan Parties.

24. The Plan contains several impermissible provisions that purport to eliminate the Prepetition Lenders' rights *vis-à-vis* the non-Debtor SFA Loan Parties. In particular, Section 10.6(b) of the Plan purports to release all SFA Loan Parties—a term that encompasses both the Debtor and non-Debtor obligors under the Syndicated Facility Agreement—from all liabilities under the SFA Loan Documents. *See* Plan § 10.6(b); *see also id.* § 10.5(c) (providing for a related injunction to enforce such release). Another section of the Plan provides that all Liens on the property of the SFA Loan Parties—once again, including both Debtor and non-Debtor

[13] Notably, in upholding the constitutionality of the second Frazier-Lemke Act, Pub. L. No. 74-384, 49 Stat. 943 (1935), a New Deal-era mortgage-relief statute, the Supreme Court found it significant that the statute protected the mortgagee's right to bid and that a proposal to cap the mortgagee's credit-bid right at the greater of the appraised value or the original principal amount was stricken "for the express purpose of avoiding a constitutional doubt" before the act passed. *Wright v. Vinton Branch of Mountain Tr. Bank of Roanoke*, 300 U.S. 440, 459 & n.4 (1937).

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obligors—will be released on the Effective Date. *See id.* § 10.6(c).[14] These provisions contravene the cardinal principle that the discharge of a claim against a debtor does not extinguish a non-debtor's guaranty of the underlying debt, or the liens securing the same. *See, e.g.*, *United States v. Stribling Flying Serv., Inc.*, 734 F.2d 221, 222–24 (5th Cir. 1984). For this reason, too, the Plan is patently unconfirmable.

25. The injunction against enforcement of the Syndicated Facility Agreement against the non-Debtor SFA Loan Parties far exceeds the scope of the Bankruptcy Code's discharge and injunction provisions. Bankruptcy Code section 524 provides that the discharge "operates as an injunction against" legal process or other acts to recover a discharged debt "*as a personal liability of the debtor*." 11 U.S.C. § 524(a)(2) (emphasis added). It further provides for clarity that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." *Id.* § 524(e). Bankruptcy Code section 524(e) reflects the fundamental policy that the debtor's discharge "make[s] a debt unenforceable as a personal liability of the debtor" but "in no way affects the liability of any other entity." 4 *Collier on Bankruptcy, supra,* ¶ 524.05; *see also Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 211 (3d Cir. 2000) ("Section 524(e) of the Bankruptcy Code makes clear that the bankruptcy discharge of a debtor, by itself, does not operate to relieve non-debtors of their liabilities." (citing *Copelin v. Spirco, Inc.*, 182 F.3d 174, 182 (3d Cir. 1999))). Thus, in connection with funded indebtedness, courts have "consistently" held that the debtor's discharge does not extinguish the liability of third-party guarantors on the same debt. *See Stribling Flying Serv.*, 734 F.2d at 222–24 (rejecting argument that personal guaranties provided by non-debtor

[14] Similarly, the Disclosure Statement advertises that the Plan will yield "a complete discharge of the Company's debt under the Syndicated Facility Agreement." Disclosure Statement Art. I at 2. The term "Company" includes both the Debtors and their non-Debtor affiliates. *See id.* Art. III at 7.

individuals were "somehow discharged or modified" by virtue of the chapter 11 plan of the primary borrower); *cf. Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997) ("[A] discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt."). Put simply, the non-Debtor SFA Loan Parties, having chosen not to commence bankruptcy cases of their own, cannot piggyback on the discharge available to their Debtor affiliates.

26. Nor may the Plan compel the Prepetition Lenders and the Syndicated Facility Agent to release their claims and liens against the non-Debtor SFA Loan Parties without their consent. The Fifth Circuit has "firmly pronounced its opposition to" non-consensual third-party releases. *Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.)*, 701 F.3d 1031, 1062 (5th Cir. 2012); *see also Cole v. Nabors Corporate Servs., Inc. (In re CJ Holding Co.)*, 597 B.R. 597, 608 (S.D. Tex. 2019) ("The Fifth Circuit has concluded that a bankruptcy court may not confirm a plan that provides 'non-consensual non-debtor releases.'" (quoting *Vitro*, 701 F.3d at 1061–62)). As the *Pacific Lumber* court explained, the bar on "non-consensual non-debtor releases" in this Circuit derives from the principle that "Section 524(e) only releases the debtor, not co-liable third parties." *Pac. Lumber*, 584 F.3d at 252. And, although *consensual* third-party releases are permissible in this district, the Required Lenders and the Syndicated Facility Agent will not consent to the release of claims and liens against the non-Debtor SFA Loan Parties in connection with this Plan.

27. Although the Fifth Circuit's prohibition on non-consensual third-party releases precludes both the proposed injunction against the enforcement of the non-Debtor guaranties and the proposed release of liens on the property of the non-Debtor SFA Loan Parties, the latter is especially problematic. Indeed, any such result would raise serious Fifth Amendment concerns.

Cf. Dewsnup, 502 U.S. at 418–19; *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601–602 (1935).

B. The Proposed Classification and Treatment of General Unsecured Claims Is Impermissible.

(i) The Proposed Reinstatement of Intercompany Interests Violates the Absolute-Priority Rule.

28. The Plan also fails because a reorganization plan that reinstates intercompany equity interests (as this Plan does) without satisfying all general unsecured claims in full facially violates the absolute-priority rule.

29. Holders of Class 4B Other Unsecured Claims will not be paid in full under the Plan and will instead receive a *pro rata* share of the net proceeds from a Litigation Trust, while the holders of Class 8 Intercompany Interests will be "reinstated." Plan §§ 4.5, 4.9. This treatment violates the absolute-priority rule, 11 U.S.C. § 1129(b)(2)(B)(ii), which prohibits an interest holder from receiving or retaining stock in the debtor or reorganized debtor over the objection of an impaired class of unsecured creditors.[15]

30. Bankruptcy Code section 1129(b)(1) provides that a plan may be confirmed over the objection of an impaired class only if the plan does not discriminate unfairly and is fair and equitable with respect to the objecting class. *See* 11 U.S.C. § 1129(b)(1). The minimum requirements for a plan to be fair and equitable are set forth in Bankruptcy Code section 1129(b)(2). With respect to classes of unsecured claims, the statute provides as follows:

> (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:
>
> (B) With respect to a class of unsecured claims—

[15] Black Diamond has a blocking position in Class 4B (Other Unsecured Claims) and will vote to reject the Plan, thereby precluding Class 4B from accepting the Centerbridge Plan.

> (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property. . . .

Id. § 1129(b)(2). Thus, to be fair and equitable to a class, such as Class 4B, that does not vote to accept the Plan, a plan of reorganization must do one of two things. The plan may provide for payments to each creditor within the class equal to the present value of the amount of the creditor's claim. If this requirement is not satisfied (and it is not in this case), then the holder of any claim or interest that is junior to the claims of the class that rejected the plan "[shall] not receive or retain under the plan on account of such junior claim or interest any property." *Id.* § 1129(b)(2)(B)(ii). More simply, if a class of impaired unsecured creditors rejects the plan, the holder of an interest junior to that class of impaired unsecured creditors may not receive or retain "any property" under a plan on account of its junior interest. *Id.*[16]

31. The Plan violates this basic rule. Under the Plan, Intercompany Interests ranking junior to Class 4B Other Unsecured Claims would be reinstated. Class 4B is impaired and, if Black Diamond votes against the Plan, will reject the Plan. Nonetheless, the Plan provides for each Debtor (other than Speedcast Parent) to receive stock (which constitutes property). In contrast, Class 4B Other Unsecured Claims will receive a *de minimis* distribution. This treatment violates the plain language of the statute and renders the Plan unconfirmable. *See, e.g.*, *DISH Network Corp. v. DBSD N. Am. Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 95 (2d Cir. 2011)

[16] This rule is consistent with basic principles of corporate law. Creditors come before stockholders, and stockholders are not entitled to a distribution from an entity's assets unless creditors are paid in full. *See* 8 Del. C. § 281; *see also* 7 *Collier on Bankruptcy, supra,* ¶ 1129.04[3][b] ("Under section 1129(b)(2)(B)(ii), unsecured creditors need not be paid in full, but they have to be assured that no junior creditor or equity participant receive anything under the plan.").

("Absent the consent of all impaired classes of unsecured claimants, therefore, a confirmable plan must ensure either (i) that the dissenting class receives the full value of its claim, or (ii) that no classes junior to that class receive any property under the plan on account of their junior claims or interests."); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 449 (1999) ("Subsection (b)(2)(B)(ii) [of the Bankruptcy Code] forbids not only receipt of property on account of the prior interest but its retention as well."); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206–207 (1988) ("[T]he Code provides that it is up to the creditors – and not the courts – to accept or reject a reorganization plan which fails … to honor the absolute priority rule.").[17]

32. The Debtors will find no refuge in cases permitting the "technical" reinstatement of intercompany equity interests for "administrative convenience." *See In re Ion Media Networks, Inc.*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009). These cases suggest that reinstatement of intercompany equity interests without strict technical compliance with the absolute-priority rule may be permissible if the reinstatement "does not have any economic substance" and merely "allows the [debtors] to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure." *Id*. It is easy to see why the reinstatement of intercompany equity interests has no "economic substance" under a chapter 11 plan that, like the *Ion* plan, equitizes a "fulcrum" class of senior debt guaranteed by various subsidiary debtors, while affording junior creditors minimal or no recovery. *See Ion*, 419 B.R. at

[17] To the extent the new value exception to the absolute priority rule is recognized in the Fifth Circuit, *cf. In re Pac. Lumber Co.*, 584 F.3d 229, 247 (5th Cir. 2009), it is inapplicable. Specifically, the new value exception permits old equity to retain an interest "if they contribute new capital in money or money's worth, reasonably equivalent to the property's value, and necessary for successful reorganization of the restructured enterprise." *203 N. LaSalle St.*, 526 U.S. at 442. Here, the *Debtors* (as the owners of the Intercompany Interests) are not contributing any "money or money's worth" whatsoever. Rather, all of the new capital is coming from *Centerbridge*, who is effectively purchasing all of the Debtors' assets—including the Intercompany Interests—free and clear of the liens and claims of the Prepetition SFA Secured Parties.

592–93 (describing the *Ion* plan). Because the senior debt is the "fulcrum" class for each relevant subsidiary debtor, the senior debtholders could, under a chapter 11 plan, equitize their claims against each subsidiary debtor and thus obtain direct equity ownership of each debtor entity. After the plan effective date, the former senior debt holders could effect an internal corporate reorganization in order to replicate the company's organizational structure as it existed just prior to the effective date.[18] Recognizing that actually undertaking this internal reorganization would impose "unnecessary cost" without changing the ultimate outcome for any creditor, the *Ion* court allowed the debtors simply to reinstate their existing intercompany structure under the plan. *See Ion,* 419 B.R. at 601.

33. But this Plan is not the *Ion* plan. Although the Debtors style the Plan as a reorganization, the Plan does not actually equitize a fulcrum class of claims. So the logic undergirding *Ion* does not prevail here. To be sure, *Ion*'s rationale might also apply to a sale plan. Just as a fulcrum debt holder might prefer to equitize at the parent level only, while leaving the rest of the debtors' organization structure intact, so too may a cash buyer prefer to purchase the equity of the ultimate parent only, rather than purchasing the equity of each subsidiary debtor individually and reconstituting the organizational structure on the backend. Thus, should the Debtors acknowledge that the "economic substance," *Ion*, 419 B.R. at 601, of this transaction is a sale, the absolute-priority issues attendant to the proposed reinstatement of intercompany

[18] To elaborate, suppose that a debtor's corporate structure consists of one parent entity (Parent) that directly owns one intermediate holding company (Intermediate Holdings), which in turn owns two operating companies (OpCo 1 and OpCo 2). All entities are guarantors of the senior debt. Under the debtor's plan, the senior debt holders "equitize" their claims against each entity. Thus, immediately after the effective date, the senior debt holders directly own all of the reorganized debtors, all of whom are now "sister" companies. Next, to replicate the existing organization structure, the senior debt holders contribute their equity interests in Intermediate Holdings to Parent and their equity interests in OpCo 1 and OpCo 2 to Intermediate Holdings. As a result, the former senior debt holders are the direct equity owners of Parent and the indirect owners of Intermediate Holdings, OpCo 1 and OpCo 2. The resulting structure is, therefore, no different than had the senior debt holders equitized their claims against the Parent while reinstating the intercompany equity interests under the plan.

interests may fall away. But the Debtors cannot have it both ways: either the Plan effectuates a sale, and the Syndicated Facility Agent is permitted to credit bid, or the proposed reinstatement of intercompany equity interests violates the absolute-priority rule.

(ii) The Separate Classification of Unsecured Trade Claims and "Other Unsecured Claims" Represents Impermissible Gerrymandering.

34. The Plan also improperly classifies Unsecured Trade Claims separately from Other Unsecured Claims, including the Syndicated Facility Deficiency Claims. Section 1122 of the Bankruptcy Code provides for the classification of claims in the same class if they are "substantially similar." 11 U.S.C. § 1122(a). The Fifth Circuit has read this statute as establishing a general rule that "'substantially similar claims,' those which share common priority and rights against the debtor's estate, should be placed in the same class." *Phx. Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1278 (5th Cir. 1991). The court further declared: "[T]hou shalt not classify *similar* claims *differently* in order to gerrymander an affirmative vote on a reorganization plan." *Id.* at 1279 (emphasis added). Thus, separate classification of claims that are "substantially similar" is permissible in the Fifth Circuit only "for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims." *Id.*; *see also Pac. Lumber*, 584 F.3d at 251 ("Facilitating a plan's confirmation is definitely not a valid justification.").

35. The Plan violates this clear mandate. As discussed above, the Plan purports to leave the Syndicated Facility Secured Claims unimpaired through a payment of $150 million in cash. *See* Plan § 4.3(a). The Syndicated Facility Deficiency Claim would, if properly classified, enable Prepetition Lenders to block any plan. *See* 11 U.S.C. § 1129(a)(10) (requiring the affirmative vote of one class of impaired claims). Recognizing this, the Debtors simply classified a select group of trade creditors (including all members of the creditors' committee, save two

that either have entered, or shortly will enter, into individual settlements with the Debtors) separately from the remaining unsecured creditors, and carved out $25 million in cash to secured the affirmative vote of that class. That value rightly should flow to the Prepetition Lenders.

36. This is the type of impermissible gerrymandering the Fifth Circuit and other courts have prohibited. *See Greystone III*, 995 F.2d at 1280–81 (rejecting separate classification of secured creditor's deficiency claim from trade creditors); *see also Marlow Manor Downtown, LLC v. Wells Fargo Bank (In re Marlow Manor Downtown, LLC)*, No. AK-14-1122-JuKiKu, 2015 WL 667543, at *9–10 (B.A.P. 9th Cir. Feb. 6, 2015) (finding separate classification of unsecured deficiency claim from other unsecured creditors constituted improper gerrymandering); *In re Nw. Timberline Enters., Inc.*, 348 B.R. 412, 436 (Bankr. N.D. Tex. 2006) (rejecting separate classification of unsecured deficiency claim and other unsecured claims where such classification "has all the appearances of improper gerrymandering without any justification other than to obtain an impaired accepting class for voting purposes"); *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 859–61 (Bankr. S.D. Tex. 2001) (finding separate classification of unsecured trade creditors and other unsecured creditors violated 11 U.S.C. § 1122); *Bos. Post Rd. Ltd. P'ship v. FDIC (In re Bos. Post Rd. Ltd. P'ship)*, 21 F.3d 477, 483 (2d Cir. 1994) (rejecting separate classification of deficiency claim and unsecured trade creditors, explaining that "approving a plan that aims to disenfranchise the overwhelmingly largest creditor through artificial classification is simply inconsistent with the principles underlying the Bankruptcy Code").

37. Given the respective ownership percentages of the Prepetition Credit Facilities, any claimed business reasons for such classification are clearly pretextual. The selected trade creditors clearly "share common priority and rights against the debtor's estate" with other

unsecured creditors. *Greystone III*, 995 F.2d at 1278. For this reason, too, the Plan is patently unconfirmable.

II. The Plan Sponsor Selection Procedures Are Improper.

38. Black Diamond has consistently maintained that a fair, transparent, and open marketing process is the best way to ensure that the Debtors' business is not undervalued and that prepetition creditors realize the greatest possible recoveries. The proposed Plan Sponsor Selection Procedures, unfortunately, do not advance these objectives. They impose arbitrary and unreasonable restrictions on bidder participation that will impede rather than promote the realization of the highest and best offer. Absent significant modifications to address the issues below, the Court should deny approval of the Plan Sponsor Selection Procedures.

A. The Plan Sponsor Selection Procedures Impermissibly Deny the Syndicated Facility Agent the Right to Credit Bid.

39. To begin, the Plan Sponsor Selection Procedures improperly restrict the Syndicated Facility Agent's right to credit bid at the direction of the Required Lenders. Allegedly "[a]s an accommodation," the Plan Sponsor Selection Procedures permit the Syndicated Facility Agent to offer so-called "Non-Cash Consideration," subject to two significant conditions. *First*, the Syndicated Facility Agent must "cash out" any Prepetition Lender that does not elect to participate in the Syndicated Facility Agent's bid. *See* Plan Sponsor Selection Procedures § V.C.5. *Second*, any proposal that includes "Non-Cash Consideration" must also offer $350 million in cash earmarked for various purposes, including repayment of the

DIP Facility, payment of the $25 million Trade Claim Cash Amount, and payment of the $2.5 million Litigation Trust Cash Amount. *See id.* § V.C.4.[19]

40. These requirements are legally baseless. *First*, because the Plan constitutes a "sale," the Syndicated Facility Agent has an unfettered right to credit bid to the extent permitted by Bankruptcy Code section 363(k). *See* discussion *supra* Section I.A.(ii); *see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 643, 649 (2012) (observing that it was "an easy case" to deny procedures that provided for the sale of collateral "free and clear of [a secured creditor's] lien without permitting [the secured creditor] to credit bid").[20] That right is expressly memorialized in the Final DIP Order, which provides that, "unless the Court for cause orders otherwise," the Syndicated Facility Agent may "credit bid up to the full amount of the Prepetition Credit Agreement Debt," provided its bid provides sufficient cash to pay the DIP Facility in full at closing. Final DIP Order ¶ 31. The Debtors do not contend that there is "cause" to limit the Syndicated Facility Agent's credit-bid rights within the meaning of Bankruptcy Code section 363(k) and Paragraph 31 of the Final DIP Order. Put differently, the Syndicated Facility Agent's right to credit bid is not a mere "accommodation," as the Debtors contend, *see* Plan Sponsor Selection Procedures § V.C.4, but a legal entitlement. [21]

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[19] As discussed in greater detail below, *see* discussion *infra* Section II.D.(iii), the $350 million Minimum Base Required Cash appears to be inflated. The specifically enumerated components of the Minimum Base Required Cash do not total $350 million.

[20] In words that apply equally to the Plan Sponsor Selection Procedures in this case, the Supreme Court in *RadLAX* held that "[a]s a matter of law, no bid procedures like the ones proposed here *could* satisfy the requirements of § 1129(b)(2)(A)(ii) [of the Bankruptcy Code], and the distinction between approval of bid procedures and plan confirmation is therefore irrelevant." 566 U.S.. at 649.

[21] Bidding-procedures orders in this district and elsewhere routinely contain provisions confirming credit-bidding rights, including the customary provision that the debtor will treat one dollar of credit as the equivalent of one dollar of cash. *See, e.g.*, *In re Centric Brands Inc.,* No. 20-22637 (SHL), Ex. 1 at 7 (Bankr. S.D.N.Y. Aug. 19, 2020), ECF No. 513; *In re Sable Permian Resources, LLC,* No. 20-33193 (MI), Annex 1 at 13-14 (Bankr. S.D. Tex. Aug. 11, 2020), ECF No. 306; *In re Brooks Brothers Group, Inc.,* No. 20-11785 (CSS), order ¶ 9 (Bankr. D. Del. Aug. 3, 2020), ECF No. 285; *In re RentPath Holdings, Inc.,* No. 20-10312 (BLS), Ex. 1 at 9 (Bankr. D. Del. Mar. 10, 2020), ECF No. 172-1*; In re SD-Charlotte, LLC,* No. 20-30149 (LTB), Ex. 1 at 5 (Bankr.

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41. *Second*, in purporting to require the Syndicated Facility Agent to "cash out" non-consenting Prepetition Lenders, *see id.* § V.C.5, the Plan Sponsor Selection Procedures impermissibly intrude on a purely intra-lender matter that is governed by the collective-action provisions of the Syndicated Facility Agreement. The Syndicated Facility Agreement vests the right to credit bid in the Syndicated Facility Agent. Specifically, it provides that:

> In the event of a foreclosure by any Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363 of the Bankruptcy Code), any Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, the Collateral Agent or the Security Trustee, as agent and/or trustee for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (and is hereby expressly authorized), for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by such Agent on behalf of the Secured Parties at such sale or other disposition.

Syndicated Facility Agreement § 8.01. The same provision also makes clear that the Syndicated Facility Agent exercises the authority delegated to it "at the direction of the Required Lenders." *Id.* The cash-out requirement in the Plan Sponsor Selection Procedures essentially undoes the collective-action regime embedded in the Syndicated Facility Agreement by allowing each individual Prepetition Lender to determine whether or not to allow its "Obligations" to be used

W.D.N.C. Mar. 6, 2020), ECF No. 189*; In re GCX Ltd.,* No. 19-12031 (CSS), Ex. 1 at 12 (Bankr. D. Del. Sept. 25, 2019), ECF No. 72-1; *In re iPic-Gold Class Ent't, LLC,* No. 19-11739 (LSS), Ex. 1 at 13 (Bankr. D. Del. Sept. 13, 2019), ECF No. 273-1; *In re Loot Crate, Inc.,* No. 19-11791 (BLS), Ex. 1 at 7 (Bankr. D. Del. Sept. 11, 2019), ECF No. 147; *In re Fusion Connect, Inc.,* No. 19-11811 (SMB), Ex. 1 at 11 (Bankr. S.D.N.Y. July 3, 2019), ECF No. 164; *In re Cloud Peak Energy Inc.,* No. 19-11047 (KG), Ex. 1 at 10 (Bankr. D. Del. June 13, 2019), ECF No. 272-1; *In re Empire Generating Co, LLC,* No. 19-23007 (RDD), Order at 8 (Bankr. S.D.N.Y. June 10, 2019), ECF No. 102*; In re Orchids Paper Prods. Co.,* No. 19-10729 (MFW), Ex. 1 at 12 (Bankr. D. Del. May 20, 2019), ECF No. 179-1; *In re Ditech Holding Corp.,* No. 19-10412 (JLG), Schedule 1 at 14 (Bankr. S.D.N.Y. Apr. 23, 2019), ECF No. 456; *In re Westmoreland Coal Co.,* No. 18-35672 (DRJ), Annex 1 ¶ 10 (Bankr. S.D. Tex. Feb. 4, 2019), ECF No. 1287; *In re Open Road Films, LLC,* No. 18-12012 (LSS), Order ¶ 4(b) (Bankr. D. Del. Oct. 9, 2018), ECF No. 160*; In re Aerogroup Int'l, Inc.,* No. 17-11962 (KJC), Ex. 1 at 8 (Bankr. D. Del. Jan. 31, 2018), ECF No. 566-1; *In re GST AutoLeather, Inc.,* No. 17-12100 (LSS) (Bankr. D. Del. Nov. 15, 2017)*; In re Shoreline Energy LLC,* No. 16-35571 (DRJ), Annex 1 at 22 (Bankr. S.D. Tex. Dec. 15, 2016), ECF No. 183.

"as a credit on account of the purchase price." *Id.* It is not the Debtors' prerogative to modify intra-lender contractual arrangements in this manner. *Cf.* Hr'g Tr. at 9:20–23, *In re Alta Mesa Res., Inc*., Case No. 19-35133 (MI) (Bankr. S.D. Tex. Jan. 21, 2020) (observing that the right to consent to a sale free and clear of liens is "delegated to the Administrative Agent, and that means that any consent given by the Administrative Agent is effective for all purposes and may not be countermanded by the banks").

B. The Plan Sponsor Selection Procedures Inappropriately Purport to Establish the Amount of the Allowed SFA Secured Claim.

42. Relatedly, the Debtors' attempt to conclusively establish the allowed amount of the Syndicated Facility Secured Claims in the Plan Sponsor Selection Procedures is flagrantly inappropriate. The Plan Sponsor Selection Procedures provide:

> If the Successful Plan Sponsor Proposal is not the Initial Plan Sponsor Transaction, then for purposes of the Plan, the Allowed SFA Secured Claim Amount (as defined in the Plan) shall be deemed to be an amount equal to (A) the Aggregate Consideration offered in such Successful Plan Sponsor Proposal, *minus* (B) the Required Base Cash Amount. Promptly following the Plan Sponsor Selection Date, the Debtors shall file a supplement to the Plan identifying the updated Allowed SFA Secured Claim Amount (as defined in the Plan) and the amount of the Non-Cash Consideration (if any) in each case as determined pursuant to this Plan Sponsor Selection Process.

Plan Sponsor Selection Procedures § VII.A. Although Black Diamond acknowledges that a fair, transparent, and open marketing process, in which the Syndicated Facility Agent is permitted to credit bid in accordance with Bankruptcy Code section 363(k), would provide the best evidence of the value of the Prepetition Collateral, the marketing process outlined in the Plan Sponsor Selection Procedures is anything but. *Cf. River Rd. Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642, 651 (7th Cir. 2011), *aff'd sub nom. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012) (suggesting that an auction at which the secured creditor is not entitled to credit bid is not a reliable indicia of value because it "lack[s] a crucial check against

undervaluation"). As such, if the procedures are approved as proposed (*i.e.*, without affording the Syndicated Facility Agent the right to credit bid to the extent set forth in Bankruptcy Code section 363(k)), the Debtors should not be entitled to offer the results of the Plan Sponsor Selection Process as *conclusive* evidence of value at the Confirmation Hearing.

43. Centerbridge is willing to pay $175 million to the Debtors' prepetition creditors to acquire the Prepetition Lenders' Collateral. But, to be clear, Black Diamond does not consent to a $25 million "gift" from the Prepetition Lenders to the holders of Class 4A Unsecured Trade Claims. Even if the Debtors could otherwise attempt to cram up the Prepetition Lenders by providing them the cash "indubitable equivalent" of the Syndicated Facility Agreement Secured Claim (they cannot, *see* discussion *supra* § I.A.ii), the $150 million cash payment the Plan contemplates is not the indubitable equivalent of the Prepetition Lenders' secured claims.[22] Because the Prepetition Lenders have Liens on substantially all of the Debtors' assets, the $25 million Trade Claim Cash Amount reflects an involuntary "gift" (*i.e.*, an improper allocation of

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[22] Said differently, because the value of the collateral securing the Syndicated Facility Secured Claims "is equal to the enterprise value of [the Company] less the value of the Debtors' unencumbered assets," *In re Hawaiian Telecom Commc'ns, Inc.*, 430 B.R. 564, 606 (Bankr. D. Ha. 2009), holders of Syndicated Facility Secured Claims are entitled to a recovery equal to the value of the collateral (after repayment of the DIP) "less the Plan's assumed unencumbered asset value." *Id.; see also id.* at 603 (holding that "[t]here is no precedent that supports the conclusion that a secured creditor with a lien on a debtor's primary assets is not entitled to the debtor's enterprise value when the debtor proposed to use that collateral in its business under a plan of reorganization.").

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value) from the value of the Prepetition Collateral.[23] The attempt to hardwire an involuntary gift into the Plan Sponsor Selection Procedures is inappropriate.

C. The Plan Sponsor Selection Procedures Unreasonably Require Prepetition Lenders with Existing Confidentiality Obligations to Enter into an Additional NDA.

44. Next, the Plan Sponsor Selection Procedures unreasonably burden the Prepetition Lenders' access to due-diligence information. The Plan Sponsor Selection Procedures generally provide that a Prepetition Lender subject to the existing confidentiality obligations in the Syndicated Facility Agreement need not execute a standalone non-disclosure agreement to participate in the selection process. Indeed, Black Diamond has been conducting due diligence for months under the existing confidentiality provisions of the Syndicated Facility Agreement (and has already submitted several proposals to the Debtors). In these circumstances, the prospect that Black Diamond would be required to execute a new non-disclosure agreement at this late hour is perplexing. Nonetheless, the Debtors purport to reserve their right to insist that a Prepetition Lender that is "participat[ing] in the Plan Sponsor Selection Process through the submission of a joint Plan Sponsor Proposal" execute a separate confidentiality agreement. Plan Sponsor Selection Procedures § IV. As with many provisions of the Plan Sponsor Selection Procedures, this proviso, although phrased generically, it transparently intended to target Black Diamond—whom the Debtors know is collaborating with a strategic partner to potentially submit a joint bid that Black Diamond believes will offer substantially more value to the Debtors' estates and creditors than the Centerbridge transaction. But regardless of its motivation, the

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[23] *See also* Stephen Karotkin, et al., *Advanced Program: Consensual Resolution Part II: The "Solutions" and Whether They Work,* American Bankruptcy Institute (2011) (reviewing gifting cases and concluding that even in the context of consensual gifts, "[i]n the end, one must focus squarely on the work that the gift is doing in the particular case. The more easily one can cast it as a payoff that greases the skids of the reorganization, the more suspect it will be, regardless of the form in which it is done or the person to whom it is made.").

requirement is illogical. If a Prepetition Lender and a third-party bidder collaborating on a joint bid are both already subject to a non-disclosure agreement—the Prepetition Lender through the confidentiality provisions of the Syndicated Facility Agreement and the third-party bidder through a standalone non-disclosure agreement executed in connection with the selection process—requiring the Prepetition Lender to execute a further non-disclosure agreement is duplicative and will only impede bidding.

D. The Criteria for a "Qualified Plan Sponsor Proposal" and the Plan Sponsor Proposal Factors Are Unduly Restrictive.

45. The Plan Sponsor Selection Procedures impose numerous other qualification requirements and selection criteria that will chill bidding and impede the realization of the best possible proposal.

(i) The Minimum Bid Amount Is Excessive and Does not Reflect the Actual Value of the Centerbridge Proposal.

46. *First*, the minimum bid amount—$505 million—overstates the value of the Centerbridge proposal to the Debtors' estates. *See* Plan Sponsor Selection Procedures § V.C.3. The $505 million minimum bid amount apparently reflects the aggregate purchase price for the New Equity Interests, plus a $5 million overbid requirement. A substantial portion of the $500 million aggregate cash purchase price will be applied to balance-sheet cash at emergence. But unrestricted cash at emergence contributes neither to creditor recoveries nor total enterprise value, particularly where, as here, the Debtors already have substantial balance-sheet cash and ample availability under the DIP Facility (and, thus, the Direct Investment Amount is not necessary to fill a "gap" in balance-sheet cash). To foster fair competition and better promote the ultimate objective of maximizing the value of the estates for prepetition creditors, the Debtors should revise the minimum bid requirement to track recoveries to prepetition creditors—the stated objective of the Plan Sponsor Selection Procedures. *See* Disclosure Statement Mot. ¶ 79

(professing that the Plan Sponsor Selection Procedures will "yield the maximum value for [the Debtors'] creditors").

(ii) Prospective Plan Sponsors Should Be Permitted to Submit Proposals to Acquire the Debtors' Assets.

47. *Second*, the Plan Sponsor Selection Procedures are unnecessarily prescriptive concerning the structure of the transaction. Under the Plan Sponsor Selection Procedures, a Qualified Plan Sponsor Proposal must be structured as a "purchase of 100% of the New Speedcast Equity Interests." Plan Sponsor Selection Procedures at 2 and § V.C.2. The Debtors do not justify their refusal to consider other acquisition structures. For example, a Prospective Plan Sponsor may wish to acquire the Debtors' assets (including the equity interests in the subsidiary Debtors). Competing bidders should be afforded sufficient flexibility to structure their proposals in a manner that permits them to make the most attractive offer possible.

(iii) The Plan Sponsor Selection Procedures Should not Dictate the Application of the Required Base Cash Amount.

48. *Third*, the Plan Sponsor Selection Procedures establish an arbitrarily inflated $350 million Required Base Cash Amount and inappropriately dictate the application of that amount. In particular, the Plan Sponsor Selection Procedures provide that, "[s]olely with respect to a Plan Sponsor Proposal made by any Prospective Plan Sponsor that includes Non-Cash Consideration"—a descriptor that, although phrased generically, is obviously intended to single out the Syndicated Facility Agent—the Required Base Cash Amount must be earmarked for four specific purposes: repayment of the DIP Facility, payment of the $25 million Trade Claim Cash Amount, payment of the $2.5 million Litigation Trust Cash Amount, and other items set forth on the Schedule of Emergence Costs. *Id.* § V.C.4.

49. Black Diamond acknowledges that any Plan Sponsor Proposal must provide sufficient cash to repay the DIP Facility on the Effective Date. The Bankruptcy Code compels

that result. *See* 11 U.S.C. § 1129(a). But the Bankruptcy Code does not require a $25 million cash distribution to otherwise out-of-the-money trade creditors, nor the establishment and funding of a litigation trust. The Debtors' fiduciary duties run to their estates as a whole. The Plan Sponsor Selection Procedures should, accordingly, seek to elicit the Plan Sponsor Proposal that provides the greatest overall value to the Debtors' estates. Requiring the Syndicated Facility Agent to earmark consideration for specific constituencies beyond what the Bankruptcy Code requires detracts from this objective.

50. Finally, the Required Base Cash Amount is a number in excess of all DIP borrowings and anticipated exit costs and does not take into account the Company's substantial cash balance (which balance will be further increased by future DIP draws). Accordingly, the Required Base Cash Amount is an amount materially in excess of the cash needed to exit bankruptcy.

(iv) The Plan Sponsor Selection Procedures Require Unnecessary Disclosures.

51. Fourth, the Plan Sponsor Selection Procedures impose meddlesome disclosure requirements designed to deter bidding. For example, the requirement that Prospective Plan Sponsors describe "the expected operational role of the current Speedcast management team" is transparently motivated by parochial interests unrelated to value maximization. *See id.* § V.A.3. The "nature of any economic arrangements between or among such participants" is irrelevant. *See id.* § V.C.1. Finally, the Debtors articulate no plausible justification for considering the "proposed governance terms of the board of directors or equivalent governing body of New Speedcast Parent" in evaluating Plan Sponsors Proposals. *See id.* § VI New Speedcast Parent (or the equivalent bidding entity under a competing Plan Sponsor Proposal) is not a Debtor, and its

post-closing governance arrangements are irrelevant to the value the Debtors will derive from a Transaction.

(v) The Requirement that Competing Plan Sponsors Serve as the Back-Up Plan Sponsor for an Unlimited Period Is Unreasonable and Will Chill Bidding.

52. Fifth, the requirement that a Qualified Plan Sponsor Proposal be "irrevocable until the closing of the Transaction with the Plan Sponsor" is onerous and inconsistent with customary practice and market expectations, and will chill bidding. *See* Plan Sponsor Selection Procedures § V.C.17. While courts regularly approve marketing procedures that require the second-highest bidder to serve as a "back-up" bidder, the second-highest bidder's "back-up" obligation typically has a firm outside date.[24] Here, in contrast, the Debtors would require the Back-Up Plan Sponsor to keep its Plan Sponsor Proposal outstanding indefinitely. *See* Plan Sponsor Selection Procedures § V.C.17. That requirement places an undue burden on other Prospective Plan Sponsors and likely will discourage participation. Black Diamond's Participation in a Joint Bid with a Strategic Partner Should not Preclude the Syndicated Facility Agent from Bidding Independently.

(vi) The Plan Sponsor Selection Procedures Should not Prohibit Multiple Bids.

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[24] *In re Sable Permian Res., LLC*, No. 20-33193 (MI) (Bankr. S.D. Tex. Aug. 11, 2020), ECF No. 306 (backup bids remain open and irrevocable until earlier of 60 days after entry of sale order and closing of transaction with successful bidder); *In re Echo Energy Partners I, LLC*, No. 20-31920 (DRJ) (Bankr. S.D. Tex. Apr. 23, 2020), ECF No. 104 (backup bids remain open until earlier of July 3, 2020 and closing of transaction with successful bidder); *In re Approach Res. Inc.*, No. 19-36444 (MI) (Bankr. S.D. Tex. Jan. 9, 2020), ECF No. 184 (back up bids remain open until earlier of 30 days after entry of sale order and closing of transaction with successful bidder); *In re Alta Mesa Res., Inc.*, No. 19-35133 (MI) (Bankr. S.D. Tex. Oct. 11, 2019) (backup bids remain open until the earlier of 30 days after entry of sale order and closing of transaction with successful bidder); *In re Vanguard Natural Res., LLC*, No. 17-30560 (MI) (Bankr. S.D. Tex. Apr. 13, 2017) (backup bids remain open until the earlier of 30 days after the auction and closing of transaction with successful bidder); *In re EMAS Chiyoda Subsea Ltd.*, No. 17-31146 (MI) (Bankr. S.D. Tex. Apr. 24, 2017) (backup bids remain open until the earlier of the second business day after the closing of transaction with successful bidder and 120 days after the petition date).

53. Sixth, the Plan Sponsor Selection Procedures should not preclude parties from participating in more than one bid simultaneously. *Cf. id.* § I ("Any party, whether submitting a Plan Sponsor Proposal as an individual party or with a group of parties, may only submit one Plan Sponsor Proposal."). The Plan Sponsor Selection Procedures should encourage competition, and, accordingly, should afford potential bidders as much flexibility as possible to furnish value-maximizing bids. In particular, Black Diamond is evaluating numerous structures for a potential bid, and is concerned that these restrictions could limit Black Diamond and/or the Syndicated Facility Agent's ability to participate fully in the process. The restriction serves no apparent purpose and should be stricken.

E. The Marketing Period Is too Short to Attract Meaningful Competition.

54. Next, the proposed 25-day marketing period is facially inadequate. Assuming the Court approves the Plan Sponsor Selection Procedures on October 19, 2020, a Prospective Plan Sponsor would have only (a) *four days* thereafter to negotiate a non-disclosure agreement, conduct its Phase 1 Diligence and submit a Non-Binding Indication of Interest and (b) 21 additional days to complete Phase 2 Diligence and submit a binding Plan Sponsor Proposal. *See id.* §§ II, IV, V.A, V.B. The 25 days the Debtors propose between approval of the Plan Sponsor Selection Procedures represents a substantially shorter marketing period than courts in this district customarily approve in complex chapter 11 case—at least where (as is the case here), the debtor has engaged in no substantial marketing efforts prior to approval of its marketing procedures.[25] Black Diamond submits that the deadline for submission of non-binding

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[25] *In re NPC Int'l, Inc.*, No. 20-33353 (DRJ) (Bankr. S.D. Tex. Sep. 25, 2020), ECF No. 693 (bid deadlines for groups of assets, and whole company, set for 46 and 56 days from entry of procedures order); *In re Sable Permian Res., LLC*, No. 20-33193 (MI) (Bankr. S.D. Tex. Aug. 11, 2020), ECF No. 306 (bid deadline 45 days from entry of procedures order); *In re Echo Energy Partners I, LLC*, No. 20-31920 (DRJ) (Bankr. S.D. Tex. Apr. 23, 2020), ECF No. 104 (bid deadline 49 days from entry of procedures order); *In re Approach Res. Inc.*, No. 19-36444 (MI) (Bankr. S.D. Tex. Jan. 9, 2020), ECF No. 184 (bid deadline 36 days from entry of

(cont'd)

indications of interest and binding Plan Sponsor Proposals should be extended to November 6, 2020, and November 25, 2020, respectively, with the balance of the schedule adjusted proportionally.

F. The Plan Sponsor Selection Procedures Fail to Describe How the Debtors Will Conduct the "Final Selection Process."

55. Further, the procedures governing the so-called "Final Selection Procedures" are entirely opaque and inspire no confidence that the Successful Plan Sponsor Proposal will be chosen through a fair and transparent process. Marketing procedures approved in this district typically provide that, where multiple qualified proposals are submitted, the ultimate winner will be selected at an auction conducted in accordance with prescribed rules. In contrast, the Debtors' proposed procedures provide that the Debtors will select the Successful Plan Sponsor Proposal during a mysterious "Final Selection Process" for which no procedures whatsoever are specified. *See* Plan Sponsor Selection Procedures § VII. The Plan Sponsor Selection Procedures should clearly describe parameters for the Final Selection Process, including customary procedures for an auction (including procedures relating to the order of bidding, minimum overbids, and other typical rules to facilitate a fair, open, and transparent auction).

G. The Plan Sponsor Selection Procedures Afford the Debtors Excessive Flexibility to Modify the Procedures.

56. Finally, the Debtors purport to reserve virtually unfettered discretion to "modify or terminate these Plan Sponsor Selection Procedures . . . without specifying the reasons

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procedures order); *In re Burkhalter Rigging, Inc.*, No. 19-30495 (MI) (Bankr. S.D. Tex. Mar. 20, 2019), ECF No. 179 (bid deadline 40 days from entry of procedures order); *In re Alta Mesa Res., Inc.*, No. 19-35133 (MI) (Bankr. S.D. Tex. Oct. 11, 2019) (bid deadline 68 days after entry of procedures order); *In re Vanguard Natural Res., LLC*, No. 17-30560 (MI) (Bankr. S.D. Tex. Apr. 13, 2017) (bid deadline 32 days after entry of procedures order); *In re Westmoreland Coal Company*, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018) (bid deadline 61 days after entry of procedures order); *In re EMAS Chiyoda Subsea Ltd.*, No. 17-31146 (MI) (Bankr. S.D. Tex. Apr. 24, 2017) (bid deadline 44 days after entry of procedures order).

therefor." *Id.* at 2. The ostensible limitations on this authority are illusory. The Debtors are required to consult with the Consultation Parties (*i.e.*, the creditors' committee) before modifying the Plan Sponsor Selection Procedures, but are not required to obtain the Consultation Parties' or any other party's consent before doing so. And the proviso that no such modification may be "in any material respect inconsistent with the Plan Procedures Order" is toothless. The proposed order simply declares that the Plan Sponsor Selection Procedures are approved and contains no substantive terms governing the marketing and selection process. *See* Proposed Order ¶¶ 43–44. As such, no modification of the Plan Sponsor Selection Procedures, no matter how egregious, could possibly be "inconsistent with the Plan Procedures Order." Plan Sponsor Selection Procedures at 2. The Debtors' reserved modification rights impose significant risk that the Plan Sponsor Selection Procedures will be modified after approval to further prejudice Black Diamond or otherwise impede competing bids.

III. The Disclosure Statement Is Inadequate.

57. Putting aside the substantive legal infirmities of the Plan and the Plan Sponsor Selection Procedures, the Disclosure Statement itself is insufficient in "the circumstances of the case." *Mabey v. Sw. Elec. Power Co. (In re Cajun Elect. Power Coop., Inc.*, 150 F.3d 503, 518 (5th Cir. 1998) (quoting S. Rep. No. 95-989, at 121 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5907). Bankruptcy Code section 1125 mandates that a disclosure statement contain "adequate information" to enable "a hypothetical investor typical of the holders of claims or interests . . . of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a), (b). While courts have itemized non-exhaustive lists of factors to guide their assessment of the adequacy of a disclosure statement, *see, e.g.*, *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984), Bankruptcy Code section 1125 ultimately requires the bankruptcy court to make a "subjective" determination "on a case by case basis," *Tex. Extrusion*

Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir. 1988). Black Diamond submits that the Disclosure Statement contains crucial omissions and misstatements that render it unsuitable in the circumstances of the case.

A. The Disclosure Statement Lacks Sufficient Disclosure Concerning the Debtors' Valuation of the Prepetition Collateral.

58. The Disclosure Statement is inadequate because it lacks a clear and consistent explanation of how the Debtors' ascertained the value of the Prepetition Collateral and, thus, the Allowed SFA Secured Claim Amount. As discussed above, the Plan rests on the proposition that the Prepetition Lenders will receive cash on the Effective Date equal to the value of the Prepetition Collateral and that the value of the Prepetition Collateral establishes the Allowed SFA Secured Claim Amount. *See* Plan §§ 1.1 (definitions of "Allowed SFA Secured Claim Amount" and "Syndicated Facility Secured Claim"), 4.3. The Plan indicates that under the Initial Plan Sponsor Transaction, the Allowed SFA Secured Claim Amount is $150,000,000—representing "the portion of the Direct Investment Amount attributable to the Syndicated Facility Secured Claim." *Id.* § 1.1 (definition of "Allowed SFA Secured Claim Amount"). But the definition is circular: it says, in essence, that the Prepetition Lenders' secured claim is equal to that portion of the Direct Investment Amount that is equal to the amount of the Prepetition Lenders' secured claim. The Disclosure Statement contains no substantive explanation as to how the asserted Allowed SFA Secured Claim Amount of $150 million can be extrapolated from the Direct Investment Amount.

59. Compounding the problem, the Disclosure Statement does not explain how the collateral valuation allegedly extrapolated from the Direct Investment Amount reconciles with the Valuation Analysis. Because the Valuation Analysis purports to value the Debtors' enterprise, and the Prepetition Lenders have liens on substantially all assets that make up the

Debtors' enterprise, the Valuation Analysis must imply some value for the Prepetition Collateral. But the Debtors decline to say what value that is, or how it corresponds to the Allowed SFA Secured Claim Amount. Because the value of the Prepetition Collateral is fundamental to the Plan, the Debtors' failure to say anything useful about it makes the Disclosure Statement inadequate.

B. The Disclosure Statement Contains Inadequate Information Concerning the Treatment of Unsecured Trade Claims and Other Unsecured Claims.

60. A critical element of the Plan is the separate classification of Unsecured Trade Claims and Other Unsecured Claims. The former (consisting of claims held by a select group of trade vendors allegedly "crucial to the Debtors' business") will share a generous $25 million cash distribution; the latter (consisting of all other general unsecured claims, including the Syndicated Facility Deficiency Claims), will receive a *de minimis* recovery. As discussed above, Black Diamond submits that the separate classification of these claims, and the enormous discrepancy in their respective recoveries, are so manifestly improper as to render the Plan patently unconfirmable. At minimum, however, the Disclosure Statement must provide significantly more information concerning the classification and treatment of these claims than it currently does.

61. First, the Disclosure Statement does not "clearly and succinctly inform the average" holder of a Class 4B Other Unsecured Claim "what it is going to get [and] when it is going to get it." *In re Keisler*, No. 08-34321, 2009 WL 1851413, at *4 (Bankr. E.D. Tenn. June 29, 2009) (citation omitted). The Disclosure Statement unhelpfully indicates that holders of Other Unsecured Claims can expect a recovery greater or equal to zero percent, without taking into account "potential recoveries arising from Causes of Action transferred to the Litigation Trust." Disclosure Statement at 6 & n.6. The Disclosure Statement list some categories of claims

that might be transferred to the Litigation Trust for the benefit of holders of Other Unsecured Claims, but contains no information concerning the substance of any such potential claims.

62. Second, to the extent the Debtors claim that the separate classification of Unsecured Trade Claims and Other Unsecured Claims turns on *bona fide* business reasons, the Debtors should explain those reasons, including the factors they considered in determining whether a given general unsecured claims qualifies for treatment in the favored class.

C. The Disclosure Statement Does not Adequately Disclose the Federal Income Tax Consequences of the Plan.

63. The Disclosure Statement's discussion of the federal income tax consequences of the Plan is also inadequate.[26] Despite the false dichotomy the Debtors draw between a "sale" and a "reorganization"—the crutch on which the Debtors' lean to bar the Prepetition Lenders from credit bidding—the Debtors take no position in the Disclosure Statement whether the Plan is a "reorganization" under section 368 of the Tax Code. *See* 26 U.S.C. § 368(a). Instead, the Debtors adopt the milquetoast position that the Plan *might* constitute a reorganization under the Tax Code and direct the Prepetition Lenders to consult their own tax advisors. *See* Disclosure Statement at 33.

64. The Debtors' attempt to hedge on this point is puzzling for two reasons. *First*, the Debtors will be required to take a position in their federal income tax return on whether the Plan transaction constitute a "reorganization" under the Tax Code. There is no reason the Debtors should withhold their view from creditors. *Second*, the Debtors' prevarication on the treatment of the Plan transaction for tax purposes is strikingly inconsistent with their unequivocal stance that

[26] While the propriety of including or excluding certain topics in a disclosure statement is "largely within the discretion of the bankruptcy court," *Tex. Extrusion*, 844 F.2d at 1157, the Bankruptcy Code specifically requires that the disclosure statement discuss the "potential material Federal tax consequences of the plan," 11 U.S.C. § 1125(a)(1).

the Plan constitutes a reorganization, rather than a "sale," under the Bankruptcy Code. Notably, bankruptcy courts look to the Tax Code for guidance as to whether a transaction constitutes a "sale" within the meaning of Bankruptcy Code section 1129(b)(2)(A)(ii). *See In re Olde Prairie Block Owner, LLC*, 464 B.R. 337, 345 (Bankr. N.D. Ill. 2011) (observing that "[t]here is little in the way of caselaw or precedent discussing or defining recapitalization in the context of bankruptcy" or "distinguishing a recapitalization from a sale" but that "there is substantial precedent in cases involving the tax code"). In this regard, the Debtors' refusal to endorse the treatment of the Plan transactions as a "reorganization" under the Tax Code suggests that their insistence that the Plan does not constitute a "sale" is mere posturing. At minimum, however, the Disclosure Statement should provide some account of the Debtors' discordant position and explain specifically what factors might justify the treatment of the Plan as a sale under the Tax Code but not the Bankruptcy Code.

D. The Disclosure Statement Does not Adequately Disclose the Role of the Special Restructuring Committee in the Plan Selection Process.

65. Finally, the Disclosure Statement's account of the formation and role of the Special Restructuring Committee is confusing and inadequate. The Disclosure Statement suggests that the Special Restructuring Committee comprises five members: Stephe Wilks and Michael Malone, both of whom are directors of Speedcast, *Our Leadership*, Speedcast, https://www.speedcast.com/about-us/leadership/ (last visited Oct. 16, 2020), plus three directors of Speedcast Americas, Inc., Disclosure Statement at 22. The composition of the Special Restructuring Committee—that is, the fact that some of its members are directors of Speedcast, whereas others are directors of Speedcast Americas, Inc.—raises questions regarding its role and authority that the Disclosure Statement neglects to explain. For example, if the Special Restructuring Committee is constituted at the parent level, but three of its five members are not

directors of the parent, one might infer that its role is merely advisory. Conversely, if the Special Restructuring Committee is constituted at Speedcast Americas, Inc., the Disclosure Statement should explain where ultimate decision-making authority at the parent entity lies.

IV. The Proposed Order Should Clearly and Fully Preserve Parties' Rights to Object to Approval of the Disclosure Statement and Confirmation of the Plan.

66. Although the Debtors claim they are seeking only conditional approval of the Disclosure Statement, *see* Disclosure Statement Mot. ¶ 3, the proposed order annexed to the Disclosure Statement Motion contains proposed findings of fact and conclusions of law that are not described as conditional. For example, paragraph 16 of the proposed order provides that the Disclosure Statement is "conditionally approved as providing holders of Claims entitled to vote on the Plan with adequate information." Disclosure Statement Mot. Ex. A ¶ 16. In contrast, paragraph 1 provides, without qualification, that "[t]he Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code." *Id.* ¶ 1.

67. Black Diamond is concerned that the Debtors will leverage these provisions of the proposed order to render parties' rights to object to the adequacy of the Disclosure Statement and confirmation of the Plan at the Confirmation Hearing illusory. That is, while the proposed order ostensibly permits parties to object to confirmation of the Plan and approval of the Disclosure Statement by filing an objection on or before November 30, 2020, *see id.* ¶ 47, Black Diamond is concerned that the proposed order provides the Debtors a back door to argue that the substance of any such objection is barred by claim preclusion, *res judicata*, or similar preclusive doctrines. Similarly, the Debtors may argue that the solicitation procedures set forth in the proposed order effectively preclude certain of Black Diamond's substantive Plan objections, including its contention that the Syndicated Facility Secured Claims are impaired. The proposed order should

contain a broad reservation of rights that fully preserves parties' rights to object to the Disclosure Statement and the Plan on any grounds permitted by law.

[*Remainder of Page Intentionally Left Blank*]

CONCLUSION

Black Diamond respectfully requests that this Court deny the Disclosure Statement Motion as set forth herein and in accordance with the proposed order attached as **Exhibit A** hereto and grant such other and further relief as may be just and proper.

Dated: Houston, Texas
October 16, 2020

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CERTIFICATE PURSUANT TO
BANKRUPTCY LOCAL RULE 9013-1(g)(1)

I hereby certify that counsel to Black Diamond conferred with counsel to the Debtor prior to the filing of this Objection to attempt to resolve the relief requested in the Disclosure Statement Motion without the necessity of a hearing. The parties were not able to resolve the dispute.

/s/ Wallis M. Hampton
Wallis M. Hampton

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served by electronic transmission via the Court's ECF system to all parties registered to receive electronic notice in this case.

/s/ Wallis M. Hampton
Wallis M. Hampton

EXHIBIT A

Proposed Order

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

	§	
In re:	§	**Chapter 11**
	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	
	§	
Debtors.[1]	§	**Jointly Administered**
	§	

ORDER DENYING EMERGENCY MOTION OF DEBTORS FOR ENTRY OF ORDER (I) SCHEDULING COMBINED HEARING ON (A) ADEQUACY OF DISCLOSURE STATEMENT AND (B) CONFIRMATION OF PLAN; (II) CONDITIONALLY APPROVING DISCLOSURE STATEMENT; (III) APPROVING SOLICITATION PROCEDURES AND FORM AND MANNER OF NOTICE OF COMBINED HEARING AND OBJECTION DEADLINE; (IV) FIXING DEADLINE TO OBJECT TO DISCLOSURE STATEMENT AND PLAN; (V) APPROVING NOTICE AND OBJECTION PROCEDURES FOR THE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI) APPROVING PLAN SPONSOR SELECTION PROCEDURES; AND (VIII) GRANTING RELATED RELIEF

Upon consideration of the *Emergency Motion of Debtors for Entry of an Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Approving Plan Sponsor Selection Procedures; and (VIII) Granting Related Relief* [Docket No. 811] (the "**Motion**"); and upon consideration of the *Objection of Black Diamond Capital Management,*

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[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

L.L.C. to Emergency Motion of Debtors for Entry of an Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Approving Plan Sponsor Selection Procedures; and (VIII) Granting Related Relief; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been insufficient; and it further appearing cause exists to grant the relief requested in the Motion to the extent set forth herein; and upon all of the proceedings had before the Court; and after due deliberation thereon:

IT IS HEREBY ORDERED that:

1. The Motion is DENIED, as set forth herein.

2. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this order.

DATED: ___________, 2020

____
THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Markup of Plan Sponsor Selection Procedures

Proposed Comments to Procedures
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	
Debtors.[1]	§	**(Jointly Administered)**
	§	

PLAN SPONSOR SELECTION PROCEDURES

SpeedCast International Limited, a company registered in Victoria, Australia ("**Speedcast**"), and its subsidiary debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, and together with Speedcast, the "**Debtors**") have executed an *Amended and Restated Equity Commitment Agreement* with certain affiliates of Centerbridge Partners, L.P. (collectively, the "**Initial Plan Sponsor**," and, Centerbridge Partners, L.P. and its affiliates, "**Centerbridge**") (whose affiliates are also among the lenders under the Syndicated Facility Agreement (as defined below)), dated as of October 10, 2020 (together with all exhibits, schedules, and attachments thereto, and as may be amended, supplemented, or otherwise modified from time to time, the "**Initial Plan Sponsor Agreement**"), pursuant to which, among other things, the Initial Plan Sponsor has committed to make a new-money equity investment for 100% of the equity interests in a newly formed parent entity (the "**New Speedcast Equity Interests**") of the Debtors and their non-Debtor affiliates pursuant to a chapter 11 plan on the terms set forth in the proposed *Joint Chapter 11 Plan of SpeedCast International Limited and its Debtor Affiliates* (Docket No. ~~[ ]~~810) (as may be further amended, modified, or supplemented pursuant to the terms thereof, the "**Plan**"). The equity investment and plan sponsor transaction contemplated by the Initial Plan Sponsor Agreement is referred to herein as the "**Initial Plan Sponsor Transaction**."

The process (the "**Plan Sponsor Selection Process**") and procedures set forth herein (the "**Plan Sponsor Selection Procedures**") have been approved by the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") in connection with the chapter 11 cases for the Debtors pursuant to the *Order (i) Scheduling Combined Hearing on (a) Adequacy of Disclosure Statement and (b) Confirmation of Plan; (ii) Conditionally Approving Disclosure Statement; (iii) Approving Solicitation Procedures and Form and Manner of Notice*

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

Proposed Comments to Procedures
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of Combined Hearing and Objection Deadline; (iv) Fixing Deadline to Object to Disclosure Statement and Plan; (v) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (vi) Approving Plan Sponsor Selection Procedures; and (viii) Granting Related Relief (Docket No. [ ]) (the "**Plan Procedures Order**").

On October [ ]10, 2020, the Debtors, filed with the Bankruptcy Court the *Emergency Motion of Debtors for Entry of an Order (i) Scheduling Combined Hearing on (a) Adequacy of Disclosure Statement and (b) Confirmation of Plan; (ii) Conditionally Approving Disclosure Statement; (iii) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (iv) Fixing Deadline to Object to Disclosure Statement and Plan; (v) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (vi) Approving Plan Sponsor Selection Procedures; and (viii) Granting Related Relief* (Docket No. [ ]811) (the "**Motion**"),[2] seeking, among other things, approval of the Plan Sponsor Selection Procedures for soliciting proposals for all or substantially all of the Debtor's assets (the "**Assets**"), including through either purchasing equity interests in any entity or entities owning all or substantially all of the Debtors' Assets or through the purchase of 100% of the New Speedcast Equity Interests, in each case pursuant to a chapter 11 plan or, to the extent that a chapter 11 plan cannot be confirmed, pursuant to a section 363 sale (the "**Plan Sponsor Transaction**").[3]

If the Debtors receive one or more Qualified Plan Sponsor Proposals (as defined below) other than the Initial Plan Sponsor Transaction, the Debtors will ~~implement a procedure~~follow the below procedures, including conducting an Auction, for the ultimate selection of the Plan Sponsor (as defined below) among such Qualified Plan Sponsor Proposals, in accordance with these Plan Sponsor Selection Procedures.

~~**The Debtors reserve the right, subject to the exercise of their reasonable business judgment, and in consultation with the Consultation Parties (as defined herein), to modify or terminate <these Plan Sponsor Selection Procedures>, to waive terms and conditions set forth herein, to extend any of the deadlines or other dates set forth herein, and/or terminate discussions with any and all Prospective Plan Sponsors (as defined herein) at any time and without specifying the reasons therefor, in each case, to the extent not in any material respect inconsistent with the Plan Procedures Order.**~~

I. Description of Plan Sponsor Selection Procedures

The Debtors are seeking to ~~reorganize through the issuance of New Speedcast Equity Interests~~effectuate the Plan Sponsor Transaction pursuant to the Plan.

[2] All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion and the Plan Procedures Order.

[3] The term "**Transaction**," as used in these Plan Sponsor Selection Procedures, refers to a Plan Sponsor Transaction.

Proposed Comments to Procedures
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Any party or, with the consent of the Debtors (following the Debtors' consultation with the Consultation Parties and not to be unreasonably withheld, conditioned, or delayed), group of parties, subject to the execution of a confidentiality agreement satisfactory to the Debtors, and satisfaction of the preconditions set forth below, may submit a proposal to become the plan sponsor and to acquire the Assets or the New Speedcast Equity Interests (each such proposal, whether a cash bid or Credit Bid (defined below), a "**Plan Sponsor Proposal**"). ~~Any party, whether submitting a Plan Sponsor Proposal as an individual party or with a group of parties, may only submit one Plan Sponsor Proposal.~~

Any party interested in submitting a Plan Sponsor Proposal should contact the Debtors' investment banker, Moelis Australia Advisory Pty Ltd and Moelis & Company LLC (Attn: Paul Rathborne (paul.rathborne@moelisaustralia.com), and Adam Waldman (adam.waldman@moelis.com)) (collectively, "**Moelis**") as set forth below.

II. Important Dates and Deadlines

~~October 23~~November 6, 2020, at 4:00 p.m. (prevailing Central Time)	Deadline to submit Non-Binding Indications of Interest
November ~~13~~25, 2020, at 4:00 p.m. (prevailing Central Time)	Deadline for all Plan Sponsor Proposals to be Submitted
November ~~15~~27, 2020, at 8:00 p.m. (prevailing Central Time)	Deadline for Debtors to notify Prospective Plan Sponsors of their status as Qualified Plan Sponsors
November ~~17~~30, 2020, at 10:00 a.m. (prevailing Central Time)	Debtors shall conduct the ~~Final Selection Process~~Auction
~~November 20~~December 3, 2020, at 4:00 p.m. (prevailing Central Time)	Deadline for Debtors to file with the Bankruptcy Court the Notice of Designation of Plan Sponsor
~~November 30~~December 13, 2020, at 4:00 p.m. (prevailing Central Time)	Deadline for Objections
December ~~10~~23, 2020	Date of Confirmation Hearing to consider approval of the proposed Plan

III. Noticing

A. Consultation Parties

As noted herein, or as otherwise necessary or appropriate in the judgment of the Debtors, where these Plan Sponsor Selection Procedures require the Debtors and their advisors to consult with the official committee of unsecured creditors appointed in the Debtors' chapter 11 cases

(the "**Consultation Parties**"), the Debtors and their advisors will consult with the Consultation Parties in good faith.

For the avoidance of doubt, the consultation rights afforded to the Consultation Parties by these Plan Sponsor Selection Procedures shall not limit the Debtors' discretion in the exercise of the Debtors' reasonable business judgment and subject to the terms of Plan Sponsor Selection Procedures and the Plan Procedures Order.

B. Submission Parties

Non-Binding Indications of Interest and Plan Sponsor Proposals, each as applicable, must be submitted by email to the Debtors' investment banker, Moelis: (Attn: Paul Rathborne (paul.rathborne@moelisaustralia.com), Adam Waldman (adam.waldman@moelis.com)) (the "**Submission Parties**") as set forth below.

No Non-Binding Indications of Interest or Plan Sponsor Proposals shall be submitted to or shared with any director, officer, or other insider of the Debtors that is a Prospective Plan Sponsor, a Qualified Plan Sponsor, or is participating or investing in a Plan Sponsor Proposal, except to the extent such Plan Sponsor Proposal is shared with all Qualified Plan Sponsors or as otherwise provided herein.

C. Transaction Notice Parties

The "**Transaction Notice Parties**" shall include the following persons and entities:

i. the Consultation Parties;

ii. all persons and entities known by the Debtors to have expressed an interest to the Debtors in a transaction to acquire the Debtors' business or ~~assets~~Assets during the past twelve (12) months;

iii. the Office of the United States Trustee for the Southern District of Texas;

iv. all of the persons and entities entitled to notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and

v. all other persons and entities as directed by the Bankruptcy Court.

D. Objection Recipients

Any Objections (as defined below) shall be filed with the Bankruptcy Court and served on the Debtors, the Consultation Parties and the Initial Plan Sponsor (collectively, the "**Objection Recipients**") by no later than **~~November 30~~December 13, 2020 at 4:00 p.m. (prevailing Central Time)**.

Proposed Comments to Procedures
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IV. Access to Debtors' Diligence Materials

To receive access to due diligence materials and to participate in the Plan Sponsor Selection Process, an interested party (a "**Prospective Plan Sponsor**") that is not a Diligence Lender (defined below) must first execute a confidentiality agreement, in form and substance satisfactory to the Debtors.

The SFA Lenders[4] and DIP Lenders that agreed to receive information from the Debtors subject to the confidentiality provisions set forth in the Syndicated Facility Agreement or the DIP Credit Agreement without any requirement that such information be publicly disclosed or posted to lender datasites shall be permitted to continue to access due diligence on that basis, including for purposes of conducting due diligence in connection with submitting a Plan Sponsor Proposal, without the need to execute a further confidentiality agreement (a "**Diligence Lender**"); *provided*, that to the extent such Diligence Lender notifies the Debtors that it may participate in the Plan Sponsor Selection Process through the submission of a joint Plan Sponsor Proposal, the Debtors may require such Diligence Lender to execute an additional confidentiality agreement or information sharing procedures reasonably satisfactory to the Debtors (and any other person joining in the submission of such joint Plan Sponsor Proposal shall be required to execute a confidentiality agreement in form and substance satisfactory to the Debtors)..

A. Phase 1 Diligence

A party (or parties) that delivers an executed confidentiality agreement satisfactory to the Debtors or that is a Diligence Lender shall be a "**Diligence Party**."

Each Diligence Party that wishes to conduct due diligence will be granted access to confidential information, which will primarily be provided through a data room (the "**Data Room**") containing confidential electronic data, including a confidential information memorandum and select historical financial data for Speedcast as well as a schedule of the

[4] "**SFA Lenders**" means the lenders party to the certain Syndicated Facility Agreement.

"**Syndicated Facility Agreement**" means the certain Syndicated Facility Agreement dated as of May 15, 2018 (as amended, restated, supplemented or otherwise modified from time to time, by and among Speedcast and certain of its subsidiaries, as borrowers, the lenders party thereto from time to time).

"**DIP Lenders**" means the lenders from time to time party to the DIP Credit Agreement, including by means of any joinder to the DIP Credit Agreement.

"**DIP Credit Agreement**" means that certain Senior Secured Superpriority Debtor-in-Possession Term Loan Credit Agreement, dated as of September 30, 2020 by and among SpeedCast International Limited, SpeedCast Communications, Inc., the lenders named therein, and Belward Holdings LLC, or its successor, in its capacity as administrative agent, collateral agent and security trustee (the "**DIP Agent**"), as the same may be amended, restated, supplemented, refinanced, replaced, or otherwise modified from time to time in accordance with the terms thereof and the Final DIP Order.

Company's estimated emergence costs (the "**Schedule of Emergence Costs**," and such diligence, collectively, the "**Phase 1 Diligence**").

The Debtors will require Diligence Parties who, in the Debtors' reasonable judgment, are actual or potential competitors of the Debtors, to establish a "clean team" and execute a clean team agreement, in form and substance acceptable to the Debtors, prior to such Diligence Parties and/or their professionals being granted access to unredacted versions of any documents. In the event that the Debtors and any such Diligence Party are unable to resolve issues relating to confidentiality during Phase 1 Diligence, the Debtors and such Diligence Party shall consult with the Consultation Parties and, if such issues are not satisfactorily resolved, either the Debtors or the Diligence Party may seek relief from the Bankruptcy Court.

B. Phase 2 Diligence

~~At the discretion of the Debtors in~~After consultation with the Consultation Parties, following a submission of a Non-Binding Indication of Interest as set forth below, a Diligence Party ~~may~~shall (subject to Section IV.C) be granted access to additional information in the Data Room including, but not limited to: (i) detailed information on the Debtors' proposed business transformation plans; (ii) redacted customer and supplier information; (iii) historical and forecast divisional financials; (iv) material contracts (redacted, as necessary); (v) a summary of relevant financing arrangements; (vi) the Initial Plan Sponsor Agreement; (vii) relevant legal, regulatory, management and operational information; ~~and~~ (viii) a management presentation; and (ix) >sensitive, material, customer or supplier contract terms<; *provided, however*, that the materials described in this clause (ix) shall be subject to the clean-team process described in the previous paragraph (such diligence, collectively, the "**Phase 2 Diligence**").

~~**C. Phase 3 Diligence**~~

~~Following selection as the Plan Sponsor, the Successful Plan Sponsor will be provided a 48-hour period in which to review <sensitive, material, customer or supplier contract terms >that were redacted during Phase 1 Diligence and Phase 2 Diligence (such diligence, the "**Phase 3 Diligence**") and confirm its Successful Plan Sponsor Proposal.~~

Notwithstanding the foregoing, other than with respect to a Diligence Lender, the SFA Agent[5] or the DIP Agent, the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, reserve the right to withhold any diligence materials that the Debtors determine (in their reasonable business judgment and in consultation with the Consultation Parties) are sensitive or otherwise not appropriate for disclosure to a Diligence Party that the Debtors determine (in their reasonable business judgment and in consultation with the Consultation Parties) is a competitor of the Debtors or is affiliated with any competitor of the

[5] "**SFA Agent**" means Black Diamond Commercial Finance, L.L.C., in its capacity as administrative agent, collateral agent and security trustee under the Syndicated Facility Agreement, and together with any of its successors in such capacity.

Debtors (except pursuant to "clean team" or other information sharing procedures reasonably satisfactory to the Debtors), or otherwise to comply with applicable law or confidentiality provisions in third party contracts; *provided*, that the Debtors may decline to provide such information to a Diligence Party who, at such time and in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, has not established, or who has raised doubt, that such Diligence Party intends in good faith to, or will have the capacity to, consummate a Plan Sponsor Transaction. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Diligence Party.

All due diligence requests shall be directed to the Debtors' investment banker, Moelis (Attn: Drew Konopasek (Drew.Konopasek@moelis.com) and Alex Danieli (Alex.Danieli@moelisaustralia.com)).

V. Plan Sponsor Qualifications

A Prospective Plan Sponsor that desires to participate in the Plan Sponsor Selection Process must be determined by the Debtors, in consultation with the Consultation Parties, to satisfy the eligibility requirements in Section V.C., below.

A. Non-Binding Indications of Interest

Parties interested in participating in the Plan Sponsor Selection Process, other than the Initial Plan Sponsor, must submit an indication of interest to the Debtors by **October 23November 6, 2020 at 4:00 p.m. (prevailing Central Time)** in writing expressing their proposed terms for a Qualified Plan Sponsor Proposal (as defined below) (a "**Non-Binding Indication of Interest**"). Non-Binding Indications of Interest should be sent to Moelis, as set forth in Section I hereof.

A Non-Binding Indication of Interest should include:

1. the identity of the Prospective Plan Sponsor(s);

2. a preliminary indication of the amount and type of value for the purchase of the Assets or New Speedcast Equity Interests; *provided, however*, no preference shall be given between a Credit Bid or cash up to the amount of the Credit Bid;

3. a description of the expected operational role of the current Speedcast management team and employees following the Transaction, including, but not limited to, level of integration if appropriate;

43. a statement regarding the level of review and, if necessary, approval that the Plan Sponsor Proposal has received within each Prospective Plan Sponsor(s) organization and any remaining internal approvals required to consummate the Transaction;

~~5~~4. a list of any corporate, shareholder, regulatory or other approvals required to complete the Transaction and the timing to obtain such approvals~~.~~;

~~6. a detailed description of the intended sources of financing for the Transaction, including intended capital structure, amount of debt financing, equity contribution and any contingencies thereto, as well as an indication of the timing and steps required to secure such financing;~~

~~7~~5. a ~~detailed~~ description of the ~~specific~~ due diligence issues ~~that must be resolved and any additional information that will be required in order to submit a Qualified Plan Sponsor Proposal~~;

~~8~~6. a statement of any material conditions or assumptions made in reaching the preliminary indication of value for the New Speedcast Equity Interests; and

~~9. any other material terms to be included in a Plan Sponsor Proposal by such Prospective Plan Sponsor(s); and~~

~~10~~7. a list of advisors and contacts for the Prospective Plan Sponsor(s).

Submitting a Non-Binding Indication of Interest by the deadline set forth herein does not obligate the interested party to consummate a transaction, submit a Plan Sponsor Proposal or to participate further in the Plan Sponsor Selection Process. It also does not exempt such party from having to submit a Qualified Plan Sponsor Proposal by the Submission Deadline (as defined below) or comply with these Plan Sponsor Selection Procedures.

The Debtors shall provide copies of any Non-Binding Indications of Interest received by the Debtors as soon as practicable, but no later than the earlier of one (1) business day or three (3) calendar days after receipt thereof, to the Consultation Parties.

~~The Debtors will determine in their full discretion, but <in consultation with the Consultation Parties>, whether a Non-Binding Indication of Interest has met the requirements to allow a Prospective Plan Sponsor to progress to Phase 2 Diligence.~~

A Prospective Plan Sponsor who submits a Non-Binding Indication of Interest shall progress to Phase 2 Diligence.

B. Binding Submission Deadline

Any Prospective Plan Sponsor, other than the Initial Plan Sponsor, that desires to have a Plan Sponsor Proposal considered by the Debtors must submit an executed Plan Sponsor Proposal on or before **November ~~13~~25, 2020,** at **4:00 p.m. (prevailing Central Time)** (the "**Submission Deadline**") in writing to the Submission Parties.

The Debtors, after consulting with the Consultation Parties, may extend the Submission Deadline for any reason whatsoever, in their reasonable business judgment, for all Prospective Plan Sponsors.

The Debtors shall provide copies of any Plan Sponsor Proposal received by the Debtors as soon as practicable, but no later than the calendar day after receipt thereof, to the Consultation Parties.

C. Qualified Plan Sponsor Proposal Requirements

Other than as described in Section V.D., to qualify as a "**Qualified Plan Sponsor Proposal**," a Plan Sponsor Proposal must (i) be in writing; (ii) include a cover letter confirming that the Prospective Plan Sponsor has satisfied each of the requirements in this Section V.C., entitled "Qualified Plan Sponsor Proposal Requirements"; (iii) include the required information set forth below, presented in the order provided herein; and (iv) be determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, to satisfy the following requirements:

1. Identification of Plan Sponsor. A Qualified Plan Sponsor must fully disclose the legal identity of each person or entity directly participating in such Plan Sponsor Proposal (including any direct equity holders or other direct financing sources, if the Prospective Plan Sponsor is an entity formed for the purpose of submitting or consummating a Plan Sponsor Proposal) ~~and, in the case of any joint Plan Sponsor Proposal, the nature of any economic arrangements between or among such participants~~. A Qualified Plan Sponsor must also disclose any connections or agreements with the Debtors, any other known Prospective Plan Sponsor(s) or Qualified Plan Sponsor(s), and/or any current or former officer or director of the foregoing.

2. Transaction Structure. A Qualified Plan Sponsor Proposal must be structured as a Plan Sponsor Transaction~~,~~ and ~~<the Qualified Plan Sponsor Proposal >must include a description of the pro forma capital structure, including any debt or equity financing. The Prospective Plan Sponsor~~ must provide a reasonable basis for the Debtors, in consultation with the Consultation Parties, to make a determination of confirmability.

3. Higher or Better Terms. Each Qualified Plan Sponsor Proposal must be on terms that, in the Debtors' reasonable business judgment and in consultation with the Consultation Parties, are higher or better than the terms of the Initial Plan Sponsor Transaction including, for the avoidance of doubt, by offering aggregate consideration (the aggregate consideration offered by any Qualified Plan Sponsor Proposal, the "**Aggregate Consideration**") ~~for the New Speedcast Equity Interests~~ in the amount ~~of at least \$505,000,000~~sufficient to (x) pay all obligations under the

Debtors' debtor-in-possession credit facility, other administrative claims, and priority claims in full in cash on the effective date or closing date of the transaction and (y) provide an aggregate recovery to the Debtors' prepetition creditors that exceeds the aggregate recovery to such creditors under the Initial Plan Sponsor Transaction by at least $1,000,000 (the "**Minimum Bid**"). Except as described in section V.C.54 below, the Aggregate Consideration must be offered entirely in cashall Plan Sponsor Proposals must provide for an all-cash offer in at least such amount.

4. Cashless Value. Nothing herein is intended to waive or modify the DIP Agent's right to submit a credit bid under the DIP Credit Agreement and the DIP Order or the SFA Agent's right to submit a credit bid under the Syndicated Facility Agreement for the Assets (each, a "**Credit Bid**") in accordance with paragraph 31 of the Final DIP Order, and any such Credit Bid(s) shall be permitted; *provided, that*, the aggregate cash portion of the consideration in any such Plan Sponsor Proposal in connection with any Credit Bid of the Obligations under the Syndicated Facility Agreement must be no less than the amount necessary to repay the DIP Obligations in full and in cash.

4. Cash Consideration Requirement. Solely with respect to a Plan Sponsor Proposal made by any Prospective Plan Sponsor that includes Non-Cash Consideration pursuant to (and as defined in) section V.C.5 below, the cash portion of the Aggregate Consideration must be not less than $350,000,000 (the "**Required Base Cash Amount**") and shall be designated to fund (i) the repayment in full of all obligations under the DIP Credit Agreement, (ii) the Trade Claim Cash Amount (as defined in the Plan), (iii) the Litigation Trust Cash Amount (as defined in the Plan) and (iv) the other uses identified on the Schedule of Emergence Costs.

5. Cashless Value. As an accommodation, any Qualified Plan Sponsor entitled to direct the SFA Agent under the Syndicated Facility Agreement may offer as part of its Plan Sponsor Proposal, non-cash value in the form, and in an aggregate amount not to exceed the amount, of Allowed Syndicated Facility Claims (as defined in the Plan) (the amount of such Allowed Syndicated Facility Claims offered in such Plan Sponsor Proposal, the "**Non-Cash Consideration**"); *provided*, *that* (x) the cash portion of the Aggregate Consideration in any such Plan Sponsor Proposal must be no less than the Required Base Cash Amount, (y) such Plan Sponsor Proposal shall otherwise satisfy all requirements of a Qualified Plan Sponsor Proposal, and (z) concurrently with and as a condition precedent to consummation of the Transaction, in addition to any cash component of the Aggregate Consideration payable by such Qualified Plan Sponsor, such Qualified Plan Sponsor must pay (and the Plan requires that it pay) to each other SFA Lender (other than any SFA Lender that waives

~~its right to receive such amounts in writing delivered to the Debtors) cash in an amount equal such SFA Lender's Pro Rata Share of the Non-Cash Consideration (as defined below) (the amount of any such payment obligation to SFA Lenders pursuant to this clause (z), the "**Specified Cash Amount**"). "**Pro Rata Share of the Non-Cash Consideration**" means, with respect to any SFA Lender, a percentage equal to such SFA Lender's Pro Rata (as defined in the Plan) share of the Allowed Syndicated Facility Claims (as defined in the Plan), determined without regard to any Letters of Credit (as defined in the Plan) constituting Allowed Syndicated Facility Claims (as defined in the Plan).[6]~~

~~6~~5. Good-Faith Deposit. A Qualified Plan Sponsor Proposal must be accompanied by a good-faith deposit in the form of cash in an amount equal to ten percent (10%) of the ~~sum of (x) the~~ cash portion of the Aggregate Consideration ~~and (y) the Specified Cash Amount~~ (a "**Good-Faith Deposit**"). Good-Faith Deposits shall be deposited prior to the Submission Deadline with the Debtors. A Qualified Plan Sponsor's Good-Faith Deposit shall be held in escrow by the Debtors until no later than five (5) business days after the Plan Sponsor Selection Date (as defined below) (except for the Good-Faith Deposits of the Successful Plan Sponsor(s) and Back-Up Plan Sponsor(s) (if any)), and thereafter returned to the respective parties in accordance with the provisions of these Plan Sponsor Selection Procedures.

~~To the extent that a Plan Sponsor Proposal is modified at or prior to the Final Selection Process, the Prospective Plan Sponsor must adjust its Good-Faith Deposit so that it equals ten percent (10%) of the amounts described above as so modified in no event later than one (1) business day following the conclusion of the Final Selection Process.~~ For the avoidance of doubt, the Initial Plan Sponsor shall not be required to submit a Good-Faith Deposit in connection with the Initial Plan Sponsor Transaction or any update thereto.

~~7~~6. Conditions to Closing. A Qualified Plan Sponsor Proposal must identify with particularity each condition to closing.

~~8~~7. Contingencies. No Qualified Plan Sponsor Proposal may be conditioned on (i) obtaining financing, (ii) any internal approval, (iii) the outcome or

~~[6] As an illustrative example, if any Qualified Plan Sponsor includes Non-Cash Consideration of $155,000,000 in its Plan Sponsor Proposal, immediately upon consummation of the Transaction such Qualified Plan Sponsor would be required to pay $15,500,000 in cash to an SFA Lender with a Pro Rata Share of the Non-Cash Consideration equal to 10%.~~

review of unperformed due diligence, or (iv) regulatory contingences, except as provided under "Required Approvals."

98. Proposed Equity CommitmentTransaction Agreement. Each Qualified Plan Sponsor Proposal must include executed transaction documents (including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be (but have not yet been) prepared by the Debtors)), signed by an authorized representative of the Prospective Plan Sponsor, pursuant to which the Prospective Plan Sponsor commits to effectuate a Transactiontransaction (a "**Modified Transaction Agreement**") based on the Plan and the relevant exhibits and schedules thereto (as further supplemented or superseded by the documents included in the Plan Supplement (as defined in the Plan)). Each Modified Transaction Agreement (including all exhibits and schedules) must, to the extent based on the Initial Plan Sponsor Agreement, be accompanied by a redline marked against the Initial Plan Sponsor Agreement (including all exhibits and schedules) to show all changes requested by the Prospective Plan Sponsor (including those related to purchase price).

In addition, a Qualified Plan Sponsor Proposal must be accompanied by a proposed Confirmation Order accompanied by a redline marked to reflect differences between the form Confirmation Order provided to Prospective Plan Sponsors.[7]

109. Qualified Plan Sponsor Representatives. A Qualified Plan Sponsor must identify representatives that are authorized to appear and act on its behalf in connection with the proposed transaction.

1110. Employee and Labor Terms. A Qualified Plan Sponsor Proposal must include a statement on how the Prospective Plan Sponsor intends to treat the employment of any of the Debtors' employees following a closing of the Transaction(transaction(s), including with regards to compensation and benefits.

1211. Financial Information. A Qualified Plan Sponsor Proposal must include the following:

a. written evidence of a firm commitment for financing to consummate the proposed transaction (including to pay any Specified Cash Amount) (including to the extent necessary, through a Modified Outside Date (as defined below)), or other

[7] A proposed form of Confirmation Order will be made available to each Diligence Party and shall be subject to prior review and comment by the Consultation Parties.

evidence, as reasonably determined by the Debtors in consultation with the Consultation Parties, to allow the Debtors to determine the ability of the Prospective Plan Sponsor to consummate the transaction(s) contemplated by the Modified Transaction Agreement;

b. written evidence, as reasonably determined by the Debtors in consultation with the Consultation Parties, to allow the Debtors, to determine that the Prospective Plan Sponsor has, or can obtain, the financial wherewithal, operational capability, and corporate and regulatory authorization to consummate the ~~Transaction(s) (including to pay any Specified Cash Amount)~~transaction(s) contemplated by the Qualified Plan Sponsor's Modified Transaction Agreement in a timely manner.

~~13~~12. Representations and Warranties. A Qualified Plan Sponsor Proposal must include the following representations and warranties:

a. a statement that the Prospective Plan Sponsor has had an opportunity to conduct any and all due diligence regarding the Debtors prior to submitting its Plan Sponsor Proposal;

b. a statement that the Prospective Plan Sponsor has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Debtors in making its Plan Sponsor Proposal and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Prospective Plan Sponsor's Modified Transaction Agreement ultimately accepted and executed by the Debtors; and

c. a statement that the Prospective Plan Sponsor has not engaged in any collusion with respect to the submission of its Plan Sponsor Proposal.

~~14~~13. Required Approvals. A Qualified Plan Sponsor Proposal must include a statement identifying all required governmental and regulatory approvals and an explanation and/or evidence of the Prospective Plan Sponsor's plan and ability to obtain all governmental and regulatory approvals to operate or own Speedcast from and after the effective date of the plan of reorganization and the proposed timing for the Prospective Plan Sponsor to undertake the actions required to obtain, and in fact to obtain, such approvals. A Prospective Plan Sponsor further agrees that its legal counsel

will coordinate in good faith with the Debtors' and Consultation Parties' legal counsel to discuss and explain the Prospective Plan Sponsor's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Modified Transaction Agreement.

~~15~~14. Outside Date. A Qualified Plan Sponsor shall not propose an outside date for consummation later than March 15, 2021 unless such party commits in such Plan Sponsor Proposal to fund, on or prior to March 15, 2021, the repayment in full of all obligations under the DIP Credit Agreement and any additional amounts necessary for the Debtors' operations under chapter 11, chapter 11 costs and other regulatory and administrative costs to be incurred through the proposed closing date of the transaction (the "**Modified Outside Date**"), subject to terms and conditions acceptable to the Debtors (in consultation with the Consultation Parties) (which amounts, for the avoidance of doubt, shall be in addition to the Aggregate Consideration offered by such Qualified Plan Sponsor).

~~16~~15. Authorization. A Qualified Plan Sponsor must include evidence of corporate authorization and approval from the Prospective Plan Sponsor's investment committee or board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Plan Sponsor Proposal, participation in the ~~Final Selection Process~~Auction, and closing of the transactions contemplated by the Prospective Plan Sponsor's Modified Transaction Agreement in accordance with the terms of the Plan Sponsor Proposal and these Plan Sponsor Selection Procedures.

~~17~~16. Other Requirements. A Qualified Plan Sponsor Proposal shall:

a. expressly state that the Prospective Plan Sponsor agrees to serve as a back-up plan sponsor (a "**Back-Up Plan Sponsor**") until the Back-Up Termination Date (as defined below) if its Qualified Plan Sponsor Proposal is selected as the next highest or next best Plan Sponsor Proposal after the Successful Plan Sponsor Proposal (as defined herein);

b. state that the Plan Sponsor Proposal is formal, binding, and unconditional (except as set forth in an applicable purchase agreement ultimately executed by the Debtors); is not subject to any further due diligence; and is irrevocable until the ~~closing of the Transaction with~~60th day following the Plan Sponsor Selection Date (such date, the "**Back-Up Termination Date**");

c. expressly state and acknowledge that the Prospective Plan Sponsor shall not be entitled to any break-up fee, expense reimbursement,

or other protections in connection with the submission of a Plan Sponsor Proposal; *provided, however*, that nothing in these Plan Sponsor Selection Procedures shall limit, alter or impair the rights of any party to payment and reimbursement of expenses that are set forth in the DIP Order (as defined in the Plan), and parties entitled to payment or reimbursement of expenses under the DIP Order shall be entitled to payment or reimbursement of expenses incurred in connection with these Plan Sponsor Selection Procedures and the matters contemplated hereby subject to the terms of, including the caps of such fees set forth in, such DIP Order;

d. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with the submission of a Plan Sponsor Proposal and/or participating in the Plan Sponsor Selection Process;

e. not contain any unsatisfied financing contingencies of any kind;

f. include a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Prospective Plan Sponsor's operations (if any) reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;

g. be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Plan Sponsor, within a time frame acceptable to the Debtors;

h. include contact information for the specific person(s) the Debtors should contact in the event they have questions about the Plan Sponsor Proposal; and

i. include a covenant to comply with the terms of the Plan Sponsor Selection Procedures and the Plan Procedures Order.

D. Qualified Plan Sponsors

A Plan Sponsor Proposal that is determined by the Debtors, after consultation with the Consultation Parties, to meet the requirements set forth in the Section titled "Qualified Plan Sponsor Proposal Requirements" above will be considered a "**Qualified Plan Sponsor Proposal**" and any Prospective Plan Sponsor that submits a Qualified Plan Sponsor Proposal will be considered a "**Qualified Plan Sponsor**."

The Debtors may, in their sole discretion, but after consultation with the Consultation Parties, amend or waive the conditions precedent to being a Qualified Plan Sponsor at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

For the avoidance of doubt and notwithstanding the foregoing, the Initial Plan Sponsor Transaction shall automatically be deemed a Qualified Plan Sponsor Proposal and the Initial Plan Sponsor shall automatically be deemed a Qualified Plan Sponsor, in each case, without any further action on the part of the Initial Plan Sponsor or the Debtors.

VI. Plan Sponsor Proposal Review Process

The Debtors will evaluate all timely Plan Sponsor Proposals, and may, based upon their evaluation of the content of each Plan Sponsor Proposal, engage in negotiations with Prospective Plan Sponsors that submitted Plan Sponsor Proposals, as the Debtors deem appropriate, in their reasonable business judgment, in consultation with the Consultation Parties, and in a manner consistent with their fiduciary duties and applicable law. In evaluating the Plan Sponsor Proposals, the Debtors may take into consideration, among other factors, the following non-binding factors (the "**Plan Sponsor Proposal Factors**"):

1. the amount of the purchase price set forth in the Plan Sponsor Proposal;

2. the form of consideration (*provided, however*, no preference shall be given between a Credit Bid or cash bid up to the amount of the Credit Bid);

3. the Assets included or excluded from the Plan Sponsor Proposal;

34. the number, type, and nature of any changes to the form Plan Sponsor Agreement, as applicable, requested by each Prospective Plan Sponsor (and the extent to which such modifications are likely to delay closing of the Transaction and the cost to the Debtors of such modifications or delay);

45. the value and net economic benefit to the Debtors' estates (including reduction or forgiveness of debt);

56. the likelihood of the Prospective Plan Sponsor being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof;

6. ~~the confirmability of the plan proposed in the Modified Transaction Agreement;~~

7. ~~the proposed governance terms for the board of directors or equivalent governing body of New Speedcast Parent (as defined in the Plan);~~

87. the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals; and

98. the impact on employees and employee claims against the Debtors.

The Debtors, in consultation with the Consultation Parties, will make a determination regarding which Plan Sponsor Proposal(s) qualify as a Qualified Plan Sponsor Proposal(s), and will notify Prospective Plan Sponsor(s) whether they have been selected as a Qualified Plan Sponsor by no later than **November ~~15~~27, 2020, at 8:00 p.m. (prevailing Central Time)** (the "**Qualified Plan Sponsor Notice Date**").

The Debtors, in consultation with the Consultation Parties, reserve the right to work with any Prospective Plan Sponsor in advance of the Qualified Plan Sponsor Notice Date to cure any deficiencies in a Plan Sponsor Proposal that is not initially deemed a Qualified Plan Sponsor Proposal. Without the prior written consent of the Debtors in consultation with the Consultation Parties, a Qualified Plan Sponsor may not modify, amend, or withdraw its Qualified Plan Sponsor Proposal, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Qualified Plan Sponsor Proposal.

The Debtors, in consultation with the Consultation Parties, shall determine the highest or otherwise best Qualified Plan Sponsor Proposal (each, the "**Baseline Plan Sponsor Proposal**" and, such plan sponsor or group of plan sponsors, a "**Baseline Plan Sponsor**") as of the Submission Deadline, which may be the Initial Plan Sponsor Transaction; *provided, however,* the determination of the Baseline Plan Sponsor shall be in the Debtors' reasonable discretion, in consultation with the Consultation Parties, based on the Plan Sponsor Proposal Factors and the Plan Sponsor Proposal with the highest face value will not necessarily be the Baseline Plan Sponsor Proposal. No director, officer, or other insider of the Debtors that is a Prospective Plan Sponsor or is participating or investing in a proposed Plan Sponsor Transaction shall participate in the Debtors' evaluation of Plan Sponsor Proposals or Qualified Plan Sponsor Proposals or any other matters described in this Section VI.

The Debtors shall provide copies of each Qualified Plan Sponsor Proposal no later than the Qualified Plan Sponsor Notice Date to the Consultation Parties, the Initial Plan Sponsor and each other Qualified Plan Sponsor. In addition, if the Debtors determine that a Qualified Plan Sponsor Proposal other than the Initial Plan Sponsor Transaction is the Baseline Plan Sponsor Proposal, the Debtors shall notify the Initial Plan Sponsor and each other Qualified Plan Sponsor of the identify of such Baseline Plan Sponsor no later than the Qualified Plan Sponsor Notice Date.

VII. Plan Sponsor Selection

A. Auction

If two or more Qualified Plan Sponsor Proposals (including the Initial Plan Sponsor Agreement and the Baseline Plan Sponsor Proposal, if different) are received by the Submission Deadline, following consultation with the Consultation Parties, the Debtors shall conduct a final selection process ~~for Plan Sponsor~~ (the "~~**Final Selection Process**~~**Auction**") at the offices of Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153 (with reasonable accommodations requested due to the ongoing pandemic) on **November ~~17~~30, 2020, at 10:00 a.m. (prevailing Central Time)** (the "**Final Selection Date**"), or at such other date, time and location (including virtual location and with other accommodations necessary to mitigate any COVID-19 related risks or concerns) as the Debtors, as determined in their reasonable business judgment, shall notify all Qualified Plan Sponsors (including the Initial Plan Sponsor and the Baseline Plan Sponsor), and all other parties entitled to attend the ~~Final Selection Process~~Auction. If held, the proceedings of the ~~Final Selection Process~~Auction will be transcribed, and, if the Debtors deem appropriate, video recorded.

The Auction shall be governed by the following procedures:

1. Baseline Plan Sponsor Proposal. Bidding shall commence at the amount of the Baseline Plan Sponsor Proposal.

2. Overbid. An "**Overbid**" is any Qualified Plan Sponsor Proposal made at the Auction, in accordance with the requirements set forth herein, subsequent to the Debtors' announcement of the Baseline Plan Sponsor Proposal. The initial Overbid, if any, shall provide for total consideration to the Debtors, of an aggregate value that exceeds the value of the consideration under the Baseline Plan Sponsor Proposal by an incremental amount that is not less than the $1,000,000 (the "**Minimum Overbid**") (which Minimum Overbid may consist of a Credit Bid to the extent set forth in Section V.C.4 of >these Plan Sponsor Selection Procedures<), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. Additional consideration in excess of the amount set forth in each Qualified Plan Sponsor's respective initial Qualified Plan Sponsor Proposal may include cash, a Credit Bid, and/or non-cash consideration in the form of assumed liabilities; *provided, however*, that the value for (i) such non-cash consideration for assumed liabilities shall be determined by the Debtors in their reasonable business judgment, >in consultation with the Consultation Parties <and (ii) the value of a Credit Bid shall be valued on a dollar-for-dollar basis.

3. Highest or Otherwise Best Plan Sponsor Selection Proposal. After the first round of bidding and between each subsequent round of bidding, the

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Debtors shall announce >the Qualified Plan Sponsor Proposal <that they believe, after consultation with Consultation Parties not connected to any Bid, to be the highest or otherwise best offer (each such Qualified Plan Sponsor Proposal, a "**Leading Plan Sponsor Proposal**"). Each round of bidding will conclude after each participating Qualified Plan Sponsor has had the opportunity to submit a subsequent Qualified Plan Sponsor Proposal with full knowledge of the Leading Plan Sponsor Proposal, including how the Debtors value such Qualified Plan Sponsor Proposal in light of the Plan Sponsor Proposal Factors.

The Auction may include open bidding in the presence of all other Qualified Plan Sponsors. All Qualified Plan Sponsors shall have the right to submit additional Plan Sponsor Proposals at the Auction to improve their Plan Sponsor Proposals. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Plan Sponsors participating in the Auction.

>The Debtors shall have the right <to determine>, in their reasonable business judgment, and in consultation with Consultation Parties <not connected to any Plan Sponsor Proposal, which Qualified >Plan Sponsor Proposal is the highest or otherwise best <Qualified Plan Sponsor Proposal >and reject, at any time, any <Plan Sponsor Proposal that is inconsistent with >these Plan Sponsor Selection Procedures<.

The Debtors shall have the right to reschedule or extend the Final Selection Date, if in each case, the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that such action would be in the best interests of their estates. The Debtors shall provide reasonable notice to all Qualified Plan Sponsors of such procedure and ability to participate virtually (and with other accommodations necessary to mitigate any COVID-19 related risks or concerns), as applicable.

~~<The Debtors shall have the right><, in their reasonable business judgment, and in consultation with Consultation Parties>, to determine which <Plan Sponsor Proposal is the highest or otherwise best >Plan Sponsor Proposal, <and reject, at any time, any >Qualified Plan Sponsor Proposal (other than the Initial Plan Sponsor Transaction) that the Debtors, in consultation with the Consultation Parties, deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, <these Plan Sponsor Selection Procedures>, any order of the Bankruptcy Court, or the best interests of the Debtors and their estates.~~

~~A~~B. Final Selection Process

1. Successful Plan Sponsor Proposal. On the Final Selection Date, the Debtors shall (i) determine, consistent with these Plan Sponsor Selection Procedures and in consultation with the Consultation Parties, which Qualified Plan Sponsor Proposal constitutes the highest or best Qualified Plan Sponsor Proposal (the "**Successful Plan Sponsor Proposal**"); and

(ii) notify all Qualified Plan Sponsors of the identity of the Plan Sponsor that submitted the Successful Plan Sponsor Proposal (the "**Plan Sponsor**") and the amount of the Aggregate Consideration, Non-Cash Consideration (if any) and other material terms of the Successful Plan Sponsor Proposal.

The Successful Plan Sponsor(s) shall, within 48 hours after being notified that it is the Plan Sponsor, confirm its Successful Plan Sponsor Proposal in accordance with the Phase 3 Diligence provisions herein, and submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Plan Sponsor Proposal. A Successful Plan Sponsor Proposal may not be assigned to any party without the consent of the Debtors, in consultation with the Consultation Parties.

2. Back-Up Plan Sponsor Proposal. On the Final Selection Date, the Debtors shall (i) determine, consistent with these Plan Sponsor Selection Procedures and in consultation with the Consultation Parties, which Qualified Plan Sponsor Proposal is the next highest or next best Qualified Plan Sponsor Proposal after any Successful Plan Sponsor Proposal (the "**Back-Up Plan Sponsor Proposal**"); and (ii) notify all Qualified Plan Sponsors of the identity of the Back-Up Plan Sponsor and the amount of the Aggregate Consideration, Non-Cash Consideration (if any) and other material terms of the Back-Up Plan Sponsor Proposal. The Back-Up Plan Sponsor Proposal shall remain open and irrevocable until the Back-Up Termination Date.

If the Transaction(s) with a Plan Sponsor is terminated, the Back-Up Plan Sponsor shall, upon such termination, automatically be deemed the new Plan Sponsor and shall be obligated to consummate the Back-Up Plan Sponsor Proposal as if it were the Successful Plan Sponsor; *provided*, that. For the avoidance of doubt, the Initial Plan Sponsor shall not be so obligated to act as the Back-Up Plan Sponsor with respect to the Initial Plan Sponsor Transaction, but shall be afforded the opportunity to elect, within 5 Business Days of notice of such termination delivered to it by the Debtors, to opt to act in such capacity; *provided*, *however*, thatProposal and any subsequent Plan Sponsor Proposal proposed by the Initial Plan Sponsor to the Debtors in connection with the Final Selection ProcessAuction may be identified as the Back-Up Plan Sponsor Proposal by the Debtors in accordance with the terms hereof and shall remain open and irrevocable until the Back-Up Termination Date.

The Debtors shall use commercially reasonable efforts to, by **November 20December 3, 2020 at 4:00 p.m. (prevailing Central Time)** (the "**Plan Sponsor Selection Date**"), file with the Bankruptcy Court, serve on the Transaction Notice Parties, and cause to be published on the

Debtors' claims and noticing agent's website a notice, which shall identify the Plan Sponsor and Back-Up Plan Sponsor, if any.

~~If the Successful Plan Sponsor Proposal is not the Initial Plan Sponsor Transaction, then for purposes of the Plan, the Allowed SFA Secured Claim Amount (as defined in the Plan) shall be deemed to be an amount equal to (A) the Aggregate Consideration offered in such Successful Plan Sponsor Proposal, *minus* (B) the Required Base Cash Amount. Promptly following the Plan Sponsor Selection Date, the Debtors shall file a supplement to the Plan identifying the updated Allowed SFA Secured Claim Amount (as defined in the Plan) and the amount of the Non-Cash Consideration (if any) in each case as determined pursuant to this Plan Sponsor Selection Process.~~

~~The Debtors in the exercise of their fiduciary duties and for the purpose of maximizing value for their estates from the Plan Sponsor Selection Process, may modify the Plan Sponsor Selection Procedures and implement additional procedural rules for determining the Successful Plan Sponsor, in each case in consultation with the Consultation Parties.~~

Except as set forth in the Plan Sponsor Agreement, the Debtors specifically reserve the right to seek all available damages, excluding any special, indirect, consequential, or punitive damages, but including, without limitation, forfeiture of the Good-Faith Deposit or specific performance, from any defaulting Plan Sponsor (including any Back-Up Plan Sponsor designated as a Plan Sponsor) in accordance with the terms of the Plan Sponsor Selection Procedures.

VIII. Disposition of Good-Faith Deposits

A. Prospective Plan Sponsors

Within five (5) business days after the Qualified Plan Sponsor Notice Date, the Debtors shall return to each Prospective Plan Sponsor that was determined by the Debtors not to be a Qualified Plan Sponsor, such Prospective Plan Sponsor's Good-Faith Deposit (without any interest accrued thereon). Upon the authorized return of such Prospective Plan Sponsor's Good-Faith Deposit, the Plan Sponsor Proposal of such Prospective Plan Sponsor shall be deemed revoked and no longer enforceable.

B. Qualified Plan Sponsors

1. Forfeiture of Good-Faith Deposit. The Good-Faith Deposit of a Qualified Plan Sponsor will be forfeited to the Debtors if (i) the Qualified Plan Sponsor attempts to modify, amend, or withdraw its Qualified Plan Sponsor Proposal, except with the prior written consent of the Debtors, in consultation with the Consultation Parties, or as otherwise permitted by these Plan Sponsor Selection Procedures; or (ii) the Qualified Plan Sponsor is selected as the Plan Sponsor and fails to enter into the required definitive documentation or to consummate a Transaction(s), in each case in accordance with and by the deadlines set forth in these Plan Sponsor Selection Procedures and the terms of the applicable transaction

documents with respect to the Successful Plan Sponsor Proposal. The Debtors shall release the Good-Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors two (2) business days after the execution by an authorized officer of the Debtors of a written notice stating that the applicable Good-Faith Deposit shall be forfeited in accordance with this section (b)(1).

2. Return of Good-Faith Deposit. With the exception of the Good-Faith Deposits of the Plan Sponsor and Back-Up Plan Sponsor, the Debtors shall return to each other Qualified Plan Sponsor any Good-Faith Deposit (without any interest accrued thereon) made by such Qualified Plan Sponsor within five (5) business days after the Plan Sponsor Selection Date.

3. Back-Up Plan Sponsor. The Debtors shall return the Back-Up Plan Sponsor's Good-Faith Deposit (without any interest accrued thereon), within five (5) business days after the occurrence of the Back-Up Termination Date.

4. Plan Sponsor. The Good-Faith Deposit of the Plan Sponsor (if any) shall be applied against the purchase price of the Successful Plan Sponsor Proposal on the effective date of the plan of reorganization.

IX. Confirmation Hearing

At a hearing before the Bankruptcy Court (the "**Confirmation Hearing**"), the Debtors will seek (i) an order confirming the chapter 11 plan contemplated by such Successful Plan Sponsor Proposal (a "**Confirmation Order**") or (ii) if such chapter 11 plan is not confirmed, approval of the transaction pursuant to a section 363 sale.

The Debtors may, in their reasonable business judgment, after consulting with the Successful Plan Sponsor and the Consultation Parties, adjourn or reschedule any Confirmation Hearing, including by (i) an announcement of such adjournment at the applicable Confirmation Hearing, or (ii) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the applicable Confirmation Hearing.

Any objections to (i) the conduct of the Plan Sponsor Selection Process; (ii) the confirmation of a chapter 11 plan implementing the Initial Plan Sponsor Transaction or the Plan Sponsor Proposal proposed by any other Qualified Plan Sponsor, and/or (iii) entry of the Confirmation Order (any objection of the nature described in the preceding clauses (i) through (iii), an "**Objection**") (a) be in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "**Complex Case Procedures**"); (c) state, with specificity, the legal and factual bases thereof; (d) include any appropriate documentation in support thereof; and (e) be filed with the Bankruptcy Court and served on the Objection Recipients by the applicable objection deadline, as provided herein and in accordance with the Plan Procedures Order.

All Objections not otherwise resolved by the parties shall be heard at the Confirmation Hearing. Any party that fails to file with the Bankruptcy Court and serve on the Objection Recipients an Objection by the applicable objection deadline set forth herein or in the Plan Procedures Order may be forever barred from asserting, at the Confirmation Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the Transaction(s) contemplated by the agreement with a Successful Plan Sponsor, including the confirmation of a chapter 11 plan implementing a Transaction.

X. Consent to Jurisdiction and Authority as Condition to Submission of a Plan Sponsor Proposal

All Prospective Plan Sponsors shall be deemed to have (i) consented to the jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, ~~in any way~~directly related to these Plan Sponsor Selection Procedures~~, or the construction or enforcement of any agreement or any other document relating to a Transaction(s)~~; (ii) waived any right to a jury trial in connection with any disputes directly relating to these Plan Sponsor Selection Procedures~~, or the construction or enforcement of any agreement or any other document relating to a Transaction(s)~~; and (iii) consented to the entry of a final order or judgment ~~in any way~~directly related to these Plan Sponsor Selection Procedures~~, or the construction or enforcement of any agreement or any other document relating to a Transaction(s)~~ if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

XI. Reservation of Rights

Except as otherwise provided in the Plan, the Plan Sponsor Agreement, these Plan Sponsor Selection Procedures, ~~or~~ the Plan Procedures Order, or the DIP Order, the Debtors further reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to: (i) determine which Prospective Plan Sponsors are Qualified Plan Sponsors; (ii) determine which Plan Sponsor Proposals are Qualified Plan Sponsor Proposals; (iii) determine which Qualified Plan Sponsor Proposal is the highest or otherwise best Plan Sponsor Proposal and which is the next highest or otherwise best Plan Sponsor Proposal; (iv) reject at any time prior to entry of the Confirmation Order any Plan Sponsor Proposal (other than the Initial Plan Sponsor Transaction) that is ~~(a) inadequate or insufficient, (b)~~ not in conformity with the requirements of these Plan Sponsor Selection Procedures or the requirements of the Bankruptcy Code~~ or (c) contrary to the best interests of the Debtors and their estates~~; (v) waive terms and conditions set forth herein with respect to all Prospective Plan Sponsors; (vi) impose additional terms and conditions with respect to all Prospective Plan Sponsors, *provided* that the impact on each Prospective Plan Sponsor is proportional and not material or adverse to any Prospective Plan Sponsor; (vii) extend the deadlines set forth herein; (viii) continue or cancel the Confirmation Hearing in open court, or by filing a notice on the docket of the Debtors' chapter 11 cases, without further notice; and (ix) include any other party as an attendee at the ~~Final Selection Process; and (x) modify the Plan Sponsor Selection Procedures and implement additional procedural rules for conducting the Final Selection Process, *provided* that such rules~~

are not inconsistent in any material respect with the Bankruptcy Code, the Plan Procedures Order, or any other order of the Bankruptcy Court and do not materially and adversely impact any Prospective Plan Sponsor or Qualified Plan Sponsor disproportionatelyAuction. **Nothing herein shall obligate the Debtors to consummate or pursue any transaction with a Qualified Plan Sponsor.**

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 10/16/2020 3:21:50 PM	
Style name: #Skadden (Strikethrough, Double Score, No Moves)	
Intelligent Table Comparison: Active	
Original DMS: dm://CHISR01A/1079979/1	
Description: SCI-Plan Sponsor Selection Procedures	
Modified DMS: dm://CHISR01A/1079979/1D	
Description: SCI-Plan Sponsor Selection Procedures	
Changes:	
Add	115
~~Delete~~	117
~~Move From~~	9
Move To	9
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	250