Docket #0212 Date Filed: 6/2/2026

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

In re:	Chapter 11
SHANNON WIND, LLC,	Case No. 26-90124 (ARP)
Debtor.	

MEMORANDUM OF LAW IN SUPPORT OF (I) FINAL APPROVAL OF THE DISCLOSURE STATEMENT; AND (II) CONFIRMATION OF THE PLAN

DATED: June 2, 2026

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Shannon Wind LLC, as debtor and debtor in possession (the "**Debtor**"), in the above-captioned chapter 11 case (the "**Chapter 11 Case**"), hereby submits this memorandum of law (the "**Memorandum**") in support of its request for entry of an order approving, on a final basis, the *Amended Combined Disclosure Statement and Chapter 11 Plan of Reorganization* [Docket No. 209] (as it may be amended, the "**Combined Disclosure Statement and Plan**") and, including all agreements and other documents set forth in certain supplements to the Plan [Docket Nos. 187 & 202] (as modified, amended, or supplemented from time to time, collectively, the "**Plan Supplement**").[1]

PRELIMINARY STATEMENT

1. The Debtor stands poised to confirm the Plan that comes at the culmination of an orderly and efficient chapter 11 process resulting in a value-maximizing sale of substantially all the Debtor's assets.

2. Among other things, the Plan will facilitate: (a) the orderly distribution to creditors of the proceeds from the sale of the Debtor's assets; and (b) the wind down and dissolution of the Debtor's Estate.

3. As discussed in detail below, the Plan satisfies each of the Bankruptcy Code's confirmation requirements. In advance of the Confirmation Hearing, the Debtor filed a proposed confirmation order [Docket No. 211] (the "**Proposed Confirmation Order**"). For the reasons set forth herein and in the Supporting Declarations (as defined below), the Bankruptcy Court should approve the Disclosure Statement on a final basis and enter the Proposed Confirmation Order.

[1] Unless otherwise defined all capitalized terms shall have the meanings provided in the Combined Disclosure Statement and Plan.

BACKGROUND

I. SUPPORTING DECLARATIONS

4. Prior to, or substantially contemporaneously with the filing of this Memorandum, the Debtor has filed the following documents in support of confirmation of the Plan and final approval of the Disclosure Statement (collectively, the "**Supporting Declarations**"):

- *Declaration of Adam J. Gorman With Respect to the Tabulation of Votes on the Amended Combined Disclosure Statement and Chapter 11 Plan* [Docket No. 205] (the "**Voting Declaration**");
- *Affidavit of Publication of the Notice of (I) Hearing on Final Approval of the Disclosure Statement and Confirmation of the Joint Plan of Liquidation, (II) Deadline to Cast Votes to Accept or Reject the Plan, and (IV) Notice of Objection and Opt-Out Rights in the Houston Chronicle, The New York Times, and Wichita Falls Times Record News*, filed on May 6, 2026 [Docket No. 159] (the "**Publication Affidavit**");
- *Certificate of Service of Scott M. Ewing, re: Solicitation Materials Served*, filed on May 14, 2026 by Kurtzman Carson Consultants, d/b/a Verita Global [Docket No. 182] (the "**Solicitation Affidavit**"); and
- *Declaration of John Shepherd in Support of (I) Final Approval of the Disclosure Statement and (II) Confirmation of the Plan* [Docket No. 204] (the "**Shepherd Declaration**")

5. The Supporting Declarations and any testimony and other declarations that may be adduced or submitted in connection with the Combined Hearing are incorporated in full herein.

II. BACKGROUND OF CHAPTER 11 CASE AND PLAN

A. The Chapter 11 Filing

6. On January 25, 2026 (the "**Petition Date**"), the Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the Bankruptcy Court for the Southern District of Texas (the "**Court**"). The pertinent facts relating to

the commencement of this Chapter 11 Case and the key events preceding the Chapter 11 Case are set forth in the Disclosure Statement.

III. PLAN SOLICITATION AND TABULATION

7. On April 10, 2026, the Debtor filed: (a) the *Combined Disclosure Statement and Chapter 11 Plan* [Docket No.128]; and (b) the *Emergency Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation Procedures and Solicitation Packages, (III) Scheduling a Combined Hearing, (IV) Establishing Procedures for Objecting to the Plan and Final Approval of the Disclosure Statement, (V) Approving the Form, Manner, and Sufficiency of Notice of the Combined Hearing, and (VI) Granting Related Relief* [Docket No. 129] (the "**Solicitation Procedures Motion**"), pursuant to which the Debtor sought, among other things, a combined hearing on the final approval of the Disclosure Statement and confirmation of the Plan (the "**Combined Hearing**").

8. On April 22, 2026, the Bankruptcy Court entered an order approving the Solicitation Procedures Motion [Docket No. 138] (the "**Conditional Approval and Procedures Order**"). The Conditional Approval and Procedures Order, among other things, (i) scheduled the Combined Hearing for June 3, 2026 at 9:00 a.m. (prevailing Central Time), (ii) established May 27, 2026, at 4:00 p.m. (prevailing Central Time), as the deadline to object to the adequacy of the Disclosure Statement or confirmation of the Plan (the "**Objection Deadline**"), (iii) approved the solicitation, balloting, tabulation, noticing, and related activities undertaken by the Debtor in connection with the Plan (collectively, the "**Solicitation Procedures**") and the forms of Ballots,

(iv) approved the form of notice of the Combined Hearing (the "**Combined Hearing Notice**"), and (v) conditionally approved the Disclosure Statement.[2]

9. The Disclosure Statement and Ballots directed the Holders of Claims in Class 3 (Prepetition Secured Obligations Claims), Class 4 (General Secured Claims), and Class 6 (Existing Equity Interests) (collectively, the "**Voting Classes**") to cast their votes to accept or reject the Plan by following the instructions contained in the Ballots so as to be received by Notice and Claims Agent no later than 4:00 p.m. (prevailing Central Time) on May 27, 2026 (the "**Voting Deadline**").[3] Each Ballot also contained detailed instructions on how to complete it and how to opt out of the an opt-out form that allowed for the Holders of Claims and Interests to opt out of the third-party releases (the "**Third-Party Release Opt-Out Form**"), which form contained the full text of the settlement, release, exculpation, and injunction provisions set forth in Article XIII of the Plan, provided instructions for completing the Third-Party Release Opt-Out Form, and advised such Holders that they would be deemed to have consented to the third-party release provisions in Article XIII of the Plan unless they timely and properly opted out of such release.[4]

10. On April 27, 2026, the Debtor filed the *Amended Combined Disclosure Statement and Chapter 11 Plan* [Docket No. 141] that included certain revisions to the original filed at Docket No. 128 and served as the solicitation version of the Plan and Disclosure Statement.

11. The Debtor served Holders of Claims and Interests in the Voting Classes with the Solicitation Packages on or before April 29, 2026 (the "**Solicitation Deadline**").

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2 *See, e.g.*, Conditional Approval and Procedures Order ¶¶ 1, 2, 5, 6, and 8.

3 Class 5 is vacant and, pursuant to Section 6.3 of the Plan is eliminated for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class.

4 *See* Voting Declaration ¶ 5; Solicitation Affidavit; Conditional Approval and Procedures Order.

12. Consistent with the Conditional Approval and Procedures Order, the Debtor did not provide the complete Solicitation Packages to the Holders of Claims in Class 1 (Priority Non-Tax Claims) and Class 2 (Other Secured Claims)) (collectively, the "**Non-Voting Classes**"). Holders of Claims in Classes 1 and 2 are Unimpaired under the Plan and conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code.

13. In accordance with the Conditional Approval and Procedures Order, in lieu of serving Holders of Claims in the Non-Voting Classes with a copy of the Plan and the Disclosure Statement, the Debtor served such Holders with the Combined Hearing Notice, which sets forth (i) the date, time, and place of the Combined Hearing, (ii) a summary of the Plan, (iii) the procedures and deadline for submitting an objection to approval of the Disclosure Statement or confirmation of the Plan, and (iv) the manner in which a copy of the Plan and Disclosure Statement may be obtained.[5]

14. The Combined Hearing Notice, conformed to publication format (the "**Publication Notice**"), was also published in the *Houston Chronicle* and *The New York Times* on April 29, 2026, and in the *Wichita Falls Times Record News* on April 30, 2026, in accordance with the Conditional Approval and Procedures Order.[6] The Plan and Disclosure Statement were also made available at no cost on the website of the Debtor's Notice and Claims Agent's at https://www.veritaglobal.net/shannon.

15. In addition to the Combined Hearing Notice, by the Solicitation Deadline, the Debtor also served Holders of Claims in the Non-Voting Classes with (i) a notice of non-voting status (the "**Notice of Non-Voting Status**") and (ii) the Third-Party Release Opt-Out Form. The Notice of Non-Voting Status and Third-Party Release Opt-Out Form meet the requirements of the

[5] *See* Voting Declaration ¶ 5; Solicitation Affidavit; Conditional Approval and Procedures Order.
[6] *See* Publication Affidavit.

Procedures for Complex Cases in the Southern District of Texas (the "**Complex Case Procedures**").

16. In accordance with the Conditional Approval and Procedures Order, the Debtor filed the Plan Supplement on May 20, 2026 [Docket No. 187], which contained, subject to modification pursuant to the terms set forth in the Plan, (i) the Schedule of Retained Causes of Action, (ii) Plan Assumed Contracts List, (iii) the Wind Down Budget, and (iv) the Liquidation Analysis.

17. Subsequently, on June 1, 2026, the Debtor filed the second Plan Supplement [Docket No. 202], which contained, subject to modification pursuant to the terms set forth in the Plan, amendments to the Plan Assumed Contracts List and the Liquidation Trust Agreement.

18. Finally, on June 2, 2026, the Debtor filed a corrected version of the Combined Disclosure Statement and Plan at [Docket No. 209] with a redline comparison against the solicitation version reflecting certain limited technical and typographical corrections.

A. Tabulation

15. After the Voting Deadline, and following a complete review by the Notice and Claims Agent of all Ballots received, the Notice and Claims Agent finalized the tabulation of the votes.[7] Class 3 (Prepetition Secured Obligations Claims) and Class 4 (General Unsecured Claims) are impaired and voted to accept the Plan. Class 6 (Existing Equity Interests) abstained from voting. Finally, Class 5 (510(b)Claims) is vacant and, pursuant to Section 6.3 of the Plan is eliminated for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class.

IV. OBJECTIONS TO THE PLAN

[7] *See* Voting Declaration ¶¶ 12-16.

16. The Debtor only received one formal and one informal objection to the Plan. The U.S. Trustee filed an objection at Docket No. 197 (the "**U.S. Trustee Objection**") requesting that the Bankruptcy Court deny approval of the Third-Party Release provision in the Plan and the associated opt-out procedures. This argument is addressed below. The U.S. Trustee further requests language clarifying that claims of certain Governmental Units are not impaired by the Third-Party Release and Exculpation Provisions. The Debtor and U.S. Trustee have agreed to proposed language in the Proposed Confirmation Order to resolve this objection.

17. The Clay County Appraisal District also raised an informal objection to the Plan to ensure payment of taxes upon the closing of the Sale Transaction and preserving rights against the relevant property for future tax obligations. The Proposed Confirmation Order includes language to resolve this objection as well.

ARGUMENT

18. This Memorandum is divided into three sections. Section V demonstrates satisfaction of each requirement for final approval of the Disclosure Statement and requests a finding that the Debtor complied with the Conditional Approval and Procedures Order. Section VI demonstrates satisfaction of the requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code. Finally, Section VII addresses the Debtor's request for a waiver of the 14-day stay imposed by operation of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

V. THE DISCLOSURE STATEMENT SHOULD BE APPROVED ON FINAL BASIS

A. Parties in Interest Received Sufficient Notice of the Combined Hearing and Objection Deadline.

19. Under Bankruptcy Rule 3017(a), a hearing on the adequacy of a disclosure statement requires 28 days' notice.[8] Bankruptcy Rule 2002(b) further provides that parties in interest should receive 28 days' notice of the objection deadline for, and hearing to consider approval of, the disclosure statement and confirmation of a chapter 11 plan.[9] Section 105(d)(2)(B)(vi) of the Bankruptcy Code provides that the Bankruptcy Court may combine the hearing on approval of a disclosure statement with the hearing on confirmation of the plan.[10]

20. The U.S. Court of Appeals for the Fifth Circuit has adopted the general rule that "[d]ue process requires that notice be 'reasonably calculated, under all the circumstances, to inform interested parties of the pendency' of a proceeding."[11] When evaluating the sufficiency of notice, courts in this Circuit consider whether "(1) the notice apprised the claimant of the pendency of the action, and (2) [whether] it was sufficiently timely to permit the claimant to present his objections."[12]

21. On April 29, 2026, twenty-eight (28) days before the Objection Deadline, the Debtor caused its Notice and Claims Agent to commence service of the Solicitation Package on the Voting Classes. Moreover, as noted, the Debtor (i) published the Publication Notice in the national edition of the *Houston Chronicle*, *The New York Times* and the *Wichita Falls Times Record News* on April 29, 2026, respectively, in accordance with the Conditional Approval and

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8 *See* Fed. R. Bankr. P. 3017(a).

9 *See* Fed. R. Bankr. P. 2002(b).

10 *See* 11 U.S.C. § 105(d)(2)(B)(vi).

11 *In re Placid Oil Co.,* 753 F.3d 151, 154 (5th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

12 *Matter of Christopher*, 28 F.3d 512, 518 (5th Cir. 1994); *In re Tex. Tamale Co.*, 219 B.R. 732, 739–40 (Bankr. S.D. Tex. 1998). Indeed, "[w]hether a particular method of notice is reasonably calculated to reach interested parties depends upon the particular circumstances of each case." *In re Hunt*, 146 B.R. 178, 182 (Bankr. N.D. Tex. 1992).

Procedures Order, and (ii) served the Combined Hearing Notice to all known creditors and equity holders by the Solicitation Deadline of April 29, 2026.[13]

22. In addition, all Voting Classes were served with a copy of the Solicitation Package, and all Non-Voting Classes were provided a copy of the Non-Voting Status Package, respectively, twenty-eight (28) days prior to the Objection Deadline, Voting Deadline, and release opt-out deadline of May 27, 2026. As such, the Debtor has complied with the time periods required by the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules for the Southern District of Texas (the "**Local Rules**"). All parties in interest had sufficient notice of the Objection Deadline and the Combined Hearing, and no party has been prejudiced by this schedule.

B. The Disclosure Statement Contains Adequate Information and Should be Approved.

23. The primary purpose of a disclosure statement is to provide material information, or "adequate information," that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.[14] Under section 1125(a) of the Bankruptcy Code, a plan proponent must provide holders of claims and interests entitled to vote with "adequate information" regarding a debtor's proposed plan of reorganization. "Adequate information" is defined as:

> [I]nformation 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.[15]

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[13] *See* Voting Declaration ¶ 5; Solicitation Affidavit; Publication Affidavit.

[14] *See, e.g., In re J.D. Mfg., Inc.*, No. 07-36751, 2008 WL 4533690, at *2 (Bankr. S.D. Tex. Oct. 2, 2008).

[15] 11 U.S.C. § 1125(a).

24. "Adequate information" is a flexible standard that adapts to the facts and circumstances of a particular case.[16]

25. Courts consider various factors when evaluating the adequacy of the disclosures in a proposed disclosure statement, including (i) the events that led to the filing of a bankruptcy petition, (ii) a description of a debtor's available assets and its value, (iii) the anticipated future of the company, (iv) the claims asserted against a debtor, (v) the present condition of a debtor while in chapter 11, (vi) the estimated return to creditors under a chapter 7 liquidation, (vii) the chapter 11 plan or a summary thereof, (viii) the financial information, valuations, and projections relevant to the claimants' decisions to accept or reject the plan, (ix) the information relevant to the risks posed to claimants under the plan, (x) the tax attributes of a debtor; (xi) the relationship of a debtor with its affiliates, (xii) the source of information stated in the disclosure statement, (xiii) the future management of a debtor, (xiv) the actual or projected realizable value from recovery of any causes of action or avoidance actions; and (xv) the litigation likely to arise in a nonbankruptcy context.[17]

26. The Disclosure Statement is extensive and comprehensive. Specifically, the Disclosure Statement describes, among other disclosures:

- The key terms of the Plan; [18]
- The Debtor's history and business operations;[19]
- The Debtor's prepetition capital structure;[20]

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16 *See In re J.D. Mfg., Inc.*, at *2 ("'Adequacy' of information is a determination that is relative both to the entity . . . and to the sophistication of the creditors to whom the disclosure statement is addressed."). In examining the adequacy of the information contained in a disclosure statement, the Bankruptcy Court has broad discretion. See *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and . . . is largely within the discretion of the bankruptcy court.").

17 *See 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); *Westland Dev. Corp. v. MCorp Mgmt. Sols., Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (same).

18 *See* Combined Disclosure Statement and Plan.

19 See *id*., at Article V.

20 *See id.*

- The Debtor's prepetition efforts to negotiate with creditors;[21]
- Certain events and relevant negotiations preceding the commencement of this Chapter 11 Case;[22]
- Key events during the Chapter 11 Case;[23]
- The Debtor's marketing efforts for the sale of assets or new equity and the Bidding Procedures Order;[24]
- Risk factors affecting the Plan and consummation of the Plan,[25] and
- Federal tax law consequences of the Plan.[26]

27. For the reasons set forth above, the Disclosure Statement, which was conditionally approved by the Bankruptcy Court, satisfies the requirements of section 1125(a) of the Bankruptcy Code and should be approved on a final basis.

C. The Debtor's Solicitation of Votes Complied with the Bankruptcy Code, the Bankruptcy Rules, and the Conditional Approval and Procedures Order.

28. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

> Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk, as the court orders, shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,
> (1) the plan or a court-approved summary of the plan;
> (2) the disclosure statement approved by the court;
> (3) notice of the time within which acceptances and rejections of the plan may be filed; and

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21 *See id.*
22 *See id.*
23 *See id.*
24 *See id.*
25 *See id.*, at Article VII.
26 *See id.*

> (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.
> In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.[27]

Bankruptcy Rule 3017(d) also provides, in relevant part, as follows:

> If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.[28]

29. As set forth herein and as approved in the Conditional Approval and Procedures Order, the Solicitation Packages and Solicitation Procedures comply with the Bankruptcy Code and Bankruptcy Rules.[29]

i. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with Bankruptcy Rules.

30. Bankruptcy Rule 3017(d) requires Debtor to distribute a ballot that conforms substantially to Official Form No. 314 only to "creditors and equity security holders entitled to vote on the plan."[30] Bankruptcy Rule 3018(c) provides that "[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form."[31] Only Holders of Claims and Interests in the Voting Classes were sent Ballots. The Ballots conformed to

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27 Fed R. Bankr. P. 3017(d).

28 *Id.*

29 *See* Conditional Approval and Procedures Order.

30 Fed. R. Bankr. P. 3017(d).

31 Fed. R. Bankr. P. 3018(c).

Official Form No. 314, as modified to address the facts of these cases and to be appropriate for each Voting Class. The Ballots were approved by the Bankruptcy Court in the Conditional Approval and Procedures Order. Accordingly, the Debtor has satisfied Bankruptcy Rules 3017(d) and 3018(c).

ii. The Voting Record Date Complied with Bankruptcy Rules.

30. Pursuant to Bankruptcy Rule 3018(b), "[a]n equity security holder or creditor whose claim is based on a security of record . . . shall not be deemed to have accepted or rejected the plan . . . unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation."[32] The Disclosure Statement and the Solicitation Packages identified April 24, 2026 as the Voting Record Date for determining which Holders of Claims in the Voting Classes were entitled to vote on the Plan. Accordingly, the Debtor has satisfied Bankruptcy Rule 3018(b).

iii. The Debtor's Vote Tabulation was Appropriate.

31. As set forth in the Voting Declaration, the Notice and Claims Agent followed the Solicitation Procedures in tabulating the votes received from the Voting Parties. The Notice and Claims Agent carefully reviewed all Ballots received by the Voting Deadline (as extended by the Debtor, in its discretion) in accordance with the procedures described in the Conditional Approval and Procedures Order.[33] The Bankruptcy Court should approve the Debtor's tabulation of votes confirming that, with respect to the Voting Classes, the requisite majorities in amount and number of voting Claims voted to accept the Plan pursuant to sections 1126(c) and 1126(d) of the Bankruptcy Code.

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[32] Fed. R. Bankr. P. 3018(b).
[33] *See* Voting Declaration.

iv. Solicitation Complied with Bankruptcy Code and Was in Good Faith.

32. Pursuant to section 1125(e) of the Bankruptcy Code, "[a] person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.[34]

33. The Debtor at all times engaged in arm's-length, good-faith negotiations with its stakeholders, and all parties took appropriate actions in connection with the solicitation of the Plan and in the offer and issuance of any securities under the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Bankruptcy Court should grant these parties the protections provided under section 1125(e) of the Bankruptcy Code.

VI. THE PLAN SATISFIES THE BANKRUPTCY CODE'S REQUIREMENTS FOR CONFIRMATION AND SHOULD BE APPROVED

34. To obtain confirmation of the Plan, the Debtor must demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence.[35] The Plan satisfies all provisions of section 1129 and complies with all other applicable sections of the Bankruptcy Code, Bankruptcy Rules, Local Rules, and applicable nonbankruptcy law.

A. Section 1129(a)(1) of the Bankruptcy Code: The Plan Complies with Applicable Provisions of the Bankruptcy Code.

35. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code.[36] The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the

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[34] 11 U.S.C. § 1125(e).

[35] *See In re Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown.").

[36] 11 U.S.C. § 1129(a)(1).

Bankruptcy Code governing classification of claims and contents of a plan, respectively.[37] As explained below, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as other applicable provisions.

i. Section 1122: The Plan's Classification Structure is Proper.

36. Section 1122(a) of the Bankruptcy Code provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."[38] The Plan has six Classes of Claims and Interests: (i) Class 1 (Priority Non Tax Claims); (ii) Class 2 (Other Secured Claims); (iii) Class 3 (Prepetition Secured Obligations Claims); (iv) Class 4 (General Unsecured Claims); (v) Class 5 (510(b)Claims)[39]; and, (vi) Class 6 (Existing Equity Interests).

37. A plan proponent is afforded significant flexibility in classifying claims and interests into different classes, provided that there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar.[40]

38. The classification structure of the Plan is rational and complies with the Bankruptcy Code. The Claims or Interests in each Class are substantially similar to the other Claims or Interests in each such Class, as all Claims and Interests within a Class have the same or similar rights against the Debtor. The distinctions among Classes are based on valid business, factual, and legal reasons warranting separate classification of the particular Claims or Interests into the Classes created under the Plan. For example, debt and equity are separately classified and secured debt is separately classified from unsecured debt. No unfair discrimination exists between or among

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37 *See* H.R. Rep. No. 95-595, at 412, reprinted in 1978 U.S.C. C.A.N. 5963, 6368 (1977); S. Rep. No. 95-989, at 126, reprinted in 1978 U.S.C. C.A.N. 5787, 5912 (1978).

38 11 U.S.C. § 1122(a).

39 Class 5 is vacant and, pursuant to Section 6.3 of the Plan is eliminated for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class.

40 *See In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009).

Holders of Claims or Interests. In general, the Plan's classification scheme follows the Debtor's capital structure.[41]

39. Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code.

ii. Section 1123(a): The Plan's Content is Appropriate.

40. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that a plan must satisfy.[42] The Plan satisfies each such applicable requirement:

- Section 1123(a)(1). The Plan designates and classifies Classes of Claims and Interests as required by section 1123(a)(1).[43]
- Section 1123(a)(2). The Plan specifies whether each Class of Claims or Interests is Impaired or Unimpaired under the Plan as required by section 1123(a)(2).[44]
- Section 1123(a)(3). The Plan specifies the treatment of any Class of Claims or Interests that is Impaired as required by section 1123(a)(3).[45]
- Section 1123(a)(4). Except as otherwise agreed to by a Holder of a particular Claim or Interest, the opportunity for recovery for Holders of each Claim or Interest in each Class is the same as the opportunity for recovery for all Holders in such Class, as required by section 1123(a)(4).[46]
- Section 1123(a)(5). The Plan provides adequate means for its implementation as required by section 1123(a)(5) through, among other things, the provisions governing (i) the general settlement of Claims and Interests (see Plan, at Article IV); (ii) sources of consideration for Plan distributions (see Plan, at Article VIII); (iii) the Sale Transaction (see Plan, at Article VIII); (iv) the allowance and payment of Administrative Expense Claims (see Plan, at Article II); (v) the Wind Down (see Plan, at Article VIII); (vi) the creation of the Liquidation Trust (see Plan, at Article VIII); (vii) the claims reconciliation process (see Plan, at Article X); (viii) the preservation of Causes of Action (see Plan, at Article VIII); (ix) the cancellation of existing securities, agreements, and existing security interests (see Plan, at Article VIII); (x) the effectuation of documents and further

41 *See* Shepherd Declaration ¶¶ 20-23.

42 *See* 11 U.S.C. § 1123(a).
43 *See* Plan, at Article III.
44 *Id.*
45 *See* Plan, at Article IV.
46 *See* Plan, at Article IV.

transactions (see Plan, at Article VIII); and (xi) the section 1146 exemption from certain taxes and fees (see Plan, at Article VIII).

- Section 1123(a)(6). Given that the Debtor is proceeding with a sale transaction, the Plan does not contemplate issuance of any equity securities, including nonvoting equity securities, and therefore complies with section 1123(a)(6).

- Section 1123(a)(7). The Plan provides that Accordion Partners, LLC will be the Plan Administrator and sole manager of the Wind Down Debtor, which is consistent with applicable state law, the Bankruptcy Code, and the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7).[47]

41. The Plan satisfies section 1123(a) of the Bankruptcy Code.

iii. Section 1123(b): The Plan's Content is Permitted.

a. Permissive Provisions

42. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a Plan. Specifically,

- Section 1123(b)(1). Article III of the Plan classifies and describes the treatment of each impaired and unimpaired Class. All impaired and unimpaired Classes are receiving appropriate treatment under the Plan.

- Section 1123(b)(2). Article XI of the Plan generally provides for the rejection of all Executory Contracts and Unexpired Leases upon the Effective Date, other than those which are assumed and assigned to the Successful Bidder pursuant to the Bidding Procedures Order, Sale Order, and applicable Sale Documents, or that are otherwise listed by the Debtor for assumption on the Plan Assumed Contracts List or any Supplemental Plan Assumed Contracts list.

- Section 1123(b)(3)(A). The settlements and compromises contemplated by Article XIII of the Plan represent a good faith compromise of Claims, issues, and controversies, including a release of certain Claims and Causes of Action owned by the Debtor.

- Section 1123(b)(3)(B). Article VIII of the Plan preserves for the Plan Administrator and Liquidation Trust all rights to commence and pursue, as appropriate, any and all Retained Causes of Action, other than the Causes of Action released by the Debtor pursuant to the releases and exculpations contained in the Plan, including in Article XIII.

[47] *See* Plan, at Article VIII.

- Section 1123(b)(6). Article XIII of the Plan contains certain release and exculpation provisions that are essential to the Plan and consistent with the applicable provisions of the Bankruptcy Code and Fifth Circuit law.

43. Each of the foregoing permissive provisions is consistent with section 1123(b) of the Bankruptcy Code.

b. The Settlements and Compromises Embodied in the Plan are Integral Components of the Plan and Should be Approved.

44. Section 13.1 of the Plan provides that in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. Here, the settlements and compromises embodied in the Plan should be approved because they are fair and equitable and in the best interest of the Debtor's estates.

c. The Plan Releases Should be Approved

45. Article XIII of the Plan provides for releases of Claims by the Debtor and its Estate as well as consensual releases of Claims held by third parties. The release provisions are integral components of the Plan, are consistent with the Bankruptcy Code and the Local Rules, and comply with applicable case law. As such, the Debtor asserts that such release provisions should be approved.

1) The Debtor Release is appropriate and should be approved.

46. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, the Debtor may release estate causes of action as consideration for concessions made by their various stakeholders

pursuant to the Plan.[48] In considering the appropriateness of such releases, courts consider whether the release is (i) "fair and equitable" and (ii) "in the best interest of the estate."[49]

47. The "fair and equitable" prong is generally interpreted to require compliance with the Bankruptcy Code's absolute priority rule.[50] Additionally, courts generally determine whether a release is "in the best interests of the estate" by reference to the following factors:

- the probability of success of litigation, with due consideration for the uncertainty in fact and law;
- the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection;
- the paramount interest of the creditors and a proper deference to their respective views;
- the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and
- all other factors bearing on the wisdom of the compromise.[51]

48. As noted above, in determining whether a settlement is appropriate and should be approved, "a bankruptcy court need not 'conduct a mini-trial' … [but] [r]ather . . . must 'apprise [itself] of the relevant facts and law so that [it] can make an informed and intelligent decision.'"[52] Further, the court need only determine that the "settlement [does] not … 'fall beneath the lowest point in the range of reasonableness.'"[53] Ultimately, courts afford Debtor some discretion in

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48 *See, e.g., In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (finding that a plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan").

49 *See Matter of Jackson Brewing Co.,* 624 F.2d 599, 602 (5th Cir. 1980) *(citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).

50 *See Matter of Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355-56 (5th Cir. 1997) ("The words 'fair and equitable' are terms of art—they mean that senior interests are entitled to full priority over junior ones") (citations omitted).

51 *See In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010).

52 *In re Age Refining, Inc.*, 801 F.3d 530, 541 (5th Cir. 2015) (citations omitted).

53 *In re Idearc Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009), subsequently aff'd sub nom. *Spencer Ad Hoc Equity v. Idearc, Inc. (In re Idearc, Inc.)*, 662 F.3d 315 (5th Cir. 2011) (citations omitted); *In re Roqumore*, 393

determining for themselves the appropriateness of granting plan releases of estate causes of action.[54]

49. Section 13.2 of the Plan provides for the Debtor's release of any and all claims and Causes of Action, and liabilities whatsoever (including any derivative claims, asserted by or assertable on behalf of the Debtor, or its Estate, as applicable) against the Released Parties[55] based on or relating to, or in any manner arising from, in whole or in part, the Debtor, including without limitation the Debtor's business or contractual relationships with any Released Parties, the Chapter 11 Case, the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Case, and the confirmation or consummation of the Plan or the solicitation of votes on the Plan (the "**Debtor Release**").[56]

50. The Debtor Release meets the controlling standard and is in the best interest of the estate, as discussed below.

51. First, the Debtor does not believe there are any colorable claims being released that might reasonably be expected to yield any material value for its Estate.

52. Second, given the lack of colorable claims worth pursuing, the benefits that the Released Parties are providing the Debtor far outweigh any possible recoveries that the Debtor might receive from pursuing potential Claims against the Released Parties. The Released Parties, including the CRO and Independent Manager, have made substantial and valuable contributions

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B.R. 474, 480 (Bankr. S.D. Tex. 2008) ("The Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives.'").

54 *See In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("The court concludes that such a release is within the discretion of the Debtor.").

55 "Released Parties" means, collectively, and each solely in its capacity as such: (a) the Debtor, its Estate, and the Reorganized Debtor; (b) the Plan Administrator, including as trustee on behalf of the Liquidation Trust; (c) the Prepetition Secured Parties; (d) the CRO; (e) the Independent Manager; (f) Professional Persons retained by the Debtor; and (g) solely with respect to (b) through (f), each of such parties' Affiliates and Related Parties.

56 The foregoing description is meant as a summary of the Debtor Release only. To the extent there is any conflict between the foregoing summary and the Debtor Release and associated definitions, the Plan shall control.

to the Debtor's restructuring through efforts to negotiate and implement the Plan, which maximizes and preserves the value of the Debtor for all parties in interest, and further, optimizes recoveries and provides for the best possible conclusion of this Chapter 11 Case. Similarly, the Prepetition Secured Parties have also contributed to the Debtor's restructuring efforts through consensual use of cash collateral, agreeing to reduced payments on their claims, and agreeing to the terms of the Plan, which contemplates using the proceeds of the Prepetition Secured Parties' collateral to fund distributions to General Unsecured Creditors.

53. Third, the Plan, including the Debtor Release, was negotiated by sophisticated entities that were represented by able counsel.[57] Each of the Released Parties has provided significant consideration.[58] The Debtor Release constitutes an integral aspect of the Debtor's negotiations with key creditor constituencies that resulted in the Plan.[59] In reaching this result, the Released Parties have and will continue to contribute significantly in negotiating, formulating, and ultimately effectuating the Plan.[60] The Plan provides the various Released Parties the global closure that they negotiated in exchange for, among other things, the various concessions and benefits provided under the Plan.[61]

54. Accordingly, the Debtor Release is fair, equitable, and in the best interest of the Estate, is justified under the controlling Fifth Circuit standard, and should be approved.

2) <u>The Third-Party Release is consensual, appropriate, complies with applicable Law, and should be approved.</u>

(a) Courts in the Fifth Circuit are authorized to approve consensual third-party releases, even in light of *Purdue*.

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57 *See* Shepherd Declaration ¶ 73.
58 *See id.*
59 *Id.*
60 *Id.*
61 *Id.*

55. In *Purdue*, the Supreme Court held that non-consensual third-party releases were impermissible under the Bankruptcy Code, reasoning 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] The Supreme Court in Purdue stated expressly that "[n]othing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan."[63] The Supreme Court also declined to determine the standard for parties in interest to evidence consent to releases under a plan.[64]

56. The Supreme Court's holding in Purdue is consistent with and provides no reason to reexamine longstanding Fifth Circuit law. The Fifth Circuit has never permitted non-consensual releases, and, as stated by this Court in *In re Robertshaw,* "Purdue did not change the law in this Circuit[.]"[65] As such, third-party releases are justified and in conformity with both *Purdue* and Fifth Circuit precedent where, as here, the releases are consensual.

57. While the Fifth Circuit has not directly addressed what constitutes a consensual third-party release, the Fifth Circuit has found that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization."[66] *Republic Supply* and its progeny ultimately stand for the proposition that "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of

62 *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024).
63 *Id.* at 226.
64 *Id.* ("Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.").
65 *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024).
66 *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).

the settlement, and given for consideration do not violate" the Bankruptcy Code.[67] At the core of the analysis is whether the third-party release is consensual.

58. Bankruptcy courts in this district have applied this standard when approving third-party releases similar to the Third-Party Release. In doing so, these courts have focused on process—i.e., whether notice has gone out, parties have actually gotten it, they've had the opportunity to look it over, [and] the disclosure is adequate so that they can actually understand what they're being asked to do and the options that they're being given.[68]

59. This District—and this Court in particular—has routinely held that third-party releases with opt-out mechanisms manifest valid consent.[69]

(b) The Third-Party Release is consensual, appropriate, complies with applicable law, and should be approved.

60. Section 13.3 of the Plan provides for a release by the Non-Debtor Releasing Parties of the Released Parties from any and all Claims, Causes of Action, and liabilities whatsoever, that each Releasing Party[70] would have been legally entitled to assert in its own right (whether

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67 *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007) (citing *Republic Supply*, 815 F.2d at 1050).

68 *Robertshaw*, 662 B.R. at 322-25; *In re CJ Holding Co.*, 597 B.R. 597, 608-09 (S.D. Tex. 2019).

69 *See In re Container Store Group, Inc.*, 676 B.R. 356, 388 (S.D. Tex. 2026) ("failure to opt-out constitutes consent to a third-party release under the appropriate circumstances"); *Robertshaw*, 662 B.R. at 322-323 ("The Trustee wants to use the *Purdue [Pharma]* holding as an opportunity to advance its long-held position that consensual third-party releases in a plan should require an opt-in feature, rather than an opt out" but "[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan"); *see also In re CJ Holding Co.*, 597 B.R. at 609 ("Allowing the bankruptcy court to approve the Plan releases, including construing [a claimant's] silence as consent, serves the bankruptcy law's purpose of quick and efficient resolution of claims to permit a debtor's business to continue.").

70 "Releasing Parties" means, collectively, and each solely in its capacity as such: (a) the Debtor, its Estate, and the Reorganized Debtor; (b) the Plan Administrator, including as trustee on behalf of the Liquidation Trust; (c) the Prepetition Secured Parties; (d) the CRO; (e) the Independent Manager; (e) the Successful Bidder; and (f) all Holders of Claims or Interests that (i) vote to accept or reject the Plan and do not timely make the Third-Party Release Opt-Out Election by checking the relevant box on their Ballots or submitting a Third-Party Release Opt-Out Form, thereby indicating such Holders' decision not to participate in the releases set forth in Article XIII of the Plan; (ii) are deemed to accept or reject the Plan and either do not timely make the Third-Party Release Opt-Out Election by submitting the Third-Party Release Opt-Out Form or do not file a Release Objection; (iii) do not vote to accept or reject the Plan, and either do not timely make the Third-Party Release Opt-Out Election by

individually or collectively) or otherwise based on or relating to, or in any manner arising from, in whole or in part, the Debtor, including without limitation the Debtor's business or contractual relationships with any Released Parties, the Chapter 11 Case, the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Case, and the confirmation or consummation of the Plan or the solicitation of votes on the Plan (the "**Third-Party Release**").[71]

61. The Third-Party Release satisfies the standard set forth in *Republic Supply* and its progeny, notwithstanding the Supreme Court's decision in *Purdue*. First and foremost, the Third-Party Release is fully consensual. As set forth above, parties in interest were provided extensive notice of this Chapter 11 Case, the Plan, and the deadline to object to confirmation of the Plan, and opt out of the Third-Party Release. The Combined Hearing Notice, the Notice of Non-Voting Status, and the Ballots, as applicable, expressly included in bold font the terms of the Third-Party Release, as set forth in the Plan. In addition, the Notice of Non-Voting Status, Release Opt-Out Form, and Ballots set forth the procedures for opting out of such Third-Party Release, including by directing recipients to the online voting portal and attaching the appropriate form in compliance with paragraph 40 of the Complex Case Procedures.[72] The Combined Hearing Notice, the Notice of Non-Voting Status, the Third-Party Release Opt-Out Form, and the Ballots all advised careful review and consideration of the terms of the Third-Party Release, along with the other release, exculpation, and injunction provisions. The release, exculpation, and injunction provisions, including the Third-Party Release, were also emphasized with bold font in the Combined

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submitting the Third-Party Release Opt-Out Form or do not file a Release Objection; and (iv) all unimpaired creditors of the Debtor who either do not timely make the Third-Party Release Opt-Out Election by submitting the Third-Party Release Opt-Out Form or file a Release Objection.

[71] The foregoing description is meant as a summary of the Third-Party Release only. To the extent there is any conflict between the foregoing summary and the Third-Party Release and associated definitions contained in the Plan, the Plan shall control.

[72] Specifically, the Notice of Non-Voting Status, Opt-Out Form, and Ballots included a box to check to indicate opt out of the Third-Party Release in accordance with paragraph 40 of the Complex Case Procedures.

Disclosure Statement and Plan. By the Opt-Out Deadline, at least three Third-Party Release Opt-Out Forms were submitted, as set forth in the Voting Declaration.[73]

62. Second, the Third-Party Release is sufficiently specific to put the Releasing Parties on notice of the claims being released. The Third-Party Release describes the nature and type of claims being released.

63. Third, the provisions of the Plan, including the Third-Party Release, were negotiated as part of the Plan formulation. Absent the Third-Party Release (together with the Debtor Release), the Debtor may not have been able to obtain necessary support for the Plan, including from the Prepetition Secured Parties.[74] The key stakeholders engaged with the Debtor in good faith negotiating the terms of the Plan, including the Third-Party Release. Holders of Claims or Interests that elected not to opt-out of the Third-Party Release consented to the release of all Claims and Causes of Action against the Released Parties.

64. Fourth, the Third-Party Release is given for fair consideration. The Third-Party Release benefits not only the non-Debtor Released Parties, but also the Debtor's stakeholders benefit by allowing the consummation of the Plan and wind down of the Debtor to proceed in an efficient and expedient manner thus maximizing the proceeds from the Sale Transaction and funds available for distribution to creditors. In exchange for the substantial contributions, concessions, and support offered by the Released Parties under the Plan, they are afforded the Third-Party Release.[75]

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[73] *See* Voting Declaration, Exhibit D. *See also Robertshaw*, 662 B.R. at 323-24 (explaining that the fact that a significant number of parties in interest opted-out of the third-party releases showed that the releasing parties were put on notice and that the opt-out worked.).

[74] *See* Shepherd Declaration ¶ 74.

[75] *Id.* ¶ 76.

65. Based on the foregoing, the Third-Party Release complies with the controlling Fifth Circuit standards, is appropriate and justified under the circumstances, and should therefore be approved.

d. The Plan Exculpation Provision Should be Approved.

66. Section 13.4 of the Plan contains an exculpation for the Debtor[76] from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to the administration of the Chapter 11 Case, commencement of the Chapter 11 Case, pursuit of confirmation and consummation of the Plan, making distributions under the Plan, the Disclosure Statement, the New Equity Transaction, the Sale Transaction, the Sale Process, the Sale Order, or the solicitation of votes for, or confirmation of, this Plan; the occurrence of the Effective Date; the administration of the Plan or the property to be distributed under this Plan; the issuance of securities under or in connection with the Plan; the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtor; or the transactions or documentation in furtherance of any of the foregoing; or any other postpetition, pre-Effective Date act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or confirmation or consummation of the Plan, (the **"Exculpation Provision**"). The Exculpation Provision carves out Causes of Action arising from willful misconduct, actual fraud, or gross negligence.

67. Unlike the Third-Party Release, the Exculpation Provision does not affect the liability of third parties, but rather sets a standard of care in hypothetical future litigation against the Debtor for acts arising out of the Chapter 11 Case.[77] An exculpation provision represents a

[76] "Exculpated Party" means the Debtor, to the maximum extent permitted by law.

[77] *See, e.g., In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the [Bankruptcy] Code").

legal determination that flows from several findings a court must reach in confirming a plan, as well as the exculpation in section 1125(e) of the Bankruptcy Code.[78] Once the court makes a good faith finding, it is appropriate to set the standard of care for the parties involved in the formulation of that plan.[79] As such, exculpation provisions prevent future collateral attacks against estate fiduciaries and others that participate actively in a Debtor's restructuring.

68. The Fifth Circuit has held that the only parties that may receive an exculpation are "the debtor, the creditors' committee and its members for conduct within the scope of their duties . . . , and the trustees within the scope of their duties."[80] Here, the Exculpation Provision is appropriate as it provides protection to the Exculpated Party, which is limited to the Debtor.

e. The Injunction Provision and Gatekeeping Provision should be approved.

69. The injunction provision set forth in Section 13.5 of the Plan (the "**Injunction Provision**") implements the Plan's settlement, release, and exculpation provisions by enjoining all Persons or Entities that have held Claims or Interests, from and after the Effective Date, from commencing or maintaining, among other things, any action against the Debtor, its Estate, its property, the Wind Down Debtor, the Liquidation Trust, the Exculpated Party, or the Released Parties on account of or with respect to any such claims or interests that are settled, released, exculpated, or settled under the Plan.[81]

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78 *See* 28 U.S.C. § 157(b)(2)(L) (providing that core proceedings include confirmation of plans); 11 U.S.C. § 1125(e).

79 *See In re PWS Holding Corp.*, 228 F.3d at 246 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties").

80 *Nexpoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (Matter of Highland Capital Mgmt., L.P.) (Highland I)*, 48 F.4th 419, 437 (5th Cir. 2022).

81 *See* Plan, Section 13.5.

70. The Injunction Provision is necessary and appropriate to enforce the terms of the Plan and the releases and settlements contemplated therein.[82]

71. In addition, the Plan includes a "gatekeeper" provision (the "**Gatekeeper Provision**")[83] in Section 13.6 which requires that, for any Person or Entity to commence or pursue a Claim or Cause of Action of any kind that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Cause of Action subject to the Debtor Release, Third-Party Release, or Exculpation Provision that is related to the Chapter 11 Case, Sale Order, or Plan, the Bankruptcy Court must (1) request a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Released Party or Exculpated Party, and is not a Claim that the Debtor released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party; and (2) obtain from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Released Party or Exculpated Party.[84]

72. While applicable Fifth Circuit law broadly forecloses nonconsensual non-debtor releases and permanent injunctions, bankruptcy courts in the Fifth Circuit have allowed permanent injunctions where non-debtor releases are consensual.[85]

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82 *See Container Store Group*, 676 B.R. at 393 (Courts routinely uphold permanent injunctions coextensive with proper releases contained in plans).

83 *See id.*, Article XIII.6. As the Fifth Circuit noted in *Matter of Highland Capital Management (Highland II)*, the gatekeeper clause is an injunction—a pre-filing injunction. 132 F.4th 353, 356 n.2 (5th Cir. 2025) (citing *IntegraNet Physician Res., Inc. v. Tex. Indep. Providers*, LLC, 945 F.3d 232, 237 (5th Cir. 2019) ("[T]he . . . court's order prevents a party from filing future lawsuits without that judge's permission—meaning it's a pre-filing injunction.")).

84 The foregoing description of the Gatekeeper Provision is meant as a summary of such provisions only. To the extent there is any conflict between the foregoing summary and the provisions in the Plan, the Plan shall control.

85 *See In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009) (Fifth Circuit case law "seem[s] broadly to foreclose non-consensual non-debtor releases and permanent injunctions."); *In re Camp Arrowhead*, 451 B.R. at 701-02 ("[T]he Fifth Circuit does allow permanent injunctions so long as there is consent. Without an objection, this court was entitled to rely on . . . silence to infer consent at the Combined Hearing.") (citing *In re Pacific Lumber*, 584 F.3d at 253).

73. In *Highland I*,[86] the Fifth Circuit approved a gatekeeping provision related to claims that were exculpated under the plan, and in *Highland II*,[87] clarified that the scope of such gatekeeping provision may be no broader than the underlying claims that were exculpated. Importantly, *Highland I* and *Highland II* involved only exculpation provisions, which are inherently non-consensual. Even post-*Highland II*, courts in this district have granted injunction provisions to enforce consensual releases.[88]

74. Here, the Plan's Injunction Provision and Gatekeeping Provision are essential and necessary to the Plan to protect the beneficiaries of such provisions from post-Effective Date litigation relating to consensually released and exculpated claims and causes of action that are otherwise resolved by the Plan. The Plan's Injunction Provision and Gatekeeping Provision are appropriately tailored because they preserve and enforce the settlement and treatment of Claims under the Plan as well as the Debtor Release and the Third-Party Release—each of which were consensually provided—and the appropriately narrow Exculpation Provision. As such, if the Injunction Provision and Gatekeeping Provision were disallowed, it would critically undermine the winddown efforts of the Debtor and jeopardize the settlements and agreements embodied in the Plan.[89]

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[86] 48 F.4th at 439 ("In sum, the Plan violates § 524(e) but only insofar as it exculpates and enjoins certain non-debtors…We otherwise affirm the inclusion of the injunction and the gatekeeper provisions in the Plan.").

[87] 132 F.4th at 362 ("a proper reading of Highland I requires that the definition of 'Protected Parties' used in the Plan's Gatekeeper Clause be narrowed coextensively with the definition of 'Exculpated Parties' used in the Exculpation Provision.").

[88] *See, e.g., In re DocuData Solutions*, No. 25-90023 (CML) (Bankr. S.D. Tex. Jun. 23, 2025) [Docket No. 834]; *In re Plenty*, No. 25-90105 (CML) (Bankr. S.D. Tex. May 15, 2025) [Docket No. 368] (confirming a plan that included injunction and gatekeeper provisions that covered third parties); *In re Cutera*, No. 25-90088 (ARP) (Bankr. S.D. Tex. Apr. 16, 2025) [Docket No. 237] (same). *But see Container Store Group*, 676 B.R. at 393-94 (gatekeeping provision can be no broader than exculpation provision).

[89] *See Container Store Group,* 676 B.R. at 391-93 (affirming plan injunction that was necessary to enforce plan terms and releases).

75. Based upon the foregoing, the Plan complies fully with sections 1122 and 1123, and, therefore, satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

B. Section 1129(a)(2): The Debtor Has Complied with the Bankruptcy Code.

76. Section 1129(a)(2) of the Bankruptcy Code requires that plan proponents comply with the applicable provisions of the Bankruptcy Code.[90] The legislative history to section 1129(a)(2) indicates that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code.[91]As set forth above, the Debtor has complied with sections 1125 and 1126 of the Bankruptcy Code and, therefore, has satisfied the requirement of section 1129(a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3): The Plan Has Been Proposed in Good Faith and Is Not by any Means Forbidden by Law.

77. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law."[92] Good faith is determined through consideration of whether the plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success[.]"[93] The good faith standard is "viewed in light of the totality of circumstances surrounding establishment of a Chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code to give Debtor a reasonable opportunity to make a fresh start."[94]

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90 11 U.S.C. § 1129(a)(2).

91 *See* H.R. Rep. No. 95-595, at 412 (1977) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *In re Star Ambulance Serv.*, LLC, 540 B.R. 251, 262 (Bankr. S.D. Tex. 2015) ("Courts interpret [section 1129(a)(2)] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code §§ 1125 and 1126.").

92 11 U.S.C. § 1129(a)(3).

93 *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985).

94 *Id.*; *In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) ("Good faith should be evaluated 'in light of the totality of the circumstances' . . . mindful of the purposes underlying the Bankruptcy Code.") (citing *In re Cajun Elec. Power Coop.*, 150 F.3d 503, 519 (5th Cir. 1998)).

78. The Debtor has proposed the Plan in good faith and solely for the legitimate and beneficial purposes of liquidating and distributing assets and effectuating an orderly wind down. The acceptance of the Plan by the Holders of Claims in Class 3 and Class 4 reflect the Plan's inherent fairness and good faith efforts to achieve the objectives of chapter 11. Furthermore, the Plan is not by any means forbidden by law, and indeed, is in full compliance with the Bankruptcy Code and applicable nonbankruptcy law. Accordingly, the Debtor has proposed the Plan in good faith in compliance with section 1129(a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4): The Plan Provides that Professional Fees and Expenses are Subject to Court Approval.

79. Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."[95]

80. All payments for services provided to the Debtor during this Chapter 11 Case, prior to entry of the Confirmation Order, must be approved by the Bankruptcy Court as reasonable in accordance with the Bankruptcy Code. Moreover, Article II of the Plan provides that all fees of retained professionals must be approved by the Bankruptcy Court pursuant to final fee applications, to be filed no later than forty-five (45) days after the Effective Date, thereby providing an adequate period of time for interested parties to review such Professional Fee Claims. Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

[95] 11 U.S.C. § 1129(a)(4).

E. Section 1129(a)(5): The Debtor Has Disclosed All Necessary Information Regarding Directors, Officers, and Insiders.

81. Section 1129(a)(5) of the Bankruptcy Code requires that (i) the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized Debtor, (ii) the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and (iii) to the extent that these directors and officers are insiders, there be disclosure of the identity and nature of any compensation of any such insiders.[96] The Plan provides that Accordion Partners, LLC will be the Plan Administrator and sole manager of the Wind Down Debtor, as well as trustee for the Liquidation Trust. Accordingly, the Plan satisfies the requirements under section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6): The Plan Does Not Contain Any Rate Changes.

82. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of "any rate change provided for in the plan."[97] Section 1129(a)(6) is inapplicable to this Chapter 11 Case, as the Plan does not provide for any rate changes.

G. Section 1129(a)(7): The Plan Satisfies the Best Interests of Creditors Test.

83. Section 1129(a)(7) of the Bankruptcy Code requires that each individual holder of an impaired claim or interest has either accepted the plan or will receive or retain property having, as of the effective date of the plan, a present value of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time— commonly referred to as the "best interests" test.[98] The best interests test is satisfied where the estimated recoveries for a Debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal

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96 *See* 11 U.S.C. § 1129(a)(5).
97 *See* 11 U.S.C. § 1129(a)(6).
98 *See* 11 U.S.C. § 1129(a)(7).

to the estimated recoveries for a holder of an impaired claim or interest under the debtor's plan of reorganization.[99]

84. The best interests test is satisfied with respect to the Holders of Impaired Claims or Interests under the Plan. The Debtor's financial advisor performed a liquidation analysis that was attached to the Plan Supplement (the "**Liquidation Analysis**").[100] The Liquidation Analysis represents an estimate of recovery values and percentages based upon a hypothetical liquidation if the Debtor's Chapter 11 Case were converted by the Bankruptcy Court to a proceeding under chapter 7 of the Bankruptcy Code and the chapter 7 trustee proceeded to convert the Debtor's assets into cash.[101]

85. As illustrated by the Liquidation Analysis, Holders of General Unsecured Claims would receive a lower recovery in a hypothetical liquidation in chapter 7 than they would under the Plan. Further, no holder of a claim or interest would receive or retain property under the Plan of a value that is less than such holder would receive in a hypothetical chapter 7 liquidation.

86. The Liquidation Analysis is sound, reasonable, and incorporates justified assumptions and estimates regarding the liquidation of the Debtor's assets. The methodology used to prepare the Liquidation Analysis is reasonable and reliable, and the assumptions and conclusions set forth therein are reasonable and reliable under the circumstances.[102] Based on the foregoing, the Plan satisfies the requirements of the best interests test under section 1129(a)(7) of the Bankruptcy Code.[103]

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99 *Bank of Am. Nat'l Tr. & 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."); *In re Tex. Extrusion Corp.*, 844 F.2d at 1159 n.23 (5th Cir. 1988) (noting that a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation).

100 *See* Docket No. 187 at Exhibit D.

101 *See* Shepherd Declaration ¶¶ 47-50.

102 *See id.*

103 *See id.*; Docket No. 187 at Exhibit D.

H. Section 1129(a)(8): The Plan Is Confirmable Notwithstanding Section 1129(a)(8) of the Bankruptcy Code.

87. 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.[104]

88. As set forth above, Class 3 (Prepetition Secured Obligations Claims) and Class 4 (General Unsecured Claims) are impaired and voted to accept the Plan. Holders of Claims in Class 1 (Priority Non-Tax Claims), and Class 2 (Other Secured Claims) are Unimpaired and thus not entitled to vote and deemed to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code.

89. Class 6 (Existing Equity Interests) did not vote to accept the Plan.

90. While the Plan does not satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code, as discussed more fully below, the Debtor has satisfied the "cram down" requirements under section 1129(b) of the Bankruptcy Code and may obtain confirmation of the Plan.

I. Section 1129(a)(9): The Plan Provides for Payment in Full of All Allowed Priority Claimants.

91. Section 1129(a)(9) of the Bankruptcy Code requires that claims entitled to priority under section 507(a) of the Bankruptcy Code be paid in full in cash unless the holders thereof agreed to a different treatment with respect to such claims.[105] The Plan complies with section 1129(a)(9). Article II of the Plan provides that Allowed Administrative Expense Claims shall be paid in accordance with the terms of the Plan, and Allowed Priority Tax Claims will be paid in accordance with section 1129(a)(9)(C), each consistent with sections 1129(a)(9)(A)-(C) of the Bankruptcy Code.

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[104] 11 U.S.C. § 1129(a)(8).
[105] *See* 11 U.S.C. § 1129(a)(9).

J. Section 1129(a)(10): At Least One Class of Impaired Claims Has Accepted Plan.

92. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one class of impaired claims, "determined without including any acceptance of the plan by any insider."[106] As set forth above, Class 3 and Class 4 are impaired Classes and the Holders of Claims in those Classes have voted to accept the Plan. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11): The Plan Is Feasible.

93. Section 1129(a)(11) of the Bankruptcy Code requires the court to determine that a plan is feasible as a condition precedent to confirmation.[107] Specifically, the Bankruptcy Court must determine that "[c]onfirmation 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."[108] Section 1129(a)(11) does not require a guarantee of a plan's success to demonstrate a plan's feasibility.[109]

94. Here, the Plan is feasible as it is an orderly wind-down with sufficient funding. As an initial matter, the Debtor will receive at least $129.5 million upon closing of the Sale Transaction and will have additional cash on hand at the time of closing. This cash is the primary source of funding for the Plan and the Effective Date of the Effective Date is conditioned upon the closing of the Sale Transaction.

95. The Debtor and its advisors have thoroughly analyzed the Debtor's ability to meet obligations under the Plan. The Debtor or Plan Administrator, as applicable, shall fund certain

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106 11 U.S.C. § 1129(a)(10).
107 11 U.S.C. § 1129(a)(11).
108 *Id*.
109 *See In re Briscoe Enters., Ltd., II,* 994 F.2d at 1165–66 ("[T]he [bankruptcy] court need not require a guarantee of success . . . [o]nly a reasonable assurance of commercial viability is required.").

distributions and obligations under the Plan with the Wind Down Amount in accordance with the Wind Down Budget. The Debtor sized the Wind Down Budget to fund the administration of the Wind Down under the Plan. Distributions to General Unsecured Creditors and Existing Equity Interests, if any, shall come from the Liquidation Trust Assets, including the Net Restructuring Transaction Proceeds.

96. Accordingly, the Debtor submits that the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

L. Section 1129(a)(12): All Statutory Fees Have or Will Be Paid.

97. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan."[110] Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses.[111] In accordance with these sections, Section 2.4 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. After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee when due and payable, and the Wind Down Debtor and/or the Plan Administrator, as applicable, 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 case under chapter 7 of the Bankruptcy Code. Accordingly, the Plan satisfies section 1129(a)(12), and no party has asserted otherwise.

[110] 11 U.S.C. § 1129(a)(12).
[111] 11 U.S.C. § 507(a)(2).

M. Sections 1129(a)(13), (a)(14), (a)(15), and (a)(16) of the Bankruptcy Code are Inapplicable to this Chapter 11 Case.

98. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide "for the continuation after its effective date of payment of all retiree benefits."[112] 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. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtor is not subject to any domestic support obligations and, as such, section 1129(a)(14) does not apply. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). The Debtor is not an "individual" and, accordingly, section 1129(a)(15) is inapplicable. Section 1129(a)(16) of the Bankruptcy Code applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. The Debtor is a moneyed, business, or commercial corporation and, accordingly, section 1129(a)(16) is inapplicable. To the extent there are any transfers of property made pursuant to the Plan, such transfers will be made in accordance with applicable nonbankruptcy law.

N. The Plan Satisfies "Cram Down" Requirements under Bankruptcy Code Section 1129(b) for Non-Accepting Classes.

99. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes. Under section 1129(b), the court may "cram down" a plan over the dissenting vote of an impaired class of claims or interests as long as the plan does

[112] 11 U.S.C. § 1129(a)(13).

not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

100. Class 6 (Existing Equity Interests) is the only Voting Class to which cram down is relevant. As described below, the Plan satisfies both cram down requirements with respect to such Class.

i. The Plan Does Not Discriminate Unfairly.

101. Section 1129(b)(1) of the Bankruptcy Code prohibits unfair discrimination. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly situated classes are treated differently without a reasonable basis for the disparate treatment.[113] As between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests,[114] or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment.[115]

102. The Plan's treatment of Class 6 is proper because all similarly situated Holders of Interests in Classes 6 will receive the same treatment, and the Plan's classification scheme rests on a legally acceptable rationale. Holders of Interests in Class 6 are not similarly situated—legally or otherwise—to Holders of Claims in any other Class. Accordingly, the Plan does not discriminate unfairly, and section 1129(b)(1) is therefore satisfied.

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113 *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) (noting that the "hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination.") (citing *In re Lernout & Hauspie Speech Prod., N.V.*, 301 B.R. 651, 660 (Bankr. D. Del. 2003), *aff'd*, 308 B.R. 672 (D. Del. 2004)).

114 *See, e.g., Matter of Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd sub nom. In re Johns-Manville Corp.*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

115 *See, e.g., In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992).

ii. The Plan Is Fair and Equitable.

103. Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if, under the plan, no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest.[116]

104. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the rule of absolute priority. Accordingly, the Plan is fair and equitable.

O. Section 1129(c): The Plan Is the Only Plan on File.

105. The Plan is the only plan currently on file in these cases and, accordingly, section 1129(c) of the Bankruptcy Code does not apply.

P. Section 1129(d): The Principal Purpose of the Plan Is Not Avoidance of Taxes.

106. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

Q. Provisions of Section 1129(e) are Inapplicable.

107. The provisions of section 1129(e) of the Bankruptcy Code apply only to "small business cases" as defined therein. The Chapter 11 Case is not a "small business case." Accordingly, section 1129(e) of the Bankruptcy Code is inapplicable in this Chapter 11 Case.

VII. CAUSE EXISTS TO WAIVE ANY STAY OF PROPOSED CONFIRMATION ORDER

[116] *See* 11 U.S.C. § 1129(b)(2).

108. The Debtor requests that the Bankruptcy Court direct that the Proposed Confirmation Order be effective immediately upon its entry, notwithstanding the 14-day stay imposed by operation of Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062 or otherwise, as set forth in Section 12.5 of the Plan.

109. 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."[117] As such, and as the Advisory Committee notes to Bankruptcy Rule 3020(e) state, "the court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately."[118]

110. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use . . . of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."[119] The Advisory Committee Notes to Bankruptcy Rule 6004(h) (when it was codified as subsection (g)) similarly state that "[t]he court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used immediately."[120]

111. Bankruptcy Rule 6006(d) provides that "[u]nless the court orders otherwise, an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed for 14 days after the order is entered."[121] The Advisory Committee Notes to Bankruptcy Rule 6006(d) state that "[t]he court may, in its discretion, order that Rule 6006(d) is not applicable

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117 Fed. R. Bankr. P. 3020(e).
118 Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend.
119 Fed. R. Bankr. P. 6004(h).
120 Fed. R. Bankr. P. 6004(h), Adv. Comm. Notes, 1999 Amend.
121 Fed. R. Bankr. P. 6006(d).

so that the executory contract or unexpired lease may be assigned immediately in accordance with the order entered by the court."[122]

112. Finally, Bankruptcy Rule 7062 provides that Federal Rule of Civil Procedure 62 "applies in an adversary proceeding—except that a proceeding to enforce a judgment is stayed for 14 days after its entry."[123] Bankruptcy Rule 9014 does not incorporate Bankruptcy Rule 7062 as one of the Part VII Rules that apply in contested matters. Nonetheless, to the extent Bankruptcy Rule 7062 is applicable, Federal Rule of Civil Procedure 62(a) provides that the court may waive any stay of execution.[124]

113. Under the circumstances, good cause exists for waiving the stays. It is appropriate for the Bankruptcy Court to exercise its discretion to order that Bankruptcy Rules 3020(e), 6004(h), 6006(d), and 7062 (to the extent applicable) are waived to permit the Debtor to consummate the Plan and commence its implementation without delay after the entry of the Confirmation Order.[125]

114. Each day that the Debtor remains in chapter 11 incurs significant administrative and professional costs for the Debtor, and waiting until the expiration of 14 days after entry of the Confirmation Order would otherwise provide no purpose.[126] Moreover, parties need the necessary comfort that once the Plan has gone effective, there is finality on the issues.

CONCLUSION

115. The Disclosure Statement and the Plan comply with all of the requirements of the Bankruptcy Code, and the Debtor requests that the Bankruptcy Court (i) enter the Proposed

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122 Fed. R. Bankr. P. 6006(d), Adv. Comm. Notes, 1999 Amend.
123 Fed. R. Bankr. P. 7062.
124 Fed. R. Civ. P. 62(a).
125 *See, e.g., In re Energy Partners, Ltd.*, No. 09-32957, 2009 WL 2898876, at *16 (Bankr. S.D. Tex. Aug. 3, 2009) (waiving stay of confirmation order).
126 Shepherd Declaration ¶ 82.

Confirmation Order to approve the Disclosure Statement on a final basis and confirm the Plan, (ii) grant related relief requested herein, and (iii) grant such other and further relief as the Bankruptcy Court may deem just and appropriate.

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DATED: June 2, 2026

Respectfully submitted,

/s/ James B. Bailey

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 2, 2026, a true and correct copy of the foregoing Motion was served electronically on all parties registered to receive electronic notice of filings in this case via this Court's ECF notification. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtor's claims agent.

/s/ James B. Bailey
OF COUNSEL