




CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 5, 2024

  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:  
  
EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>  
  
Debtors.

Chapter 11  
Case No. 24-80040 (SGJ)  
(Jointly Administered)

**ORDER APPROVING THE DEBTORS'  
AMENDED DISCLOSURE STATEMENT AND  
CONFIRMING THE FIFTH AMENDED JOINT PLAN OF LIQUIDATION  
OF EIGER BIOPHARMACEUTICALS, INC. AND ITS DEBTOR AFFILIATES**

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Avenue, Dallas, Texas 75201.



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The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) having:<sup>2</sup>

- a. commenced, on April 1, 2024 (the “Petition Date”), these chapter 11 cases (these “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”);
- b. continued to operate their businesses and manage their properties during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed, on the Petition Date, the:
  - i. *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 19]; and
  - ii. *Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), If Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assumption and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* [Docket No. 13] (the “Bidding Procedures Motion”), which was approved by this Bankruptcy Court’s order dated April 15, 2024 [Docket No. 94];
- d. obtained, on April 24, 2024, the *Order (I) Approving the Sale of the Debtors’ Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] (the “Zokinvy Sale Order”), approving the sale of Zokinvy free and clear to Sentyln Therapeutics, Inc.;
- e. obtained, on June 27, 2024, the *Order (I) Approving the Sale of the Debtors’ Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606-1], attached hereto as **Exhibit A** (the “Fourth Amended Plan”) and, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms thereof and this Order, including all exhibits and schedules thereto, the “Plan”), the *Amended Disclosure Statement for Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 476-1] (the “Disclosure Statement”), or the Voting Report (as defined herein), as applicable. The rules of interpretation set forth in Section I.B of the Plan shall apply herein.

*and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376] (the “Avexitide Sale Order”), approving the sale of Avexitide free and clear to Amylyx Pharmaceuticals, Inc.;

- f. filed, on July 15, 2024, the
  - i. *Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 424];
  - ii. *Disclosure Statement For Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 425]; and
  - iii. *Debtors’ Motion for Entry an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426];
- g. filed, on July 28, 2024, the
  - i. *Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 455-1];
  - ii. *Amended Disclosure Statement For Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 456-1]; and
  - iii. *Notice of Filing of Amended Disclosure Statement Order* [Docket No. 457];
- h. filed, on July 29, 2024, the
  - i. *Amended Disclosure Statement For Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 463-1];
- i. obtained, on July 30, 2024, the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement, (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 473] (the “Disclosure Statement Order”), conditionally approving the Disclosure Statement, and approving the solicitation procedures and the tabulation rules set forth in the Disclosure Statement Order (collectively, the “Solicitation Procedures”) and related notices, forms, and ballots (collectively, the “Solicitation Packages”);
- j. filed, on July 30, 2024, the

- i. *Notice of Filing of Solicitation Version of Amended Plan* [Docket No. 475]; and
  - ii. *Notice of Filing of Solicitation Version of Further Amended Disclosure Statement* [Docket No. 476];
- k. caused, on or about August 2, 2024, the Solicitation Packages, plus the notice of the combined hearing for confirmation of the Plan (“Confirmation”) and approval of the Disclosure Statement (the “Combined Hearing Notice”) to be distributed in accordance with the terms of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Local Rules”), the Disclosure Statement Order, and the Solicitation Procedures, *see Certificate of Service* [Docket No. 508];
- l. caused, on or about August 2, 2024, the: (a) *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Deemed to Accept the Plan*; and (b) the *Release Opt-Out Form* (together, the “Notice of Non-Voting Status and Release Opt-Out Forms”) and, together with the Combined Hearing Notice, the “Notices”) to be served on all Holders of Claims or potential Claims in the non-voting classes, which informed recipients of (i) their status as Holders or potential Holders of Claims in non-voting classes, (ii) provided the full text of the releases, exculpation, and injunction provisions set forth in the Plan, (iii) included a form by which Holders could elect to opt out of the Third Party Release (as defined below) included in the Plan by checking a prominently featured and clearly labeled box, (iv) where applicable, provided information on how certain Holders could opt out electronically, (v) provided the deadline for release opt outs, and (vi) enclosed a postage prepaid, return-addressed envelope in which Holders could return their opt out elections to the Notice and Claims Agent, *see Certificate of Service* [Docket No. 508];<sup>3</sup>
- m. published the Combined Hearing Notice in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, as evidenced by the *Affidavit of Publication of Notice of (I) Combined Hearing on the Amended Disclosure Statement and Confirmation of the Amended Joint Plan, and (II) Notice of Objection and Opt Out Rights in the New York Times and San Francisco Chronicle* [Docket No. 494] (the “Publication Affidavit”);

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<sup>3</sup> As discussed in the Voting Report (defined herein), Class 1 (Other Secured Claims) included one creditor who also was a Holder of Class 4 Claims. That Class 1 Holder received a Solicitation Package in connection with its Class 4 Claims and therefore had the opportunity to opt-out of the releases. Per prior agreement, each Holder of an Allowed Intercompany Claim in Class 5 agreed to waive entitlement to a distribution on account of such Claim. Thus, Class 5 (Intercompany Claims) did not receive the Non-Voting Package (as defined in the Disclosure Statement Order). Holders of Claims in Class 4 received the Solicitation Package and Combined Hearing Notice at the time of solicitation. The Solicitation Package and Combined Hearing Notice included the full text of the releases, exculpation, and injunction provisions set forth in the Plan and included opt-out information.

- n. filed, on August 14, 2024, the *Certificate of Service* [Docket No. 508], certifying the service of the Solicitation Packages (together with all the exhibits thereto) (the “First Solicitation Packages Affidavit”);
- o. filed, on August 15, 2024, the
  - i. *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (the “Second Amended Plan”); and
  - ii. *Notice of Filing Plan Supplement* [Docket No. 525] (the “First Plan Supplement” and which, for purposes of the Plan and this Confirmation Order, is included in the definition of “Plan”);
- p. obtained, on August 21, 2024, the *Revised Order (I) Authorizing the Sale of the Lonafarnib And Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558] (the “Lonafarnib and Lamba Sale Order,” and collectively with the Zokinvy Sale Order, the Avexitide Sale Order, and any other order approving the sale of certain of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code, the “Sale Orders”), approving the sale of Lonafarnib and Lambda free and clear to Eiger InnoTherapeutics, Inc.;
- q. obtained, on August 23, 2024, the *Order Estimating Claim of Innovatus Life Sciences Lending Fund I, LP for the Purposes of Establishing Sufficient Reserves to Unimpair Claim* [Docket No. 561];
- r. filed, on August 28, 2024, the
  - i. *Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 571-1];
  - ii. *Debtors’ Memorandum of Law in Support of Confirmation of the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 573] (the “Initial Confirmation Brief”);
  - iii. *Declaration of Douglas Staut, Chief Restructuring Officer, in Support of Confirmation of the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 574] (the “Staut Declaration”); and
  - iv. the *Supplemental Certificate of Service* [Docket No. 508], certifying the service of the Solicitation Packages (together with all the exhibits thereto) (the

“Supplemental Solicitation Packages Affidavit,” and together with the First Solicitation Packages Affidavit, the “Solicitation Packages Affidavit”);

- s. filed, on September 3, 2024, the
- i. the *Notice of Filing of Second Plan Supplement* [Docket No. 598] (the “Second Plan Supplement,” and together with the First Plan Supplement, the “Plan Supplement”);
  - ii. *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606-1];
  - iii. *Declaration of Adam J. Gorman in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 607] (the “Voting Report”), which accounts for ballots received up to the Voting Deadline (as defined below);
  - iv. *Declaration of Jon Muenz in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 608] (the “Muenz Declaration”); and
  - v. *Declaration of Michael Shanahan in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 609] (the “Shanahan Declaration” and collectively with the Staut Declaration, the Voting Report, and the Muenz Declaration the “Declarations in Support”); and
- t. filed, on September 4, 2024 the *Debtors’ Supplemental Memorandum of Law in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 620](the “Supplemental Confirmation Brief”).

And this Bankruptcy Court having:

- a. entered the Disclosure Statement Order on July 30, 2024;
- b. set August 30, 2024, at 4:00 p.m. (prevailing Central Time) as the deadline for Holders of Interests in Class 6<sup>4</sup> to accept or reject the Plan (the “Voting Deadline”);

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<sup>4</sup> As discussed in the Initial Confirmation Brief, Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4.

- c. set August 30, 2024, at 4:00 p.m. (prevailing Central Time) as the deadline to file and serve objections to the confirmation of the Plan and the adequacy of the Disclosure Statement (the “Plan Objection Deadline”);
- d. set September 5, 2024, at 9:30 a.m. (prevailing Central Time) as the date and time for the commencement of the Combined Hearing;
- e. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Solicitation Packages Affidavit, the Declarations in Support, the Initial Confirmation Brief, the Supplemental Confirmation Brief, the Combined Hearing Notice, and all Filed pleadings, exhibits, statements, responses, and comments regarding approval of the Disclosure Statement and Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket in these Chapter 11 Cases;
- f. held the Combined Hearing on September 5, 2024 at 9:30 a.m. (prevailing Central Time);
- g. considered all oral representations, live testimony, written direct testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- h. overruled any and all outstanding objections to approval of the Disclosure Statement, the Plan, Confirmation, and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated;
- i. taken judicial notice of all papers and pleadings filed in these Chapter 11 Cases, all evidence proffered or adduced in these Chapter 11 Cases, and all arguments made at hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases; and
- j. entered rulings on the record at the Combined Hearing.

NOW THEREFORE, the Bankruptcy Court having found that notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and Confirmation and other evidence presented at the Combined Hearing and the record in these Chapter 11 Cases establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court makes and issues the following findings of fact and conclusions of law, and orders:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:**

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction, Venue, and Core Proceeding.**

2. This Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). This Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of these Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. In accordance with the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 81], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b)



and Bankruptcy Local Rule 1015-1. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

**E. Appointment of the Creditors' Committee and the Equity Committee.**

5. On June 10, 2024, the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 322] (the "Unsecured Creditors Committee"). On June 25, 2024, the U.S. Trustee appointed an official committee of equity security holders pursuant to section 1102 of the Bankruptcy Code [Docket No. 359] (the "Equity Committee"). The U.S. Trustee amended the appointment of certain members of the Equity Committee on July 23, 2024 [Docket No. 438].

**F. Burden of Proof—Confirmation of the Plan**

6. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements under sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard for Confirmation. In addition, and to the extent applicable, the Plan is confirmable under the clear and convincing evidentiary standard.

**G. Judicial Notice.**

7. The Bankruptcy Court takes judicial notice of (and deems admitted into evidence for purposes of Confirmation of the Plan) the docket of these Chapter 11 Cases maintained by the clerk of the Bankruptcy Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases.

**H. Notice.**

8. As evidenced by the Solicitation Packages Affidavit and the Voting Report, the Debtors provided due, adequate, and sufficient notice of the commencement of these Chapter 11 Cases, the Disclosure Statement, the Plan, the Combined Hearing, and the opportunity to opt out of the Third Party Release (as defined below), together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan. Further, the Combined Hearing Notice was published in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, in compliance with Bankruptcy Rule 2002(l), as evidenced by the Publication Affidavit. Such notice was adequate and sufficient under the facts and circumstances of these Chapter 11 Cases in compliance with the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 2002 and 3017, the Bankruptcy Local Rules, and the Disclosure Statement Order. No other or further notice is or shall be required.

**I. Disclosure Statement.**

9. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b).

**J. Ballots.**

10. Holders of Interests in Class 6 are entitled to vote to accept or reject the Plan (the “Voting Class”).<sup>5</sup>

11. The forms of ballot attached as Exhibits 5B, 5C, and 5D to the Disclosure Statement Order (collectively, the “Ballots”) that the Debtors used to solicit votes to accept or reject the Plan from Holders in the Voting Class adequately addressed the particular needs of these Chapter 11 Cases and were appropriate for Holders in the Voting Class to vote to accept or reject the Plan.

**K. Solicitation.**

12. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures set forth in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable rules, laws, and regulations, including the registration requirements under the Securities Act.

13. As described in the Voting Report and the Solicitation Packages Affidavit, as applicable, the Solicitation Packages, including the Disclosure Statement (including the Plan and other exhibits thereto), the Solicitation Procedures, and the appropriate Ballot were transmitted and served, including to all Holders in the Voting Class, in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Bankruptcy Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages was timely, adequate,

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<sup>5</sup> As discussed in the Initial Confirmation Brief, Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4.

and sufficient under the facts and circumstances of these Chapter 11 Cases. No further notice is required.

14. As set forth in the Voting Report and the Solicitation Packages Affidavit, the Solicitation Packages were distributed to the Holders in the Voting Class that held an Interest as of July 22, 2024 (the “Voting Record Date”). The establishment and notice of the Voting Record Date were reasonable and sufficient.

15. The period during which the Debtors solicited acceptances or rejections to the Plan was a reasonable and sufficient period of time for each Holder in a Voting Class to make an informed decision to accept or reject the Plan.

16. Under section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1, 2, 3, 4, and 5 (the “Non-Voting Classes”) are Unimpaired and conclusively presumed to have accepted the Plan.<sup>6</sup>

17. The Debtors served the Notice of Non-Voting Status and Release Opt-Out Forms and the Combined Hearing Notice on all Holders of Claims or potential Claims in the Non-Voting Classes.<sup>7</sup> The Notice of Non-Voting Status and Release Opt-Out Forms informed recipients of (a) their status as Holders or potential Holders of Claims in non-voting classes, (b) provided the full text of the releases, exculpation, and injunction provisions set forth in the Plan, (c) included a

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<sup>6</sup> As noted in the Voting Report, twelve (12) Holders of Class 4 Claims submitted Ballots, and all such Holders unanimously accepted the Plan. Two (2) Holders abstained from submitting a Ballot.

<sup>7</sup> Holders of Claims in Class 4 (General Unsecured Claims) received Solicitation Packages. The Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4. The Solicitation Packages and Combined Hearing Notice included the full text of the releases, exculpation, and injunction provisions set forth in the Plan and included opt-out information. As discussed in the Voting Report, Class 1 (Other Secured Claims) included one creditor who also was a Holder of Class 4 Claims. That Class 1 Holder received a Solicitation Package in connection with its Class 4 Claims and therefore had the opportunity to opt-out of the releases. Per prior agreement, each Holder of an Allowed Intercompany Claim in Class 5 agreed to waive entitlement to a distribution on account of such Claim. Thus, Class 5 (Intercompany Claims) did not receive the Non-Voting Package (as defined in the Disclosure Statement Order).

form by which Holders could elect to opt out of the Third Party Release (as defined below) included in the Plan by checking a prominently featured and clearly labeled box, (d) where applicable, provided information on how certain Holders could opt out electronically, (e) provided the deadline for release opt outs, and (f) enclosed a postage prepaid, return-addressed envelope in which Holders could return their opt out elections to the Notice and Claims Agent.

18. The Notices adequately summarized the material terms of the Plan, including classification and treatment of Claims and Interests and the Third Party Release. Further, because an opt out form was included in both the Ballots and the Notices, every known stakeholder was provided with the means by which to opt out of the Third Party Release.

**L. Voting.**

19. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Disclosure Statement, and any applicable non-bankruptcy law. Class 6 voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

**M. Plan Supplement.**

20. On August 16, 2024, the Debtors filed the First Plan Supplement with the Bankruptcy Court, and on September 3, the Debtors filed the Second Plan Supplement. The Plan Supplement (including as it may be subsequently modified, supplemented, or otherwise amended pursuant to its terms) complies with the Bankruptcy Code and the terms of the Plan, and the Debtors provided good and proper notice of the filing in accordance with the Bankruptcy Code,

the Bankruptcy Rules, the Bankruptcy Local Rules, and the facts and circumstances of these Chapter 11 Cases. The notice parties and Holders of Claims and Interests were provided due, adequate, and sufficient notice of the Plan Supplement. No other or further notice is or will be required with respect to the Plan Supplement. The Plan Supplement consists of the following documents: (a) the Liquidation Analysis; (b) the Schedule of Assumed Executory Contracts and Unexpired Leases; (c) the Schedule of Retained Causes of Action; (d) the Liquidating Trust Agreement, which discloses the identity of the Liquidating Trustee; (e) the Plan Administrator Agreement, which discloses the identity and compensation of the Plan Administrator; (f) the identity of any insiders to be employed by the Plan Administrator; and (g) any other documentation necessary to effectuate the Plan or that is contemplated by the Plan. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan and this Confirmation Order, the Debtors shall have the right to alter, amend, update, or modify the Plan Supplement through the Effective Date.

**N. Plan Modifications.**

21. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan, including those set forth in the Fourth Amended Plan filed on September 3, 2024, and any additional modifications to the Plan set forth in this Confirmation Order or in any Plan filed prior to the entry of this 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. These Plan Modifications are consistent with the disclosures previously made pursuant to the Disclosure Statement and Solicitation Packages served pursuant to the Disclosure Statement Order, and notice of these Plan

Modifications was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases.

22. 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 Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Accordingly, the Plan, as modified, is properly before this Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**O. Objections Overruled.**

23. Any resolution or disposition of objections to approval of the Disclosure Statement and/or Confirmation of the Plan that have not been withdrawn, waived, or settled are hereby **OVERRULED** and **DENIED** on the merits, with prejudice.

**P. Global Settlement**

24. In connection with a global settlement between the Debtors and their Estates, the Prepetition Term Loan Secured Parties, and the Equity Committee (collectively, the “Global Settlement Parties”), the Global Settlement Parties have agreed to the following (collectively, the “Global Settlement”):

25. Global Releases. Effective upon the entry of this Confirmation Order, each Global Settlement Party and its Related Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, is deemed to be conclusively, absolutely, unconditionally, irrevocably, and forever released by each other Global Settlement Party and its Related Parties and hereby conclusively, absolutely, unconditionally, irrevocably, and forever releases and discharges each other Global Settlement Party and its Related Parties from any and all Causes of Action,

whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including, without limitation, any “lender liability” claims and any claims or causes of action related to the Prepetition Term Loan Credit Agreement, and including, without limitation, any and all rights to surcharge the interests of the Prepetition Term Loan Agent or the Prepetition Term Loan Secured Parties pursuant to Section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law, and including, without limitation, any derivative claims that have been or may be asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the Debtors’ in- or out-of-court restructuring efforts, intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, the Prepetition Term Loan Credit Agreement, or any aspect of the Liquidation Transactions, including, without limitation, any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Global Settlement Party or its Related Parties on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, for actions, in each case, occurring before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Consummation, the administration and implementation of the Plan, including, without limitation, the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction,



agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, notwithstanding any cause of action listed in the schedule of Retained Causes of Action found in the Debtors' Plan Supplement. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan or (2) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. By entry of this Order, (i) the Debtors' objection to the Prepetition Term Loan Agent's proof of claim (Claim No. 55) is deemed withdrawn and Holders of Prepetition Term Loan Claims shall have Allowed Claims entitled to treatment pursuant to Class 3 and legal fees and expenses as provided for in paragraph 30 herein, and (ii) the Challenge Period (as defined in the Cash Collateral Order) is deemed to have expired without any Challenge (as defined in the Cash Collateral Order) being brought. Nothing herein shall waive or affect the rights of the collateral agent or lenders under the Debtors' Prepetition Term Loan Credit Agreement or their Related Parties to distribution on account of their Class 6 Interests, which shall also be Allowed.

26. For the avoidance of doubt, the releases approved pursuant to this Confirmation Order shall supersede any prior agreement related to releases, including any releases approved by a prior Final Order.

27. Setoff of Claims Against Current Directors or Officers. Notwithstanding anything to the contrary herein or in the Plan, any counterclaims or defenses may be asserted as a setoff against a Proof of Claim Filed by a current director or officer; *provided* that such counterclaims or defenses may not arise from or relate to a breach of fiduciary duties.

28. Claims Against Former Directors or Officers. Notwithstanding the language contained in paragraph 25 hereof, no Claims or Causes of Action against any former director or officer shall be waived or released by the Debtors.

29. Pending Appeals. The Prepetition Term Loan Agent shall (i) take reasonable steps to seek that all pending deadlines in any pending appeal of any Order entered in these Chapter 11 Cases (each, and “Appeal”) be held in abeyance upon the entry of the Confirmation Order, and (ii) withdraw the Appeals, with all parties thereto bearing their own costs, as soon as practicable upon entry of the Confirmation Order.

30. Prepetition Term Loan Secured Parties’ Fees. The Equity Committee shall have the sole right to review and object to payment of Prepetition Term Loan Secured Parties’ legal fees and expenses. The Equity Committee hereby agrees that so long as Prepetition Term Loan Secured Parties’ fees and expenses incurred for services rendered during the period July 1, 2024 through September 13, 2024 do not exceed \$2.5 million, such fees shall not be subject to objection. In the event that fees and expenses during such period (or for any period from and after September 14, 2024) exceed \$2.5 million in the aggregate, such excess amount shall be subject to the reasonable review and objection rights of the Equity Committee.

31. Payment Prior to the Effective Date. The Debtors are authorized to pay, prior to the Effective Date, the Prepetition Term Loan Claim in accordance with the Plan treatment for such Claim (Class 3) in order to avoid any further interest accruals and attorneys’ fees, as provided for herein and in the Plan.

**Q. Plan Complies with Bankruptcy Code Requirements—Section 1129(a)(1).**

32. The Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 thereof.

Additionally, the Plan and all Plan Modifications are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a).

**(a) Proper Classification—Sections 1122 and 1123.**

33. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Interests into six (6) Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

**(b) Specified Unimpaired Classes—Section 1123(a)(2).**

34. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims in the following Classes (the “Unimpaired Classes”) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

<b>Class</b>	<b>Designation</b>
1	Other Secured Claims
2	Other Priority Claims
3	Prepetition Term Loan Claims
4	General Unsecured Claims
5	Intercompany Claims

35. Additionally, Article II of the Plan specifies that Allowed Administrative Claims (including Professional Compensation Claims) and Allowed Priority Tax Claims will be paid in full (unless a Holder of such Claim consents to alternative treatment) in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan.

36. Holders of Claims in Classes 1, 2, 3, 4, and 5 are Unimpaired and conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

**(c) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

37. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Interests in the following Classes (the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes:

<b>Class</b>	<b>Designation</b>
6	Existing Equity Interests

38. While Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4. Thus, Class 6 is the only Impaired class and the only Class entitled to vote on the Plan.

**(d) No Discrimination—Section 1123(a)(4).**

39. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

**(e) Adequate Means for Implementation—Section 1123(a)(5).**

40. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan provide in detail adequate and proper means for the Plan’s implementation, including regarding: (a) the consummation of the Plan, including the wind-down and dissolution of the Debtors and the vesting of the assets in the Wind-Down Debtors or Liquidating Trust, as applicable; (b) the Sale Transactions; (c) the sources of consideration for Plan distributions, including the Sale Transactions, Cash, and Retained Causes

of Action; (d) the appointment of the Plan Administrator and the Liquidating Trustee; (e) the authorization for the Debtors, the Plan Administrator, and/or the Liquidating Trustee, as applicable, to take all actions contemplated under or necessary, advisable, or appropriate to implement or effectuate the Plan; (f) the settlement and discharge of Claims and Interests as set forth in the Plan; (g) the good faith compromise and settlement of all claims or controversies; (h) the preservation and vesting of certain Retained Causes of Action in the Wind-Down Debtors or the Liquidating Trust, as applicable; (i) the treatment of Executory Contracts and Unexpired Leases; (j) the dissolution of the Debtors; (k) the effectuation and implementation of documents and further transactions; (l) the cancellation of existing securities and agreements; and (m) the authorization, approval, and entry of corporate actions under the Plan.

**(f) Non-Voting Equity Securities—Section 1123(a)(6).**

41. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. The Plan does not provide for the issuance of equity or other securities of the Debtors, including non-voting equity securities.

**(g) Directors and Officers—Section 1123(a)(7).**

42. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. In accordance with Article IV.H of the Plan, as of the Effective Date, the existing directors and officers of the Debtors shall be deemed to have resigned without any further action required. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, *provided* that the Plan Administrator or the Liquidating Trustee shall have no duties other than as expressly set forth in the Plan, this Confirmation Order, or any agreement governing the Plan Administrator's or the Liquidating

Trustee's duties and responsibilities, as applicable. The appointment of the Plan Administrator and the Liquidating Trustee is consistent with the interests of creditors and with public policy.

**(h) Debtor Is Not an Individual—Section 1123(a)(8) and 1123(c).**

43. The Debtors are not individuals. Accordingly, the requirements of sections 1123(a)(8) and 1123(c) of the Bankruptcy Code are inapplicable.

**(i) Impairment / Unimpairment of Classes—Section 1123(b)(1).**

44. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims or Interests Impaired or Unimpaired.

**(j) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).**

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 and Unexpired Leases (other than the Indemnification Obligations and the D&O Liability Insurance Policies) not previously rejected, assumed, or assumed and assigned during these Chapter 11 Cases under section 365 of the Bankruptcy Code, nor scheduled to be assumed under the Plan, the Plan Supplement, or the Sale Orders.

46. The Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases 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 these Chapter 11 Cases.

**(k) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

47. In accordance with section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-

faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to the Plan. In addition, the compromises and settlements embodied in the Plan preserve value by enabling the Debtors to avoid extended, value-eroding litigation that could delay the Debtors' emergence from chapter 11, and the compromises and settlements in the Plan are fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

48. **Debtor Releases.** The release of Claims and Causes of Action by the Debtors, as described in Article IX.A of the Plan in accordance with section 1123(b) of the Bankruptcy Code (the "Debtor Releases"), represents a valid exercise of the Debtors' business judgment. The Debtor Releases are integral to the Plan and are fair, reasonable, and in the best interests of the Debtors, the Estates and Holders of Claims or Interests. Also, the Debtor Releases are: (a) reflective of the significant contributions the Released Parties made to a highly complex and contentious restructuring, including the negotiation, formulation, and the effectuation of the Sale Transactions and transactions contemplated in the Plan; (b) given, and made, after due notice and opportunity for a hearing; and (d) a bar to the Debtors asserting a Claim or Cause of Action released by Article IX.A of the Plan. The scope of the Debtor Releases is appropriately tailored under the facts and circumstances of these Chapter 11 Cases. Moreover, the Debtor Releases are appropriate in light of, among other things, the critical nature of the Debtor Releases to the Plan.

49. The Debtor Releases appropriately offer protection to parties that participated in the Debtors' restructuring process. Each of the Released Parties made significant concessions and contributions to these Chapter 11 Cases. The Debtor Releases for the Debtors' directors and officers as of the Petition Date are appropriate because the Debtors' directors and officers share an identity of interest with the Debtors, supported the Plan and these Chapter 11 Cases, and actively

participated in meetings and negotiations during these Chapter 11 Cases to facilitate the negotiation and consummation of the transactions contemplated by the Plan. Further, such parties may assert indemnification claims against the Debtors with respect to claims subject to the Debtor Releases.

50. **Third Party Release.** The release of Claims and Causes of Action by the Releasing Parties, as described in Article IX.B of the Plan (the “Third Party Release”), was consensually provided after due notice and an opportunity for a hearing and is an essential provision of the Plan. The Third Party Release is a critical and integral component of the Plan, thereby preventing significant and time-consuming litigation regarding parties’ respective rights and interests. The Third Party Release provides finality for the Debtors, their Estates, the Plan Administrator, the Liquidating Trustee, and the other Released Parties regarding the parties’ respective obligations under the Plan and the transactions contemplated therein. The Third Party Release was instrumental in developing a Plan that maximized value for all of the Debtors’ stakeholders. As such, the Third Party Release appropriately offers certain protections to parties who constructively participated in the Debtors’ chapter 11 process by, among other things, supporting the Plan.

51. Notice of the Third Party Release was provided to all Holders of Claims and Interests and such notice was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases. The Combined Hearing Notice was sent to Holders of Claims and Interests and published in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, and the Ballots and Notices, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third Party Release and that each such Holder of Claims or Interests may elect not to grant such Third Party Release. The release provisions of the Plan were conspicuous and emphasized with boldface type in the Plan, the Disclosure Statement,



the Ballots, and the Notices. Further, opt-out information was provided in the Notices. The Third Party Release provides appropriate and specific disclosure with respect to the Claims and Causes of Action that are subject to the Third Party Release, and no other disclosure or notice is necessary.

52. The Third Party Release is: (a) consensual; (b) a good faith settlement and compromise of the Claims released by the Third Party Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a bar to any of the Releasing Parties' asserting any Claim or Cause of Action released pursuant to the Third Party Release; (g) specific in language and scope; and (h) consistent with sections 105, 524, 1123, 1129 and 1141 and other applicable provisions of the Bankruptcy Code. Therefore, the Third Party Release is reasonable, appropriate, and consistent with the provisions of the Bankruptcy Code and applicable law.

53. The only Holders of Claims and Interests that have opted out of the Third Party Release are those set forth in the tabulation summary attached as **Exhibit A** to the Voting Report. The only non-voting parties that have opted out of the Third Party Release are those set forth in the opt-out election summary attached as **Exhibit C** to the Voting Report.

54. **Exculpation.** The exculpation provision included at Article IX.C of the Plan (the "Exculpation") is necessary and appropriate to the Plan. The Exculpation is narrowly tailored to protect estate fiduciaries from inappropriate litigation and to exclude actions found to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties subject to the Exculpation have, and upon entry of this Confirmation Order, will be deemed to have participated in good faith and in compliance with all applicable laws with regard to the negotiation and implementation of, among others, these Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract,

instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or this Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.

55. **Injunction.** The injunction provision set forth in Article IX.D of the Plan is essential to the Plan and necessary to preserve and enforce the Debtor Releases, the Third Party Release, and the Exculpation, each as set forth in Articles IX.A, IX.B, and IX.C of the Plan respectively.

56. In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtors or the Liquidating Trust, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained Causes of Action and Causes of Action of the Debtors that are not otherwise transferred or sold pursuant to the Sale Transactions, whether arising before or after the Petition Date, and the Wind-Down Debtors' or the Liquidating Trust's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the

occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX of the Plan, which shall be deemed released and waived by the Debtors as of the Effective Date. No Causes of Action shall be retained or preserved by the Debtors against the Debtors' directors and officers. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Wind-Down Debtors or the Liquidating Trust will not pursue any and all available Causes of Action of the Debtors against it.

57. The release and discharge of mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, as described in Article IX.F of the Plan (the "Lien Release") is necessary to implement the Plan.<sup>8</sup> The provisions of the Lien Release are appropriate, fair, equitable, reasonable, and in the best interests of the Debtors, the Estates, and Holders of Claim and Interests.

58. The releases, injunctions, and exculpations set forth in the Plan are fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and all Holders of Claims or Interests. The record at the Combined Hearing and in these Chapter 11 Cases is sufficient to support the releases, injunctions, and exculpations provided for in Article IX of the Plan. Accordingly, the Plan is consistent with section 1123(b)(3) of the Bankruptcy Code.

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<sup>8</sup> All parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

**(l) Treatment of Rights of Holders of Claims—1123(b)(5)**

59. The Plan is consistent with section 1123(b)(5) of the Bankruptcy Code. 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.

**(m) Additional Plan Provisions—Section 1123(b)(6).**

60. 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.

**R. Debtors Complied with Bankruptcy Code Requirements—Section 1129(a)(2).**

61. The Debtors complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109 of the Bankruptcy Code and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;
- b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and
- c. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Bankruptcy Local Rules, any applicable non-bankruptcy law, rule and regulation, the Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages and the Notice of Non-Voting Status and Release Opt-Out Forms, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**S. Plan Proposed in Good Faith—Section 1129(a)(3).**

62. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan, the Sale Transactions, and the process leading to

Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Liquidation Transactions for the maximum benefit of all parties in interest and to maximize the value of the Estates and the recoveries to Holders of Claims and Interests.

**T. Payment for Services or for Costs and Expenses—Section 1129(a)(4).**

63. The procedures set forth in the Plan for the Bankruptcy Court’s review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**U. Directors, Officers, and Insiders—Section 1129(a)(5).**

64. Because the Plan provides for the dissolution of the existing board of directors of the Debtors and that any remaining directors or officers of the Debtors shall be dismissed, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Plan Administrator or the Liquidating Trustee, the Debtors have satisfied the requirements of this provision by, among other things, agreeing to disclose the identities of the Plan Administrator and the Liquidating Trustee.

**V. No Rate Change—Section 1129(a)(6).**

65. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission.

**W. Best Interest of the Creditors—Section 1129(a)(7).**

66. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis included in the Plan Supplement, and any other evidence related thereto

in support of the Plan that was proffered or adduced in the Declarations in Support or at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims and Interests in each Class will recover more under the Plan on account of such Claim or Interest, as of the Effective Date, than such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

**X. Acceptance by Certain Classes—Section 1129(a)(8).**

67. Classes 1, 2, 3, 4, and 5 are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 6 is Impaired under the Plan and has voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. Accordingly, each Class of Claims or Interests is either Unimpaired or has accepted the Plan and, as such, the Plan complies with Section 1129(a)(8) of the Bankruptcy Code.

**Y. Treatment of Claims Entitled to Priority under Section 507(a)—1129(a)(9).**

68. The Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code. The treatment of Allowed Administrative Claims, Professional Compensation Claims, and Priority Tax Claims under Article II of the Plan and of Other Priority Claims under Article III of the Plan satisfies the requirements of, and complies in all respects with the treatment required by section 1129(a)(9) of the Bankruptcy Code for each of the various claims specified in sections 507(a)(1)–(8) of the Bankruptcy Code.

**Z. Acceptance by at Least One Impaired Class—Section 1129(a)(10).**

69. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced in the Voting Report, Class 6 voted to accept the Plan by the requisite numbers and

amounts of interests specified under section 1126(c) of the Bankruptcy Code, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code).

**AA. Feasibility—Section 1129(a)(11).**

70. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization; (d) establishes that the Plan may be implemented and has a reasonable likelihood of success; (e) establishes that the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, will have sufficient funds available to meet their obligations under the Plan; and (f) establishes that the Plan Administrator or the Liquidating Trustee, as applicable, will have the financial wherewithal to satisfy their obligations following the Effective Date.

**BB. Payment of Statutory Fees—Section 1129(a)(12).**

71. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article II.D of the Plan provides for the payment of all fees and charges assessed against the Estates under 28 U.S.C. § 1930.

**CC. Continuation of Employee Benefits—Section 1129(a)(13).**

72. The Debtors do not have any obligation to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases and the Plan.

**DD. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

73. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**EE. “Cram Down” Requirements—Section 1129(b).**

74. 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. Class 6 voted to accept the Plan, so all Holders of Claims or Interests under the Plan are either Unimpaired or they have accepted the Plan, thus satisfying the requirements of section 1129(a)(8) of the Bankruptcy Code and rendering section 1129(b) of the Bankruptcy Code inapplicable.

**FF. Only One Plan—Section 1129(c).**

75. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in these Chapter 11 Cases.

**GG. Principal Purpose of the Plan—Section 1129(d).**

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

**HH. No Small Business Case—Section 1129(e).**

77. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply.

**II. Good Faith Solicitation—Section 1125(e).**

78. The Debtors acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and



the Bankruptcy Rules in connection with all of their activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**JJ. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

79. Each of the conditions precedent to the Effective Date, as set forth in Article VIII.A of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article VIII.B of the Plan.

**KK. Implementation.**

80. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length, are in the best interests of the Debtors and their Estates, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, are authorized to take any action reasonably necessary, advisable, or appropriate to consummate such agreements and the transactions contemplated thereby.

**LL. Disclosure of All Material Facts.**

81. The Debtors disclosed all material facts regarding the Disclosure Statement, the Plan, the Plan Supplement, and the adoption, execution, and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable.

**MM. Satisfaction of Confirmation Requirements.**

82. Based on the foregoing, the Declarations in Support, and all other pleadings and evidence proffered or adduced at or prior to the Combined Hearing, the Plan satisfies the requirements of section 1129 of the Bankruptcy Code.

**ORDER**

**BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

83. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

84. **Disclosure Statement, Solicitation Packages, Tabulation Procedures, and Solicitation Procedures.** The Disclosure Statement, the Solicitation Packages, and the Solicitation Procedures are **APPROVED** on a final basis in all respects pursuant to section 1125 of the Bankruptcy Code.

85. **Approval of the Global Settlement.** Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, the Global Settlement is hereby approved.

86. **Confirmation of the Plan.** The Plan, attached hereto as **Exhibit A**, as and to the extent modified by this Confirmation Order, is approved and **CONFIRMED** in its entirety pursuant to section 1129 of the Bankruptcy Code. All Plan documents necessary for implementation of the Plan, including those in the Plan Supplement, are hereby approved and incorporated herein by reference as an integral part of this Confirmation Order. The failure to include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document, agreement, or exhibit does not impair the effectiveness of that article,

section, or provision, it being the intent of this Confirmation Order that the Plan, the Plan Supplement, and any related document, agreement, or exhibit are approved in their entirety.

87. **Headings.** Headings utilized in this Confirmation Order are for convenience of reference only and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

88. **Objections.** All objections (including any reservations of rights contained therein) to approval of Confirmation of the Plan that have not been withdrawn, waived, or settled prior to entry of this Confirmation Order, are not cured by the relief granted herein, or are not otherwise resolved as stated by the Debtors on the record of the Combined Hearing, are **OVERRULED** and **DENIED** on the merits and in their entirety, and all withdrawn objections are deemed withdrawn with prejudice.

89. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims or Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications and this Confirmation Order. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of any Plan Modifications.

90. **No Action Required.** Under section 1142(b) of the Bankruptcy Code and any other comparable provisions under applicable law, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, File, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Liquidation Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan.

91. **Immediate Binding Effect.** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, or the Plan Administrator, the Liquidating Trustee, the Holders of Claims or Interests, the Released Parties, and each of their respective successors and assigns. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

92. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder, and all motions or requests for relief by the Debtors pending before this Bankruptcy Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Wind-Down Debtors, the Plan Administrator, the Liquidating Trust, and the Liquidating Trustee, as applicable, and their respective successors and assigns.

93. **Classification and Treatment.** The Plan's classification scheme is approved. The terms of the Plan shall govern the classification and treatment of Claims and Interests for purposes of the distributions to be made thereunder.

94. **Subordination of Claims.** The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Liquidating Trustee (as applicable) reserve the right to re-classify any Allowed Claim or

Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

95. **Insurance.** Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

96. **Liquidation.** On or before the Effective Date, the Debtors or the Plan Administrator shall enter into and take any actions that may be necessary or appropriate to effectuate the Sale Transactions or the Wind-Down of the Debtors, as applicable, including but not limited to: (a) the Eiger Conversion; (b) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (c) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan; (d) the delivery of Liquidating Trust Assets to the Liquidating Trustee; (e) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (f) any and all other actions that the Debtors or the Plan Administrator determine are necessary or appropriate to effectuate the Plan.

- a. **Wind-Down.** Following the Effective Date, the Plan Administrator shall Wind-Down the business affairs and operations of the Debtors. The responsibilities and authority of the Plan Administrator shall include the following: (i) administering the Professional Fee Reserve Account, the Wind-Down Budget, and the Prepetition Term Loan Claims Escrow Account on the terms set forth in the Plan; (ii) administering and paying taxes, including, among other things, (a) filing tax returns (to the extent not the obligation of any Purchaser), and (b) representing the interest and

account of the Debtors before any taxing authority in all matters; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator's performance of its duties under the Plan; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) complying with any continuing obligations under the Asset Purchase Agreements, as applicable; (vi) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Cases; and (vii) making distributions to Professionals for Allowed Professional Compensation Claims from the Professional Fee Reserve Account.

The responsibilities and authority of the Liquidating Trustee shall include the following: (i) preserving and liquidating the Debtors' assets remaining after consummation of the Sale Transactions, if any, including through the prosecution of any Claims or Retained Causes of Action; (ii) considering, litigating, or resolving disputed Claims; (iii) distributing the Distributable Cash and other assets of the Debtors' Estates pursuant to the terms of the Plan to Holders of Allowed Claims and Interests; (iv) procuring the necessary insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (v) performing such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan or an order of the Bankruptcy Court (including, without limitation, this Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

97. **Sources of Consideration for Plan Distributions.** Subject to the provisions of the Plan concerning the Professional Fee Reserve Account and the Wind-Down Budget, the Debtors or the Liquidating Trustee (as applicable) shall fund distributions under the Plan with the Liquidating Trust Assets, including but not limited to: (1) the remaining proceeds from the Sale Transactions; (2) the Debtors' Cash on hand delivered to the Liquidating Trustee; and (3) the recovery, if any, from prosecution or settlement of the Retained Causes of Action, all in accordance with the terms in the Plan.

98. On or before the Effective Date, the Debtors or the Plan Administrator shall take any actions that may be necessary or appropriate to effectuate the Sale Transactions in accordance with the Bid Procedures Order and the Plan.

99. The Debtors or the Liquidating Trustee shall use Cash on hand to pay the fees and expenses of administering their respective functions and to fund distributions to Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

100. The Debtors, the Liquidating Trustee, or the Plan Administrator shall use the recovery, if any, from prosecution or settlement of the Retained Causes of Action to fund distributions to certain Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

101. **Vesting of Assets.** Except as otherwise provided in the Plan or the Sale Orders, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except for certain Causes of Action (as set forth on the Schedule of Retained Causes of Action), the Wind-Down Budget, the Professional Fee Reserve Account, which shall vest in the Wind-Down Debtors, all property in each of the Estates, including all claims, rights, Causes of Action that shall vest in the Liquidating Trust, and any property acquired by the Debtors under or in connection with the Plan, shall vest in the Liquidating Trust and with the Liquidating Trustee, free and clear of all Claims, Liens, encumbrances, charges, Causes of Action, or other interests. Subject to the terms of the Plan, on or after the Effective Date, the Liquidating Trustee may use, acquire, and dispose of property, and may prosecute, compromise, or settle any Claims and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or this Confirmation Order.

102. As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the

Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

103. On the Effective Date, the attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities (all together, "Privileges") belonging to the Debtors or the Estates that concern or in any way relate to (a) any of the Liquidating Trust Assets, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any Liquidating Trust Assets, shall vest in the Liquidating Trust, and (b) any of the assets vesting in the Wind-Down Debtors, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any such assets, shall vest in the Wind-Down Debtors. The Liquidating Trustee shall have the sole right to waive Privileges that concern or in any way relate to any of the Liquidating Trust Assets or that would apply to communications, documents, or electronic records concerning or in any way relating to any Liquidating Trust Assets. The Plan Administrator shall have the sole right to waive Privileges that concern or in any way relate to any of the assets vesting in the Wind-Down Debtors or that would apply to communications, documents, or electronic records concerning or in any way relating to any such assets.

104. **Preservation of Causes of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trustee or the Plan Administrator, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action



of the Debtors, including any actions specifically enumerated in the Schedule of Retained Causes of Action, that are not otherwise transferred or sold pursuant to the Sale Transactions or distributed pursuant to the Plan, whether arising before or after the Petition Date, and the Liquidating Trustee's or the Plan Administrator's, as applicable, rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX of the Plan, which shall be deemed released and waived by the Debtors as of the Effective Date. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trustee, or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action of the Debtors against it.

105. **Corporate Action.** On the Effective Date, the Debtors shall not be dissolved unless and until the Plan Administrator, in consultation with the Liquidating Trustee, determines that dissolution will not have any adverse impact on the value of the Debtors' assets; *provided* that neither the Debtors nor any party released pursuant to Article IX of the Plan shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors; *provided further*, that nothing in the Plan shall be construed as relieving the Debtors or the Plan Administrator (as applicable) of their duties to pay U.S. Trustee Statutory Fees as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtors' Chapter 11 Cases or

the cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The Plan Administrator shall submit with the appropriate governmental agencies a copy of this Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the applicable Secretary of State or equivalent body.

106. Without limiting the foregoing, on the Effective Date and following satisfaction of the Debtors' distribution and funding requirements set forth in the Plan, the Debtors shall have no further duties or responsibilities in connection with implementation of the Plan, and the directors and officers of the Debtors shall be deemed to have resigned in favor of the ongoing administration of the Debtors' affairs by the Plan Administrator. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, provided that neither of them shall have duties other than as expressly set forth in the Plan or this Confirmation Order.

107. **Cancellation of Existing Securities and Agreements.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, securities and other documents evidencing any Claim or Interest, and any rights of any Holder in respect thereof, shall be deemed cancelled and of no further force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged and, as applicable, shall be deemed to have been surrendered to the Liquidating Trustee. The Holders of or parties to such cancelled instruments, securities, and other documentation shall have no rights arising from or related to such instruments, securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan. All parties' rights, defenses, and Causes of Action

related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

108. **Effectuating Documents; Further Transactions.** Upon entry of this Confirmation Order, the Debtors or the Plan Administrator or the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtors or the Plan Administrator or the Liquidating Trustee, all Holders of Claims or Interests receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

109. **Section 1146 Exemption from Certain Taxes and Fees.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

110. **Sale Orders.** Notwithstanding anything to the contrary in the Plan, nothing in the Plan shall affect, impair or supersede the Sale Orders or Sale Transactions Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

111. **Authority to Act.** Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state(s) in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

112. **Separate Plans.** Notwithstanding the combination of separate plans of liquidation for the Debtors set forth in the Plan for purposes of economy and efficiency, the Plan constitutes a separate chapter 11 plan for each Debtor.

113. **General Settlement of Claims and Interests.** Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holders of Claims or Interests may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise

or settlement is in the best interests of the Debtors, their Estates, and Holders of such Claims or Interests, and is fair, equitable, and reasonable.

114. **Assumption and Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, except as otherwise provided in the Plan (which exclusion includes the Indemnification Obligations and the D&O Liability Insurance Policies) or otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

115. Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Transactions Documents or the Plan, and payment of any Cures relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

116. If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Bankruptcy Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon

counsel to the Plan Administrator and the Liquidating Trustee within thirty (30) days of the Effective Date.

117. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and this Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and this Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with the provisions herein.

**118. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and this Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be disallowed automatically, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties.**

119. **Indemnity Obligations.** Each of the Debtors' Indemnification Obligations shall not be discharged, impaired, or otherwise affected by the Plan. The Indemnification Obligations shall be deemed Executory Contracts assumed by the Debtors under the Plan. Notwithstanding the foregoing, such Indemnification Obligations shall be subject to typical exclusions for actual fraud, willful misconduct, or gross negligence.

120. **D&O Liability Insurance Policies.** Each D&O Liability Insurance Policy to which the Debtors are a party as of the Effective Date shall be deemed an Executory Contract and shall be automatically assumed or assumed and assigned by the applicable Debtor, effective as of

the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code. For the avoidance of doubt, coverage for defense and indemnity under the D&O Liability Insurance Policies shall remain available to all individuals within the definition of “Insured” in the D&O Liability Insurance Policies. In addition, after the Effective Date, all officers, directors, agents, or employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of the D&O Liability Insurance Policies (including any “tail” policy) in effect or purchased as of the Effective Date for the full term of such policy regardless of whether such officers, directors, agents, and/or employees remain in such positions after the Effective Date, in each case, to the extent set forth in the D&O Liability Insurance Policies.

121. **Employee Compensation and Benefits.** All employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and nonemployee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, Executory Contracts under the Plan and, on the Effective Date, shall be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

122. **Employment Agreements.** Any Employment Agreement not assumed and assigned pursuant to the Sale Transactions Documents as part of the Sale Transactions shall be rejected by the Plan Administrator on the Effective Date of the Plan.

123. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or in this Confirmation Order, the timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan, the Plan

Supplement, or this Confirmation Order, as applicable. To the extent the Plan does not specify the recipient of any Estate assets or property (including in the event that the Claim of the specified recipient of such Estate assets or property is paid or otherwise satisfied in full), such Estate assets or property shall be turned over to the Liquidating Trustee for distribution to Holders of Claims in accordance with the claims and priority waterfall set forth in the Plan.

124. **Professional Compensation.** All requests for payment of Professional Compensation Claims (other than from OCPs) for services rendered and reimbursement of expenses incurred through the Effective Date shall be filed no later than forty-five (45) days after the Effective Date. This Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Objections to Professional Compensation Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Compensation Claims. To the extent any Cash is remaining in the Professional Fee Reserve Account following irrevocable payment in full of all Allowed Professional Compensation Claims (including Allowed Professional Compensation Claims arising after the Confirmation Date), such Cash shall be transferred to the Wind-Down Debtors.

125. All requests for payment of Professional Compensation Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Compensation Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Compensation Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Plan Administrator (as applicable) from the Professional Fee Reserve Account as soon as reasonably practicable after such Professional Compensation Claims are Allowed pursuant to the OCP Order.



126. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Liquidating Trustee promptly following the occurrence of the Effective Date, if not returned or applied earlier.

127. **Compliance with Tax Requirements.** In connection with the Plan, any Person issuing any instrument or making any distribution or payment in connection therewith, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority. In the case of a non-Cash distribution that is subject to withholding, the distributing party may require the intended recipient of such distribution to provide the withholding agent with an amount of Cash sufficient to satisfy such withholding tax as a condition to receiving such distribution or withhold an appropriate portion of such distributed property and either (1) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (2) pay the withholding tax using its own funds and retain such withheld property. The distributing party shall have the right not to make a distribution under the Plan until its withholding or reporting obligation is satisfied pursuant to the preceding sentences. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

128. Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the withholding agent or such other Person designated by the Liquidating Trustee the appropriate IRS Form or other tax forms or documentation requested by the Liquidating Trustee to reduce or eliminate any required federal, state, or local withholding. If

the party entitled to receive such property as an issuance or distribution fails to comply with any such request for a one hundred eighty (180) day period beginning on the date after the date such request is made, the amount of such issuance or distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such distribution under the Plan shall be discharged and forever barred from assertion against such Debtor, the Plan Administrator, or the Liquidating Trustee or its respective property.

129. Notwithstanding the above, each Holder of an Allowed Claim or Interest that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Plan Distribution.

130. **Procedures for Resolving Disputed Claims.** The procedures governing resolution of disputed or unliquidated claims contained in Article VII of the Plan shall be, and hereby are, approved in their entirety. As set forth therein, all Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims shall not be entitled to vote to accept or reject the Plan. A Claim deemed Disputed pursuant to Article VII.H of the Plan shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtors or the Liquidating Trustee from such Holder have been paid.

131. Prepetition Term Loan Claims will remain Disputed until the Bankruptcy Court determines the Aggregate Allowed Prepetition Term Loan Claims Amount.

132. Except as provided in the Plan, on or after the Effective Date, without the prior authorization of the Bankruptcy Court, the Plan Administrator, or the Liquidating Trustee, as applicable, a Claim may not be Filed or amended, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

133. If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

134. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Within ten (10) days after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan, unless otherwise provided by order of the Bankruptcy Court. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim unless the Plan provides otherwise. The Aggregate Allowed Prepetition Term Loan Claims Amount shall include any interest accrued, as applicable per the Bankruptcy Court's determination, with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

135. **Claims Register.** Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the official Claims Register in these

Chapter 11 Cases by the Debtors, or the Liquidating Trustee, as applicable, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. The Debtors' Notice and Claims Agent, is directed to adjust or expunge such Claims in the Claims Register, as applicable.

136. **Waiver or Estoppel.** Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, as an Other Secured Claim, or not subordinated, by virtue of an agreement made with the Debtors or their counsel (or any other Entity), if such agreement was not disclosed in the Plan, the Sale Orders, the Plan Supplement, the Disclosure Statement, or other papers filed with the Bankruptcy Court or evidenced by a written instrument acknowledged by the Debtors or their counsel before the Confirmation Date.

137. **Debtor Releases, Third Party Release, Exculpations, Injunction, and Related Provisions under the Plan.** The discharge, releases, injunctions, exculpations, and related provisions set forth in Article IX of the Plan are incorporated herein in their entirety, are hereby approved and authorized in all respects, are so ordered, and shall be immediately effective on the Effective Date without further order or action on the part of this Bankruptcy Court or any other party.

138. **Debtor Releases.** Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, effective on the Effective Date, each Released Party is hereby deemed to be hereby released and discharged by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to

assert any causes of action, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Debtors, from any and all derivative Claims and Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or this Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, and the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the

administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, this Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. Notwithstanding anything to the contrary in the foregoing, the releases under this section only release Claims held by the Debtors or Claims that could be asserted by the Debtors under applicable law.

139. Third Party Release. Except as otherwise expressly set forth in the Plan or this Confirmation Order, on and after the Effective Date, and with respect to all other Releasing Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital

structure, management, ownership, or operation thereof), the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or this Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan, (2) this Confirmation Order, or (3) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

140. **Exculpations.** Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission taking place between the Petition Date and the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transaction, including any contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or this Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

141. **Injunction.** Except as otherwise provided in the Plan or this Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a Purchaser in connection with the Sale Transactions; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated



pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, Interests, Causes of Action, or liabilities that have been compromised or settled against any of the Debtors or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Plan Administrator, the Liquidating Trustee, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and

**(5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.**

**142. Upon the Bankruptcy Court's entry of this Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan by the Debtors, the Plan Administrator, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.**

**143. Article IX.D shall not operate as a discharge under section 1141(d)(3) of the Bankruptcy Code.**

**144. Gatekeeper Provision.** No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors or the Plan Administrator, the Liquidating Trustee, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article IX.A, Article IX.B, and Article IX.C without first (a) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor or the Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party and is not a Claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (b) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor or Plan Administrator, Liquidating Trustee, Exculpated

Party, or Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

145. **Release of Liens.** Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the terms of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

146. If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon as practicable on or after the date such Holder has been satisfied in full pursuant to the Plan, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or

recordings on such Holder's behalf. The presentation or filing of this Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

147. All parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

148. **Term of Injunctions or Stays.** Except as otherwise provided in the Plan or this Confirmation Order, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under the Plan: (a) all injunctions with respect to or stays against an action against property of the Debtors or the Debtors' Estates arising under or entered during these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date this Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtors or the Debtors' Estates; and (b) all other injunctions and stays arising under or entered during these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (i) the date that these Chapter 11 Cases are closed pursuant to a Final Order of the Bankruptcy Court, or (ii) the date that these Chapter 11 Cases are dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect indefinitely.

149. **Nonseverability of Plan Provisions.** Each term and provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidating Trustee (as applicable); and (c) non-severable and mutually dependent.

150. **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date is required to be served upon only the following parties: (a) the U.S. Trustee; (b) the Prepetition Term Loan Agent; (c) any party known to be directly affected by the relief sought by such pleadings; and (d) any party that specifically requests additional notice after the Effective Date in writing to the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Debtors' Notice and Claims Agent shall not be required to file updated service lists.

151. **Post-Confirmation Reports.** After entry of the Confirmation Order, each of the Debtors and the Plan Administrator, as applicable, shall remain obligated to file post-confirmation quarterly reports and to pay quarterly fees to the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary herein, the U.S. Trustee shall not be required to File a Proof of Claim or any other request for payment of quarterly fees.

152. **Post-Confirmation Modifications.** Following the entry of this Confirmation Order, the Debtors or the Plan Administrator may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

153. **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents,

instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

154. **Applicable Non-Bankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law or any requirements related thereto.

155. **Government Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

156. **Reporting.** After entry of this Confirmation Order, the Debtors, or the Plan Administrator, as applicable, shall have no obligation to file with the Bankruptcy Court, serve on any parties, or otherwise provide any party with any other report that the Debtors were obligated to provide under the Bankruptcy Code or an order of the Bankruptcy Court, including obligations to provide (a) any reports to any parties otherwise required under the “first” and “second” day orders entered in these Chapter 11 Cases and (b) monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date); *provided* that the Debtors or Plan Administrator, as applicable, will comply with the U.S. Trustee’s quarterly reporting requirements.

157. **Notice of Effective Date.** The Debtors or the Plan Administrator, as applicable, shall serve notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Effective Date”) in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with notice of the Combined Hearing within seven (7) Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

158. The Notice of Effective Date will have the effect of an order of the Bankruptcy Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

159. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

160. **Dissolution of the Committees.** On the Effective Date, any duly appointed Statutory Committee will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to these Chapter 11 Cases.

161. **Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

162. **Provisions Regarding Releases.** Nothing set forth in the Plan, including, without limitation, Article IX.A or Article IX.B of the Plan, shall be construed as or deemed to constitute a release of any obligations of the Debtors or any Released Parties under any Sale Order, including any Asset Purchase Agreement or ancillary document related thereto, regardless of when such obligations arise.

163. **Provisions Regarding Texas Comptroller.** Notwithstanding anything in the Plan or this Confirmation Order, the following provisions will govern the treatment of the Claims of the Texas Comptroller of Public Accounts (the "Texas Comptroller"): (1) the Plan shall not release or discharge any entity other than the Debtors, the Wind-Down Debtors, the Plan Administrator, the Liquidating Trust, or the Liquidating Trustee, as applicable, from any liability owed to the Texas Comptroller for a tax debt, including interest and penalties on such tax, and this provision is not an admission by any party that such liability exists; (2) the Plan shall not limit the Texas Comptroller's setoff rights under 11 U.S.C. § 553, if any, and this provision is not an admission by any party that such setoff rights exist; and (3) in the event payment on account of the Texas Comptroller's Claims is not made as set forth in the Plan, the Texas Comptroller reserves its rights under bankruptcy and state law.

164. **Governmental Entities.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal



Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

165. **Final Order.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by this Bankruptcy Court. This Confirmation Order is a Final Order and shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing.

166. **Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

**### END OF ORDER ###**

Submitted By:

**SIDLEY AUSTIN LLP**

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*Attorneys for the Debtors and Debtors in  
Possession*

In re:  
Eiger BioPharmaceuticals, Inc.  
Debtor

Case No. 24-80040-sgj  
Chapter 11

## CERTIFICATE OF NOTICE

District/off: 0539-8  
Date Rcvd: Sep 06, 2024

User: admin  
Form ID: pdf012

Page 1 of 5  
Total Noticed: 1

The following symbols are used throughout this certificate:

**Symbol**            **Definition**

+                    Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

**Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Sep 08, 2024:**

<b>Recip ID</b>	<b>Recipient Name and Address</b>
aty	+ Andrew J. Townsell, Sidley Austin LLP, 787 7th Avenue, New York, NY 10019-6088

TOTAL: 1

**Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.**  
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

## BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, \*duplicate of an address listed above, \*P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

## NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Sep 08, 2024

Signature:           /s/Gustava Winters          

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## CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on September 5, 2024 at the address(es) listed below:

<b>Name</b>	<b>Email Address</b>
Anne G. Wallace	on behalf of Debtor Eiger BioPharmaceuticals Inc. anne.wallice@sidley.com, anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com
Anne G. Wallace	on behalf of Debtor EBPI Merger Inc. anne.wallice@sidley.com anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com
Anne G. Wallace	on behalf of Jointly Administered Party/Debtor EB Pharma LLC anne.wallice@sidley.com anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com
Anne G. Wallace	on behalf of Jointly Administered Party/Debtor Eiger BioPharmaceuticals Europe Limited anne.wallice@sidley.com anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com
Anne G. Wallace	on behalf of Debtor EB Pharma LLC anne.wallice@sidley.com anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com

District/off: 0539-8  
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Total Noticed: 1

Anne G. Wallace  
on behalf of Jointly Administered Party/Debtor EBPI Merger Inc. anne.wallice@sidley.com  
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Anne G. Wallace  
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anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com

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anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com

Anne G. Wallace  
on behalf of Debtor EigerBio Europe Limited anne.wallice@sidley.com  
anne--wallice--4789@ecf.pacerpro.com;nyefiling@sidley.com

Beverly Weiss Manne  
on behalf of Creditor Thermo Fisher Scientific et al. bmanne@tuckerlaw.com, bewmanne@aol.com

Bruce H White  
on behalf of Creditor Dr. Colleen Craig Kaludzinski bwhite@parsonsbehle.com

Candice Marie Carson  
on behalf of Creditor Eton Pharmaceuticals Inc. Candice.Carson@butlersnow.com

Charles Martin Persons, Jr.  
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ltannenbaum@melandbudwick.com;ltannenbaum@ecf.courtdrive.com;mrbnf@yaho.com

David E. Sklar  
on behalf of Interested Party Official Equity Security Holders' Committee desklar@pbnlaw.com  
mpdermatis@pbnlaw.com;jmoconnor@pbnlaw.com

Dawn Whalen Theiss  
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brooke.lewis@usdoj.gov;CaseView.ECF@usdoj.gov

Elizabeth Ziegler Young  
on behalf of U.S. Trustee United States Trustee elizabeth.a.young@usdoj.gov

Eric M. Van Horn  
on behalf of Creditor Merck Sharp & Dohme LLC ericvanhorn@spencerfane.com

Garrick Chase Smith  
on behalf of Attorney Munsch Hardt Kopf & Harr P.C. gsmith@munsch.com

Garrick Chase Smith  
on behalf of Creditor Committee Official Unsecured Creditors Committee gsmith@munsch.com

Garrick Chase Smith  
on behalf of Attorney Meland Budwick P.A. gsmith@munsch.com

George H. Barber  
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Jay Robert Bender  
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Jeff P. Prostok  
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John James Sparacino  
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john-sparacino-7086@ecf.pacerpro.com;managingclerk@mckoolsmith.com;scastillo@mckoolsmith.com

John Joseph Kuster

District/off: 0539-8  
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Total Noticed: 1

on behalf of Jointly Administered Party/Debtor EB Pharma LLC jkuster@sidley.com

John Joseph Kuster  
on behalf of Interested Party Eiger InnoTherapeutics Inc. jkuster@sidley.com

John Joseph Kuster  
on behalf of Debtor Eiger BioPharmaceuticals Inc. jkuster@sidley.com

John Joseph Kuster  
on behalf of Jointly Administered Party/Debtor EigerBio Europe Limited jkuster@sidley.com

John Joseph Kuster  
on behalf of Jointly Administered Party/Debtor Eiger BioPharmaceuticals Europe Limited jkuster@sidley.com

John Joseph Kuster  
on behalf of Jointly Administered Party/Debtor EBPI Merger Inc. jkuster@sidley.com

John Mark Stern  
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