DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
Timothy Graulich
Joshua Y. Sturm
Marc J. Tobak
Jarret Erickson
Richard J. Steinberg
Andrew Frisoli

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
AZUL S.A., *et al.*,	**Case No. 25-11176 (SHL)**
Debtors.[1]	**(Jointly Administered)**

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF AZUL S.A. AND ITS DEBTOR AFFILIATES AND (II) RESPONSE TO OBJECTIONS THERETO

[1] The debtors and debtors in possession in the chapter 11 cases, along with the last four digits of their respective tax, employer identification, or Delaware file numbers (as applicable), are as follows: Azul S.A. (CNPJ: 5.994); Azul Linhas Aéreas Brasileiras S.A. (CNPJ: 6.295); IntelAzul S.A. (CNPJ: 8.624); ATS Viagens e Turismo Ltda. (CNPJ: 3.213); Azul Secured Finance II LLP (EIN: 2619); Azul Secured Finance LLP (EIN: 9978); Canela Investments (EIN: 4987); Azul Investments LLP (EIN: 2977); Azul Finance LLC (EIN: 2283); Azul Finance 2 LLC (EIN: 4898); Blue Sabia LLC (EIN: 4187); Azul SOL LLC (EIN: 0525); Azul Saira LLC (EIN: 8801); Azul Conecta Ltda. (CNPJ: 3.318); Cruzeiro Participações S.A. (CNPJ: 7.497); ATSVP – Viagens Portugal, Unipessoal LDA. (NIF: 2968); Azul IP Cayman Holdco Ltd. (N/A); Azul IP Cayman Ltd. (N/A); Canela Turbo Three LLC (EIN: 4043); and Canela 336 LLC (Del. File No.: 6717). The Debtors' corporate headquarters is located at Avenida Marcos Penteado de Ulhôa Rodrigues, nº 939, 8º floor, Edifício Jatobá, Condomínio Castelo Branco Office Park, Tamboré, 06460-040, Barueri, São Paulo, Brazil.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

Azul S.A. and its direct and indirect subsidiaries (collectively, the "**Debtors**" or "**Azul**"), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), respectfully submit this memorandum of law and omnibus reply in support of confirmation of the *Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates* [ECF No. 844] (as may be amended, altered, modified or supplemented from time to time, the "**Plan**").[2] This memorandum of law is supported by the *Declaration of Beau Roy in Support of Confirmation of the Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates* (the "**Roy Declaration**"), the *Declaration of Christopher Creger in Support of Confirmation of the Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtors Affiliates* (the "**Creger Declaration**"), the *Declaration of Homer Parkhill in Support of Confirmation of the Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates* (the "**Parkhill Declaration**"), and the *Declaration of Angela Tsai of Stretto, Inc. Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates* [ECF No. 997] (the "**Voting Declaration**" and together with the Roy Declaration, the Creger Declaration, the Parkhill Declaration, and any other declarations filed in support of Confirmation, the "**Confirmation Declarations**"), each of which was filed substantially contemporaneously herewith[3] and is incorporated herein by reference. In further support of confirmation of the Plan, the Debtors respectfully state as follows:

---

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms elsewhere herein or in the following documents, as applicable: (a) the Plan or the *Disclosure Statement for the Revised Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates* [ECF No. 845] (as may be amended, altered, modified or supplemented from time to time, the "**Disclosure Statement**") (each of which is incorporated herein by reference) or the Disclosure Statement Approval Order. The rules of interpretation set forth in <u>Section 1.2</u> of the Plan shall apply hereto. Unless otherwise specified, all references herein to "<u>Articles</u>" refer to articles of the Plan, all references to "<u>Sections</u>" (uppercase) refer to sections of the Plan, and all references to "sections" (lowercase) refer to sections of the Bankruptcy Code.

[3] The Voting Declaration was filed on December 5, 2025, in accordance with the timeline set forth in the Disclosure Statement Approval Order.

Preliminary Statement[4]

1. The Debtors' stated goals at the outset of the Chapter 11 Cases were incredibly bold: (i) reimagine and transform Azul as a more robust and resilient airline better able to withstand the impacts of the exigent circumstances that helped precipitate the Chapter 11 Cases, including fuel and currency fluctuations, floods and other natural disasters, tariffs, and a competitive marketplace, (ii) restructure and modernize its fleet, (iii) right size its capital structure and provide appropriate liquidity for the restructured airline, and (iv) obtain equity investments from two of the largest and best-operated airlines in the entire world. And if these goals were not sufficiently bold, Azul set an equally ambitious timeline – accomplish each of these goals in a fraction of the time in chapter 11 of precedent Latin American airline chapter 11 cases.[5] Today, less than seven months following the commencement of the Chapter 11 cases, the Debtors stand poised to seek confirmation of a Plan that achieves each of the above objectives and which enjoys overwhelming support from its creditor body. In fact, the Plan is *entirely consensual* among the parties that are entitled to vote and that have an economic interest in the consummation of the Plan. *See* Voting Decl., Ex. A (reflecting each Voting Class voted to accept the Plan by majorities in excess of 90%).[6]

[4] Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them in this memorandum of law.

[5] *See, e.g.*, *In re Gol Linhas Aéreas Inteligentes S.A.*, 24-10118 (Bankr. S.D.N.Y.) (15 months from the petition date to entry of the confirmation order), *In re Avianca Holdings S.A.*, 20-11133 (Bankr. S.D.N.Y.) (17 months from the petition date to entry of the confirmation order), *In re LATAM Airlines Group S.A.*, 20-11254 (Bankr. S.D.N.Y.) (24 months from the petition date to entry of the confirmation order), and *In re Grupo Aeromexico, S.A.B. de C.V.*, 20-11563 (Bankr. S.D.N.Y.) (19 months from the petition date to entry of the confirmation order).

[6] More specifically, the Plan was overwhelmingly accepted by all Voting Classes. *See* Voting Declaration, Ex. A (Class 1 (100% accepted), Class 4 (100% accepted), Class 5 (92.25% accepted), Class 6 (93.96% accepted), Class 7 (94.85% accepted)).

2. The Debtors accomplished widespread support for the Plan through their commitment to reaching consensus wherever possible. This commitment to consensus was evident prepetition, as the Debtors commenced the Chapter 11 Cases with three separate RSAs by and between the Debtors and the Secured Ad Hoc Group, the Strategic Partners and AerCap, respectively. Postpetition the Debtors worked tirelessly on developing the Plan centered around the RSAs while also seeking to reach consensus for value-maximizing transactions among all stakeholders, most notably, upon its formation, the Creditors' Committee.

3. The Plan Settlement, which reflects a global settlement between the Debtors, the Secured Ad Hoc Group and the Creditors' Committee, serves as the latest cornerstone to the Plan, the Debtors having announced the settlement just a few days prior to the Disclosure Statement hearing. *See Notice of Settlement* [ECF No. 829] (the "**Notice of Settlement**"). It bears emphasizing that the Plan Settlement is the product of monthslong negotiations between the parties that culminated in an agreement resolving all claims and causes of action (actual, potential, threatened or otherwise) that the Creditors' Committee could seek to bring on behalf of the Estates. The Plan Settlement also resolved any objections that the Creditors' Committee could have prosecuted during the Chapter 11 Cases, thereby helping pave the pathway to a consensual confirmation. As discussed below, and as set forth in the Plan and Plan Documents, the Plan Settlement will result in distributions to Holders of General Unsecured Claims and Convenience Class Claims of tens of millions of dollars, whereas, barring a settlement, the recovery for the general unsecured creditors was very likely to be zero.

4. Against this backdrop of overwhelming consensus from economic stakeholders, a single objection has been filed to confirmation of the Plan. Specifically, the Office of the United States Trustee (the "**U.S. Trustee**") filed the *Objection of the United States Trustee to*

Confirmation of the Joint Chapter 11 Plan of Reorganization of Azul S.A. and Its Debtor Affiliates [ECF No. 984] (the "**U.S. Trustee Plan Objection**")[7] asserting that the Plan is flawed for five reasons: (i) the Plan's Exculpation Provision is overly broad, (ii) the Plan's Voluntary Releases are impermissible, (iii) the Plan provides the Debtor Releases without setting forth consideration that the Debtors received in exchange for such releases, (iv) the MIP fails to comply with section 503(c) of the Bankruptcy Code, and (v) the Plan seeks to pay Unsecured Indenture Trustee Expenses. *See* U.S. Trustee Plan Obj. at 2, n. 3, 3–4.

5. As set forth in detail below, the U.S. Trustee asserts unpersuasive legal arguments that are contrary to black letter law and recent decisions issued by this Court and others in this district. Moreover, the Objections also fail as a matter of fact, as a brief review of the record in these cases directly refutes the U.S. Trustee's arguments. At bottom, the U.S. Trustee raises objections that do not reflect, and in fact stand athwart, the expressed wishes of effectively every single economic constituency in the Chapter 11 Cases.

6. Importantly, after reflecting upon voting and opt-out results, the Debtors propose (with the consent of the Secured Ad Hoc Group and the Strategic Partners) to amend the proposed Voluntary Releases by eliminating Holders that did not return a ballot from the ambit of such third-party releases. Thus, the Voluntary Releases will be granted only by those creditors that have undertaken the affirmative act of submitting a ballot that did not elect to opt out (or consenting to the releases in an RSA). Also, following consultation with the U.S. Trustee, and in the spirit of engagement and compromise that has been a hallmark of the Chapter 11 Cases, the Debtors will

[7] The U.S. Trustee Plan Objection does not separately identify each argument in opposition to the Plan but, instead, resubmits and reaffirms the objections and arguments in the *Objection of the United States Trustee to the Debtors' Motion to Approve the (I) Adequacy of Information in the Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [ECF No. 786] (the "**U.S. Trustee Disclosure Statement Objection**" and, together with the U.S. Trustee Plan Objection, the "**Objection**").

modify the terms of the Plan to make explicit that the 1% MIP Interests will be awarded after the Effective Date by the New Azul Strategy Committee.

7. For the reasons set forth herein, the Plan (especially, as revised) satisfies the applicable provisions of section 1129 of the Bankruptcy Code and is in the best interests of the Debtors, their Estates and all stakeholders. Accordingly, the Debtors respectfully request that the Bankruptcy Court overrule the U.S. Trustee's objection, confirm the Plan and enter the Confirmation Order.

Background

8. On May 28, 2025 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 41]. No formal request has been made for the appointment of a trustee or examiner. On June 13, 2025, the U.S. Trustee appointed the Creditors' Committee pursuant to section 1102 of the Bankruptcy Code. *See Not. Appointing Creditors Comm.* [ECF No. 80].

9. Relevant facts in support of confirmation of the Plan are also set forth in the Disclosure Statement, the First Day Declaration and the Confirmation Declarations.

10. On September 16, 2025, the Debtors filed an initial Plan [ECF No. 602], an initial Disclosure Statement [ECF No. 603], and the Disclosure Statement Motion [ECF No. 604]. On November 4, 2025, the Debtors filed the solicitation versions of the Plan [ECF No. 834] and

Disclosure Statement [ECF No. 835], which incorporated the terms of the global settlement with the Creditors' Committee, as discussed below.

11. On November 26, 2025, the Debtors filed the *Notice of Filing of Plan Supplement* [ECF No. 919] (the "**First Plan Supplement**") and the *Notice of Filing of Second Plan Supplement* [ECF No. 921] (the "**Second Plan Supplement**"), which included the (A) Schedule of Assumed Contracts, (B) Schedule of Rejected Contracts, (C) Schedule of Retained Causes of Action, (D) Schedule of Directors and Officers, (E) Specified Employment Agreement Term Sheet, (F) Governance Term Sheet, (G) Registration and Listing Terms, (H) ERO Procedures, (I) GUC Warrant Agreement, (J) GUC CVR Agreement, (K) GUC Trust Agreement, and (L) Transaction Steps. Further amended versions of the Plan Supplement will be filed.

12. On November 5, 2025, after a hearing, the Bankruptcy Court overruled any non-settled Disclosure Statement-specific objections[8] set forth in the *Objection of the United States Trustee to the Debtors' Motion to Approve the (I) Adequacy of Information in the Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (IV) Certain Dates With Respect Thereto* [ECF No. 786] (the "**U.S. Trustee Disclosure Statement Objection**")[9] and granted the Disclosure Statement Motion and entered the Disclosure Statement Approval Order [ECF No. 847]. In addition to approving the Disclosure Statement as containing adequate information in compliance with section 1125(a) of the Bankruptcy Code for the purpose of soliciting votes on the Plan, the Disclosure Statement Approval Order also (a) approved the Solicitation and Voting Procedures, (b) approved the forms of Ballots, Solicitation Packages, and related notices, (c) scheduled the Confirmation

[8] The U.S. Trustee's right to object to Confirmation of the Plan was fully preserved.

[9] The Debtors' reply to the U.S. Trustee Disclosure Statement Objection is at ECF No. 815.

Hearing for December 11, 2025, at 11:00 a.m., (e) set the Voting Record Date for October 14, 2025, and (f) set the Voting Deadline, Opt-Out Deadline, and Plan Objection Deadline for December 2, 2025, at 4:00 p.m.

13. Promptly following entry of the Disclosure Statement Approval Order, in compliance therewith, the Debtors (including through the Claims and Solicitation Agent) effectuated the timely and proper:

a. Service of (i) the Solicitation Packages on each Holder of a Claim in a Voting Class (i.e., Classes 1, 4, 5, 6, and 7), which included (A) the Cover Letter, (B) the Confirmation Hearing Notice, (C) the applicable Ballot (which included the ability to opt out of the Third-Party Releases and pertinent information and instructions), (D) the Plan Summary, (E) the Committee Recommendation Letter and (F) the Disclosure Statement (including the Plan and the other exhibits thereto) as approved by the Court and the Disclosure Statement Approval Order (without exhibits other than the Solicitation and Voting Procedures) as entered by the Court (or, in accordance with the Disclosure Statement Approval Order, instructions as to how to obtain copies of the Disclosure Statement and Disclosure Statement Approval Order); (ii) the Non-Voting Status Notice Package on each non-Debtor Holder of a Claim or Interest in a Nonvoting Class (i.e., Classes 2, 8, 11, 12, and Holders of Claims and Interests in Class 3 other than the Specified Class 3 Holders), which included (A) the Confirmation Hearing Notice, (B) the Plan Summary, (C) the Notice of Non-Voting Status (including an Opt-Out Form and pertinent information and instructions) and (D) the Disclosure Statement (including the Plan and the other exhibits thereto) as approved by the Court and the Disclosure Statement Approval Order (without exhibits other than the Solicitation and Voting Procedures) as entered by the Court (or, in accordance with the Disclosure Statement Approval Order, instructions as to how to obtain copies of the Disclosure Statement and Disclosure Statement Approval Order); and

b. publication of the Publication Notice in each of the national edition of The Wall Street Journal and Folha de S.Paulo in both English and Portuguese.[10] In addition, to notice their foreign equity security holders, the Debtors published notice of the Confirmation Hearing in a form substantially similar to the Publication Notice through the electronic system currently adopted for the submission of information and documents to the Brazilian Securities Commission (the "**CVM**") and to B3 S.A. – Brasil, Bolsa, Balcão (the "**Brazilian Stock Exchange**"), as well as on Azul's investor relations webpage, in both English and Portuguese, and on the Case Website.

[10] *See* ECF Nos. [899, 900].

14. As set forth in the Voting Declaration and detailed below, the Plan has been accepted by all Voting Classes. The votes cast with respect to the Plan are summarized below[11]:

Class	Class Description	Number Accepting	Number Rejecting	Amount Accepting	Amount Rejecting	Class Voting Result
		%	%	%	%	
1	Other Secured Claims	29	0	$416,201,198	$0.00	**Accepts**
		100%	0%	100%	0%	
4	1L Claims	132	0	1,048,006,408	$0.00	**Accepts**
		100%	0%	100%	0%	
5	2L Notes Claims	99	8	$311,887,399	$20,762,318	**Accepts**
		92.52%	7.48%	93.76%	6.24%	
6	General Unsecured Claims	140	9	$2,386,601,538	$172,666,379	**Accepts**
		93.96%	6.04%	93.25%	6.75%	
7	Unsecured Convenience Class Claims	184	10	717,850,218	$42,418,319	**Accepts**
		94.85%	5.15%	94.42%	5.58%	

Argument

15. This memorandum of law is divided into three parts. *Part I* addresses satisfaction of the applicable requirements for settlements contained in a chapter 11 plan pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code with respect to the Plan Settlement. *Part II* responds to the U.S. Trustee's Objection. *Part III* addresses the applicable requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code and demonstrates the satisfaction of each requirement.

16. For the reasons set forth herein and in the Confirmation Declarations, the Plan satisfies section 1129 of the Bankruptcy Code and should be confirmed.

I. The Plan Settlement is Fair and Equitable and Should be Approved.

17. Prompt emergence from the Chapter 11 Cases is premised on the proposed global settlement between the Debtors, the Secured Ad Hoc Group and the Creditors' Committee (the

[11] The results summarized herein are intended for summary purposes only, and parties should refer to the Voting Declaration.

"**Plan Settlement**"). As set forth below, the Plan Settlement is fair and equitable and should be approved.

A. Overview of Plan Settlement

18. The Plan incorporates a value-maximizing settlement with the Creditors' Committee. Prior to entering the settlement, the Creditors' Committee conducted a comprehensive, monthslong investigation into the Debtors' capital structure and various prepetition transactions. As part of this investigation, the Creditors' Committee analyzed the value of the shared collateral that secures certain prepetition secured creditors' claims, whether secured creditors' prepetition liens were properly perfected, whether certain secured claims should be allowed in the Chapter 11 Cases (and, if so, in what amounts) and whether any potential estate claims and causes of action exist that could be pursued for the benefit of unsecured creditors. *See* Disclosure Statement at 43. During this period, the Debtors worked cooperatively to produce voluminous amounts of diligence to facilitate the Creditors' Committees investigation and a consensual resolution thereof.

19. Based on its investigation, the Creditors' Committee concluded that unsecured creditors were entitled to receive distributable value from the Debtors' estates, and that the Creditors' Committee was prepared to prosecute certain claims and causes of action that it identified during its investigation, recommend that unsecured creditors vote against the originally filed plan and object to the originally filed plan. *See id.* at 43–44 (describing the Creditors' Committee's investigation).[12] The treatment of general unsecured claims was left unspecified in the originally filed plan and in the RSAs.

---

[12] *See also* Disclosure Statement Ex. E (Committee Recommendation Letter) ("Based on its investigation, the Committee concluded that unsecured creditors are entitled to receive distributable value from the Debtors' estates,

(cont.)

20. After the Creditors' Committee presented the results of its investigation, the Debtors and its advisors (along with the Secured Ad Hoc Group and its advisors) engaged in several weeks of good-faith, hard-fought negotiations. These negotiations culminated in a global settlement agreement, *see* Notice of Settlement, as embodied in the Plan, consisting of the following elements:

> a. Value to Holders of General Unsecured Claims: under the Plan, each Holder of an Allowed General Unsecured Claim will have the ability to elect treatment that is either (a) the Holder's Pro Rata share of interests in the GUC Trust or (b) the Holder's Pro Rata share of $20 million in cash. If, for any reason, a Holder does not elect either treatment, such Holder will receive the cash treatment by default.
>
> b. GUC Trust Assets: the Plan will establish a GUC Trust for the benefit of Holders of Allowed General Unsecured Claims, and the Trust will be funded with the following assets: (i) up to $5 million in cash to fund administrative expenses of the GUC Trust (in the event that more than 50% of Holders of General Unsecured Claims elect to receive cash treatment, such cash amount will be reduced to $2.5 million); (ii) five-year warrants to subscribe to up to 5.5% of the fully diluted equity in the Reorganized Debtors (subject to further dilution by the MIP Interests at emergence); and (iii) a contingent value right that would distribute up to a $6.5 million cash payment to the GUC Trust in each of the fiscal years ending December 31, 2027, 2028, and 2029, respectively, in the event that the Debtors realize 100% of their projected EBITDAR for any such fiscal year, provided that any such payment is subject to the satisfaction of certain cash and net leverage tests.
>
> c. Creation of an Unsecured Convenience Class: the Plan establishes an Unsecured Convenience Class for the benefit of Holders of Allowed General Unsecured Claims in an amount less than $12.5 million. Under the Plan, Holders of Allowed Unsecured Convenience Class Claims will receive their Pro Rata share of $3 million in cash.
>
> d. Waiver of Deficiency Claims: the Plan provides that the Holders of 1L Claims and 2L Notes Claims will not receive any recovery on account of deficiency claims related to such 1L Claims and 2L Notes Claims.

See, generally, Notice of Settlement, Ex. A at 2; Plan at 49–50 (providing the treatment of Classes 6 and 7) 61–66 (describing, among other things, the GUC Trust and related instruments).

---

and absent modifications to the Debtors' chapter 11 plan (as originally filed) that would provide unsecured creditors with sufficient recoveries, the Committee was prepared to prosecute the claims and causes of action that it identified during its investigation, recommend that unsecured creditors vote against the plan, and object to the plan.")

21. Additionally, as part of the settlement with the Creditors' Committee, it was agreed that the Backstop Commitment Parties would earn an incremental extension fee of 1.5% on January 31, 2026 (payable on the Effective Date in New Equity Interests), if the Equity Rights Offering has not closed as of such date. Importantly, this settlement resolves the Creditors' Committee's potential objections to the Plan, and as a result of the settlement, the Creditors' Committee is supportive of the Plan and has recommended that the Holders of General Unsecured Claims vote to accept the Plan. *See* Disclosure Statement at 113, App. F.

22. The Plan Settlement is a critical component of the Plan, and it enabled a significantly streamlined and nearly fully consensual Confirmation Hearing as it resolves numerous complex issues that, if litigated, would have delayed the Debtors' successful emergence from chapter 11 and imposed significant costs on the Debtors' estates, potentially jeopardizing recoveries by the Holders of Allowed Claims.

B. Each Component of the Plan Settlement is Fair and Equitable and Should be Approved.

23. The Plan Settlement is the product of extensive, good-faith negotiations among sophisticated parties, is supported by robust, independent investigation of the Creditors' Committee, and resolves numerous complex issues. Parkhill Decl. ¶¶ 8–10. Absent the Plan Settlement, the Chapter 11 Cases would have resulted in costly and protracted litigation that would have eroded the value the Debtors are able to make available to their stakeholders. In making the foregoing determinations, the Debtors carefully considered each component of the Plan Settlement, including (i) whether any prepetition transactions gave rise to estate causes of action that were worth pursuing, (ii) the risks associated with complex and protracted litigation, and (iii) the value of the consideration proposed to be provided to Holders of Allowed General Unsecured Claims. The Debtors believe that, taken as a whole, the Plan Settlement provides greater value to the Debtors' stakeholders than could have been achieved absent the significant compromises

contained in the Plan Settlement. Parkhill Decl. ¶ 12. For these reasons, and those set forth below, the Plan Settlement satisfies the standards of Bankruptcy Rule 9019 and should be approved.

24. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a "plan may provide for the settlement or adjustment of any claim or interest belonging to the debtor or to the estate" and "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. §§ 1123(b)(3)(A), (b)(6). "Courts analyze settlements under section 1123 by applying the same standard applied under [Bankruptcy] Rule 9019"—which requires that a settlement be fair and equitable and in the best interests of the estate. *In re NII Holdings, Inc.*, 536 B.R. 61, 98 (Bankr. S.D.N.Y. 2015) ("Courts analyze settlements under section 1123 by applying the same standard applied under Rule 9019 of the Bankruptcy Rules, which permits a court to 'approve a compromise or settlement.'"); *Fixed Income Shares: Series M v. Citibank N.A.*, 314 F. Supp. 3d 552, 560 (S.D.N.Y. 2018) (quoting *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994)); *Fjord v. AMR Corp*. (*In re AMR Corp.)*, 502 B.R. 23, 42–43 (Bankr. S.D.N.Y. 2013). "The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court," *In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 256–57 (Bankr. S.D.N.Y. 2016), which must be exercised "in light of the general public policy favoring settlements." *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *3 (Bankr. S.D.N.Y. May 3, 2016) (internal citation and quotations omitted); *see also In re NII Holdings, Inc.*, 536 B.R. at 100; *In re Ditech Holding Corp.*, 606 B.R. 544, 623 (Bankr. S.D.N.Y. 2019).

25. The Supreme Court has held that, in the plan confirmation context, the court must "determine that a proposed compromise forming part of a reorganization plan is fair and equitable." *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390

U.S. 414, 424 (1968). In determining whether a settlement is fair and equitable, courts in the Second Circuit consider the following seven *Iridium* factors: (i) the balance between the litigation's possibility of success and the settlement's future benefits; (ii) the likelihood of complex and protracted litigation, "with its attendant expense, inconvenience, and delay," including the difficulty in collecting on the judgment; (iii) "the paramount interests of the creditors," including each affected class's relative benefits "and the degree to which creditors either do not object to or affirmatively support the proposed settlement"; (iv) whether other parties in interest support the settlement; (v) the "competency and experience of counsel" supporting, and "[t]he experience and knowledge of the bankruptcy court judge" reviewing, the settlement; (vi) "the nature and breadth of releases to be obtained by officers and directors"; and (vii) "the extent to which the settlement is the product of arm's-length bargaining." *In re Res. Cap., LLC*, 497 B.R. 720, 750 (Bankr. S.D.N.Y. 2013) (citing *In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007)).

26. In analyzing a settlement under Bankruptcy Rule 9019, "the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation." *In re Purofied Down Prods.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). Rather, the court "must only 'canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.'" *In re Res. Cap., LLC*, 497 B.R. at 749 (quoting *In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005)). "The lenient standards concerning approval of settlements . . . reflect the considered judgment that little would be saved by the settlement process if bankruptcy courts could approve settlements only after an exhaustive investigation and determination of the underlying claims. The applicable standards encourage courts to approve settlements in bankruptcy proceedings and related actions." *In re Purofied Down Prods.*, 150 B.R. at 522–23.

27. Here, the Plan Settlement is a fair and equitable resolution of numerous complex disputes, is in the best interests of creditors, is the result of arm's-length negotiations among the Debtors, the Secured Ad Hoc Group and the Committee, and represents a reasonable settlement of the relevant issues. Each *Iridium* factor weighs in favor of approving the Plan Settlement.

28. *First*, the balance between the litigation's possibility of success and the settlement's benefits weighs in favor of the Plan Settlement. As noted, the Plan Settlement resolves a number of highly complex issues. Parkhill Decl. ¶ 10. These include not only potential litigation regarding fraudulent transfers, preferences, and the enforceability of certain contractual provisions, but also contested valuation issues and potential claims arising under foreign law. Litigating these claims to resolution likely would have significantly delayed the Debtors' emergence and jeopardized their ability to consummate a successful restructuring at all, and it would have unnecessarily depleted the Estates in the process. *See* Parkhill Decl. ¶ 10. The informed support of the Creditors' Committee informed and bolsters the Debtors' determination to enter into the Plan Settlement.

29. The Debtors submit that the Plan Settlement thus saves the Estates significant costs that would have been spent litigating numerous complex issues and likely could have jeopardized the Debtors' timely emergence from chapter 11. Parkhill Decl. ¶ 12. In addition to enabling the Estates to avoid the significant costs of litigation, the Debtors view the Plan Settlement as a method to deliver significant value to the Estates. *Id*. Additionally, the Plan Settlement allows the Debtors to present the Court with a largely consensual Plan that charts a clear path to their successful emergence. Accordingly, "the benefits of the [Plan] Settlement strongly outweigh the likelihood of success and any rewards of litigation, particularly given the sizable costs of litigation, the risk of damage to the Debtors' business, and the depletion of asset value which would likely result

from remaining in chapter 11 during any such protracted litigation." *Sabine Oil*, 555 B.R. at 309–310.

30. *Second*, the risk of complex and protracted litigation, with its attendant expense and delay, weighs in favor of the Plan Settlement. The Creditors' Committee's investigation confirmed that any litigation relating to the 2024 Restructuring Transactions would be expensive, time-consuming, and uncertain in outcome. *See* Disclosure Statement at 44, App'x F at 4. Moreover, by resolving the Creditors' Committee's objection to the Plan, the Debtors have eliminated the risk of a contested confirmation that would otherwise have included highly contested valuation issues, required extensive expert testimony, and/or presented issues regarding the application of foreign law that may have required the Court to take advice from foreign law experts. *Id.*

31. *Third*, the Plan Settlement serves the paramount interests of the Debtors' stakeholders. The Plan Settlement enabled the Debtors to proceed with a nearly entirely consensual Plan, thereby providing substantial benefits to all stakeholders, maximizing distributions to unsecured creditors, and increasing the likelihood of a timely emergence from chapter 11. Parkhill Decl. ¶ 10. Given the magnitude of the secured claims, it is likely that, absent such settlement, there would have been no distributable value left for the holders of General Unsecured Claims. Under the Plan Settlement, however, Holders of General Unsecured Claims will receive appreciable amounts of value. The Plan Settlement has made a consensual, confirmable Plan possible and cleared a direct path for the Debtors to emerge from chapter 11, which benefits all stakeholders. *Id.* at 10, 12.

32. *Fourth*, the Plan Settlement is supported by all key stakeholders in the Chapter 11 Cases: the Secured Ad Hoc Group, the Creditors' Committee and the Strategic Partners. Indeed, "the support of the Creditors' Committee . . . weighs heavily in favor of approval of the proposed

settlement." *In re Ambac Fin. Grp., Inc.*, 457 B.R. 299, 306 (Bankr. S.D.N.Y. 2011), *aff'd*, No. 10-B-15973 SCC, 2011 WL 6844533 (S.D.N.Y. Dec. 29, 2011), *aff'd*, 487 F. App'x 663 (2d Cir. 2012). And the support of all other key constituents—and the lack of objections to the Plan Settlement from any economic stakeholder—is further evidence that the Plan Settlement is in the best interest of the Debtors' estates.

33. *Fifth*, the Debtors, the Secured Ad Hoc Group and the Creditors' Committee are each represented by skilled and experienced professionals who were involved throughout the negotiation processes.

34. *Sixth*, the nature and breadth of releases to be obtained by officers and directors are reasonable, and such releases are necessary components of the Plan. The Plan's release provisions are discussed in further detail below.

35. *Finally*, the Plan Settlement is the product of good-faith and arm's-length negotiations. *See* Parkhill Decl. ¶ 12. Courts generally approve settlements where "[t]he parties expended significant time and effort debating the merits" of the potential estate causes of action that were settled, "multiple parties gave concessions, and agreement ultimately was reached by parties with distinct fiduciary obligations — the Debtors [and] the Committee . . . — each of whom decided to support the [Plan] Settlement after undertaking an independent review of its terms." *In re NII Holdings*, 536 B.R. at 121 (considering the seventh *Iridium* factor and placing "great weight upon the Committee's support of the Settlement").

36. For the foregoing reasons, each of the *Iridium* factors are met, thereby establishing that the Plan Settlement is a sound exercise of the Debtors' business judgment, is fair and equitable, and is squarely in the best interests of the Debtors, their Estates and their creditors. The Plan Settlement should be approved.

II. The U.S. Trustee's Objection is Meritless and Should Be Overruled.

A. The Plan's Third-Party Releases Are Consensual and Appropriate, and Should Be Approved

37. Not one creditor that may grant the Voluntary Releases[13] has objected to those releases or the use of an opt-out mechanism to manifest consent. The only objection to the Voluntary Releases comes from the U.S. Trustee. Yet again echoing its tired (and largely inaccurate) mantra that "silence does not constitute acceptance," the U.S. Trustee argues that the Voluntary Releases are not in fact voluntary because "[a] consensual third-party release is a separate agreement between non-debtors governed by non-bankruptcy law." U.S. Trustee Disclosure Statement Obj. at 13. Consequently, the U.S. Trustee argues, the Voluntary Releases are consensual only if they would qualify as a contractual release duly formed under state law (though *which* state's law is unclear, as discussed below), entirely divorced from both their context in the Plan and their role in the web of compromises that make the Plan possible. U.S. Trustee Disclosure Statement Obj. at 15-16. But that is neither reality nor, thankfully, the law. This Court has already rejected the U.S. Trustee's categorical argument in *Spirit*, recognizing that it is against the overwhelming weight of authority in this district and elsewhere. *See In re Spirit, Inc.*, 668 B.R. 689, 703-16 (Bankr. S.D.N.Y. 2025).

38. This Court can reach the same conclusion even more easily here. After reviewing the results of voting in light of the *Spirit* decision,[14] the Debtors (after consultation with the

---

[13] As used herein, "**Voluntary Releases**" refers to those voluntary third-party releases that are set forth in <u>Section 8.6</u> of the Plan.

[14] Class 7 (Unsecured Convenience Class) had a relatively lower voting participation rate (approximately 7%) than other Classes and consists of a population dominated by smaller and more non-U.S. creditors. As a result, the Debtors have concluded that the *Spirit* test may not be satisfied as to non-voters in this Class 7. In Classes 1, 2, 3, and 6 (excluding public securities), a mere 19 eligible claimants in total elected not to return a Ballot. As a result, the Debtors chose not to litigate the Objection with respect to these claimants.

Secured Ad Hoc Group and the Strategic Partners) have determined to amend the Plan to provide that Voluntary Releases will be provided *only by creditors that returned a ballot and did not elect to opt-out*, which this Court found, in *Spirit*, to evidence an "active choice" to grant releases. *Spirit*, 668 B.R. at 720. It is therefore all the more straightforward that the Voluntary Releases in this case should be approved, and the U.S. Trustee's objection overruled.

(i) The Plan Provides for Only Consensual Third-Party Releases

39. The Plan provides for only *voluntary* releases of certain creditors' claims against third parties. The voluntary nature of the Releases is evident from the face of Section 8.6 of the Plan, which provides for "Voluntary Releases by the Releasing Parties." Section 8.6 details the scope of the potential claims, rights, and causes of action that the consenting creditors will release as against the Releasing Parties.

40. The Plan also appropriately provides that creditors may manifest or withhold consent for the Voluntary Releases using an "opt-out mechanism." *See* Plan at 31 (definition of "Releasing Parties"). As the Plan, Disclosure Statement, and Ballots amply demonstrate, the classes of creditors that may grant the Voluntary Releases are provided multiple, simple means to manifest or withhold their consent to the Releases.

- The Ballots provided to voting creditors included a box that creditors could check to manifest that they did not consent to the Releases, and thus, would be excluded from the Plan's definition of "Releasing Parties." Creditors were also given the option to vote in favor of the Plan and receive all of the benefits contemplated therein while *also* opting out of the Voluntary Releases. *See* Disclosure Statement Approval Order Exs. 2A–C.[15]

[15] Certain nonvoting, unimpaired creditors in Classes 2 and 3 (with the exception of holders of government-backed engine maintenance claims in Class 3) were provided with Opt-Out Forms and instructed that they could manifest their lack of consent to the Releases either by returning the form by mail or electronically through the Online Voting Portal. *See* Disclosure Statement Approval Order Ex. 3. These classes are no longer relevant to the U.S. Trustee's objection to the Voluntary Releases because the Debtors intend to amend the Plan to eliminate the option for these creditors to grant the Voluntary Releases.

- Any party offered the opportunity to grant or withhold the Releases could exclude itself by filing an objection to the Releases.

41. Creditors in classes that could grant the Voluntary Releases were given extensive notice of their rights and ability to grant or withhold consent with respect to the Releases. The Disclosure Statement, Ballots, Notice of Non-Voting Status (including the Opt-Out Form), and Confirmation Hearing Notice contained the full text of the Releases and clearly and repeatedly explained creditors' rights, including with respect to the Releases, as well the various voting mechanisms through which to demonstrate consent. *See* Disclosure Statement; Disclosure Statement Approval Order Exs. 2A–C, 3, 5. The Plan Summary explained in clear terms that creditors should "read the provisions contained in Article VIII of the Plan very carefully" to understand how Confirmation may impact the creditors and their claims and allow them to vote accordingly. Disclosure Statement at 15. The Confirmation Hearing Notice was also published in *The Wall Street Journal* and *Folha de S.Paulo* in both English and Portuguese. *See* ECF Nos. [899, 900]. The releases as well as creditors' rights with respect to the releases were mentioned in both publications. *Id.*

42. In addition, following the recommendations the Court made at the Disclosure Statement hearing, the Debtors revised the Ballots to ensure that the check-box used to manifest consent to, or to opt-out from, the Voluntary Releases was immediately adjacent to the full text of the Voluntary Releases, ensuring that creditors evaluating their election had immediately at hand the full scope of information necessary to understand what they would release or retain through that election. *See Disclosure Statement Approval Order*, Exs. 2A–C; November 4, 2025 Hr'g Tr. 49:18–50:2 [ECF No. 863]. The Debtors similarly revised the Cover Letter to the Ballots, highlighting that the Ballot required creditors to consider two items: (1) voting on the Plan, and

(2) whether to grant or withhold the Voluntary Releases. *See Disclosure Statement Approval Order*, Ex. 11; November 4, 2025 Hr'g Tr. 50:8–23 [ECF No. 863].

43. The Disclosure Statement also amply explained why the Voluntary Releases were offered. In sum, without the Restructuring Transactions and other compromises that enable a value-maximizing Plan and reorganization, the *only* creditors that could expect to recover *any* value are holders of certain administrative claims and certain secured claims and DIP lenders. *See Disclosure Statement*, App. B [ECF No. 835]. All other creditors could expect to recover no value on account of their claims. *Id.* The compromises made in the RSA and the other settlements embedded in the Plan unlocked significant value for the benefit of those creditor classes that may give the Voluntary Releases, including the general unsecured creditors in Class 6 and convenience class creditors in Class 7.

44. The Voluntary Releases may be granted by the creditors in voting classes: Class 1 (Other Secured Claims), Class 4 (1L Claims), Class 5 (2L Claims), Class 6 (General Unsecured Claims), and Class 7 (Unsecured Convenience Class Claims). *See id*.

45. The Plan does not contain releases by Holders of Class 3 (Specified Non-U.S. Claims), Holders of Class 8 (Subordinated Claims), and Holders of Class 11 (April 2025 Warrants) or shareholders, that is, Holders of Class 10 (Intercompany Interests) and Class 12 (Existing Azul Interests).[16] *See id*.

46. And even the summary above somewhat overstates the limited scope of creditors providing the Voluntary Releases through an opt-out mechanism. Under the Bondholder RSA,

[16] Holders of Class 2 (Priority Non-Tax Claims) and Class 3 (Specified Non-U.S. Claims) are no longer included within the ambit of the third-party releases in light of the Debtors' proposed amendments to the Voluntary Release provision of the Plan, as discussed herein.

and the AerCap RSA, substantial fractions of creditors in Classes 4, 5 and 6 have already consented to the Voluntary Releases.

47. The results of the vote demonstrate that, with one important exception, the opt-out mechanism worked as intended. An extraordinarily high proportion of creditors in Classes 1, 4, 5, and 6 participated in voting. More than 90% of Ballots in each of these classes was returned. In total, the Debtors received 767 opt-out elections through Ballots and Opt-Out Forms.

48. The voting results for Class 7, the Unsecured Convenience Class Claims, stood in stark contrast. In that class, only about 7% of Ballots were returned. The Debtors and their stakeholders carefully evaluated the composition of that class and guiding precedent, including this Court's comprehensive analysis in *Spirit*. Following that deliberation, the Debtors and their stakeholders agreed to amend the Plan to provide that the Voluntary Releases could be granted only by creditors in voting classes, and *only* if those creditors returned a Ballot (and, of course, did not make an opt-out election on that Ballot).

49. As a result, the use of an opt-out mechanism to solicit the Voluntary Releases is now relevant to *only* those creditors that *actually returned* a Ballot on which they did not elect to opt-out.

(ii) The Plan's Opt-Out Mechanism Adequately Manifests Consent to the Third-Party Releases in the Plan

a. Federal Bankruptcy Law Governs Whether Creditors Have Adequately Consented to Third Party Releases Under a Plan

1) <u>This Court—and the Overwhelming Majority of Bankruptcy Decisions—Decide Consent as a Matter of Federal Bankruptcy Law</u>

50. In *Spirit*, this Court held that releases nearly identical to the Voluntary Releases must be analyzed not in isolation, but in their context in the Plan. A Chapter 11 plan of reorganization is a product of federal bankruptcy law, and that law governs whether a Plan may be

confirmed. And while a plan is often analogized to a contract, and principles of contract interpretation are employed to construe a plan's provisions, the force of a plan's terms do not arise out of contract law. Instead, as this Court explained in *Spirit*, a Chapter 11 plan "is the crucible by which the parties' claims and rights in property dealt with by the plan are transformed and governed post-confirmation—a 'super-contract'—not because it is signed by all of the parties with claims against the debtor and holders of interests affected by the plan who participated in the case, but because of applicable provisions of the Bankruptcy Code and principles of *res judicata*." *Spirit*, 668 B.R. at 701 (quoting *In re Frontier Ins. Grp., Inc.*, 585 B.R. 685, 693 (Bankr. S.D.N.Y. 2018), *aff'd*, 598 B.R. 87 (S.D.N.Y. 2019)).

51. Federal bankruptcy law frequently requires or permits creditor consent as a prerequisite for certain conduct or treatment of claims. To pick just a few examples, a trustee may not "use, sell, or lease cash collateral" unless, among other things, "each entity that has an interest in such cash collateral **consents**." 11 U.S.C. § 363(c)(2). Likewise, a trustee may sell property free and clear of non-debtor entity interests only if certain conditions are met or "such entity **consents**." 11 U.S.C. § 363(f)(2). And, as this Court elaborated in *Spirit*, section 1123 of the Bankruptcy Code requires a Plan to provide the same treatment to each member of a particular class "unless the holder of a particular claim or interest agrees to a less favorable treatment," and that if a creditor does consent to less favorable treatment, that creditor is not "impaired" under section 1124(1) of the Bankruptcy Code. *Spirit*, 668 B.R. at 701–702 (collecting cases). What all of these provisions show, as the Court observed in *Spirit*, is that creditor consent is a consequential concept in federal bankruptcy law—and one that is not expressly defined in the Bankruptcy Code. *Id.* at 702 (noting that the Bankruptcy Code does not define what it means for a creditor to "agree" to Plan treatment). *See also* 11 U.S.C. § 101 (providing no definition of "consent"). Congress

thus called upon federal courts to define creditor consent for the purposes of the Bankruptcy Code, carrying out their duty to fill in interstices in federal legislation by defining creditor consent for purposes of the Bankruptcy Code. *Spirit*, 668 B.R. at 702 (citing *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011) (courts look to the "ordinary meaning of [a] term" not defined in the Bankruptcy Code) and *U.S. v. Little Lake Misere Land Co.*, 412 U.S. 580, 593 (1973) (explaining federal courts' "basic responsibility" to "fill the interstices of congressional legislation").

52. This is exactly what courts within and outside of this Circuit have done. As this Court held in *Spirit*, "[T]he question about whether a creditor has agreed to certain treatment is a matter of federal bankruptcy law, with an already existing and well-developed body of case law on consent in the context of a collective bankruptcy proceeding." *Spirit*, 668 B.R. at 716. In dozens of cases, courts in this district and elsewhere have approved opt-out releases where the circumstances appropriately demonstrate consent under the standards of federal bankruptcy law and, in so deciding, did not do so based on state law.[17] Beyond this district, many other courts

---

[17] *See, e.g., In re Lumileds Holding B.V.*, No. 22-11155 (LGB) (Bankr. S.D.N.Y. Oct. 14, 2022) [ECF No. 204] (Judge Beckerman held that creditors manifested consent to grant releases by being provided with notice of the releases and a form with which they could elect to opt out); *In re PacificCo Inc.*, No. 23-10470 (PB) (Bankr. S.D.N.Y. Apr. 28, 2023) [ECF No. 157] (Judge Bentley applied federal law in approving an opt-out mechanism that only purported to apply to voting creditors, not abstaining or nonvoting creditors); *In re Cumulus Media Inc.*, Case No. 17-13381 (SCC), Hr'g Tr. 27:7–11 (Bankr. S.D.N.Y. Feb. 1, 2018) [ECF No. 434]. (Judge Chapman applied federal law in approving an opt-out mechanism and noted "[i]naction is action under appropriate circumstances. When someone is clearly and squarely told if you fail to act your rights will be affected[, t]hat person is then given information that puts them on notice that they need to do something or else. That's not a trap."); *In re Tops Holding II Corp.*, Case No. 18-22279 (RDD), Hr'g Tr. 46:3–21, 73:14–74:1 (Bankr. S.D.N.Y. Nov. 8, 2018) [ECF No. 783] (Judge Drain applied federal law in approving a similar opt-out mechanism because it permitted parties to support a plan while retaining claims against third parties in a straightforward manner); *In re LATAM Airlines Grp. S.A. ("LATAM")*, 2022 WL 2206829, at *46 (Bankr. S.D.N.Y. June 18, 2022) (Judge Garrity applied federal law in approving an opt-out mechanism, noting that "courts in this district routinely approve opt out release language in cases in which creditors and interest holders have been provided with a clear and prominent explanation of the opt out procedure.") (internal citation and quotations omitted); *In re Avianca Holdings S.A. ("Avianca")*, 632 BR 124, 136–37 (Bankr. S.D.N.Y. 2021) (Judge Glenn applied federal law and emphasized his agreement "with Judge Chapman's analysis in Cumulis [sic] Media—the opt-out structure is permissible provided that a clear and prominent explanation of the procedure is given as it has been here."); *In re Revlon, Inc.*, No. 22-10760 (DSJ) (Bankr. S.D.N.Y. Apr. 3, 2023) [ECF No. 1746] (Judge Jones applied federal law in approving an opt-out mechanism); *In re Centric Brands Inc.*, No. 20-22637 (SHL) (Bankr. S.D.N.Y. Sept. 21, 2020) [ECF No. 657] (This Court applied federal law in approving an opt-out mechanism in substantially

(cont.)

across the United States have agreed that opt-out mechanisms are sufficient to manifest creditor consent or non-consent.[18]

2) <u>The U.S. Trustee Position that Voluntary Releases Exist Only as A Matter of State Law Is Contrary to Bankruptcy Caselaw</u>

53. To its credit, the U.S. Trustee recognizes that this Court's comprehensive decision in *Spirit* rejects the U.S. Trustee's position that third-party releases in a Plan can be conceived of only as separate agreements governed by state law. U.S. Trustee Disclosure Statement Obj. at 15–17. The U.S. Trustee nonetheless invites this Court to reverse itself. The Court should decline that invitation, because the U.S. Trustee's position relies on a smattering of cases at odds with the overwhelming majority described above and principles of federalism that have no application in this proceeding governed by a comprehensive federal statutory scheme.

54. To begin, the U.S. Trustee's citation to a handful of bankruptcy court decisions only demonstrates just how idiosyncratic of a position it advances. At very most, just *two* cases have adopted something akin to the U.S. Trustee's categorical view that a voluntary third

similar circumstances); *In re Times Square JV LLC*, No. 22-11715 (JPM) (Bankr. S.D.N.Y. Mar. 21, 2023) [ECF No. 260] (Judge Mastando applied federal law in approving an opt-out mechanisms where parties were provided notice and opportunity for their ability to opt out); *In re Barneys New York, Inc.*, No. 19-36300 (CGM) (Bankr. S.D.N.Y. Feb. 5, 2020) [ECF No. 789] (Judge Morris applied federal law in approving an opt-out mechanism where parties were provided notice and opportunity of their ability to opt out). As best the Debtors can determine, Judge Paek has not yet had occasion to rule on this issue, and Judge Wiles ruled on this issue only in *Chassix*, discussed *infra*.

[18] *E.g.*, *In re Tommy's Fort Worth, LLC.*, No. 24-90000 (ELM), 2025 WL 2092193, at *69 (Bankr. N.D. Tex. July 24, 2025) ("[T]he Court finds that the absence of the return of a Third-Party Release Opt-Out Notice constitutes consent to the Third-Party Releases" due to the fact that "all of those holders have actively participated, and given the nature of the clear and unequivocal notice provided to such parties, their lack of action to return a Third-Party Opt-Out Notice is clear indication of consent."); *In re Tehum Care Servs., Inc.*, 672 B.R. 108, 112 (Bankr. S.D. Tex. 2025) (holding that claimants who were served an opt-out release form and ballot but did not opt out were bound by plan's consensual third-party releases); *In re Mallinckrodt PLC*, 639 B.R. 837, 879 (Bankr. D. Del. 2022) (same); *In re Clarus Therapeutics Holdings, Inc.*, No. 22-10845 (MFW) (Bankr. D. Del. Feb. 9, 2023) [ECF No. 320] (same); *In re EYP Group Holdings, Inc.*, No. 22-10367 (MFW) (Bankr. D. Del. Nov. 1, 2022) [ECF No. 568] (same); *In re Robertshaw US Holding Corp.*, 662 B.R. 300 (Bankr. S.D. Tex. 2024) (approving consensual, third-party opt-out releases); *In re LaVie Care Centers, LLC ("LaVie")*, 2024 WL 4988600 (Bankr. N.D. Ga. Dec. 5, 2024) (approving consensual, third-party opt-out releases).

party release is nothing but a separate state-law settlement agreement. Neither of those two cases offer any kind of analysis that could justify adopting their view over that of the vast majority of bankruptcy courts. The first outlier, *In re Arrowmill Development Corp.*, arose in the context of a Rule 60(b) motion filed to modify a confirmed chapter 11 plan that purportedly "discharged" one of the debtor's equity holders (not himself a debtor) from liability on judgment of $77,555 held by one of the debtor's creditors. 211 B.R. 497, 499–500 (Bankr. D.N.J. 1997). After lengthy discussion concluding that the confirmed plan should not have granted a "discharge" to non-debtors, the *Arrowmill* court also held that the creditor had not consented to the non-debtor discharge by abstaining from voting on the plan, and quoted a law review article stating that "the validity of the release ... hinge[s] upon principles of straight contract law or quasi-contract law rather than upon the bankruptcy court's confirmation order." *Id*. at 507 (internal citation on quotations omitted). The *Arrowmill* decision offers no explanation of why it adopted the article's position wholesale, and, even if taken at face value, hardly states that federal bankruptcy law can never bear on the validity of a consensual third-party release. The second such outlier, *In re Tonawanda Coke Corp.*, 662 B.R. 220 (Bankr. W.D.N.Y. 2024) also offers scant analysis. In that case, the bankruptcy court stated that "any proposal for a non-debtor release is an ancillary offer that becomes a contract upon acceptance and consent. Not authorized by any provision of the Bankruptcy Code, any such consensual agreement would be governed instead by state law." 662 B.R. at 222. While *Tonawanda Coke* appears to ground its conclusion in the *Purdue* decision, that is incorrect. The Supreme Court made absolutely clear that "[n]othing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan," and made equally clear that it had no occasion to opine on what constitutes consent to such a release. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 226

(2024). More broadly, bankruptcy courts in the Fifth Circuit—which had long held that nonconsensual third-party releases were not authorized by the Bankruptcy Code[19]—had nonetheless authorized consensual third-party releases using an opt-out mechanism before *Purdue* and continue to authorize the use of an opt-out mechanism after *Purdue*. It makes little sense to read *Purdue* as having worked a fundamental change in the law governing *consensual* releases expressly *not* addressed in that case.[20]

55. The handful of other bankruptcy court decisions upon which the U.S. Trustee relies do not even arguably adopt the U.S. Trustee's categorical position that voluntary plan releases can *only* be creatures of state law. This Court has already rejected the U.S. Trustee's recycled assertion, U.S. Trustee Disclosure Statement Objection at 17, that *In re Smallhold*, 665 B.R. 704 (Bankr. D. Del. 2024) stands for the proposition that "state-law contract principles govern whether a third-party release is consensual." *Spirit* 668 B.R. at 715–16 ("The *Smallhold* court also did not hold that consent was governed by state law rather than federal law . . . [and] referenced other areas of federal law that might be relevant to the consent analysis."). Likewise, neither *Patterson v. Mahwah Bergen Retail Group Inc.*, 636 B.R. 641 (E.D. Va. 2022) nor *In re SunEdison, Inc.*, 576 B.R. 453 (Bankr. S.D.N.Y. 2017) held that voluntary third-party releases are authorized only as a "separate agreement governed by state law." The *Patterson* court looked—like this Court in *Spirit*—to bankruptcy court decisions establishing the scope of consent required for a third-party release. *Patterson*, 636 B.R. at 684–86 (comparing bankruptcy courts' approaches to opt-in and opt-out consent mechanisms). In doing so, it rejected the *Patterson* debtor's analogies to contract

19 *E.g., Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995).

20 *See, e.g., In re Robertshaw US Holding Corp.*, 662 B.R. at 323 ("[W]hat constitutes consent, including opt-out features and deemed consent for not opting out, has long been settled in this District. Hundreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out. And, again, *Purdue* did not change the law in this Circuit.") (internal citation omitted).

law and class action law, finding that neither analogy supported the release at issue in that case—where it had "found as a matter of fact that consent did not occur." *Id.* at 686. And, in *SunEdison*, Judge Bernstein, like Judge Goldblatt in *Smallhold*, invoked "contract principles" but did *not* analyze the voluntary releases in that case as stand-alone state-law contracts; indeed, Judge Bernstein concluded that creditors that voted in favor of the plan consented to the third-party releases in that plan. *SunEdison*, 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017) (explaining that the court limited its analysis to "Non-Voting Releasors," *i.e.*, creditors entitled to vote that had not voted on the Plan). All in all, the U.S. Trustee's argument from bankruptcy precedent rests, at most, on passing phrases lifted from just two cases—a few words that can neither bear the weight of categorical rule that the U.S. Trustee hopes to build upon them, nor outweigh the vast majority of decisions, including this Court's, that adopt a contrary view.

3) <u>The U.S. Trustee's Invocation of Federalism Fails Because Consensual Plan Releases Are Governed by Federal Bankruptcy Law</u>

56. The U.S. Trustee's attempt to utilize principles of federalism to divorce consensual releases from bankruptcy law fares no better. The U.S. Trustee invokes two familiar doctrines. First, the U.S. Trustee invokes the *Erie* doctrine, which generally teaches that "except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state," U.S. Trustee Disclosure Statement Objection at 15 (quoting *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) and citing *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 416 (2010)). Second, the U.S. Trustee invokes the *Butner* doctrine, which holds that "state law governs the substance of claims" in bankruptcy unless modified by federal law, U.S. Trustee Disclosure Statement Objection at 14 (citing *Travelers Cas. & Sur. Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 450-51 (2007)). Based on these doctrines, the U.S.

Trustee argues that only state law can govern consent to the Voluntary Releases because the Bankruptcy Code does not preempt state contract law.

57. The problem for the U.S. Trustee is that only by assuming the proposition that it must prove—that consent to the Voluntary Releases is *not* governed by federal law—do these doctrines have any application. This is not a breach of contract action in the district court's diversity jurisdiction where no federal law or rule provides the rule of decision. It is a plan confirmation proceeding where federal law abounds. The Constitution specifically empowers Congress to establish "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8 clause 4. Congress has enacted the comprehensive Bankruptcy Code. It is true that the Bankruptcy Code does not define a "consensual release," as the U.S. Trustee points out. U.S. Trustee Disclosure Statement Objection at 16. This Court, explained in *Spirit* that the Bankruptcy Code's reticulated complex of laws governing the standards for what a plan can and cannot contain and the consequences of creditor consent (or the absence thereof) for certain provisions indicates that Congress intended courts to interpret the Bankruptcy Code to define the circumstances under which a creditor has consented to a plan provision. *Spirit*, 668 B.R. at 702. The U.S. Trustee's utter failure to engage with this Court's analysis beyond simply invoking the rules that would apply if, contrary to fact, federal law *were* lacking is fatal to its argument.

58. The U.S. Trustee invokes the Southern District of New York's decision of last week in *In re Gol Linhas Aereas Inteligentes S.A.*, 2025 WL 3456675 (S.D.N.Y. Dec. 1, 2025), which reversed Judge Glenn's decision approving opt-out releases in that case. U.S. Trustee Plan Obj. at 2-3. Yet, the U.S. Trustee does not meaningfully engage with *Gol* other than to ask this Court to adopt *Gol* wholesale because that case also concerned opt-out releases. Respectfully, the *Gol*

decision errs for many of the same reasons that the U.S. Trustee's argument fails.[21] The district court's opinion in *Gol* simply states, without citing any authority, that whether a release is consensual is determined by "principles of contract law," and confines its choice of analysis to whether state or federal *contract* law governs that question. *Id.* at *5 (explaining that no conflict exists between federal and state contract law and looking to "federal common law of contract"). The *Gol* court did not address the possibility that federal bankruptcy law—as opposed to the federal common law of contracts—has any bearing on the circumstances under which creditors may consent to voluntary releases in a plan of reorganization. That gap stands in stark contrast to this Court's decision in *Spirit*, which, as noted above, explained that Congress had expressly used the term "agree" in the Bankruptcy Code without defining it, compelling courts to develop federal bankruptcy case law defining creditor consent. *Spirit*, 668 B.R. at 702. The *Gol* court's utter silence on this issue undermines its force to persuade a shift from the approach this Court took in *Spirit*.

59. Finally, adopting the U.S. Trustee's rule that a consensual third-party release in a plan must be analyzed as a state-law contract between releasing and released parties raises a welter of questions lacking any clear answer. The U.S. Trustee, which is neither giving nor getting a release, very likely lacks constitutional standing to litigate the question of whether unidentified third parties have validly entered into a contract. The U.S. Trustee suffers no "injury in fact" from the presence or absence of such a contract. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016) (noting "the 'irreducible constitutional minimum' of standing" requires,

[21] "A bankruptcy court in a multi-judge district is not bound by stare decisis to the decision of a single district judge in that district." *In re Firestar Diamond, Inc.*, 615 B.R. 161, 166 (Bankr. S.D.N.Y. 2020), *vacated on other grounds*, 627 B.R. 804 (S.D.N.Y. 2021) (Lane, J.). "Thus, in this district, which has both a multi-judge bankruptcy court and a multi-judge district court, only decisions of the Second Circuit Court of Appeals are controlling." *In re 400 Madison Ave. Ltd. P'ship*, 213 B.R. 888, 890 (Bankr. S.D.N.Y. 1997).

inter alia, "injury in fact"). Nor can the U.S. Trustee invoke the state-law contract rights of third parties. *Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) ("[I]n the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.") (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991)). *See also In re Quigley Co., Inc.*, 437 B.R. 102, 158 (Bankr. S.D.N.Y. 2010) (holding the U.S. Trustee does not have authority "to assert control over causes of action belonging to" another). It is no response to invoke the U.S. Trustee's statutory authority to "raise and [] appear and be heard on any issue in any case or proceeding under this title" under 11 U.S.C. § 307, as the U.S. Trustee will likely do at argument. A statute cannot cure a defect in constitutional standing, *see e.g., Spokeo*, 578 U.S. at 331 ("Article III standing requires a concrete injury even in the context of a statutory violation."), and, in any case, the U.S. Trustee's premise is that the existence of a third-party release contract is *not* a question of bankruptcy law, but rather, a separate question of state contract law. In the same vein, the state-law question the U.S. Trustee would have this Court address—whether valid state-law contracts separate from the Plan exist between unspecified Releasing Parties and Released Parties—is likely an advisory opinion this Court cannot constitutionally issue. None of the parties to the U.S. Trustee's hypothesized separate contracts have asked this Court to determine whether any such contract exists. The abstract question the U.S. Trustee has raised—whether some Released Party and another Releasing Party could have formed a contract under some state law[22]—is a paradigm example of an advisory opinion. *See Carney v. Adams*, 592 U.S.

[22] Nor is it clear what state law would govern that hypothetical contract. The U.S. Trustee points to the Plan having a New York choice of law provision, without explaining why the Plan's choice of law provision should govern what it argues is a separate contract between third parties, or why the Plan's choice of law provision should apply before confirmation, when the Plan is not binding on any party. *See In re Meehan*, 46 B.R. 96, 100 (Bankr. E.D.N.Y. 1985), *aff'd*, 59 B.R. 380 (E.D.N.Y. 1986). In any event, here, as in *Spirit*, the Plan explicitly provides that New York law only governs "to the extent that the Bankruptcy Code, Bankruptcy Rules or other law" is inapplicable. Plan § 11.12; *Spirit*, 668 B.R. at 716 n.30.

53, 58 (2020) ("We have long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions."). That the U.S. Trustee's proposed rule would lead this Court and other bankruptcy courts into a constitutional thicket demonstrates why this Court correctly concluded that the consent required for voluntary third-party releases in the Plan is a question of federal bankruptcy law, not state contract law—and why this Court should adhere to that decision in this case.

(iii) The Opt-Out Mechanism of the Plan Is Appropriate Under the Standards this Court Set Forth in Spirit

60. This Court, through an exhaustive consideration of precedent both from this district and nationwide, identified a set of factual circumstances that, taken together, are relevant to determining whether opt-outs are sufficient to manifest consent. *Spirit*, 668 B.R. at 703–07, 711–12. These circumstances include that the "clarity and prominence of the language used for the release," the "circumstances of the proposed releasing parties in the bankruptcy case, including whether these creditors have any economic disincentive to follow the bankruptcy case," and "the procedural history of the bankruptcy case and whether the requested release has been clearly and consistently presented to the affected creditors." *Id.* at 704–05. Each of these factual considerations support the appropriateness of the Releases on the basis of the factual record before the Court.

61. <u>The Voluntary Releases are clearly and prominently displayed in the Plan, Disclosure Statement, Ballots, and Opt-Out Forms.</u> The language of the Releases is clearly worded and prominently displayed in all of the Plan materials, including the court-approved Ballots, court-approved physical Opt-Out Forms, and on the online balloting portal. For example, the

Confirmation Hearing Notice contained the following conspicuous text, which appeared in bold caps:

> **ALL HOLDERS OF CLAIMS OR INTERESTS (OTHER THAN SPECIFIED HOLDERS OF CLAIMS IN CLASS 3 AND HOLDERS OF CLAIMS IN CLASSES 8, 11, AND 12) THAT DO NOT TIMELY AND PROPERLY ELECT TO OPT OUT OF THE THIRD-PARTY RELEASES CONTAINED IN ARTICLE VIII OF THE PLAN, BY CHECKING THE OPT-OUT BOX ON A BALLOT OR OPT-OUT FORM DISTRIBUTED BY THE DEBTORS OR FILING AN OBJECTION TO SUCH RELEASES, WILL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY, INDIVIDUALLY, AND COLLECTIVELY CONSENTED TO THE RELEASE OF ALL CLAIMS AND CAUSES OF ACTION AGAINST THE DEBTORS AND THE RELEASED PARTIES.**

Disclosure Statement Approval Order Ex. 5. And, as this Court found significant in *Spirit*, no party has suggested that these materials are anything but clear, including the U.S. Trustee. *Spirit*, 668 B.R. at 707 ("[N]o party . . . has argued that the language and presentation here was anything other than clear and fulsome."). Indeed, at the disclosure statement stage, this Court ensured that the Releases were prominently and clearly displayed both on the Ballots and the rest of the Plan materials.

62. <u>The Voluntary Releases have not meaningfully changed since first proposed in September 2025.</u> The Releases have been clearly and consistently presented since the beginning of the bankruptcy. The Releases were included in the first version of the Plan filed on September 16, 2025 [ECF No. 602], as well as the first and second amended versions filed more recently [ECF Nos. 831, 844]. Nor have there been any changes to the Releases that "might serve to confuse any party," *Spirit*, 668 B.R. at 707, as there have been no changes to the Releases since the disclosure statement hearing other than the narrowing of the scope of creditors that may grant the Voluntary Releases, as detailed earlier in this brief. In short, this is not a case in which notice to the parties was compromised by last-minute changes, or inconsistent or obscure language and

presentation. And significantly, no party has suggested that the presentation of the Releases was anything but clear and consistent, including the U.S. Trustee.

63. Non-Voting creditors will be excluded from the Voluntary Releases. Perhaps most importantly, the Voluntary Releases will not apply to creditors that did not return a ballot. This Court, in *Spirit*, concluded that "parties who voted on the Plan but did not exercise the opt-out . . . have manifested their intent by taking the affirmative act of voting on the Plan while declining to exercise the opt-out." *Spirit* 668, B.R. at 709. This, standing alone, is sufficient reason to approve the Voluntary Releases, as the Court has evidence that each creditor granting the Voluntary Releases was actively participating and undertook an affirmative act to grant the Voluntary Releases. *Id*. at 720 ("[Voting creditors] undertook an affirmative act by returning a ballot, indicating that the creditor was actively engaged in the process and affirmatively chose to not check the opt-out box.").

64. Creditors in Classes 1, 4, 5, and 6 have participated at an extraordinary high rate. The extraordinary high rate of creditor participation in voting further demonstrates that the Voluntary Releases apply with ample evidence of creditor consent. In many cases, courts properly express concerns that general unsecured creditors receiving a relatively low rate of recovery will cease paying attention to the case, and therefore will neither vote nor elect to grant or withhold third-party releasees. The voting record here demonstrates that this is not such a case as there was extraordinarily high levels of creditor participation (e.g., over 92% of Class 1 other secured creditors and over 95% of Class 6 general unsecured creditors (excluding public securities)). And, even though Class 6 general unsecured creditors were projected to receive a relatively small ratable recovery, such creditors remained incentivized to pay attention as well, considering that the Plan provides meaningful recovery in the form of (i) a cash recovery from the Cash-Out Pool (totaling

up to $20,000,000) or (ii) a share of the GUC Trust if they so elected. Disclosure Statement at 11; Plan at 12.

65. The U.S. Trustee's argument that the relatively low recovery rate of Class 6 General Unsecured Claims weighs against approval rests on the premise—now demonstrated to be false—that creditors receiving a small recovery will not pay attention. *See* U.S. Trustee Plan Obj. at 3 n.5. The opinions cited by the U.S. Trustee show that courts look to recovery rates to draw an inference about how much attention creditors paid. *In re Chassix Holdings, Inc.*, 533 B.R. 64, 80 (Bankr. S.D.N.Y. 2015) ("The relatively small recoveries that were initially proposed . . . could have prompted an even higher-than-usual degree of inattentiveness."); *SunEdison*, 576 B.R. at 461 ("meager recoveries" for creditors "may explain their inaction"); *In re Emerge Energy Servs. LP*, 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (creditors who were receiving no recovery at all may have been inattentive).[23] Whatever force such an inference about creditor attention to voting could have had before voting results were received has no such force now that the evidence demonstrates that general unsecured creditors were paying very close attention and where the modified Voluntary Releases will apply only to those creditors that *in fact* paid attention as evidenced by their decision to return a ballot.

66. <u>The customary inclusion of "Related Parties" in the Voluntary Releases is no obstacle to obtaining consent using an opt-out mechanism</u>. The U.S. Trustee also suggests that the Releases are impermissible because the Ballots are not being sent to a laundry list of entities whose claims rest upon those of the creditors from their "current and former Affiliates" down to their "heirs, executors, estates, and nominees." U.S. Trustee Disclosure Statement Obj. at 24–25. The

[23] *Emerge Energy* also analyzed releases using contract principles, but only because the debtors there did not attempt to argue that federal law applied, instead arguing that the releases should be approved as "typical, customary, and routine." 2019 WL 7634308, at *18.

U.S. Trustee's contention is plainly unsupportable on its face. The "Releasing Parties" identified in Section 1.1 of the Plan are nothing by a standard acknowledgement of the binding effect of the Releases upon the downstream entities whose could theoretically have claims tied to that of the releasor. *See* Plan at 31. It is impractical, impossible, and unnecessary for Ballots or Opt-Out Forms to be delivered to these theoretical, non-creditor, downstream entities only bound to the extent of the claims held by the creditor granting the Voluntary Releases.

67. Additional circumstances demonstrate that the Voluntary Releases are appropriate. Furthermore, additional circumstances that this Court and others have identified as hallmarks of an appropriately tailored opt-out mechanism are all present with respect to the Releases. Azul is one of the largest airlines in Latin America and news of this case has been widely publicized. It is highly unlikely that a creditor entitled to opt out of the Releases is unaware of this action. *See* *Spirit*, 668 B.R. at 709 (noting "well-publicized nature" of the case supported approval of releases). Indeed, the results of the vote speak to the widespread attention this case received and the effectiveness of the notice in this case.

(iv) The Voluntary Releases are Consensual Under the Contractual Approach Favored by the U.S. Trustee

68. Even if the Court were to "meet the U.S. Trustee where it stands" as it did in *Spirit* and look to contract law as the basis for approval of the Voluntary Releases, it would reach the same result. *Spirit*, 688 B.R. at 717. The U.S. Trustee repeatedly intones the mantra that "silence does not constitute acceptance" although the very authorities upon which it relies say the opposite. Both New York law and the Restatement (Second) of Contracts demonstrate that inaction *can* constitute acceptance of a contract under appropriate circumstances—such as those present here.

69. The Restatement of Contracts instructs that "silence" constitutes acceptance under appropriate circumstances, including (1) where an offeree takes the benefit of offered services with

reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation, (2) where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer, or (3) where because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not intend to accept. Restatement (Second) of Contracts § 69(1).

70. New York law[24] also provides that inaction *may* manifest acceptance under appropriate circumstances. For example, in a situation somewhat analogous to the present case, New York courts regularly hold that offerees assent to the terms of an offer of payment when they retain the payment, regardless of whether or not the offeree actually communicates their acceptance to the offeror. *See Josephine & Anthony Corp. v. Horwitz*, 396 N.Y.S.2d 53, 54 (2d Dep't 1977) (party accepted settlement offer when it cashed check attached to offer, despite not explicitly responding to offer); *Karpen v. Ali*, 9 N.Y.S.3d 593 (N.Y. Sup. Ct. 2015) (plaintiff consented to contract modification when he tendered payment but did not explicitly agree to new terms). More generally, New York law infers acceptance of an offer when an offeree enjoys the offered benefit, regardless of the offeree's subjective intent. *See Tsadilas v. Providian Nat'l Bank*, 786 N.Y.S.2d 478, 480 (1st Dep't 2004) (plaintiff consented to arbitration agreement in credit card terms by failing to opt out and continuing to use her credit cards, even though she never read the agreement); *see also Nirvana Int'l, Inc. v. ADT Sec. Servs., Inc.*, 881 F. Supp. 2d 556, 561 (S.D.N.Y. 2012), *aff'd*, 525 F. App'x 12 (2d Cir. 2013) ("It is standard contract doctrine that when a benefit is offered subject to stated conditions, and the offeree makes a decision to take the benefit

[24] The Debtors refer to New York law only as an example and do not concede that New York law is the correct choice of law.

with knowledge of the terms of the offer, the taking constitutes an acceptance of the terms, which accordingly become binding on the offeree.”).

71. Under the principles of the Restatement and New York Law, the voting creditors providing the Voluntary Releases have adequately consented. When considering the first of the three alternative bases of the Restatement, this Court highlighted that the released parties made “significant compromises in the Plan to the treatment of their claims and provided hundreds of millions of dollars in value,” 668 B.R. at 718, that the plan’s distributions to releasing creditors were “made possible” by the released parties. *Id.* Dismissing the objectors’ arguments that the releases required consideration separate and apart from the Plan, *Spirit* correctly observed that the releases were “a term in the Plan that provides the value to the affected creditors,” and “an integrated part of the Plan and not an unsolicited offer that is being given for no consideration.” *Id.* at 718. Finally, the Court observed that creditors had reason to know of the benefits provided, because the releasees’ contributions were detailed in the *Spirit* disclosure statement and plan. *Id.*

72. The same analysis holds true here. The creditors providing the Voluntary Releases are provided with benefits in exchange —the panoply of settlements in the Plan that allowed such creditors to meaningfully augment their recoveries. A portion of the Released Parties, including the DIP Lenders, have provided over one billion dollars in fresh capital, allowing creditors to recover more than they otherwise would have and allowing the company to successfully restructure in chapter 11. In addition, secured lenders agreed to take less than their full rights—absent that agreement, the secured lenders’ recoveries would have left the general unsecured creditors with nothing. Creditors also have every reason to know these benefits were offered with the expectation of receiving Releases from consenting creditors. As explained above at length, creditors were repeatedly informed of the Voluntary Releases and how they could make their election to grant or

withhold the releases.[25] And, as modified, the Voluntary Releases will apply only to those creditors that undertook the affirmative act of returning a ballot after being informed that the Voluntary Releases were provided in consideration for the benefits of the Plan and nonetheless declined to exercise their right to reject the Voluntary Releasees.

73. Application of the second alternative basis of the restatement and New York law—where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer—is even more straightforward.

74. In *Spirit*, this Court concluded that this second contractual standard is met for creditors that had agreed in an RSA to provide a release, and for those creditors who voted on the plan and did not opt out of the consensual releases. *Spirit*, 668 B.R. at 719. For the same reasons, those creditors that are parties to the RSA or the AerCap settlement, or that returned Ballots and did not opt out, readily qualify for this exception. The parties to the RSA and AerCap settlement have already agreed to provide the Voluntary Releases and had ample reason to know that not opting out of the Voluntary Releases would manifest consent. Similarly, creditors that returned a ballot but did not check the opt-out box have "clearly manifested their consent." Those creditors were amply informed by the Plan, the Disclosure Statement, and the Ballots that they could choose to grant the Releases by returning the ballot and declining to check the box to opt-out. *Id.* at 720. By electing to return a ballot and electing *not* to check the opt-out box, voting creditors manifested their intent to grant the Voluntary Releases through an affirmative act. *Id.* As the Court also

[25] According to the U.S. Trustee, under the "independent contract" conception of releases, no creditor in any case can *ever* be bound by a third-party release, because creditors are usually not provided independent consideration for a release. It is not clear that this is a result the U.S. Trustee wishes to achieve. In any event, such a result would run contrary the Supreme Court's tacit approval of consensual releases in *Purdue*.

explained, it does not matter whether such a creditor voted to accept or to reject the Plan: "an active choice was made in each instances to return the ballot without checking the opt-out box." *Id*.

75. For many of the same reasons, the third contractual alternative—that is "reasonable that the offeree should notify the offeror if he does not intend to accept" given the previous dealings or course of conduct of the parties— also holds true. As in *Spirit*, there is more than enough reason to conclude that creditors that have agreed by RSA to provide the Voluntary Releases can be held to their prior promise by deciding not to check the opt-out box. *See Spirit*, 668 B.R. at 721 (Bankr. S.D.N.Y. 2025) (exception "clearly applie[d]" to creditors who "extensive[ly] negotiat[ed]" with debtors). Likewise, because the Voluntary Releases will otherwise bind only those creditors who took the affirmative step of submitting a ballot, it is entirely reasonable that such parties must provide notice—by checking the opt-out box—that they do not intend to grant the Voluntary Releases. That the Debtors received several hundred such opt-outs from creditors that submitted ballots demonstrate that this mechanism worked properly.

76. The U.S. Trustee's last-ditch effort to invalidate the Voluntary Releases from those creditors that undertook the affirmative step of voting rests on a mischaracterization of the decision not to check the opt-out box on a returned ballot as "silence." In support, the U.S. Trustee, as in *Spirit*, invokes *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279 (9th Cir. 2017). U.S. Trustee Disclosure Statement Obj. at 20-21. But this Court has already carefully reviewed and thoroughly rejected any parallel to *Norcia*. *Spirit*, 668 B.R. at 718 n.36. This Court observed that in *Norcia*, a cellphone manufacturer could not bind a customer to a purported agreement to arbitrate because the customer "had little reason to believe that he was being asked to waive any rights [against the manufacturer] and, in fact, he never received notice of the proposed agreement."

Id. By contrast, the creditors that will grant the Voluntary Releases are those creditors who were—unlike the customer in *Norcia*—provided with extensive disclosures explaining that they are being asked to grant the Voluntary Releases, and who—again unlike the customer in *Norcia*—undertook an affirmative act *using a ballot form that itself disclosed* the Voluntary Releases in full and that itself explained that the Voluntary Releases could be declined by checking the opt-out box. *Norcia* has no relevant parallels to this case. More broadly, having tied its argument to contractual principles, the U.S. Trustee cannot escape the conclusion that those principles compel: creditors that have returned ballots and declined to check the opt-out box (or that are already bound by an RSA) have adequately manifested consent to the Voluntary Releases.

B. The Exculpation Provision is Appropriate.

77. The U.S. Trustee asserts that the Plan's exculpation provision should not be approved for two reasons. *First*, because the Exculpated Parties are not estate fiduciaries. U.S. Trustee Disclosure Statement Obj. at 9. *See also* U.S. Trustee Plan Obj. at 4, n. 7 ("The United States Trustee resubmits his request that the Court limit the list of Exculpated Parties to Debtors and those specifically identified parties that acted as estate fiduciaries in the chapter 11 cases."). *Second*, because the language permits the Exculpated Parties to rely on the advice of counsel. U.S. Trustee Disclosure Statement Obj. at 12. The Objection ignores volumes of authority in this district (and elsewhere) and is wrong on the law.

78. Exculpation provisions "insulate court-supervised fiduciaries and some other parties from claims that are based on actions that relate to the restructuring." *In re Genesis Glob. Holdco, LLC ("Genesis Glob.")*, 660 B.R. 439, 527 (Bankr. S.D.N.Y. 2024). "As a policy matter, exculpations are necessary to ensure that capable, skilled individuals are willing to assist in the

reorganization efforts in chapter 11 cases." *In re Alpha Nat. Res., Inc.*, 556 B.R. 249, 260–61 (Bankr. E.D. Va. 2016).[26]

79. In the Second Circuit, "[p]arties who made substantial contributions to the reorganization process and whose inclusion in the exculpation provision was a critical component in forming a plan have been found to be entitled to exculpation," even if they are not estate fiduciaries. *Genesis Glob.*, 660 B.R. at 528–30. Additionally, exculpation provisions may apply to prepetition and post-emergence conduct. *See, e.g., Genesis Glob.*, 660 B.R. at 528 (noting that "exculpation may be appropriate even for actions taken after the effective date"); *In re Ditech Holding Corp.*, 2021 WL 3716398, at *9 (Bankr. S.D.N.Y. Aug. 20, 2021) ("The Exculpation Provision expressly covers acts falling under the 'administration of the Plan' – which by definition occurs post-Effective Date."); *In re Voyager Digit. Holdings, Inc.*, 649 B.R. 111, 132–38 (Bankr. S.D.N.Y. 2023) (overruling objections of the U.S. Trustee and other governmental entities—who argued that the exculpation provision should not apply to violations of state or federal laws or regulations in connection with *post-emergence* plan distributions required by the confirmation order—and noting that such positions were unreasonable, wrong, and absurd).

80. Indeed, the U.S. Trustee previewed this objection at the Disclosure Statement stage, to which the Court agreed on the record that exculpation provisions may appropriately extend beyond estate fiduciaries. *See* November 4, 2025 Hr'g Tr. 62:2–11 [ECF No. 863] (referring to

---

[26] *See also Blixseth v. Credit Suisse*, 961 F.3d 1074, 1084 (9th Cir. 2020) (noting that, in bankruptcy proceedings, parties "battle each other tirelessly [and] oxe[n] are gored," so exculpation provisions permit these parties "to engage in the give-and-take of the bankruptcy proceeding without fear of subsequent litigation over any potentially negligent actions in those proceedings"); *In re BearingPoint, Inc.*, 453 B.R. 486, 494 (Bankr. S.D.N.Y. 2011) ("[E]xculpation provisions are included so frequently in chapter 11 plans because stakeholders all too often blame others for failures to get the recoveries they desire; seek vengeance against other parties; or simply wish to second guess the decisionmakers in the chapter 11 case."); *American Bankruptcy Institute Commission to Study the Reform of Chapter 11: 2012-2014 Final Report and Recommendations*, 23 Am. Bankr. Inst. L. Rev. 1, 273 (2015) (noting that the public policy underlying exculpation provisions includes "encouraging parties to engage in the process and assist the debtor in achieving a confirmable plan—actions that committees, committee members, other estate representatives and their professionals, and certain parties (such as key lenders) may not be willing to undertake in the face of litigation risk").

Judge Wiles' decision in *Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717 (Bankr. S.D.N.Y. 2019), "'exculpation provision is a protection not only of court-supervised fiduciaries, but also of court-supervised and court-approved transactions.' I wholeheartedly agree."). Accordingly, the sole inquiry is whether the exculpation provision is properly tailored. As discussed below, the Debtors submit the answer is yes.

81. Here, Section 8.9 (the "**Exculpation Provision**") provides for exculpation of the Exculpated Parties[27] for acts or omissions in connection with, related to, or arising out of the Chapter 11 Cases.[28] Moreover, the scope of claims subject to the Exculpation Provision is temporally limited to claims arising during the period between the commencement of the Chapter 11 Cases and the Effective Date, even though courts in this district may exculpate post-emergence conduct.

82. The record clearly establishes that the scope of the exculpation is appropriate in light of the Exculpated Parties' efforts in the Chapter 11 Cases and with respect to the Restructuring Transactions that the Court is being asked to approve through the Plan. With respect to Estate fiduciaries, it is uncontroverted that such parties exercised, and continue to exercise, their fiduciary duties to the Debtors and their Estates, including by assisting with, advising on, overseeing, or authorizing various aspects of the Debtors' restructuring and the Chapter 11 Cases with care, loyalty, good faith, and diligence. Roy Decl. ¶ 31. Many fiduciaries of the Estates have

[27] "**Exculpated Party**" means, collectively, and in each case in its capacity as such: (a) the Debtors and Reorganized Debtors; (b) the Debtors' current and former officers, directors, and managers; (c) the DIP Debtholders; (d) the DIP Trustee; (e) the Creditors' Committee and its members (including any ex-officio members); (f) the Backstop Commitment Parties; (g) the Strategic Partners; (h) AerCap; (i) the Secured Ad Hoc Group and its members; (j) the GUC Trustee; and (k) with respect to each of the foregoing clauses (a) through (j), to the fullest extent permitted by law, such Person's Related Parties, solely with respect to work performed on behalf of the applicable Related Party in connection with the negotiation, execution, and implementation of any transactions approved by the Bankruptcy Court in the Chapter 11 Cases.

[28] The Exculpation Provision carves out claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, gross negligence, or a criminal act.

performed these tasks while also overseeing the Debtors' businesses and operations during the Chapter 11 Cases. For the Exculpated Parties who are not fiduciaries of the Estate (i.e., the DIP Debtholders, the DIP Trustee, the Backstop Commitment Parties, the Strategic Partners, AerCap, the Secured Ad Hoc Group and its members, and the GUC Trustee), these parties also contributed to the Chapter 11 Cases in significant ways, including by formulating, preparing, negotiating and pursuing confirmation and/or consummation of the Plan, the DIP Facility and the DIP Documents, the RSAs, the Exit Debt Facilities and Exit Debt Documents, the GUC Trust documents, the Equity Rights Offering and the ERO Documents, and the Strategic Investment Agreements. Moreover, the Exculpation Provision was a bargained for term of the non-fiduciary Exculpated Parties to support the Plan. *Id*.

83. In other words, the Exculpated Parties have worked tirelessly to consummate the Restructuring Transactions which are embedded in the Plan and that which the Court is being asked to approve. These are the exact facts and circumstances under which Judge Wiles stated exculpation of non-estate fiduciaries in appropriate. *See Aegean*, 599 B.R. at 721 ("parties should not be liable for doing things that the Court authorized them to do and that the Court decided were reasonable things to do.") (citations omitted). Nevertheless, following a colloquy on the record at the Disclosure Statement hearing, the Debtors narrowed the scope of Exculpated Parties by providing that a Related Party may be an Exculpated Party "solely with respect to work performed on behalf of the applicable Related Party in connection with the negotiation, execution, and implementation of any transactions approved by the Bankruptcy Court in the Chapter 11 Cases." Plan at 19. The Debtors submit that this revision adequately addresses the U.S. Trustee's concerns without unintentionally creating an unworkably narrow construct. *See* November 4, 2025 Hr'g Tr.

62:20–21 ("But it's also something that isn't trying to be so precise that it's going to ultimately have a problem of omissions.").

84. Lastly, the U.S. Trustee's assertion that the Exculpation Provision cannot shield parties who relied upon the advice of counsel is equally unavailing. U.S. Trustee Disclosure Statement Obj. at 12. To be clear, this language is also a common feature in exculpation provisions included in confirmed plans in this district. *See*, *e.g.*, *In re Genesis Global Holdco, LLC*, No. 23-10063 (SHL) (Bankr. S.D.N.Y. May 31, 2024) [ECF No. 1736] (confirming plan with exculpation provision that stated exculpated parties may rely upon advice of counsel); *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. June 18, 2022) [ECF No. 5754] (same); *In re Avianca Holdings S.A.*, No. 21-11133 (MG) (Bankr. S.D.N.Y. Nov. 2, 2021) [ECF No. 2300] (same). Following the Court's guidance at the Disclosure Statement hearing, the Debtors further tailored Section 8.9 of the Plan to provide that the Exculpated Parties may reasonably rely upon the advice of counsel "to the extent permitted by and under applicable law." Plan at 100.

85. For the foregoing reasons and for the reasons stated on the record, the Debtors submit that the Exculpation Provision and the scope of Exculpated Parties are appropriately tailored given the facts and circumstances of the Chapter 11 Cases.

C. The Management Incentive Plan Complies with Section 1129(a)(4) of the Bankruptcy Code and Should be Approved.

86. The U.S. Trustee contends that the Management Incentive Plan (the "**MIP**") renders the Plan unconfirmable for two reasons. *First*, the MIP does not comply with Section 503(c) and therefore the Plan fails to satisfy Section 1129(a)(1). U.S. Trustee Disclosure Statement Obj. at 28-29. *Second*, and in the alternative, the Debtors have not established that the MIP is reasonable under section 1129(a)(4). U.S. Trustee Disclosure Statement Obj. at 35.

87. The U.S. Trustee misreads the law, as the MIP Interests do not fall within the ambit of section 503 of the Bankruptcy Code. Moreover, the U.S. Trustee ignores applicable case law and uncontroverted evidence in the record that established that the MIP is reasonable. Both arguments should be rejected, and the Objection overruled. The Plan simply reserves up to 7.0% of the New Equity Interests for distribution to employees, directors, and other service providers of the Reorganized Debtor(s) on terms and conditions to be determined by the New Azul Strategy Committee. Plan § 4.12. Out of the 7% that may be awarded, 1% shall vest immediately upon adoption of the Management Incentive Plan.

88. The Debtors have engaged with the U.S. Trustee with respect to this argument. To that end, the Debtors anticipate filing a further revised Plan ahead of the Confirmation Hearing that makes clear the 1% MIP Interests shall vest only upon approval by the New Azul Strategy Committee (and not solely based upon the Effective Date). The Debtors believe that this resolves the U.S. Trustee's objection with respect to the MIP. To the extent it does not, the Debtors submit that the Court overrule this argument for the reasons set forth below.

(i) Section 503(c) of the Bankruptcy Code is Inapposite

89. Section 503 of the Bankruptcy Code concerns the treatment of "administrative expense claims," i.e., certain expenses incurred by a debtor postpetition. 11 U.S.C. § 503. *See also In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2007) ("[A]n expense is administrative only if it arises out of a transaction between the creditor and the bankrupt's trustee or debtor in possession[.]" (internal quotes and citations omitted).

90. The U.S. Trustee misconstrues the Bankruptcy Code and the Plan, as the latter makes clear that the MIP is a post-Effective Date incentive program to be determined and implemented at the discretion of the New Azul Strategy Committee. *See* Plan § 4.12. Specifically,

the Plan provides that the "terms and conditions, including with respect to participants, allocation, timing, and the form and structure of the equity or equity-based awards, shall be determined at the distraction of the New Azul Strategy Committee after the Effective Date." *Id*.

91. The MIP does not create any obligations owed by the Debtors to any employee as the MIP will not exist prior to the Effective Date, and no awards will be considered, much less issued, until after emergence. Therefore, the MIP awards are clearly not administrative expenses of the Debtors.

92. As noted by the Court at the Disclosure Statement hearing, there are two cases in this district that together harmonize the applicability of section 503(c), governing administrative expenses of the Debtors' estate, and section 1129(a)(4), governing payments in connection with a plan: *In re J. Reg. Co.*, 407 B.R. 520 (Bankr. S.D.N.Y. 2009) ("***Journal Register***") and *In re AMR Corp.*, 497 B.R. 690 (Bankr. S.D.N.Y. 2013) ("***AMR***").[29] As discussed below, the MIP squarely falls within *Journal Register* and its progeny and constitutes a reasonable incentive program that need not satisfy section 503 of the Bankruptcy Code.

93. In *Journal Register*, the debtors sought confirmation of a proposed plan of reorganization that included, among other things, an incentive package for certain of the debtors' key employees, which provided for bonuses to be paid post-effective date if the participating employees achieved certain goals. *Journal Register*, 407 B.R. at 527 (citing the debtors' disclosure statement description of the incentive plan which was "designed to incentivize those employees that were critical to the Company's efforts to implement the initial stages of the Business Plan, and to expeditiously confirm and consummate a plan of reorganization.") Certain parties objected to

[29] *See* November 4, 2025 Hr'g Tr. 41:11-14 ("it's really a question about what decision applies, the AMR decision that existed on the severance or [Journal Register] decision on a post-emergence incentive plan").

the plan, arguing that the incentive package violated both sections 503 and 1129(a)(4) of the Bankruptcy Code. *Id*. at 535. In discussing the objectors' section 503 argument, Judge Gropper determined that payments under the incentive package were "not being allowed as administrative expenses under § 503" at all. *Id.* Rather, "[l]ike the rest of § 503, subsection 503(c) applies only when the proposed bonuses are to be paid *as administrative expenses of a bankruptcy estate*." *Id.* at 535 n.8 (citing *In re Airway Indus., Inc.*, 354 B.R. 82, 86–88 (Bankr. W.D. Pa. 2006)) (emphasis added).

94. In this sense, "[t]he bonuses payable under the Incentive Plan are not being paid to preserve the value of the estate or to prevent unjust enrichment of the estate, as they are being paid subsequent to confirmation of the Plan and as a result of the confirmation order itself," *Id.* at 536 (citing *In re HNRC Dissolution Co.*, 343 B.R. 839 (Bankr. E.D. Ky. 2006); *In re Barker Med. Co., Inc.*, 55 B.R. 435, 435 (Bankr. M.D. Ala. 1985)).

95. Judge Gropper also addressed the intent behind the inclusion of section 503(c) as a part of the 2005 amendments to the Bankruptcy Code, stating that the provision "curtails payments of *retention* incentives or *severance* to insiders, as well as bonuses granted to other employees without factual and circumstantial justification." *Id*. at 536 (emphasis added). The court concluded that the payments at issue in *Journal Register* were not to induce employees to remain with the debtors, nor were the payments triggered upon termination of an employee (as is typical with severance payments), and therefore did not implicate section 503(c) of the Bankruptcy Code.

96. On the other hand, the *AMR* decision serves as a good example of the exact payment program that runs afoul of section 503(c) of the Bankruptcy Code. *AMR*, 497 B.R. at 690. In that case, the debtors sought, as part of a reorganization plan, approval of a letter agreement by which the debtors' CEO, whose employment would be terminated on the plan effective date, would

receive an approximately $20 million severance payment. Moreover, court approval of the severance payment was a *condition precedent* to the plan's effectiveness and, as such, was required to be paid in order for the debtors to emerge from bankruptcy, without any action from the reorganized debtor. *Id.* at 698.

97. The court rejected the debtors' reliance on *Journal Register*, finding the nature of the payments readily distinguishable. Specifically, the court noted that the payments in *Journal Register* were neither designed to induce employees to remain with the company nor functioned as severance payments, which stood in stark contrast to the proposed $20 million severance payment before the court in *AMR*. *See id*. at 697. The debtors were similarly unsuccessful in arguing that section 503(c) of the Bankruptcy Code does not apply as the payments were due post-effective date. The court found this to be a "legal fiction," noting that the proposed severance payment was a condition precedent to effectiveness that would undoubtedly be paid by a newly formed entity composed largely of estate assets.

98. Even a cursory review of the Plan reveals that the Debtors' MIP is closely aligned to that of *Journal Register*, and entirely distinct from that of *AMR*. To be sure, the MIP is not an inducement to remain with the Debtors or a disguised severance package. Instead, the MIP is designed to incentivize the Reorganized Debtors' employees, directors, consultants, and other service providers to implement the Restructuring Transactions and achieve the business plan underlying the Plan. Just for this reason, the MIP cannot fall within the ambit of section 503(c)'s restrictions on retention and severance payments. *In re AMR Corp.*, 490 B.R. 148, 166 (Bankr. S.D.N.Y. 2013) (quoting *In re Dana Corp.*, 358 B.R. 567, 575 (Bankr. S.D.N.Y.2006) ("[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance.")). Far from a condition precedent to

effectiveness, the MIP and MIP Interests will be implemented and administered by the Reorganized Debtors' governing bodies *after* the Effective Date. And much like the incentive plan at issue in *Journal Register*, the MIP does not seek to allow or pay any administrative expenses pursuant to the Plan, and any MIP awards would be obligations of the Reorganized Debtors from their inception.

99. The Objection's contention that the MIP violates section 503(c) of the Bankruptcy Code because 1% of the MIP Interests vest upon the Effective Date, *see* U.S. Trustee Disclosure Statement Obj. at 31, is an unavailing red herring and should be ignored. As will be made even clearer in a revised Plan filed before the Confirmation Hearing, the 1% MIP Interests will be awarded *after* the Effective Date by the New Azul Strategy Committee and, therefore, such interests cannot and do not constitute administrative expenses. *Journal Register*, 407 B.R. at 535.

100. Judge Garrity in *LATAM Airlines* approved a similar incentive plan over a *nearly identical* objection from the U.S. Trustee. In that case, the debtors' incentive plan included a $12 million cash payment earned on the Effective Date. *In re LATAM Airlines Group S.A.*, No. 20-11254 (Bankr. S.D.N.Y. June 18, 2022) [ECF No. 5753] § 5.3 ("the program implementing the Management Protection Provisions shall include a short-term cash incentive plan in the aggregate amount of $12 million, which shall be deemed earned as of the Effective Date."). The court overruled the U.S. Trustee's objection and approved the Plan and incentive program contained therein. Applying *Journal Register*, the court noted that the incentive program "will be established pursuant to the Plan and implemented by the New Board, for the benefit of the Reorganized Debtors." *In re LATAM Airlines Group S.A.*, 20-11254 (Bankr. S.D.N.Y. June 18, 2022), *Memorandum Decision on Confirmation of the Joint Plan of Reorganization of LATAM Airlines Group, S.A. et al, Chapter 11 of the Bankruptcy Code* (the "**LATAM Memo Decision**") at 97.

Judge Garrity continued, stating that "[t]he New Board, acting for the benefit of the Reorganized Debtors, not the Debtors, will need to consider the CIP and determine all individual CIP Grants. The CIP will not exist prior to the Effective Date, and no CIP Granted will be considered, let alone issued, until after the Effective Date. *By definition, the CIP Grants cannot qualify as administrative expenses*." *Id*. at 97–98 (emphasis added). Like in *LATAM*, the fact that at least a portion of the MIP to be approved and allocated by the New Board will vest earlier than other awards does not convert a post-effective date incentive plan into an administrative expense of the bankruptcy estate.

101. Finally, the holding in *In re TCI 2 Holdings, LLC*, 428 B.R. 117 (Bankr. D.N.J. 2010), fails to support the U.S. Trustee's argument. The court's limited analysis stands for the basic proposition that severance payments may violate section 503(c)(3). Here, there is no allegation that the MIP is a severance payment.

102. In sum, the MIP aligns entirely with the facts of *Journal Register* and the line of cases following Judge Gropper's reasoning, including *LATAM*. The U.S. Trustee fails to identify a single administrative expense that would be incurred by the Debtors as part of the MIP, nor any reasoned basis to conclude that the Plan's contemplation of a post-emergence employee incentive plan, which will not be implemented or administered until after the Effective Date by the New Azul Board, implicates section 503(c) of the Bankruptcy Code. Because no MIP awards will qualify as administrative expense claims, the U.S. Trustee's objection is misplaced and must be overruled.

(ii) The MIP Is Reasonable and Satisfies Section 1129(a)(4) of the Bankruptcy Code

103. Section 1129(a)(4) of the Bankruptcy Code requires that any payments made by the debtors pursuant to a plan be approved by the court as reasonable. 11 U.S.C. § 1129(a)(4). Judge

Gropper noted that this fact-intensive analysis is two-fold: "First, there must be disclosure. Second, the court must approve of the reasonableness of payments. *Journal Register*, 407 B.R. at 537. While the analysis must be made on a case-by-case basis, the determination hinges upon, among other things, who makes the payments at issue, who receives the payments and whether the payments are made from assets of the estate. *Id*. at 537-38 (citing *Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 517 (5th Cir. 1998), cert. denied, 526 U.S. 1114 (1999)). The bankruptcy court in *Journal Register* found that the payments were reasonable because said payments were to be paid after the effective date with assets owned by the lenders. *Id*. at 538. Additionally, Judge Gropper acknowledged the disclosure statement and plan "fully disclosed the Incentive Plan, giving the holders of unsecured claims an opportunity to factor the payments into their decision of whether to accept the Plan, which they did overwhelmingly. *Id*. Moreover, the Creditors Committee endorsed the Incentive Plan as reasonable." *Id*.

104. The Debtors' MIP satisfies both the disclosure and reasonableness standards. The MIP is described in both the Plan and Disclosure Statement and, in fact, has been included at the same level since the first iteration of the Plan and Disclosure Statement were filed nearly three months ago. *See* [ECF Nos. 602, 603]. Importantly, the MIP Interests will not be paid from the Debtors' estates, but instead will be borne almost entirely by the Debtors' secured lenders who will be the new majority equity owners of Reorganized Azul. Moreover, quantification and disclosure of the quantum of the MIP Interests at this juncture was *necessary* because the ERO Participants needed to know the extent of dilution that would be occasioned by a customary MIP and could not defer this negotiation to the New Azul Board. These parties' approval of the Plan (and decision to invest in the Equity Rights Offering), as the main post-Effective Date economic stakeholders impacted by the MIP Interests, should alone demonstrate its reasonableness.

However, the other prospective equity owners—the Strategic Partners and the holders of GUC Warrants—have also approved the MIP. Indeed, the Plan enjoys overwhelming support from nearly all constituents, including the Creditors' Committee and the general unsecured creditors that will benefit from the GUC Warrants. The fact cannot be ignored: the parties with economic interests at stake voted in favor of a Plan that clearly discloses the MIP. The uncontroverted record makes clear that the MIP is reasonable.

D. The Payment of Indenture Trustee Fees Is Appropriate

105. The U.S. Trustee contends that the Plan cannot be confirmed because it provides for the payment of the Unsecured Indenture Trustee Expenses, arguing such fees and expenses will be borne by all general unsecured creditors while the indenture trustee only benefits certain general unsecured creditors. U.S. Trustee Plan Obj. at 4, n. 6. Moreover, the U.S. Trustee contends that the claims of the indenture trustees should receive the same treatment as all other General Unsecured Claims. *Id*. In the alternative, the U.S. Trustee argues that the trustee must meet its evidentiary burden that it has made a substantial contribution pursuant to section 503(b) of the Bankruptcy Code. The U.S. Trustee is both factually and legally incorrect.

106. The Debtors are compelled to correct the record, as the U.S. Trustee entirely overlooks the context in which the agreement to pay the Unsecured Indenture Trustee Expenses arose. This provision is not a stand-alone request but instead is a bargained-for component of the comprehensive global settlement embodied in the Plan and Plan Documents. Payment of Unsecured Indenture Trustee Expenses serves as an integral piece to the Plan Settlement that was negotiated since the very first settlement term sheet was exchanged between the relevant parties. *See* Notice of Settlement, Ex. A at 2 (one of five main bullet points summarizing the Plan Settlement provided for the "funding for payment of GUC Trust administrative expenses and trustee fees").

107. Relatedly, the U.S. Trustee's assertion that the payment of the Unsecured Indenture Trustee Expenses is borne by the general unsecured creditors, *see* U.S. Trustee Plan Obj. at 4, n. 6, is also inaccurate and, again, disregards the context and impact of such payment. The Plan provides that the Unsecured Indenture Trustee Expenses will be satisfied by the GUC Trust, using a portion of the GUC Trust Cash. Accordingly, cost of the Unsecured Indenture Trustee Expenses will only be borne by Holders that voluntarily and affirmatively make the GUC Trust Election, and not by all general unsecured creditors, as the U.S. Trustee contends.

108. As noted above, the agreement to pay these fees was heavily negotiated and agreed to in connection with the Plan Settlement. And to be clear, the Plan Settlement has received approval from greater than 93% (by number and amount) of the same general unsecured creditors that the U.S. Trustee claims are harmed.[30]

109. More importantly, and contrary to the U.S. Trustee's assertion that general unsecured creditors are harmed by this Plan provision, the opposite is true. Without this provision, the Creditors' Committee would be entitled to revisit the entire Plan Settlement, which could result in protracted and costly litigation and, ultimately, result in general unsecured creditors receiving worse treatment than currently contemplated.

110. The U.S. Trustee also misreads the law. Courts in this district have determined that "section 503(b) does not provide, … that it is the *only* way by which fees of this character may be absorbed by an estate [and] the Court is free to look to other provisions of the Code that might also authorize a payment." *In re Adelphia Commc'ns Corp*., 441 B.R. 6, 12–13 (Bankr. S.D.N.Y.2010); *see also AMR*, 497 B.R. at 695 ("the Trustee argues that Section 503(b) provides the exclusive

[30] Tellingly, no unsecured creditor, the Creditors' Committee or otherwise, asserts unfair discrimination or disparate treatment. The U.S. Trustee's argument to this effect is unfounded and should be rejected.

vehicle for these creditors to receive fees. The Court disagrees."). The U.S. Trustee ignores other relevant provisions of the Bankruptcy Code, including sections 363(b), 1123(b)(6), 1129(a)(4), as well as Bankruptcy Rule 9019.

111. Here, sections 1123(b)(6) of the Bankruptcy Code provides ample statutory authority for the payment of Indenture Trustee Fees. Pursuant to section 1123(b)(6) of the Bankruptcy Code, a chapter 11 plan may "include any . . . appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Courts interpret section 1123(b)(6) very broadly and generally permit the inclusion of any provision in a reorganization plan, including provisions for the payment of fees, as long as such provision is not contrary to any other provision of the Bankruptcy Code. *See e.g.*, *AMR*, 497 B.R. at 695-96. In *AMR*, this Court allowed, over the objection of the U.S. Trustee, payment of statutory committee members' professional fees contemplated by the plan "given the overwhelming support of the Plan by creditors." *Id.* at 696; *see also In re Purdue Pharma L.P.*, 633 B.R. 53, 66 (Bankr. S.D.N.Y. 2021) (confirming a plan that provided for the payment of fees of non-estate professionals negotiated as part of a settlement pursuant to section 1129(a)(4) and Rule 9019), *overruled on other grounds by* 603 U.S. 204 (2024); *In re Stearns Holdings, LLC,* 607 B.R. 781, 793 (Bankr. S.D.N.Y. 2019) (confirming a plan that provided for the payment of fees of non-estate professionals under Rule 9019); *Adelphia*, 441 B.R. at 14–19 (allowing payment of professional fees to non-estate professionals under a plan pursuant to sections 1123(b)(6) and 1129(a)(4)); *In re Mallinckrodt PLC,* 639 B.R. 837, 906-07 (Bankr. D. Del. 2022) (confirming a plan providing for the payment of fees of non-estate professionals pursuant to section 1129(a)(4) and Rule 9019 and overruling an objection premised on a section 503(b) argument raised by the U.S. Trustee).

112. The unsecured indenture trustees' efforts in the Chapter 11 Cases cannot be understated. They have actively and continuously engaged in many aspects of these cases since the Debtors' bankruptcy filing. Acting on behalf of—and for the benefit of—their respective bondholder constituencies, the unsecured indenture trustee has participated in the negotiation and formulation of the restructuring transactions, contributed to the development of the global settlements embodied in the Plan, and coordinated extensively with other major stakeholder groups to facilitate consensual resolutions of complex issues. Their constructive engagement has materially advanced the restructuring process. By narrowing disputes, reducing litigation costs, and helping to forge the consensus reflected in the Plan, the indenture trustees played a meaningful role in paving the way for confirmation and positioning the Debtors for a timely and efficient emergence from chapter 11. These efforts directly and demonstrably benefit the Debtors' Estates and all parties in interest. Courts routinely recognize that such participation by indenture trustees provides an estate-wide benefit. *See In re Premier Int'l Holdings*, 2010 WL 1986769, at 4–5 (Bankr. D. Del. May 17, 2010) (recognizing that indenture trustee's participation in negotiations benefits the estate and supports payment of fees). Moreover, because the unsecured indenture trustees serve unique contractual roles under their respective indentures, their contributions cannot be replicated by other parties in the Chapter 11 Cases.

113. Finally, the U.S. Trustee's reliance on *In re Lehman Bros. Holdings, Inc.*, 508 B.R. 283 (S.D.N.Y. 2014) is misplaced. The facts of *Lehman* are distinct from the facts of the Chapter 11 Cases. In *Lehman*, the individual members of the unsecured creditors' committee sought payment of their fees under the plan as administrative expenses. *Lehman*, 508 B.R. at 288 (noting plan section 6.7 permitted payment of individual committee members fee expenses as "Administrative Expense Claims"). The court took issue with this plan provision, and ultimately

determined that it circumvented section 503(b) of the Bankruptcy Code. Crucially, the court noted that "because § 503(b)—the sole source of administrative expenses—excludes paying professional fee expenses on the basis of committee membership, the Individual Members cannot have their professional fee expenses paid as administrative expenses solely on the basis of their committee membership." *Id*. at 290–91. Here, however, payment of the Unsecured Indenture Trustee Expenses derives from the Plan Settlement—not merely by virtue of committee membership as was the case in *Lehman*. Accordingly, the reasoning in *Lehman* is inapplicable.

E. The Debtor Releases Are Appropriate

114. The U.S. Trustee contends that the Plan cannot be confirmed because it does not describe the consideration given in exchange for the Debtor Releases. U.S. Trustee Plan Obj. at 2, n. 3. As an initial matter, this argument is procedurally improper and must be overruled on those grounds. More specifically, the Debtors submit this is an impermissible ***disclosure*** objection, *see id*. ("the Plan provides for valuable estate releases to numerous parties ***without setting forth*** the consideration which the Debtors has [sic] received in exchange for the releases") (emphasis added), that was overruled by the Court through entry of the Disclosure Statement Approval Order.

115. The record also belies the government's argument. For instance, at the Disclosure Statement stage the Debtors made additional disclosures with respect to the Debtor Releases, explaining that the parties receiving the Debtor Releases provided meaningful value to the Estates. *See* Disclosure Statement at 15 ("the Debtor Releases was a material inducement for their funding, participation, negotiation, and ultimate resolution of the Chapter 11 Cases through the Plan."). The record established at the Confirmation Hearing will bolster this fact, as it is clear the Debtor Releases were granted in exchange for real value. *See* Roy Decl. ¶¶ 28 (explaining the non-Debtor Released Parties made meaningful contributions to the Chapter 11 Cases, including in the form of funding, participating in and negotiating the Restructuring Transactions.").

III. The Plan Satisfies the Confirmation Requirements and Should Be Approved.

116. The Debtors are required to prove by a preponderance of the evidence that the Plan satisfies the relevant requirements of section 1129 of the Bankruptcy Code. 11 U.S.C. § 1129. As set forth herein and as is evident from the record in the Chapter 11 Cases to date, and the record established by the Confirmation Declarations and that will be further developed at the Confirmation Hearing, the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Plan should be confirmed.

A. The Plan Complies with Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1))

117. Section 1129(a)(1) of the Bankruptcy Code requires a chapter 11 plan to "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). "In determining whether a plan complies with section 1129(a)(1), reference must be made to sections 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization."[31] The Debtors respectfully submit that the Plan properly complies with sections 1122 and 1123 of the Bankruptcy Code in all respects.

(i) The Plan Properly Classifies Claims and Interests (11 U.S.C. §§ 1122 and 1123(a)(1))

118. Section 1123(a)(1) of the Bankruptcy Code requires a chapter 11 plan to classify all claims (except for certain administrative and priority claims) and interests, and that such classifications comply with section 1122. 11 U.S.C. § 1123. Section 1122(a), in turn, requires the claims or interests within a given class to be "substantially similar" to one another. 11 U.S.C. § 1122. "Courts that have considered the issue, including the Court of Appeals for the Second

[31] *In re Glob. Fertility & Genetics, New York, LLC ("Glob. Fertility")*, 663 B.R. 584, 600 (Bankr. S.D.N.Y. 2024); *see also In re Johns-Manville Corp.*, 843 F.2d 636, 648–49 (2d Cir. 1988) (attributing this interpretation of section 1129(a)(1) to legislative history).

Circuit as well as numerous courts in this District, have concluded that the separate classification of otherwise substantially similar claims and interests is appropriate so long as the plan proponent can articulate a reasonable (or rational) justification for separate classification." *In re LightSquared Inc.*, 513 B.R. 56, 82–83 (Bankr. S.D.N.Y. 2014); *see also In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("A plan proponent is afforded significant flexibility in classifying claims under § 1122(a) if there is a reasonable basis for the classification scheme and if all claims within a particular class are substantially similar."). Specifically, "Congress gave reorganizing debtors considerable flexibility *in their treatment of general unsecured creditors* to position themselves for future economic viability," such that separate classification is warranted where "[t]he debtors want to use that Code-given flexibility to facilitate a reorganization that will leave [them] strong and successful, a goal consonant with the purpose of § 1122." *In re Chateaugay Corp.*, 89 F.3d 942, 949–50 (2d Cir. 1996).

119. <u>Article III</u> designates all Claims and Interests, other than the Claims of the type described in sections 507(a) of the Bankruptcy Code (which are addressed in <u>Article II</u>), into the following 12 Classes:

Class	Claims or Interests
1	Other Secured Claims
2	Priority Non-Tax Claims
3	Specified Non-U.S. Claims
4	1L Claims
5	2L Claims
6	General Unsecured Claims
7	Unsecured Convenience Class Claims
8	Subordinated Claims
9	Intercompany Claims
10	Intercompany Interests
11	April 2025 Warrants
12	Existing Azul Interests

120. Under the Plan, all Claims and Interests within each designated Class have the same rights against the Debtors. Furthermore, this classification scheme is premised on, among other things, the secured or unsecured status and the differences in the legal nature or priority of the applicable underlying obligation (for example, debt and equity are classified separately), as well as the agreed-upon treatment of certain Classes. The Debtors have valid business and factual reasons that 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. While the Plan separately classifies General Unsecured Claims and Unsecured Convenience Class Claims, such classification is appropriate for purposes of administrative convenience, as is permitted by section 1122(b) of the Bankruptcy Code.

121. Therefore, the Debtors respectfully submit that the Plan's classification scheme fully satisfies the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code.

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

122. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that the proponent of a chapter 11 plan must satisfy. *See* 11 U.S.C. §§1123(a)(1)–(7). The Plan fully complies with each such requirement.

- the Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code. *See* Plan § 3.1;

- the Plan identifies Unimpaired Classes of Claims and Interests as required by section 1123(a)(2) of the Bankruptcy Code. *See* Plan § 3.1;

- the Plan specifies treatment of Impaired Classes of Claims and Interests as required by section 1123(a)(3) of the Bankruptcy Code. *See* Plan §§ 3.1, 3.2;

- except as otherwise agreed to by a Holder of a particular Claim or Interest, the Plan provides for the same treatment for each Claim or Interest of a particular class as required by section 1123(a)(4) of the Bankruptcy Code. *See* Plan § 3.2;

- the Plan provides adequate means for its implementation, as required by section 1123(a)(5) of the Bankruptcy Code, through, among other things, (a) issuance of the New Equity Interests, (*see* Plan § 4.3(c)), and in connection with the Backstop Commitment Agreement and the Strategics Investment Agreements, and those contemplated to be issued under the Management Incentive Plan (see Plan § 4.12), (b) entry into the GUC Trust Agreement and related documents thereby effectuating the global settlement embodied under the Plan (*see* Plan §§ 4.4, 4.5, 4.6), (c) establishing the sources for Plan Distributions (*see* Plan § 4.3), (d) providing for the cancellation of certain instruments, certificates, and other documents (*see* Plan § 4.7), and (e) setting forth the parameters of the New Azul Board, the New Azul Strategy Committee and the New Subsidiary Boards (*see* Plan § 4.10).

- in accordance with section 1123(a)(6) of the Bankruptcy Code, and to the extent permitted by applicable law, the New Corporate Governance Documents have been or will be amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities. *See* Plan § 4.9.

- the Plan and Plan Supplement, with respect to the provisions governing the manner of selection of any officer, director or manager, are consistent with the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code. *See* Plan § 4.10. The Schedule of Directors and Officers of the Plan Supplement provides the identity of the members of the New Azul Board and the officers of the

Reorganized Debtors, to the extent known, in accordance with section 1129(a)(5).[32]

In light of the foregoing, the Plan satisfies section 1123(a) of the Bankruptcy Code.

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2))

123. Section 1129(a)(2) of the Bankruptcy Code obligates a chapter 11 plan proponent to "comply with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. 1129(a)(2). "The case law and legislative history to section 1129(a)(2) reflect that this provision is intended to encompass the disclosure and solicitation requirements set forth in section 1125 of the Code and the plan acceptance requirements set forth in section 1126 of the Code." *Sabine Oil*, 555 B.R. at 311.

(i) Section 1125: Disclosure Statement and Solicitation.

124. Section 1125(b) of the Bankruptcy Code provides:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, 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. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. § 1125(b).

125. By entry of the Disclosure Statement Approval Order on November 5, 2025, the Bankruptcy Court approved, among other things (a) the adequacy of information in the Disclosure Statement within the meaning of section 1125 of the Bankruptcy Code, (b) Solicitation and Voting Procedures, (c) forms of Ballots, notices and notice procedures in connection therewith, and (d)

[32] Section 1123(a)(8) of the Bankruptcy Code is inapplicable because the Debtors are not individuals.

certain dates with respect thereto. As set forth in the Voting Declaration, the Debtors solicited votes on the Plan in a manner consistent with the provisions of the Disclosure Statement Approval Order. Further, in accordance with section 1125(b) of the Bankruptcy Code, the Debtors did not solicit votes on the Plan from any Holder of a Claim or Interest prior to entry of the Disclosure Statement Approval Order. Instead, for Holders of Claims and Interests in the Non-Voting Classes, the Debtors provided solicitation packages with, among other things, the Confirmation Hearing Notice and the applicable Notice of Non-Voting Status. *See* Disclosure Statement Approval Order at 5-6.

(ii) Section 1126: Acceptance of the Plan.

126. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a chapter 11 plan and determining acceptance thereof. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims or interests that are impaired and will receive or retain property under a plan on account of such claims or interests may vote to accept or reject the plan. 11 U.S.C. § 1126.

127. In accordance with section 1126(f) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from Holders of Claims in Class 2 (Priority Non-Tax Claims) and Class 3 (Specified Non-U.S. Claims) because such Claims are Unimpaired under the Plan, and thus their Holders are conclusively presumed to have accepted the Plan.

128. In accordance with section 1126(g) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from Holders of Claims or Interests in Class 8 (Subordinated Claims), Class 11 (April 2025 Warrants), and Class 12 (Existing Azul Interests) because such Holders of Claims and Interests will neither receive nor retain any property on account of their Claims or Interests and thus are deemed to have rejected the Plan.

129. In accordance with sections 1126(f) and 1126(g) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from Holders of Claims or Interests in Class 9 (Intercompany Claims) and Class 10 (Intercompany Interests) because either (a) such Claims or Interests will be Unimpaired under the Plan and thus are conclusively presumed to have accepted the Plan or (b) the Holders of such Claims or Interests will receive no distribution or property on account of their Claims or Interests. As such, these Classes are deemed not to have accepted the Plan.

130. Section 1126(c) of the Bankruptcy Code specifies the requirements or acceptance of a plan by impaired classes of claims entitled to vote to accept or reject the plan:

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

11 U.S.C. § 1126(c).

131. As set forth in the Voting Declaration, the Plan has been accepted by at least two-thirds in amount and one-half in number of Claims in all Voting Classes.

132. Accordingly, the Debtors respectfully submit that the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

C. The Plan was Proposed in Good Faith (11 U.S.C. § 1129(a)(3))

133. Section 1129(a)(3) provides that a court "shall confirm a plan only if . . . [t]he plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). While good faith is not defined in the Bankruptcy Code, "Courts have found that good faith in this context means a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Eletson Holdings, Inc.*, 664 B.R. 569, 636 (Bankr. S.D.N.Y. 2024); *see also In re Koelbl*, 751 F.2d 137, 139 (2d Cir. 1984) ("This court has

defined the good faith standard in the bankruptcy context as requiring a showing that the plan was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected."); *Glob. Fertility*, 663 B.R. at 605 (holding that section 1129(a)(3) "applies only to the process of plan development, and not to the content of the plan"). "It must be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan . . ." *Eletson*, 664 B.R. at 636. "The primary goal of chapter 11 is to promote the restructuring of the debtor's obligations so as to preserve the business and avoid liquidation." *In re Genco Shipping & Trading Ltd. ("**Genco**")*, 513 B.R. 233, 261 (Bankr. S.D.N.Y. 2014); *see also Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship ("**203 N. LaSalle**")*, 526 U.S. 434, 435 (1999) ("[T]he two recognized policies underlying Chapter 11 [are] preserving going concerns and maximizing property available to satisfy creditors."); *In re Goldstein*, 663 B.R. 245, 251 (Bankr. S.D.N.Y. 2024) (quoting *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007)). "Thus, good faith is shown when the plan has been proposed for the purpose of reorganizing the debtor, preserving the value of the bankruptcy estate, and delivering that value to creditors." *Genco*, 513 B.R. at 261.

134. The record demonstrates that the Plan was proposed by the Debtors in good faith, with the legitimate and honest purpose of reorganizing Azul and positioning it for long-term success while enabling creditors to realize the highest possible recoveries under the circumstances of the Chapter 11 Cases, all as overseen by the Debtors' Restructuring Committee. Roy Decl. ¶ 7. The Plan itself and the process of formulating it provide independent evidence of the Debtors' good faith and fair treatment of Holders of Claims and Interests. The Plan is the culmination of months of rigorous, arm's-length negotiations among the Debtors and certain of their key constituents—including the Secured Ad Hoc Group, the Creditors' Committee, the Strategic

Partners and AerCap—without any collusion, fraud, or attempt to take unfair advantage of any party in connection with such negotiations. *Id*. at 8. Throughout these good-faith negotiations, the Debtors consistently sought to use the proposed transactions contemplated by the Plan to maximize distributable value for their economic stakeholders.[33]

135. Accordingly, the Debtors respectfully submit that the Plan was formulated and proposed with the legitimate and honest purpose of reorganizing Azul, and the record establishes or will establish that "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3).

D. Payments to Professionals Under the Plan Are Subject to Court Approval (11 U.S.C. § 1129(a)(4))

136. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by the Debtors "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," either be approved by, or be subject to approval of, the Bankruptcy Court as reasonable. 11 U.S.C. § 1129(a)(4). "This section of the Code has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval by a bankruptcy court for reasonableness." *Sabine Oil*, 555 B.R. at 313.

137. Payment by the Debtors for professional services (including Professional Fee Claims) is and will continue to be subject to the Bankruptcy Court's approval, including in accordance with section 330 of the Bankruptcy Code. Section 2.3(c) provides that all final applications for payment for Professional Fee Claims incurred prior to the Effective Date must be filed with the Bankruptcy Court within 45 days of the Effective Date. *See* Plan § 2.3. Additionally,

---

[33] Article II the Disclosure Statement discusses some of the ways the Debtors sought to maximize value in advance of filing and throughout the pendency of the Chapter 11 Cases.

all other payments covered by section 1129(a)(4) of the Bankruptcy Code that are not on account of Professional Fee Claims have been or will be made with express Bankruptcy Court approval (*e.g.*, pursuant to the DIP Order) or pursuant to procedures established by the Bankruptcy Court (*e.g.*, the procedures in the Bankruptcy Court's *Order Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business* [ECF No. 262]. Accordingly, the Debtors respectfully submit that the Plan satisfies the requirements of section 1129(a)(4).

E. The Plan Properly Discloses Adequate Information Regarding the Reorganized Debtors' Boards of Directors (11 U.S.C. § 1129(a)(5))

138. Section 1129(a)(5) of the Bankruptcy Code requires the proponent of a chapter 11 plan to disclose (a) the identity and affiliations of any individual proposed to serve as a director, officer, or voting trustee after the confirmation of such plan, with the appointment of each such individual being consistent with the interests of the debtor's economic stakeholders and with public policy and (b) the identity and the nature of any compensation of any insider that will be employed or retained by the reorganized debtor. 11 U.S.C. § 1129(a)(5).

139. <u>Section 4.10(a)</u> provides, except to the extent set forth in the Plan Supplement, for the termination of each of the Company's current directors in that role and sets forth the parameters of the New Azul Board and the New Azul Strategy Committee. Furthermore, the identity and affiliations of the persons proposed to serve on the New Azul Board and the New Azul Strategy Committee, to the extent known, has been set forth in the Plan Supplement. Selection of members of the New Azul Board and the New Azul Strategy Committee (or similar governing bodies) was, and is, in compliance with the procedures set forth in the Governance Term Sheet and the New Corporate Governance Documents. The appointment to, or continuance in, such offices and roles of such persons will allow the Reorganized Debtors operate smoothly and in accordance with

applicable law and is, thus, consistent with the interests of the Debtors and Reorganized Debtors' economic stakeholders and with public policy. Accordingly. the Debtors respectfully submit that the Plan satisfies section 1129(a)(5).

F. The Plan Satisfies the Best Interests Test (11 U.S.C. § 1129(a)(7))

140. Section 1129(a)(7) of the Bankruptcy Code (i.e., the Best Interests Test) requires a court to find either that all holders of claims or interests in an impaired class have accepted the plan or that the plan will provide each such holder who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor's estate was, hypothetically, liquidated under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(7)(A); *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 252 (Bankr. S.D.N.Y. 2007) (holding that, when considering whether a plan satisfies the Best Interests Test, a court must consider "the applicable rules of distribution of the estate under chapter 7, as well as the probable costs incident to such liquidation"). Accordingly, if the Bankruptcy Court finds that each non-consenting Holder of a Claim or Interest in an Impaired Class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the Best Interests Test. *See 203 N. LaSalle*, 526 U.S. at 434, n.13 (1999).

141. The Best Interests Test is generally satisfied by utilizing a liquidation analysis setting forth projected distributions under a hypothetical chapter 7 scenario. *See* 7 *Collier on Bankruptcy* ¶ 1129.02 (16th ed. 2024) ("[Section 1129(a)(7)(A)] essentially requires every plan proponent to perform a liquidation analysis of the estate."). As set forth in the Creger Declaration, the Debtors, with the assistance of their advisors, prepared the Liquidation Analysis, a copy of which is attached to the Disclosure Statement as Appendix B, estimating and comparing the range of proceeds generated under the Plan and a hypothetical chapter 7 liquidation. Creger Decl. ¶ 7. As reflected in the Liquidation Analysis (subject to the limitations and disclaimers contained

therein), in a hypothetical chapter 7 liquidation, Holders of DIP Facility Claims would receive, at most, 46% recovery on account of such Claims. *Id.* ¶ 10. Holders of Class 1 (Other Secured Claims) would receive, at most, 66% recovery on account of such Claims. *Id.* Holders of Claims and Interests in all other Classes would receive nothing.

Creditor Class	**Description of Claims**	**Estimated Recovery in Hypothetical Chapter 7 Liquidation**	**Estimated Recovery Under the Plan**
DIP Facility Claims	DIP Facility	Up to 46%	100%
Class 1	Other Secured Claims	Up to 66%	100%
Class 4	1L Claims	0%	39.1% – 44.0%
Class 5	2L Notes Claims	0%	2.9% – 3.3%
Class 6	General Unsecured Claims	0%	0.7% – 0.9% (Cash-Out Pool) *or* 1.6% – 2.1% (GUC Trust Interests)
Class 7	Unsecured Convenience Class Claims	0%	1.1% – 1.3%
Other Impaired Classes (if any)	Remaining Claims/Interests	0%	0%

142. Notwithstanding the difficulties in quantifying recoveries to Holders of Claims with precision, the Debtors believe that, based on the Liquidation Analysis and the fact that the Company will continue operating as a going concern, the Plan satisfies the Best Interests Test. As the Plan and Liquidation Analysis indicate, confirmation of the Plan would provide each Holder of an Allowed Claim in an Impaired Class with an equal or greater recovery than the value of any distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code. *See Glob. Fertility*, 663 B.R. at 606–07 (holding that the Best Interests Test was satisfied, even though the dissenting equity class was to receive no distributions, "because it [was] undisputed that, in a liquidation, holders of the Debtor's equity interests would receive nothing"). Therefore, the Debtors respectfully submit that the Plan meets the Best Interests Test set forth in section 1129(a)(7) of the Bankruptcy Code.

G. Section 1129(a)(8) Does Not Preclude Confirmation

143. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or equity interests must either accept the plan or be unimpaired under the plan. 11 U.S.C. § 1129(a)(8). A class of claims accepts a plan if holders of at least two-thirds of the dollar amount and more than one-half of the number of claims that actually vote on the plan (excluding certain disallowed votes) vote to accept the plan. 11 U.S.C. § 1126(c). A class of interests accepts a plan if holders of at least two-thirds of the amount of allowed interests that actually vote on the plan (excluding certain disallowed votes) vote to accept the plan. 11 U.S.C. § 1126(d).

144. As set forth herein, Classes 2 and 3 are Unimpaired and are conclusively presumed to have accepted the Plan. Accordingly, the requirements of section 1129(a)(8) of the Bankruptcy Code have been (or will be) satisfied with respect to these Classes.

145. Classes 11 and 12 are deemed to have rejected the Plan as Holders of Claims or Interests in these Classes do not receive or retain any property under the Plan on account of such Claims or Interests. These presumed rejections necessarily preclude the Plan from satisfying section 1129(a)(8) with respect to all Classes. Nonetheless, the Debtors respectfully submit that the Plan may be confirmed over such rejections because, as set forth below, the Plan satisfies the requirements under section 1129(b) of the Bankruptcy Code.

H. The Plan Provides for Payment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9))

146. Section 1129(a)(9) of the Bankruptcy Code requires that, except as to holders of claims that have agreed to different treatment, a chapter 11 plan must provide for all holders of claims of the kind specified in section 507(a) of the Bankruptcy Code to be paid in full in cash on the effective date of the plan and for all holders of allowed priority claims to be paid in full in cash

(depending on the specific type of claim, either on the effective date of the plan or over time with interest). 11 U.S.C. § 1129(a)(9).

147. Section 2.2(b) provides that, except with respect to Other Administrative Expense Claims,[34] and except to the extent that a Holder of an Allowed Administrative Expense Claim and the Debtor against which such Claim is asserted agree to different treatment, or as otherwise set forth in an order of the Bankruptcy Court (including pursuant to the procedures specified therein), on the applicable date set forth in Section 2.2(b), each Holder of an Allowed Administrative Expense Claim shall receive an amount of Cash equal to the aggregate amount of such Allowed Administrative Expense Claim.

148. Similarly, Section 2.5 provides that, except to the extent that (a) a Priority Tax Claim has already been paid during the Chapter 11 Cases or (b) a Holder of an Allowed Priority Tax Claim and the Debtors agree to different treatment, in full and final satisfaction, settlement, discharge, and release of each Allowed Priority Tax Claim, on the applicable date set forth in Section 2.5, each Holder of an Allowed Priority Tax Claim shall receive an amount of Cash equal to the aggregate amount of such Allowed Priority Tax Claim. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(9).

I. At Least One Impaired Class is Bound to Vote in Favor of the Plan (11 U.S.C. § 1129(a)(10))

149. Section 1129(a)(10) of the Bankruptcy Code requires that, if any class of claims is impaired under the plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. 11 U.S.C. § 1129(a)(10). As reflected in the Voting Declaration, the

[34] Other Administrative Expense Claims include Administrative Expense Claims that are DIP Facility Claims, Claims related to U.S. Trustee Fees, or Professional Fee Claims, the satisfaction of each of which is covered elsewhere in the Plan. *See* Sections 2.1, 2.4, and 2.3.

Plan has been accepted by all Voting Classes. Voting Decl., Ex. A. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(10).

J. The Plan is Feasible (11 U.S.C. § 1129(a)(11))

150. Section 1129(a)(11) of the Bankruptcy Code requires the bankruptcy court to determine that a chapter 11 plan is feasible to be confirmed. Specifically, the court must find 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." 11 U.S.C. § 1129(a)(11). Following the Second Circuit's lead, *see In re Johns-Manville Corp.*, 843 F.2d at 649 ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."), "[c]ourts have adopted a relaxed interpretation of this so-called 'feasibility' standard, requiring only a finding that the plan offers a reasonable assurance of success." *Glob. Fertility*, 663 B.R. at 607 (quotations in original); *see also Journal Register*, 407 B.R. at 539 ("[T]he mere potential for failure of the plan is insufficient to disprove feasibility.")

151. In evaluating feasibility, courts consider the following factors:

> the prospective earnings of the business or its earning power; the soundness and adequacy of the capital structure and working capital for the business which the debtor will engage in post-confirmation; the prospective availability of credit; whether the debtor will have the ability to meet its requirements for capital expenditures; economic and market conditions; the ability of management, and the likelihood that the same management will continue; and any other related factors which would materially reflect on the company's ability to operate successfully and implement its plan.

In re Prudential Energy Co., 58 B.R. 857, 862–63 (Bankr. S.D.N.Y. 1986). While courts have referred to these factors as "probative," they are "neither exhaustive nor exclusive." *In re Young Broad. Inc.*, 430 B.R. 99, 129 (Bankr. S.D.N.Y. 2010).

152. For purposes of demonstrating that the Plan meets the "feasibility" standard, the Debtors, with the assistance of their financial advisor, analyzed the ability of the Reorganized Debtors to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their businesses. As set forth in Section 4.3, Plan Distributions shall be funded, as applicable, with (1) with Cash on hand, including Cash from operations, (2) with Cash received under the DIP Facility and refinanced pursuant to the Exit Notes (if any), (3) with any proceeds (if any) arising from the exercise of statutory preemptive rights within the context of the transactions implemented to carry out the equitization of 1L Claims and 2L Notes Claims (as applicable), (4) with any proceeds from the Equity Rights Offering, (5) from the Cash proceeds from the issuance of Other Exit Financing (if any), and (6) from the Cash proceeds of an Additional Investment (if any). Accordingly, the Debtors will be able to make all payments required under the Plan. In addition, the Financial Projections attached as Appendix C to the Disclosure Statement, taken together with the Confirmation Declarations, support Azul's expectation that (a) its cash flow will be sufficient to support its post-emergence capital structure (including servicing its post-emergence debt obligations and paying operating expenses as they come due in the ordinary course of business) and (b) confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(11).

K. The Plan Provides for Payment of U.S. Trustee Fees (11 U.S.C. § 1129(a)(12))

153. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. 11 U.S.C. § 1129(a)(12). Section 2.4 provides that, on the Effective Date or as soon thereafter as reasonably practicable, the Reorganized Debtors shall pay all U.S. Trustee Fees that are due and payable on the Effective Date and that, following the Effective Date, the Reorganized Debtors shall pay the U.S. Trustee Fees as such fees are assessed

and come due for each open Chapter 11 Case for each quarter (including any fraction thereof) until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(12).

L. The Plan Provides for the Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))

154. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the continuation of retiree benefit payments after the plan effective date. 11 U.S.C. § 1129(a)(13). <u>Section 7.7</u> provides that all the Debtors' retirement programs shall be deemed assumed on the Effective Date. On and after the Effective Date, the Reorganized Debtors will continue to abide by such programs and continue to honor the obligations in connection with retiree benefits (as defined in section 1114 of the Bankruptcy Code) thereunder, thereby satisfying section 1129(a)(13).

M. The Remaining Provisions of Section 1129(a) Do Not Apply to the Plan (11 U.S.C. § 1129(a)(6), (14)–(16))

155. The Debtors are not subject to any regulatory approval over rate changes and the Plan does not provide for any such rate changes by the Reorganized Debtors. *See* 11 U.S.C. § 1129(a)(6). Therefore, section 1129(a)(6) is inapplicable.

156. The Debtors are not required to pay any domestic support obligations and the Debtors are not individuals. *See* 11 U.S.C. § 1129(a)(14)–(15). Accordingly, the Debtors respectfully submit that sections 1129(a)(14) and 1129(a)(15) do not apply.

157. Finally, section 1129(a)(16) of the Bankruptcy Code provides that "all transfers of property under [a chapter 11] plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative

history of section 1129(a)(16) states that this section was intended "to restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." H.R. Rep. No. 109-31(I), 145 (2005); *see also In re Klaynberg*, 2023 WL 5426748, at *15 (Bankr. S.D.N.Y. Aug. 22, 2023) ("The Debtor is not a nonprofit entity. Therefore, section 1129(a)(16) does not apply."). No Debtor is a nonprofit entity and, therefore, the Debtors respectfully submit that section 1129(a)(16) is inapplicable.

N. The Plan Satisfies the Requirements of Section 1129(b) for the Non-Accepting Classes

158. Section 1129(b) of the Bankruptcy Code provides that, upon request of the plan proponent, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than subsection (a)(8) (i.e., acceptance by all impaired classes), the court "shall confirm [a chapter 11] plan . . . if the plan does not discriminate unfairly, and is fair and equitable, with respect to each [non-accepting impaired] class." 11 U.S.C. § 1129(b)(1). As noted above, the Holders of Claims and Interests in Class 8 (Subordinated Claims), Class 11 (April 2025 Warrants), and Class 12 (Existing Interests) will not receive any property on account of their Claims or Interests and, thus, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. However, for the reasons set forth below, the Debtors respectfully submit that the Plan satisfies the fairness requirements of section 1129(b) as to such Classes and should be confirmed.[35]

[35] In addition to Class 8 (Subordinated Claims), Class 11 (April 2025 Warrants), and Class 12 (Existing Interests), solely for argument's sake, this section III.N assumes that Class 9 (Intercompany Claims) and Class 10 (Intercompany Interests) will be eliminated and would therefore be rejecting Impaired Classes.

(i) The Plan Does Not Unfairly Discriminate with Respect to the Rejecting Impaired Classes (11 U.S.C. § 1129(b)(1))

159. Section 1129(b)(1) explicitly prohibits only *unfair* discrimination, but not *all* discrimination. *See* 11 U.S.C. § 1129(b)(1); *Journal Register*, 407 B.R. at 532 n.6 ("§ 1129(b) prohibits only 'unfair discrimination.'") (internal quotation in original). Nonetheless:

> Neither the Bankruptcy Code nor legislative history provides clear guidance for determining what constitutes unfair discrimination. . . . Thus, a plan will be found to unfairly discriminate where similarly situated classes are treated differently without a reasonable basis for the disparate treatment. [I]f under the facts and circumstances of a particular case, there is a reasonable basis for disparate treatment of two similarly situated classes of claims or two similarly situated classes of equity interests, there is no unfair discrimination. To determine whether a plan discriminates unfairly, courts consider whether (1) there is a reasonable basis for discriminating, (2) the debtor cannot consummate the plan without the discrimination, (3) the discrimination is proposed in good faith, and (4) the degree of discrimination is in direct proportion to its rationale.

Genco, 513 B.R. at 241–42 (alteration in original).

160. Here, the Plan does not discriminate unfairly with respect to any rejecting Class. As described above, Claims and Interests in all Classes (including the rejecting Impaired Classes) are specifically classified in such manner because of the differences in the legal nature or priority of the underlying obligations, and there are no other Classes of similarly situated Claims or Interests.

161. More specifically, while Classes 10 and 12 may seem similar, given that they both comprise Interests, such Interests are in fact appropriately classified and the Plan does not discriminate unfairly against such Holders. Unlike the Interests in Class 10, the Interests in Class 12 are Interests in Azul S.A. (i.e., a "TopCo") held by non-Debtors. Because of the legally distinct nature of these Interests, such Interests are separately classified. To be sure, all Interests in Azul S.A. are classified together in Class 12, and all Interests in the other Debtors are classified together

in Class 10. Because the Plan does not discriminate unfairly among the Holders of Interests in Classes 9 or 10, the Debtors respectfully submit that the Plan satisfies section 1129(b)(1).

(ii) The Plan Is Fair and Equitable with Respect to the Rejecting Impaired Classes (11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii))

162. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code set forth what is known as the "absolute priority rule:" a chapter 11 plan is fair and equitable with respect to a class of impaired unsecured claims or interests if, under the plan, no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest. 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii); *see generally 203 N. LaSalle*, 526 U.S. at 441–42 (discussing the absolute priority rule).

163. This standard is clearly satisfied as no Holder of a Claim or Interest junior to Claims or Interests in any of the rejecting Impaired Classes—Class 8 (Subordinated Claims), Class 9 (Intercompany Claims) and Class 10 (Intercompany Interests), Class 11 (April 2025 Warrants), and Class 12 (Existing Interests)—will receive or retain any property or distribution under the Plan. Further, even if any Intercompany Claims and/or Intercompany Interests are Reinstated, such reinstatement would be mere technical preservation of the Debtors' corporate structure and would not violate the absolute priority rule. *See In re MPM Silicones, LLC*, 531 B.R. 321, 331 n.8 (S.D.N.Y. 2015), *rev'd in part on other grounds*, 874 F.3d 787 (2d Cir. 2017) ("The 'technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan. The Plan's retention of intercompany equity interests for holding company purposes constitutes a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure.'") (quoting *In re Ion Media Networks, Inc.*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009)).

Accordingly, the Debtors respectfully submit that the Plan satisfies the absolute priority rule of section 1129(b)(2) of the Bankruptcy Code and is fair and equitable in all respects.

IV. The Plan's Discretionary Provisions Are Appropriate

164. Section 1123(b)(3) of the Bankruptcy Code provides that a chapter 11 plan may include the "settlement or adjustment of any claim or interest belonging to the debtor or to the estate," and section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title."

165. The Plan includes discretionary provisions that provide for or relate to the following:

- the settlement of certain claims and interests belonging to the Debtors and the Estates, as permitted by section 1123(b)(3)(A) (e.g., Articles II and III, and Sections 8.1, 8.4, and 8.5)
- the retention of the Retained Causes of Action, as permitted by section 1123(b)(3)(B) (e.g., Section 8.12);
- the designation of the Impaired and Unimpaired Classes, as permitted by section 1123(b)(1) (e.g., Article III);
- the assumption and rejection of Executory Contracts and Unexpired Leases, and the payment of Cure Amounts, as permitted by sections 1123(b)(2) and 1123(d) (e.g., Article VII); and
- exculpation, debtor and consensual releases, and injunctions (*e.g.*, Sections 8.4–8.10 and Section 11.10).

166. In addition to the reasons set forth herein, the Plan's discretionary provisions (a) reflect a reasonable exercise of the Debtors' business judgment (where necessary) and (b) are fair, equitable, reasonable, necessary, appropriate, and not inconsistent with the Bankruptcy Code or applicable law, and thus, permissible under sections 1123(b)(3) and 1123(b)(6).

A. The Plan's Releases, Settlements, and Compromises Are Appropriate

(i) The Plan Appropriately Incorporates Settlements of Claims and Causes of Actions

167. As described above, the Bankruptcy Code expressly allows chapter 11 plans to provide for settlements of claims. *See* 11 U.S.C. § 1123(b)(3). This Court, too, has noted that "[c]ompromises are a normal part of the process of reorganization," adding that they "are favored because they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate." *Genesis Glob.*, 660 B.R. at 491; *see also Sabine Oil*, 555 B.R. at 256; *Protective Comm.*, 390 U.S. at 424. "Settlements under a plan are governed by the same standards as those under Bankruptcy Rule 9019, which at bottom require the settlement to be fair and equitable, and in the best interests of the estate." *Glob. Fertility*, 663 B.R. at 602; Fed. R. Bankr. P. 9019(a) ("On the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement."); *see generally Iridium Operating*, 478 F.3d at 461–63 (analyzing the nexus between pre-plan settlements under Bankruptcy Rule 9019 and settlements contained in chapter 11 plans).

168. Section 8.4 provides that the releases of Claims, Interests, and Causes of Action described in the Plan constitute good-faith compromises and settlements of the matters covered thereby and are consensual, fair, equitable, and reasonable, as well as integral elements of the resolution of the Chapter 11 Cases in accordance with the Plan. Further, Section 8.1 specifies that the Plan *itself* constitutes a good-faith compromise of all Claims, Interests, Causes of Action, and controversies incorporated in the Plan. The settlements and compromises memorialized in the Plan were (a) reasonably evaluated in light of the above legal standard, (b) negotiated extensively, in good faith, and at arm's length, and (c) reviewed and approved by Holders of the Impaired Claims. Accordingly, the Debtors respectfully submit that the settlements and compromises

contained in the Plan, including, without limitation, the Plan Settlement, are fair, equitable, and in the best interests of the Debtors' Estates and comply with the Bankruptcy Code.

(ii) The Debtor Releases Are Consensual and Appropriate

169. Section 8.5 provides for the Debtors to release certain potential claims, rights, and causes of action that the Debtors, the Reorganized Debtors, the Debtors' Estates, or their respective Affiliates may have against the Released Parties (the "**Debtor Releases**").[36] Under section 1123(b)(3)(A), a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). Courts in the Second Circuit approve debtor releases under section 1123(b)(3)(A) when the debtors "establish that such releases are in the best interests of the estate," such as where the debtors were required to grant the releases to secure exit financing, *see Sabine Oil*, 555 B.R. at 309, and where the debtors determined that the released parties do not have claims against the debtors. *Genesis Glob.*, 660 B.R. at 524.

170. The Debtor Releases are in the best interests of the Estates and a sound exercise of the Debtors' business judgment, as they reflect the important contributions, concessions, good-faith negotiations, and compromises made by the Released Parties to formulate and support a value-maximizing and essentially consensual Plan. Roy Decl. ¶ 28. The non-Debtor Released Parties made significant contributions to the Chapter 11 Cases, and their inclusion in the Debtor Releases was a material inducement for their funding, participation, and negotiation of the Restructuring Transactions. *Id*. Without these releases, the non-Debtor Released Parties would

[36] The Debtor Releases do not (i) release (a) any Retained Causes of Action listed on the Schedule of Retained Causes of Action, (b) any Claims or Causes of Action against any Holder of a Claim against a Debtor to the extent necessary for the administration and resolution of such Claim in accordance with the Plan, (c) Claims or Causes of Action arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, gross negligence, or a criminal act, or (d) rights, remedies, exculpations, indemnities, powers, and protections preserved in Section 4.7 (*Cancellation of Loans, Securities, and Agreements*) or (ii) impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order, or the Restructuring Transactions.

not have agreed to the terms of the Restructuring Transactions or otherwise supported Confirmation. *Id*. Undoubtedly, without the support of the Released Parties, the Debtors would not have been able to propose the Plan, let alone maximize recoveries thereunder. The Debtor Releases, therefore, ultimately inure to the benefit of all stakeholders.

171. Furthermore, the Debtor Releases are fair and equitable and were negotiated in good faith and at arm's length by sophisticated entities represented by able counsel and financial advisors. *Id*. at 36. Moreover, the Debtor Releases do not apply to any Retained Causes of Action or any claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including actual fraud) or gross negligence. Finally, as noted in the Disclosure Statement, the Debtors are not aware of any substantial Claims against the non-Debtor Released Parties that are in the best interest of the Estates to pursue under the Plan, particularly when weighing the limited likelihood of recoveries that could result from the pursuit of any such potential Claims against the likely cost of pursuing any such potential Claims. *Id*. Accordingly, the Debtors submit that the Debtor Releases are fair, equitable, and in the best interests of the estate and should be approved under section 1123(b)(3)(A).

(iii) The Voluntary Releases Are Appropriate

172. For the reasons set forth in section II.A herein, the Voluntary Releases are reasonable, appropriate, consistent with applicable law and should be approved.

(iv) Injunctions Are Narrowly Tailored and Should Be Approved

173. The Plan's injunction provisions are necessary to effectuate and implement various provisions in the Plan, including the discharge provision, the Debtor Releases, the Third-Party Releases, and the Exculpation Provision. *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (court may approve injunction provision in settlement contained in plan of reorganization where such provision "plays an important part in the debtor's reorganization

plan”). Moreover, the injunctions are essential to protect the beneficiaries of such provisions from any action or other proceeding after the Effective Date from all Entities who held, hold, or may hold claims or interests that arose prior to the Effective Date and all other parties in interest (along with their respective Related Parties). Any such proceeding would hinder the efforts of the Reorganized Debtors to effectively fulfill their responsibilities contemplated in the Plan, thereby undermining the Reorganized Debtors’ efforts to maximize value for all of their stakeholders.

174. Further, Section 8.10 complies with the requirements of Bankruptcy Rule 3016(c), which provides that a plan must “describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c). The injunction provisions are clearly identified in the Plan, are displayed in bold font, and specifically identify all acts to be enjoined and all entities that would be subject to the injunction. Accordingly, to allow the Reorganized Debtors to comply with their obligations under the Plan, the Debtors respectfully request that the Bankruptcy Court approve the Plan’s injunction provisions.

[*Remainder of page intentionally left blank*]

WHEREFORE, for the reasons stated herein, the Debtors respectfully request that the Bankruptcy Court overrule the Objections with prejudice, grant the relief requested in the Motion, and grant such other relief that the Court deems just.

Dated: December 7, 2025
New York, New York

DAVIS POLK & WARDWELL LLP

By: *Timothy Graulich*

450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
Timothy Graulich
Joshua Y. Sturm
Marc J. Tobak
Jarret Erickson
Richard J. Steinberg
Andrew Frisoli

Counsel to the Debtors
and Debtors in Possession