IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SALT HOUSE, INC.,[1]	Case No. 25-12277 (LSS)
Debtor.	

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF THE DISCLOSURE STATEMENT ON A FINAL BASIS AND CONFIRMATION OF THE CHAPTER 11 PLAN OF LIQUIDATION FOR SALT HOUSE, INC.

Dated: May 15, 2026

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[1] The Debtor in this chapter 11 case is Salt House, Inc. (f/k/a Food52, Inc.) and the last four digits of the Debtor's federal tax identification number are 2738. For the purpose of this chapter 11 case, the Debtor's service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

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Salt House, Inc. (f/k/a Food52, Inc.), as debtor and debtor in possession (the "**Debtor**"), submits this memorandum of law (this "**Memorandum**") in support of final approval of the *Disclosure Statement for the Chapter 11 Plan of Liquidation for Salt House, Inc.* [Docket No. 302] (as modified, amended, or supplemented from time to time, the "**Disclosure Statement**") and confirmation of the *Chapter 11 Plan of Liquidation for Salt House, Inc.* [Docket No. 290] (as modified, amended, or supplemented from time to time hereafter, the "**Plan**"),[2] pursuant to sections 1125, 1126, and 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), and respectfully represents as follows:

PRELIMINARY STATEMENT[3]

1. Through this chapter 11 case, the Debtor successfully sold substantially all of its assets through (a) the Food52 Sale [*see* Docket No. 210 & 268], (b) the Schoolhouse Sale [*see* Docket No. 211], and (c) the Dansk Sale [*see* Docket No. 212] for an aggregate purchase price of $13.375 million plus the assumption of certain liabilities—more than doubling the stalking horse bid provided by F52, LLC. The Sales generated sufficient proceeds to satisfy the Debtor's obligations under the DIP Term Sheet in full. They also resulted in continued vendor relationships, the assumption and assignment of numerous contracts, and employment offers for certain of the Debtor's former employees. Now, through the Plan, the Debtor seeks to distribute its remaining assets to its creditors in accordance with the priority scheme set forth in the Bankruptcy Code and to conduct an orderly wind down of its affairs.

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

[3] Capitalized terms used but not defined in this Preliminary Statement have the meanings ascribed to such terms later in this Memorandum.

2. The Plan provides for, among other things: (a) the payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Secured Claims, and Allowed Class 2 Other Priority Claims in full, or otherwise renders such Claims Unimpaired, (b) the appointment of the Liquidating Trustee pursuant to the mechanics set forth in the Plan, and (c) the establishment of a Liquidating Trust to (i) administer claims and liquidate and distribute the Liquidating Trust Assets to the Holders of Allowed Class 3 General Unsecured Claims, and (ii) wind-down the Debtor.

3. The Holders of Allowed Class 3 General Unsecured Claims will be the beneficiaries of the Liquidating Trust and will receive their *pro rata* share of the Beneficial Trust Interests, which Beneficial Trust Interests will entitle the holders thereof to receive their *pro rata* share of the distributable proceeds from the Liquidation Trust Assets. The Holders in the other Classes in the Plan—Class 4 Subordinated Claims and Class 5 Interests—are not entitled to any recovery and are deemed to reject the Plan.

4. The Plan provides the best possible outcome for creditors and is the product of the continuous efforts of the Debtor and its professionals, in collaboration with the Committee, to create value for the benefit of the Estate. The Plan was overwhelmingly accepted by the sole voting Class—Class 3 (General Unsecured Claims)—and the proposed Confirmation Order reflects a global settlement by and among the Debtor, the Committee, and certain Released Parties providing for a voluntary reduction of General Unsecured Claims in the amount of approximately $10.8 million, reflecting a nearly 40% reduction to the pool of General Unsecured Claims, excluding litigation claims, and increasing the estimated payment percentage for Holders of Allowed General Unsecured Claims from approximately 2.6% to approximately 9%.

5. The Debtor resolved various informal comments to the Plan through non-material modifications to the Plan or the inclusion of language in the Confirmation Order. As of the date hereof, the only formal objection the Debtor received to confirmation of the Plan was filed by the U.S. Trustee, who lodges the exact same objection to the Debtor's use of an opt-out mechanism for the proposed third-party release that this Court overruled on March 27, 2026.[4] As this Court has repeatedly held, including in this case, consent for purposes of a third-party release is a notice issue, and an opt-out can be appropriate because of notice provisions.[5]

6. The Debtor provided clear and broad notice of the proposed-third party release and opt-out mechanism in this case—using forms of notice approved by this Court—and the proposed third-party release is therefore consensual. The clarity of such notice and the opt-out instructions is evidenced by the Debtor's receipt of twenty-eight opt-out elections out of the fifty-two parties who submitted Ballots or opt-out election forms.[6] Putting aside the consensual nature of the third-party release, certain of the proposed Released Parties in this case, including the Sponsor, agreed to significant reductions to their General Unsecured Claims, as discussed above, as consideration for the protections set forth in the Plan, which materially enhanced the projected

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[4] *In re Salt House, Inc.*, Case No. 25-12277 (LSS) (Bankr. D. Del. Mar. 27, 2026) Hr'g Tr. No. 15:13-17:5 (I agree that other than the opt-in, opt-out the issues that the U.S. Trustee has raised are confirmation issues . . . As to the opt-in, opt-out I am still of the position that I have been . . . For purposes of today, I will overrule that portion of the objection. The rest of it I will hear at confirmation.").

[5] *See In re Corvias Camping – USG, LLC*, Case No. 25-11214 (LSS) (Bankr. D. Del. Oct. 29, 2025) Hr'g Tr. No. 47:12-48:6 ("I am still of the opinion I have been over the years that parties need to read documents that come to them, that it's a notice issue, and that is sufficient to ask for consensual third party releases and an opt-out can be appropriate. [F]or multiple reasons, I'm still okay with an opt-out because of notice provisions."); *In re Corvias Camping – USG, LLC*, Case No. 25-11214 (LSS) (Bankr. D. Del. Dec. 11, 2025) at 25-28:14-6 (same); *In re Boy Scouts of America and Delaware BSA, LLC*, 642 B.R. 504, 675-77 (Bankr. D. Del. 2022) (approving third-party releases where "claimants . . . were well aware of the opportunity and need to opt-out or object to the third-party releases in the Plan [because] [t]he need to opt-out of the releases is prominently placed on the first page of each ballot . . . in bold, all caps and surrounded by a box"); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. 2019) [Docket No. 384] ("With respect to third-party releases I'm prepared to find that they are consensual because of opt-out box in the ballots.").

[6] *See Voting Report* Exs. A, B.

payment percentage for Holders of Allowed General Unsecured Claims.[7] Simply put, there is no merit to the U.S. Trustee's objection and it should be overruled.

7. The Debtor submits this Memorandum, along with (a) the *Declaration of Laura Marcero in Support of Confirmation of the Chapter 11 Plan of Liquidation for Salt House, Inc.* (the "**Marcero Declaration**"), (b) the *Declaration of Jill Frizzley in Support of Approval of the Disclosure Statement on a Final Basis and Confirmation of the Chapter 11 Plan of Liquidation for Salt House, Inc.* (the "**Frizzley Declaration**"), (c) the *Declaration of Erika Badan in Support of Final Approval of the Disclosure Statement and Confirmation of the Chapter 11 Plan of Liquidation for Salt House, Inc.* (the "**Badan Declaration**"), and (d) the *Declaration of Patrick Leathem with Respect to the Tabulation of Votes on the Chapter 11 Plan of the Liquidation for Salt House, Inc.* (the "**Voting Report**" and, collectively with the Marcero Declaration, the Frizzley Declaration, and the Badan Declaration, the "**Declarations**"), filed contemporaneously herewith, in support of the final approval of the Disclosure Statement and confirmation of the Plan.

8. For the reasons set forth herein and in the Declarations, the Debtor submits that the Disclosure Statement and the Plan satisfy all applicable requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and non-bankruptcy law, and respectfully requests that the Court overrule the U.S. Trustee's objection, approve the Disclosure Statement on a final basis, and confirm the Plan.

[7] These concessions were made in part to address the Court's comments at the March 27, 2026 hearing. *See In re Salt House, Inc.*, Case No. 25-12277 (LSS) (Bankr. D. Del. Mar. 27, 2026) Hr'g Tr. No. 16:2-11 ("I know the committee is doing some investigations. I also think the debtor is doing some investigations. But why isn't the default provision really in a liquidation case whatever causes of action they are unless someone has really bought it and bought their release through settlement and negotiations or some other contribution. So, I think it's a fair question. I will deal with it at confirmation, give the parties continued chances to talk about it and to complete investigations.").

BACKGROUND

A. General Background

9. On December 29, 2025 (the "**Petition Date**"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its businesses and manage its properties as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. On January 8, 2026, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**") [Docket No. 61]. No request has been made for the appointment of a trustee or examiner.

11. Additional information regarding the Debtor's businesses, its capital structure, and the circumstances leading to the filing of this chapter 11 case is set forth in the *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* [Docket No. 2], which is incorporated herein by reference.

B. Background Regarding the Plan and Disclosure Statement

12. On March 6, 2026, the Debtor filed the Plan and the Disclosure Statement, along with a motion [Docket No. 257] (the "**Disclosure Statement Motion**") seeking approval of the Disclosure Statement on an interim basis for solicitation purposes only and approval of related solicitation and voting procedures.

13. On March 27, 2026, the Court entered an order [Docket No. 301] (the "**Interim Approval and Procedures Order**") approving the Disclosure Statement Motion which, among other things: (a) approved the Disclosure Statement on an interim basis; (b) approved the form of ballot, solicitation materials, and solicitation procedures set forth in the Disclosure Statement Motion; (c) established May 6, 2026, at 4:00 p.m. (prevailing Eastern Time) as the deadline for all

Holders of Claims entitled to vote on the Plan to cast their ballots; (d) established May 6, 2026, at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to final approval of the Disclosure Statement and confirmation of the Plan (the "**Objection Deadline**"); and (e) fixed the date, time, and place for the Combined Confirmation Hearing on final approval of the Disclosure Statement and confirmation of the Plan.

14. On April 1, 2026, the Debtor caused Kurtzman Carson Consultants, LLC dba Verita Global (the "**Notice and Claims Agent**") to serve the Solicitation Packages, the Notice of Non-Voting Status, and Combined Confirmation Hearing Notice in accordance with the terms of the Interim Approval and Procedures Order.[8]

15. On April 29, 2026, the Debtor filed the *Notice of Filing of Plan Supplement for the Chapter 11 Plan of Liquidation for Salt House, Inc.* [Docket No. 346] (as amended, the "**Plan Supplement**"),[9] which includes: (a) the identity and compensation of the Liquidating Trustee; (b) the Liquidating Trust Agreement; (c) to the extent known, the identity of any insider that will be employed or retained by the Liquidating Trustee, and the nature of any compensation for such insider; and (d) the schedule of Retained Causes of Action. The Plan Supplement was served by electronic mail and U.S. First Class Mail, as set forth in the *Certificate of Service* [Docket No. 343].

16. The Confirmation Hearing is scheduled for May 19, 2026, at 11:00 a.m. (prevailing Eastern Time). The Debtor received informal comments to the Plan from the Committee, Avidbank, the Chubb Insurance Companies (as defined in the Confirmation Order), and Zurich American Insurance Company and its affiliates, all of which were resolved informally through the inclusion of language in the Confirmation Order or modifications to the Plan set forth in the

[8] *See Certificate of Service* [Docket No. 322].

[9] On May 6, 2026, the Debtor filed the *Notice of Filing of Amendment to Exhibit A of the Plan Supplement for the Chapter 11 Plan of Liquidation for Salt House, Inc.* [Docket No. 351].

Confirmation Order. The Debtor submits that the modifications to the Plan do not negatively impact any parties and do not require additional disclosure or re-solicitation of the Plan. As discussed above, the only formal objection to the Plan was filed by the U.S. Trustee, who only disputes "whether the Plan's third-party releases based on inaction are consensual."[10] For the reasons set forth herein, the U.S. Trustee's objection should be overruled.

C. Plan Solicitation and Notification Process

17. In compliance with the Bankruptcy Code and the Interim Approval and Procedures Order, only Holders of Claims in Class 3 (General Unsecured Claims) were entitled to vote on the Plan.[11] The following Classes of Claims and Interests were not entitled to vote on the Plan:

Class	Claim or Interest	Status	Voting Rights
1	Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	Subordinated Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
5	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

18. The voting results for Class 3 (General Unsecured Claims), as reflected in the Voting Report, filed contemporaneously herewith, are below:

[10] *Objection of the United States Trustee to Confirmation of the Debtor's Plan* [Docket No. 367] (the "**U.S. Trustee Objection**") at ¶1.

[11] *See* 11 U.S.C. § 1126.

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 3 – General Unsecured Claims	$1,816,093.91 (99.12%)	49 (96.08%)	$16,182.53 (0.88%)	2 (3.92%)

19. As set forth above and in the Voting Report, Holders of Claims in Class 3 voted to accept the Plan. Holders of Claims in Classes 1, 2, and 3 were also entitled to opt-out, or object to, the third-party releases as set forth in Article IX of the Plan by exercising the release opt-out election (the "**Release Opt-Out Election**") on their respective ballots, with respect to Class 3, or their Non-Voting Opt-Out Form, with respect to Classes 1 and 2. In total, the Notice and Claims Agent received one (1) Release Opt-Out Election from a Holder of a Claim in Class 1 and twenty-seven (27) Release Opt-Out Elections from Holders of Claims in Class 3.

ARGUMENT

A. The Disclosure Statement Should Be Approved on a Final Basis

20. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide "adequate information" regarding that plan to holders of impaired claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part, as follows:

> "[A]dequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical

> investor of the relevant class to make an informed judgment about the plan[.][12]

21. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan.[13] Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a plan of reorganization.[14]

22. "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[15] Courts in the Third Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[16]

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[12] 11 U.S.C. § 1125(a)(1).

[13] *See, e.g.*, *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote."); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) ("The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan").

[14] *Century Glove,* 860 F.2d at 100.

[15] 11 U.S.C. § 1125(a)(1) ("'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . "); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5907 ("The information required will necessarily be governed by the circumstances of the case.").

[16] *See, e.g.*, *In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) ("[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *Tex. Extrusion Corp. v. Lockheed Corp.* (*In re Tex. Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *Phoenix Petroleum Co.*, 278 B.R. at 393 (same); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate information' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court."); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005), *aff'd*,

23. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as: (a) the events that led to the filing of a bankruptcy petition; (b) the relationship of the debtor with its affiliates; (c) a description of the available assets and their value; (d) the company's anticipated future; (e) the source of information stated in the disclosure statement; (f) the debtor's condition while in chapter 11; (g) claims asserted against the debtor; (h) the estimated return to creditors under a chapter 7 liquidation; (i) the future management of the debtor; (j) the chapter 11 plan or a summary thereof; (k) financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan; (l) information relevant to the risks posed to creditors under the plan; (m) the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers; (n) litigation likely to arise in a non-bankruptcy context; and (o) tax attributes of the debtor.[17]

24. The Disclosure Statement provides "adequate information" to allow Holders of Claims in the Voting Class to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including, among other things: (a) the major events that occurred prior to, and during the course of, this chapter 11 case; (b) a summary of the classification and treatment of all Classes of Claims and Interests under the Plan; (c) an estimate of distributions

241 F. App'x 1 (3d Cir. 2007) ("The information required will necessarily be governed by the circumstances of the case.").

[17] *See, e.g.*, *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *See U.S. Brass Corp.*, 194 B.R. at 424; *see also Phoenix Petroleum Co.*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.").

to Holders of Allowed Claims pursuant to the Plan; (d) the provisions governing distributions under the Plan; (e) the means for implementation of the Plan; (f) an analysis as to the distributions creditors would receive from the Estate in a chapter 7 liquidation; (g) a summary of the Debtor's remaining assets that will be transferred to the Liquidating Trust on the Effective Date; (h) information regarding the Liquidating Trust, including the Liquidating Trustee; (i) information regarding certain risk factors that could affect recoveries under the Plan or the implementation of the Plan; (j) the right and ability of the Liquidating Trustee to assert, compromise or dispose of the certain Causes of Action; (k) the tax consequences of the Plan; (l) conspicuous language containing releases of the Debtor and third parties, exculpation, and limitation of liabilities, and the injunction to be entered by and in connection with the Plan; and (m) such other and further information that informs Holders of Claims and Interests of their rights arising from and relating to the Plan.[18]

25. Accordingly, the Debtor respectfully submits that the Disclosure Statement contains "adequate information," and satisfies section 1125 of the Bankruptcy Code, and the Disclosure Statement should be approved on a final basis.

B. The Plan Satisfies the Requirements of Section 1129 of the Bankruptcy Code

26. To confirm the Plan, the Court must find that the Debtor has satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[19] As set forth herein, the Plan fully complies with all relevant sections of the Bankruptcy Code—including sections 1122, 1123, 1125, 1126, and 1129—as well as the Bankruptcy Rules and applicable non-bankruptcy law.

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[18] *See* Badan Decl. ¶ 7.

[19] *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120, n.15 (D. Del. 2006); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 616 n.23 (Bankr. D. Del. 2001).

C. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code

27. Under section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan, respectively.[20] As explained below, the Plan complies with the requirements of sections 1122, 1123, and 1129 of the Bankruptcy Code, as well as other applicable provisions.

1. The Plan Properly Classifies Creditors' Claims Under Section 1122 of the Bankruptcy Code

28. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, as follows:

> Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to other claims or interests of such class.[21]

29. Although section 1122(a) of the Bankruptcy Code requires that all claims or interests in a class be substantially similar to all other claims or interests in the class, it "does not expressly require that all substantially similar claims or interests be placed in the same class."[22] Courts in this jurisdiction, as well as others, frequently recognize the significant flexibility that plan proponents have to place similar claims in different classes, provided there is a legitimate

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[20] S. Rep. No. 95-989, at 126, reprinted in 1978 U.S.C. C.A.N. 5787, 5912 (1978); H.R. Rep. No. 95-595, at 412, reprinted in 1978 U.S.C. C.A.N. 5963, 6368 (1977); *In re S&W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was most directly aimed at were [s]ections 1122 and 1123."); *see also In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008).

[21] 11 U.S.C. § 1122(a).

[22] *In re Hyatt*, 509 B.R. 707, 714–15 (Bankr. D.N.M. 2014) (citing *In re City of Colorado Springs Spring Creek Gen. Improvement Dist.*, 187 B.R. 683, 687 (Bankr. D. Colo. 1995)) (observing that "[t]here is no requirement [in subsection (a)] that all substantially similar claims be placed in the same class ..."); *see also Armstrong World Indus.*, 348 B.R. at 159.

business justification to do so.[23] Grounds justifying separate classification, including separate classification of unsecured claims, include: (a) where members of a class possess different legal rights; and (b) where there is a good business reason for separate classification.[24]

30. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places the Claims and Interests into five (5) separate Classes, with Claims and Interests in each Class differing from the Claims and Interests in each other Class in a legal or factual manner, or based on other relevant criteria.[25] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

- Class 1: Secured Claims
- Class 2: Other Priority Claims
- Class 3: General Unsecured Claims
- Class 4: Subordinated Claims
- Class 5: Interests

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[23] *See, e.g.*, *In re W.R. Grace & Co.*, 729 F.3d 311, 326 (3d Cir. 2013) (citing *In re AOV Indus., Inc.*, 792 F.2d 1140, 1150 (D.C. Cir. 1986)) (concluding that when analyzing whether claims are "substantially similar," the proper focus is on "the legal character of the claim as it relates to the assets of the debtor"); *Armstrong World Indus.*, 348 B.R. at 159 ("A classification structure satisfies section 1122 of the Bankruptcy Code when a reasonable basis exists for the structure, and the claims or interests within each particular class are substantially similar.") (citations omitted); *see also In re Barakat*, 99 F.3d 1520, 1526 (9th Cir. 1996) (separate classification of similar claims requires a "legitimate business or economic justification"); *Boston Post Road Ltd. P'ship v. F.D.I.C.* (*In re Boston Post Road Ltd. P'ship*), 21 F.3d 477, 483 (2nd Cir. 1994) ("the debtor must adduce credible proof of a legitimate reason for separate classification of similar claims."); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 246–247 (Bankr. S.D.N.Y. 2007) ("Although section 1122(a), by its terms, doesn't require that all similarly-situated claims be classified together, caselaw has made clear that separate classification of substantially similar unsecured claims is permissible only when there is a reasonable basis for doing so or when the decision to separately classify 'does not offend one's sensibility of due process and fair play.'") (quoting *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 703 (Bankr. S.D.N.Y. 1993)).

[24] *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs*., 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that, as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper); *In re Mallinckrodt PLC*, 639 B.R. 837, 858 (Bankr. D. Del. 2022) (permitting the separate classification of unsecured noteholders where the two groups had divergent debt structuring rights); *In re Jersey City Med. Ctr*., 817 F.2d 1055, 1061 (3d Cir. 1987) (approving classification of general unsecured creditors into different classes: doctors' indemnification claims, medical malpractice claims, employee benefit claims and trade claims); *In re ECE Wind-down LLC*, No. 22-10320 (JTD) (Dec. 21, 2022) [Docket No. 520] (approving plan with separate classification of general unsecured claims); *In re Masten Space Sys.*, *Inc.*, No. 22-10657 (BLS) (Nov. 9, 2022) [Docket No. 226] (same); *In re Insys Therapeutics, Inc.*, *et al.*, No. 19-11292 (KG) (Bankr. D. Del. Dec. 4, 2019) [Docket No. 1115] (same).

[25] *See* Plan, Art. III.

31. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class.[26] In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes set forth in the Plan, and the classification scheme was not implemented for any improper purpose and does not unfairly discriminate between or among the Holders of Claims or Interests.[27] Specifically, the Plan separately classifies the Claims because each Holder of such Claim may hold (or may have held at the time the Plan was filed) rights in the Estate that were legally dissimilar to the Claims in other Classes.[28] The Debtor thus submits that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code.

2. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code

32. Section 1123(a) of the Bankruptcy Code sets forth seven criteria that every chapter 11 plan must satisfy. The Plan satisfies each of these requirements, and no party has asserted otherwise.

a. Designation of Classes of Claims and Interests (Section 1123(a)(1) of the Bankruptcy Code)

33. For the reasons set forth above, Article III of the Plan properly designates classes of Claims and Interests and thus satisfies the requirements of section 1122 of the Bankruptcy Code.[29]

[26] *See* Badan Decl. ¶ 10.

[27] *Id.*

[28] *Id.*

[29] *Id*.

b. Specification of Unimpaired Classes (Section 1123(a)(2) of the Bankruptcy Code)

34. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan."[30] The Plan meets this requirement by identifying each Class in Article III that is Unimpaired.[31]

c. Treatment of Impaired Classes (Section 1123(a)(3) of the Bankruptcy Code)

35. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan."[32] The Plan meets this requirement by setting forth the treatment of each Class in Article III that is Impaired.[33]

d. Equal Treatment Within Classes (Section 1123(a)(4) of the Bankruptcy Code)

36. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[34] The Plan meets this requirement because holders of Allowed Claims or Interests will receive the same rights and treatment as other holders of Allowed Claims or Interests within such holders' respective Class.[35]

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30 11 U.S.C. § 1123(a)(2).

31 *See* Plan, Art. III.A.; Badan Decl. ¶ 13.b.

32 11 U.S.C. § 1123(a)(3).

33 *See* Plan, Art. III.B.; Badan Decl. ¶ 13.b.

34 11 U.S.C. § 1123(a)(4).

35 *See* Plan, Art. III.B.; Badan Decl. ¶ 13.b.

e. Means for Implementation (Section 1123(a)(5) of the Bankruptcy Code)

37. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[36] The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provide for the means by which the Plan will be implemented.[37]

38. Among other things, the Plan provides for: (a) the wind-down and dissolution of the Debtor and its wholly-owned subsidiary; (b) the formation of the Liquidating Trust and the vesting of assets therein; (c) the sources of consideration for Plan distributions; (d) the treatment of Executory Contracts and Unexpired Leases; (e) the treatment of Claims and Interests; (f) the preservation and vesting of certain Retained Causes of Action in the Liquidating Trust; and (g) the taking of all necessary and appropriate actions by the Debtor to effectuate the transactions under and in connection with the Plan.[38] Accordingly, the Plan complies with section 1123(a)(5) of the Bankruptcy Code.

f. Issuance of Non-Voting Securities (Section 1123(a)(6) of the Bankruptcy Code)

39. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities.[39] The Plan is a liquidating plan pursuant to which the Debtor's assets will be liquidated and distributed by the Debtor or the Liquidating Trust, as applicable, in accordance with the terms of the Plan and the

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[36] 11 U.S.C. § 1123(a)(5).

[37] *See* Plan, Art. IV.; Badan Decl. ¶ 13.c.

[38] *See* Plan, Art. IV, V, & VII.

[39] 11 U.S.C. § 1123(a)(6).

Liquidating Trust Agreement. As such, the Plan does not provide for the issuance of non-voting equity securities and section 1123(a)(6) of the Bankruptcy Code is inapplicable to the Plan.[40]

g. Directors and Officers (Section 1123(a)(7) of the Bankruptcy Code)

40. Section 1123(a)(7) of the Bankruptcy Code requires that plan provisions with respect to the manner of selection of any director, officer, or trustee, or any other successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy."[41] In accordance with Article IV.F.2 of the Plan, as of the Effective Date, the existing board of directors of the Debtor shall be deemed to have resigned without any further action required. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Estate, provided that the Liquidating Trustee shall have no duties other than as expressly set forth in the Plan, in the Confirmation Order, and in the Liquidating Trust Agreement, as applicable. The identity of the Liquidating Trustee along with the nature of the Liquidating Trustee's compensation was disclosed in the Plan Supplement. The appointment of the Liquidating Trustee is consistent with the interests of creditors and with public policy.[42] Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

3. The Plan Complies with the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

41. Section 1123(b) of the Bankruptcy Code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) modify or leave unaffected the rights of holders of secured or unsecured claims;

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40 *See* Badan Decl. ¶ 13.d.

41 11 U.S.C. § 1123(a)(7).

42 *See* Badan Decl. ¶ 20; Plan, Art. IV.C.5.

(c) provide for the settlement or adjustment of claims against or interests in a debtor or its estate or the retention and enforcement by a debtor, trustee, or other representative of claims or interests; (d) provide for the assumption or rejection of executory contracts and unexpired leases; (e) provide for the sale of all or substantially all of the property of a debtor's estate, and the distribution of the proceeds of such sale among holders of claims or interests; or (f) "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[43]

a. Impairment and Unimpairment of Classes (Section 1123(b)(1) of the Bankruptcy Code)

42. The Plan satisfies the requirements of section 1123(b)(1) of the Bankruptcy Code because Article III leaves each Class of Claims and Interests Impaired or Unimpaired, respectively.[44]

b. Treatment of Executory Contracts and Unexpired Leases (Section 1123(b)(2) of the Bankruptcy Code)

43. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the rejection of the Debtor's Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date or listed as assumed in the Plan Supplement.[45] The Debtor determined, in its sound business judgment, that all of its remaining Executory Contracts and Unexpired Leases should be rejected upon the Effective Date, as they do not provide

[43] *See* U.S.C. § 1123(b)(1)–(6).

[44] Plan, Art. III.A.; Badan Decl. ¶ 14.a.

[45] Plan, Art. V.

any benefit to the Estate or to parties in interest as part of the liquidation.[46] Accordingly, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.[47]

c. The Plan's Release, Exculpation, and Injunction Provisions, Including the Adjustment of Claims Held by Certain Released Parties, Satisfy Section 1123(b) of the Bankruptcy Code

44. The Plan also includes certain releases, an exculpation provision, and an injunction provision. These discretionary provisions are proper because, among other things, they are supported by the Debtor and are consistent with applicable precedent.[48]

i. **The Debtor Release Is Appropriate**

45. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[49] Further, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[50] Article IX.A. of the Plan provides for releases by the Debtor and its Estate, as of the Effective Date, of, among other things, certain claims, rights, and Causes

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46 *See* Badan Decl. ¶ 14.b.

47 *Id.*

48 *Id*. ¶ 14.c.

49 *See In re Coram Healthcare Corp*., 315 B.R. 321, 334–35 (Bankr. D. Del. 2004) (holding that standards for approval of settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019). Generally, courts in the Third Circuit approve a settlement by the debtor if the settlement "exceed[s] the lowest point in the range of reasonableness." *In re Exaeris, Inc.*, 380 B.R. 741, 746– 47 (Bankr. D. Del. 2008) (citation omitted); *see also Cosoff v. Rodman* (*In re W.T. Grant Co*.), 699 F.2d 599, 608 (2d Cir. 1983) (examining whether settlement "fall[s] below the lowest point in the range of reasonableness") (alteration in original) (citation omitted); *In re World Health Alts., Inc*., 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that settlement must be within reasonable range of litigation possibilities).

50 *In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether 'the compromise is fair, reasonable, and in the best interest of the estate.'") (internal citations omitted).

of Action that the Debtor or its Estate may have against the Released Parties,[51] subject to certain carve-outs and limitations as reflected in Article IX.A of the Plan (the "**Debtor Releases**").

46. The Debtor believes the business judgment standard is the appropriate standard to apply to the Debtor Releases; however, some courts in this district have also examined the following list of non-exclusive and disjunctive factors (the "***Zenith* Factors**"):[52] (a) an identity of interest between the debtor and the third party; (b) substantial contribution by the non-debtor of assets to the reorganization; (c) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success; (d) an agreement by a substantial majority of creditors to support the injunction; (e) specifically if the impaired class or classes "overwhelmingly" vote to accept the plan; and (f) a provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction.[53] As a list of non-conjunctive factors, these factors provide a way of "weighing the equities of the particular

[51] "**Released Party**" means collectively, solely in its capacity as such, (a) the Debtor; (b) the post-Effective Date Debtor; (c) each of the Debtor's officers and directors who served on or after the Petition Date; (d) the Debtor's former director appointed by the Sponsor; (e) the Sponsor; (f) the Prepetition Noteholders; (g) the Committee and its members; (h) each current and former Affiliate of each Entity in clause (a) through the following clause (g); and (i) the respective Related Parties for each of the foregoing in (a) through (h) above; provided, however, that any Released Party that elects to opt-out of the releases set forth in Article IX.B of the Plan shall not be a Released Party. Plan Art. I.A.87.

[52] The *Zenith* Factors were first articulated as the standard for approving a third-party release (*i.e.*, a provision releasing a non-debtor's claim against another non-debtor). *See In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994). Later, in *Zenith*, this Court applied the *Master Mortgage* factors to a debtor release. *See In re Zenith Elec. Corp.*, 241 B.R. 92, 110–11 (Bankr. D. Del. 1999) (citing *Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930). As such, the Debtor has applied the *Zenith* Factors to the Debtor Releases and, for the reasons set forth herein, submit that the Debtor Releases in this case satisfy the *Zenith* Factors and should be approved.

[53] *Zenith Elecs. Corp.*, 241 B.R. at 110; *see also Indianapolis Downs, LLC*, 486 B.R. 286, 303-04 (Bankr. D. Del. 2013) ("These factors are neither exclusive nor are they a list of conjunctive requirements."); *Wash. Mut. Inc.*, 442 B.R. at 346 (stating that the factors "simply provide guidance in the [c]ourt's determination of fairness"); *In re Exide Techs.*, 303 B.R. 48, 72 (Bankr. D. Del. 2003) (finding that *Zenith* factors are not exclusive or conjunctive requirements).

case after a fact-specific review."[54] Notably, courts have approved releases where only one or two factors are present.[55]

47. Notably, here, the Debtor Releases are limited and do not include (a) any post-Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (b) any obligations under or in respect of the Sale Orders or the APAs; or (c) the Retained Causes of Action.

48. Considering the foregoing limitations to the Debtor Releases, each *Zenith* Factor supports the Debtor Releases. First, there is an identity of interest between the Debtor and the Debtor Released Parties. Each of the Debtor Released Parties shares the common goals of resolving Claims and achieving fair and equitable distributions to creditors under the Plan. This unified interest in formulating and confirming the Plan establishes an identity of interest under applicable law.[56]

49. Moreover, with respect to certain of the releases—*e.g.*, those releasing the Debtor's directors and officers who served on or after the Petition Date—there is a clear identity of interest supporting the release because the Debtor owes certain indemnification obligations to such parties

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54 *Indianapolis Downs, LLC*, 486 B.R. at 303.

55 *See*, *e.g.*, *In re Caribbean Petroleum Corp.*, 512 B.R. 774, 777-78 (Bankr. D. Del. 2014) (finding "no question" that release of debtor's claims was proper because non-debtor "provided [d]ebtors with substantial consideration in exchange for the releases, providing the justification for the Court approving the releases"); *Spansion, Inc.*, 426 B.R. at 143 (approving release where releasees were actively involved in negotiating the plan and four of five creditor classes voted overwhelmingly in favor).

56 *See*, *e.g.*, *Zenith Elecs. Corp.*, 241 B.R. at 110 (finding an identity of interest with debtor where certain released parties who "were instrumental in formulating the Plan" shared an identity of interest with debtor "in seeing that the Plan succeed . . ."); *Tribune Co.*, 464 B.R. at 187 (noting an identity of interest between debtors and settling parties where such parties "share[d] the common goal of confirming the [] Plan and implementing the [] Plan Settlement"); *In re 710 Long Ridge Rd. Operating Co., II, LLC*, Case No. 13-13653 (DHS), 2014 WL 886433, at *15 (Bankr. D.N.J. Mar. 5, 2014) (approving non-consensual third-party release and finding identity of interest where both debtor and non-debtor released parties shared a common goal of "confirming [a plan] and implementing the transactions contemplated thereunder").

pursuant to the Debtor's governance documents, which would otherwise increase the Claims pool and delay distributions to Holders of Allowed Claims to the detriment of all parties in interest.[57] Thus, a lawsuit commenced by the Debtor (or derivatively on behalf of the Debtor) against certain individuals would effectively be a lawsuit against the Debtor itself, except to the extent the lawsuit is instituted for the limited and sole purpose of triggering coverage under any applicable Insurance Policies.

50. In addition to the foregoing, the Debtor's officers and directors have made substantial and valuable contributions, on a prepetition and postpetition basis, to the chapter 11 case. Those contributions include, among other things: (a) working around the clock to identify a third-party buyer and DIP Lender after Avid abruptly swept the Debtor's cash on December 15, 2025, resulting in the Debtor's chapter 11 filing on December 29, 2025 with a full asset purchase agreement and schedules, committed DIP financing, and all other requisite chapter 11 filings to allow the Debtor to continue operating in the ordinary course and run a competitive 363 sale process to maximize value for creditors; (b) negotiating and obtaining a bridge loan from the Sponsor to enable the filing of the chapter 11 case following the cash sweep by Avid, and participating in negotiations with various stakeholders to obtain the consensual use of cash collateral and debtor-in-possession financing; (c) ensuring the uninterrupted operation of the Debtor's businesses during the chapter 11 case and preserving the value of the Debtor's estate in a challenging operating environment; (d) running a competitive sale and marketing process with the Debtor's professionals, ultimately resulting in the Debtor's receipt of eight bids, a full-day auction, and the execution and consummation of three separate sales for substantially all of the

[57] *See Indianapolis Downs*, 486 B.R. at 303 ("An identity of interest exists when, among other things, the debtor has a duty to indemnify the nondebtor receiving the release.").

Debtor's assets with an aggregate sale price of $13.375 million—$6.875 million in excess of the $6.5 million stalking horse bid provided by F52, LLC that set the floor for the Debtor's sale process; (e) attending court hearings; (f) attending regular Board meetings to monitor the progress of the chapter 11 case and approve the sales; (g) investing significant time and effort to assist the Debtor's professionals in the preparation of the Plan, Disclosure Statement, all supporting analyses, and several other pleadings filed in the chapter 11 case; and (h) consensually agreeing to reduce their General Unsecured Claims by approximately $10.8 million in the aggregate, thereby materially enhancing recoveries for other Holders of General Unsecured Claims.[58] Notably, as a result of the investigation completed by the special committee (the "**Special Committee**") of the Board of Salt House, Inc., the Debtor does not believe there are colorable or valuable claims against the Debtor Released Parties that would be likely to result in significant recoverable damages, as set forth more fully in the Frizzley Declaration.[59]

51. Third, the overwhelming support for the Plan by Class 3 (General Unsecured Claims) is compelling evidence that the Debtor Releases constitute a valid exercise of the Debtor's business judgment that should be approved. Indeed, no Holder of a Claim or Interest has objected to the Plan or the Debtor Releases included therein. This is a significant endorsement of the Debtor Releases that the Court should not overlook: it reinforces and affirms the Debtor's determination that the Debtor Releases are a valid exercise of the Debtor's business judgment and are in the best interest of the Estate. There could be no better evidence as to the reasonableness and fairness of

[58] *See* Frizzley Decl. ¶ 19.

[59] *Id.* ¶ 22.

the Debtor Releases than the support of those Holders of Claims most affected by a release of the Debtor's claims or Causes of Action against the Released Parties.[60]

52. Finally, the Plan provides recoveries for the Classes affected by the Debtor Releases, which recoveries were significantly enhanced by the voluntary claim reductions described above. The Debtor, together with the Released Parties, has worked diligently to preserve the Estate's limited resources and maximize recoveries for the benefit of all Holders of Allowed Claims, including by successfully consummating three Sales and preserving the Retained Causes of Action. Accordingly, the Debtor submits that the Debtor Releases are a sound exercise of its business judgment, satisfy the *Zenith* Factors, and should be approved under section 1123(b)(3)(A) of the Bankruptcy Code.

ii. **The Third-Party Release Is Wholly Consensual and Appropriate Under the Facts and Circumstances of This Case**

53. Article IX.B. of the Plan provides for the release of each Released Party by the Releasing Parties from any and all claims and Causes of Action, as further provided in the Plan (the "**Third-Party Release**"). The standard for approval of a third-party release is consent,[61] and this Court and others within the Third Circuit have consistently approved third-party releases as consensual where creditors are provided with adequate notice and have the opportunity to opt-out.[62]

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[60] *See Master Mortg. Inv. Fund, Inc*., 168 B.R. at 938 (stating that creditor approval of a release is "the single most important factor" to determine whether a release is appropriate); *see also In re Key3Media Grp., Inc.*, 336 B.R. 87, 97–98 (Bankr. D. Del. 2005) (granting a settlement of estate causes of action over creditor's objection because, among other things, a majority of creditors approved of the settlement), *aff'd*, 2006 WL 2842462 (D. Del. 2006); *see also In re Corvias Campus Living – USG, LLC,* Case No. 25-11214 (LSS) (Bankr. D. Del. Dec. 11, 2025) [Docket No. 327] at 17 (finding that releases were consensual where the debtor used an opt-out mechanism).

[61] *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024) (holding that "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants.").

[62] *See In re Nikola Corp., et al.*, No. 25-10258 (TMH) (Bankr. D. Del. 2025) (D.I. 1029) Hr'g Tr. No. 132:25–133:1-94 (approving an opt out mechanism that provided clear and conspicuous notice); *In re Molecular Templates, Inc.*, No. 25-10739 (BLS) (Bankr. D. Del. May 21, 2025) Hr'g Tr. 37:3–22 (confirming that the

54. In this case, the Debtor provided clear and broad notice of the Third-Party Release and instructions to opt-out, using the forms of notice approved by the Court in the Interim Approval and Procedures Order. All parties subject to the Third-Party Release had ample opportunity to evaluate the Third-Party Release and elect to grant such Third-Party Release by not timely electing to opt-out, or object to, the Third-Party Release, as set forth in the Ballot, with respect to Class 3 (General Unsecured Claims), or Non-Voting Opt-Out Form, with respect to Class 1 (Secured Claims) and Class 2 (Other Priority Claims). These parties were additionally provided (a) the Combined Confirmation Hearing Notice that included the deadline to object to confirmation of the Plan, (b) instructions, including a QR code, for accessing the Disclosure Statement, the Plan, and the Interim Approval and Procedures Order, and (c) a prepaid, pre-addressed return envelope. Moreover, the Disclosure Statement, the Combined Confirmation Hearing Notice, and the Ballots provided recipients with timely, sufficient, appropriate, and adequate notice of the Third-Party Release, and twenty-seven recipients exercised the opt-out election, demonstrating that the instructions within the notice of the Third-Party Release were clear, sufficient, appropriate, and adequate.[63]

55. Accordingly, the Debtor asserts that the Third-Party Release is wholly consensual and consistent with established Third Circuit law. The Third-Party Release should therefore be approved.

Indianapolis Downs analysis applies post-*Purdue*); *In re Fisker, Inc.*, No. 24-11390 (TMH) (Bankr. D. Del. Oct. 11, 2024) (D.I. 706) Hr'g Tr. No. 44:20-45:11 (finding that "in light of Purdue, there is no prohibition on the use of opt-out releases"); *In re Amyris Inc.*, Case No. 23-11131 (TMH) (Bankr. D. Del. Feb. 2, 2024) (D.I. 1238) Hr'g Tr. No. 6:9-14 (approving consensual third-party releases with an opt-out feature because "the opt-out adequately protects parties' rights and appropriately indicates whether a party would consent to the releases"); *In re Invitae Corp.*, Case No. 24-11362 (MBK) (Bankr. D. N.J. Aug. 2, 2024) [Docket No. 913] (confirming a plan that contained a third-party release with an opt out mechanism); *In re Bowflex Inc.*, Case No. 24-12364 (ABA) (Bankr. D. N.J. Aug. 19, 2024) [Docket No. 614] (same).

63 *See* Disclosure Statement § X.B; Interim Approval and Procedures Order, Exs. 1-4.

56. For the reasons set forth in the Debtor's reply [Docket No. 288] (the "**DS Reply**") in support of the Interim Approval and Procedures Order, which is incorporated herein by reference, the U.S. Trustee Objection should be overruled. The "[o]ne confirmation issue" raised by the U.S. Trustee in the U.S. Trustee Objection is "whether the Plan's third-party releases based on inaction are consensual."[64] This Court already approved the use of an opt-out mechanism and held that inaction can constitute consent at the March 27, 2026 hearing in this case.[65] The U.S. Trustee acknowledged that the Court overruled this point in its confirmation objection: "On March 27, 2026, the Court overruled the UST DS Objection in part. The Court indicated that it maintained its previous position regarding opt-ins/opt-outs for purposes of the Debtor's Plan and overruled the UST DS Objection on that point, and reserved the rest of the UST DS Objection for confirmation."[66]

57. While the Court reserved judgment on other issues, those issues were not the focus of the U.S. Trustee's confirmation objection, which solely focuses on whether consent can be demonstrated by inaction. The Debtor submits that the analysis for a third-party release should be limited to the issue of consent, which is satisfied in this case for the reasons set forth above. The U.S. Trustee raises several factual points that (i) do not distinguish this case from any other bankruptcy case and (ii) have no bearing on the issue of consent and whether it may be demonstrated through the failure to opt-out following the receipt of clear notice. Nevertheless, the Debtor addresses the U.S. Trustee's points in turn below.

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64 U.S. Trustee Obj. ¶1.

65 *In re Salt House, Inc.*, Case No. 25-12277 (LSS) (Bankr. D. Del. Mar. 27, 2026 Hr'g Tr. No. 15:13-17:5 (I agree that other than the opt-in, opt-out the issues that the U.S. Trustee has raised are confirmation issues . . . As to the opt-in, opt-out I am still of the position that I have been . . . For purposes of today, I will overrule that portion of the objection. The rest of it I will hear at confirmation.").

66 U.S. Trustee Obj. ¶19.

58. *First*, as a result of extensive negotiations by and among the Debtor, the Committee, and the Released Parties, certain of the Released Parties have agreed to significant reductions of their General Unsecured Claims, reducing the projected pool of General Unsecured Claims by approximately 40%, and, together with additional available cash due to operational efficiencies, the Debtor now projects a payment percentage for Holders of General Unsecured Claims of approximately 9%, compared to the Debtor's prior estimate of 2.6%.[67] Thus, any assertion that the Third-Party Release is not appropriate due to a lack of consideration by the Released Parties has no merit.

59. *Second*, the fact that the Debtor's chapter 11 filing was precipitated by a cash sweep, and the Debtor's creditors were not notified of the bankruptcy filing in advance, does not distinguish this case from any other case where creditors are not notified of a bankruptcy filing in advance. In fact, the exact purpose of a chapter 11 filing is to avoid a run on the bank by notifying creditors after the automatic stay is in place so that a debtor's assets may be distributed in accordance with the priority scheme set forth in the Bankruptcy Code.[68]

60. *Third*, the inclusion of employees in the creditor body is irrelevant to the question of consent for a third-party release. This Court has repeatedly held that consent is an issue of notice and that the use of an opt-out mechanism can demonstrate consent.[69] Applying that

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67 *See* Marcero Decl. ¶ 12.

68 *See In re W.R. Grace & Co*., 475 B.R. 34, 147 (Bankr. D. Del. 2012) (citing A.H. Robbins Co., Inc. v. Piccinin, 788 F.2d 994, 998 (4th Cir. 1986)) (stating that the purpose of the automatic stay is to "protect the debtor from an uncontrollable scramble for its assets in a number of uncoordinated proceedings in different courts, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors, and to provide the debtor with a reasonable respite from protracted litigation.")

69 *See In re Corvias Camping – USG, LLC*, Case No. 25-11214 (LSS) (Bankr. D. Del. Oct. 29, 2025) Hr'g Tr. No. 47:12-48:6 ("I am still of the opinion I have been over the years that parties need to read documents that come to them, that it's a notice issue, and that is sufficient to ask for consensual third party releases and an opt-out can be appropriate. [F]or multiple reasons, I'm still okay with an opt-out because of notice provisions."); *In re Corvias Camping – USG, LLC*, Case No. 25-11214 (LSS) (Bankr. D. Del. Dec. 11, 2025) at 25-28:14-6 (same); *In re Boy Scouts of America and Delaware BSA, LLC*, 642 B.R. 504, 675-77 (Bankr. D. Del. 2022) (approving third-party releases where "claimants . . . were well aware of the opportunity and need to opt-out or object to the third-party

standard, the notices the Debtor sent out in this case were approved by this Court as sufficient through the Interim Approval and Procedures Order.[70] Notably, without being asked by any party, the Debtor revised the Interim Approval and Procedures Order to specifically state that "Any member of Class 1 (Secured Claims), Class 2 (Other Priority Claims), or Class 3 (General Unsecured Claims) whose Ballot or Notice of Non-Voting Status is returned as undeliverable shall not be considered a Releasing Party under the Plan."[71] This change was made to ensure that only parties who actually received notice would be Releasing Parties under the Plan, if those parties elected not to opt-out of the Third-Party Release. An individual's status as a former employee as compared to a vendor, a contract counterparty or any other party does not change the foundational analysis of whether a party received clear notice and consented to a third-party release by electing not to opt-out.

61. *Fourth*, Governmental Units should not be excluded from the Third-Party Release due to the timing of the governmental bar date, when those entities merely need to read a notice that was provided to them and check a box to opt-out of the third-party release. The U.S. Trustee has not, and cannot, identify a single case where the Court excluded Governmental Units from a third-party release on this basis and, if anything, Governmental Units are better equipped to read legal notices than the average creditor. Governmental Units routinely respond to notices in bankruptcy cases within the response period required by the Bankruptcy Rules or the Local Rules and provide comments to sale orders and the like to protect their rights and claims prior to the

releases in the Plan [because] [t]he need to opt-out of the releases is prominently placed on the first page of each ballot . . . in bold, all caps and surrounded by a box"); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. 2019) [Docket No. 384] ("With respect to third-party releases I'm prepared to find that they are consensual because of opt-out box in the ballots.").

70 *See* Interim Approval and Procedures Order ¶8.

71 *Id*. at ¶14.

governmental bar date.[72] There is no reason that a different approach should be adopted in this scenario and, notably, no Governmental Unit with a claim has raised this issue in this case, even after the U.S. Trustee initially raised the issue nearly two months ago.[73]

62. *Fifth*, the U.S. Trustee's argument regarding creditors who do not receive the de minimis distribution amount in the Plan, which the Debtor reduced from $100 to $50 in the Confirmation Order at the U.S. Trustee's request, should be rejected for the same reasons set forth above—any Releasing Parties who did not opt out of the Third-Party Release received a very clear notice and elected not to opt-out. Recognizing consent as a notice issue, this Court has authorized the use of opt-outs for third-party releases even for impaired classes entitled to no distribution and deemed to reject plans in other cases.[74] The Debtor did not seek such relief here, and the Releasing Parties only include Holders of Claims in Classes entitled to a recovery.[75] As a result, the U.S. Trustee's reliance on *Container Store* is inapposite. *See In re Container Store Grp., Inc.*, 676 B.R. 356, 390 (S.D. Tex. 2026) (approving the use of an opt-out mechanism to demonstrate consent for a third-party release, except for holders of claims in classes deemed to reject the plan).

63. The Plan received resounding support from the sole Voting Class (General Unsecured Claims)—with 99.12% of such Holders in voting amount submitting Ballots in favor of the Plan—and the Committee—who represents the exact constituency affected by the U.S. Trustee Objection—supports the Plan and has not joined in the U.S. Trustee Objection.

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[72] *See, e.g.* Fed. R. Bankr. P. 2002 (setting forth notice requirements for objections in bankruptcy cases and not providing a carve-out for governmental units); Del. Bankr. L.R. 9006-1 (same).

[73] *See generally Objection of the United States Trustee to Approval of Solicitation Procedures* [Docket No. 282].

[74] *See, e.g., In re Z Gallerie, LLC*, Case No. 19-10488 (LSS); *In re Corvias Camping – USG, LLC*, Case No. 25-11214 (LSS).

[75] As a practical matter, the U.S. Trustee's proposal is also entirely unworkable as final distribution amounts may not be known for years, depending on the case and the time required for claims reconciliation.

Accordingly, for the reasons set forth herein and in the DS Reply, the U.S. Trustee Objection should be overruled and the Third-Party Release should be approved.

iii. **The Exculpation Provision Is Appropriate**

64. Article IX.C. of the Plan provides for the exculpation of the Exculpated Parties (the "**Exculpation Provision**").[76] The Exculpation Provision is fair and appropriate under both applicable law[77] and the facts and circumstances of this chapter 11 case. The Exculpation Provision is limited to Estate fiduciaries and does not exculpate acts or omissions that constitute actual intentional fraud, willful misconduct, or gross negligence.[78] The Debtor believes that the Exculpation Provision is important because the Exculpated Parties have participated in this chapter 11 cases in good faith, and such provision is necessary to protect them from collateral attacks related to any good faith acts or omissions in connection with, or related to, among other things, this chapter 11 case and the Plan.[79] Accordingly, the Debtor believes that the Exculpation Provision is consistent with applicable law and should be approved.

iv. **The Injunction Provision Is Appropriate**

65. The injunction provision set forth in Article IX.D. of the Plan merely implements the Plan's release and exculpation provisions, in part, by permanently enjoining all entities from commencing or maintaining any action against the Debtor Released Parties, the Released Parties or the Exculpated Parties on account of or in connection with or with respect to any such claims

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[76] "**Exculpated Party**" or "**Exculpated Parties**" means, in each case in its capacity as such, (a) the Debtor; (b) each of the Debtor's officers and directors who served in such capacity on or after the Petition Date, and any other person serving as a fiduciary of the Debtor's Estate, in each case, who served at any time between the Petition Date and the Effective Date of this Plan; (c) the Committee and its members; and (d) each of the Debtor's and the Committee's Retained Professionals. Plan Art. I.A.47

[77] *See Wash. Mut.*, 442 B.R. at 350-51 (holding that an exculpation clause that encompassed "the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the [c]ommittees and their members, and the [d]ebtors' directors and officers" was appropriate).

[78] *See* Plan, Art. IX.C.

[79] *See* Badan Decl. ¶ 14.c.

or interests released or subject to exculpation (the "**Injunction Provision**"). Thus, the Injunction Provision is a key provision of the Plan because it enforces the release and exculpation provisions that are centrally important to the Plan.[80] As such, to the extent the Court finds that the exculpation and release provisions are appropriate, the Debtor respectfully submits that the Injunction Provision must also be appropriate and should be approved.

d. The Retention of the Retained Causes of Action is Appropriate

66. The Retained Causes of Action set forth in the Plan and Plan Supplement are essential to the Plan and appropriate under the facts and circumstances of this chapter 11 case. Accordingly, such Retained Causes of Action should be approved.

e. The Plan Complies with the Additional Provision of Section 1123(b) of the Bankruptcy Code

67. The Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.[81] Article III of the Plan modifies or leaves unaffected, as is applicable, the rights of certain Holders of Claims, as permitted by section 1123(b)(5) of the Bankruptcy Code.[82] Additionally, the other discretionary provisions in the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of sections 1123(b)(5) and (b)(6) of the Bankruptcy Code, and no party has asserted otherwise.

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80 *Id*.

81 11 U.S.C. § 1123(b)(5).

82 *See* Badan Decl. ¶ 14.d.

D. The Plan Complies with Section 1123(d) of the Bankruptcy Code

68. Section 1123(d) of the Bankruptcy Code provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable non-bankruptcy law."[83]

69. The Plan complies with section 1123(d) of the Bankruptcy Code. Article V of the Plan provides for the rejection of the Debtor's Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Court, other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date or set forth in the Plan Supplement. The Debtor's determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtor, are necessary to the implementation of the Plan, and are in the best interests of the Debtor, its Estate, Holders of Claims, and other parties in interest in this chapter 11 case.[84]

E. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code

70. The Debtor has satisfied section 1129(a)(2) of the Bankruptcy Code, which requires the plan proponent to comply with the applicable provisions of the Bankruptcy Code.[85] The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code.[86] As set forth below, the Debtor

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83 *See* 11 U.S.C. § 1123(d).

84 *See* Badan Decl. ¶ 14.b.

85 *See* 11 U.S.C. § 1129(a)(2).

86 *See In re Lapworth*, 1998 WL 767456, at *3 (DWS) (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); *In re Aleris Int'l, Inc.*, 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) ("[S]ection 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the

has complied with these provisions, including sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan through its Notice and Claims Agent in accordance with the Interim Approval and Procedures Order.[87]

1. The Debtor Complied with Section 1125 of the Bankruptcy Code

71. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[88] Section 1125 ensures that parties in interest are fully informed regarding the debtor's condition so that they may make an informed decision whether to approve or reject the plan.[89]

72. As set forth above, section 1125 is satisfied here. Before the Debtor solicited votes on the Plan, the Court approved the Disclosure Statement on an interim basis.[90] The Court also approved the contents of the solicitation materials provided to Holders of Claims entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, and the relevant dates for voting and objecting to the Plan.[91] As stated in the Badan Declaration, the Debtor, through the Notice and Claims Agent, complied with the content and delivery

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solicitation and disclosure requirements under sections 1125 and 1126 of the Bankruptcy Code."); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

87 *See* Badan Decl. ¶ 15.

88 11 U.S.C. § 1125(b).

89 *See Momentum Mfg. Corp. v. Emp. Creditors Comm.* (*In re Momentum Mfg. Corp.*), 25 F.3d 1132, 1136 (2d Cir. 1994) (finding that section 1125 of the Bankruptcy Code obliges a debtor to engage in full and fair disclosure that would enable a hypothetical reasonable investor to make an informed judgment about the plan).

90 *See generally* Interim Approval and Procedures Order.

91 *Id*.

requirements of the Interim Approval and Procedures Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code.[92] The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. Here, the Debtor caused the Disclosure Statement to be transmitted to all parties entitled to vote on the Plan.

73. Based on the foregoing, the Debtor submits that it has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Interim Approval and Procedures Order.

2. The Debtor Complied with Section 1126 of the Bankruptcy Code

74. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.[93] The Debtor did not solicit votes on the Plan from Class 1 (Secured Claims) and Class 2 (Other Priority Claims) as such Classes are Unimpaired under the Plan (the "**Unimpaired Classes**").[94] Pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims in the Unimpaired Classes are conclusively presumed to have accepted the Plan and, therefore, were not entitled to vote on the Plan. The Debtor also did not solicit votes from Class 4 (Subordinated Claims) and Class 5 (Interests) as such Classes are Impaired under the Plan and not expected to receive any recovery on account of their Claims or Interests (the "**Deemed Rejecting Classes**").[95] Pursuant to section 1126(g) of the Bankruptcy

[92] *See* Badan Decl. ¶ 10.

[93] *See* 11 U.S.C. § 1126.

[94] *See* Plan, Art. III.A.

[95] *Id.*

Code, holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan and, therefore, were not entitled to vote on the Plan.

75. Accordingly, the only Impaired Class that voted under the Plan was Class 3 (General Unsecured Claims).[96] With respect to Class 3, section 1126(c) of the Bankruptcy Code provides that:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.[97]

76. The Voting Report, summarized *supra*, reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code. Based on the foregoing, the Debtor submits that it has satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

F. The Plan Was Proposed in Good Faith and Therefore Complies with Section 1129(a)(3) of the Bankruptcy Code

77. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." Where a plan satisfies the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code is satisfied.[98] To determine whether a plan seeks

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96 *See* Badan Decl. ¶ 25.

97 11 U.S.C. § 1126(c).

98 *E.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986)); *Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'ship* (*In re T-H New Orleans Ltd. P'ship*), 116 F.3d 790, 802 (5th Cir. 1997) (quoting *Brite v. Sun Country Dev., Inc.* (*In re Sun Country Dev., Inc.*), 764 F.2d 406, 408 (5th Cir. 1985)); *In re Century Glove, Inc.*, Civ. A. Nos. 90-400 and 90-401,1993 WL 239489, at *4 (D. Del. Feb. 10, 1993); *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002).

relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[99]

78. The Plan was proposed with honesty, good intentions, and with the goal of maximizing stakeholder recoveries. Throughout this chapter 11 case, the Debtor, its directors, and its management team have upheld their fiduciary duties to stakeholders and protected the interests of all constituents.[100] The Plan facilitates transactions that will provide greater value to the Debtor's stakeholders compared to the alternative of a chapter 7 liquidation.[101] Importantly, the Plan is supported by the Holders of Claims entitled to vote on the Plan. Accordingly, the Plan and the Debtor's conduct satisfy section 1129(a)(3) of the Bankruptcy Code.

G. The Plan Provides that the Payment of Debtor's Professional Fees and Expenses Are Subject to Court Order in Compliance with Section 1129(a)(4) of the Bankruptcy Code

79. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable. Courts have construed this section to require that all payments of professional fees paid out of estate assets be subject to review and approval by the Court as to their reasonableness.[102]

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[99] *E.g., T-H New Orleans*, 116 F.3d at 802 (quoting *In re Sun Country Dev., Inc*., 764 F.2d at 408); *In re W.R. Grace & Co*., 475 B.R. 34, 87 (D. Del. 2012); *Century Glove*, 1993 WL 239489, at *4.

[100] *See generally* Frizzley Decl. ¶ 9.

[101] *See* Marcero Decl. ¶ 11.

[102] *Lisanti Foods*, 329 B.R. at 503 ("Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court"), *aff'd,* 241 F. App'x 1 (3d Cir. 2007); *In re Future Energy Corp*., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *In re Chapel Gate Apartments, Ltd*., 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation").

80. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code.[103] All payments made or to be made by the Debtor for services or for costs or expenses in connection with this chapter 11 case prior to the Confirmation Date, including all Professional Fee Claims, have been approved by, or are subject to approval of, the Court.[104] Article II.B.1 of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed no later than 30 days after the Effective Date for determination by the Court, after notice and a hearing, in accordance with the procedures established by the Court except as such procedures have been otherwise modified by the Plan.[105] Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code, and no party has asserted otherwise.

H. The Plan Does Not Require Additional Disclosures Regarding Directors, Officers, or Insiders and Therefore Complies with Section 1129(a)(5) of the Bankruptcy Code

81. The Bankruptcy Code requires the plan proponent to disclose the affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.[106] Section 1129(a)(5)(A)(ii) further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[107] In addition, section 1129(a)(5)(B) also requires a plan proponent to disclose the identity of any "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the nature of any compensation for such insider.[108]

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[103] *See* Badan Decl. ¶ 19.

[104] *See* Plan, Art. II.

[105] *Id.*

[106] 11 U.S.C. § 1129(a)(5)(A)(i).

[107] *Id.* § 1129(a)(5)(A)(ii).

[108] *Id.* § 1129(a)(5)(B).

82. Article IV.F.2. of the Plan provides for the resignation of the Debtor's directors and officers and the termination of the Debtor's remaining employees on the Effective Date. From and after the Effective Date, the Liquidating Trustee, who was selected by the Committee, will be authorized to act on behalf of the Estate. The identity of the Liquidating Trustee, along with the nature of the compensation of the Liquidating Trustee, was disclosed in the Plan Supplement. Accordingly, the requirements of section 1129(a)(5) of the Bankruptcy Code have been satisfied.

I. The Plan Does Not Require Governmental Regulatory Approval and Therefore Complies with Section 1129(a)(6) of the Bankruptcy Code

83. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and section 1129(a)(6) of the Bankruptcy Code is therefore inapplicable to the Plan.

J. The Plan is in the Best Interest of Creditors and Therefore Complies with Section 1129(a)(7) of the Bankruptcy Code

84. Section 1129(a)(7) of the Bankruptcy Code, commonly known as the "best interests test," provides, in relevant part:

> With respect to each impaired class of claims or interests—
>
> (A) each holder of a claim or interest of such class—
> (i) has accepted the plan; or
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date . . . .

85. The best interests test applies to individual dissenting holders of impaired claims and interests rather than classes, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate

against the estimated recoveries under that debtor's plan of reorganization.[109] As section 1129(a)(7) of the Bankruptcy Code makes clear, the best interests test applies only to holders of non-accepting impaired claims or interests, who must receive at least as much under a plan as they would receive in a chapter 7 liquidation.[110]

86. Here, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test. As set forth in the Marcero Declaration,[111] the Debtor, with the assistance of its legal and financial advisors, including MERU, LLC, prepared an unaudited liquidation analysis (the "**Liquidation Analysis**"), which is attached as Exhibit B to the Disclosure Statement.

87. The Liquidation Analysis compares the projected range of recoveries that would result from the liquidation of the Debtor in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to holders of allowed Claims and Interests under the Plan.[112] As illustrated in the Liquidation Analysis, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code, because—due to higher anticipated costs to the Estate in a hypothetical chapter 7 case as compared to under the Plan in this chapter 11 case—all holders of impaired Claims and Interests will receive property with a value as of the Effective Date that is not less than the value such holders would receive in a liquidation under chapter 7.[113]

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[109] *Bank of Am. Nat. Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *Century Glove*, 1993 WL 239489, at *7; *Adelphia Commc'ns. Corp.*, 368 B.R. at 251 (stating that section 1129(a)(7) is satisfied when an impaired holder of claims would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation").

[110] *See In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'") (internal citations omitted).

[111] *See generally* Marcero Decl.

[112] *See* Marcero Decl. ¶ 10.

[113] *See id.* and the Liquidation Analysis.

88. Accordingly, based on the Liquidation Analysis, the Plan satisfies the best interests test as required by the Bankruptcy Code.

K. The Plan is Confirmable Notwithstanding the Requirements of Section 1129(a)(8) of the Bankruptcy Code

89. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. Holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan and, thus, were not entitled to vote. Consequently, while the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to the Deemed Rejecting Classes, the Plan is confirmable nonetheless because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code, as discussed below.[114]

L. The Plan Provides for Payment in Full of All Allowed Priority Claims in Compliance with Section 1129(a)(9) of the Bankruptcy Code

90. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments. In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan), or cash of a value equal to the allowed amount of such claim on the effective date of the plan (if such class has

[114] *See* Badan Decl. ¶¶ 25, 26.

not accepted the plan). Finally, section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim.[115]

91. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code.[116] *First*, Article II.A of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because it provides that each Holder of an Allowed Administrative Claim shall receive payment as follows: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which (i) an order allowing such Administrative Claim becomes a Final Order or (ii) the Debtor or the Liquidating Trustee (as applicable) and the holder of the Administrative Claim consensually agree to the Allowed amount of such claim, or as soon as reasonably practicable thereafter; or (c) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

92. *Second*, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because Holders of Allowed Other Priority Claims are Unimpaired under the Plan.

93. *Third*, Article II.C of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides Holders of Allowed Priority Tax Claims payment in full in Cash on the Effective Date or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed Priority Tax Claim and the Debtor or the Liquidating Trustee, as applicable, agree to less

[115] 11 U.S.C. §§ 507(a)(1)–(7), 1129(a)(9).

[116] *See* Badan Decl. ¶ 24.

favorable treatment for such Holder. The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.

M. At Least One Class of Impaired, Non-Insider Claims Accepted the Plan in Compliance with Section 1129(a)(10) of the Bankruptcy Code

94. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan.

95. The Holders of Class 3 (General Unsecured Claims), which are Impaired, voted to accept the Plan independent of any insiders' votes.[117] Thus, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.[118]

N. The Plan is Feasible in Compliance with Section 1129(a)(11) of the Bankruptcy Code

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

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.[119]

[117] *See* Badan Decl. ¶ 25.

[118] *See id*.

[119] 11 U.S.C. § 1129(a)(11).

97. To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success.[120] Rather, a debtor must provide only a reasonable assurance of success.[121] There is a relatively low threshold of proof necessary to satisfy the feasibility requirement.[122] The feasibility test set forth in section 1129(a)(11) does not require the Debtor to "prove" that the Plan will succeed. The Debtor needs only demonstrate that the Plan has "a reasonable likelihood of success" or a "reasonable probability" that the provisions of the Plan may be performed.[123]

98. The purpose of the feasibility test under section 1129(a)(11) is to "prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation."[124] The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.[125] Bankruptcy courts have found that feasibility is established where a debtor has "sufficient resources" to meet its obligations under a liquidating plan, including its "obligations to pay for the costs of administering and fully

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[120] *Kane v. Johns-Manville Corp*., 843 F.2d 636, 649 (2d Cir. 1988) ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); *In re Flintkote Co*., 486 B.R. 99, 139 (Bankr. D. Del. 2012); *W.R. Grace & Co*., 475 B.R. at 115; *In re U.S. Truck Co*., 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd sub nom. Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co.* (*In re U.S. Truck Co.*), 800 F.2d 581 (6th Cir. 1986).

[121] *Kane*, 843 F.2d at 649; *Flintkote Co*., 486 B.R. at 139; *W.R. Grace & Co*., 475 B.R. at 115; *see also Pizza of Haw.*, 761 F.2d at 1382 (citations omitted) (holding that "[t]he purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation"); *accord In re Capmark Fin. Grp. Inc*., No. 09-13684 (CSS), 2011 WL 6013718, at *61 (Bankr. D. Del. Oct. 5, 2011) (same).

[122] *See, e.g., In re Prussia Assocs*., 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting approvingly that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility") (internal citations omitted); *In re Sea Garden Motel & Apartments*, 195 B.R. 294, 305 (D. N.J. 1996); *In re Tribune Co.*, 464 B.R. 126, 185 (Bankr. D. Del. 2011), *overruled in part on other grounds*, 464 B.R. 208 (Bankr. D. Del. 2011).

[123] *See Kane*, 843 F.2d at 649; *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 156 (3d Cir. 2012) (noting that section 1129(a)(11) "does not require a plan's success to be guaranteed"); *In re Heritage Highgate, Inc*., 679 F.3d 132, 142 (3d Cir. 2012) (quoting *In re TCI 2 Holdings, LLC*, 428 B.R. at 148).

[124] *Pizza of Haw*, 761 F.2d at 1382; *In re Kreider*, No. 05-15018 (ELF), 2006 WL 3068834, at *5 (Bankr. E.D. Pa. Sept. 27, 2006).

[125] *See U.S. Truck*, 47 B.R. at 944.

consummating the plan and closing the chapter 11 cases."[126] Other courts have said that, to demonstrate that a liquidating plan is feasible, a plan proponent need only show that "the successful performance of [the plan's] terms is not dependent or contingent upon any future, uncertain event."[127]

99. Here, the Plan is feasible.[128] The Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code by providing for a clear path to emergence from this chapter 11 case and the ability of the Debtor to satisfy its obligations under the Plan. The Debtor projects that all Allowed priority and administrative Claims will be satisfied as outlined in the Plan and Confirmation Order. As explained in the Marcero Declaration, the Plan provides the financial wherewithal necessary to implement the Plan, sufficiently funds the Liquidating Trust, and offers reasonable assurance that the Plan is workable and has a reasonable likelihood of success.[129] This process will continue following the Effective Date under the direction of the Liquidating Trustee.

100. Moreover, the value of the Debtor's Estate under the Plan includes, among other things, the Debtor's Cash on hand as of the Effective Date and the Retained Causes of Action.[130] The Debtor projects that the distributable value of the Estate will be sufficient to satisfy all Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Other Priority Claims, Allowed Administrative Claims, and Statutory Fees, and will provide a recovery to Class 3 (General

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126 *In re Finlay Enters., Inc.*, No. 09-14873 JMP, 2010 WL 6580628, at *7 (Bankr. S.D.N.Y. June 29, 2010).

127 *In re Heritage Org., L.L.C.*, 375 B.R. 230, 311 (Bankr. N.D. Tex. Aug. 31, 2007) (holding that the creation of a creditor trust with res consisting of estate cash and the proceeds of any future successful litigation in addition to a fixed trust governance mechanism qualified as feasible).

128 *See* Marcero Decl. ¶ 17.

129 *See id.*

130 *See generally* Plan Art. IV.A.

Unsecured Claims) consistent with the Plan and the Confirmation Order. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

O. All Statutory Fees Have or Will Be Paid in Compliance with Section 1129(a)(12) of the Bankruptcy Code

101. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan." Section 507(a)(2) of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses.

102. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article II.D of the Plan provides that all fees due and payable pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtor on the Effective Date.[131] After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee when due and payable, and the Debtor and the Liquidating Trustee shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

P. Sections 1129(a)(13), (a)(14), (a)(15), and (a)(16) of the Bankruptcy Code Do Not Apply to the Plan

103. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. The Debtor does not have any obligation to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Plan. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of

[131] *See* Badan Decl. ¶ 28; Plan Art. II.D.

domestic support obligations. Since the Debtor is not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply.[132] Likewise, section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. Because the Debtor is not an "individual," the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply.[133] Finally, the Debtor is a moneyed, business, or commercial corporation and therefore section 1129(a)(16) of the Bankruptcy Code, which provides that property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust be made in accordance with any applicable provisions of non-bankruptcy law, is not applicable to this chapter 11 case.[134]

Q. The Plan Satisfies the "Cram Down" Requirements of Section 1129(b) of the Bankruptcy Code

104. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[135]

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132 *See* Badan Decl. ¶ 29.

133 *See id*.

134 *See id*.

135 *John Hancock*, 987 F.2d at 157 n.5; *In re Ambanc La Mesa L.P.*, 115 F.3d 650, 653 (9th Cir. 1997) ("the [p]lan satisfies the 'cramdown' alternative . . . found in 11 U.S.C. § 1129(b), which requires that the [p]lan 'does not discriminate unfairly' against and 'is fair and equitable' towards each impaired class that has not accepted the [p]lan.").

1. The Plan is Fair and Equitable and Thus Satisfies Section 1129(b)(2)(B) of the Bankruptcy Code

105. A plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the "absolute priority" rule.[136] This requires that an impaired rejecting class of claims or interests either be paid in full or that a class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.

106. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code.[137] Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code.

107. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met.

108. *Second*, the Plan is fair and equitable with respect to the Deemed Rejecting Classes. The Plan has been proposed in good faith, is reasonable and meets the requirements that no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest, and no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests in

[136] *Bank of Am.*, 526 U.S. at 441–42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

[137] *See* Badan Decl. ¶¶ 30-32.

the Deemed Rejecting Classes.[138] As a result, the Plan satisfies the fair and equitable standard of section 1129(b)(2)(B) of the Bankruptcy Code, and no party has asserted otherwise.

2. The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes that Have Not Voted to Accept the Plan in Accordance with Section 1129(b)(1) of the Bankruptcy Code

109. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of a particular case to make the determination.[139] In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.[140] A threshold inquiry to assessing whether a proposed chapter 11 plan unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.

110. Here, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar

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138 *See* Badan Decl. ¶ 32.

139 *In re 203 N. LaSalle St. Ltd. P'ship*., 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev'd on other grounds*, *Bank of Am*., 526 U.S. 434 (1999) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established."); *In re Aztec Co.*, 107 B.R. 585, 589–91 (Bankr. M.D. Tenn. 1989) ("Courts interpreting language elsewhere in the Code, similar in words and function to § 1129(b)(1), have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination."); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances").

140 *See Coram*, 315 B.R. at 349 (citing cases and noting that separate classification and treatment of claims is acceptable if the separate classification is justified because such claims are essential to a reorganized debtor's ongoing business); *In re Lernout & Hauspie Speech Prods., N.V*., 301 B.R. 651, 661 (Bankr. D. Del. 2003) (permitting different treatment of two classes of similarly situated creditors upon a determination that the debtors showed a legitimate basis for such discrimination); *Ambanc La Mesa*, 115 F.3d at 656–57 (same); *Aztec Co*., 107 B.R. at 589–91 (stating that plan which preserved assets for insiders at the expense of other creditors unfairly discriminated); *In re Johns-Manville Corp*., 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) (stating that interests of objecting class were not similar or comparable to those of any other class and thus there was no unfair discrimination).

treatment on account of their Claims or Interests, as applicable, in such class.[141] The Deemed Rejecting Classes are classified separately because they are legally distinct from the other Classes in that Class 4 consists of Claims that are subordinated under the Bankruptcy Code or applicable law and Class 5 is the only Class comprised of Interests. Accordingly, the Holders in these Classes are not similarly situated to any other Claims in other Classes. Therefore, the Plan does not discriminate unfairly with respect to any Impaired Classes of Claims or Interests, and the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

R. The Debtor Complied with Sections 1129(d) and (e) of the Bankruptcy Code

111. Section 1129(d) of the Bankruptcy Code provides that "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."[142] The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no Governmental Unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.[143]

112. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because this chapter 11 case is not a "small business case."[144] Thus, the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements, and no party has asserted otherwise.

S. Modifications to the Plan

113. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of

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141 *See* Badan Decl. ¶ 31.

142 *See* 11 U.S.C. § 1129(d).

143 *See* Badan Decl. ¶ 33.

144 *See* 11 U.S.C. § 1129(e).

sections 1122 and 1123 of the Bankruptcy Code. Further, when the proponent of a plan files the plan with modifications with the court, the plan as modified becomes the plan. Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who have previously accepted the plan if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or the interest of any equity security holder. Interpreting Bankruptcy Rule 3019, courts consistently have held that a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated.[145]

114. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan described or set forth in the Confirmation Order or in any Plan filed prior to the entry of the Confirmation Order (collectively, the "**Plan Modifications**") constitute technical or clarifying changes, changes with respect to particular Claims by agreement with Holders of such Claims, or modifications that do not otherwise materially and adversely affect or change the treatment of any other Claim or Interest under the Plan. In accordance with Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of votes under section 1126 of the Bankruptcy Code, and they do not require that Holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Accordingly, the Debtor submits that the Plan, as modified, is properly

[145] *See, e.g., In re Federal–Mogul Glob. Inc.*, 2007 Bankr. LEXIS 3940, *113 (Bankr. D. Del. 2007) (additional disclosure under section 1125 is not required where plan "modifications do not materially and adversely affect or change the treatment of any Claim against or Equity Interest in any Debtor"); *Beal Bank, S.S.B. v. Jack's Marine, Inc.*, (*In re Beal Bank, S.S.B.*), 201 B.R. 376, 380 n. 4 (E.D. Pa. 1996) (further disclosure and solicitation not required under section 1127(b) and (c) where modifications to the plan were immaterial); *In re Glob. Safety Textiles Holdings LLC*, No. 09-12234 (KG), 2009 WL 6825278, at *4 (Bankr. D. Del. Nov. 30, 2009) (finding that nonmaterial modifications to plan do not require additional disclosure or resolicitation); *In re Burns & Roe Enters., Inc.*, No. 08-4191 (GEB), 2009 WL 438694, at *23 (D. N.J. Feb. 23, 2009) (confirming plan as modified without additional solicitation or disclosure because modifications did "not adversely affect creditors").

before the Court and all votes cast with respect to the Plan prior to such modification should be binding and apply with respect to the Plan.

T. Good Cause Exists to Waive the Stay of the Confirmation Order

115. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."[146] Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

116. The Debtor submits that good cause exists for waiving and eliminating any stay of the Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the Confirmation Order will be effective immediately upon its entry.[147] As noted above, this chapter 11 case and the related transactions have been negotiated and implemented in good faith and with a high degree of transparency and public dissemination of information.[148] Additionally, each day the Debtor remains in chapter 11, it incurs significant administrative and professional costs that directly reduce the amount of distributable value for creditors.[149]

117. Based on the foregoing, the Debtor requests a waiver of any stay imposed by the Bankruptcy Rules so that the Confirmation Order may be effective immediately upon its entry.

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146 Bankruptcy Rule 3020(e).

147 *See, e.g.*, *In re Source Home Entm't, LLC*, No. 14-11553 (KG) (Bankr. D. Del, Feb. 20, 2015) (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re GSE Envtl., Inc*., No. 13-11126 (MFW) (Bankr. D. Del. July 25, 2014) (same); *In re Physiotherapy Holdings, Inc*., No. 13¬12965 (KG) (Bankr. D. Del. Dec. 23, 2013) (same); *In re Gatehouse Media, Inc.*, No. 13-12503 (MFW) (Bankr. D. Del. Nov. 6, 2013) (same); *In re Dex One Corp*., No. 13-10533 (KG) (Bankr. D. Del. Apr. 29, 2013) (same); *In re Geokinetics Inc*., No. 13-10472 (KJC) (Bankr. D. Del. Apr. 25, 2013) (same).

148 *See* Badan Decl. ¶ 36.

149 *Id* at ¶ 35.

CONCLUSION

118. For all of the reasons set forth herein and in the Declarations, and as will be further shown at the Combined Confirmation Hearing, the Debtor respectfully requests that the Court approve the Disclosure Statement on a final basis and confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code by entering the Confirmation Order, overruling the U.S. Trustee Objection, and granting such other and further relief as is just and proper.

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Dated: May 15, 2026
Wilmington, Delaware

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