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

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

**CARNIVAL CORPORATION'S REPLY TO THE REORGANIZED DEBTORS' OBJECTION TO MOTION FOR AN ORDER (I) RE-OPENING THE CHAPTER 11 CASES OF MARITIME COMMUNICATION SERVICES, INC. AND SPEEDCAST INT'L LTD. AND (II) INTERPRETING AND ENFORCING THE CHAPTER 11 PLAN**

Carnival Corporation ("Carnival")[2] hereby files this reply to the *Reorganized Debtors' Objection to Carnival Corporation's Motion for an Order (I) Re-Opening the Chapter 11 Cases of Maritime Communication Services, Inc. and Speedcast Int'l Ltd. and (II) Interpreting and Enforcing the Chapter 11 Plan* [Docket No. 2113] (the "Objection") filed by SpeedCast International Limited and Maritime Communication Services, Inc. (together, the "Objecting Debtors") and respectfully states as follows:

1. Months after completing its debt restructuring, Maritime announced for the first time that it held tens of millions of dollars in claims that, by its own account, were kept hidden from this Court and its creditors throughout its chapter 11 case. This is not how bankruptcy works.

[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.

[2] Defined terms used but not defined herein have the meanings ascribed to them in *Carnival Corporation's Motion for an Order (I) Re-Opening the Chapter 11 Cases of Maritime Communication Services, Inc. and SpeedCast Int'l Ltd. and (II) Interpreting and Enforcing the Chapter 11 Plan* [Docket No. 2092] (the "Motion").





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The bankruptcy disclosure regime ensures that a confirmed plan fully and fairly reflects a debtor's financial position. If a debtor withholds known, material assets during solicitation, voting, and confirmation, and is later permitted to monetize those assets post-confirmation, the chapter 11 plan is robbed of its legitimacy.

2. Carnival raises two bankruptcy law arguments to address this misuse of the bankruptcy process: the Deficiency Claims are barred for lack of standing due to failed retention under section 1123 of the Bankruptcy Code, and the Deficiency Claims are barred by judicial estoppel due to failed disclosure in the case. The Objection responds to a strawman: that this is a contractual dispute governed by the payment terms of the MSA and a subsequent agreement with Carnival signed a year after confirmation. But Maritime's chapter 11 obligations are not determined by the MSA, and this is not a contractual dispute. It is a bankruptcy dispute over section 1123 and the extent of disclosure requirements in chapter 11.

3. As to section 1123, the Objection asks this Court to endorse an end-run around the Bankruptcy Code. Under their theory, a debtor need only list every conceivable type of claim it might someday hold—without identifying any actual, known claims held at the time of plan filing. If adopted, this rule would allow future debtors to cut and paste the exhaustive catalogue of hypothetical claims set forth in Maritime's Plan and thereby evade their functional notice obligations. This elevation of form over substance is not permitted. Maritime's retention language fails for the same reason that the phrase "any and all claims" failed in *United Operating*: not because it captures too little, but because it captures too much.

4. As to judicial estoppel, the Objection obscures the analysis with red herrings about the provability of Maritime's intent and the assertion that this Court did not rely on the Debtors' Plan documents when confirming that Plan. Given the Objecting Debtors' concession that they

disclosed the Deficiency Claims nowhere on the chapter 11 docket, the judicial estoppel inquiry reduces to a single question: whether Maritime was required to disclose them. The case law is overwhelmingly clear that it was. Maritime's excuses for its non-disclosure collapse under the weight of Fifth Circuit authority endorsing the cardinal rule of bankruptcy: disclose, disclose, disclose.

## ARGUMENT

### A. Maritime Did Not Retain the Deficiency Claims under Section 1123 and Lacks Standing to Bring Them Now.

#### *1. Maritime's Quoted Retention Language Fails Section 1123 Because it Gives No Notice of and Indicates No Intent to Sue on the Then-Known Deficiency Claims.*

5. To demonstrate retention, the Objecting Debtors point the Court to heavily elided verbiage cherrypicked from their 15-page retention provision. Obj. ¶¶ 26–30. To be clear, Carnival put this language before the Court in its Motion. Mot. ¶¶ 53–54. That Maritime must elide the vast majority of its retention provision to show the Court exactly where it purported to retain the Deficiency Claims is precisely the point. By listing every conceivable type of claim, real or imagined, that the Reorganized Debtors might someday claim to have held, Maritime gave no notice of what claims it actually held and intended to pursue.

6. Instead, Maritime attempted to reserve any "Cause of Action"—defined to include all potential claims "of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law." Schedule of Retained Causes of Action, Exhibit 2 to the *Supplement to Plan Supplement in Connection with Second Amended Joint Chapter 11*

*Plan of Speedcast International Limited and its Debtor Affiliates* [Docket No. 1144] at 1 n.2. It went on to list of every possible type of cause of action, followed by a second reservation of "all Causes of Action" against "any [e]ntity that owed any legal duty, no matter how arising, to any Debtor." *Id*. at 14. Tucked into that list is the language Maritime now relies on: "all Causes of Action based in whole or in part upon any and all contracts and leases to which any of the Debtors or Reorganized Debtors is a party or pursuant to which any of the Debtors or Reorganized Debtors has any rights whatsoever." *Id*. at 12.

7. This retention provision is a verbose reboot of the "any and all claims" retention in *Dynasty Oil and Gas, LLC v. Citizens Bank (In re United Operating, LLC)*, 540 F.3d 351, 356 (5th Cir. 2008) (hereinafter, "*United Operating*"). If a debtor cannot retain "any and all claims" with those words exactly, then it cannot retain any and all claims by iterating on that expression across fifteen pages.

8. Both blanket retention provisions fail for the same reason: lack of notice. By reserving everything with language blanketing all conceivable hypothetical claims, Maritime did not "put its creditors on notice of any claim it wishes to pursue after confirmation." *Id*. at 355. It did not indicate intent in a way that enabled creditors "to properly calculate their payout under the proposed plan." *Lovett v. Cardinal Health, Inc. (In re Diabetes Am., Inc.)*, 485 B.R. 340, 355 (Bankr. S.D. Tex. 2012) (hereinafter, "*Diabetes*"). A creditor scrutinizing Maritime's disclosures—especially given that Maritime had never disclosed the existence of the Deficiency Claims in schedules or MORs—would have no way of knowing that the debtor was retaining tens of millions in contract claims for its own later benefit. A debtor cannot retain known claims by hiding them inside a list of hypothetical ones.

*2. Cases Rejecting Failed Retention Arguments Support Rather than Undermine Carnival's Position.*

9. In support of its Objection, Maritime cites Fifth Circuit case law rejecting failed retention arguments. But Fifth Circuit cases finding retention feature claims retained *for the benefit of creditors*, not claims hidden from creditors to the debtor's sole advantage. Specifically:

- *Spicer v. Laguna Madre Oil & Gas II, LLC (In re Tex. Wyo. Drilling, Inc.)*, 422 B.R. 612 (Bankr. N.D. Tex. 2010) (hereinafter, "*Texas Wyoming Drilling I*") – the plan retained, ***for pursuit by chapter 7 trustee***, avoidance actions to recover dividends under plan language referencing avoidance actions, estimated dollars to be recovered, and factual bases for the retained claims;

- *Compton v. Anderson (In re MPF Holdings US LLC)*, 701 F.3d 449 (5th Cir. 2012) – the plan retained, ***for pursuit by litigation trustee***, avoidance actions under plan language identifying defendants and bases for recovery.

- *Diabetes* – the plan retained, ***for pursuit by plan agent for benefit of creditors***, fraudulent conveyance claims under plan's categorical retention of "fraudulent transfer" claims.

- *Lauter v. Citgo Petroleum Corp.*, No. CV H-17-2028, 2018 WL 801601 (S.D. Tex. Feb. 8, 2018) – the plan retained, ***for pursuit by liquidating trustee***, breach of contract claims under retention provision listing "breach of contracts" as one of three categories of retained claims and identified defendant by name;

- *Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147 (Bankr. W.D. Tex. 2015) – the plan retained, ***for recovery by liquidating trust***, breach of contract claim against former director/officer under retention provision naming defendant insider;

- *Brickley for CryptoMetrics, Inc. Creditors' Tr. v. ScanTech Identification Beams Sys. LLC*, 566 B.R. 815 (W.D. Tex. 2017) – the plan retained, ***for benefit of unsecured creditors***, RICO claims predicated upon expressly retained claims against same defendant for fraud and unfair trade practices;

- *In re Odin Demolition & Asset Recovery, LLC*, 544 B.R. 615 (Bankr. S.D. Tex. 2016) (hereinafter, "*Odin*") – (in dicta) if the court proceeded to an 1123 analysis, it would have found that the plan effectively retained claims ***for benefit of creditors holding 1st and 2nd liens on the proceeds***

10. In all of these cases, the proceeds of retained claims ultimately belonged to creditors, so the debtors had no incentive to hide those claims for their own post-confirmation use. *Blue Water Endeavors, LLC v. AC & Sons, Inc. (In re Blue Water Endeavors, LLC)*, No. 08-10466, 2011 WL 52525, at *4 (Bankr. E.D. Tex. Jan. 6, 2011) ("The concern inherent in the specificity requirement for retention is that a debtor may manipulate the plan process in order to benefit itself or blind-side one of the parties to its bankruptcy." (citation modified)).

11. The notice concerns of *United Operating* are vitiated in these cases: there is little need to give notice of potential claims to creditors when the creditors are receiving the claims. *Texas Wyoming Drilling I*, 422 B.R. at 625 n.11 ("Where . . . lawsuits [are] pursued post-confirmation . . . for the benefit of . . . creditors, the possibility that they will provide an unanticipated dividend to those who passed on the plan of reorganization would seem to contradict [*United Operating*'s] rationale as a basis for finding a want of standing.").

12. Finally, as this Court has recognized, "in cases where . . . the funds recovered by the postconfirmation actions will be distributed to prepetition creditors (as opposed to management or to equity holders in control of management)," there is a "policy interest working in the opposite direction" of the need for fulsome disclosure. *Diabetes*, 485 B.R. at 354. In short, courts are loathe to punish creditors for the misdeeds of a debtor who failed to schedule its claims. *Id.* at 354 ("It is a valid policy goal to avoid (if possible) reading into § 1123(b)(3) additional requirements likely to punish innocent creditors instead of plan proponents (who are in fact the ones responsible for any alleged failure to include sufficient information)."). Carnival does not ask as much. It asks this Court only to hold a debtor responsible for its own failed retention.

**B. The Deficiency Claims Are Barred by Judicial Estoppel.**

*1. In Light of Maritime's Concessions, the Judicial Estoppel Analysis Needs Only to Ask Whether Maritime Was Required to Disclose the Deficiency Claims.*

13. The Objection contains several concessions that narrow the scope of this Court's judicial estoppel analysis.

14. Judicial estoppel bars a debtor from pursuing undisclosed claims post-confirmation because the failure to disclose *when required to disclose* "is tantamount to a representation that no such claim exist[s]." *See Superior Crewboats Inc. v. Primary P & I Underwriters (In re Superior Crewboats)*, 374 F.3d 330, 335 (5th Cir. 2004); *Allen v. C & H Distribs., L.L.C.*, 813 F.3d 566, 572 (5th Cir. 2015) (same); *U.S. ex rel. Long v. GSDMIdea City, L.L.C.*, 798 F.3d 265, 272 n.4 (5th Cir. 2015) (same); *In re Walker*, 323 B.R. 188, 195 (Bankr. S.D. Tex. 2005) (same). So, for judicial estoppel to apply, this Court needs to find two things: that Maritime had to disclose, and that Maritime did not disclose.

15. The Objecting Debtors concede that Maritime did not disclose the Deficiency Claims at any time during their chapter 11 cases. Obj. ¶¶ 30 (not disclosed in schedule of retained causes of action), 36 (not disclosed in schedules or SOFAs), 37 (not disclosed in MORs or DIP budgets). As a result, this Court's estoppel analysis turns on one remaining dispute: whether Maritime was required to disclose.

16. The Objecting Debtors attempt to confound this simple analysis by contending that (i) the Court did not rely on their representations, and (ii) their omissions were inadvertent. The case law on judicial estoppel for failure to disclose a claim easily dispenses with these two distractions. First, confirmation of the plan constitutes reliance. *See Lyles v. Brennan*, No. 1:15-CV-354, 2019 WL 4777320, at *5 (E.D. Tenn. Sept. 30, 2019) ("A bankruptcy court's confirmation of a plan constitutes an adoption of the party's position for judicial estoppel purposes.");

*USinternetnetworking, Inc. v. Gen. Growth Mgmt., Inc. (In re USinternetnetworking, Inc.)*, 310 B.R. 274, 284 (Bankr. D. Md. 2004) (hereinafter, "*USinternetnetworking*") ("While it may be conceptually impossible for the court to state that it relied affirmatively on what it did not know and how it would have acted differently had it known what was not disclosed," judicial estoppel does not rest on "the result of such retrospective speculation"). Second, when it comes to a debtor's failure to disclose an asset in chapter 11, all that is needed to satisfy intentionality is that the debtor knew of the claims (which Maritime concedes) and is the beneficiary of the claim proceeds (which Maritime is). *See USinternetnetworking*, 310 B.R. at 285 (where debtor knows of claims and stands to gain as the beneficiary of post-effective date recovery on that claim, the intentionality prong of judicial estoppel is satisfied without further need to prove mindset); *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 210 (5th Cir. 1999) (hereinafter, "*Coastal Plains*") (same).

*2. Maritime Was Required to Disclose the Deficiency Claims.*

17. The Objecting Debtors contend that Maritime had no obligation to disclose the Deficiency Claims at any time during its chapter 11 case, including in its initial schedules and SOFA, amendments to schedules and SOFA, or its MORs. Obj. ¶ 36.

18. This cannot be right. Even if Maritime is correct that it was under no obligation to update its schedules and SOFA—a notion rejected by the Fifth Circuit[3]—MORs are the vehicle by which a debtor keeps its creditors apprised of ongoing changes to its financial condition after its initial filing schedules. *See Nester v. Gateway Access Sols., Inc. (In re Gateway Access Sols.,*

[3] *Compare* Obj. ¶ 36 ("Neither the Bankruptcy Code nor the Bankruptcy Rules impose a continuing obligation to update the schedules . . . ."), *with Coastal Plains*, 179 F.3d at 208 ("The duty of disclosure in a bankruptcy proceeding is a continuing one . . . ." (citation modified)); *Superior Crewboats*, 374 F.3d at 333 ("[D]ebtors are [ ] obliged to update their schedules as necessary to assure full disclosure."); Fed. R. Bankr. P. 1009(a)(1) (contemplating amendments to schedules and SOFAs).

*Inc.)*, 374 B.R. 556, 565 (Bankr. M.D. Pa. 2007) (a debtor-in-possession has a duty to keep the court and its parties-in-interest reasonably informed about the status and condition of its business). Without accurate and complete MORs, creditors have no way of knowing if the asset and liability disclosures at the start of a case remain good information—especially if, as the Debtors contend, there is no obligation to update initial schedules once they become materially inaccurate. *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *8 n.14 (Bankr. S.D. Tex. Mar. 21, 2014) ("The purpose of [MORs] is to provide creditors with up-to-date information about the debtor's financial condition."); *In re Whetten*, 473 B.R. 380, 383–84 (Bankr. D. Colo. 2012) ("Monthly reports and the financial disclosures contained within them are the life-blood of the chapter 11 process . . . ." (citation modified)).

19. Maritime asserts that it properly omitted the Deficiency Claims from its MORs because those claims were disputed (Obj. ¶¶ 35, 37), because Maritime didn't think they should count as a receivable (Obj. ¶ 36), because they were not an account receivable under GAAP (Obj. ¶ 37), because they arose during the case instead of before (Obj. ¶ 39), because they arose under an MSA contemplating late invoicing of up to nine months (Obj. ¶ 37), because they were known to Carnival (Obj. ¶ 43), because they benefitted a DIP lender (Obj. ¶ 40), and because Maritime was busy and it was cumbersome to add up the deficiency numbers on its accounting spreadsheets (Obj. ¶ 45). Each of these fails under the case law:

- Maritime had to disclose the Deficiency Claims even if they were disputed. *See In re Castillo*, 508 B.R. 1, 7–8 (Bankr. W.D. Tex. 2014) (explaining that debtors must disclose in their schedules "the existence of assets whose immediate status in the bankruptcy is uncertain"). Indeed, Maritime disclosed *other* "doubtful accounts" in every one of its MORs and offers no reason why Carnival's "doubtful accounts" warranted omission.[4]

[4] *See, e.g.*, *Monthly Operating Report for Speedcast International Limited, et al., for Filing Period Ending October 31, 2020* [Docket No. 1018] at 7 (noting that, of the approximately $90.3m in A/R disclosed, $14.8m were "doubtful" debts); *Monthly Operating Report for Speedcast*

- Maritime had to disclose the Deficiency Claims regardless of its subjective views of the claims as uncertain or spurious. *Carter v. Rollie Transp. Inc.*, No. 4:21-CV-01382-O, 2023 WL 137488, at *5 (N.D. Tex. Jan. 9, 2023) ("[T]he general duty to disclose assets to the bankruptcy court is not disturbed by a creditor's personal assessment that certain assets may be irrelevant."); *In re Arora*, No. 14-28073, 2018 WL 485956, at *4 (Bankr. D.N.J. Jan. 17, 2018) ("It is not left to debtors to determine an asset's materiality to the bankruptcy case, and it is not up to a debtor to determine what is worth being disclosed and what is not."); *United States v. Sieber (In re Sieber)*, 489 B.R. 531, 556–57 (Bankr. Md. 2013) (rejecting debtor's argument that MOR was accurate despite omitting earmarked funds because "[i]t was not for the [d]ebtor to pick and choose which sources of funds he considered income").

- Maritime had to disclose the Deficiency Claims even if they were not "A/R" in the technical sense or under applicable accounting standards.[5] *In re Visicon S'holders Tr.*, 478 B.R. 292, 315 (Bankr. S.D. Ohio 2012) (rejecting debtor's argument that it was allowed to omit a large account receivable in its MOR asserted in "vague testimony . . . which seem[s] to center upon whether the [receivable] . . . should be booked as [such]"). *USinternetworking* is particularly instructive on this point, as the Bankruptcy Court for the District of Maryland rejected Martime's exact argument in judicially estopping debtor from pursuing unscheduled breach of contract claims. 310 B.R. 274. The debtor argued that it did not need to disclose the claims against its customers because it "had a policy . . . consistent with . . . GAAP" of "not reporting revenue and/or related accounts receivable from clients who were several months in arrears." *Id.* at 279 (citation modified). The bankruptcy court rejected this contention because "whether a claim of the debtor must be disclosed in a debtor's bankruptcy schedules is controlled by whether it exists as a legal or equitable right of the debtor" and not by accounting standards. *Id.* at 284 (citing 11 U.S.C. § 541(a)).

- Maritime had to disclose the Deficiency Claims notwithstanding that they arose during the case rather than prepetition. Indeed, if the schedules are, as Maritime contends, "a snapshot of the debtor's financial condition at the commencement of the case, not an ongoing reporting mechanism," then MORs are exactly the place, indeed the only place, to report new material assets acquired by a debtor-in-possession in the course of its business operations. Obj. ¶ 36. They are, after all, *operating reports* filed each month. *In re Visicon S'holders Tr.*, 478 B.R. at 315 ("The purpose of [monthly] operating reports is

*International Limited, et al., for Filing Period Ending January 31, 2021* [Docket No. 1479] at 7 (noting that, of the approximately $78m in accounts receivable disclosed, $16.5m were "doubtful" debts).

[5] The Objecting Debtors offer no authority for the notion that unbilled amounts due and owing are not accounts receivable. *See* Obj. ¶¶ 36–37.

to provide the parties in interest, the UST and the court with meaningful financial information with which to gauge the debtor's performance.").

- Maritime had to disclose the Deficiency Claims regardless of the invoicing and payment terms of the MSA. Maritime's disclosure requirements are a function of bankruptcy law, rules and regulation; its bilateral agreements with individual counterparties are of no import. *USinternetworking*, 310 B.R. at 284 ("[W]hether a claim of the debtor must be disclosed . . . is controlled by whether it exists as a legal or equitable right of the debtor" under § 541(a) of the Bankruptcy Code).6

- Maritime had to disclose the Deficiency Claims even if Carnival knew about them. MORs ensure disclosure of assets to parties-in-interest and to the court—not disclosure to the debtors or defendants of those claims. *See In re NRS Props., LLC*, 634 B.R. 395, 426–27 (Bankr. D. Colo. 2021) (omissions on an MOR are not permitted if they leave creditors "unable to ascertain the [d]ebtors' financial wherewithal to repay obligations owed to creditors or determine the [d]ebtors' prospects for future business").

- Maritime had to disclose the Deficiency Claims even if failing to disclose them further advantaged their second DIP lender. The Objecting Debtors contend no harm, no foul in concealing the Deficiency Claims in their Second DIP Motion, because the existence of extra accounts receivable "would . . . strengthen the [DIP] lenders' collateral, not undermine it." Obj. ¶ 40. To be clear, no one is arguing that Centerbridge got a raw deal. It was paid in full with interest and stood to reap a windfall by finding an extra $53 million in accounts receivable in the Debtor's couch cushions post-confirmation. The parties harmed by this lack of disclosure were the *unsecured* creditors who could have negotiated for a higher GUC recovery had they known about these extra assets[7] and Carnival,

[6] Carnival contests Maritime's reading of the MSA. The contract permits three time periods for billing: timely (within 15 days), which Maritime agreed to endeavor; late (between 15 days and 9 months), with acknowledged prejudice to Carnival; and so late as to be per se void (more than 9 months). 2018 MSA § 4.4.

[7] These are the same unsecured creditors who footed the bill for the Debtors' mismanagement of estate assets. Maritime's duties to these creditors mandated prompt disclosure *and prompt* invoicing, even if (as Maritime contends) the MSA did not. *See, e.g.*, *In re C. M. Heavy Mach., LLC*, 671 B.R. 309, 321 (Bankr. E.D. Okla. 2025) (admonishing debtor that "had not even made the effort to send invoices or statements to collect" accounts receivable for "over a year" of its chapter 11 case and characterizing the "failure to pursue this estate asset" and "to acknowledge responsibility to pursue collection of these funds" as evidence of gross mismanagement); *In re Fall*, 405 B.R. 863, 869 (Bankr. N.D. Ohio 2009) (debtor's failure to "ma[k]e a good faith effort to fully pursue its accounts receivable" was a failure to satisfy his "duty to maximize estate assets" and a "symptom[] of mismanagement").

which could have resolved these alleged claims years ago had they been pressed.

- Maritime had to disclose the Deficiency Claims even if doing so required accounting work and Maritime was busy. *See In re Whetten*, 473 B.R. at 383 ("The [c]ourt believes that [the debtor] has been extremely busy. . . . Nevertheless, this 'excuse' is unavailing. Every debtor-in-possession faces the weighty duties of running a business and meeting the fiduciary obligations imposed by the Code. To allow a debtor to sidestep these duties simply because he is 'busy' would render the Code's reporting requirements a nullity.").

20. At the end of the day, Maritime was obligated to file MORs that gave parties-in-interest and this Court "a complete financial picture of [its] activities." *Sieber*, 489 B.R. at 557. None of these excuses justify Maritime's failure to do that here. *See In re Fall*, 405 B.R. at 866, 869 (reproaching debtor for "cryptic" financial statements that made it "impossible for the [c]ourt or [c]reditors, throughout the pendency of th[e] case, to gain an accurate financial picture of the [debtor]"); *ABCD Holdings, LLC v. Hannon (In re Hannon)*, 512 B.R. 1, 19 (Bankr. D. Mass. 2014) (faulting debtor for omissions in MORs that "prevented parties in interest from accurately assessing the viability of a reorganization or understanding the [d]ebtor's true financial condition"); *USinternetworking*, 310 B.R. at 282 (rejecting semantic arguments that concealed claims were not technically receivables as "fail[ing] utterly to recognize the obligation of a debtor to disclose all of its assets, including unliquidated assets, for scrutiny by its creditors and the court during the reorganization process").

### C. Maritime Cites a Non-Binding and Unhelpful Multi-Factor Test for Re-Opening the Chapter 11 Cases.

21. The Objecting Debtors urge this court to evaluate Carnival's request to reopen these chapter 11 cases with the multi-factor test set forth in *Odin*. 544 B.R. at 628; Obj. ¶¶ 48–55. But *Odin* imported that multi-factor test from another circuit. 544 B.R. at 628 (citing *In re Easley–Brooks*, 487 B.R. 400, 407 (Bankr. S.D.N.Y. 2013)). It is not Fifth Circuit law. *See Order Granting*

*United Refining's Motion to Reopen* [Docket No. 10] at 2 n.4, *In re United Refining Co.*, No.4:83-bk-03935 (Bankr. S.D. Tex. Sep. 11, 2020) ("The Fifth Circuit has not adopted the multi-factor analysis considered in *Odin*."). This court has already declined to apply the limited *Odin* factors in favor of a more flexible discretionary standard adaptable to facts and circumstances. *See In re Sandridge Energy, Inc.*, No. 16-32488, 2025 WL 1490539, at *6 (Bankr. S.D. Tex. May 23, 2025) (making no mention of *Odin*'s multi-factor test and noting that "the term 'for other cause' is a broad term which gives the bankruptcy court discretion to reopen a closed estate or proceeding when cause for such reopening has been shown. A bankruptcy court must consider the facts presented in each case and use its discretion to determine whether cause exists to reopen a case." (citation modified)). And under the proper, discretionary standard, this Court should reopen for all the reasons stated in Carnival's Motion.

**D. This Court Has Authority to Issue Carnival's Requested Injunction.**

*1. The Injunctive Relief Is Appropriate in Scope and Properly Before the Court by Motion.*

22. The Objecting Debtors contend that the Motion is "procedurally defective" because injunctive relief requires an adversary proceeding "under Bankruptcy Rule 7001(7)." Obj. ¶ 31 n.5. But Rule 7001(g) carves out relief that "is provided in a [c]hapter 9, 11, 12, or 13 plan." Fed. R. Bankr. P. 7001(g). A motion to enforce a chapter 11 plan definitionally qualifies for this carve-out. *In re Loving*, 269 B.R. 655, 658 (Bankr. S.D. Ind. 2001) ("Rule 7001 simply does not provide that a motion to enforce must be brought by adversary proceeding."); *In re Worldcorp, Inc.*, 252 B.R. 890, 895 (Bankr. D. Del. 2000) ("[A]n adversary proceeding is not necessary where the relief sought is the enforcement of an order previously obtained."). And for that reason, this Court regularly hears and grants motions to enforce chapter 11 plans that seek injunctive and other equitable relief. *See, e.g.*, *Order Enforcing the Plan and Confirmation Order and Granting Related*

*Relief* [Docket No. 1512], *In re Sandridge Energy Inc.*, No. 16-32488 (Bankr. S.D. Tex. Sep. 25, 2023) (ruling on motion to interpret/enforce plan that the confirmation ordered barred certain claims and enjoining those claims on that basis); *In re United Refining Co.*, No. 83-03935, 2021 WL 160433, at *1 (Bankr. S.D. Tex. Jan. 16, 2021) (ruling on motion to interpret/enforce that confirmation order enjoined pending litigation and ordering claims permanently enjoined).

23. Nor is the injunctive relief requested overly broad, as Maritime contends. Carnival's injunctive relief is limited to a single, narrowly tailored injunction that would enjoin Maritime "from continuing the Florida Proceeding and from otherwise taking any action to prosecute, pursue, enforce, monetize, or otherwise recover on the Florida Causes of Action." Proposed Order ¶ 4. This is far narrower than the expansive injunctive language that debtors regularly obtain from bankruptcy courts to enforce plans and confirmation orders. *See, e.g.*, *In re United Refining Co.*, 2021 WL 160433, at *8 (permanently enjoining not only specific claims at issue but also "any related claims [against the defendants] arising from the same facts, events, or occurrences giving rise to the [s]tate [c]ourt [l]awsuit"); *Order Enforcing the Plan and Confirmation Order and Granting Related Relief* [Docket No. 1512], *In re Sandridge Energy Inc.*, No. 16-32488 (Bankr. S.D. Tex. Sep. 25, 2023) (enjoining specific claims at issue as well as "any claims or defenses or taking any other actions in contradiction of or otherwise inconsistent with the terms of the [p]lan or the [c]onfirmation [o]rder"). Indeed, *Sandridge* makes clear that relief cannot be overbroad when it seeks only to enforce the terms of an existing order. *Accord In re Cont'l Airlines, Inc.*, 236 B.R. 318, 327 (Bankr. D. Del. 1999) (reasoning that movant seeking to enforce plan and confirmation is order is not seeking a new injunction but is merely "seeking to enforce an injunction already in place").

24. Finally, the Objecting Debtors contend that the requested injunction is overly broad because it enjoins claims for both Pre-Effective Date Months and Post-Effective Date Months, and "[c]laims based on post-Effective Date performance cannot have been concealed . . . in a way that could justify extinguishing them." Obj. ¶ 32. Carnival's Motion lays out several independent legal arguments to explain why all the Deficiency Claims are barred, including those for Post-Effective Date Months. *See, e.g.*, Mot. ¶¶ 46, 74, 78. The Objection addresses none of them.[8] Instead, the Objection concedes the key point: all the Deficiency Claims, including those for Post-Effective Date Months, were estate property before entry of the Confirmation Order. *See* Obj. ¶¶ 24, 25 (asserting twice that all the Deficiency Claims vested in the Reorganized Debtors upon Effective Date). Because all the Deficiency Claims were estate property, all were subject to the retention requirements of § 1123 and the disclosure requirements that implicate judicial estoppel. *Coastal Plains*, 179 F.3d at 207–08 ("It goes without saying that the Bankruptcy Code and Rules impose upon bankruptcy debtors an express, affirmative duty to disclose all assets, *including contingent and unliquidated claims*." (emphasis in original) (citation omitted)); *USinternetworking*, 310 B.R. at 282 (quoting same to bar post-confirmation debtor from bringing unscheduled contract claims for unpaid A/R).

[8] The Objecting Debtors respond instead to strawman arguments. For example, Carnival argues that it would be inequitable to allow Maritime to sue Carnival on the 2018 MSA when Maritime may argue that Carnival's own claims under that document are barred by the Confirmation Order and the passage of the administrative bar date. Mot. ¶ 79. The Objecting Debtors offer in response: "The administrative claims bar date governed the deadline for creditors to assert administrative expense claims against the Debtors, not the deadline for the Debtors to invoice their own contract counterparties." Obj. ¶ 43.

*2. The Court Has Jurisdiction Over, and Is the Most Appropriate Authority to Adjudicate, Carnival's Section 1123 Arguments.*

25. The Objection suggests in so many words[9] that this Court cannot grant relief enforcing its own order. Obj. ¶¶ 6 ("[N]o relief is available to Carnival from this Court . . . ."), 31 (stating that bankruptcy court jurisdiction extends only to implementation and execution of the plan and suggesting this does not include enforcement). The Objecting Debtors cite repeatedly to section 11.1 of the Plan to support their assertion that the Court's retention of jurisdiction is "narrow," does not extend to the relief requested in the Motion, and does not include enforcement of the chapter 11 plan, only "implementation or execution." Obj. ¶¶ 31, 52, 53.

26. But section 11.1—which the Debtors drafted—runs for three pages and covers an expansive range of post-confirmation issues:

> Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases . . . for, among other things, the following purposes:
>
> . . . .
> (g) to issue and enforce injunctions and releases, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any [e]ntity with the consummation, implementation, or enforcement of this Plan, the Confirmation Order, or any other order of the Bankruptcy Court[.]

27. Plan § 11.1. It is supplemented by a further retention of jurisdiction provision—also penned (in first instance) by the Debtors—in the Confirmation Order, which states "the

[9] As the Objecting Debtors do concede this Court's authority to interpret its own orders (Obj. ¶ 31), it is unclear what they are trying to say in quoting the MSA for the Florida court's "exclusive jurisdiction" four separate times. *See* Obj. ¶¶ 4, 10, 31, 53. Because this is not a contract dispute, the MSA's forum-selection clause is of no import, and neither are the debtor's repeated references to *forum non conveniens*, which Carnival has not asserted.

Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Plan, the Plan Settlement Agreement, the Chapter 11 Cases and the Debtors . . . to the fullest extent legally permissible." Confirmation Order ¶ 46.

28. Under the Debtors' language and applicable law, this Court has jurisdiction over the issues raised in the Motion and the authority to grant the relief requested in the Motion. *See In re Sandridge Energy, Inc.*, 2025 WL 1490539, at *6 ("A bankruptcy court always has jurisdiction to interpret and enforce its own prior orders." (citing *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009))); *Deelen v. Dickson (In re McDermott Int'l, Inc.)*, No. 23-20436, 2024 WL 3875141, at *2 (5th Cir. Aug. 20, 2024) ("When a proceeding implicates the bankruptcy court's power to interpret and enforce its own orders, it is core in at least the 'arising in' way." (citing *Travelers Indem. Co.*, 557 U.S. at 151)).

*3. The Court Has Jurisdiction, and Is the Most Appropriate Authority, to Adjudicate Judicial Estoppel Arguments Based on Bankruptcy Disclosure Requirements.*

29. The Objecting Debtors next argue that, even if this Court is the correct authority to interpret and enforce its own orders regarding section 1123, it should at least leave judicial estoppel arguments to the Florida District Court. Obj. ¶ 31.

30. But Carnival's judicial estoppel arguments *are* plan interpretation and enforcement arguments.[10] *See USinternetworking*, 310 B.R. at 281 (judicially estopping debtor from bringing unscheduled claims post-confirmation as a matter of plan and confirmation order interpretation because "[t]he previous litigation here is [the debtor's] reorganization case, which culminated in an order of this court confirming [its] plan of reorganization"). Furthermore, the bankruptcy court

[10] This is the same reason they, too, fall into the Rule 7001(g) exception for relief provided in a plan. *See supra* ¶ 22.

is the appropriate forum for judicial estoppel arguments when, as here, estoppel turns on whether or not a debtor was required to disclose a claim in its bankruptcy proceeding. That query requires interpreting: (1) the Bankruptcy Code, (2) the Bankruptcy Rules, (3) the Official Bankruptcy Forms, (4) bankruptcy regulation promulgated by the "bankruptcy watchdog" (the U.S. Trustee), and (5) bankruptcy case law asking the same questions on similar facts. The Objecting Debtors may well want out of this Court; that does not change the fact that a bankruptcy court is the right authority to resolve bankruptcy issues.[11] *See Bembenek v. Aurora Health Care, Inc.*, No. 09-C-1201, 2010 WL 1186338, at *1 (E.D. Wis. Mar. 19, 2010) ("[T]he bankruptcy court is well-suited to address the question of whether bankruptcy law required [the debtor] to disclose the [disputed material] . . . because it has particular expertise in bankruptcy law."); *Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, No. 02-10605, 2009 WL 10714861, at *16 (Bankr. S.D. Tex. Mar. 6, 2009), *report and recommendation adopted sub nom.*, *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341 (S.D. Tex. 2009) ("To state the obvious, the bankruptcy court exists to handle bankruptcy matters.").

**E. Maritime's Objection Confuses the Factual Chronology.**

31. Carnival contends that Maritime's objection fails for the legal reasons stated above, even if its achronological construction of the facts were correct. In addition, because Maritime's factual background confounds the timeline, Carnival seeks here to clarify the factual chronology. The correct order of events is as follows:

[11] The Objecting Debtors also falsely contend that "[t]he Florida District Court is closer to the facts and circumstances surrounding the Florida Causes of Action and the course of dealings of the parties as to the contested matter." Obj. ¶ 52. But the Florida District Court has expended no judicial labor on the parties or their course of dealings, because Carnival has yet to even answer the Complaint. Indeed, Maritime has agreed to a 60-day stay to let this Court adjudicate the relief pending in the Motion. *See Plaintiff Maritime Communications Services, Inc.'s Response to Motion to Stay* [Docket No. 13], Case No. 1:26-cv-20739, attached hereto as **Exhibit A**.

| key ch. 11 events | 2018 MSA invoice batches (invoice date as stated by Maritime) | 2022 MSA negotiations |
|---|---|---|
| **Dec. 21, 2018** 2018 MSA executed | | |
| **April 23, 2020** Petition Date | | |
| **Nov. 16, 2020** notice of intent to assume 2018 MSA | | |
| **Jan. 22, 2021** Confirmation Order | | |
| **March 11, 2021** Plan Effective Date; 2018 MSA assumed | | |
| **April 10, 2021** Admin. Claims Bar Date | | |
| | **May 5, 2021** invoices for April. 2020 through March 2021 | **spring - fall 2021** negotiations re 2022 MSA |
| | **May 17, 2021** invoice for April 2021 | |
| | **June 16, 2021** invoice for May 2021 | |
| | | **Sep. 21, 2021** Letter of Intent re 2022 MSA |
| | | **Dec. 3, 2021** 2022 MSA executed |
| | | **Jan. 1, 2022** 2022 MSA takes effect |
| | | |
| | **Feb. 25, 2022** invoices for June 2021 - Sept. 2021 | |
| | **December 2025** demand letter | |
| | **Feb. 4, 2026** FL litigation commenced | |

32. The timeline makes short work of Maritime's fact-based objections. Maritime claims it omitted the Deficiency Claims from its MORs because it knew those claims were disputed. Obj. ¶¶ 35, 37, 39. But Maritime didn't invoice Carnival for these amounts until May 2021. How could it have known when filing MORs in 2020 that Carnival would contest these claims six months later? Similarly, Maritime cannot point to a clause in the 2022 MSA as evidence that these claims were in dispute 18 months earlier, before those amounts had even been invoiced and when Maritime's bankruptcy disclosure obligations were live. *See* Obj. ¶ 39.[12]

[12] What is more, to argue that the invoices have always been disputed (and therefore did not need to be disclosed), Maritime has to abandon one of the two causes of action it filed just a month ago in Florida: account stated. A claim for account stated rests on the defendant having not disputed an amount owed, which Maritime asserted repeatedly. *See* Compl. ¶¶ 27 ("At no time prior to the respective due dates did Carnival provide Speedcast with written notice of its intent to dispute any deficiency invoice charge."), 46 ("[T]o date, Carnival has never objected to these statements . . . .").

33. Elsewhere in its Objection, Maritime asserts a second theory: it did in fact disclose the Deficiency Claims—by including a reference to them in its 2022 MSA with Carnival. Obj. ¶ 43 ("If Maritime were deliberately hiding claims, it would not have negotiated a clause . . . expressly preserving 'disputes regarding outstanding amounts owed by Carnival' by name."). Again, the MSA was a bilateral agreement executed about a year after entry of the Confirmation Order. A private agreement executed post-Effective Date cannot constitute disclosure to unsecured creditors trying to assess their proposed Plan recoveries 12 months earlier.

34. Each of these rationales fails on its own; that the Debtors assert both at the same time suggests post hoc rationalization.[13] In any event, both rest on citations to a 2022 document that has no relevance to the arguments before the Court over what Maritime had to say, and what it did and did not say, in documents filed in this Court prior to the March 11, 2021 Effective Date.

## CONCLUSION

35. For these reasons, the Court should overrule the Objection and grant the Motion.

[13] As the law does not permit a party to argue in the alternative with respect to its own mindset, Maritime should be directed in oral argument to pick a story. *See Off. Comm. of Unsecured Creditors of Tousa, Inc. v. Citicorp N. Am., Inc. (In re TOUSA, Inc.)*, 408 B.R. 913, 920 (Bankr. S.D. Fla. 2009) ("Although a party may plead in the alternative, it cannot proceed to trial on two fundamentally inconsistent theories . . . .").

Respectfully submitted this 23rd day of March 2026.

**GRAY REED**

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**Certificate of Service**

The undersigned hereby certifies that on the 23rd day of March 2026, he caused a true and correct copy of the foregoing document by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Jason S. Brookner*
Jason S. Brookner

**Exhibit A**

**Florida Stay Response**

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:26-cv-20739-KMW

MARITIME COMMUNICATIONS SERVICES, INC.,

Plaintiff,

vs.

CARNIVAL CORPORATION,

Defendant.
_____/

**PLAINTIFF MARITIME COMMUNICATIONS SERVICES, INC.'S RESPONSE TO MOTION TO STAY**

Plaintiff Maritime Communications Services, Inc. ("Speedcast") hereby responds to Defendant Carnival Corporation's Motion to Stay [Doc. 11]. Suffice it to say that Speedcast disputes Carnival Corporation's characterization of Speedcast's conduct during its Chapter 11 bankruptcy proceeding, disputes its assertions about what the factual record will show in this case, and disputes the positions it has taken in the U.S. Bankruptcy Court filing. Speedcast looks forward to addressing its claims before this Court on their merits.

That said, Speedcast is also mindful of judicial efficiency in light of Carnival Corporation's filing of its Motion for an Order (I) Re-Opening the Chapter 11 Cases of Maritime Communications Services, Inc. and Speedcast Int'l Ltd. and (II) Interpreting and Enforcing the Chapter 11 Plan (the "Motion") before the U.S. Bankruptcy Court for the Southern District of Texas. Speedcast will be responding to

the Motion in the U.S. Bankruptcy Court shortly. Given the timeframe in which a hearing has been set on that Motion (March 25, 2026), and the expectation that the U.S. Bankruptcy Court may provide its ruling at the hearing or relatively promptly thereafter, a temporary stay of this matter should not unreasonably delay proceeding on the merits in this case. Accordingly, Speedcast does not oppose a temporary stay of sixty (60) days or until the U.S. Bankruptcy Court issues a decision on the Motion, whichever occurs sooner.

Respectfully submitted,

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