IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
RENOVATE AMERICA, INC., *et al.*,[1]	)	Case No. 20-13172 (LSS)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 603, 722**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF AN ORDER (I) APPROVING THE DEBTORS' DISCLOSURE STATEMENT ON A FINAL BASIS AND (II) CONFIRMING THE DEBTORS' JOINT CHAPTER 11 PLAN

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include Renovate America, Inc. (4352) and Personal Energy Finance, Inc. (8208). The Debtors' service address is 16870 W. Bernardo Dr., Suite 408, San Diego, California 92127.

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this memorandum of law in support of (a) final approval of the disclosures in the *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code (With Technical Modifications)*, filed contemporaneously herewith (as modified, amended, or supplemented from time to time, and as the context requires, the "Plan," the "Disclosure Statement," or the "Combined Plan and Disclosure Statement"), pursuant to section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and (b) confirmation of the Plan,[2] pursuant to sections 1125, 1126, and 1129, respectively, of the Bankruptcy Code. In support of the Plan, the Debtors have filed the *Declaration of Christopher Powell in Support of Confirmation of the Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code (With Technical Modifications)* (the "Powell Declaration") and the *Voting Declaration of Stretto Regarding Tabulation of Votes in Connection With the Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 707] (the "Voting Report"), each filed concurrently herewith. In further support of confirmation of the Plan and approval of the Disclosure Statement, the Debtors respectfully state as follows.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Confirmation Order (as defined herein), or the *Order (I) Approving on an Interim Basis the Adequacy of Disclosure in the Second Amended Combined Plan and Disclosure Statement, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Second Amended Combined Plan and Disclosure Statement (IV) Approving the Form of Ballot and Solicitation Package, (V) Approving the Notice Provisions, (VI) Confirming the Plan, and (VII) Granting Related Relief* [Docket No. 620] (the "Disclosure Statement Order"), as applicable.

Preliminary Statement

1. Confirmation of the Plan is the culmination of hard-fought, good-faith negotiations among and between the Debtors and their key stakeholders. These chapter 11 cases had two main acts. During the first act, the Debtors' efforts in these chapter 11 cases focused on the stabilization of the Debtors' operations in chapter 11 and the consummation of a value-maximizing going-concern sale of the Debtors' "Benji" business that saved a number of jobs, benefitted customers, and ensured that vendors and other stakeholders had an opportunity to transact with the purchaser, Finance of America Mortgage, LLC, on a go-forward basis. During the second act, the Debtors negotiated the terms of the Plan with the Committee and worked to monetize a number of their remnant assets for the benefit of creditors. In the days leading up to confirmation of the Plan, the Debtors were able to negotiate resolutions with ***all*** of their significant stakeholders, paving the way for a consensual confirmation hearing.

2. The Plan is consistent with the Bankruptcy Code, maximizes the value of the Debtors' estate, and provides a source of recovery to as many creditors as possible in these circumstances, including holders of General Unsecured Claims. For the reasons stated herein and considering the evidentiary support to be offered at the Confirmation Hearing, the Disclosure Statement and the Plan satisfy all applicable provisions of the Bankruptcy Code. Therefore, and as set forth more fully in this memorandum, the Disclosure Statement should be approved on a final basis and the Plan should be confirmed.

Background

I. Procedural History.

3. On December 21, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business

and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 33]. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases. On January 4, 2021, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [Docket No. 73].

4. A detailed description of the Debtors and their businesses, and the facts and circumstances surrounding these Chapter 11 Cases, is set forth in greater detail in the *Declaration of Shawn Stone, Chief Executive Officer of Renovate America, Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 12] (the "First Day Declaration").

5. On October 20, 2020, the Debtors filed with the Bankruptcy Court, among other pleadings, the *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 603], along with the Disclosure Statement Motion,[3] pursuant to which the Debtors sought a hearing on approval of the Disclosure Statement and the related Solicitation and Voting Procedures.

6. On July 21, 2021 the Bankruptcy Court entered the *Order (I) Approving on an Interim Basis the Adequacy of Disclosures in the Combined Plan and Disclosure Statement, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and*

[3] *Debtors' Motion for Entry of an Order (I) Approving on an Interim Basis the Adequately of Disclosures in the Combined Plan and Disclosure Statement, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and Disclosure Statement, (IV) Approving the Form of Ballot and Solicitation Package, (V) Approving the Notice Provisions, (VI) Confirming the Plan, and (VII) Granting Related Relief* [Docket No. 586] (the "Disclosure Statement Motion").

Disclosure Statement, (IV) Approving the Form of Ballot and Solicitation Package, (V) Approving the Notice Provisions, (VI) Confirming the Plan, and (VII) Granting Related Relief [Docket No. 620] (the "Disclosure Statement Order"), approving, among other things, the proposed procedures for solicitation of the Plan and related notices, forms, and ballots (collectively, the "Solicitation Packages").

7. On August 24, 2021, the Debtors filed with the Bankruptcy Court the *Plan Supplement to the Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 687] (as amended, modified, or supplemented from time to time, the "Plan Supplement"), which included the (a) Schedule of Retained Actions, (b) Liquidating Trust Agreement, (c) Homeowner Data Administration Agreement, (d) Claims Resolution Procedures, (e) Amount of Priority/Secured Claims Reserve, and (f) Liquidation Analysis and indicated that the List of Executory Contracts and Unexpired Leases To Be Assumed would be filed later. On September 1, 2021, the Debtors filed the *Second Plan Supplement to the Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 706], which included the List of Executory Contracts and Unexpired Leases to Be Assumed.

II. The Plan Solicitation and Notification Process.

8. On or about July 28, 2021, the Debtors caused their notice and claims agent, Stretto (the "Notice and Claims Agent"), to distribute the Solicitation Packages to holders of Claims entitled to vote on the Plan as of July 20, 2021 (the "Voting Record Date")—*i.e.*, the holders of Claims in Classes 2, 4, 5, 6, 7, 8, and 9 (collectively, the "Voting Classes")—in accordance with sections 1125 and 1126 of the Bankruptcy Code.[6]

9. The Plan constitutes a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein applies separately to each of the Debtors. For purposes of administrative convenience, the Plan consolidates the process by which distributions will be made under the Plan, but the Plan does not contemplate substantive consolidation.

10. In compliance with the Bankruptcy Code and the Disclosure Statement Order, only holders of Claims and Interests in Impaired Classes receiving or retaining property on account of such Claims or Interests were entitled to vote on the Plan.[7] Holders of Claims and Interests were not entitled to vote if their rights were (a) Unimpaired under the Plan (in which case such holders were conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code) or (b) Impaired and such holders were not entitled to receive any distribution under the Plan (in which case such holders were conclusively deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code). Accordingly, the following Classes of Claims and Interests were ***not*** entitled to vote on the Plan, and the Debtors did not solicit votes from holders of such Claims and Interests:

Class	Claim and Interests	Status	Voting Rights
1A	Allowed Priority Claims against RAI	Unimpaired	Not Entitled to Vote (Presumed to Accept)
1B	Allowed Priority Claims against PEFI	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3A	Other Secured Claims against RAI	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3B	Other Secured Claims against PEFI	Unimpaired	Not Entitled to Vote (Presumed to Accept)
10A	Intercompany Claims against RAI	Impaired	Not Entitled to Vote (Deemed to Reject)
10B	Intercompany Claims against PEFI	Impaired	Not Entitled to Vote (Deemed to Reject)
11A	Section 510(b) Claims against RAI	Impaired	Not Entitled to Vote (Deemed to Reject)
11B	Section 510(b) Claims against PEFI	Impaired	Not Entitled to Vote (Deemed to Reject)
12A	Interests in RAI	Impaired	Not Entitled to Vote (Deemed to Reject)
12B	Interests in PEFI	Impaired	Not Entitled to Vote (Deemed to Reject)

11. The Debtors solicited votes on the Plan only from holders of Claims in Impaired Classes receiving or retaining property on account of such Claims. The deadline for all holders of Claims and Interests entitled to vote on the Plan to cast their Ballots was August 31, 2021, at 4:00 p.m. (prevailing Eastern Time) (the "Voting Deadline"), and the deadline to object to confirmation of the Plan was August 31, 2021, at 4:00 p.m. (prevailing Eastern Time) (the "Confirmation Objection Deadline"). As reflected in the Voting Report, Class 2 (Secured Credit Facility Claims), Class 4A (Homeowner Claims Against RAI), Class 4B (Homeowner Claims Against PEFI), Class 5A (General Unsecured Claims Against RAI), Class 5B (General Unsecured Claims Against PEFI), Class 7A (Thrivepoint Claims Against RAI), Class 7B (Thrivepoint Claims Against PEFI), Class 8 (Loya Class Action Claims), and Class 9 (Other Class Action Claims) voted to accept the Plan, and Class 6 (Issuer Claims) voted to reject the Plan.

12. As set forth above and in the Voting Declaration, at least one Voting Class voted in favor of accepting the Plan.[4] Because the Plan meets the requirements of section 1129(b) of the Bankruptcy Code as described below, the Court should confirm the Plan over the Classes that were deemed to reject the Plan and Class 6, which voted to reject the Plan. The hearing on final approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing") is scheduled to start on September 10, 2021, at 11:00 a.m. (prevailing Eastern Time). Concurrently with the filing of this memorandum, the Debtors submitted a proposed order confirming the Plan (the "Confirmation Order").

III. Resolved Confirmation Objections.

13. As set forth in greater detail in **Exhibit A** attached hereto, the Debtors received certain informal comments and objections to confirmation of the Plan (collectively, the

[4] *See* Voting Declaration.

"Objections"). The Debtors worked with the commenting and objecting parties and have resolved all of the Objections prior to filing this memorandum through agreed language in the Plan or Confirmation Order.

Argument

14. This memorandum is divided into two parts. ***First***, the Debtors request approval of the Disclosure Statement on a final basis and a finding that all notice requirements are satisfied. ***Second***, the Debtors present their case in chief that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence and, accordingly, request that the Bankruptcy Court confirm the Plan.

I. The Disclosure Statement Contains "Adequate Information" As Required by Sections 1125 and 1126 of the Bankruptcy Code and Satisfies Notice Requirements.

A. The Disclosure Statement Contains Adequate Information.

15. 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. Specifically, section 1125(a)(1) of the Bankruptcy Code provides, 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.

16. The primary purpose of a disclosure statement is to provide all 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.[5] Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a chapter 11 plan.[6]

17. "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[7] Courts within 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.[8] Accordingly, the determination of whether a disclosure statement contains adequate information must be made on a case-by-case basis, focusing on the unique facts and circumstances of each case.[9]

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5 *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 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 Petrol., 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.").

6 *See Century Glove, Inc*., 860 F.2d at 100.

7 *See* 11 U.S.C. § 1125(a)(1) (stating that "'adequate 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), as reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (stating that "the information required will necessarily be governed by the circumstances of the case").

8 *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."); *In re Phoenix Petroleum Co*., 278 B.R. at 393 (same).

9 *See In re Phoenix Petroleum Co*., 278 B.R. at 393; *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 disclosure' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court." (internal citations omitted)); *In re Lisanti Foods, Inc*., 329 B.R. 491, 507 (Bankr. D. N.J. 2005) (stating that "[t]he information required will necessarily be governed by the circumstances of the case.").

18. In determining 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 debtor's anticipated future performance;

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 of the debtor;

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 nonbankruptcy context; and

o. tax attributes of the debtor.[10]

19. The Disclosure Statement contains a number of categories of information that courts consider "adequate information," including, without limitation:

[10] *See In re U.S. Brass Corp*., 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *see also In re Scioto Valley Mortg. Co*., 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *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 In re U.S. Brass Corp*., 194 B.R. at 424; *see also In re Phoenix Petroleum*, 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.").

- ***The Debtors' Corporate History, Structure, and Business Overview***. An overview of the Debtors' corporate history, business operations, organizational structure, and capital structure is described in Article II of the Combined Plan and Disclosure Statement;

- ***Events Leading to the Chapter 11 Filings***. A detailed overview of the Debtors' out-of-court restructuring efforts in response to liquidity constraints is described in Article II of the Combined Plan and Disclosure Statement;

- ***Events of the Chapter 11 Cases***. A summary of the course of events in the chapter 11 cases, including the sale process, is described in Article II of the Combined Plan and Disclosure Statement;

- ***Risk Factors***. Certain risks associated with the Debtors' businesses, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement, are described in Article VIII of the Combined Plan and Disclosure Statement;

- ***Solicitation and Voting Procedures***. A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan is provided in Article V of the Combined Plan and Disclosure Statement;

- ***Confirmation of the Plan***. Confirmation procedures and statutory requirements for confirmation and consummation of the Plan are described in Article V of the Combined Plan and Disclosure Statement;

- ***Certain United States Federal Income Tax Consequences of the Plan***. A description of certain U.S. federal income tax law consequences of the Plan is provided in Article XI of the Combined Plan and Disclosure Statement; and

- ***Liquidation Analysis***. An analysis of the liquidation value of the Debtors is attached to the Plan Supplement as Exhibit G.

20. In addition, prior to solicitation, the Disclosure Statement and the Plan were subject to review and comment by the Committee and the U.S. Trustee. The Bankruptcy Court approved the Disclosure Statement on an interim basis on July 21, 2021, as containing adequate information to authorize the Debtors to commence solicitation. No party in interest has requested additional information or disputed that the Disclosure Statement contained information sufficient for Impaired Classes to be able to cast an informed vote on the Plan. For the reasons set forth above, the Debtors submit that the Disclosure Statement contains adequate information within the

meaning of section 1125(a) of the Bankruptcy Code in satisfaction of section 1126(b)(2) and should be approved.

B. The Debtors Complied with Applicable Notice Requirements.

21. On July 21, 2021, the Bankruptcy Court entered the Disclosure Statement Order granting the relief requested in the Disclosure Statement Motion, including, among other things: (a) approving the Solicitation Procedures; (b) approving the form and manner of the Confirmation Hearing Notice; and (c) approving certain dates and deadlines with respect to the Combined Plan and Disclosure Statement. The Debtors complied with the procedures and timeline approved by the Disclosure Statement Order.

(i) The Debtors Complied with the Notice Requirements Set Forth in the Disclosure Statement Order.

22. The Debtors satisfied the notice requirements set forth in the Disclosure Statement Order, Bankruptcy Rule 3017, and Local Rule 3017-1. ***First***, on or about July 28, 2021, the Debtors caused the Notice and Claims Agent to distribute the Solicitation Packages to holders of Claims entitled to vote on the Plan as of the Voting Record Date.[11] ***Second***, the Confirmation Hearing Notice included instructions on how to obtain the Combined Plan and the Disclosure Statement without a fee through the Debtors' restructuring website or for a fee at the Bankruptcy Court's PACER website.

(ii) The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Disclosure Statement Order.

23. The forms of Ballots used comply with the Bankruptcy Rules and were conditionally approved by the Bankruptcy Court pursuant to the Disclosure Statement Order.[12] No party has objected to the sufficiency of the Ballots. Based on the foregoing, the Debtors submit

[11] *See* Affidavit of Service of Solicitation Materials [Docket No. 708] (the "Solicitation Affidavit").
[12] *See* Disclosure Statement Order, ¶ 7.

that they complied with the Disclosure Statement Order and satisfied the requirements of Bankruptcy Rule 3018(c).

(iii) The Debtors' Solicitation Period Complied with the Disclosure Statement Order.

24. The Debtors' solicitation period complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. ***First***, the Solicitation Packages, including instructions for accessing electronic or hard-copy versions of the Plan and Disclosure Statement, were transmitted to all holders of Claims entitled to vote on the Plan.[13] ***Second***, the solicitation period, which lasted from July 28, 2021 through August 31, 2021, complied with the Disclosure Statement Order and was adequate under the particular facts and circumstances of these Chapter 11 Cases.[14] Accordingly, the Debtors submit that the solicitation period complied with the Disclosure Statement Order.

(iv) The Debtors' Tabulation Procedures Complied with the Disclosure Statement Order.

25. The Debtors request that the Bankruptcy Court find that the Debtors' tabulation of votes complied with the Disclosure Statement Order. The Notice and Claims Agent reviewed all Ballots received in accordance with the Solicitation Procedures approved pursuant to the Disclosure Statement Order.[15] Accordingly, the Debtors respectfully submit that the Bankruptcy Court should approve the Debtors' tabulation of votes, confirming that the requisite Claims voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code.

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13 *See* Solicitation Affidavit.
14 *See* Disclosure Statement Order, ¶ 6; Solicitation Affidavit.
15 *See* Disclosure Statement Order, ¶ 12.

(v) Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith.

26. Section 1125(e) of the Bankruptcy Code provides that "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.

27. As set forth in the Combined Plan and Disclosure Statement and Disclosure Statement Motion, and as demonstrated by the Debtors' compliance with the Disclosure Statement Order, the Debtors at all times engaged in arm's-length, good-faith negotiations and took appropriate actions in connection with the solicitation of the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Debtors respectfully request that the Bankruptcy Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

II. The Plan Satisfies Each Requirement for Confirmation.

28. To confirm the Plan, the Bankruptcy Court must find that the Debtors have satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[16] 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.

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

29. Section 1129(a)(1) of the Bankruptcy Code requires that a plan "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

[16] *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).

1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a chapter 11 plan, respectively.[17] 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.

(i) The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code.

30. 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 the other claims or interests of such class.

31. For a classification structure to satisfy section 1122 of the Bankruptcy Code, not all substantially similar claims or interests need to be grouped in the same class.[18] Instead, claims or interests designated to a particular class must be substantially similar to each other.[19] Courts in this jurisdiction and others have recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.[20]

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[17] 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."); *In re Nutritional Sourcing Corp*., 398 B.R. 816, 824 (Bankr. D. Del. 2008).

[18] *Armstrong World Indus., Inc*., 348 B.R. at 159.

[19] *Id*.

[20] Courts have identified grounds justifying separate classification, including: (a) where members of a class possess different legal rights, and (b) where there are good business reasons for separate classification. *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 Jersey City Med. Ctr*., 817 F.2d 1055, 1061 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *see also Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis on account of the bankruptcy court-approved settlement); *In re Heritage Org., L.L.C*., 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) (explaining that "the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan"); *In re 500 Fifth Ave. Assocs*., 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (holding that, although discretion is not unlimited, "the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case") (internal quotations omitted); *In re Drexel Burnham Lambert Grp.*

32. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into 12 separate Classes, with Claims and Interests in each Class differing from the Claims and Interests in each other Class in a legal or factual way or based on other relevant criteria.[21] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

a. Class 1A: Allowed Priority Claims against RAI;

b. Class 1B: Allowed Priority Claims against PEFI;

c. Class 2: Secured Credit Facility Claims;

d. Class 3A: Other Secured Claims against RAI;

e. Class 3B: Other Secured Claims against PEFI;

f. Class 4A: Homeowner Claims against RAI;

g. Class 4B: Homeowner Claims against PEFI;

h. Class 5A: General Unsecured Claims against RAI;

i. Class 5B: General Unsecured Claims against PEFI;

j. Class 6: Issuer Claims;

k. Class 7A: Thrivepoint Claims against RAI;

l. Class 7B: Thrivepoint Claims against PEFI;

m. Class 8: Loya Class Claims;

n. Class 9: Other Class Claims;

o. Class 10A: Intercompany Claims against RAI;

p. Class 10B: Intercompany Claims against PEFI;

q. Class 11A: Section 510(b) Claims against RAI;

Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together . . . .").

[21] See Plan, Art. IV.

r. Class 11B: Section 510(b) Claims against PEFI;

s. Class 12A: Interests in RAI; and

t. Class 12B: Interests in PEFI.

33. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class.[22] In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among holders of Claims and Interests.[23] Namely, the Plan separately classifies the Claims because each holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims or Interests in other Classes or because substantial administrative convenience resulted from such classification.[24]

34. For example, the classification scheme distinguishes holders of Secured Credit Facility Claims (Class 2) from holders of General Unsecured Claims against RAI (Class 5A), because of the different circumstances of each Class, including that the Debtors' obligations with respect to the former are secured by collateral.[25] Allowed Priority Claims against RAI (Class 1A) and Allowed Priority Claims against PEFI (Class 1B) are classified separately due to their required treatment under the Bankruptcy Code.[26]

35. Accordingly, the Claims or Interests assigned to each particular Class described above are substantially similar to the other Claims or Interests in each such Class and the distinctions among Classes are based on valid business, factual, and legal distinctions. Further, no

[22] *See* Powell Declaration, ¶ 14, 15.
[23] *See id.*
[24] *See id.*
[25] *See* Plan, Art. IV.
[26] *See id.*

party has objected to the Debtors' proposed classification scheme. The Debtors submit that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code.

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

36. The seven applicable requirements of section 1123(a) of the Bankruptcy Code generally relate to the specification of claims treatment and classification, the equal treatment of claims within classes, and the mechanics of implementing a plan. The Plan satisfies each of these requirements.

(1) Designation of Classes of Claims and Equity Interests.

37. For the reasons set forth above, Article IV of the Plan properly designates classes of Claims and Interests and thus satisfies the requirement of section 1122 of the Bankruptcy Code.[27]

(2) Specification of Unimpaired Classes (§ 1123(a)(2))

38. 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." The Plan meets this requirement by identifying each Class in Article IV that is Unimpaired.[28]

(3) Treatment of Impaired Classes (§ 1123(a)(3)).

39. 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." The Plan meets this requirement by setting forth the treatment of each Class in Article IV that is Impaired.[29]

(4) Equal Treatment Within Classes (§ 1123(a)(4))

[27] *See* Plan, Art. IV.
[28] *See id*.
[29] *See id*.

40. 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."[30] 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.[31]

(5) Means for Implementation (§ 1123(a)(5))

41. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[32] The Plan, together with the documents and forms of agreement included in the Plan Supplement, provides a detailed blueprint for the transactions that underpin the Plan, which are focused on an orderly wind-down of the estate now that all operating assets have been sold.

42. Article VI of the Plan, in particular, sets forth the means for implementation of the Plan.[33] In addition to these core transactions, the Plan sets forth other critical mechanisms of the Debtors' emergence, such as the vesting of assets in the Liquidating Trust for the purpose of liquidating the assets and winding down the Debtors' Estates, the issuance and sale of the New Common Stock of New RAI, the cancellation of existing securities and agreements, and the payment of certain fees.[34]

43. The precise terms governing the execution of these transactions are set forth in the applicable definitive documents or forms of agreements included in the Plan Supplement. The Debtors believe that the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

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30 *See* 11 U.S.C. § 1123(a)(4).
31 *See* Plan, Art. IV.
32 *See* 11 U.S.C. § 1123(a)(5).
33 *See* Plan, Art. VI.
34 *Id.*

(6) Issuance of Non-Voting Securities (§ 1123(a)(6))

44. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities.[35] Because the Plan prohibits the issuance of nonvoting equity securities, section 1123(a)(6) of the Bankruptcy Code does not apply to the Plan.

(7) Directors and Officers (§ 1123(a)(7))

45. 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." The Plan satisfies this requirement by providing for the deemed resignation of the Debtors' managers and officers from their duties and the appointment of the Liquidating Trustee to oversee the Liquidating Trust.[36]

B. The Debtors Complied with the Applicable Provisions of the Bankruptcy Code (§ 1129(a)(2)).

46. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires the plan proponent to comply with the applicable provisions of the Bankruptcy Code.[37] 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.[38] As set forth herein,

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35 *See* 11 U.S.C. § 1123(a)(6).
36 *See* Plan, Art. VI(3).
37 *See* 11 U.S.C. § 1129(a)(2).
38 *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 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).

the Debtors have 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 their Notice and Claims Agent in accordance with the Disclosure Statement Order.

(i) The Debtors Complied with Section 1125 of the Bankruptcy Code.

47. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a chapter 11 plan "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."[39] Section 1125 of the Bankruptcy Code 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.[40]

48. Section 1125 is satisfied here. Before the Debtors solicited votes on the Plan, the Bankruptcy Court approved the Disclosure Statement on an interim basis in accordance with section 1125(a)(1) of the Bankruptcy Code.[41] The Bankruptcy Court also approved the contents of the Solicitation Packages 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 deadlines for voting on and objecting to the Plan.[42] As stated above, the Debtors, through their Notice and Claims Agent, complied with the content and delivery requirements of the Disclosure Statement Order,[43] thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code. The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure

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39 *See* 11 U.S.C. § 1125(b).

40 *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).

41 *See generally* Disclosure Statement Order.

42 *Id*.

43 *See* Solicitation Affidavit.

statement must be transmitted to each holder of a claim or interest in a particular class. Here, the Debtors caused a Solicitation Package or a Non-Voting Package, as applicable, each of which included instructions for accessing electronic or hard-copy versions of the Disclosure Statement, to be transmitted to each holder of a Claim or Interest.

49. Based on the foregoing, the Debtors submit that they have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order.

(ii) The Debtors Complied with Section 1126 of the Bankruptcy Code.

50. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and equity interests in impaired classes of claims or interests that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject such plan. Section 1126 of the Bankruptcy Code provides, in pertinent part, that:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan. . . .
>
> (b) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.[44]

51. As set forth above, in accordance with section 1125 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from the holders of Allowed Claims in Classes 2, 4, 5, 6, 7, 8, and 9. The Debtors did not solicit votes from holders of Claims in Classes 1 and 3 because holders of Claims in these Classes are Unimpaired and, pursuant to section 1126(f)

[44] *See* 11 U.S.C. § 1126(a), (f).

of the Bankruptcy Code, are conclusively presumed to have accepted the Plan.[45] Depending on their ultimate treatment by the Debtors, holders of Claims and Interests in Classes 10, 11, and 12 will be either conclusively deemed to reject the Plan and are not entitled to vote on the Plan.[46] Thus, pursuant to section 1126(a) of the Bankruptcy Code, only holders of Claims in Classes 2, 4, 5, 6, 7, 8, and 9 were entitled to vote to accept or reject the Plan.[47]

52. With respect to the voting classes, section 1126(c) of the Bankruptcy Code provides that a class accepts a plan where holders of claims holding at least two-third in amount and more than one-half in number of allowed claims in such class vote to accept such plan.

53. The Voting Report, summarized above, reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code.[48] As set forth in the Voting Declaration and summarized above, the majority of the holders in Classes 2, 4, 5, 7, 8, and 9 voted to accept the Plan. Additionally, as discussed below, the Debtors have satisfied the requirements of section 1129(a)(10) of the Bankruptcy Code and will be able to "cram down" Class 6, which voted to reject the Plan, pursuant to section 1129(b) of the Bankruptcy Code. Based on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2).

C. The Plan Was Proposed in Good Faith (§ 1129(a)(3)).

54. 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.[49] To determine whether a plan seeks

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45 *See* Plan, Art. IV.
46 *Id*.
47 *Id*; *see also* Solicitation Affidavit.
48 *See generally* Voting Report.
49 *See 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*

relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[50]

55. The Debtors negotiated, developed, and proposed the Plan in good faith and the Plan satisfies section 1129(a)(3) of the Bankruptcy Code. Throughout these Chapter 11 Cases, the Debtors worked to build consensus among their various stakeholders. The Plan and the process leading up to its formulation are the result of extensive arm's-length negotiations among the Debtors, the Committee, and various other critical stakeholders.[51]

56. Throughout the negotiation of the Plan and these cases, the Debtors have upheld their fiduciary duties to stakeholders and protected the interests of all constituents with an even hand.[52] Accordingly, the Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code.

D. The Plan Provides that the Debtors' Payment of Professional Fees and Expenses are Subject to Court Approval (§ 1129(a)(4)).

57. 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 Bankruptcy 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 Bankruptcy Court as to their reasonableness.[53]

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).

50 *See 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.

51 *See* Powell Declaration, ¶ 45.

52 *Id*.

53 *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").

58. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code.[54] All payments made or to be made by the Debtors for services or for costs or expenses in connection with these Chapter 11 Cases prior to the Effective Date, including all Professional Fee Claims, have been approved by, or are subject to approval of, the Bankruptcy Court.[55] Section 3.2(a) of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed no later than sixty (60) days after the Effective Date for determination by the Bankruptcy Court, after notice and a hearing, in accordance with the procedures established by the Bankruptcy Court.[56] Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Debtors Have Complied with the Governance Disclosure Requirement (§ 1129(a)(5)).

59. Section 1129(a)(5)(A)(ii) of the Bankruptcy Code requires the plan proponent to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan and that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and public policy.[57]

60. The Plan satisfies section 1129(a)(5). Article IX of the Plan provides for a Liquidating Trustee. The Plan provides that the Liquidating Trustee will act for the Liquidating Trust. Further, the Plan also provides that on the Effective Date, the authority, power, and incumbency of the persons acting as directors and officers of the Debtors shall be deemed to have

[54] *See* Plan, Art. III.
[55] *See* Plan, Art. II(2).
[56] *Id*.
[57] *See* 11 U.S.C. § 1129(a)(5)(A).

resigned, solely in their capacities as such. Accordingly, the Plan fully complies with and satisfies all of the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Does Not Require Governmental Regulatory Approval (§ 1129(a)(6)).

61. Section 1129(a)(6) of the Bankruptcy Code requires that any rate change provided for in a plan be approved by or subject to the approval of all governmental regulatory commissions with jurisdiction, if any. The Plan does not provide for any rate changes, and the Debtors are not subject to any such regulation. Thus, section 1129(a)(6) of the Bankruptcy Code does not apply to the Plan.

G. The Plan is in the Best Interests of All the Debtors' Creditors (§ 1129(a)(7)).

62. Section 1129(a)(7) of the Bankruptcy Code, commonly known as the "best interests test," requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a value of not less than the value such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. The best interests test applies to individual dissenting holders of impaired claims and interests rather than classes[58] 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 chapter 11 plan.[59]

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[58] *See 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; *In re Adelphia Commc'ns Corp*., 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (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").

[59] *See In re Stone & Webster, Inc*., 286 B.R. 532, 544–45 (Bankr. D. Del. 2002) (citation omitted) ("The application of the best interest test involves a hypothetical application of chapter 7 to a chapter 11 plan. A liquidation and distribution analysis is performed to see whether each holder of a claim or interest in each impaired class, as such classes are defined in the subject plan, receive not less than the holders would receive in a "hypothetical Chapter 7 distribution" to those classes."); *In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2007) ("In order to show that a payment under a plan is equal to the value that the creditor would receive if the debtor were liquidated, there must be a liquidation analysis of some type that is based on evidence and not mere assumptions or assertions.") (citations omitted).

63. As set forth in the Disclosure Statement,[60] the Debtors, with the assistance of B. Riley, the Debtors' financial advisor, prepared a liquidation analysis, which is attached to the Plan Supplement as Exhibit G (the "Liquidation Analysis").[61] As reflected in the Liquidation Analysis, liquidation of the Debtors' business under chapter 7 of the Bankruptcy Code would result in substantial diminution in the value to be realized by holders of Allowed Claims as compared to distributions contemplated under the Plan. Importantly, because this is a liquidating plan, creditors are receiving all remaining assets in the Debtors' estate, subject to the priority rules under the Bankruptcy Code. In light of the minimal remaining assets and incremental costs of a liquidation, no party would do better in an alternative structure, including a chapter 7 liquidation. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

H. The Plan Complies with the Requirements of Section 1129(a)(8) of the Bankruptcy Code.

64. 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. Pursuant to section 1126(c) of the Bankruptcy Code, a class of claims accepts a plan if holders of at least two thirds in amount and more than one half in number of the allowed claims in that class vote to accept the plan. Pursuant to section 1126(d) of the Bankruptcy Code, a class of interests accepts a plan if holders of at least two thirds in amount of the allowed interests in that class vote to accept the plan. A class that is not impaired under a plan, and each holder of a claim or interest in such a class, is conclusively presumed to have accepted the plan. On the other hand, a class is deemed to have rejected a plan if the plan provides that the claims or interests of that class do not receive or retain any property under the plan on account of such claims or interests.

[60] *See* Disclosure Statement, Art. X.
[61] *See* Disclosure Statement, Art. X.B., Exh. B.

65. As set forth above and as reflected in the Voting Report, Classes 2, 4, 5, 7, 8, and 9 voted to accept the Plan, and Class 6 voted to reject the Plan. Moreover, holders of Claims and Interests in Classes 10, 11, and 12 are deemed to have rejected the Plan and, thus, were not entitled to vote.

I. The Plan Provides for Payment in Full of All Allowed Priority Claims (§ 1129(a)(9)).

66. 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 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.

67. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code. ***First***, Section 3.1 of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because it provides that each holder of an Allowed Administrative Claim will receive payment in an amount of Cash equal to

the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due) with a Cash distribution from the Priority/Secured Claims Reserve by the Liquidating Trustee; (3) at such time and upon such terms as may be agreed upon by such holder and the Debtors or the Liquidating Trustee, as applicable; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided* that any Administrative Claim with respect to an Assumed Liability or that has otherwise been assumed by the Purchaser shall not be an obligation of the Debtors.[62] ***Second***, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because, based on the Debtors' current projections,[63] no holders of the types of Claims specified by 1129(a)(9)(B) are Impaired under the Plan. More specifically, under Section 4.2 of the Plan, except to the extent that a holder of an Allowed Priority Claim agrees to less favorable treatment, shall be paid by the Liquidating Trustee from the Priority/Secured Claims Reserve, as set forth in Section 9.12 of this Plan, the amount of such holder's Allowed Class 1A or 1B Claim on the later of (A) the Effective Date (or as soon as reasonably practicable thereafter), and (B) fifteen Business Days following the date such Claim is Allowed by Final Order, rendering such holder's Allowed Priority Claim Unimpaired.[64] ***Third***, Section 3.3 of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides that holders of Allowed Priority

[62] *See* Plan, Art. III.
[63] *See* Powell Declaration, ¶ 54.
[64] *See* Plan, Art. IV(2).

Tax Claims shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.[65] The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. At Least One Class of Impaired, Non-Insider Claims Accepted the Plan (§ 1129(a)(10)).

68. 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. As detailed herein and in the Voting Report, the Debtors have obtained the requisite acceptance to confirm the Plan, independent of any insiders' votes. Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

K. The Plan Is Feasible (§ 1129(a)(11)).

69. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that a plan is feasible as a condition precedent to confirmation. 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."[66] To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success.[67] Rather, a debtor must

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65 *See* Plan, Art. III.

66 *See* 11 U.S.C. § 1129(a)(11).

67 *See 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*, 800 F.2d 581 (6th Cir. 1986).

provide only a reasonable assurance of success.[68] There is a relatively low threshold of proof necessary to satisfy the feasibility requirement.[69]

70. Here, the Plan is feasible as it is an orderly wind-down with sufficient funding. As set forth in the Powell Declaration,[70] the Debtors and their advisors have thoroughly analyzed their ability to meet their obligations under the Plan. More specifically, the Debtors and Liquidating Trust, as applicable, shall fund the distributions and obligations under the Plan with available Cash from the Liquidating Trust Assets.[71]

71. The Debtors have therefore established that there will be sufficient funds to satisfy all requirements and obligations under the Plan. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(11) of the Bankruptcy Code.

L. The Plan Provides for the Payment of Certain Statutory Fees (§ 1129(a)(12)).

72. 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.

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68 *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., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (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).

69 *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).

70 *See* Powell Declaration, ¶ 58.

71 *See* Plan, Art. IX.

73. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Section 3.4 of the Plan provides that all fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by the Liquidating Trustee for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.[72]

M. No Remaining Retiree Benefits Obligations (§ 1129(a)(13)).

74. 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 Debtors do not have any remaining obligations 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 these Chapter 11 Cases or the Plan.

N. Section 1129(a)(14) through 1129(a)(16) of the Bankruptcy Code Do Not Apply to the Plan.

75. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. Since the Debtors are not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply. 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 none of the Debtors is an "individual," the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply. Finally, each of the Debtors are 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 nonbankruptcy law, is not applicable to these Chapter 11 Cases.

[72] *See* Plan, Art. IX.

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

76. 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.[73]

77. The Plan satisfies section 1129(b) of the Bankruptcy Code. As noted above, Classes 2, 4, 5, 7, 8, and 9, which are Impaired Classes of Claims entitled to vote on the Plan, have voted in favor of the Plan. Class 6 voted to reject the Plan. Holders of Claims and Interests in Classes 10, 11, and 12 will receive no recovery and are deemed to reject the Plan. Notwithstanding that Classes 6, 10, 11, and 12 voted to reject or are deemed to reject the Plan, the Plan is confirmable.

(i) The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes that Have Not Voted to Accept the Plan (§ 1129(b)(1)).

78. The Plan does not unfairly discriminate with respect to Classes 6, 10, 11, and 12. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of the particular case to make the determination.[74] In general, courts have held that a plan unfairly discriminates in

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[73] *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.").

[74] *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

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.[75] 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.[76]

79. Here, the Plan's treatment of the non-accepting Impaired Classes is proper because all similarly situated holders of Claims and Interests at each applicable Debtor will receive substantially similar treatment, and the Plan's classification scheme rests on a legally acceptable rationale, including in relation to their priority within the Debtors' capital structure, their differing legal nature, and their respective rights against the Debtors. Claims in each of the non-accepting Impaired Classes are not similarly situated to those of any other classes, given their distinctly different legal character from all other Claims and Interests.

80. Accordingly, the Plan does not discriminate unfairly with respect to Classes 6, 10, 11, and 12, who either voted to reject or are deemed to reject the Plan, and it satisfies the requirements of section 1129(b) of the Bankruptcy Code.

established."); *In re Aztec Co*., 107 B.R. 585, 589 (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").

[75] *See In re Coram Healthcare Corp*., 315 B.R. 321, 349 (Bankr. D. Del. 2004) (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).

[76] *See Aleris Int'l, Inc*., 2010 WL 3492664, at *31 (*citing Armstrong World Indus*., 348 B.R. at 121).

(ii) The Plan Is Fair and Equitable (§ 1129(b)(2)).

81. 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.[77] 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.[78]

82. Here, the Plan is "fair and equitable" to holders of Claims and Interests in those Classes that were deemed to reject the Plan because the Plan satisfies the absolute priority rule with respect to each of these non-accepting Impaired Classes. Specifically, no holder of any junior Claim or Interest will receive or retain any property under the Plan on account of such junior Claim or Interest.[79]

83. Accordingly, and further supported by the lack of objections on any grounds related to the application of section 1129(b) of the Bankruptcy Code, the Plan can be crammed down on the non-consenting Impaired Classes.

P. The Plan Complies with the Remaining Provisions of Section 1129 of the Bankruptcy Code (§ 1129(c)-(e)).

84. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. ***First***, section 1129(c) of the Bankruptcy Code, which prohibits confirmation of multiple plans, is not implicated because there is only one proposed plan. Second, the purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no

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77 *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.'").

78 *Id*.

79 *See* Powell Declaration, ¶ 66; 11 U.S.C. § 1129(b)(2).

governmental unit or any other party has requested that the Bankruptcy Court decline to confirm the Plan on such grounds. As provided in the Powell Declaration, the Plan was proposed in good faith and not by any means forbidden by law.[80] Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases is a "small business case."[81] Accordingly, the Plan satisfies the requirements of section 1129(c), (d), and (e) of the Bankruptcy Code.

III. The Discretionary Contents of the Plan Are Appropriate Under Section 1123(b) of the Bankruptcy Code.

85. 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; (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 the Debtors' estates, 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]."[82]

86. As set forth below, the Plan includes certain of these discretionary provisions, such as releases and general settlement of Claims and Interests. The Debtors have determined, as

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[80] *See* Powell Declaration, ¶ 62.

[81] *See* 11 U.S.C. § 1129(e). A "small business debtor" cannot be a member "of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,566,050 [] (excluding debt owed to 1 or more affiliates or insiders)." 11 U.S.C. § 101(51D)(B).

[82] *See* 11 U.S.C. § 1123(b)(1)–(6).

fiduciaries of their Estates and in the exercise of their reasonable business judgment, that each of the discretionary provisions of the Plan is appropriate given the circumstances of these Chapter 11 Cases.

87. Here, the Plan includes various discretionary provisions that are consistent with the discretionary authority vested under section 1123(b) of the Bankruptcy Code. For example, the Plan impairs certain Classes of Claims and Interests and leaves others Unimpaired, proposes treatment for Executory Contracts and Unexpired Leases, provides a structure for Claim allowance and disallowance, and establishes a distribution process for the satisfaction of Allowed Claims entitled to distributions under the Plan. In addition, the Plan contains provisions implementing certain releases and exculpations, and permanently enjoining certain causes of action.

88. Each of these provisions are appropriate because, among other things, they (a) are the product of arm's-length negotiations, (b) have been critical to obtaining the support of the various constituencies for the Plan, (c) are given for valuable consideration, (d) are fair and equitable and in the best interests of the Debtors, these estates, and the Chapter 11 Cases, and (e) are consistent with the relevant provisions of the Bankruptcy Code and Third Circuit law. Such provisions are discussed in turn below but, in summary, satisfy the requirements of section 1123(b) of the Bankruptcy Code.[83]

A. The Plan's Release, Exculpation, and Injunction Satisfy Section 1123(b) of the Bankruptcy Code.

89. The Plan also includes certain releases, an exculpation provision, and an injunction provision. These discretionary provisions are proper because, among other things, they are the product of extensive good-faith, arm's-length negotiations, are supported by the Debtors and their key constituents, and are consistent with applicable precedent.

[83] *See* Powell Declaration, ¶ 18.

(i) The Debtor Releases in the Plan Are Appropriate.

90. 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."[84] Furthermore, 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."[85] Section 13.5 of the Plan provides for releases by each of the Released Parties in favor of the other Released Parties of certain Claims and Causes of Action (the "Debtor Releases").[86]

91. Courts in this jurisdiction generally analyze five factors when determining the propriety of a debtor release, commonly known as the Zenith or Master Mortgage factors.[87] The analysis includes an inquiry into whether there is: "(1) an identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate's resources; (2) a substantial contribution to the plan by the non-debtor; (3) the necessity of the release to the reorganization; (4) the overwhelming acceptance of the plan and release by creditors and interest holders; and (5) the payment of all or substantially all of the claims of the creditors and interest

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84 *See Coram*, 315 B.R. at 334–35 ("The 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 debtors if the settlement "exceed[s] the lowest point in the range of reasonableness." *Id*. at 330 (internal citations omitted). *E.g.*, *In re Exaeris, Inc*., 380 B.R. 741, 746–47 (Bankr. D. Del. 2008); *In re World Health Alts., Inc*., 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that settlement must be "within the reasonable range of litigation possibilities") (internal quotation marks omitted).

85 *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 quotation marks omitted). *See also In re WCI Cable, Inc*., 282 B.R. 457, 469 (Bankr. D. Or. 2002) ("a chapter 11 plan may provide for the settlement of any claim belonging to the debtor or to the estate").

86 The Released Parties include, among others, in each case in their capacity as such: (a) the Debtors; (b) the Committee and each member of the Committee; (c) the Credit Facility Agent; (d) the Lenders; and (e) the financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals of each Entity in clause (a) through (d).

87 *See In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013) (*citing In re Zenith Elecs. Corp*., 241 B.R. 92, 105 (Bankr. D. Del. 1999)); *In re Master Mortg. Inv. Fund, Inc*., 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994).

holders under the plan."[88] These factors are "neither exclusive nor conjunctive requirements" but rather serve as guidance to courts in determining fairness of a debtor's releases.[89]

92. The Debtor Releases meet the applicable standard because they are fair, reasonable, and in the best interests of the Debtors' estates. As described in the Powell Declaration[90] and as an analysis of the Master Mortgage factors demonstrates, the Debtor Releases embodied in Section 13.5 of the Plan should be approved.

- ***First***, an identity of interest exists between the Debtors and the parties to be released. Each of the Released Parties, as a stakeholder and critical participant in the Plan process, shares a common goal with the Debtors in seeing the Plan succeed and would have been unlikely to participate in the negotiations and compromises that led to the ultimate formation of the Plan without the Debtor Releases. Like the Debtors, these parties seek to confirm the Plan and implement the transactions contained therein.[91]

- ***Second***, the substantial contributions are clear. The Released Parties played an integral role in the formation of the Plan and the sale process, and have expended significant time and resources analyzing and negotiating the issues present in these Chapter 11 Cases to reach a value-maximizing chapter 11 plan. As Delaware bankruptcy courts have recognized, a wide variety of acts may illustrate a substantial contribution to a debtor's chapter 11 case.[92] Moreover, the Released Parties have expended time and resources analyzing and negotiating the issues presented by the Debtors' capital structure and the material barriers to the resolution thereof. Here, the value contributed by the Released Parties is certainly substantial. Without the contributions of each of these parties, the Plan and the transaction contemplated therein would not be possible.

- ***Third***, the Debtor Releases are essential to the successful resolution of the Chapter 11 Cases because they constitute an integral term of the Plan. Indeed,

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88 *See In re Washington Mut., Inc*., 442 B.R. at 346 (*citing In re Zenith Elecs. Corp*., 241 B.R. at 110 and *In re Master Mortg. Inv. Fund, Inc*., 168 B.R. at 937).

89 *Id*. (*citing In re Master Mortg*., 168 B.R. at 935).

90 *See* Powell Declaration, ¶¶ 21-25.

91 *See In re Abeinsa Holding, Inc*., 562 B.R. 265, 284 (Bankr. D. Del. 2016) (finding that "there is an identity of interest between the Debtors and the released parties arising out the shared common goal of confirming and implementing the Plan."); *see also Zenith*, 241 B.R. at 110 (concluding that certain releasees who "were instrumental in formulating the Plan" shared an identity of interest with the debtor "in seeing that the Plan succeed and the company reorganize").

92 *See id*. at 304 (finding that the non-debtor party had substantially contributed by performing services for the debtors post-petition without receiving compensation); *In re Wash. Mut., Inc*., 442 B.R. at 347 (finding substantial contribution required the contribution of "cash or anything else of a tangible value to the [chapter 11 plan] or to creditors"); *In re Zenith Elecs. Corp*., 241 B.R. at 111 (finding that prepetition contribution of work in negotiating a plan constituted adequate consideration for debtor's release).

absent the Debtor Releases, it is highly unlikely the Released Parties would have agreed to support the Plan transactions contemplated therein. As described above, each of the Released Parties contributed substantial value to these Chapter 11 Cases and did so with the understanding that they would receive releases from the Debtors. In the absence of these parties' support, the Debtors would not be in a position to confirm the Plan and emerge from chapter 11. The Debtor Releases, therefore, are essential to the successful resolution of these Chapter 11 Cases.

- ***Fourth***, no party in interest has contested the debtor release of any hypothetical claims, and as evidenced by the Voting Report and noted herein, parties entitled to vote on the Plan have overwhelmingly voted to approve the Plan. Given the critical nature of the Debtor Releases and the Plan's overall support, the Debtors submit that the releases are proper.

- ***Fifth***, the Plan provides for meaningful recoveries for the Classes affected by the Debtors Releases, recoveries that would be unavailable absent the Plan.[93]

93. For the reasons set forth above, and as supported by the Powell Declaration, each of the Master Mortgage factors supports approval of the Debtor Releases. Moreover, the breadth of the Debtor Releases is consistent with those regularly approved in this jurisdiction. The Debtors have satisfied the business judgment standard in granting the Debtor Releases under the Plan. The Debtor Releases easily meet the applicable standard because they are fair, reasonable, and in the best interests of the Debtors' Estates. Thus, the Bankruptcy Court should approve the Debtor Releases in the Plan.

(ii) The Third-Party Releases are Wholly Consensual and Should Be Approved.

94. In addition to the Debtor Releases, the Plan provides for releases by certain holders of Claims and Interests. Specifically, Section 13.6 of the Plan provides that each Releasing Party shall release any and all Claims and Causes of Action such parties could assert against the Released Parties (the "Third-Party Release" and together with the Debtor Releases, the "Releases"). The Releasing Parties include: (a) the Debtors; (b) the Committee and each member of the

[93] *See* Powell Declaration, ¶ 25.

Committee (solely in its capacity as such); (c) the Credit Facility Agent; (d) the Lenders; (e) all holders of Claims; (f) each current and former Affiliate of each Entity in clause (a) through (e); and (g) each of the financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals of each Entity in clause (a) through (e); *provided* that any holder of a Claim or Interest that (w) validly opts out of the releases contained in the Plan, (x) files an objection to the releases contained in the Plan, (y) votes to reject or is deemed to reject the Plan, or (z) fails to timely return its Ballot shall not be a "Releasing Party." The Third-Party Releases are consensual, consistent with established Third Circuit law, and integral to the Plan, and should therefore be approved.

95. Numerous courts have recognized that a chapter 11 plan may include a release of non-debtors by other non-debtors when such release is consensual.[94] Consensual releases are permissible on the basis of general principles of contract law.[95] The law is clear that a release is consensual where parties have received sufficient notice of a plan's release provisions and have had an opportunity to object to or opt out of the release and failed to do so (including where such holder abstains from voting altogether).[96] Here, all parties in interest had ample opportunity to

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94 *See, e.g., Indianapolis Downs*, 486 B.R. at 305 (collecting cases); *Spansion*, 426 B.R. at 144 (stating that "a third party release may be included in a plan if the release is consensual").

95 *Coram*, 315 B.R. at 336.

96 *See, e.g., In re Indianapolis Downs, LLC*, 486 B.R. at 306 ("As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the Third-Party Releases may be properly characterized as consensual and will be approved."); *In re DBSD N. Am., Inc*., 419 B.R. 179, 218-19 (Bankr. S.D.N.Y. 2009) ("Except for those who voted against the Plan, or who abstained and then opted out, I find the Third Party Release provision consensual and within the scope of releases permitted in the Second Circuit."), *aff'd*, 2010 WL 1223109 (S.D.N.Y. March 24, 2010), *modified on other grounds*, 634 F.3d 79 (2d Cir. 2011); *In re Conseco, Inc*., 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003) ("The Article X release now binds only those creditors who agreed to be bound, either by voting for the Plan or by choosing not to opt out of the release. Therefore, the Article X release is purely consensual and within the scope of releases that Specialty Equipment permits." (*citing In re Specialty Equip. Corp*., 3 F.3d 1043 (7th Cir. 1993))).

evaluate and opt out of the Third-Party Releases by opting out of, or objecting to, the Third-Party Release.

96. Importantly, the Ballots distributed to holders of Claims entitled to vote on the Plan quoted the entirety of the Third-Party Release, clearly informing holders of Claims entitled to vote of the steps they should take if they disagreed with the scope of the Third-Party Release. Similarly, the Non-Voting Packages distributed to holders of Claims and Interests not entitled to vote on the Plan also quoted the entirety of the Third-Party Release, clearly informing holders of Claims and Interests not entitled to vote of the steps they should take if they disagreed with the scope of the Third-Party Release. Thus, affected parties were on notice of Third-Party Release, including the option to opt out of the Third-Party Release. As such, the Third-Party Releases are consensual releases of all holders of Claims or Interests who did not object.

97. Based on the foregoing, the Debtors have established that the Third-Party Release is consensual, and there is no need to consider the factors governing non-consensual third-party releases under Continental[97] and its progeny. Nonetheless, even if the Bankruptcy Court determines that such releases are non-consensual, the Third-Party Release is appropriate and should be approved.

98. Courts in the Third Circuit have held that a non-consensual release may be approved if such release is fair and necessary, and the court makes specific factual findings to

[97] *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203, 213-14 (3d Cir. 2000).

support such conclusions.[98] In addition, the Third Circuit has found that, for such releases to be permissible, fair consideration must be given in exchange for the release.[99]

99. The circumstances of these Chapter 11 Cases warrant the Third-Party Release because it is critical to the success of the Plan, and it is fair and appropriate. Without the efforts of the Released Parties in actively participating in the Sale Transaction and Plan negotiations, the Debtors would not have been able to consummate a value-maximizing Sale Transaction for the benefit of all stakeholders and an orderly post-sale wind down through the Plan. In addition, many of the Released Parties have been instrumental in supporting these Chapter 11 Cases and facilitating its smooth administration. Finally, throughout the entire case and its attendant negotiations, the Debtors' directors and officers steadfastly maintained their duties to maximize value for the benefit of all stakeholders, investing countless hours both pre- and postpetition.[100]

100. Moreover, the third parties bound by the Releases have received sufficient consideration in exchange for the release of their Claims against the Released Parties to justify the Third-Party Release. The Released Parties have made massive concessions and commitments that will allow the Debtors to maximize the value of their estates and maintain their business through the Debtors' restructuring. The Released Parties have been active and important participants in the development of the Plan and have expended significant time and resources analyzing and

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98 *See Id.* at 214 (noting that the "hallmarks of permissible non-consensual releases [are] fairness, necessity to the reorganization, specific factual findings to support these conclusions"); *In re Spansion, Inc*., 426 B.R. at 144 (evaluating certain factors to determine whether the "hallmarks" of permissible non-consensual releases are met, including "(i) the non-consensual release is necessary to the success of the reorganization, (ii) releases have provided a critical financial contribution to the Debtors' plan; (iii) the releasee's financial contribution is necessary to make the plan feasible; and (iv) the release is fair to the non-consenting creditors, i.e., whether the non-consenting creditors received reasonable compensation in exchange for the release"); *In re Genesis Health Ventures, Inc*., 266 B.R. at 607- 08 (evaluating similar factors to determine whether non-consensual third party releases were permissible); *cf. Washington Mutual*, 442 B.R. at 355 ("[T]he Court concludes that any third party release is effective only with respect to those who affirmatively consent to it by voting in favor of the Plan and not opting out of third party releases.").

99 *See United Artists Theatre Co. v. Walton*, 315 F.3d 217, 227 (3d Cir. 2000) (*citing In re Continental Airlines*, 203 F.3d at 215).

100 *See* Powell Declaration, ¶ 30.

negotiating the issues presented by the Debtors' capital structure and the material barriers to the resolution thereof. In addition to significant concessions under the Plan, the Released Parties made the contributions as discussed above, each in exchange for, among other things, the Third-Party Releases.

101. The Debtors submit that the Third-Party Release is consensual or otherwise appropriate under Continental and its progeny. Accordingly, the Third-Party Release should be approved.

(iii) The Exculpation Provision is Appropriate.

102. Section 13.4 of the Plan provides for the exculpation of the Exculpated Parties. The exculpation is fair and appropriate under both applicable law [101] and the facts and circumstances of these Chapter 11 Cases. The Plan's exculpation provision is the product of arm's-length negotiations, was critical to obtaining the support of various constituencies for the Plan, and, as part of the Plan, has received support from the Debtors' major stakeholders. The exculpation provision was important to the development of a feasible, confirmable Plan, and the Exculpated Parties participated in these Chapter 11 Cases in reliance upon the protections afforded to those constituents by the exculpation.

103. Courts evaluate the appropriateness of exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations.[102] Exculpation provisions that are limited to claims not involving actual fraud or gross negligence are customary and

[101] *See In re Laboratory Partners, Inc*., No. 13-12769 (PJW) (Bankr. D. Del. July 10, 2014) (finding that exculpation was appropriately extended to secured lender who funded the chapter 11 case); *In re FAH Liquidating Corp*., No. 13-13087 (KG) (Bankr. D. Del. July 28, 2014) (finding that exculpation as applied to a non-debtor purchaser was appropriate under section 1123(b)).

[102] *See, e.g., In re Enron Corp*., 326 B.R. 497, 503 (S.D.N.Y. 2005) (evaluating the exculpation clause based on the manner in which the clause was made a part of the agreement, the necessity of the limited liability to the plan negotiations, and that those who participated in proposing the plan did so in good faith).

generally approved in this district under appropriate circumstances.[103] Unlike third-party releases, exculpation provisions do not affect the liability of third parties *per se* but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an "Exculpated Party" for acts arising out of the Debtors' restructuring.[104]

104. The Exculpated Parties have participated in good faith in formulating and negotiating the Plan as it relates to the Debtors, and they should be entitled to protection from exposure to any lawsuits filed by disgruntled creditors or other unsatisfied parties. Moreover, the exculpation provision and the liability standard it sets represents a conclusion of law that flows logically from certain findings of fact that the Bankruptcy Court must reach in confirming the Plan as it relates to the Debtors. As discussed above, this Court must find, under section 1129(a)(2), that the Debtors have complied with the applicable provisions of the Bankruptcy Code. Additionally, this Court must find, under section 1129(a)(3), that the Plan has been proposed in good faith and not by any means forbidden by law. These findings apply to the Debtors and, by extension, to the Debtors' officers, directors, employees, and professionals. Further, these findings imply that the Plan was negotiated at arm's-length and in good faith.

105. Here, the Debtors and their officers, directors, and professionals actively negotiated with holders of Claims and Interests across the Debtors' capital structure in connection with the Plan and these Chapter 11 Cases. Such negotiations were extensive and the resulting agreements were implemented in good faith with a high degree of transparency, and as a result, the Plan enjoys

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[103] *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).

[104] *See In re PWS Holding Corp.*, 228 F.3d at 245 (finding 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 Code"); *see also In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *10 (Bankr. D. Del. Apr. 29, 2010) (approving a similar exculpation provision as that provided for under the Plan); *In re Spansion*, 2010 WL 2905001, at *16 (Bankr. D. Del. April 16, 2010) (same).

support from a majority of holders of Claims entitled to vote.[105] The Exculpated Parties played a critical role in negotiating, formulating, and implementing the Disclosure Statement, the Plan, and related documents in furtherance of the Debtors' chapter 11 efforts.[106] Furthermore, the Exculpation is limited to acts during these Chapter 11 Cases and does not extend beyond such time period.[107] Accordingly, the Bankruptcy Court's findings of good faith vis-à-vis the Debtors' Chapter 11 Cases should also extend to the Exculpated Parties.

106. Additionally, the promise of exculpation played a significant role in facilitating Plan negotiations.[108] All of the Exculpated Parties played a key role in developing the Plan that paved the way for a successful resolution of these Chapter 11 Cases, and likely would not have been so inclined to participate in the plan process without the promise of exculpation.[109] Exculpation for parties participating in the plan process is appropriate where plan negotiations could not have occurred without protection from liability.[110]

107. Under the circumstances, it is appropriate for the Bankruptcy Court to approve the exculpation provision, and to find that the Exculpated Parties have acted in good faith and in compliance with the law.[111]

(iv) The Injunction Provision is Appropriate.

108. The injunction provision set forth in Section 13.7 of the Plan merely implements the Plan's release and exculpation provisions, in part, by permanently enjoining all entities from

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105 *See, e.g.*, Voting Report.

106 *See* Powell Declaration, ¶ 34; cf. Hr'g Tr. 58:18–19, *In re Verso Corp*., No. 16-10163 (KG) (Bankr. D. Del. June 23, 2016) ("[T]he debtors did not do this alone; they did it with the help of many others.").

107 *See* Powell Declaration, ¶ 34.

108 *See* Powell Declaration, ¶ 35.

109 *See* Powell Declaration, ¶ 35.

110 *See In re Enron Corp*., 326 B.R. at 503 (excising similar exculpation provisions would "tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition").

111 *See PWS Holding Corp*., 228 F.3d at 246–47 (approving plan exculpation provision with willful misconduct and gross negligence exceptions); *In re Indianapolis Downs, LLC*, 486 B.R. at 306 (same).

commencing or maintaining any action against the Estates, New RAI, or the Liquidating Trust on account of or in connection with or with respect to any such claims or interests released or subject to exculpation. 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. As such, to the extent the Bankruptcy Court finds that the exculpation and release provisions are appropriate, the Debtors respectfully submit that the injunction provision must also be appropriate. Moreover, this injunction provision is narrowly tailored to achieve its purpose.

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

109. 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 nonbankruptcy law."

110. Section 7.2 of the Plan provides for the satisfaction of all monetary defaults under each Executory Contract and Unexpired Lease assumed pursuant to the Plan in accordance with section 365 of the Bankruptcy Code by payment of the default amount in Cash on the Effective Date, or as soon as reasonably practicable thereafter, subject to certain limitations set forth in the Plan, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.[112] The Debtors, in accordance with the Disclosure Statement and the Plan, filed the Plan Supplement with the Assumed Executory Contracts and Unexpired Leases Schedule.[113]

111. Accordingly, the Debtors submit that the Plan fully complies with section 1123(d) of the Bankruptcy Code.

[112] *See* Plan, Art. VII.
[113] *See* Plan Supplement, Exh. B.

C. Modifications to the Plan.

112. 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 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.[114]

113. On September 8, 2021, the Debtors filed a modified version of the Plan, which makes technical clarifications and resolves certain formal objections and informal comments to the Plan by parties in interest. In particular, and in response to informal comments of the SEC, the Plan was modified to adjust the mechanism by which the Debtors would sell the newly-issued stock in New RAI to the Remnant Asset Purchaser. This change also prompted the removal of the discharge provision in the prior versions of the Plan. Finally, the Debtors included a toggle in the treatment of ING related to a potential future settlement with WRCOG. The modifications are immaterial and thus comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 2019. Accordingly, the Debtors submit that no additional solicitation or disclosure is required on account

[114] *See, e.g., 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").

of the modifications, and that such modifications should be deemed accepted by all creditors that previously accepted the Plan.

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

114. 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." 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.

115. The Debtors submit 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.[115] The Debtors have devoted considerable effort to liquidating their assets and negotiating a consensual Plan with their key constituencies in order to exit chapter 11 as soon as practicable. Additionally, each day the Debtors remain in chapter 11 they incur significant administrative and professional costs.

116. For these reasons, the Debtors, their advisors, and other key constituents are working to expedite the Debtors' entry into, and consummation of the documents and transactions related to the restructuring transactions so that the Effective Date of the Plan may occur as soon as possible after the Confirmation Date. Based on the foregoing, the Debtors request a waiver of any

[115] *See, e.g., In re Akorn, Inc*., No. 20-11177 (KBO) (Bankr. D. Del. September 4, 2020) (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re Bluestem Brands Inc.*, No. 20-10566 (MWF) (Bankr. D. Del. August 21, 2020) (same); *In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 22, 2020) (same); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020) (same); *In re Anna Holdings, Inc*., No. 19-12551 (CSS) (Bankr. D. Del. Dec. 17, 2019) (same); *In re Blackhawk Mining, LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 29, 2019) (same).

stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

Conclusion

117. For all of the reasons set forth herein and in the Powell Declaration, and in the Voting Report, and as will be further shown at the Confirmation Hearing, the Debtors respectfully request that the Bankruptcy Court approve the Disclosure Statement and confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code by entering the proposed Confirmation Order and granting such other and further relief as is just and proper.

[*Remainder of page is intentionally blank.*]

Dated: September 8, 2021
Wilmington, Delaware

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Exhibit A

Chart of Objections to the Plan and Proposed Actions[116]

Objector	Objection	Proposed Resolution / Response
LA County [Docket No. 702]	**1. Third Party Releases are improper.** **2. Discharge provision is improper.** **3. Lack of Disclosure of New D&Os.** **4. Issues regarding Data Administrator Professionals.** **5. Consumer Data Protections are required.** **6. Injunction is overly broad.**	**Each of LA County's objections were consensually resolved with explanation and/or confirmation order language.**
WRCOG [Docket No. 704]	**Joined in LA County's objection.**	**Resolved with confirmation order language.**
SEC (Informal Objection)	**Informal objection related to 1145 exemption.**	**Resolved by removal of 1145 exemption and revised New RAI sale structure.**

[116] Capitalized terms used but not defined herein have the meanings given to them in the Debtors' brief in support of confirmation of the Plan.