Docket #0531 Date Filed: 01/14/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: AGDP HOLDING INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-11446 (MFW) (Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF THE DISCLOSURE STATEMENT ON A FINAL BASIS AND CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR AGDP HOLDING INC. AND ITS AFFILIATED DEBTORS

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[1] The Debtors in these chapter 11 cases, together with the last four digits of the Debtors' federal tax identification number, are AGDP Holding Inc. (6504); Avant Gardner, LLC (6504); AG Management Pool LLC (9962); EZ Festivals LLC (8854); Made Event LLC (6272); and Reynard Productions, LLC (5431). The Debtors' service address is 140 Stewart Ave, Brooklyn, NY 11237, Attn: General Counsel.

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Table of Contents

PRELIMINARY STATEMENT 1

I. BACKGROUND 3

A. General Background 3

B. The Plan and Disclosure Statement 4

C. Plan Solicitation and Notification Process 5

D. Informal Comments and the TVT Objections 7

II. ARGUMENT 7

A. The Disclosure Statement Should Be Approved on a Final Basis 7

B. The Plan Satisfies the Requirements of Section 1129 of the Bankruptcy Code 10

C. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code 11

1. The Plan Properly Classifies Creditors' Claims Under Section 1122 of the Bankruptcy Code 11

2. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code 13

a. Designation of Classes of Claims and Interests (Section 1123(a)(1) of the Bankruptcy Code) 13

b. Specification of Unimpaired Classes (Section 1123(a)(2) of the Bankruptcy Code) 14

c. Treatment of Impaired Classes (Section 1123(a)(3) of the Bankruptcy Code) 14

d. Equal Treatment Within Classes (Section 1123(a)(4) of the Bankruptcy Code) 14

e. Means for Implementation (Section 1123(a)(5) of the Bankruptcy Code) 15

f. Issuance of Non-Voting Securities (Section 1123(a)(6) of the Bankruptcy Code) 15

g. Directors and Officers (Section 1123(a)(7) of the Bankruptcy Code) 16

3. The Plan Complies with the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code 16

a. Impairment and Unimpairment of Classes (Section 1123(b)(1) of the Bankruptcy Code) 17

b. Treatment of Executory Contracts and Unexpired Leases (Section 1123(b)(2) of the Bankruptcy Code) 17

c. The Plan's Release, Exculpation, and Injunction Provisions Satisfy Section 1123(b) of the Bankruptcy Code 18

i. The Debtor Release Is Appropriate................................ 18

ii. The Releasing Party Release Is Wholly Consensual and Appropriate Under the Facts and Circumstances of This Case 22

iii. The Exculpation Provision Is Appropriate 23

iv. The Injunction Provision Is Appropriate 24

d. The Retention of the Retained Causes of Action is Appropriate 25

e. The Plan Complies with the Additional Provisions of Section 1123(b) of the Bankruptcy Code.................................... 25

D. The Plan Complies with Section 1123(d) of the Bankruptcy Code..................... 25

E. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code 26

1. The Debtors Complied with Section 1125 of the Bankruptcy Code 27

2. The Debtors Complied with Section 1126 of the Bankruptcy Code 28

F. The Plan Was Proposed in Good Faith and Therefore Complies with Section 1129(a)(3) of the Bankruptcy Code 29

G. The Plan Provides that the Payment of Debtors' Professional Fees and Expenses Are Subject to Court Order in Compliance with Section 1129(a)(4) of the Bankruptcy Code 30

H. The Plan Does Not Require Additional Disclosures Regarding Directors, Officers, or Insiders and Therefore Complies with Section 1129(a)(5) of the Bankruptcy Code... 31

I. The Plan Does Not Require Governmental Regulatory Approval and Therefore Complies with Section 1129(a)(6) of the Bankruptcy Code............... 32

J. The Plan is in the Best Interest of Creditors and Therefore Complies with Section 1129(a)(7) of the Bankruptcy Code 32

K. The Plan is Confirmable Notwithstanding the Requirements of Section 1129(a)(8) of the Bankruptcy Code 34

L. The Plan Provides for Payment in Full of All Allowed Priority Claims in Compliance with Section 1129(a)(9) of the Bankruptcy Code........................... 34

M. At Least One Class of Impaired, Non-Insider Claims Accepted the Plan in Compliance with Section 1129(a)(10) of the Bankruptcy Code.......................... 36

N. The Plan is Feasible in Compliance with Section 1129(a)(11) of the Bankruptcy Code 37

O. All Statutory Fees Have or Will Be Paid in Compliance with Section 1129(a)(12) of the Bankruptcy Code 39

P. Sections 1129(a)(13)—1129 (a)(16) of the Bankruptcy Code Do Not Apply to the Plan 39

Q. The Plan Satisfies the "Cram Down" Requirements of Section 1129(b) of the Bankruptcy Code 40

1. The Plan is Fair and Equitable and Thus Satisfies Section 1129(b)(2)(B) of the Bankruptcy Code 41

2. The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes that Have Not Voted to Accept the Plan in Accordance with Section 1129(b)(1) of the Bankruptcy Code 42

R. The Debtors Complied with Sections 1129(d) and (e) of the Bankruptcy Code 43

S. Modifications to the Plan 43

T. Good Cause Exists to Waive the Stay of the Confirmation Order 44

U. The TVT Objections Should be Overruled 45

1. The Debtors have Complied with the Cash Management Order and the Final DIP Order 46

2. The TVT Parties' Purported Administrative Claim is Speculative At Best and Should Not Impede Confirmation 49

3. The Balance of the TVT Parties' Objections are Meritless and can be Addressed through Reservation of Rights Language 53

TABLE OF AUTHORITIES

Page(s)

CASES

In re 203 N. LaSalle St. Ltd. P'ship,
190 B.R. 567 (Bankr. N.D. Ill. 1995), *rev'd on other grounds*, *Bank of Am.*,
526 U.S. 434 (1999)....................42

In re 710 Long Ridge Rd. Operating Co., II, LLC,
Case No. 13-13653 (DHS), 2014 WL 886433 (Bankr. D.N.J. Mar. 5, 2014)....................20

In re Adelphia Commc'ns Corp.,
368 B.R. 140 (Bankr. S.D.N.Y. 2007)....................12, 33

In re Alecto Healthcare Servs., LLC,
No. 23-10787, 2024 WL 1208355 (Bankr. D. Del. Mar. 20, 2024), aff'd, No.
23-10787 (JKS), 2025 WL 961482 (D. Del. Mar. 31, 2025)....................50

In re Aleris Int'l, Inc.,
2010 WL 3492664 (Bankr. D. Del. May 13, 2010)....................26

In re Am. Cap. Equip., LLC,
688 F.3d 145 (3d Cir. 2012)....................37

In re Ambanc La Mesa L.P.,
115 F.3d 650 (9th Cir. 1997)....................40, 42

In re Armstrong World Indus., Inc.,
348 B.R. 111 (D. Del. 2006)....................10, 11, 12

In re Aztec Co.,
107 B.R. 585 (Bankr. M.D. Tenn. 1989)....................42

Bank of Am. Nat. Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship,
526 U.S. 434 (1999)....................33, 41

In re Barakat,
99 F.3d 1520 (9th Cir. 1996)....................12

Beal Bank, S.S.B. v. Jack's Marine, Inc. (*In re Beal Bank, S.S.B.*),
201 B.R. 376 (E.D. Pa. 1996)....................44

Boston Post Road Ltd. P'ship v. F.D.I.C. (*In re Boston Post Road Ltd. P'ship*),
21 F.3d 477 (2nd Cir. 1994)....................12

In re Burns & Roe Enters., Inc.,
No. 08-4191 (GEB), 2009 WL 438694 (D. N.J. Feb. 23, 2009) 44

In re Caribbean Petroleum Corp.,
512 B.R. 774 (Bankr. D. Del. 2014) 20

In re Century Glove, Inc.,
Civ. A. Nos. 90-400 and 90-401,1993 WL 239489 (D. Del. Feb. 10, 1993) 30, 33

Century Glove, Inc. v. First Am. Bank of N.Y.,
860 F.2d 94 (3d Cir. 1988)....................8, 35, 41

In re Chapel Gate Apartments, Ltd.,
64 B.R. 569 (Bankr. N.D. Tex. 1986)....................31

In re Coram Healthcare Corp.,
315 B.R. 321 (Bankr. D. Del. 2004) 18, 42

Cosoff v. Rodman (*In re W.T. Grant Co.*),
699 F.2d 599 (2d Cir. 1983)....................18

In re Dex One Corp.,
No. 13-10533 (KG) (Bankr. D. Del. Apr. 29, 2013)....................45

In re Emerge Energy Servs.
LP, No. 19-11563 (KBO), 2019 WL 7634308 (Bankr. D. Del. Dec. 5, 2019)....................50

In re Exaeris, Inc.,
380 B.R. 741 (Bankr. D. Del. 2008) 18

In re Exide Techs.,
303 B.R. 48 (Bankr. D. Del. 2003) 19

In re Federal–Mogul Glob. Inc.,
2007 Bankr. LEXIS 3940 (Bankr. D. Del. 2007) 44

Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'ship (*In re T-H New Orleans Ltd. P'ship*),
116 F.3d 790 (5th Cir. 1997) 29, 30

In re Finlay Enters., Inc.,
No. 09-14873 JMP, 2010 WL 6580628 (Bankr. S.D.N.Y. June 29, 2010) 38

First Am. Bank of N.Y. v. Century Glove, Inc.,
81 B.R. 274 (D. Del. 1988)....................8

In re Freymiller Trucking, Inc.,
190 B.R. 913 (Bankr. W.D. Okla. 1996) 42

In re Future Energy Corp.,
83 B.R. 470 (Bankr. S.D. Ohio 1988)..31

In re Gatehouse Media, Inc.,
No. 13-12503 (MFW) (Bankr. D. Del. Nov. 6, 2013) 45

In re Genesis Health Ventures, Inc.,
266 B.R. 591 (Bankr. D. Del. 2001) 10

In re Geokinetics Inc.,
No. 13-10472 (KJC) (Bankr. D. Del. Apr. 25, 2013) 45

In re Glob. Safety Textiles Holdings LLC,
No. 09-12234 (KG), 2009 WL 6825278 (Bankr. D. Del. Nov. 30, 2009)..............................44

In re GSE Envtl., Inc.,
No. 13-11126 (MFW) (Bankr. D. Del. July 25, 2014) 45

Harrington v. Purdue Pharma, L.P.,
603 U.S. 204, 144 S. Ct. 2071 (2024)..23

In re Heritage Highgate, Inc.,
679 F.3d 132 (3d Cir. 2012)...37

In re Heritage Org., L.L.C.,
375 B.R. 230 (Bankr. N.D. Tex. Aug. 31, 2007)...38

In re Hyatt,
509 B.R. 707 (Bankr. D.N.M. 2014) 11

Indianapolis Downs, LLC, 486 B.R. at 303-04 ....19, 20, 21, 50

John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.,
987 F.2d 154 (3d Cir. 1993)...12, 40

In re Johns-Manville Corp.,
68 B.R. 618 (Bankr. S.D.N.Y. 1986)...42

In re Key3Media Grp., Inc.,
336 B.R. 87 (Bankr. D. Del. 2005), *aff'd*, 2006 WL 2842462 (D. Del. 2006)........................22

In re Kreider,
No. 05-15018 (ELF), 2006 WL 3068834 (Bankr. E.D. Pa. Sept. 27, 2006) 37

In re Lapworth,
1998 WL 767456 (DWS) (Bankr. E.D. Pa. Nov. 2, 1998)...26

In re Lason, Inc.,
300 B.R. 227 (Bankr. D. Del. 2003) 33

In re Lernout & Hauspie Speech Prods., N.V.,
301 B.R. 651 (Bankr. D. Del. 2003) 42

In re Lisanti Foods, Inc.,
329 B.R. 491 (D.N.J. 2005), *aff'd*, 241 F. App'x 1 (3d Cir. 2007) 8, 31

In re Master Mortg. Inv. Fund, Inc.,
168 B.R. 930 (Bankr. W.D. Mo. 1994)....................19, 22

In re Metrocraft Pub. Serv., Inc.,
39 B.R. 567 (Bankr. N.D. Ga. 1984) 9

Momentum Mfg. Corp. v. Emp. Creditors Comm. (*In re Momentum Mfg. Corp.*),
25 F.3d 1132 (2d Cir. 1994)....................27

In re Monnier Bros.,
755 F.2d 1336 (8th Cir. 1985)....................8

In re NII Holdings, Inc.,
288 B.R. 356 (Bankr. D. Del. 2002) 30

In re Nutritional Sourcing Corp.,
398 B.R. 816 (Bankr. D. Del. 2008) 11

Oneida Motor Freight, Inc. v. United Jersey Bank,
848 F.2d 414 (3d Cir. 1988)....................8

In re PC Liquidation Corp.,
383 B.R. 856 (E.D.N.Y. 2008) 8

In re Phoenix Petroleum, Co.,
278 B.R. 385 (Bankr. E.D. Pa. 2001) 8, 9

In re Physiotherapy Holdings, Inc.,
No. 13¬12965 (KG) (Bankr. D. Del. Dec. 23, 2013) 45

In re Prussia Assocs.,
322 B.R. 572 (Bankr. E.D. Pa. 2005) 37

PWS Holding Corp., 228 F.3d at 242 29

In re River Village Assoc.,
181 B.R. 795 (E.D. Pa. 1995) 8

In re S&W Enter.,
37 B.R. 153 (Bankr. N.D. Ill. 1984) 11

In re Scioto Valley Mortg. Co.,
88 B.R. 168 (Bankr. S.D. Ohio 1988)....................9

In re Sea Garden Motel & Apartments,
195 B.R. 294 (D. N.J. 1996) 37

In re Source Home Entm't, LLC,
No. 14-11553 (KG) (Bankr. D. Del, Feb. 20, 2015)....................45

In re Spansion, Inc.,
426 B.R. 114 (Bankr. D. Del. 2010) 18, 20

In re Spiegel, Inc.,
No. 03-11540 (BRL), 2005 WL 1278094 (Bankr. S.D.N.Y. May 25, 2005) 16

In re Stoneway Cap. Ltd.,
No. 21-10646 (JLG) (Bankr. S.D.N.Y. May 12, 2022) ECF No. 594 16

In re Swedeland Dev. Grp., Inc.,
16 F.3d 552 (3d Cir. 1994)....................48

Tex. Extrusion Corp. v. Lockheed Corp. (*In re Tex. Extrusion Corp.*),
844 F.2d 1142 (5th Cir. 1988) 8

In re Tribune Co.,
464 B.R. 126 (Bankr. D. Del. 2011), *overruled in part on other grounds*, 464 B.R. 208 (Bankr. D. Del. 2011) 20, 37

In re U.S. Brass Corp.,
194 B.R. 420 (Bankr. E.D. Tex. 1996) 9

In re Unichem Corp.,
72 B.R. 95 (Bankr. N.D. Ill. 1987) 8

In re VJGJ, Inc.,
Case No. 21-11332 (BLS) (July 13, 2022) 50

In re W.R. Grace & Co.,
475 B.R. 34 (D. Del. 2012)....................30

In re W.R. Grace & Co.,
729 F.3d 311 (3d Cir. 2013)....................12

In re Wash. Mut., Inc.,
442 B.R. 314 (Bankr. D. Del. 2011) 18, 19, 22, 24

In re World Health Alts., Inc.,
344 B.R. 291 (Bankr. D. Del. 2006) 18

In re Zenith Elec. Corp.,
241 B.R. 92 (Bankr. D. Del. 1999) 19, 20, 22

Zenith Elecs. Corp., 241 B.R. at 110 20

STATUTES

11 U.S.C. 1129(a)(11) 50

11 U.S.C.
Ch. 7 .... *passim*
Ch. 11 .... *passim*
§ 101(31) 32
§§ 101-1532 1
11 U.S.C § 364 48

§ 503(b) 35
§ 506(c) 48
§ 507(a)(1) 35
§§ 507(a)(1)–(7) 35
§ 507(a)(2) 34, 39
§ 507(a)(4) 35
§ 507(a)(7) 35
§ 507(a)(8) 35
§ 1114 39
§ 1122 ..... 11, 12, 13, 43
§ 1122(a) 11, 12
§ 1122(b) 11
§ 1123 ..... 11, 18
§ 1123(a) 13
§ 1123(a)(1) 13
§ 1123(a)(2) 14
§ 1123(a)(3) 14
§ 1123(a)(4) 14
§ 1123(a)(5) 15
§ 1123(a)(6) 15
§ 1123(a)(7) 16
§ 1123(b) 16, 18, 25
§ 1123(b)(1) 17
§ 1123(b)(2) 17, 18
§ 1123(b)(3)(A) 18, 22
§ 1123(b)(5) 25
§ 1123(b)(6) 17, 25
§ 1123(d) 25, 26
§ 1125 ..... *passim*
§ 1125(a) 28
§ 1125(a)(1) 7, 8
§ 1125(b) 27, 28
§ 1125(c) 28
§ 1126 ..... *passim*
§ 1126(c) 29
§ 1126(e) 29
§ 1127 44
§ 1127(b) 44
§ 1127(c) 44
§ 1129 ..... 1, 10, 11
§ 1129(a) 40, 41
§ 1129(a)(1) 11
§ 1129(a)(2) 26, 29
§ 1129(a)(3) 29, 30
§ 1129(a)(4) 30, 31
§ 1129(a)(5) 31, 32

§ 1129(a)(5)(A)(i) 31
§ 1129(a)(5)(A)(ii) 31
§ 1129(a)(6) 32
§ 1129(a)(7) 32, 33
§ 1129(a)(8) 34, 36, 40, 41
§ 1129(a)(9) 34
§ 1129(a)(9) 35
§ 1129(a)(9)(A) 34, 35
§ 1129(a)(9)(B) 35, 36
§ 1129(a)(9)(C) 35, 36
§ 1129(a)(10) 34, 36
§ 1129(a)(11) 37, 38, 50
§ 1129(a)(12) 39
§ 1129(a)(13) 39
§ 1129(a)(14) 39, 40
§ 1129(a)(16) 39, 40
§ 1129(b) 34, 40, 41, 42
§ 1129(b)(1) 40, 41, 42
§ 1129(b)(2)(B) 41
§ 1129(d) 43
§ 1129(e) 43
§ 1145 1
§ 1146 1

United States Code title 11 1

United States Code title 28 section 1930 39

Bankruptcy Code Section 364(e) 48

Bankruptcy Code section 365(f) 45

Bankruptcy Code sections 1107(a) and 1108 3

Bankruptcy Code section 1126(f) 28

Bankruptcy Code section 1126(g) 28

Bankruptcy Code Section 1127(a) 43

Bankruptcy Code Section 1129(a)(9) 34, 35, 36

Bankruptcy Code section 1129(a)(15) 40

Securities Act of 1933 section 5 43

RULES

Bankr. R. 3017 27

Bankr. R. 3018 27

Bankr. R. 3019 ....43, 44

Bankr. R. 3020 45

Bankr. R. 6004 45

Bankr. R. 6006 45

Bankr. R. 9019 18

Bankruptcy Rule 3020(e) 44

Bankruptcy Rules 6004(h) and 6006(d) 45

Federal Rules of Bankruptcy Procedure Rule 1015(b) 3

OTHER AUTHORITIES

H.R. Rep. No. 95-595, reprinted in 1978 U.S.C. C.A.N. 5963 (1977) 11

H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) 27

S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 8

S. Rep. No. 95-989, reprinted in 1978 U.S.C. C.A.N. 5787 (1978) 11

S. Rep. No. 989, 95th Cong., 2d Sess. (1978) 27

AGDP Holding Inc. and its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases, submit this memorandum of law (this "Memorandum") in support of final approval of the *Disclosure Statement for the Joint Chapter 11 Plan of Liquidation for AGDP Holding Inc. and Its Affiliated Debtors* [D.I. 396] (the "Disclosure Statement") and confirmation of the *Joint Chapter 11 Plan of Liquidation for AGDP Holding Inc. and Its Affiliated Debtors*, filed contemporaneously herewith (as modified, amended, or supplemented from time to time hereafter, the "Plan"),[1] pursuant to sections 1125, 1126, 1129, 1145, and 1146 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and respectfully represent as follows:

PRELIMINARY STATEMENT

1. After successfully completing a value-maximizing sale process that resulted in the Sale to the Purchaser and a Global Settlement that among other things, provides significant consideration to pay General Unsecured Claims, the Debtors seek confirmation of their widely supported Plan on a largely uncontested basis.

2. These cases were not always marked by consensus. As this Court is aware, when the Debtors filed for chapter 11 in August, the Committee did not consent to the Debtors' proposed DIP financing or use of cash collateral. It was only through extensive, good faith negotiations that the Debtors achieved a resolution with the Committee and the Prepetition Term Loan Lenders, authorizing the proposed DIP financing facility and use of cash collateral and obtaining support for the proposed sale to AG Acquisition 1 LLC ("AG Acquisition" or the "Purchaser"). Following a sale process run in accordance with the Bidding Procedures Order, the Court approved the sale

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

to AG Acquisition on October 24, 2025. Since then, the Debtors have been working closely with AG Acquisition to successfully transition the Debtors' operations. In parallel, the Debtors worked diligently with all of their key stakeholders to develop and build consensus around the Plan. The Plan would allow the Debtors to exit chapter 11 in an orderly manner, reconcile claims, and fund distributions pursuant to the Plan.

3. Through the Plan, the Debtors seek to distribute their remaining assets to their creditors in accordance with the priority scheme set forth in the Bankruptcy Code, conclude the transition services, and conduct an orderly wind down of their affairs. The Plan—which was accepted by the Classes entitled to vote on the Plan—Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims)—provides the best possible outcome for creditors. It is the product of continuous efforts of the Debtors' directors, officers, and professionals, in consultation with the Committee, to maximize value for the benefit of the Estates.

4. The Plan establishes a Liquidating Trust for the benefit of Holders of Allowed General Unsecured Claims. In addition, the Plan provides for the payment of allowed administrative, priority, and secured claims and provides for the appointment of the Plan Administrator and the Liquidating Trustee to administer the Plan.

5. The Debtors received numerous comments from the U.S. Trustee, the Committee and their lenders as they proposed and have further revised/formulated the Plan. Through those efforts, the Debtors have managed to resolve the concerns of all of the parties in the Chapter 11 Cases, aside from the issues raised in the TVT Objections (as hereinafter defined). While the TVT Objections dress up their concerns in multiple forms, their objection essentially boils down to a misplaced belief that the plan feasibility requirement of the Bankruptcy Code requires not just a general showing of the ability to consummate and administer the Plan, but rather a specific reserve

related to all conceivable (and in their case heavily disputed) claims that could arise. As will be discussed further herein, this is not the requirement and the Plan is feasible even if they ultimately establish an entitlement to the claims being addressed in the pending adversary proceeding titled *AGDP Holdings Inc v. TVT Capital Source LLC, Insta Funding LLC and Pinnacle Business Funding LLC*, Adv. Pro. No. 25-51803 (MFW) (the "TVT Adversary Proceeding").

6. The Debtors now submit (i) this Memorandum, and (ii) *the Declaration of Jeffrey Gasbarra in Support of Approval of the Disclosure Statement on a Final Basis and Confirmation of the Joint Chapter 11 Plan of Liquidation for AGDP Holding Inc. and Its Affiliated Debtors* (the "Gasbarra Declaration"), filed contemporaneously herewith, in support of the final approval of the Disclosure Statement and confirmation of the Plan.

7. For the reasons set forth herein and in the Gasbarra Declaration, the Debtors submit that the Disclosure Statement and the Plan satisfy all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and non-bankruptcy law, and respectfully request that the Court approve the Disclosure Statement on a final basis and confirm the Plan.

I. BACKGROUND

A. General Background

8. On August 4, 2025 (the "Petition Date"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

9. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. On August 18, 2025, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") [D.I. 73]. No other trustee or examiner has been appointed in the Chapter 11 Cases.

11. Additional factual background regarding the Debtors' businesses, corporate and capital structure, and the events leading up to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Gary Richards in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 13], which is incorporated herein by reference.

B. The Plan and Disclosure Statement

12. On October 25, 2025, the Debtors filed the Joint Chapter 11 Plan of Liquidation for AGDP Holding Inc. and Its Affiliated Debtors [D.I. 317] and the Disclosure Statement for the Joint Chapter 11 Plan of Liquidation for AGDP Holding Inc. and Its Affiliated Debtors [D.I. 318] (the "Initial Disclosure Statement"), along with a motion [D.I. 319] (the "Disclosure Statement Motion") seeking approval of the Initial Disclosure Statement on an interim basis for solicitation purposes only and approval of related solicitation and voting procedures.

13. On November 4, 2025, the Court entered an order [D.I. 400] approving the Disclosure Statement Motion which, among other things: (a) approved the Disclosure Statement on an interim basis; (b) approved the form of ballot, solicitation materials, and solicitation procedures set forth in the Disclosure Statement Motion; (c) established December 8, 2025 at 5:00 p.m. (prevailing Eastern Time) as the deadline for all Holders of Claims entitled to vote on the Plan to cast their ballots; (d) established December 8, 2025, at 5:00 p.m. (prevailing Eastern Time) as the deadline to object to final approval of the Disclosure Statement and confirmation of

the Plan (the "Objection Deadline"); and (e) fixed the date, time, and place for the Combined Hearing on final approval of the Disclosure Statement and confirmation of the Plan.

14. On or about November 7, 2025, the Debtors caused Kurtzman Carson Consultants, LLC d/b/a Verita Global (the "Notice and Claims Agent") to serve the Solicitation Packages and Combined Hearing Notice in accordance with the terms of the Disclosure Statement Order.[2] The Debtors caused the Publication Notice to be published in *The New York Times* (national edition) on November 10, 2025.[3]

15. On December 1, 2025, the Debtors filed the *Notice of Filing of Plan Supplement* [D.I. 459] (the "Plan Supplement"), and includes: (a) the Identity and Compensation of the Liquidating Trustee; (b) Liquidating Trust Agreement; (c) the Identity and Compensation of the Plan Administrator; (d) Plan Administrator Agreement; (e) Identity and Compensation of Insiders Employed or Retained by the Liquidating Trustee or the Post-Effective Date Debtors; and (f) Schedule of Assumed Executory Contracts and Unexpired Leases.

16. The Debtors intend to file an amended Plan prior to the Confirmation Hearing that will address certain responses received.

C. Plan Solicitation and Notification Process

17. In compliance with the Bankruptcy Code, the Debtors solicited votes on the Plan only from Holders of Claims in Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims).[4] The Debtors did not solicit votes from Holders of Claims and Interests in the remaining Classes set forth below because those Holders were ***not*** entitled to vote on the Plan:

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[2] *See Affidavit of Service* [D.I. 427].

[3] *See* Proof of Publication for the Combined Hearing Notice [D.I. 430].

[4] *See* 11 U.S.C. § 1126.

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

18. The voting results for Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims), as reflected in the Voting Report, filed contemporaneously herewith, are summarized as follows:

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 3 – Prepetition Deficiency Claims	$586,642,297.00 100%	1 100%	$0 0%	0 0%
Class 4 – General Unsecured Claims	$21,204,535.24 83.33%	40 82.63%	$4,457,352.22 16.67%	8 17.37%

19. As set forth above and in the Voting Report, Holders of Claims in Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims) (the "Voting Classes") voted to accept the Plan.

D. Informal Comments and the TVT Objections

20. The Debtors received informal comments to the Plan from the U.S. Trustee, all of which were resolved either informally or through the inclusion of language in the Confirmation Order or revisions to the Plan. The Plan revisions were limited to (i) the exculpation provision in Article IX.C, (ii) the release of liens provision in Article IX.F, (iii) the plan modification provision in Article XI.A, and (iii) the revocation of the Plan provision in Article XI.D. The Debtors submit that the revisions made to the Plan to resolve these informal comments do not negatively impact any parties and do not require additional disclosure or re-solicitation of the Plan.

21. Additionally, the TVT Parties filed objections [D.I. 524 & 525] (the "TVT Objections") to final approval of the Disclosure Statement and certain provisions of the Plan. The TVT Objections are addressed in Section II.U of this Memorandum. To the extent the TVT Objections remain pending as of the Combined Hearing, it should be overruled for the reasons discussed below.

II. ARGUMENT

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

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

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

> investor of the relevant class to make an informed judgment about the plan[.][5]

23. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan.[6] Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a chapter 11 plan.[7]

24. "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[8] Courts in the Third Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[9]

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[5] 11 U.S.C. § 1125(a)(1).

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

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

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

[9] *See, e.g.*, *In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) ("[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *Tex. Extrusion Corp. v. Lockheed Corp.* (*In re Tex. Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *Phoenix Petroleum Co.*, 278 B.R. at 393 (same); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate information' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court."); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005), *aff'd*, 241 F. App'x 1 (3d Cir. 2007) ("The information required will necessarily be governed by the circumstances of the case.").

25. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as: (a) the events that led to the filing of a bankruptcy petition; (b) the relationship of the debtor with its affiliates; (c) a description of the available assets and their value; (d) the company's anticipated future; (e) the source of information stated in the disclosure statement; (f) the debtor's condition while in chapter 11; (g) claims asserted against the debtor; (h) the estimated return to creditors under a chapter 7 liquidation; (i) the future management of the debtor; (j) the chapter 11 plan or a summary thereof; (k) financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan; (l) information relevant to the risks posed to creditors under the plan; (m) the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers; (n) litigation likely to arise in a non-bankruptcy context; and (o) tax attributes of the debtor.[10]

26. The Disclosure Statement provides "adequate information" to allow Holders of Claims in the Voting Classes to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including, among other things: (a) the major events that occurred prior to, and during the course of, the Chapter 11 Cases; (b) a summary of the classification and treatment of all Classes of Claims and Interests under the Plan; (c) an estimate of distributions to certain Holders of Allowed Claims pursuant to the Plan; (d) the provisions governing distributions under the Plan; (e) the means for implementation of the Plan;

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

(f) an analysis as to the distributions creditors would receive from the Estates in a chapter 7 liquidation; (g) information regarding the Post-Effective Date Debtors, including a summary of the Debtors' assets that will be transferred to the Post-Effective Date Debtors on the Effective Date (h) information regarding the Liquidating Trust, including a summary of the Debtors' assets that will be transferred to the Liquidating Trust on the Effective Date; (i) information regarding the Plan Administrator and the Liquidating Trustee, including their respective rights, powers, duties, and nature of compensation; (j) information regarding certain risk factors that could affect recoveries under the Plan or the implementation of the Plan; (k) the right and ability of the Liquidating Trustee to assert, compromise or dispose of the certain causes of action; (l) the tax consequences of the Plan; (m) conspicuous language regarding the Debtor Release, the Releasing Party Release, exculpation and limitation of liabilities, and the injunction to be entered by the Court in connection with the Plan; and (n) such other and further information that informs Holders of Claims in the Voting Classes arising from and relating to the Plan.[11]

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

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

28. To confirm the Plan, the Court must find that the Debtors have satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[12] As set forth herein, the Plan fully complies with all relevant sections of the Bankruptcy Code—including

[11] *See* Gasbarra Decl. ¶ 8.

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

sections 1122, 1123, 1125, 1126, and 1129—as well as the Bankruptcy Rules and applicable non-bankruptcy law.

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

29. Under section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan, respectively.[13] As explained below, the Plan complies with the requirements of sections 1122, 1123, and 1129 of the Bankruptcy Code, as well as other applicable provisions.

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

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

> Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to other claims or interests of such class.[14]

31. Although section 1122(a) of the Bankruptcy Code requires that all claims or interests in a class be substantially similar to all other claims or interests in the class, it "does not expressly require that all substantially similar claims or interests be placed in the same class."[15]

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

[14] 11 U.S.C. § 1122(a).

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

Courts in this jurisdiction, as well as others, frequently recognize the significant flexibility that plan proponents have to place similar claims in different classes, provided there is a legitimate business justification to do so.[16] Grounds justifying separate classification, including separate classification of unsecured claims, include: (a) where members of a class possess different legal rights; and (b) where there is a good business reason for separate classification.[17]

32. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places the Claims and Interests into seven (7) separate Classes, with Claims and Interests in each Class differing from the Claims and Interests in each other Class in a legal or factual manner, or based on other relevant criteria.[18] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

- Class 1: Secured Claims
- Class 2: Other Priority Claims
- Class 3: Prepetition Deficiency Claims
- Class 4: General Unsecured Claims
- Class 5: Subordinated Claims
- Class 6: Intercompany Claims
- Class 7: Interests

[16] *See, e.g.*, *In re W.R. Grace & Co.*, 729 F.3d 311, 326 (3d Cir. 2013) (citing *In re AOV Indus., Inc.*, 792 F.2d 1140, 1150 (D.C. Cir. 1986)) (concluding that when analyzing whether claims are "substantially similar," the proper focus is on "the legal character of the claim as it relates to the assets of the debtor"); *Armstrong World Indus.*, 348 B.R. at 159 ("A classification structure satisfies section 1122 of the Bankruptcy Code when a reasonable basis exists for the structure, and the claims or interests within each particular class are substantially similar.") (citations omitted); *see also In re Barakat*, 99 F.3d 1520, 1526 (9th Cir. 1996) (separate classification of similar claims requires a "legitimate business or economic justification"); *Boston Post Road Ltd. P'ship v. F.D.I.C.* (*In re Boston Post Road Ltd. P'ship*), 21 F.3d 477, 483 (2nd Cir. 1994) ("[T]he debtor must adduce credible proof of a legitimate reason for separate classification of similar claims."); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 246–47 (Bankr. S.D.N.Y. 2007) ("Although section 1122(a), by its terms, doesn't require that all similarly-situated claims be classified together, caselaw has made clear that separate classification of substantially similar unsecured claims is permissible only when there is a reasonable basis for doing so or when the decision to separately classify 'does not offend one's sensibility of due process and fair play.'") (quoting *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 703 (Bankr. S.D.N.Y. 1993)).

[17] *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that, as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper).

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

33. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class.[19] In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes set forth in the Plan, and the classification scheme was not implemented for any improper purpose and does not unfairly discriminate between or among the Holders of Claims or Interests.[20] Specifically, the Plan separately classifies the Claims because each Holder of such Claim may hold (or may have held at the time the Plan was filed) rights in the Estates that were legally dissimilar to the Claims in other Classes.[21] The Debtors thus submit that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code.

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

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

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

35. For the reasons set forth above, Article III of the Plan properly designates classes of Claims and Interests and thus satisfies the requirements of section 1123(a)(1) of the Bankruptcy Code.[22]

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[19] *See* Gasbarra Decl. ¶ 10.

[20] *Id.*

[21] *Id.*

[22] *Id*.

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

36. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan."[23] The Plan meets this requirement by identifying in Article III each Class that is Unimpaired.[24]

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

37. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan."[25] The Plan meets this requirement by setting forth in Article III the treatment of each Class that is Impaired.[26]

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

38. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[27] The Plan meets this requirement because holders of Allowed Claims or Interests will receive the same rights and treatment as other holders of Allowed Claims or Interests within such holders' respective Class.[28]

[23] 11 U.S.C. § 1123(a)(2).

[24] *See* Plan, Art. III; Gasbarra Decl. ¶ 11(a).

[25] 11 U.S.C. § 1123(a)(3).

[26] *See* Plan, Art. III; Gasbarra Decl. ¶ 11(b).

[27] 11 U.S.C. § 1123(a)(4).

[28] *See* Plan, Art. III; Gasbarra Decl. ¶ 11(b).

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

39. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[29] The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provides for the means by which the Plan will be implemented.[30]

40. Among other things, the Plan provides for: (a) the appointment of the Plan Administrator to assist with or effectuate the transition of the Debtors' business and wind-down, dissolve or liquidate the Post-Effective Date Debtors; (b) the formation of the Liquidating Trust and the vesting of the Liquidating Trust Assets therein, and the appointment of the Liquidating Trustee; (c) the sources of consideration for Plan distributions; (d) the treatment of Executory Contracts and Insurance Policies; (e) the treatment of Claims and Interests; (f) the preservation and vesting of certain Retained Causes of Action in the Liquidating Trust; and (g) the taking of all necessary and appropriate actions by the Debtors to effectuate the transactions under and in connection with the Plan.[31] Accordingly, the Plan complies with section 1123(a)(5) of the Bankruptcy Code.

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

41. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities.[32] This provision of the

[29] 11 U.S.C. § 1123(a)(5).

[30] *See* Plan, Art. IV; Gasbarra Decl. ¶ 11(c).

[31] *See* Plan, Art. IV, V & VI.

[32] 11 U.S.C. § 1123(a)(6).

Bankruptcy Code does not apply to any of the Post-Effective Date Debtors because they will be wound down, dissolved or liquidated by the Plan Administrator pursuant to the Plan.[33]

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

42. Section 1123(a)(7) of the Bankruptcy Code requires that plan provisions with respect to the manner of selection of any director, officer, or trustee, or any other successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy."[34] In accordance with Article VI, Section E. of the Plan, as of the Effective Date, the existing board of directors of the Debtors shall be deemed to have resigned and the remaining officers of the Debtors terminated without any further action required. From and after the Effective Date, the Plan Administrator shall be authorized to act on behalf of the Estates, provided that the Plan Administrator shall have no duties other than as expressly set forth in the Plan, in the Confirmation Order, and in the Plan Administrator Agreement, as applicable. The identity of the Plan Administrator along with the nature of the Plan Administrator's compensation are disclosed in the Plan Supplement. The appointment of the Plan Administrator is consistent with the interests of creditors and with public policy.[35] Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

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

43. Section 1123(b) of the Bankruptcy Code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, section 1123(b) of the

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[33] *See In re Spiegel, Inc.*, No. 03-11540 (BRL), 2005 WL 1278094, at *5 (Bankr. S.D.N.Y. May 25, 2005) (finding 1123(a)(6) is satisfied when either a reorganized debtor's charter is amended or where the issuance of non-voting securities would be impossible because the debtors in question were being dissolved following the effective date of the plan); *see also In re Stoneway Cap. Ltd.*, No. 21-10646 (JLG) (Bankr. S.D.N.Y. May 12, 2022) ECF No. 594. *See also* Gasbarra Decl. ¶ 11(d).

[34] 11 U.S.C. § 1123(a)(7).

[35] *See* Gasbarra Decl. ¶ 11(e); Plan, Art. IV.1.

Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) modify or leave unaffected the rights of holders of secured or unsecured claims; (c) provide for the settlement or adjustment of claims against or interests in a debtor or its estate or the retention and enforcement by a debtor, trustee, or other representative of claims or interests; (d) provide for the assumption or rejection of executory contracts and unexpired leases; (e) provide for the sale of all or substantially all of the property of a debtor's estate, and the distribution of the proceeds of such sale among holders of claims or interests; or (f) "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[36]

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

44. The Plan satisfies the requirements of section 1123(b)(1) of the Bankruptcy Code because Article III impairs or leaves Unimpaired each Class of Claims and Interests.[37]

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

45. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the automatic rejection of the Debtors' Executory Contracts not previously assumed, assumed and assigned, or rejected pursuant to an order of the Court, other than any Executory Contracts that: (a) have been previously assumed by the Debtors by Final Order of the Bankruptcy Court, including the Bidding Procedures Order and Sale Order, or has been assumed by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (b) is the subject of a motion to assume pending as of the Effective Date; (c) is otherwise assumed pursuant to the terms of the Plan or the Asset Purchase

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[36] *See* U.S.C. § 1123(b)(1)–(6).

[37] Plan, Art. III; Gasbarra Decl. ¶ 12(a).

Agreement; and (d) is an Insurance Policy. The Debtors determined, in their sound business judgment, that all of their remaining Executory Contracts, other than those identified should be automatically rejected upon the Effective Date, as they do not provide any benefit to the Estates or to parties in interest as part of the Debtors' wind-down.[38] Accordingly, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.[39]

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

46. The Plan also includes certain releases, an exculpation provision, and an injunction provision. These discretionary provisions are proper because, among other things, they are supported by the Debtors and are consistent with applicable precedent.[40]

i. The Debtor Release Is Appropriate

47. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[41] Further, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[42] Article IX of the Plan provides for releases by the Debtors

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[38] *See* Gasbarra Decl. ¶ 12(b).

[39] *Id.*

[40] *Id.*

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

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

and their Estates, as of the Effective Date, of, among other things, certain claims, rights, and Causes of Action that the Debtors or their Estates may have against the Released Parties[43] (the "Debtor Release").

48. The Debtors believe the business judgment standard is the appropriate standard to apply to the Debtor Release; however, some courts in this district have also examined the following list of non-exclusive and disjunctive factors (the "*Zenith* Factors"):[44] (a) an identity of interest between the debtor and the third party; (b) substantial contribution by the non-debtor of assets to the reorganization; (c) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success; (d) an agreement by a substantial majority of creditors to support the injunction; (e) specifically if the impaired class or classes "overwhelmingly" votes to accept the plan; and (f) a provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction.[45] As a list of non-conjunctive factors, these factors provide a way of "weighing the equities of the particular

[43] "Released Party" means, collectively, "each of, and in each case in its capacity as such: (a) the Debtors' and the Committee's Related Parties solely in their capacity as such; (b) the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders; (c) the DIP Agent and the DIP Lenders; (d) the Related Parties of each of the parties identified in clause (b)-(c) of this definition; (e) the members of the Restructuring Committee of the Board of AGDP Holding Inc., Pamela Corrie, Hooman Yazhari, and Vikram Jindal; and (f) Gary Richards and Alec Ifshin; provided, however, that, except as to those specifically referenced in this definition of "Released Parties," the Debtors' other current or former directors and officers shall not be Released Parties with respect to the Retained Causes of Action listed in the Plan Supplement, which the Liquidating Trustee shall be entitled to pursue solely to the extent of any available insurance coverage for such Retained Causes of Action." Plan Art. I, Section 109.

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

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

case after a fact-specific review."[46] Notably, courts have approved releases where only one or two factors are present.[47]

49. Notably, here, the Debtor Release is limited and does not include any post-Effective Date obligation or liability of any Person or Entity under the Plan, the Asset Purchase Agreement, the Sale Order, the DIP Orders, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. Considering the foregoing limitations to the Debtor Release, each *Zenith* Factor supports the Debtor Release. There is an identity of interest between the Debtors and the Debtor Released Parties. Each of the Debtor Released Parties shares the common goals of resolving Claims and achieving fair and equitable distributions to creditors under the Plan. This unified interest in formulating and confirming the Plan establishes an identity of interest under applicable law.[48]

50. Moreover, with respect to certain of the releases—*e.g.*, those releasing the Debtors' current and former directors and officers—there is a clear identity of interest supporting the release because the Debtors owe certain indemnification obligations to such parties pursuant to the Debtors' governance documents, which would otherwise increase the Claims pool and delay

[46] *Indianapolis Downs, LLC*, 486 B.R. at 303.

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

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

distributions to Holders of Allowed Claims to the detriment of all parties in interest.[49] Thus, a lawsuit commenced by the Debtors (or derivatively on behalf of the Debtors) against certain individuals would effectively be a lawsuit against the Debtors themselves, except to the extent the lawsuit is instituted for the limited and sole purpose of triggering coverage under any applicable Insurance Policies.

51. In addition to the foregoing, the Debtors' current officers and directors engaged in the performance of roles related to the Debtors' chapter 11 process, which was beyond their compensated duties, including, among other things: (a) assisting the Debtors' professionals in the preparation of sale materials pre- and post-petition; (b) responding to due diligence inquiries; (c) assisting in the implementation of a successful sale of the Debtors' assets, including through abbreviated closing periods that required workloads at hours outside of normal working hours; (d) assisting in the maximization of value in such sale through support in negotiations; (e) actively participating in negotiations with the Debtors' lenders and other creditors; (f) actively engaging in numerous meetings in the Chapter 11 Cases that were outside of stated officer roles or duties in an effort to minimize professional costs and maximize value for the Estates; and (g) forbearing from new and additional professional and financial opportunities through the completion of the Debtors' ongoing Chapter 11 Cases.[50]

52. Third, the overwhelming support for the Plan by the Voting Classes is compelling evidence that the Debtor Release constitutes a valid exercise of the Debtors' business judgment that should be approved. Further, no Holder of a Claim or Interest has objected to the Plan or the Debtor Release included therein. This is a significant endorsement of the Debtor Release that the

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

[50] *See* Gasbarra Decl. ¶ 12(c).

Court should not overlook: it reinforces and affirms the Debtors' determination that the Debtor Release is a valid exercise of the Debtors' business judgment and is in the best interest of the Estates. There could be no better evidence as to the reasonableness and fairness of the Debtor Release than the support of those Holders of Claims most affected by a release of the Debtors' claims or Causes of Action against the Released Parties.[51]

53. Finally, the Plan provides substantial recoveries for Holders of Claims in Class 3 and contemplates potential recoveries for Holders of Claims in Class 4, the Voting Classes affected by the Debtor Release. The Debtors, together with the Released Parties, have worked diligently to preserve the Estates' limited resources and maximize recoveries for the benefit of all Holders of Allowed Claims. Accordingly, the Debtors submit that the Debtor Release is a sound exercise of their business judgment, satisfy the *Zenith* Factors, and should be approved under section 1123(b)(3)(A) of the Bankruptcy Code.

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

54. Article IX of the Plan provides for the release of each Released Party by the Releasing Parties from any and all claims and Causes of Action, as further provided in the Plan (the "Releasing Party Release"). Courts in this jurisdiction routinely approve such release provisions when, as here, they are consensual.[52]

55. In this case, all parties subject to the Releasing Party Release had ample opportunity to evaluate the Releasing Party Release. In addition, Holders of Claims or Interests who either

[51] *See Master Mortg. Inv. Fund, Inc.*, 168 B.R. at 938 (stating that creditor approval of a release is "the single most important factor" to determine whether a release is appropriate); *see also In re Key3Media Grp., Inc.*, 336 B.R. 87, 97–98 (Bankr. D. Del. 2005) (granting a settlement of estate causes of action over creditor's objection because, among other things, a majority of creditors approved of the settlement), *aff'd*, 2006 WL 2842462 (D. Del. 2006).

[52] *See, e.g.*, *Wash. Mut.*, 442 B.R. at 352 (holding that third-party releases must be based on consent of the releasing party by contract or the mechanism of voting in favor of the Plan).

voted to reject, abstained from voting or were presumed to accept or deemed to reject the Plan granted the Releasing Party Release only if they affirmatively consented to provide it through their selections on the Opt-In Election. Moreover, Holders of Claims who voted to accept the Plan were still given the opportunity to affirmatively Opt-Out of granting the Releasing Party Release on the ballot.[53] These parties were additionally provided (a) the Combined Hearing Notice that included the deadline to object to confirmation of the Plan, (b) instructions for accessing the Disclosure Statement, the Plan, and the Solicitation Procedures Order; (c) a prepaid, pre-addressed return envelope; and (d) an Opt-In Release Election Form. Moreover, the Disclosure Statement, the Combined Hearing Notice, and the ballots provided recipients with timely, sufficient, appropriate, and adequate notice of the Releasing Party Release.[54]

56. Because the Releasing Party Release is wholly consensual, the *Purdue* decision governing non-consensual third-party releases is inapplicable.[55] Accordingly, the Releasing Party Release, which is consistent with established Third Circuit law, should be approved.

iii. The Exculpation Provision Is Appropriate

57. Article IX of the Plan provides for the exculpation of the Exculpated Parties (the "Exculpation Provision").[56] The Exculpation Provision is fair and appropriate under both applicable law[57] and the facts and circumstances of the Chapter 11 Cases. The Exculpation

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[53] *See* Gasbarra Decl. ¶ 12(c).

[54] *See* Disclosure Statement § XI.B.10.; Disclosure Statement Order, Ex. 1.

[55] *Harrington v. Purdue Pharma, L.P.,* 603 U.S. 204, 144 S. Ct. 2071, 2082-88 (2024).

[56] "Exculpated Party" or "Exculpated Parties" means, collectively, in each case in its capacity as such, (a) the Debtors; (b) the Estates; (c) the Committee and its members; (d) the Retained Professionals; and (e) each of the preceding parties' respective Related Parties, in each case, who served as a fiduciary of the Debtors' Estates at any time between the Petition Date and the Effective Date of this Plan.

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

Provision is limited and does not exculpate acts or omissions that constitute fraud, willful misconduct, or gross negligence.[58] The Debtors believe that the Exculpation Provision is important because the Exculpated Parties have participated in the Chapter 11 Cases in good faith, and such provision is necessary to protect them from collateral attacks related to any good faith acts or omissions in connection with, or related to, among other things, the Chapter 11 Cases and the Plan.[59] Accordingly, the Debtors believe that the Exculpation Provision is consistent with applicable law and should be approved.

iv. The Injunction Provision Is Appropriate

58. The injunction provision set forth in Article IX of the Plan merely protects property distributed under the Plan and implements the Plan's release and exculpation provisions, in part, by permanently enjoining all entities from commencing or maintaining any action against the Debtors, the Exculpated Parties, or the Released Parties, other than the Retained Causes of Action, on account of or in connection with or with respect to any such claims or interests released or subject to exculpation (the "Injunction Provision"). Thus, the Injunction Provision is a key provision of the Plan because it enforces the release and exculpation provisions that are centrally important to the Plan.[60] As such, to the extent the Court finds that the exculpation and release provisions are appropriate, the Debtors respectfully submit that the Injunction Provision must also be appropriate. Moreover, the Injunction Provision is narrowly tailored to achieve its purpose. Thus, the Injunction Provision should be approved.

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

[59] *See* Gasbarra Decl. ¶ 12(c).

[60] *Id*.

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

59. The Retained Causes of Action set forth in the Plan and Plan Supplement, which will vest in the Litigation Trust on the Effective Date, are essential to the Plan and appropriate under the facts and circumstances of the Chapter 11 Cases. Accordingly, the retention of the Retained Causes of Action should be approved.

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

60. The Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.[61] Article III of the Plan modifies or leaves unaffected, as is applicable, the rights of certain Holders of Claims, as permitted by section 1123(b)(5) of the Bankruptcy Code.[62] Additionally, the other discretionary provisions in the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.[63] Accordingly, the Plan satisfies the requirements of sections 1123(b)(5) and (b)(6) of the Bankruptcy Code, and no party has asserted otherwise.

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

61. Section 1123(d) of the Bankruptcy Code provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable non-bankruptcy law."[64]

62. The Plan complies with section 1123(d) of the Bankruptcy Code. Article V of the Plan provides for the automatic rejection of the Debtors' Executory Contracts not previously

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[61] 11 U.S.C. § 1123(b)(5).

[62] *See* Gasbarra Decl. ¶ 12(d).

[63] *Id.* ¶ 12(e).

[64] *See* 11 U.S.C. § 1123(d).

assumed, assumed and assigned, or rejected pursuant to an order of the Court, other than any Executory Contract that: (a) has been previously assumed by the Debtors by Final Order of the Bankruptcy Court, including the Bidding Procedures Order and Sale Order, or has been assumed by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (b) is the subject of a motion to assume pending as of the Effective Date; (c) is otherwise assumed pursuant to the terms of the Plan or the Asset Purchase Agreement; and (d) is an Insurance Policy. Any Executory Contract Assumed pursuant to the Plan will be treated in accordance with section 1123(d) of the Bankruptcy Code. Further, the Debtors' determination regarding the assumption and rejection of Executory Contracts are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest in the Chapter 11 Cases.[65]

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

63. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires the plan proponent to comply with the applicable provisions of the Bankruptcy Code.[66] The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code.[67] As set forth below,

[65] *See* Gasbarra Decl. ¶ 12.

[66] *See* 11 U.S.C. § 1129(a)(2).

[67] *See In re Lapworth*, 1998 WL 767456, at *3 (DWS) (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); *In re Aleris Int'l, Inc.*, 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) ("[S]ection 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the solicitation and disclosure requirements under sections 1125 and 1126 of the Bankruptcy Code."); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

the Debtors have complied with these provisions, including sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan through their Notice and Claims Agent in accordance with the Disclosure Statement Order.[68]

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

64. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[69] Section 1125 ensures that parties in interest are fully informed regarding the debtor's condition so that they may make an informed decision whether to approve or reject the plan.[70]

65. As set forth above, section 1125 is satisfied here. Before the Debtors solicited votes on the Plan, the Court approved the Disclosure Statement on an interim basis.[71] The Court also approved the contents of the solicitation materials provided to Holders of Claims entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, and the relevant dates for voting on and objecting to the Plan.[72] As stated in the Gasbarra Declaration, the Debtors, through the Notice and Claims Agent, complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the

[68] *See* Gasbarra Dec. ¶ 13.

[69] 11 U.S.C. § 1125(b).

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

[71] *See generally* Disclosure Statement Order.

[72] *Id*.

Bankruptcy Code. The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. Here, the Debtors caused the Disclosure Statement to be transmitted to all parties entitled to vote on the Plan.

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

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

67. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.[73] The Debtors did not solicit votes on the Plan from Class 1 (Secured Claims) and Class 2 (Other Priority Claims) as such Classes are Unimpaired under the Plan (the "Unimpaired Classes").[74] Pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims in the Unimpaired Classes are conclusively presumed to have accepted the Plan and, therefore, were not entitled to vote on the Plan. The Debtors also did not solicit votes from Class 5 (Subordinated Claims), Class 6 (Intercompany Claims), and Class 7 (Interests) as such Classes are Impaired under the Plan and not expected to receive any recovery on account of their Claims or Interests (the "Deemed Rejecting Classes").[75] Pursuant to section 1126(g) of the Bankruptcy Code, holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan and, therefore, were not entitled to vote on the Plan. Class 5 (Subordinated Claims), Class 6 (Intercompany Claims), and Class 7 (Interests) are either

[73] *See* 11 U.S.C. § 1126.

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

[75] *Id.*

Impaired and deemed to reject the Plan or Unimpaired and presumed to accept the Plan and, therefore, were not entitled to vote on the Plan.

68. Accordingly, the Debtors solicited votes only from the Voting Classes, which consist of the Holders of Allowed Claims in Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims), because these Classes are Impaired and entitled to receive a distribution under the Plan.[76] With respect to the Voting Classes of Claims, section 1126(c) of the Bankruptcy Code provides that:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.[77]

69. The Voting Report, summarized *supra*, reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code. Based on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

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

70. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." Where a plan satisfies the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code is satisfied.[78] To determine whether a plan seeks

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[76] *See* Gasbarra Decl. ¶ 13.

[77] 11 U.S.C. § 1126(c).

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

relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[79]

71. The record is clear that the Plan was developed and proposed with honesty, good intentions, and with the goal of maximizing stakeholder recoveries. Throughout the Chapter 11 Cases, the Debtors, their directors, and their management team have upheld their fiduciary duties to stakeholders and protected the interests of all constituents. To that end, the Debtors have completed a value maximizing going concern sale to AG Acquisition that has already generated substantial creditor recoveries. The terms of both the sale transaction and the Plan—which is designed to streamline further distributions and facilitate continued transition services and an orderly wind down of the estates for the benefit of all creditors—were negotiated among the Debtors' key stakeholders, including the Committee, and the Prepetition Term Loan Lenders. The Plan facilitates transactions that have and will continue to provide greater value to the Debtors' stakeholders compared to the alternative of a chapter 7 liquidation.[80] Importantly, the Plan is supported by both Voting Classes. Accordingly, the Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code.

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

72. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable. Courts have construed this section to

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

[80] *See* Gasbarra Decl. ¶ 14.

require that all payments of professional fees paid out of estate assets be subject to review and approval by the Court as to their reasonableness.[81]

73. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code.[82] All payments made or to be made by the Debtors for services or for costs or expenses in connection with the Chapter 11 Cases prior to the Confirmation Date, including all Professional Claims, have been approved by, or are subject to approval of, the Court.[83] Article II of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed no later than forty-five (45) days after the Effective Date for determination by the Court, after notice and a hearing, in accordance with the procedures established by the Court except as such procedures have been otherwise modified by the Plan.[84] Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code, and no party has asserted otherwise.

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

74. The Bankruptcy Code requires the plan proponent to disclose the affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.[85] Section 1129(a)(5)(A)(ii) further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[86] In addition, section 1129(a)(5)(B) also requires a plan proponent to disclose

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

[82] *See* Gasbarra Decl. ¶ 15.

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

[84] *Id.*

[85] 11 U.S.C. § 1129(a)(5)(A)(i).

[86] *Id.* § 1129(a)(5)(A)(ii).

the identity of any "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the nature of any compensation for such insider.[87]

75. Article IV, Section E of the Plan provides for the resignation of the Debtors' directors and officers and the termination of the Debtors' remaining employees on the Effective Date. From and after the Effective Date, the Plan Administrator will be authorized to act on behalf of the Estates. The identities of the Plan Administrator and the Liquidating Trustee, along with the nature of the compensation of the Plan Administrator and the Liquidating Trustee, were disclosed in the Plan Supplement. Accordingly, the requirements of section 1129(a)(5) of the Bankruptcy Code have been satisfied.

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

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

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

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

> With respect to each impaired class of claims or interests—
>
> (A) each holder of a claim or interest of such class—
> (i) has accepted the plan; or
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that

[87] *Id.* § 1129(a)(5)(B).

> is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date . . . .

78. The best interests test applies to individual dissenting holders of impaired claims and interests rather than classes, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's chapter 11 plan.[88] As section 1129(a)(7) of the Bankruptcy Code makes clear, the best interests test applies only to holders of non-accepting impaired claims or interests, who must receive at least as much under a plan as they would receive in a chapter 7 liquidation.[89]

79. Here, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test. As set forth in the Gasbarra Declaration,[90] the Debtors, with the assistance of their legal and financial advisors, including M3, prepared an unaudited liquidation analysis (the "Liquidation Analysis"), which is attached as Exhibit B to the Disclosure Statement.

80. The Liquidation Analysis compares the projected range of recoveries that would result from the liquidation of the Debtors in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to holders of allowed Claims and Interests under the Plan.[91] As illustrated in the Liquidation Analysis, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code, because—due to higher anticipated costs to the estates in a hypothetical chapter 7 case as

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

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

[90] *See generally* Gasbarra Decl.

[91] *See* Gasbarra Decl. ¶¶ 20-1.

compared to under the Plan in the Chapter 11 Cases—all holders of impaired Claims and Interests will receive property with a value as of the Effective Date that is not less than the value such holders would receive in a liquidation under chapter 7.[92] Moreover, it is notable that the Committee, who represents the interests of Holders of General Unsecured Claims, supports the Plan.[93]

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

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

82. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. Holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan and, thus, were not entitled to vote. Consequently, while the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to the Deemed Rejecting Classes, the Plan is confirmable nonetheless because it satisfies sections 1129(a)(10)[94] and 1129(b) of the Bankruptcy Code, as discussed below.[95]

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

83. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments. In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—

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

[93] *See* Gasbarra Decl. ¶ 22.

[94] *See id.* ¶ 26.

[95] *See id.* ¶ 31.

administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan), or cash of a value equal to the allowed amount of such claim on the effective date of the plan (if such class has not accepted the plan). Finally, section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim.[96]

84. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code.[97] *First*, Article II of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because it provides that each Holder of an Allowed Administrative Claim shall receive payment as follows: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (c) if the Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed

[96] 11 U.S.C. §§ 507(a)(1)–(7), 1129(a)(9).

[97] *See* Gasbarra Decl. ¶ 25.

Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Post-Effective Date Debtors, as applicable; or (e) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

85. *Second*, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because no holders of the types of Claims specified by section 1129(a)(9)(B) are Impaired under the Plan and such Claims have been paid in the ordinary course.

86. *Third*, Article IV of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides that Holders of Allowed Priority Tax Claims will be treated in accordance with the terms set forth in Section 1129(a)(9)(C), except to the extent a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment. The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.

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

87. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan. Class 3 (Prepetition Deficiency Claims) and Class 4 (General Unsecured Claims), which are Impaired, voted to accept the Plan independent of any insiders' votes.[98] Thus, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.[99]

[98] *See* Gasbarra Decl. ¶ 26.

[99] *See id*.

N. The Plan is Feasible in Compliance with Section 1129(a)(11) of the Bankruptcy Code[100]

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

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.[101]

89. The feasibility test set forth in section 1129(a)(11) does not require the Debtors to "prove" that the Plan will succeed. The Debtors need only demonstrate that the Plan has "a reasonable likelihood of success" or a "reasonable probability" that the provisions of the Plan may be performed.[102] This imposes a relatively low threshold of proof.[103]

90. The purpose of the feasibility test under section 1129(a)(11) is to "prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation."[104] The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.[105] In the context of liquidating plans, bankruptcy courts have found that feasibility is established where a debtor has "sufficient resources" to meet its obligations under the plan, including its "obligations to pay for

[100] The TVT Objections are addressed in Section II.U below.

[101] 11 U.S.C. § 1129(a)(11).

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

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

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

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

the costs of administering and fully consummating the plan and closing the chapter 11 cases."[106] Other courts have said that, to demonstrate that a liquidating plan is feasible, a plan proponent need only show that "the successful performance of [the plan's] terms is not dependent or contingent upon any future, uncertain event."[107]

91. The Plan is feasible.[108] It satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code by providing for a clear path to emergence from the Chapter 11 Cases and the ability of the Debtors to satisfy their obligations under the Plan. The Debtors project that the distributable value of the Estates will be sufficient to satisfy all Priority Tax and Other Priority Claims, Allowed Administrative Claims, Statutory Fees, and may provide further recoveries to Class 4 (General Unsecured Claims) consistent with the Plan and the Confirmation Order. As explained in the Gasbarra Declaration, the Plan provides sufficient funding for the Plan Administrator to implement the Plan, make distributions to creditors and wind down the Post Effective Date Debtors. In addition, the Plan sufficiently funds the Liquidating Trust.[109] Moreover, payments under the Plan are not dependent or contingent upon any future or uncertain event. Accordingly, there is a reasonable assurance that the Plan is workable and has a reasonable likelihood of success, satisfying the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

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

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

[108] *See* Gasbarra Decl. ¶¶ 27-8.

[109] *See id.* ¶ 28.

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

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

93. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article II of the Plan provides that all fees due and payable pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtors on the Effective Date.[110] After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee when due and payable, and the Post-Effective Debtors and the Litigation Trustee shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of each applicable Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code in accordance with the provisions of Section 11.2 of the Plan. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

P. Sections 1129(a)(13)—1129 (a)(16) of the Bankruptcy Code Do Not Apply to the Plan

94. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. Since the Debtors do not provide any retiree benefits, the requirements of section 1129(a)(13) do not apply. Similarly, Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. Since the Debtors are not subject to any domestic

[110] *See* Gasbarra Decl. ¶ 29; Plan Art. XI.

support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply.[111] Likewise, section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. Because none of the Debtors are an "individual," the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply.[112] Finally, the Debtors are moneyed, business, or commercial corporations and therefore section 1129(a)(16) of the Bankruptcy Code, which provides that property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust be made in accordance with any applicable provisions of non-bankruptcy law, is not applicable to the Chapter 11 Cases.[113]

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

95. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[114]

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[111] *See* Gasbarra Decl. ¶ 30.

[112] *See id*.

[113] *See id*.

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

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

96. A plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the "absolute priority" rule.[115] This requires that an impaired rejecting class of claims or interests either be paid in full or that a class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.

97. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code.[116] Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code.

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

99. *Second*, the Plan is fair and equitable with respect to the Deemed Rejecting Classes. No Holder of any Claim or Interest that is junior to any Deemed Rejecting Class will receive or retain any property under the Plan on account of such junior Claim or Interest, and no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest.

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

[116] *See* Gasbarra Decl. ¶ 31.

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

100. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of a particular case to make the determination.[117] In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.[118] A threshold inquiry to assessing whether a proposed chapter 11 plan unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.

101. Here, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such class.[119] The Deemed Rejecting Classes are classified separately because they are legally distinct from the other Classes. Accordingly, the Holders in these Classes are not similarly situated to any other Claims in other

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

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

[119] *See* Gasbarra Decl. ¶¶ 32-3.

Classes. Therefore, the Plan does not discriminate unfairly with respect to any Impaired Classes of Claims or Interests, and the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

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

102. Section 1129(d) of the Bankruptcy Code provides that "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."[120] The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no Governmental Unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.[121]

103. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because the Chapter 11 Cases are not "small business cases."[122] Thus, the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements, and no party has asserted otherwise.

S. Modifications to the Plan

104. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. Further, when the proponent of a plan files the plan with modifications with the court, the plan as modified becomes the plan. Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who have previously accepted the plan if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor

[120] *See* 11 U.S.C. § 1129(d).

[121] *See* Gasbarra Decl. ¶ 35.

[122] *See* 11 U.S.C. § 1129(e).

or the interest of any equity security holder. Interpreting Bankruptcy Rule 3019, courts consistently have held that a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated.[123]

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

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

106. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."

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

Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

107. The Debtors submit that good cause exists for waiving and eliminating any stay of the Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the Confirmation Order will be effective immediately upon its entry.[124] As noted above, the Chapter 11 Cases and the related transactions have been negotiated and implemented in good faith and with a high degree of transparency and public dissemination of information.[125] Additionally, each day the Debtors remain in chapter 11, they incur significant administrative and professional costs that directly reduce the amount of distributable value for creditors.[126]

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

U. The TVT Objections Should be Overruled

109. The TVT Parties' primary objection to the Plan is an objection to feasibility based on the flawed premise that they have a legitimate Administrative Claim that must be fully reserved for despite the highly speculative and heavily disputed nature of the underlying claims. The TVT Parties argue that either (a) the Debtors have insufficient cash to pay their alleged (and highly

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

[125] *See* Gasbarra Decl. ¶ 14.

[126] *Id.* ¶ 38.

speculative) Administrative Claim or (b) the Debtors have violated the Court's prior orders, thereby depriving them of collateral underlying a purported secured claim. Sustaining the TVT Parties' objection, however, would require prejudgment of the validity of the TVT Parties' alleged Administrative Claim and the arguments that they raise in the TVT Adversary Proceeding. Those issues are not presently ripe for decision before the Court, as the TVT Adversary Proceeding is in its truly beginning stage. More importantly, even if the Court were to accept that premise, there is enough liquidity after closing the Sale and consummating the Plan to accommodate the Court's ultimate ruling on the TVT Parties' claims. Accordingly, for the reasons below, the TVT Parties' arguments are flawed and should be overruled.

1. The Debtors have Complied with the Cash Management Order and the Final DIP Order

110. At the outset of the Chapter 11 Cases, and on their own initiative, the Debtors took affirmative steps to ensure that the TVT Parties' alleged interests (the validity of which have always been contested) were protected pending a resolution of the parties' disputes. In their Cash Management Order and the First Day Declaration, and at the first-day hearing, the Debtors described the prepetition practices between the Debtors and the TVT Parties, and how they intended to preserve those practices during the Chapter 11 Cases. To that end, pursuant to the express authority granted by the Cash Management Order, the Debtors segregated and restricted their Billfold receivables (the receivables that TVT had been collecting prepetition), and to also segregate and restrict funds that were in the Debtors' bank accounts when Insta Funding's pre-judgment lien attached.

111. Nevertheless, the TVT Parties now argue that the Debtors have somehow violated the terms of the Cash Management Order and the Final DIP Order. By way of reminder, when considering the Final DIP Order and related Settlement approval, the TVT Parties raised these

issues and ultimately the Court ruled that a minor top-up was needed by the estates (and the Debtors have since complied with the Court's ruling).[127] But in a second bite at the apple, the TVT Parties argue that the Debtors have failed to escrow the accounts receivable collected during the Chapter 11 Cases separate from the Billfold receivables (the "Other Receivables"). At bottom, the TVT Parties' protestations are nothing more than belated collateral attack on the Debtors' Final Cash Management Order and DIP Orders.

112. Throughout the Chapter 11 Cases, the Debtors have done exactly what they said they would do to adequately protect any interest held by the TVT Parties: they have escrowed in the F&B Reserve receipts from food and beverage sales through the Debtors' payment processor, Billfold. The F&B Reserve was established through the Final Cash Management Order, which authorized the Debtors to segregate and restrict any amounts received due to food and beverage sales pending the outcome of potential litigation with the TVT Parties. Final Cash Mngmt. Order, ¶ 2. Additionally, despite the TVT Parties' claims that the Debtors "unilaterally" and "without authorization" segregated and restricted funds that would have otherwise gone to the TVT Parties' lockbox, the Final Cash Management Order gave the Debtors specific authority to direct Billfold to send receipts to the Debtors. *Id.* As described at the First Day Hearing and at the final hearing on the DIP Motion, the Debtors intended this to only include Billfold receivables.[128] The TVT Parties did not take any issue with that approach.[129]

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[127] For the avoidance of doubt, the TVT Parties never filed an objection to the Final Cash Management Order.

[128] Transcript of Video Hearing on First-Day Motions at 32, AGDP Holding Inc., *et al.*, Case No. 25-11446 (MFW); Transcript of Hearing on Final DIP Order at 53–54, AGDP Holding Inc., *et al.*, Case No. 25-11446 (MFW).

[129] Transcript of Video Hearing on First-Day Motions, *supra* note 126, at 34; *see also* Transcript of Hearing on Final DIP Order, *supra* note 126, at 66, (requesting only that the Debtors comply with the Final Cash Management Order by segregating the agreed upon amounts into the F&B Reserve).

113. Moreover, the Final DIP Order [D.I. 370] expressly found that the Debtors' cash on hand constituted the Prepetition Term Loan Lender's Prepetition Collateral, which the Debtors were authorized to use pursuant to the Final DIP Order and the Approved Budget, and the TVT Parties took no issue with this stipulation or finding. Specifically, the Final DIP Order provided the following:

> all of the cash of the Debtors, wherever located, and all cash equivalents, including any cash in deposit accounts of the Debtors, as income, proceeds, products, rents or profits of other Prepetition Collateral, or otherwise, constitutes "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

Final DIP Order, (E)(x). As a result of the Final Cash Management Order, the Debtors segregated *only* food and beverage sales from Billfold into the F&B Reserve, and in furtherance of the Final DIP Order, the Debtors utilized their Cash Collateral, which included the Other Receivables, to fund the Chapter 11 Cases.[130]

114. Now, after the Debtors have spent more than $25 million in reliance on the DIP Orders, the TVT Parties are, in essence, objecting to the Court-approved process for financing the Chapter 11 Cases. Section 364(e) of the Bankruptcy Code provides significant protection to good faith creditors when interested parties challenge how funds were previously spent.[131] Specifically, protection under section 364(e) covers only disbursed funds and does not extend to future obligations or disbursed amounts. The TVT Parties' claims that the Debtors have somehow

[130] In fact, had it not been for the Debtors' ability to use the Other Receivables and borrowings under the DIP Orders, the Debtors would not have generated any receivables to deposit into the F&B Reserve. While segregating and restricting the Billfold receivables, the Debtors have operated at significant losses throughout the Chapter 11 Cases while the F&B Reserve has grown for the TVT Parties' potential benefit. The Debtors submit that, to the extent the TVT Parties are determined to hold security interests in the F&B Reserve or the Other Receivables, the Debtors would be entitled to surcharge the costs of the Chapter 11 Cases against the TVT Parties' putative collateral. *See* 11 U.S.C. § 506(c).

[131] 11 U.S.C § 364; *see also In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 565 (3d Cir. 1994) (establishing that this protection is limited to funds that have actually been disbursed).

violated the DIP Orders and the Final Cash Management Order are collateral attacks on orders that have been final and relied upon in good faith for months. The improper collateral attacks, if ever undertaken by this Court, should be addressed in the context of the TVT Adversary Proceeding and form no valid basis for an objection to confirmation. As such, the TVT Parties objection on this point should therefore be overruled.

2. The TVT Parties' Purported Administrative Claim is Speculative At Best and Should Not Impede Confirmation

115. The TVT Parties argue that the F&B Reserve contains only proceeds from Billfold and not the Debtors' other receivables from operations (the "Other Receivables"). The TVT Parties allege that, under the prepetition agreements between the TVT Parties and the Debtors that are subject of the TVT Adversary Proceeding, they own interests in all of the Debtors' receivables. The TVT Parties' arguments on this point are speculative at best, and are legally flawed. While the legitimacy of the TVT Parties' claims are not ripe for determination at this point (and will be addressed through the TVT Adversary Proceeding), the Debtors submit that the speculative and contested nature of the TVT Parties' claims provide a basis for this Court to overrule the TVT Objections.

116. Although the TVT Parties' claims are not ripe for determination, the Debtors feel compelled to respond to the arguments advanced by the TVT Parties on their alleged administrative expense and in opposition to confirmation. As the Debtors intend to litigate with the TVT Parties in the TVT Adversary Proceeding, the facts surrounding the TVT Parties' alleged claims are hotly disputed.

117. In sum, the TVT Parties assert that their financing agreements with the Debtors constitute sales of accounts receivable. Because the Uniform Commercial Code governs the purported "sale," the UCC required the TVT Parties to take certain steps to perfect their ownership

interests in the Debtors' accounts – interests are considered security interests under the UCC. But, in all but one instance, the TVT Parties failed to perfect their alleged ownership interests in the Debtors' accounts.

118. The Debtors, under section 544 of the Bankruptcy Code, have significant avoidance powers with respect to the TVT Parties' alleged security interests. Under § 544(a)(1)-(2), the trustee has, as of the commencement of the case, the rights and powers of a hypothetical lien creditor, regardless of actual knowledge of the trustee or of any creditors, including granting the trustee priority over all unperfected security interests at the time of the bankruptcy filing. *See In re NRP Lease Holdings*, 20 F.4th 746, 750 (11th Cir. 2021) (*quoting In re Summit Staffing*, 305 B.R. 347, 350 (Bankr. M.D. Fla. 2003) ("The Trustee's powers are the same as those of a hypothetical creditor of a debtor who has completed the legal process for perfection of its lien upon all property available for the satisfaction of its claim against the debtor."); *In re Stanton*, 254 B.R. 357, 361 (Bankr. E.D. Tex. 2000). Section 544(a) of the Bankruptcy Code directs courts to apply the applicable non-bankruptcy law to determine whether a creditor's security interest in a debtor's assets is perfected. *In re Summit Staffing*, 305 B.R. at 350; *Bakst v. Lifestyle Tree Maintenance Landscape Service, Inc. (In re HDI Partners)*, 202 B.R. 524, 528 (Bankr.S.D.Fla.1996) (citing *In re LMS Holding Co.*, 149 B.R. 681 (Bankr.N.D.Okla.1992).

119. The UCC requires a buyer of accounts to file a financing statement to perfect its security interest. A security interest is created when value is given, the debtor has rights in the collateral, and the parties authenticated a security agreement, including a sale of accounts. U.C.C. § 9-203(b). Under the UCC, the term "security interest" includes "any interest of . . . a buyer of accounts . . . in a transaction that is subject to Article 9." U.C.C. § 1-201(35). An outright sale of accounts is covered by Article 9. U.C.C. § 9-109(a)(3). Even when a debtor sells an account, the

debtor still has rights and title to the account while the security interest is unperfected. U.C.C. § 9-318. However, "a financing statement must be filed to perfect all security interests" including accounts, which are not automatically perfected. U.C.C. § 9-310(a). Together, these provisions serve to require that an outright buyer of accounts receivable must file a UCC financing statement in order to perfect its ownership interest.

120. While the TVT Parties assert an ownership interest in the accounts (meaning, under the UCC, that they assert a security interest in the Debtors' accounts), TVT, TVT Cap, and Pinnacle did not file a UCC-1 financing statement to perfect any of their ownership interests. Because TVT, TVT Cap, and Pinnacle did not perfect their interests, they do not have a lien or any other perfected ownership interest in the Debtors' accounts receivable. Any amount owed under the Agreements is, therefore, a general unsecured claim. *See* UCC § 9-318. Accordingly, the Debtors submit that the TVT Parties' arguments fail on these points. While Insta Funding made a belated attempt to perfect its security interests in the Debtors' assets, such security interest was perfected during the 90-day period before the Petition Date (the "Preference Period") and is, therefore, avoidable and recoverable. *See* 11 U.S.C. § 547(b). Insta Funding's claim is therefore also a general unsecured claim. Further, the TVT Parties received transfers during the Preference Period totaling approximately $2.1 million, and Insta Funding's prejudgment lien attached during the Preference Period, further diminishing the value of any claim that the TVT Parties may have, to the extent they have any. Finally, section 552 of the Bankruptcy Code prevents the alleged security interest conveyed to the TVT Parties from attaching to property acquired by the Debtors after the Petition Date.

121. The above analysis is simply a summary of the flaws in the TVT Parties' purported claims, and the Debtors intend to address these issues in greater detail in the adversary

proceeding.[132] Nevertheless, in the unlikely event that the TVT Parties are allowed an Administrative Claim in excess of the F&B Reserve, the Plan provides for sufficient funds cover such claim. The TVT Objections misconstrue the standard for demonstrating feasibility, appearing to argue that the Debtors must entirely de-risk only their claims in order for the Court to decide the Plan is feasible. However, the Debtors simply need to demonstrate that, in their business judgment and based on reasonable projections, their plan is feasible and not likely to be followed by liquidation or the need for further financial reorganization. *See* 11 U.S.C. 1129(a)(11). Stated differently, the feasibility requirement of the Bankruptcy Code does not require a showing that the Plan's success is guaranteed, nor is the feasibility requirement generally viewed as vigorous – as the TVT Parties suggest.[133] Thus, it naturally follows that satisfaction of the feasibility test does not require the Debtors to establish reserves for allowed administrative expenses, let alone speculative and contested administrative expenses.[134] Given the aggregate cash coming into the Estates upon closing of the Sale and consummation of the Plan, in the approximate amount of $4 million, as set forth in the Gasbarra Declaration and as will be addressed in evidence at the Confirmation Hearing, the Post-Effective Date Debtors would be able to use to satisfy all Allowed Administrative Claims – including any Administrative Claim held by the TVT Parties if ultimately

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[132] The Debtors reserve all rights to assert claims and other defenses to the TVT Parties' claims in the adversary proceeding. The analysis set forth herein is intended to demonstrate the dubious nature of the TVT Parties' claims, and that the Debtors plan is feasible because, in part, the TVT Parties have a low (if not zero) chance of success on their claims.

[133] *See In re Alecto Healthcare Servs., LLC*, No. 23-10787, 2024 WL 1208355, at *3 (Bankr. D. Del. Mar. 20, 2024), aff'd, No. 23-10787 (JKS), 2025 WL 961482 (D. Del. Mar. 31, 2025) ("[I]t is not necessary for plan success to be guaranteed, nor is the feasibility requirement generally viewed as rigorous.").

[134] *See In re VJGJ, Inc.*, Case No. 21-11332 (BLS) (July 13, 2022) (ruling, in the context of an allowed administrative claimant's feasibility objection, that the debtor had met its burden of proof under sections 1129(a)(9) and (11) by demonstrating that it had "more than sufficient funds available . . . to satisfy allowed [administrative] claims."); *see also In re Emerge Energy Servs.* LP, No. 19-11563 (KBO), 2019 WL 7634308, at *15 (Bankr. D. Del. Dec. 5, 2019) (holding that in order for a debtor to satisfy its burden under section 1129(a)(11), the evidence presented must be credible and persuasive that the proposed plan offers a 'reasonable assurance of success."); *see also In re Indianapolis Downs, LLC.*, 486 B.R. 286, 298 (Bankr. D. Del. 2013) ("Just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure will not defeat feasibility.").

Allowed. Accordingly, even giving credence to the TVT Parties' alleged Administrative Claim, the TVT Parties' feasibility objection should be overruled as they would share in the Post-Effective Date Debtors' assets with all other Holders of Allowed Administrative Claims following the Effective Date to the extent of any Allowed Administrative Claim.

3. The Balance of the TVT Parties' Objections are Meritless and can be Addressed through Reservation of Rights Language

122. The TVT Parties' remaining objections take issue with whether (i) the Plan was proposed in good faith and (ii) the Debtors provided adequate information for parties to vote on the Plan.

123. As detailed above, the Debtors have made every effort to act in good faith throughout the Chapter 11 Cases, including in developing and proposing the Plan. As set forth in the Gasbarra Declaration, in proposing the Plan, the Debtors evaluated potential administrative liabilities and post-Effective Date expenses and determined that sufficient assets will exist after the Effective Date to fund all Plan obligations. Additionally, the Debtors included in the Disclosure Statement information that was necessary to allow voters to make an informed decision, including (a) the Debtors' view of projected recoveries to creditors and (b) the contested nature of the TVT Litigation. The arguments advanced by the TVT Parties have no bearing on the information included in the Disclosure Statement, as the TVT Parties will either (x) share in distributions from the Liquidating Trust to the extent any General Unsecured Claim is allowed in their favor, (y) receive payment of any Administrative Claim ultimately allowed in their favor (if any), or (z) not be entitled to any recovery at all. Accordingly, the TVT Parties' half-hearted objection on these points should be summarily dismissed.

124. With respect to the balance of the TVT Parties' objections, the Debtors propose to include the following language in the Confirmation Order:

Notwithstanding anything to the contrary set forth in this Confirmation Order or the Plan, nothing set forth herein shall be construed to release any direct (as opposed to derivative) claims or defenses that the TVT Parties have or may have against any person or entity, and nothing herein shall have any preclusive effect on the claims and counterclaims of the TVT Parties in the Adversary Proceeding. For the avoidance of doubt, neither the Plan nor this Confirmation Order shall be deemed to confer standing on any person or entity in the adversary proceeding titled *AGDP Holdings Inc v. TVT Capital Source LLC et al.*, Pro No. 25-51803 (MFW) (the "TVT Adversary Proceeding"); *provided, however*, that nothing set forth herein shall limit the ability of the Independent Special Administrator (as defined in the Plan Administrator Agreement) to administer the TVT Adversary Proceeding on behalf of the Post-Effective Date Debtors.

[Remainder of page intentionally left blank.]

CONCLUSION

125. For all of the reasons set forth herein and in the Gasbarra Declaration, and as will be further shown at the Combined Hearing, the Debtors respectfully request that the Court confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code by entering the Confirmation Order, overruling any remaining objections, and granting such other and further relief as is just and proper.

Dated: January 14, 2026
Wilmington, Delaware

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