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TO THE HONORABLE JOHN P. MASTANDO III  
UNITED STATES BANKRUPTCY JUDGE:

Certain of the Petitioning Creditors, as Plan Proponents, in the above-captioned chapter 11 cases (these "Chapter 11 Cases"), hereby submit this memorandum of law (this "Memorandum") in support of confirmation of the *Petitioning Creditors' Alternative Chapter 11 Plan of Eletson Holdings Inc. and its Affiliated Debtors* (as it may be amended, modified, and/or supplemented from time to time, the "Alternative Plan").<sup>1</sup> In support of this Memorandum, the Plan Proponents rely upon and incorporate herein by reference,

- (a) the *Declaration of Adam Spears in Support of Confirmation of the Petitioning Creditors' Chapter 11 Plans*, filed on August 26, 2024 [Docket No. 1023] (the "Spears Declaration"),
- (b) the *Certification of James Lee With Respect to the Tabulation of Votes on the Competing Chapter 11 Plans of Reorganization for Eletson Holdings Inc. and its Affiliated Debtors*, filed on August 14, 2024 [Docket No. 941] (the "Voting Declaration"),
- (c) the *Declaration of Alex Zyngier in Support of Confirmation of the Petitioning Creditors' Chapter 11 Plans*, attached hereto as **Exhibit A**, (the "Batuta Declaration"),
- (d) the *Declaration of Alex Zyngier in Response to Expert Report of Nikolaos Veraros*, attached hereto as **Exhibit B**, (the "Batuta Rebuttal Declaration") and, together with the Spears Declaration, Voting Declaration, and Batuta Declaration, the "Declarations"), and
- (e) the *Petitioning Creditors' Omnibus Reply to the Debtors' and the Shareholders' Objections to Confirmation of the PC Plans*, filed substantially contemporaneously herewith (the "Reply").

In support of confirmation of the Alternative Plan, the Plan Proponents, by and through their undersigned counsel, respectfully state:

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Alternative Plan.

### **PRELIMINARY STATEMENT**<sup>2</sup>

1. Nearly twenty months after the commencement of these Chapter 11 Cases, the Debtors, their estates, and all parties are at a crossroads and in the midst of a complex and contentious competing plan process. As of the date hereof, the Debtors have been presented with three plans, the Debtors' Plan [Docket No. 839], the PC Plan [Docket No. 846], and the Alternative Plan [Docket No. 848] (collectively, the "Competing Plans"). As explained in more detail in the Petitioning Creditors' objection to the Debtors' Plan [Docket No. 1027] (the "Objection"), the Debtors' Plan is fraught with uncertainty and is on its face unconfirmable. In contrast, the Alternative Plan provides for higher returns for creditors, is preferred by creditors, and easily satisfies the requirements for confirmation under the Bankruptcy Code. Thus, if the Court were to ignore creditor preferences for the PC Plan and determine to prefer the structure of the Debtors' Plan, then it should confirm the Alternative Plan to comply with the absolute priority rule and creditor preferences between the two plans premised on this structure. And creditors would agree considering their overwhelming preference for the PC Plan and the Alternative Plan and clear rejection of the Debtors' Plan.

2. After the expiration of the Debtors' exclusivity period and the filing of the PC Plan, the Plan Proponents determined that, regardless of which structure the Debtors' creditors prefer, they should be entitled to the highest returns possible. Accordingly, the Plan Proponents expressed their desire to overbid the Debtors' Plan. Despite repeated attempts to engage with the Debtors on the overbid, the Plan

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Preliminary Statement have the meanings ascribed to such terms below.

Proponents were met with radio silence. Consequently, in early June, the Plan Proponents filed the Alternative Plan Term Sheet, and shortly thereafter, the original Alternative Plan. Following the filing of the original Alternative Plan, the Plan Proponents continued to engage in good faith negotiations with the Creditors' Committee, the Notes Trustees, and the U.S. Trustee on the Alternative Plan which included, among other things, increasing the equity investment from \$33 million to \$41 million.

3. The Plan Proponents structured the Alternative Plan to mirror the Debtors' Plan structure except for two notable differences: (i) more funding from the Plan Sponsor (\$41 million vs. the Debtors' insufficient 30 million) and (ii) higher returns for creditors (including the transfer of more claims and causes of action to the Litigation Trust). The Alternative Plan also contains other benefits for creditors, such as the OCM Guaranty Claims which are unimpaired and not arbitrarily impaired and complies with the OCM Financing Stipulation (which the Debtors' Plan ignores). The Alternative Plan also addressed the unconfirmable aspects of the Debtors' Plan, such as demonstrating good faith, providing more funding, and including appropriate savings clauses for sections of the Debtors' Plan the Petitioning Creditors do not believe are consistent with the Bankruptcy Code.

4. Accordingly, to the extent the Court finds that the Debtors' Plan is confirmable, this Court should only confirm the Alternative Plan because it provides for higher returns under the same structure, is in the best interests of the Debtors' estates, and meets the requirements for confirmation under section 1129(a) and (b) of the Bankruptcy Code.

## **FACTS**

5. The factual background relevant for confirmation of the Alternative Plan is set forth in the Alternative Disclosure Statement, the Declarations, and, to the extent necessary, the evidence that will be presented or adduced at the Confirmation Hearing.

## **ARGUMENT**

6. To obtain confirmation of the Alternative Plan, the Plan Proponents must establish by a preponderance of the evidence that the Alternative Plan has satisfied the requirements set forth in section 1129 of the Bankruptcy Code.

*See JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns)*, 419 B.R. 221, 243–44 (Bankr. S.D.N.Y. 2009) (finding that the plan proponent bears the burden of establishing compliance with the factors set forth in section 1129 by a preponderance of the evidence); *see also In re Young Broad. Inc.*, 430 B.R. 99, 128 (Bankr. S.D.N.Y. 2010) (same). The Plan Proponents respectfully submit that the Alternative Plan complies with, and satisfies, each of the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence, and thus should be confirmed.

### **I. The Alternative Plan Should Be Approved<sup>3</sup>**

#### **A. The Alternative Plan Complies with Section 1129(a)(1) of the Bankruptcy Code**

7. Section 1129(a)(1) of the Bankruptcy Code provides that a plan must comply with the applicable provisions of the Bankruptcy Code—notably, those

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<sup>3</sup> Notwithstanding the relief sought in this Memorandum or anything contained herein to the contrary, the Plan Proponents reserve the right to make non-substantive and/or technical modifications to the Alternative Plan, Alternative Disclosure Statement, Alternative Plan Supplement, and related documents, without further order of the Court, in accordance with the terms of the Alternative Plan.

governing classification of claims and interests and the contents of a plan. *See* 11 U.S.C. § 1129(a)(1); *In re Johns-Manville Corp.*, 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986) (noting that “[o]bjections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123”), *aff’d*, 78 B.R. 407 (S.D.N.Y. 1987), *aff’d sub nom. Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636 (2d Cir. 1988); *In re Texaco, Inc.*, 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988) (“In determining whether a plan complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization.”). Thus, to satisfy section 1129(a)(1), the Alternative Plan must comply with sections 1122 and 1123 of the Bankruptcy Code.<sup>4</sup> As demonstrated below, the Alternative Plan fully complies with sections 1122 and 1123 of the Bankruptcy Code.

**B. The Alternative Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code**

8. Under section 1122 of the Bankruptcy Code, claims or interests within a given class must be “substantially similar” to the other claims or interests in the class. *See* 11 U.S.C. § 1122.<sup>5</sup> Such claims or interests may be placed in separate classes provided a rational basis exists for doing so. *See Boston Post Rd. L.P. v. FDIC (In re Boston Post Rd. L.P.)*, 21 F.3d 477, 483 (2d Cir. 1994) (holding that a debtor may classify unsecured claims in separate classes if the debtor adduces credible proof of a legitimate reason for separate classification of similar claims)

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<sup>4</sup> *See Kane v. Johns-Manville Corp.*, 843 F.2d at 648–49 (suggesting that Congress intended the phrase “‘applicable provisions’ in this subsection to mean provisions of Chapter 11 . . . such as section 1122 and 1123”); *see also In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) (same); S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978) (“Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of plan.”); H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977) (same).

<sup>5</sup> Section 1122(b) of the Bankruptcy Code provides that “[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.” 11 U.S.C. § 1122(b).

9. Under the Alternative Plan, each Class of Claims and Interests contains only Claims and Interests that are substantially similar to the other Claims and Interests within such Class. *See* Alt. Plan, Art. II. Specifically, the Alternative Plan provides for the following Classes of Claims and Interests:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>
Class 1	OCM Guaranty Claims	Unimpaired (Deemed to Accept)
Class 2	Corp Guaranty Claims	Impaired (Entitled to Vote)
Class 3	Azure Guaranty Claims	Impaired (Entitled to Vote)
Class 4	Trade Creditor Claims	Impaired (Entitled to Vote)
Class 5	Noteholder Election Recovery Claims	Impaired (Entitled to Vote)
Class 6A	Non-Petitioning Creditor Exchange Note Claims	Impaired (Entitled to Vote)
Class 6B	Petitioning Creditor Exchange Note Claims	Impaired (Entitled to Vote)
Class 7	Interests	Impaired (Deemed to Reject)

10. The Alternative Plan's classification scheme is supported by valid business, legal, and factual reasons and was not designed to gerrymander votes. Namely, Class 1 (OCM Guaranty Claims) consists solely of the claims arising under a contingent and unliquidated guarantee of certain obligations arising with respect to the Debtors' four SMEs which are governed by separate contracts and thus are classified separately. Class 2 (Corp Guaranty Claims) and Class 3 (Azure Guaranty Claims) are both guarantee claims and could easily have been classified together or together with



other unsecured claims, but do arise under different contracts. Although, the Petitioning Creditors believe that Class 5 (Noteholder Election Recovery Claims), Class 6A (Non-Petitioning Creditor Exchange Note Claims), and Class 6B (Petitioning Creditor Exchange Note Claims) could be a single class as they all arise under the same indentures, they are classified separately for consistency with the Debtors' Plan, so voting results can be compared apples to apples (and in the extraordinarily unlikely event the Debtors manage to subordinate claims of creditors who have expended incredible resources to aid all creditors). Additionally, other aspects of the classification scheme are related to the different legal or factual nature of each Class—for example, Interests (Class 7) are classified separately due to their legal interests in the Debtors.

**C. The Alternative Plan Complies with Section 1123(a) of the Bankruptcy Code**

11. Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which the Alternative Plan must comply. 11 U.S.C. § 1123(a). Specifically, the Alternative Plan must:

- a. designate classes of claims and interests, other than administrative expense claims under section 507(a)(2) of the Bankruptcy Code, and priority tax claims under section 507(a)(8) of the Bankruptcy Code (11 U.S.C. § 1123(a)(1));
- b. specify any class of claims or interests that is not impaired under the plan (11 U.S.C. § 1123(a)(2));
- c. specify the treatment of any class of claims or interests that is impaired under the plan (11 U.S.C. § 1123(a)(3));
- d. provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest (11 U.S.C. § 1123(a)(4));
- e. provide adequate means for the plan's implementation (11 U.S.C. § 1123(a)(5));

- f. provide that the debtor's organizational documents prohibit the issuance of non-voting securities (11 U.S.C. § 1123(a)(6)); and
- g. contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee (11 U.S.C. § 1123(a)(7)).<sup>6</sup>

12. The Alternative Plan satisfies these requirements. *First*, the Alternative Plan designates Classes of Claims as required by section 1123(a)(1). *See* Alt. Plan, Art. II.C.

13. *Second*, as required by sections 1123(a)(2) and (3) of the Bankruptcy Code, the Alternative Plan specifies which Classes of Claims are Impaired and Unimpaired and sets forth the treatment of such Classes. *See* Alt. Plan, Art. II.

14. *Third*, unless a Holder of a Claim agrees to less favorable treatment, the Alternative Plan provides for the same treatment for each Claim. Therefore, the Alternative Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

15. *Fourth*, the Alternative Plan provides adequate means for its implementation as required under section 1123(a)(5) of the Bankruptcy Code. *See* Alt. Plan, Art. IV. The Alternative Plan, together with the documents and forms of agreement included in the Alternative Plan Supplement sets forth the transactions contemplated by the Alternative Plan. Article IV of the Alternative Plan describes the implementation of the transactions provided for in the Alternative Plan, including:

- a. the Equity Investment;
- b. substantive consolidation of the Debtors for purposes of making distributions under the Alternative Plan;

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<sup>6</sup> Section 1123(a)(8), added with the enactment of the 2005 Bankruptcy Code amendments, is only applicable to individual debtor cases and, therefore, not addressed herein.

- c. creation of the Litigation Trust;
- d. appointment of the Litigation Trust Trustee and the members of the Litigation Trust Oversight Committee; and
- e. description of the sources for distributions made under the Alternative Plan.

16. In addition to the transactions listed above, the Alternative Plan sets forth other critical mechanics of the Plan, such as the cancellation of existing promissory notes, shares, certificates, instruments, indentures, and the preservation of Retained Causes of Action. The precise terms governing the execution of these transactions are set forth in greater detail in the applicable definitive documents or forms of agreements included in the Alternative Plan and Alternative Plan Supplement. Thus, the Alternative Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

17. *Fifth*, section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. 11 U.S.C. § 1123(a)(6). The Reorganized Debtor Organizational Documents, the forms of which were filed in the Alternative Plan Supplement, prohibit the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. *See* Alt. Plan Art.IV.F.

18. *Finally*, the Alternative Plan complies with section 1123(a)(7) of the Bankruptcy Code as it contains only those provisions that are consistent with the interests of Holders of Claims and Interests and with public policy with respect to the manner of selection of any officer, director, or trustee under the Alternative Plan and any successor to such officer, director, or trustee. The manner of selection of directors and officers is disclosed in Art. IV.G. of the Alternative Plan and the names and identities of known directors of the New Board are disclosed in the Alternative Plan

Supplement. Accordingly, the Plan Proponents submit that the Alternative Plan satisfies section 1123(a)(7) of the Bankruptcy Code.

19. Accordingly, the Alternative Plan contains all of the provisions required by section 1123(a) of the Bankruptcy Code.

**D. The Alternative Plan Complies with Section 1123(b) of the Bankruptcy Code**

20. In addition to the provisions required by section 1123(a) of the Bankruptcy Code, the Alternative Plan also contains numerous discretionary provisions permitted by section 1123(b) of the Bankruptcy Code. Among other things, the Alternative Plan provides for: (a) the impairment of certain Claims; (b) procedures for disputed Claims; (c) the rejection or assumption of Executory Contracts and Unexpired leases; and (d) the injunction and / or exculpation of certain parties. *See* Alt. Plan Art. IV.G., Art. VIII.D., and Art. IX.A. Each of these provisions of the Alternative Plan is consistent with section 1123(b) of the Bankruptcy Code and are permissible under applicable law.

**E. Section 1123(d) is Inapplicable to the Alternative Plan**

21. Section 1123(d) of the Bankruptcy Code provides that “if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.” 11 U.S.C. § 1123(d).

22. As the Plan Proponents are not planning to assume any Executory Contracts (*see* Alt. Plan, Art. VI.), the Plan Proponents are not proposing to cure any defaults. Thus, section 1123(d) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

F. **The Alternative Plan Complies with Section 1129(a)(2) of the Bankruptcy Code**

23. Section 1129(a)(2) of the Bankruptcy Code requires the proponent of a chapter 11 plan to comply with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(2). Notably, the legislative history provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements contained in sections 1125 and 1126 of the Bankruptcy Code. *See* S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978) (“Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure.”); H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977) (same); *see also In re Johns-Manville Corp.*, 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986) (“Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Code.”); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) (“Code § 1129(a)(2) requires that the proponent of the plan must comply with chapter 11. Thus, the proponent must comply with the ban on post-petition solicitation of the plan unaccompanied by a written disclosure statement approved by the court in accordance with Code §§ 1125 and 1126.”).

24. As set forth below, the Alternative Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, as well as Bankruptcy Rules 3017 and 3018.

i. **The Plan Proponents Have Complied with the Disclosure and Solicitation Requirements of Section 1125 of the Bankruptcy Code**

25. Section 1125(b) of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan “unless, at the time of or before such solicitation, there is transmitted . . . the plan or a summary of the plan, and a written disclosure

statement approved, after notice and a hearing, by the court as containing adequate information.” 11 U.S.C. § 1125(b). The Plan Proponents satisfy section 1125(b) of the Bankruptcy Code.

26. On July 10, 2024, the Court entered the Joint Solicitation Order [Docket No. 856], which, among other things, (a) approved the Alternative Disclosure Statement, (b) scheduled the Confirmation Hearing to consider approval of the Alternative Plan (the “Confirmation Hearing”) on September 9, 2024 at 9:30 a.m. (prevailing Eastern Time), (c) approved certain procedures for solicitation and tabulation of votes to accept or reject the Alternative Plan (the “Solicitation Procedures”), and (d) approved the Ballots (as defined in the Joint Solicitation Order) and other materials distributed by the Plan Proponents in connection with Confirmation of the Alternative Plan. Beginning on July 17, 2024, Kurtzman Carson Consultants, LLC dba Verita Global, the voting agent (the “Voting Agent”), transmitted the Court-approved solicitation materials in accordance with the Joint Solicitation Order. Voting Decl. ¶ 7.

27. Specifically, the Voting Agent served the following documents via regular mail and electronic mail (where available), to the Holders of Claims in Class 2 (Corp Guaranty Claims), Class 3 (Azure Guaranty Claims), Class 4 (Trade Creditor Claims), Class 5 (Noteholder Election Recovery Claims), Class 6A (Non-Petitioning Creditor Exchange Note Claims), and Class 6B (Petitioning Creditor Exchange Note Claims): (a) a Joint Cover Letter from the Plan Proponents and the Debtors describing the contents of such Solicitation Package; (b) the Committee Letter; (c) the Confirmation Hearing Notice; (d) a copy of the Joint Solicitation Order (without exhibits attached); (e) the solicitation version of the Alternative Disclosure Statement with the solicitation version of the Alternative Plan annexed thereto;

and (f) personalized Ballots (collectively, the “Solicitation Package”). *See id.*

In accordance with the procedures attached as Exhibit 2 to the Joint Solicitation Order (the “Solicitation Procedures”), the Voting Agent mailed the Confirmation Hearing Notice to (a) Holders of Claims or Interests in Class 1 (OCM Guaranty Claims), which are unimpaired and deemed to accept the Alternative Plan, and Class 7 (Interests), which are impaired and deemed to reject the Plan, and each of which are non-voting. Such notice (i) identified the treatment of such classes as impaired or unimpaired under the Alternative Plan; (ii) set forth the manner in which a copy of the Alternative Disclosure Statement and the Alternative Plan may be obtained; and (iii) provided notice of the Confirmation Hearing.

28. The Voting Declaration demonstrates that the Solicitation Packages were served in accordance with the requirements of Bankruptcy Rules 2002(b) and 3017(d)-(f) , and the Joint Solicitation Order. The Plan Proponents, through the Voting Agent, also have complied in all respects with the content and delivery requirements of the Joint Solicitation Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code. *See* Voting Decl. ¶¶ 7, 8. Furthermore, the Plan Proponents satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. *See* 11 U.S.C. § 1125(c). Here, the Plan Proponents caused the same solicitation version of the Alternative Disclosure Statement to be transmitted to all parties entitled to vote on the Alternative Plan. *See id.* Finally, the Plan Proponents did not solicit acceptances of the Alternative Plan from any creditor or interest holder prior to the transmission of the Alternative Disclosure Statement. As such, the Plan Proponents have complied with section 1125 of the Bankruptcy Code.

ii. The Plan Proponents Have Satisfied the Plan Acceptance Requirements of Section 1126 of the Bankruptcy Code

29. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan and provides which holders of claims or interests are entitled to vote on the plan. *See* 11 U.S.C. § 1126. Specifically, section 1126 of the Bankruptcy Code details the requirements for acceptance of a plan, providing, in relevant part, that only holders of allowed claims in impaired classes that will receive or retain property under a plan on account of such claims may vote to accept or reject a plan. *See id.* A class that is not impaired under a plan, and each holder of a claim or interest in such class, is conclusively presumed to have accepted the plan. *See* 11 U.S.C. § 1126(f); *see also SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 290 (2d Cir. 1992) (noting that an unimpaired class is presumed to have accepted the plan); S. Rep. No. 989, 95th Cong., 2d Sess. 123 (1978) (same).

30. Pursuant to the Alternative Plan, and in accordance with section 1126 of the Bankruptcy Code, the Plan Proponents did not solicit votes on the Alternative Plan from Class 1 (OCM Guaranty Claims) which is unimpaired under the Alternative Plan and therefore deemed to accept the Alternative Plan. *See* 11 U.S.C. § 1126(f). The Plan Proponents also did not solicit votes from Holders in Class 7 (Interests) which are impaired and deemed to reject the Alternative Plan. Thus, pursuant to section 1126 of the Bankruptcy Code, only Holders of Claims in Class 2 (Corp Guaranty Claims), Class 3 (Azure Guaranty Claims), Class 4 (Trade Creditor Claims), Class 5 (Noteholder Election Recovery Claims), Class 6A (Non-Petitioning Creditor Exchange Note Claims), and Class 6B (Petitioning Creditor Exchange Note Claims) were entitled to vote to accept or reject the Alternative Plan.



31. The Plan Proponents solicited votes from Holders of Claims in Class 2 (Corp Guaranty Claims), Class 3 (Azure Guaranty Claims), Class 4 (Trade Creditor Claims), Class 5 (Noteholder Election Recovery Claims), Class 6A (Non-Petitioning Creditor Exchange Note Claims), and Class 6B (Petitioning Creditor Exchange Note Claims) because the Holders of Claims in these Classes are Impaired and may be entitled to receive a distribution under the Alternative Plan. Therefore, the Plan Proponents submit that its solicitation of votes on the Alternative Plan was conducted in compliance with sections 1125 and 1126 of the Bankruptcy Code.

**G. The Alternative Plan Complies with Section 1129(a)(3) of the Bankruptcy Code**

32. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be “proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). Courts in the Second Circuit have found that the good faith standard requires “a showing that the plan [was] proposed with honesty, good intentions and with a basis for expecting that a reorganization can be effected.” *In re Granite Broad Corp.*, 369 B.R. 120, 128 (Bankr. S.D.N.Y. 2007) (alteration in original) (internal quotation marks omitted); *Argo Fund Ltd. v. Bd. of Dirs. of Telecom Argentina, S.A. (In re Bd. of Dirs. of Telecom Argentina, S.A.)*, 528 F.3d 162, 174 (2d Cir. 2008) (same) (citing *In re Koelbl*, 751 F.2d 137, 139 (2d Cir. 1984)); *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988) (quoting *Koelbl*).

33. Additionally, good faith is to be determined “in light of the totality of the circumstances surrounding” formulation of the plan. *Pub. Fin. Corp. v. Freeman (In re Pub. Fin. Corp.)*, 712 F.2d 219, 221 (5th Cir. 1983); *see also In re Oneida Ltd.*, 351 B.R. 79, 85 (Bankr. S.D.N.Y. 2006) (“Good faith should be evaluated in light of the totality of the circumstances surrounding confirmation.”); *In re Lionel L.L.C.*, Case No. 04-17324

(BRL), 2008 Bankr. LEXIS 1047, at \*15–16 (Bankr. S.D.N.Y. Mar. 31, 2008) (looking to the totality of the circumstances in order to determine that a plan was proposed in good faith under section 1129(a)(3)).

34. There can be no doubt that the Alternative Plan is the product of good faith. At a hearing on May 15, 2024, the Plan Proponents expressed their desire to overbid the Debtors' Plan. *See* May 15, 2024 Hr'g Tr. at 94:20-95:10. The Debtors' publicly professed a desire to provide creditors a choice. *See id.* at 23:13-24:10; 27:5-27:20; 29:12-29:16; and 30:19-31:1. Although the Plan Proponents do not believe that statement was made in good faith, they determined that if a choice was to be provided between two structures (and to prevent a false choice) that the maximum value be provided under each choice. Thus, the Plan Proponents attempted to engage with the Debtors on an overbid under their structure. Despite the Debtors refusing to engage with the Plan Proponents, on June 5, 2024, the Plan Proponents provided a term sheet for an alternative plan (the "Alternative Plan Term Sheet") to counsel for the Debtors and the Creditors' Committee based on the structure of the Debtors' Plan but containing significant improvements for creditors. *See* Docket No. 745; *see also* Spears Decl. ¶ 16. When neither the Debtors nor any of their officers or directors (including their purported independent director) engaged with the any of the Plan Proponents on the Alternative Plan Term Sheet, on June 11, 2023, the Plan Proponents filed the original Alternative Plan, which provided, among other things, increased creditor recoveries and increased funding (\$33 million compared to the Debtors' \$30 million). *See id.*; *see also* Docket No. 762.

35. On June 14, 2024, the Creditors' Committee objected to the Alternative Plan and argued that it was not feasible absent an increase in funding of \$8 million. To address this concern and ensure feasibility, the Plan Proponents agreed

to increase the Plan Sponsor's contribution from \$33 million to \$41 million. *See* Docket No. 801; *see also* Spears Decl. at ¶ 17.

36. The voting results also demonstrate the Plan Proponents' good faith. In particular, though certain Classes rejected the Alternative Plan, the Alternative Plan was accepted by greater numbers than the Debtors' Plan, with Trade Creditor Claims (Class 4) voting to accept the Alternative Plan 66.67% in number and 88.97% in amount, and Noteholder Election Recovery Claims (Class 5) voting to accept the Plan 58.62% in number and 16.06% in amount, and the Non-Petitioning / Petitioning Creditor Exchange Note Claims (Classes 6A/6B) voting 76.92% in number and 96.40% in amount. *See* Voting Decl., Ex. A.

37. Thus, the Alternative Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

**H. The Alternative Plan Complies with Section 1129(a)(4) of the Bankruptcy Code**

38. Section 1129(a)(4) of the Bankruptcy Code requires that a payment "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved, or is subject to approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). This section has been construed to require that all payments of professional fees that are made from assets of a debtor's estate be subject to bankruptcy court review and approval as to their reasonableness. *See In re WorldCom, Inc.*, Case No. 02-13533 (AJG), 2003 WL 23861928, at \*54 (Bankr. S.D.N.Y. Oct. 31, 2003) ("Section 1129(a)(4) has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval as to their reasonableness by the Court."); *see also In re Johns-Manville Corp.*, 68 B.R. at 632 (holding that a bankruptcy court is not required to rule on fees paid by

individual creditors to their counsel, but only those fees that affect the administration of a debtor's estate).

39. Pursuant to the Interim Compensation Order, entered on February 7, 2024 [Docket No. 398], the Court has authorized and approved the procedures for payment of certain fees and expenses of Professionals retained in these Chapter 11 Cases. All Professional Fee Claims remain subject to final review and approval by the Court under the applicable provisions of the Bankruptcy Code. *See* Alt. Plan, Art. III.B.b. Moreover, the Alternative Plan provides that all Professionals shall submit final fee applications seeking approval of all Professional Fee Claims no later than forty-five (45) days after the Effective Date, with the exception of the Plan Proponents, who will seek reimbursement of the Plan Proponents Fees and Expenses through a separately filed substantial contribution claim. *See id.*; *see id* at Art. I.140 (definition of "Plan Proponents Fees and Expenses").

**I. The Alternative Plan Complies With Section 1129(a)(5) of the Bankruptcy Code**

40. Section 1129(a)(5) of the Bankruptcy Code requires the proponent of a plan to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor, or a successor to the debtor under the plan. *See* 11 U.S.C. § 1129(a)(5)(A)(i). Section 1129(a)(5)(A)(ii) further requires that the appointment or continuance of such officers and /or directors be consistent with the interests of creditors and equity security holders and with public policy. *See* 11 U.S.C. § 1129(a)(5)(A)(ii). Finally, section 1129(a)(5)(B) requires the plan proponent to disclose the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider. *See* 11 U.S.C. § 1129(a)(5)(B).

41. As part of the Alternative Plan, the Plan Proponents disclosed the manner of selection of officers and directors that will be proposed to serve on the New Board. *See* Alt. Plan, Art. IV.G. As part of the Alternative Plan Supplement, the Plan Proponents disclosed the names and identities of any known individuals that are proposed to serve on the New Board. Accordingly, the Alternative Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

**J. Section 1129(a)(6) of the Bankruptcy Code Is Inapplicable to the Alternative Plan**

42. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. *See* 11 U.S.C. § 1129(a)(6). As the Debtors are not charging rates that are the subject of any regulatory commission jurisdiction, section 1129(a)(6) of the Bankruptcy Code is inapplicable.

**K. The Alternative Plan Complies with Section 1129(a)(7) of the Bankruptcy Code**

43. Section 1129(a)(7) of the Bankruptcy Code provides that a plan must be in the “best interests” of creditors and interest holders. *See* 11 U.S.C. § 1129(a)(7). The “best interests” test requires that each holder of a claim or interest either accept the plan or receive or retain property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated in a hypothetical liquidation under Chapter 7 of the Bankruptcy Code. *See Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters., Ltd., II (In re Briscoe Enters., Ltd., II)*, 994 F.2d 1160, 1167 (5th Cir. 1993); *In re Fur Creations by Varriale, Ltd.*, 188 B.R. 754, 759 (Bankr. S.D.N.Y. 1995); *In re Best Prods. Co., Inc.*, 168 B.R. 35, 72 (Bankr. S.D.N.Y. 1994); *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 297 (Bankr.

S.D.N.Y. 1990); *In re Ne. Dairy Coop. Fed'n, Inc.*, 73 B.R. 239, 253 (Bankr. N.D.N.Y. 1987); *In re Victory Constr. Co., Inc.*, 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984) .

44. Importantly, section 1129(a)(7) of the Bankruptcy Code applies only to non-accepting holders of impaired claims. *See* 11 U.S.C. § 1129(a)(7). Similarly, pursuant to section 1126(f) of the Bankruptcy Code, a class that is not “impaired” under the plan is deemed to have accepted the plan and, therefore, has waived application of the “best interests” test. *See id.*; 11 U.S.C. § 1126(f). Because Class 1 (OCM Guaranty Claims) is Unimpaired under the Alternative Plan, such Class is deemed to have accepted the Alternative Plan and, therefore, waived application of the “best interests” test. Similarly, because Class 7 (Interests) is deemed to reject the Alternative Plan and therefore, not entitled to Vote under the Alternative Plan, the “best interest” test does not apply to such Class.

45. The best interests test is generally satisfied by a liquidation analysis demonstrating that an impaired class will receive no less under the plan than under a Chapter 7 liquidation. *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (holding that section 1129(a)(7) was satisfied when impaired holder of claim would receive “no less than such holder would receive in a hypothetical chapter 7 liquidation”). The Plan Proponents, with the assistance of Batuta, as financial advisor, prepared a liquidation analysis that estimates recoveries for members of each Class under the Alternative Plan, a copy of which was attached as Appendix F to the Alternative Disclosure Statement (the “Liquidation Analysis”).<sup>7</sup> All of the Holders of Claims entitled to vote on the Alternative Plan were sent the Liquidation Analysis,

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<sup>7</sup> The Plan Proponents also intend to submit a more fulsome report of the Liquidation Analysis at the Confirmation Hearing in the form of an expert report from Batuta.

together with the Alternative Disclosure Statement, and were provided ample time to consider the contents thereof.

46. Based on the Liquidation Analysis prepared by Batuta, the projected recoveries under the Alternative Plan and the results of the Liquidation Analysis for Voting Classes are as follows:

Class	Designation	Voting Rights	Projected Recovery under the Plan	Estimated Recovery Under Chapter 7 Liquidation
Class 2	Corp Guaranty Claims	Yes	54.5%	0%
Class 3	Azure Guaranty Claims	Yes	.21%	0%
Class 4	Trade Creditor Claims	Yes	15%	0%
Class 5	Noteholder Election Recovery Claims	Yes	1%-100%	0%
Class 6A	Non-Petitioning Creditor Exchange Note Claims	Yes	4.6%-17% plus Litigation Trust Interests	0%
Class 6B	Petitioning Creditor Exchange Note Claims	Yes	4.6%-17% plus Litigation Trust Interests	0%

47. As demonstrated by the Liquidation Analysis, if these Chapter 11 Cases were converted to a case under chapter 7 of the Bankruptcy Code, creditors in the Voting Classes would receive no recovery than under the Alternative Plan. This would also be the same result under the Debtors' liquidation analysis. *See* Alt. Disclosure Stmt., App. F.

48. Accordingly, the Plan Proponents submit that the Alternative Plan satisfies the “best interests test” and all other requirements of section 1129(a)(7) of the Bankruptcy Code.

**L. The Alternative Plan Complies with Section 1129(a)(8) of the Bankruptcy Code**

49. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a debtor’s plan or be unimpaired under the plan. *See* 11 U.S.C. § 1129(a)(8). Pursuant to section 1126(c) of the Bankruptcy Code, a class of impaired claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the claims in that class actually vote to accept the plan. *See* 11 U.S.C. § 1126(c). Pursuant to section 1126(d) of the Bankruptcy Code, a class of interests accepts a plan if holders of at least two-thirds in amount of the allowed interests in that class actually vote to accept the plan. *See* 11 U.S.C. § 1126(d). A class that is not impaired under a plan, and each holder of a claim or interest in such a class, is conclusively presumed to have accepted the plan. *See* 11 U.S.C. § 1126(f); *see also SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 290 (2d Cir. 1992) (noting that an unimpaired class is presumed to have accepted the plan); S. Rep. No. 989, 95th Cong., 2d Sess. 123 (1978) (section 1126(f) of the Bankruptcy Code “provides that no acceptances are required from any class whose claims or interests are unimpaired under the Plan or in the order confirming the Plan”). A class is deemed to have rejected a plan if the plan provides that the claims or interests of that class do not receive or retain any property under the plan on account of such claims or interests. *See* 11 U.S.C. § 1126(g).

50. As set forth below and in the Voting Declaration, Class 4 (Trade Creditor Claims), Class 5 (Noteholder Election Recovery Claims), Class 6A (Non-



Petitioning Creditor Exchange Note Claims), and Class 6B (Petitioning Creditor Exchange Note Claims) have voted to accept the Alternative Plan—with Class 4 and Classes 6A and 6B voting in excess of two-thirds in amount and one-half in number as required under section 1126 of the Bankruptcy Code, and Class 5 voting one half in number but not in excess of two-thirds in amount. Class 2 (Corp Guaranty Claims) and Class 3 (Azure Guaranty Claims) did not vote to accept the Alternative Plan and Class 7 (Interests) was deemed to reject the Alternative Plan.

51. Nevertheless, even where certain impaired classes of claims or interests do not accept a plan, and therefore the requirements of section 1129(a)(8) are not satisfied, the plan may be confirmed over such nonacceptance pursuant to the “cramdown” provisions of section 1129(b)(1). As a result, the condition precedent to confirmation contained in section 1129(a)(8) is the only condition of section 1129(a) that is not necessary for confirmation of a plan of reorganization. As described in Part R below, the Plan Proponents have met the “cramdown” requirements under section 1129(b) of the Bankruptcy Code to obtain confirmation of the Alternative Plan, notwithstanding the Classes of Claims and Interests that voted to reject or were deemed to reject the Alternative Plan.

**M. The Alternative Plan Complies with Section 1129(a)(9) of the Bankruptcy Code**

52. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments. *See* 11 U.S.C. § 1129(a)(9). In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the

effective date cash equal to the allowed amount of such claims. *Id.* Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—which generally include domestic support obligations, wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan), or cash of a value equal to the allowed amount of such claim on the effective date of the plan (if such class has not accepted the plan). *See* 11 U.S.C. § 1129(a)(9)(B). Finally, section 1129(a)(C) provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim. 11 U.S.C. § 1129(a)(9)(C).

53. The Alternative Plan satisfies section 1129(a)(9) of the Bankruptcy Code:

- a. *First*, the Alternative Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because Art. II.B.a of the Alternative Plan provides that each Holder of an Allowed Administrative Claim will receive payment in full in cash after the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim. *See* Alt. Plan, Art. II.B.a.
- b. *Second*, the Alternative Plan satisfies section 1129(a)(9)(B) and 1129(a)(9)(C) of the Bankruptcy Code because no Holders of the types of Claims specified by sections 1129(a)(9)(B) or 1129(a)(9)(C) are classified under the Alternative Plan, rather such Holders will receive either (a) the full amount of such Allowed Priority Claims, in cash, as soon as practicable after the later of (i) the Effective Date, (ii) the date on which a Priority Claim becomes a Allowed Priority Claims, and (iii) the date such Allowed Priority Claim becomes payable under applicable non-bankruptcy law, (b) upon such other terms as agreed between the Plan Proponents and each Holder of such Allowed Priority Claims, or (c) over a period ending not later than five (5) years after the Petition Date consistent with section 1129(a)(9)(C) of the Bankruptcy Code. *See id.* at Art. II.B.f.

54. Accordingly, the Plan Proponents submit that the Alternative Plan satisfies all of the requirements of section 1129(a)(9) of the Bankruptcy Code.

**N. The Alternative Plan Satisfies Section 1129(a)(10) of the Bankruptcy Code**

55. Section 1129(a)(10) of the Bankruptcy Code requires that at least one impaired class of claims, excluding acceptances of insiders, accept the Plan.

11 U.S.C. § 1129(a)(10). The Alternative Plan has been accepted by at least one impaired class of claims because Trade Creditor Claims (Class 4), Noteholder Election Recovery Claims (Class 5), Non-Petitioning Creditor Exchange Note Claims (Class 6A), and Petitioning Creditor Exchange Note Claims (Class 6B) have voted to accept the Alternative Plan. Thus, section 1129(a)(10) of the Bankruptcy Code is satisfied.

**O. The Alternative Plan Complies with Section 1129(a)(11) of the Bankruptcy Code**

56. Section 1129(a)(11) of the Bankruptcy Code requires that the Court find that the Plan is feasible as a condition precedent to confirmation. *See* 11 U.S.C. § 1129(a)(11). To demonstrate that a plan is feasible, it is not necessary that success be guaranteed. *See Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988) (“[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.”). “In making determinations as to feasibility . . . a bankruptcy court does not need to know to a certainty, or even a substantial probability, that the plan will succeed. All it needs to know is that the plan has a reasonable likelihood of success.” *In re Adelphia Bus. Solutions, Inc.*, 341 B.R. 415, 421–22 (Bankr. S.D.N.Y. 2003); *In re One Times Square Assocs. Ltd. P’ship*, 159 B.R. 695, 709 (Bankr. S.D.N.Y. 1993) (“It is not necessary that the success be guaranteed, but only that the plan present a workable scheme of reorganization and operation from which there may be a reasonable expectation of success.”) (internal quotations and citations

omitted); *see also In re EUSA Liquidation Inc.*, Case No. 09-15008 (SMB), 2010 WL 4916559, at \*6 (Bankr. S.D.N.Y. June 10, 2010) (“The Plan satisfies section 1129(a)(11) because it provides for the liquidation of the Debtor. The Debtor has sold or abandoned substantially of its assets and will distribute cash to creditors.”).

57. A debtor does not have to guarantee the success of a plan to demonstrate its feasibility under section 1129(b)(11) of the Bankruptcy Code. *See Johns-Manville*, 843 F.2d at 649 (“[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.”). Instead, courts will find that a plan is feasible if a debtor demonstrates a reasonable assurance that consummation of the plan will not likely be followed by a further need for financial reorganization. *See id.* “The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.” *Pizza of Hawaii, Inc. v. Shakey’s, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (citations omitted).

58. Courts consider a number of factors when accessing feasibility of a plan, including:

- a. the prospective earnings of the business or its earning power;
- b. the soundness and adequacy of the capital structure and working capital for the business which the debtor will engage in post-confirmation;
- c. the prospective availability of credit;
- d. whether the debtor will have the ability to meet its requirements for capital expenditures;
- e. economic and market conditions;
- f. the ability of management, and the likelihood that the same management will continue; and

- g. any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.<sup>8</sup>

59. The Alternative Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code by providing for a clear path to emergence from these Chapter 11 Cases and the ability of the Plan Proponents to satisfy all of their obligations under the Alternative Plan. As set forth in Article VI of the Alternative Disclosure Statement and the financial projections attached as Appendix G to the Alternative Disclosure Statement (the “Financial Projections”), which were prepared by Batuta using limited information from the Debtors, upon emergence, the Reorganized Debtor will possess sufficient liquidity to meet the necessary distributions required under the Alternative Plan and to sustain viable business operations going forward. Through the substantial infusion of capital from the Equity Investment, the Reorganized Debtor is anticipated to have sufficient cash to continue operations and fund capital expenditures related to ongoing business operations among other things. Furthermore, the Plan Proponents also believe that the Reorganized Debtor will be able to make all payments required pursuant to the Alternative Plan, and therefore, confirmation of the Alternative Plan is not likely to be followed by liquidation or the need for further reorganization. The Financial Projections demonstrate that The Reorganized Debtors will be positioned for stability and success post-emergence.

60. In addition, the PC Alternative Plan is feasible with respect to the CVRs. The CVRs are only payable by the Plan Sponsor to the Litigation Trust in the

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<sup>8</sup> See, e.g., *WorldCom Inc.*, 2003 WL 23861928, at \*58; *Texaco*, 84 B.R. at 910; *In re Prudential Energy Co.*, 58 B.R. 857, 862-63 (Bankr. S.D.N.Y. 1986); see also *Teamsters Nat’l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc. (In re U.S. Truck Co., Inc.)*, 800 F.2d 581, 589 (6th Cir. 1986); *In re Repurchase Corp.*, 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005).

amount, and to the extent, that the Gas Ownership Defendants ultimately collect under the Award against Levona in accordance with the PC Alternative Plan. The Plan Sponsor expects that it will have sufficient source of funds to pay the Litigation Trust on account of the CVRs, especially when considering that the Plan Sponsor will also hold a portion (likely more than 70%) of the Litigation Trust Interests. To the extent necessary, the Plan Sponsor should not need to fund its portion of the Litigation Trust Interests thereby substantially reducing the amount that it needs to fund account of the CVRs. In any event, further supporting feasibility is the Plan Sponsor's pledge of its 100% of its equity in the Reorganized Debtor as collateral to secure its payment obligations with respect to the CVRs. The likely amount that the Plan Sponsor must pay on the account of the CVRs is well below the value of the equity in the Reorganized Debtor when using either the Debtors' or the Petitioning Creditors' valuations.

61. Therefore, the Plan Proponents have established that the Reorganized Debtor will have sufficient funds to satisfy all requirements and obligations under the Alternative Plan.

62. The Plan Proponents are aware that the Creditors' Committee has objected to the feasibility of the Alternative Plan, stating that the Alternative Plan is under-funded in light of additional estimated administrative claims through the Effective Date. *See* Docket No. 1030 ¶ 28. If necessary, the Plan Proponents can address this feasibility issue by waiving certain claims owed to Plan Proponents.

63. For the foregoing reasons, the Plan Proponents submit that the Alternative Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

**P. The Alternative Plan Complies with Section 1129(a)(12) of the Bankruptcy Code**

64. Section 1129(a)(12) of the Bankruptcy Code requires that either all fees payable under section 1930, title 28 of the United States Code, as determined by the Court at the Confirmation Hearing, have been paid or that the Plan provides for the payment of all such fees on the Effective Date. *See* 11 U.S.C. § 1129(a)(12).

The Alternative Plan provides for the payment of all statutory fees by the Reorganized Debtor prior to the Effective Date, out of the Assets of the Estate for each quarter, and after the Effective Date, by the Litigation Trust. *See* Alt. Plan, Art. XI.B. The Alternative Plan thus satisfies section 1129(a)(12) of the Bankruptcy Code. Unlike the Debtors' Plan, the Alternative Plan provides the Litigation Trust with sufficient starting capital of \$3,000,000 as opposed to the paltry \$200,000 under the Debtors' Plan.

**Q. Sections 1129(a)(13), (14), (15) and (16) of the Bankruptcy Code Are Not Applicable to the Alternative Plan**

65. Section 1129(a)(13) of the Bankruptcy Code requires that retiree benefits are paid post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(13). The Plan Proponents have none of those obligations at present. Therefore, section 1129(a)(13) is inapplicable.

66. Section 1129(a)(14) of the Bankruptcy Code requires the payment of certain domestic support obligations. *See* 11 U.S.C. § 1129(a)(14). The Plan Proponents have none and, therefore, section 1129(a)(14) is inapplicable. Section 1129(a)(15) of the Bankruptcy Code imposes certain payment obligations on individual debtors. *See* U.S.C. § 1129(a)(15). The Plan Proponents are not individuals and, therefore, section 1129(a)(15) is inapplicable.

67. Section 1129(a)(16) of the Bankruptcy Code applies to transfers by "a corporation or trust that is not a moneyed, business, or commercial corporation or

trust.” 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to “restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust.” *See* H.R. Rep. No. 31, 109th Cong., 1st Sess. 145 (2005); *In re Sea Launch Co., L.L.C.*, Case No. 09-12153 (BLS), 2010 Bankr. LEXIS 5283, at \*41 (Bankr. D. Del. July 30, 2010) (“Section 1129(a)(16) by its terms applies only to corporations and trusts that are not moneyed, business, or commercial.”) (internal quotation marks and citation omitted). Because the Debtors are not a nonprofit entity, section 1129(a)(16) is inapplicable.

**R. The Alternative Plan Satisfies the “Cram Down” Requirements under Section 1129(b) of the Bankruptcy Code**

68. Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met, other than section 1129(a)(8), a plan may be confirmed so long as the requirements set forth in section 1129(b) are met. *See* 11 U.S.C. § 1129(b). To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting impaired classes. *See* 11 U.S.C. § 1129(b)(1); *In re Zenith Elecs. Corp.*, 241 B.R. at 105 (explaining that “[w]here a class of creditors or shareholders has not accepted a plan of reorganization, the court shall nonetheless confirm the plan if it ‘does not discriminate unfairly and is fair and equitable’”).

69. Here, Holders in Class 2 (Corp Guaranty Claims) and Class 3 (Azure Guaranty Claims) voted to reject the Alternative Plan, and Class 5 (Noteholder Election Recovery Claims) voted in excess of one half in number, but not two-thirds in amount. Moreover, Holders in Class 7 (Interests) are impaired and deemed to reject the



Alternative Plan, accordingly the Plan Proponents invoke section 1129(b) of the Bankruptcy Code with respect to Classes 2, 3, 5, and 7.

i. The Alternative Plan Does Not Unfairly Discriminate with Respect to Classes 2, 3, 5, and 7

70. Unlike the Debtors' Plan, the Alternative Plan does not discriminate unfairly with respect to impaired Class 2 and 3 that have rejected the Alternative Plan or Class 7 that is deemed to reject the Alternative Plan. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly situated classes are treated differently without a reasonable basis for the disparate treatment. *See In re WorldCom Inc.*, 2003 WL 23861928, at \*59 (citing *In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); *Adelphia Commc'ns Corp.*, 368 B.R. at 247. As between two classes of claims or two classes of equity interests, there is no unfair discrimination if (a) the classes of comprised of dissimilar claims or interests, *see, e.g., In re Johns-Manville Corp.*, 68 B.R. at 636; *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 656–57 (9th Cir. 1997); *In re Aztec Co.*, 107 B.R. 585, 589–91 (Bankr. M.D. Tenn. 1989), or (b) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment, *see, e.g., In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. at 715 (separate classification and treatment was rational where members of each class “possess[ed] different legal rights”); *In re Aztec Co.*, 107 B.R. at 590. In this regard, the case law is clear that not all discrimination is impermissible under section 1129(b). *See Confirmation Hr'g Tr.* at 118:4–7, *In re Reader's Digest Ass'n*, No. 09-23529 [Docket No. 758]. (“Clearly, one of the areas of flexibility that Congress provided in Chapter 11 is the unfair discrimination test of 1129, recognizing implicitly in the plain language that some forms of discrimination are fair.”).

71. If discrimination is present, courts in this District have typically applied a four-part test to determine if the discrimination is fair, which considers whether: (a) there is a reasonable basis for discriminating; (b) the debtor cannot consummate the plan without discrimination; (c) the discrimination is proposed in good faith; and (d) the degree of discrimination is in direct proportion to its rationale. *See, e.g., In re Genco Shipping & Trade Ltd.*, 513 B.R. at 241–42; *WorldCom, Inc.*, 2003 WL 23861928, at \*59 (citing *Buttonwood*, 111 B.R. at 63). In construing the test, leading courts and commentators have concluded that the “test boils down to whether the proposed discrimination has a reasonable basis and is necessary for reorganization.” *In re Breitburn Energy Partners LP*, 582 B.R. 321, 351 (Bankr. S.D.N.Y. 2018) (citing 7 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1129.03(3)(a), at 1129–66); Confirmation Hr’g Tr. at 112:21–23, *In re Reader’s Digest Ass’n*, No. 09-23529 [Docket No. 758] (interpreting the *Buttonwood* test as providing a “reminder[] to the fact finder to focus his or her inquiry on the reasonable basis for discriminating”).

72. As set forth in the Objection, the Petitioning Creditors’ believe that the Debtors’ Plan improperly gerrymandered claims in a bad faith attempt to satisfy cramdown. Here, the Petitioning Creditors believe that there are elements of the Debtors’ Plan that was improperly constructed in a bad faith attempt to obtain cramdown of their plan. The Alternative Plan was not constructed in such a way and contains appropriate savings clauses as set forth in the Reply. Lastly, none of the none of the Holders of Claims in Class 2, 3, 5, or 7 objected to confirmation of the Alternative Plan, thus confirmation of the Alternative Plan would not impact these Claims Holders.

73. Moreover, for the reasons described above, there is a reasonable basis for the discriminating, the Alternative Plan cannot be consumed without the

discrimination, the discrimination is proposed in good faith, the degree of discrimination is in direct proportion to its rationale.

74. Accordingly, the Alternative Plan does not unfairly discriminate against the Holders of Claims in Classes 2, 3, 5, and 7.

ii. The Alternative Plan is Fair and Equitable

75. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if, under the plan, no holder of any claim or interest junior thereto will receive or retain property under the plan on account of such junior claim or interest. *See* 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii). This central tenet of bankruptcy law, known as the “absolute priority rule,” requires that if the holders of claims in a particular class receives less than full value for their claims, no holders of claims or interests in a junior class may receive any property under the plan. *See Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 441–42 (1999). The corollary to the absolute priority rule is that senior classes cannot receive more than a 100% recovery for their claims. *See 7 Collier on Bankruptcy* ¶1129.03[4][a]; *see also In re Granite Broad. Corp.*, 369 B.R. at 140 (“There is no dispute that a class of creditors cannot receive more than full consideration for its claims, and that excess value must be allocated to junior classes of debt or equity, as the case may be.”); *In re Exide Techs.*, 303 B.R. 48, 61 (Bankr. D. Del. 2003) (“[A] corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims.” (citation omitted)).

76. Here, unlike the Debtors’ Plan, the Alternative Plan satisfies the “fair and equitable” rule because no Class of Claims below Classes 2, 3, 5, or 7 are receiving or retaining any property on account of their junior claims or interests. *See In re Finlay Enters. Inc.*, 2010 WL 6580629, at \*7 (holding that fair and equitable test was

satisfied where no interest junior to the interest of the rejecting class received any property under the plan). Moreover, no senior creditor will receive property in excess of the full value of its Claims under the Alternative Plan. Thus, the Alternative Plan is “fair and equitable” and therefore, consistent with the requirements of section 1129(b) of the Bankruptcy Code.

**S. The Alternative Plan Complies with Section 1129(d) of the Bankruptcy Code**

77. Section 1129(d) of the Bankruptcy Code states that “the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.” 11 U.S.C. § 1129(d). The purpose of the Alternative Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no party that is a governmental unit, or any other entity, has requested that the Court decline to confirm the Alternative Plan on the grounds that the principal purpose of the Alternative Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. For these reasons, the Alternative Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

**T. Section 1129(e) is Inapplicable to the Alternative Plan**

78. These Chapter 11 Cases are not a “small business case,” as that term is defined in the Bankruptcy Code, and accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

**U. The Alternative Plan’s Consensual Substantive Consolidation Should be Approved**

79. The provisions of the Alternative Plan provide for the consolidation of the Debtors’ estates for all purposes for the convenience of all parties. *See* Alt. Plan, Art. IV.B. Courts in this jurisdiction may substantively consolidate one or more jointly-

administered debtor's estates pursuant to section 1123(a)(5)(C) of the Bankruptcy Code and the Court's equitable power. *See In re Republic Airways Holdings, Inc.*, 565 B.R. 710, 716 (Bankr. S.D.N.Y. 2017); *In re Leslie Fay Cos.*, 207 B.R. 764, 779 (Bankr. S.D.N.Y. 1997). As a doctrine, substantive consolidation recognizes that "economic realities must not be ignored merely to preserve the legal form of corporate entities, most particularly where such legal formalism will disadvantage the vast majority of creditors and endanger the Debtors' reorganization." *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 766 (Bankr. S.D.N.Y. 1992). Substantive consolidation has also been ordered where "the debtor believes, in its best business judgement, that substantive consolidation will return the most to all creditors by pooling the assets and liabilities." *In re Am. Home Patient, Inc.*, 298 B.R. 152, 166 (Bankr. M.D. Tenn. 2003); *see also Republic Airways Holdings*, 565 B.R. at 719-21.

80. Substantive consolidation is "a flexible concept," and "a principal question is whether creditors are adversely affected by consolidation and, if so, whether the adverse effects can be eliminated." *In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 723-24 (Bankr. S.D.N.Y. 2011). "When deciding whether to order substantive consolidation, the courts in this circuit also use a balancing test to determine whether the relief achieves the best results for all creditors." *In re WorldCom Inc.*, 2003 WL 23861928, at \*36 (citing *Colonial Realty Co.*, 966 F.2d at 60). Further, to ensure fair treatment of all creditors, "a searching review of the record, on a case-by-case basis" must be conducted. *Colonial Realty Co.*, 966 F.2d at 61.<sup>9</sup>

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<sup>9</sup> In the Second Circuit, courts apply the so-called *Augie/Restivo* test when assessing the propriety of substantive consolidation. Under this test, substantive consolidation should be specifically ordered where either: (a) the affairs of a corporate parent and its subsidiaries are so "hopelessly entangled" that the time and expense required to unwind the debtors' books and records could threaten creditor recoveries or the debtors' reorganization as a whole (the "hopeless entanglement" test); or

81. The Plan Proponents submit that substantive consolidation of the Debtors with one another is appropriate and supported by caselaw. The consolidating Debtors, Eletson Finance (US) LLC and Agathonissos Finance LLC (the “Consolidating Debtors”), are holding companies that were formed for the express purpose of issuing the Exchange Notes. *See* Alt. Plan, Art. IV.B. Pursuant to the Exchange Notes Indenture, the Consolidating Debtors are prohibited from holding or maintaining any assets. *Id.* As the Exchange Notes and the claims related thereto will be discharged after the confirmation of these Chapter 11 Cases, the Plan Proponents maintain there is no reason for the continued existence of the Consolidating Debtors. *Id.* Moreover, the Plan Proponents believe that substantive consolidation provides the most equitable treatment to the Debtors’ creditors (which consists nearly entirely of claims against Debtor Eletson Holdings and not the Consolidating Debtors), and in turn the value available to their creditors, is maximized by the sum of the part of the Debtors—when separate, the Debtors have materially less value for distribution. Lastly, the substantive consolidation of the Debtors will have no impact on any operations, distributions, assets or rights of any part in interest of the Reorganized Debtor (and no creditors have objected).

82. For all of these reasons, substantive consolidation of the Debtors is appropriate. Accordingly, the substantive consolidation of the Debtors should be approved.

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(b) creditors did not rely upon the corporate separateness of individual debtors or generally relied on the credit of the debtors’ overall enterprise when extending credit (the “creditor reliance” test). *See Augie/Restivo*, 860 F.2d at 518. Because *Augie/Restivo* sets forth these tests in the disjunctive, satisfying either the hopeless entanglement test or the creditor reliance test justifies substantive consolidation. *In re Verestar*, 343 B.R. 444, 462-63 (Bankr. S.D.N.Y. 2006).

**II. The Alternative Plan's Exculpation and Injunction Provisions Should be Approved**

**A. The Alternative Plan's Exculpation Provision Should be Approved**

83. The exculpation provision set forth in Art. IX.C of the Alternative Plan (the "Exculpation Provision") is limited to claims against Exculpated Parties,<sup>10</sup> each of whom have meaningfully and substantially contributed to the success of these Chapter 11 Cases, is appropriately circumscribed, has not been objected to, and is proper. Indeed, even after *Metromedia*, appropriate exculpation provisions for case fiduciaries in chapter 11 plans remain standard practice and have been approved in large chapter 11 cases in this District. *See, e.g., In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (approving exculpation provision releasing claims relating to any "pre-petition or post-petition act or omission in connection with, or arising out of, the Disclosure Statement, the Plan or any Plan Document . . . the solicitation of votes for and the pursuit of Confirmation of [the] Plan, the Effective Date of [the] Plan, or the administration of [the] Plan or the property to be distributed under [the] Plan," where, as here, no release was provided for "gross negligence, willful misconduct, fraud, or criminal conduct, and the release cover[ed] only conduct taken in connection with Chapter 11 cases"); *Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 501 (S.D.N.Y. 2005) ("*Enron II*") (citing Bankruptcy Court's finding that plan's exculpation provision was "appropriately limited to a qualified immunity for acts of negligence and [did] not relieve any party of liability for gross negligence or willful

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<sup>10</sup> "Exculpated Parties" means "means, collectively, and in each case solely in its capacity as such, (a) the Plan Proponents, (b) the Committee and all members thereto, and (c) with respect to each of the foregoing Entities and Persons in the foregoing clauses (a) through (b), each of their Related Parties, solely to the extent such Related Parties are fiduciaries of the Estates or otherwise to the fullest extent provided for pursuant to section 1125(e) of the Bankruptcy Code." *See* Alt Plan, Art. I.B.77.

misconduct” and that such clause was “reasonable and customary”).

84. Indeed, the Court in *Oneida* found that the “language of the [exculpation] clause, which generally follows the text that has become standard in this [D]istrict, is sufficiently narrow to be unexceptionable.” *Oneida*, 351 B.R. at 94 n.22; *see also In re Granite Broad. Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (citing *Oneida* and *Enron II* and approving provision “‘follow[ing] the text that has become standard in this [D]istrict,’” which exculpated the debtors and their pre- and postpetition lender and their respective representatives “for actions in connection, related to, or arising out of the Reorganization Cases”) (quoting *Oneida*, 351 B.R. at 94 n.22).

85. Similarly, under the facts and circumstances of these Chapter 11 Cases, the Court should approve the limited exculpation of third parties who meaningfully contributed to the success of these Chapter 11 Cases and does not apply to any post-Effective Date obligations of any Exculpated Party. Importantly, *Metromedia* did not overrule the principle underlying the Second Circuit’s prior decisions affirming releases of nondebtor parties, *i.e.*, “[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor’s reorganization plan.” *SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 293 (2d Cir. 1992); *see also MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93 (2d Cir. 1988).

86. Courts in this District regularly approve exculpation provisions similar to that proposed in the Alternative Plan. *In re Venus Liquidation Inc.*, Case No. 23-10738 (JPM) [Docket No. 980] (Bankr. S.D.N.Y. May 08, 2024) [approving exculpation provisions exculpating parties who meaningfully contributed to success of the chapter 11 cases]; *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019) (“[A] proper exculpation provision is a protection not only of court-supervised



fiduciaries, but also of court-supervised and court-approved transactions.”); *see, e.g., In re Celsius Network LLC*, Case No. 22-10964 (MG), [Docket No. 3972] (Bankr. S.D.N.Y. Nov. 9, 2023) (approving exculpation of court supervised fiduciaries and court-approved transactions); *In re Voyager Digital Holdings, Inc.*, Case No. 22-10943 (MEW), [Docket No. 1170] (Bankr. S.D.N.Y. March 11, 2023) (approving exculpation of court-supervised fiduciaries and court-approved transactions); *LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG), [Docket No. 5752] at 111 (Bankr. S.D.N.Y. June 18, 2022) (approving exculpation of both estate fiduciaries and non-estate fiduciaries); *GBG USA Inc., et al.*, Case No. 21-11369 (MEW), [Docket No. 518] (Bankr. S.D.N.Y. Feb. 3, 2022) (same); *Avianca Holdings S.A., et al.*, Case No. 20-11133 (MG) [Docket No. 2300] (Bankr. S.D.N.Y. Nov. 2, 2021) (same).

**B. The Injunction Provision Should be Approved**

87. The injunction set forth in Article IX of the Alternative Plan (the “Plan Injunction”) merely implements the Alternative Plan’s exculpation provision by permanently enjoining all persons or entities from commencing or continuing in any manner any (i) Claims or Interests that arose prior to the Effective Date, (ii) Causes of Action subject to the Exculpation Provisions, or (iii) Claims, Interests, or Causes of Action that are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Alternative Plan. The Plan Proponents believe that the Plan Injunction is narrowly tailored to achieve that purpose and therefore should be approved. *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d at 293 (holding that a court may approve injunction provision where such provision “plays an important part in the debtor’s reorganization plan”).

88. Thus, the injunction is appropriate under sections 1123(b)(6) and 1123(a)(5) of the Bankruptcy Code and should be approved.

**III. The Rejection of Executory Contracts and Unexpired Leases Should Be Approved**

89. Section 1123(b)(2) of the Bankruptcy Code allows a plan, subject to section 365 of the Bankruptcy Code, to provide for the assumption, rejection, or assignment of any executory contract or unexpired lease not previously assumed or rejected under section 365 of the Bankruptcy Code. 11 U.S.C. § 1123(b)(2).

In accordance with section 1123(b)(2), Article VI of the Alternative Plan provides for the rejection of all of the Debtors' Executory Contracts and Unexpired Leases unless previously assumed by order of the Court pursuant to section 365 of the Bankruptcy Code. Accordingly, the rejection of Executory Contracts and Unexpired Leases should be approved.

**IV. The Modifications Comply with Section 1127 of the Bankruptcy Code**

90. Since the filing and solicitation of votes with respect to the solicitation version of the Alternative Plan, following further good faith negotiations with the Creditors' Committee and other key stakeholders, the Plan Proponents have revised the Alternative Plan to provide for additional provisions that are beneficial to the Debtors' estates, and their creditors. The Plan Proponents made certain modification to the solicitation version of the Plan, which are set forth in the notice filed substantially contemporaneously herewith (the "Modifications").

91. The Modifications do not materially and adversely affect the way any Claim Holder is treated under the Plan.

92. Section 1127 of the Bankruptcy Code provides:

The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.... Any holder of a claim or

interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. §§ 1127(a), (d) .

93. Accordingly, bankruptcy courts typically allow plan proponents to make non-materials changes to a plan without any special procedures or vote re-solicitation. *See, e.g., In re Am. Solar King*, 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (“[I]f a modification does not ‘materially’ impact a claimant’s treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.”) (citation omitted); *see also Enron Corp. v. New Power Co., (In re New Power Co.)*, 438 F.3d 1113, 1117-18 (11th Cir. 2006) (“[T]he bankruptcy court may deem a claim or interest holder’s vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holders is treated.”).

94. In addition, Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, provides in relevant part that:

In a ....chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the Court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019.

95. Section 1127 of the Bankruptcy Code gives a plan proponent the right to modify the plan “at any time” before confirmation. This right would be

meaningless if the promulgation of all plan modifications, ministerial or substantive, adverse to certain claimants or not, necessitated the resolicitation of votes. Accordingly, in keeping with traditional bankruptcy practice, courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedures or vote resolicitation. *See, e.g., In re CIT Grp., Inc.*, Case No. 09-16565 (ALG), 2009 WL 4824498, at \*28 (Bankr. S.D.N.Y. Dec. 8, 2009) (approving modifications that “did not materially or adversely modify the treatment of any Claims or Interests” without the need for resolicitation of votes on the plan); *In re Dana Corp.*, Case No. 06-10354 (BRL) 2007 WL 4589331, at \*2 (Bankr. S.D.N.Y. Dec. 26, 2007) (approving modifications to plan that did not “materially or adversely affect or change the treatment of any Claim or Interest in any Debtor” without the need for resolicitation of votes on the plan); *In re Calpine Corp.*, Case No. 05- 60200 (BRL) 2007 WL 4565223, at \*6 (Bankr. S.D.N.Y. Dec. 19, 2007) (approving certain non-material modification to reorganization plan without the need for resolicitation).

96. The Modifications include: (i) an increase of the Administrative Budget from \$200,000 to \$3,000,000; (ii) revisions to the Plan Proponents Fees and Expenses; (iii) revised treatment of Priority Claims; (iv) removed the limitation of liability on the Litigation Trust Trustee and the Litigation Trust Oversight Committee; and (v) extended term in which undeliverable claims would be barred from 90 days to 180 days. Accordingly, the Plan Proponents respectfully submit that the Modifications should not require the Plan Proponents to resolicit the Alternative Plan because (a) the Modifications, are (i) non-material and (ii) will not materially and adversely affect the treatment of any creditor that has previously accepted the Alternative Plan and (b) the Alternative Plan, as anticipated to be modified, will continue to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code. Furthermore, because

all creditors in these Chapter 11 Cases have notice of the Confirmation Hearing, and will have an opportunity to object to any modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. *See Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater)*, 57 B.R. 354, 358 (D. Utah 1985) (creditors who have knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan).

**V. If the Court Finds More than One Plan Satisfies Sections 1129(a) and (b), the Court Should Only Confirm the Alternative Plan**

97. For the reasons summarized below and as set forth in greater detail in the Petitioning Creditors objection to confirmation of the Debtors' Plan [Docket No. 1027] (the "PC Objection"), filed on August 27, 2024, the Debtors' Plan cannot be confirmed. If, in the unlikely event, the Court concluded the Debtors' Plan is confirmable and the PC Plan is not confirmable, the Bankruptcy Code nevertheless compels the conclusion that the Alternative Plan should be confirmed.

98. Section 1129(c) of the Bankruptcy Code provides that where multiple plans meet the requirements for confirmation, a bankruptcy court may confirm only one plan. *See* 11 U.S.C. 1129(c). Section 1129(c) also provides that if more than one plan meets the confirmation requirements of Bankruptcy Code sections 1129(a) and (b), the court should consider the preference of creditors and equity holders in determining which plan to confirm. *See id.* Where creditors and equity holder each support a different competing plan, however, bankruptcy courts routinely weigh the votes of creditors more heavily than the votes of equity holders. *See In re Coram Healthcare Corp.*, 315 B.R. 321, 351-52 (Bankr. D. Del. 2004) (confirming plan that, among other things, had the support of creditors over competing plan supported by equity holders); *In re River Vill. Assocs.*, 161 B.R. 127 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa.

1995). Other factors the court may consider in evaluating competing plans include: (i) the treatment of creditors; (ii) the feasibility of the proposed plans, and (iii) the type of plan. *See, e.g., In re ASARCO LLC*, 420 B.R. 314, 327 (S.D. Tex. 2009); *In re Orchards Vill. Invs., LLC*, No. 09-30893 (RLD), 2010 WL 143706, at \*21 (Bankr. D. Or. Jan. 8, 2010).

99. The Plan Proponents submit that, even if the Debtors' Plan otherwise satisfied the confirmation requirements of section 1129 of the Bankruptcy Code (which it does not), each of these considerations weighs in favor of confirmation of the Alternative Plan.

100. If the Court approved the PC Plan, the creditor preferences dictate that the PC Plan should be confirmed over the Alternative Plan and Debtors' Plan.

**A. Creditors Overwhelmingly Prefer the Alternative Plan as Between Plan's Based on the Alternative Plan Structure**

101. As expected, the Debtors' Plan was rejected by all classes of non-contingent, liquidated claims and requires cramdown of three classes of claims. In particular, Trade Creditor Claims (Class 4) was accepted by only 33.33% in number and 11.03% in amount, Noteholder Election Recovery Claims (Class 5) was accepted by only 17.86% in number and 3.87% in amount, and Petitioning Creditor / Non-Petitioning Creditor Exchange Note Claims (Class 6A/6B) was accepted by only 25% in number and 1.37% in amount. *See* Voting Decl., Ex. A. Further, as this Court is aware, the Holders of Interests (Class 7) consists of insiders of the Debtors, thus their preference for the Debtors' Plan should be disregarded for the purposes of this prong. *See In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213 at 245 (Bankr. D.N.J. 2000) (the most significant element in choosing between two confirmable plans is the statutory direction to the court to "consider the preferences of creditors and equity security holders in determining which plan to confirm."); *In re Applegate Prop., Ltd.*, 133 B.R. 827, 835

(Bankr. W.D. Tex. 1991) (“One may reasonably infer . . . that Congress had in mind the consideration of independent third parties when it directed courts to accede to the desires of creditors in Section 1129(c), rather than the wishes of an insider.”); *In re La Guardia Assocs., L.P.*, No. 04-34512 (SR), 2006 WL 6601650, at \*26 (Bankr. E.D. Pa. Sept. 13, 2006) (same) (reversed on other grounds); *see also Coram Healthcare Corp.*, 315 B.R. at 352 (confirming plan that was preferred by creditors over competing plan proposed and preferred by equity security holders); *In re Internet Navigator Inc.*, 289 B.R. 128, 132-33 (Bankr. N.D. Iowa 2003) (confirming plan overwhelmingly accepted by creditors over plan preferred by equity security holders).

102. In comparison, though certain Classes rejected the Alternative Plan, the Alternative Plan was accepted by greater numbers than the Debtors’ Plan, with Trade Creditor Claims (Class 4) voting to accept the Alternative Plan 66.67% in number and 88.97% in amount, and Noteholder Election Recovery Claims (Class 5) voted to accept the Plan 58.62% in number and 16.06% in amount, and the Non-Petitioning / Petitioning Creditor Exchange Note Claims (Classes 6A / 6B) voted 76.92% in number and 96.40% in amount. *See* Voting Decl., Ex. A.

103. Moreover, the only Classes of Claims that voted in favor of *only* the Debtors’ Plan (despite receiving superior economics under the similar Alternative Plan) consist of a handful of holders of contingent and unliquidated claims: the Corp Guaranty Claims (Class 2) and the Azure Guaranty Claims (Class 3). However, the Petitioning Creditors’ are investigating vote manipulation with respect to such votes. *See* Docket No. 966 at 2. At the very least, it is undisputed that certain parties voting in Class 2 received large payments from Eletson Corp. shortly prior to the voting.

104. Accordingly, the preferences of creditors support confirmation of the Alternative Plan.

**B. Creditors Receive Better Treatment under the Alternative Plan as Between Plans Based on the Alternative Plan Structure**

105. Courts considering competing plan under section 1129(c) of the Bankruptcy Code also have examined the relative treatment of creditors, giving preference to the plan that provides better treatment. *See In re Grete Bay Hotel & Casino, Inc.*, 251 B.R. 245 (Bankr. D.N.J. 2000); *In re River Vill. Assocs.*, 181 B.R. 796, 807 (E.D. Pa. 1995) (“[t]he court should confirm the plan that provides better treatment for creditors”). The Alternative Plan provides for greater recoveries to nearly all creditors than under the Debtors’ Plan. OCM Guaranty Claims (Class 1) are Unimpaired under the Alternative Plan, while under the Debtors’ Plan, they are Impaired and only receiving 50% of their continuing guaranty. Corp Guaranty Claims (Class 2) will receive 53.6% of their claims under the Debtors’ Plan, while under the Alternative Plan they are projected to receive 54.5%. Non-Petitioning Creditor Exchange Note Claims (Class 6A) will receive 4.6-1.7%, and under the Alternative Plan are projected to receive 4.6-17% *plus* Litigation Trust Interests. And Petitioning Creditor Exchange Note Claims (Class 6B) will receive 0-1% of their claims under the Debtors’ Plan, compared to 4.6-17% *plus* Litigation Trust Interests under the Alternative Plan. The remaining Classes, namely, Azure Guaranty Claims (Class 3), Trade Creditor Claims (Class 4), and Noteholder Election Recovery Claims are projected to receive the same recoveries under both the Debtors’ Plan and the Alternative Plan. The only Class projected to receive better recoveries under the Debtors’ Plan are those of Interests (Class 7), which are estimated to recover 100% under the Debtors’ Plan and 0% under the Alternative Plan (in a clear violation of the absolute priority rule). However, courts routinely consider the interests of creditors over those of equity holders when viewing competing plans. *See Coram Healthcare Corp.*, 315 B.R., 351-52; *River Vill. Assocs.*, 161 B.R. 127.



106. As a result, the Alternative Plan provides for more favorable treatment of creditors and should be confirmed.

**C. The Alternative Plan is More Feasible than the Debtors' Plan**

107. Courts considering competing plans under Bankruptcy Code section 1129(c) also examine and give preference to the plan that is more feasible than the other proposed plans. *See Coram Healthcare*, 315 B.R. at 352 (confirming plan that, among other things, was more feasible than competing plan). In evaluating this prong, courts consider the relative risks and delays with respect to plan consummation and the relative impact of plan consummation on the debtor's business operations. For example, in *Greate Bay Hotel & Casino*, the court, in considering two competing plans, found the more feasible plan to be the plan that, among other things, provided the reorganized entity with more cash on hand at emergence, and thus greater flexibility and substantially greater opportunity for capital improvements. This prong weighs heavily in favor of the Alternative Plan.

108. As more fully discussed in the PC Objection, as between the Debtors' Plan and the Alternative Plan, the Alternative Plan is the only plan that is feasible between the two. *First*, the Debtors' have not demonstrated that they have the \$30 million Shareholder New Value Contribution on which their plan is based on. *See* PC Obj. ¶ 45. *Second*, the commitment letter the Debtors' provided to the Creditors' Committee evidencing their intent to provide \$30 million is not a firm commitment because it gives no party and recourse rights should the Debtors' breach their obligations under the commitment letter. *See id.* ¶ 46. *Third*, even if the \$30 million is real, it is insufficient to fund the Debtors' Plan. *See id.* ¶ 47. By contrast, the Alternative Plan is feasible. Specifically, the Plan Sponsor has provided proof of funds, at the request of the Creditors' Committee, demonstrating that the \$41 million Equity

Investment amount is being held in an account and readily available. *See* Docket No. 849, App. D; *see also* Spears Decl. ¶ 17. Moreover, the Plan Proponents also signed a commitment letter which, among other things, gave the Creditors' Committee the right to enforce the letter. *See id.*

109. Another critical aspect of feasibility for the Alternative Plan is the Debtors' balance sheet upon emergence from Chapter 11. The proposed deleveraging of the Debtors and the infusion of capital in the form of the Equity Investment of \$41 million under the Alternative Plan (versus the \$30 million under the Debtors' Plan) will leave Reorganized Holdings with a clean balance sheet and adequate capital to continue the business. *See In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. at 246. In comparison, the Debtors' Plan is reliant on the \$30 million Shareholder New Value Contribution, which, as described previously, has a high probability of never coming into existence.

110. Accordingly, the Alternative Plan is more feasible than the Debtors' Plan and should be confirmed.

**REQUEST FOR WAIVER OF BANKRUPTCY RULE 3020(e)**

111. The Plan Proponents request that the Confirmation Order be effective immediately upon its entry notwithstanding the 14-day stay imposed by operation of Bankruptcy Rule 3020(e). Under Bankruptcy Rule 3020(e), "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). As the Advisory Committee notes to Bankruptcy Rule 3020(e) state, "[t]he court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately." Fed. R. Bankr. P. 3020(e), Advisory Comm. Notes – 1999 Amendment. Under the circumstances, the Plan Proponents believe it is appropriate for the Court to exercise its discretion with respect to the stay imposed by

Bankruptcy Rule 3020(e) and permit the Plan Proponents to consummate the Alternative Plan and commence their implementation without delay after entry of the Confirmation Order. A waiver of the 14-day stay also allows the Plan Proponents to satisfy their Effective Date distribution obligations earlier which is in the best interests of the estate and all other parties in interest and will not prejudice any party in interest.

**CONCLUSION**

The Plan Proponents submit that the Alternative Plan complies with all applicable requirements under the Bankruptcy Code and the Bankruptcy Rules. Accordingly, the Plan Proponents respectfully request that the Court confirm the Alternative Plan.

DATED: September 5, 2024  
New York, New York

TOGUT, SEGAL & SEGAL LLP  
By:

/s/ Bryan M. Kotliar

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**EXHIBIT A**

**Batuta Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Eletson Holdings Inc., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 23-10322 (JPM)

Jointly Administered

**DECLARATION OF ALEX ZYNGIER IN SUPPORT OF  
THE PETITIONING CREDITORS' CHAPTER 11 PLANS**

I, Alex Zyngier, make this declaration, pursuant to 28 U.S.C. § 1746:

1. I am the Founder and Managing Partner of Batuta Capital Advisors LLC ("Batuta"), the financial advisor for the Plan Proponents<sup>2</sup> in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). I submit this declaration and accompanying exhibits (the "Declaration") in support of: (a) the *Petitioning Creditors' Amended Joint Chapter 11 Plan of Reorganization of Eletson Holdings and its Affiliated Debtors* [Docket No. 846, Ex. 1] (the "PC Plan"); and (b) the *Petitioning Creditors' Alternative Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtors* [Docket No. 848, Ex. 1] (the "PC Alternative Plan" and, together with the PC Plan, the "Plans").

2. I am authorized to submit this Declaration on behalf of the Plan Proponents and Batuta, and if called upon to testify, I could and would testify competently to the opinions set forth herein.

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<sup>1</sup> The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plans (as defined below).

**I. Compensation**

3. I am being compensated for this testimony pursuant to the terms of Batuta's existing engagement letter with counsel to the Petitioning Creditors, a copy of which is attached hereto as **Exhibit A**. My compensation is not dependent on any particular outcome in the Chapter 11 Cases.

**II. Qualifications and Experience**

4. Batuta is a special situations advisory firm that I founded in 2013 that specializes in high growth, turnarounds, bankruptcies, and distressed opportunities. Batuta has a wealth of experience providing financial advisory services in restructurings and reorganizations and enjoys an excellent reputation for the services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States, including: *In re WeWork Inc.*, Case No. 23-19865 (JKS) (Bankr. D. N.J. Nov. 6, 2023); *In re Washington Prime Group Inc.*, Case No. 21-31948 (MI) (Bankr. S.D. Tex. June 13, 2021); *In re Tidewater Inc.*, Case No. 17-11132 (BLS) (Bankr. D. Del. May 17, 2017); *In re Nuverra Environmental Solutions, Inc.*, Case No. 17-10949 (KJC) (Bankr. D. Del. May 1, 2017); *In re NJOY, Inc.*, Case No. 16-12076 (LSS) (Bankr. D. Del. Sept. 16, 2016); *In re KaloBios Pharmaceuticals, Inc.*, Case No. 15-12628 (LSS) (Bankr. D. Del. Dec. 29, 2015); and *In re Molycorp, Inc.*, Case No. 15-11357 (CSS) (Bankr. D. Del. June 25, 2015), among others.

5. I have over twenty years of experience in corporate turnarounds, restructurings, and business transformations and have advised numerous companies on their restructurings both as an advisor and as an investor. I currently serve as Batuta's Managing Partner where I have assisted organizations and their stakeholders in developing and implementing strategic alternatives, including planning, navigating, and exiting chapter 11 filings and insolvency proceedings. Prior

to Batuta, I was a director at Alden Global Capital from 2009 until 2013. From 2007 to 2008, I was a director at Deutsche Bank in the proprietary trading desk as head of Distressed Investments. From 2003 to 2007, I was a vice president at Goldman Sachs in the Capital Structure Franchise Trading as well as the Convertible Bonds group focused on Distressed Investments. From 2001 to 2003, I was a restructuring analyst at CRT Capital Group.

6. I hold a Master of Business Administration degree in Accounting and Finance from the University of Chicago Booth School of Business, where I studied, among other things, valuation techniques, financial analysis, accounting, micro and macroeconomics, and statistics. I also hold a Bachelor of Science degree in Chemical Engineering from the Universidade Estadual de Campinas (UNICAMP). A copy of my CV is attached hereto as **Exhibit B**.

7. With respect to this Declaration, I have extensive experience preparing liquidation analyses, financial projections, and valuations for distressed companies and have conducted hundreds of such analyses during my career. These analyses have been relied upon by individuals and entities for investing, raising capital, mergers and reorganizations.

8. Throughout my career, I routinely prepared liquidation analyses to evaluate the downside risk of prospective investments in various distressed companies, including on behalf of CRT Capital Group, Goldman Sachs, Deutsche Bank, and Alden Global Capital. Also, while serving as a fiduciary to distressed companies at Batuta, I have supervised the preparation of numerous liquidation analyses for companies and investment banks involved with capital raises, mergers and restructurings. For example, I have prepared numerous liquidation analyses for asset intensive businesses such as the Debtors, including: (1) Golden Ocean Group, when it was demerged from

Frontline Ltd.; (2) YRC Worldwide, in its out-of-court reorganization; (3) Abovenet, upon its emergence from Chapter 11; (4) GlobalStar, prior to its reorganization in Chapter 11; and (5) Frontline Ltd., after its merger with Euronav.

9. I also have extensive experience preparing financial projections. Since 2013 especially, when I founded Batuta, my team and I have regularly prepared financial projections for our clients, including in bankruptcy matters. For example, we have prepared financial projections for: (1) KaloBios Inc., in its Chapter 11 case; (2) Nuverra Inc., while serving as the advisor to the Creditors' Committee in the Chapter 11 case; (3) NJOY Inc., on behalf of the successful bidders in the Chapter 11 case; (4) Molycorp Minerals, in its sale in its Chapter 11 case; and (5) HFZ, on behalf of certain unsecured creditors after the company defaulted on its obligations.

10. Between 2001 to 2013, I regularly conducted valuations as part of my fundamental analysis of distressed companies. I and other potential investors relied upon those valuations in deciding whether to invest in the relevant distressed companies. Additionally, while serving as a fiduciary to various distressed companies during my tenure at Batuta, I have prepared numerous valuations that companies and investment banks relied upon in reorganizations, capital raises and mergers.

11. For example, I have done or supervised company valuations in: (1) the bankruptcy of KaloBios Inc.; (2) the sale of GT Advanced Technologies Inc. to ON Semiconductor Corporation; (3) the sale of Appvion Inc. to WynnChurch Funds; (4) the recapitalization of Eileen Fisher; (5) capital raises at AudioEye, Inc.; (6) the restructuring of LootCrate, Inc.; (7) the sale of Molycorp Inc. to certain of its creditors; and (8) the sale of the assets of the Pappas Telecasting entities. It should be noted that my work on each of these matters, as well as many others, required me to generate and



review financial analyses on an expedited timeline, due to the distressed nature of the companies at issue.

12. I also have extensive experience with respect to the shipping industry, specifically while working on the buy side of investing. For example, I have analyzed and invested in several shipping companies over the years, including, but not limited to, Frontline Ltd, Golden Ocean Group reorganized equity, Jinhui Shipping, Tidewater Inc., Golar LNG, Navigator Gas, Navios Maritime Holdings, and Precious Shipping.

13. My colleague, Andrew Peranick, who has assisted me in this matter, also has significant relevant experience. Since 2003, Mr. Peranick has conducted liquidation analyses of distressed companies in various contexts, including liquidation analyses of distressed companies for potential investors. Mr. Peranick has also regularly performed financial projections of leveraged, distressed and bankrupt companies throughout his career. This has included generating and overseeing the generation of financial projections of distressed companies for clients in bankruptcy matters, and for potential investments. Mr. Peranick also has more than twenty years of experience conducting valuations of distressed companies.

14. Since 2016, Mr. Peranick has been involved in many of the liquidation analyses, financial projections, and valuation analyses conducted by Batuta. Again, many of these analyses were done on expedited timeframes, given the exigencies faced by distressed companies. A copy of his CV is attached hereto as Exhibit C.

### **III. Publication and Prior Testimony**

15. I have not authored any publications in the last ten years, and I have not testified at trial or by deposition in the last four years.

#### IV. Scope of Assignment

16. In May 2024, Batuta was engaged by the Plan Proponents to prepare the following:

- a liquidation analysis that estimates the potential cash distributions to holders of Allowed Claims and Interests from a hypothetical chapter 7 liquidation of the Debtors' estate, and compares the estimated distributions against those provided under the PC Plan to evaluate whether that Plan satisfies the best interests of creditors (the "Liquidation Analysis," attached hereto as **Exhibit D**);<sup>3</sup>
- an analysis of Reorganized Holdings' ability to satisfy its financial obligations, while maintaining sufficient liquidity and capital resources, and projecting this analysis for the years ending December 31, 2024 through December 31, 2029 to evaluate whether the PC Plan is likely to be followed by liquidation or the need for further financial reorganization of Reorganized Holdings or any successors under that Plan (the "Financial Projections," attached hereto as **Exhibit E**);<sup>4</sup> and
- a calculation of the Reorganized Holdings' reorganization value, that includes the hypothetical enterprise value of Reorganized Holdings as the continuing operators of the business and assets of the Debtors after giving effect to the PC Plan (the "Valuation Analysis," attached hereto as **Exhibit F**).<sup>5</sup>

17. The views set forth in this Declaration are based upon: (1) the data and information sources listed in the "Summary of Documents Considered" attached hereto as **Exhibit G**; (2) discussions with the certain of the Plan Proponents and their advisors and the advisors for the Creditors' Committee concerning the Valuation Analysis, Liquidation Analysis, and Financial Projections; (3) the knowledge, experience, education, and training that I and Mr. Peranick have obtained over our

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<sup>3</sup> The Liquidation Analysis is also attached as Appendix C to the PC Disclosure Statement and Appendix F to the PC Alternative Disclosure Statement.

<sup>4</sup> The Financial Projections are also attached as Appendix G to the PC Disclosure Statement and Appendix G to the PC Alternative Disclosure Statement.

<sup>5</sup> The Valuation Analysis is also attached as Appendix E to the PC Disclosure Statement and Appendix H to the PC Alternative Disclosure Statement.

careers in investing, corporate turnarounds, restructurings, and business transformations; and (4) the analyses conducted by Batuta, as described below.

**V. The Liquidation Analysis**

18. To conduct the Liquidation Analysis, Batuta first estimated the proceeds that a Trustee appointed in a chapter 7 under the Bankruptcy Code (a “Trustee”) would likely generate if the Debtors’ estates were liquidated in Chapter 7. The next step in the analysis was to reduce the proceeds by claims secured by enforceable security interests and liens against the assets of the Debtors’ and their estates, if any. The third step in the analysis was to reduce this total hypothetical value by the estimated costs of the Chapter 7 liquidation. This includes the fees and expenses of the Trustee, as well as the costs incidental to liquidating the Debtors’ assets, including such administrative expenses and priority claims that may exist or may result from the termination of the Debtors’ businesses and use of Chapter 7 for the purpose of liquidation. *See Exhibit D* at 1-9; *see also id.*, Appendix 1.

19. Next, any cash remaining from the hypothetical liquidation was allocated to creditors and shareholders in accordance with Section 726 of the Bankruptcy Code. Finally, the Holder’s liquidation distribution was compared to the distribution that such Holder would likely receive if the PC Plan were confirmed and consummated. *See id.*

20. As part of the Liquidation Analysis, Batuta made the following assumptions that are typical of a liquidation analysis in a restructuring case:

- (1) the Debtors had converted their Chapter 11 Cases to Chapter 7 cases on June 30, 2024;
- (2) the Debtors would be liquidated in a jointly administered and substantively consolidated proceeding;

- (3) the arrangement and disposition of substantially all of the Debtors' assets, along with the wind-down of the Debtors' estates, would take approximately 3-6 months;
- (4) the initial phase of a liquidation would involve minimal business operations and would require the Trustee to oversee the handling of disposing of remaining assets; and
- (5) the Chapter 7 Trustee would engage professionals related both to the sale(s) process(es) for the Debtors' tangible assets, as well as reviewing, analyzing, and investigating potential claims and causes of action against the Debtors' insiders and other third parties, including legal support and a broker to auction the Debtors' assets who would charge a combined fee of 5% of the Gross Transaction Value.

*See id.*

21. My understanding is that the "best interest test" is deemed satisfied if the probable distribution to such Holder in Chapter 7 has a value that is equal to or less than the value of the probable distribution under the Plan. That is the case here with respect to the PC Plan.

22. Our liquidation analysis shows a total recovery of \$15.2 to \$16.2 million, with a midpoint of \$20.6 million. *See* Ex. D at 6; *see also id.*, Appendix 1. This implies a recovery of 58% to 92% to priority and administrative claims and no recovery for unsecured creditors. *See* Ex. D at 6; *see also id.*, Appendix 1.

## **VI. The Financial Projections**

23. As part of the Financial Projections, Batuta estimated the following for Reorganized Holdings for the years ending December 31, 2024 through December 31, 2029:

- a. Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA"), by taking the sum of operating revenue primarily from the operation of the four MR class product tanks (the voyage revenue) and subtracting the costs associated with the operation of the vessels and delivery of products and services to customers (the vessel operating expenses) and general corporate overhead expenses such as personnel, property, legal and professional expenses (the general and administrative expenses) and ongoing expenses from the Debtors' Chapter 11 Cases;

- b. Net Profit/Loss by subtracting from EBITDA amortization and the vessels' depreciation (*i.e.*, the difference between the cost of the vessel and its estimated residual value); and interest and financing expense related to assumed debt to refinance outstanding SME vessel leases.
- c. Net Debt by subtracting from total debt the leveraged cash flow; and
- d. Free Cash Flow to equity by subtracting from EBITDA the costs of financing and capital expenditures.

See **Exhibit E** at 1-8; *see also id.*, Appendix 1.

24. The Financial Projections relied on the following assumptions:

(1) the four special maritime entity subsidiaries currently owned by certain subsidiaries of Eletson Holdings (the "SMEs") constitute the principal tangible assets of Reorganized Holdings; (2) the PC Plan would be implemented in accordance with its stated terms; and (3) Reorganized Holdings would emerge from Chapter 11 as contemplated therein on July 31, 2024. *See Ex. E at 1-8; see also id.*, Appendix 1.

25. Based on the projections Batuta has prepared, I conclude that the enterprise would generate positive cash flow over the long run with ups and downs as expected in a commodity business. *See Ex. E at 1-8; see also id.*, Appendix 1.

## **VII. The Valuation Analysis**

26. The Valuation Analysis relied on the following three methodologies commonly used to value an asset in a restructuring case:

- a. Selected Publicly Traded Companies Analysis, which compares a number of publicly traded companies to the business of Reorganized Holdings, by calculating certain financial multiples that measure financial performance and value for each selected company and then apply those multiples to Reorganized Holdings' financials to imply an enterprise value for Reorganized Holdings. Batuta used, among other measures, enterprise value (defined as market value of equity, plus book value of debt and book value of preferred stock and minority interests, less cash, subject to adjustments for underfunded pension and retirement obligations and other items where appropriate) for each selected company as a multiple of such company's publicly available consensus projected EV/EBITDA multiple for fiscal year 2025;

- b. Net Asset Value (NAV), which is based on the specific values of each of the SMEs according to Vessels Value asset valuations (an independent, third party research firm widely used in the industry). These values are derived based on the specifics of each individual vessel including technical specifications, age, type of vessel, capacity, building shipyard, all of which affect the NAV of each vessel. Vessels Value then aggregates this vessel specific information and uses it to obtain a specific value through their model that uses thousands of data points across asset specifications, transactions and market sentiment indicators along with daily recalibrations; and
- c. Discounted Cash Flow, which estimates the value of an asset or business by calculating the present value of expected future cash flows to be generated by that asset or business plus a present value of the estimated terminal value of that asset or business.

See **Exhibit F** at 1-5; *see also id.*, Appendix 1.

27. The Valuation Analysis relied on the following assumptions:
- a. the effective date for Reorganized Holdings would be July 31, 2024;
  - b. the PC Plan would be consummated on the same date;
  - c. the Debtors would be reorganized in accordance with the PC Plan;
  - d. Reorganized Holdings will achieve the results set forth in the Financial Projections;
  - e. Reorganized Holdings' capitalization and available cash will be as set forth in the PC Plan and this Disclosure Statement;
  - f. Reorganized Holdings will be able to obtain all future financings, on the terms and at the times, necessary to achieve the results set forth in the Financial Projections; and
  - g. there will be no material change in the economic, monetary, market, or other conditions, or the information made available to Batuta, as of July 31, 2024.

See Ex. F at 1-5; *see also id.*, Appendix 1.

28. In conclusion, the enterprise value of the debtors is between \$103.9 and \$116.4 million, with a midpoint of \$110.2 million. See Ex. F at 1; *see also id.*, Appendix 1. The range of the equity value after taking into account the \$48.1 million in

leases outstanding is \$55.8 to \$68.3 million, with a midpoint of \$62.1 million. *See id.*; *see also id.*, Appendix 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 26, 2024  
New York, New York

/s/ Alex Zyngier  
Alex Zyngier  
Founder and Managing Partner

**Exhibit A**

**Engagement Letter**



*Batuta Capital Advisors LLC*



As of May 2, 2024

Mr. Kyle Ortiz  
Partner  
Togut, Segal & Segal LLP  
One Penn Plaza, Suite 3335  
New York, NY 10119

Re: Engagement Agreement

Dear Mr. Ortiz:

Please accept this letter as the formal written agreement (this “Agreement”) by which Batuta Capital Advisors LLC (“Batuta”) will provide certain financial and consulting services to Togut, Segal & Segal LLP (“You” or “Client”) in connection with the Client’s representation of the Petitioning Creditors<sup>1</sup> in the jointly administered Chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) in *In re Eletson Holdings Inc.*, No. 23-10322 (JPM) (Bankr. S.D.N.Y.) (the “Chapter 11 Cases”).<sup>2</sup> The Agreement will become effective upon execution by duly authorized representatives of the respective parties and our receipt of the retainer.

Section 1 – Scope of Work

Batuta’s role will be to provide the following services to Client (the “Services”) with relation solely to the Chapter 11 Cases:

1. Review the Petitioning Creditors’ Plan and Disclosure Statement and related rights offering and provide relevant financial analysis to You related thereto, including a liquidation analysis, and financial statement projections, valuation, and/ or other analysis as requested by You;
2. To the extent requested by the Client, evaluate financial information and disclosures provided by Eletson or its representatives to You and provide analysis thereon;

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<sup>1</sup> The term “Petitioning Creditors” means, collectively, Pach Shemen LLC, VR Global Partners, L.P., Alpine Partners (BVI), L.P., Gene B. Goldstein, Gene B. Goldstein, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust, Mark Millet, In His Capacity as Trustee of the Mark E. Millet Living Trust, Mark Millet, In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, Robert Latter, Tracy Lee Gustafson, Jason Chamness, and Ron Pike.

<sup>2</sup> The debtors and debtors in possession in the Chapter 11 Cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC (collectively, the “Debtors”).

3. Provide expert testimony related to the foregoing if necessary; and
4. Perform such other tasks as directed by You and agreed to by Batuta.

Batuta's ability to adequately perform the Services is dependent upon Client timely providing reliable, accurate and complete necessary information. You acknowledge that we are not responsible for independently verifying the completeness or accuracy of any information supplied to us by or on behalf of Client.

Batuta will submit its evaluations and analyses pursuant to this engagement in periodic oral and written reports as it deems appropriate. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute your property.

#### Section 2 – Rates and Invoicing

A number of Batuta's personnel have experience in the above matters and may be engaged in this representation. Although others of our staff may also be involved, we have listed below certain of the Batuta personnel (along with their corresponding billing rates) who are committed to this engagement.

Alex Zyngier	\$1,350/hr.
Andrew Peranick	\$900/hr.
Dan Sommers	\$900/hr.

These rates are adjusted as of January 1<sup>st</sup> of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors. Alex Zyngier will lead this assignment and will remain personally involved throughout the engagement.

Batuta will charge its time on an hourly basis and submit detailed invoices to you periodically, which invoices shall list in 15 minute (.25) increments.

Commencing from the date on which Batuta commences providing the Services, You agree to pay Batuta a fully earned fee of \$150,000 (the "Advance Payment") that will be held until the completion of the Services; *provided*, that 100% of any of Batuta's outstanding hourly fees and expenses shall be credited against the Advance Payment.

Invoices shall be due upon receipt. We reserve the right to suspend Services if invoices are not timely paid, in which event we will not be liable for any resulting loss, damage or expense connected with such suspension.

Batuta also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, overnight deliveries, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for domestic flights will be charged at economy/coach fares; international flights will be charged at the business class fare.

Although we do not predict or warrant the outcome of any particular matters or issue, and our fees are not dependent upon such outcomes, we will perform our services with reasonable care and in a diligent and competent manner.

### Section 3 – Termination

Either Client or Batuta may terminate this Agreement for any reason with seven (7) business days' written notice (email being sufficient); *provided, however*, Client shall be obligated to pay and/or reimburse Batuta all fees and expenses accrued under this Agreement as of the effective date of the termination.

### Section 4 – Relationship of the Parties, Confidentiality

Batuta will provide consulting services to and for Client, with select members of Batuta, as noted above, assigned to specific roles for the benefit of Client. These members will remain as Batuta employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of Batuta are not to be considered employees of Client and are not entitled to any of the benefits that Client provides for Client's employees, unless written modification is made to this Agreement.

Client acknowledges that all advice (written or oral) given by Batuta to Client in connection with Batuta's engagement is intended solely for the benefit and use of Client and the Petitioning Creditors in considering the transaction or subject matter to which it relates, and that no third party is entitled to rely on any such advice or communication. Batuta will in no way be deemed to be providing services for any person other than Client and the Petitioning Creditors.

Batuta agrees that all information not publicly available that is received by Batuta from Client or the Debtors in connection with this engagement or that is developed during this engagement, will be treated as confidential and will not be disclosed by Batuta, except as required by court order or other legal process, or as may be authorized by Client. Batuta shall not be required to defend against any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to Client, so that You may seek appropriate remedies, including a protective order. Client shall reimburse Batuta for all costs and fees (including reasonable attorney's fees and internal time devoted by Batuta employees) incurred by Batuta, whether during the pendency of this engagement or thereafter relating to responding to (whether

by objecting to or complying with) any subpoenas or requests for production of information or documents.

#### Section 5 – Indemnity, Limitation of Liability

To the fullest extent permitted under applicable law, Pach Shemen LLC shall indemnify, hold harmless and defend Batuta, and each and every one of the personnel employed by Batuta who works on this particular project, as well as Batuta officers, directors, employees and agents (the “Batuta Parties”) from and against any and all claims, liability, loss, cost, damage or expense (including reasonable attorney’s fees) asserted against it or any of its individual personnel, or incurred by Batuta or its personnel, including addressing or responding to a subpoena or court order, arising out of or in connection with this Agreement or performance under this Agreement, except where it is determined in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such liability claim, loss, costs, damage or expense is the direct result of the willful misconduct, dishonesty, fraudulent act or omission, or gross negligence of any Batuta personnel. Such indemnity shall survive the expiration or termination by either party of this engagement.

The Batuta Parties shall not be liable to Client, or any party asserting claims on behalf of Client, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct of Batuta. The Batuta Parties’ aggregate liability, whether in tort, contract, or otherwise, is limited to the amount of fees paid to Batuta for services on this engagement (the “Liability Cap”). The Liability Cap is the total limit of the Batuta Parties’ aggregate liability for any and all claims or demands by anyone pursuant to this Agreement, including liability to Client, to any other parties hereto, and to any others making claims relating to the work performed by Batuta pursuant to this Agreement.

#### Section 6 – Conflicts

By executing this Agreement, Client specifically waives any objection, or standing to object, to the retention, in matters unrelated to Client, of Batuta by banks or other institutional lenders or debt holders, who are or whose affiliates are lenders to Client or the Debtors, or bank groups which include banks who are or whose affiliates are lenders to Client to the Debtors; *provided*, that the confidentiality of all Client and the Debtors information and work product is maintained and not disclosed to any other person.

#### Section 7 – No Audit

Client acknowledges that it is hiring Batuta to assist and advise Client with respect to the Debtors’ business and operations. Batuta’s engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA

or other such state and national professional bodies. It is beyond the scope of our services to identify deficiencies in record keeping practices or procedures, errors or irregularities in financial statements or the Debtors' books and records.

#### Section 9 —Retention of Information Provided by Client to Batuta

Subject to any protective orders entered by the Bankruptcy Court in the Chapter 11 Cases, regarding all documents and other materials provided by Client to Batuta, including all copies thereof (the "Client Documents"), upon termination or expiration of the Agreement, Batuta shall, at its election, either (a) return such documents to Client (b) destroy such documents upon three days' written notice (email being sufficient) to Client or (c) treat such documents and other materials in accordance with Batuta's then existing document retention policy. Should Batuta elect either alternatives (a) or (b) above, Batuta may retain copies of those Client Documents that it deems necessary to address potential post-termination issues, subject to complying with any confidentiality provisions in effect at the time of termination of the Agreement.

#### Section 10 – Survival

The provisions of this Agreement relating to indemnification, limitation of liability, the non-solicitation or hiring of Batuta employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

#### Section 11 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

#### Section 12 – Entire Agreement, Amendment

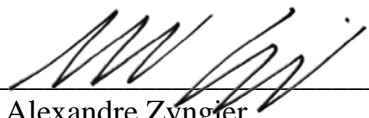
This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the terms and conditions of this engagement letter, I would ask that you indicate your acceptance of the above terms of our engagement by signing an original copy of this Agreement on the signature line below, then returning one fully-executed Agreement to Batuta's office.

*[remainder of page left blank intentionally; signature page follows]*

Should Client or its representatives have any questions, comments or concerns, or require additional clarification or information, please do not hesitate to call.

Very truly yours,

By:   
Alexandre Zyngier

**AGREED AND ACKNOWLEDGED:**

Togut, Segal & Segal LLP

By: \_\_\_\_\_  
Kyle Ortiz, Partner

Date: \_\_\_\_\_

**Solely With Respect to Section 5:**

Pach Shemen LLP

By: \_\_\_\_\_  
Mark Lichtenstein, Manager

Date: \_\_\_\_\_

Should Client or its representatives have any questions, comments or concerns, or require additional clarification or information, please do not hesitate to call.

Very truly yours,

By: \_\_\_\_\_  
Alexandre Zyngier

**AGREED AND ACKNOWLEDGED:**  
Togut, Segal & Segal LLP

By: /s/ Kyle Ortiz  
Kyle Ortiz, Partner

Date: May 8, 2024

**Solely With Respect to Section 5:**  
Pach Shemen LLP

By: \_\_\_\_\_  
Mark Lichtenstein, Manager

Date: \_\_\_\_\_

Mr. Kyle Ortiz  
As of May 2, 2024  
Page 6

Should Client or its representatives have any questions, comments or concerns, or require additional clarification or information, please do not hesitate to call.

Very truly yours,

By: \_\_\_\_\_  
Alex Zyngier

**AGREED AND ACKNOWLEDGED:**  
Togut, Segal & Segal LLP

By: \_\_\_\_\_  
Kyle Ortiz, Partner

Date: \_\_\_\_\_

**Solely With Respect to Section 5:**  
Pach Shemen LLP

By: Mark Lichtenstein  
\_\_\_\_\_  
Mark Lichtenstein, Manager

Date: 08/05/24  
\_\_\_\_\_

Signature:   
\_\_\_\_\_  
Mark L. Lichtenstein (May 8, 2024 15:16 EDT)  
Email: ml@murchinsonltd.com



**Exhibit B**

**Zyngier CV**

**ALEXANDRE (ALEX) ZYNGIER**

Batuta Capital Advisors, 650 Halstead Ave, ste 201B2, Mamaroneck, NY, 10543, tel.: (914)565-9129, azyngier@batutaadvisors.com

**BATUTA CAPITAL ADVISORS****New York, NY***Managing Director, Founder**August 2013 – Current*

Merchant Bank focused on Advising/Investing in Event Driven and high potential situations

- Current Board of Director positions: Atari SA (8/14); COFINA Puerto Rico (2/19, Acting Chairman); EVO Transportation (11/20, Chairman); SlamCorp (02/23, Audit Committee Chair); Arrival Inc. (9/23, Restructuring Committee Chair); MassInnovation Labs, Inc (12/23, Independent Director), Mithra (Board Observer 12/23) and Estethra (3/24, Independent Director), and Nu Ride (3/24, Comp Committee Chair).
- Previous Director positions: Schmitt Industries (11/21-12/23, Audit Chairman), Appvion Holding Corp (2/19- 12/21); GT Advanced Technology Inc. (3/16-11/21, Comp Chairman); Torchlight Energy Inc. (6/16-6/21, Audit Chairman); Eileen Fisher, Inc (11/20-5/21); Applied Minerals Inc. (12/17-7/20, Audit Chairman), AudioEye, Inc. (9/15-7/20, Lead Director, Comp Chairman), Formulus Black, Inc. (2/19-7/20, Chairman), First Contact Entertainment (4/17-7/20); Loot Crate, Inc. (12/17-10/19, Lead Director), Remington Outdoor Company, Inc. (6/18-12/18, Lead Director, Comp Chairman); Turing Pharma AG (9/16-6/17); DTV America Corp (10/14-11/15, Executive Chairman).
- Trustee DirectBuy (04/24), Amyris (04/24); Clovis (7/23); Linc Energy (3/17–7/21) Tetralogic Pharma (1/17).
- Private Equity manager Media Trust Acquisition - controlled Pappas Trust TV/radio stations (12/13-6/21).
- Financial Advisor: (i) HFZ Unsecured Creditors (2021) (ii) Nuverra Inc. Creditors Committee (2017); (iii) Molycorp Minerals LLC sale of Mountain Pass mine for \$120mm (2016-17); (iv) NJOY LLC acquisition of NJOY Inc - \$30mm new money (2016-17); (v) KaloBios, Inc./Humanigen, Inc. turnaround and advisory - \$60mm new money (2016, 2020), (vi) Atari turnaround, investor, new money raise (2014), (vii) DTV America Corp, Raised \$20mm (2014-15)
- Creditor/Equity Committee: Sorrento Therapeutics, Washington Prime Group, Tidewater, Lone Pine Resources, The Dolan Companies, Rotech Healthcare, Idearc, Inc., NewPage Corporation.

**ALDEN GLOBAL/SMITH MANAGEMENT****New York, NY***Director, Senior Portfolio Manager**2009 – August 2013*

- One of two portfolio managers for \$2.0 billion long/short event driven fund (special situations and value)
- Fund returns of 40.5%, 186.9%, 9%, -20.2% and 11.7% (2008, 2009, 2010, 2011 and 2012)
- Focus on event driven investments: spinoffs, special dividends, restructurings, litigations (patents, IP)
- Active focus on process to evaluate and maximize investment returns including:
  - Creditor/equity committees (Idearc, Dex One, Downey Financial, NewPage, Rotech, ATP Oil & Gas)
  - Sell/purchase assets in turnarounds (YRC Worldwide, Citadel Broadcasting, Nextwave, Delta Petroleum)
  - Director/advisor to the fund's investments (*Island One - Director, Vertis Inc. – Chairman of the Board*)

**DEUTSCHE BANK AG****New York, NY***Director, Portfolio Manager Proprietary Trading Desk**2007 – 2008*

- Event Driven/Value portfolio manager, returns of 16%, -12% in 2007, 2008 on \$400 million long/short book

**GOLDMAN SACHS GROUP INC.****New York, NY***Vice President, Capital Structure Trading Desk and Convertibles desk**2003 -2007*

- Portfolio manager for \$300million value/event driven/commodities, long/short book

**CRT CAPITAL GROUP, LLC****Stamford, CT***Vice President, Value/Special Situations Research Analyst**2001 – 2003*

- Publishing sell-side research analyst (Financials, E&P, Telecom) for value/event driven broker/dealer

**McKINSEY & CO, INC.****New York, Chicago, Sao Paulo, Brazil***Engagement Manager, Financial Institutions Group**Fall 1996, 1997 – 2000*

- Financial/strategic analysis to financial clients (banks, non-banks, insurance) and PE funds (electronics)

**PROCTER & GAMBLE CO INC.****Venezuela/UK/Brazil***Technical Brand Manager, Products and Process Development, Process scale up**1991-1995***UNIVERSITY OF CHICAGO, Graduate School of Business****Chicago, IL***M.B.A. in Finance & Accounting**1995-1997*

- Internship: Lehman Brothers, Inc, Mergers and Acquisitions

**UNICAMP, University of Campinas****Campinas, Brazil***B.S. Chemical Engineering**1987-1991*

- Internships: Dow Chemical Products, RhonePoulenc, Neste Oy Chemicals (Finland)

**OTHER** Fluent in English, Spanish and Portuguese

**Exhibit C**

**Peranick CV**

Seasoned corporate financial and investment professional with significant experience in highly levered and distressed situations. Successfully devised and spearheaded corporate strategies ranging from reorganizations to start ups. Generated proprietary valuation analysis and due diligence that underpinned capital allocation of hundreds of millions of dollars. Skilled in building relationships and clearly communicating insights on performance to management teams and stakeholders. Routinely led discussions amongst legal and financial advisors during strategic transactions and negotiations amongst competing investor groups. Guided management teams in assessing total addressable markets (TAM), revenue and profitability goals, leading to implementation of corporate structure and strategy recommendations with the goal of value maximization. Skilled in leading financial budgeting and modeling processes across multiple corporate subsidiaries and advising on optimal liquidity management and capital deployment strategies. Experienced in leading multiple Liquidation trusts.

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**EXPERIENCE:****Independent Corporate & Financial Strategy**

2019-present

- ♦ Provide analytical support on a project basis to Batuta Capital Advisors LLC in Chapter 11 bankruptcies and in Liquidating Trusts
- ♦ Perform relevant analysis per the scope of the client engagement ranging from single asset to consolidated company valuation, market analysis and monetization strategies
- ♦ Lead asset prioritization analysis, performing diligence and presenting detailed projections and market opportunity analysis to inform priority of capital deployment towards activities generating the best potential IRR
- ♦ Perform competitive intelligence collection and proprietary data analysis processes to monitor threats and opportunities in identified target markets and indications.
- ♦ Advise on capital raising, strategic funding & partnering initiatives and other liquidity management strategies

**Contrarian Capital Management, LLC – Greenwich CT**

2017-2019

**Sr. Analyst**

- ♦ Responsible for Contrarian equity investments; including total equity allocation of \$500mm across all funds and managed account in addition to assisting in idea contribution for \$2.5b flagship fund.
- ♦ Developed deep relationships with management teams while recommending strategies to improve performance, execution, market communication and value creation/maximization.
- ♦ Identified proprietary data sets of key variables underpinning the operations of investments and built out interactive models with detailed projections to provide real time impacts of changes in the assumptions of these variables.
- ♦ Employed fundamental research process which consisted of a deep dive of target company and competitors, as well as thorough industry analysis of all key trends, verticals and disruptive new entrants.
- ♦ Generated company analysis including historical financials, 3-year forward estimate of earnings and cash flow, liquidity and indenture summaries for each security in the capital structure – identifying strength and weakness of each material covenant and highlighting potential layering through available debt capacity.
- ♦ Partnered with and led discussions amongst top tier legal and financial restructuring advisors on multiple highly visible situations, including: PG&E Corporation, Revlon Inc., Pier One, Rite Aid, TEVA Pharmaceutical Industries, Chobani, Fage, Coty.

**Batuta Capital Advisors LLC - Kalobios Inc. Chapter 11 proceeding**

2016

- ♦ assist in reviewing all aspects of the Company, including its assets, market opportunity, funding needs and best path to emergence.
- ♦ Developed detailed cost structure analysis and \$20mm cost savings program.
- ♦ Performed multi-scenario financial and cash flow projections, discounted cash flow analysis, comparable and transaction emergence valuations, liquidation analysis and presented various IRRs on multiple exit strategies.
- ♦ Generated a multi-year capital budgeting timeline for two therapeutic programs through Phase 3 trials and FDA approval.
- ♦ Upon emergence, advised CEO and management team on potential M&A targets, synergies and development opportunities.
- ♦ Awarded M&A Advisor Turnaround of the Year award (2017).

**Bastogne Capital Management, LLC/Lonestar Capital Management – Stamford/NYC**

2011-2015

**Partner/Director of Research**

- ♦ Recruited by former manager and Head of Research at BTIG to establish Lonestar's NYC office and subsequently co-founded Bastogne Capital Management.
- ♦ Partnered in establishment of all corporate formation and capital raising activities.
- ♦ Maintained accountability for all aspects of internal finance and investment due diligence process, including idea sourcing, valuation and position management focused on small cap equity and special situations opportunities.
- ♦ Applied capital markets background by building out database tracking potential investment opportunities from M&A, spin-off, restructuring and other corporate action decisions.
- ♦ Drafted monthly letter and presentation for distribution to limited partners detailing: key highlights affecting performance, variances to expectations, new and exited investments and go forward outlook.

**BTIG, LLC. – New York, NY**

2009-2011

**Director**

- ♦ Recruited by former Deutsche Bank Managing Director in build out of fixed income research and analytics team.
- ♦ Originated and published detailed capital structure recommendations across retail and consumer products sectors through independent analysis/valuation including long/short and capital structure arbitrage ideas.
- ♦ Authored reports included detailed financial projections, leverage, free cash flow and relative value analysis, and included commentaries on fixed income primary issuance including a summary of structure, notable covenants, and opinions on pricing relative to existing comparable bonds.
- ♦ Routinely met with and developed deep relationships with executive management teams and establishing new investment banking relationships.

**DEUTSCHE BANK SECURITIES INC. – New York, NY**

2003-2009

**Associate – Leverage Finance Group**

- ♦ Recruited by Deutsche Bank Head of Capital Markets to join Leverage Finance Group.
- ♦ Co-managed a proprietary trading book of over \$500mm of risk with an investment focus centered on fundamental valuation of securities with a focus on the retail and consumer sectors.
- ♦ Invested and executed positions across the entire capital structure in both private and public securities, including, but not limited to, bank debt, secured and unsecured bonds, trade claims, preferred stock, common stock, options and warrants.
- ♦ Constructed analytical models focusing on credit metrics and cash flow to generate trade ideas and strategy including pair trades, capital structure arbitrage and outright long/short positions across all industries and sectors.
- ♦ Worked with corporate treasury teams and structured multiple corporate secondary market transactions including refinancing, bond buybacks and other capital structure management situations.

**GE Capital Corp. – Stamford, CT**

2003

**Analyst – Commercial Finance Group**

- ♦ Recruited into commercial finance training program following successful year long internship program.
- ♦ Performed due diligence to ensure proper collateral valuation used in Asset Backed Lending Facilities ranging in size from \$100mm to \$1B, including leading onsite meetings with the debtors' finance and treasury management teams.
- ♦ Performed detailed analysis of company internal accounting systems and processes and recommended adjustments to assure adherence to best-in-class practices.
- ♦ Drafted initial terms and recommended amendments to credit facilities focusing on the structure, covenants, cash flow sweeps and valuation of secured collateral.
- ♦ Alerted risk management group to industry trends, highlighting the potential for covenant breaches, collateral shortfalls and potential risks to recovery as a result of deteriorating company performance or weakening economic conditions.

**EDUCATION:**

Fairfield University, Dolan School of Business  
Bachelor of Science (BS) Finance  
Magna Cum Laude, Alpha Sigma Nu

**CERTIFICATIONS:**

Chartered Financial Analyst, CFA  
Data Analysis and Techniques from Wharton School of Business

**Exhibit D**

**Liquidation Analysis**

## **LIQUIDATION ANALYSIS**

### **I. Best Interests Test**

Under the “best interests of creditors” test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a Chapter 11 plan unless, with respect to each impaired class of claims or interests, each holder of a claim or interest either (i) accepts the plan or (ii) receives or retains under the plan, on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on the effective date. *See* 11 U.S.C. § 1129(a)(7). Accordingly, to demonstrate that the Plan satisfies the “best interests of creditors” test, the Plan Proponents<sup>1</sup> have prepared the following hypothetical liquidation analysis (the “Liquidation Analysis”) based upon certain assumptions discussed in the Disclosure Statement and in the accompanying notes to the Liquidation Analysis.

The Liquidation Analysis estimates potential cash distributions to holders of Allowed Claims and Interests in a hypothetical Chapter 7 liquidation of the Debtors’ assets. Asset values discussed in the Liquidation Analysis may differ materially from values referred to in the Plan and Disclosure Statement. Batuta Capital Advisors LLC (“Batuta”), at the direction of the Plan Proponents, prepared the Liquidation Analysis.

*THE LIQUIDATION ANALYSIS HAS NOT BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. ALTHOUGH THE PLAN PROPONENTS CONSIDER THE ESTIMATES AND ASSUMPTIONS SET FORTH HEREIN TO BE REASONABLE UNDER THE CIRCUMSTANCES, SUCH ESTIMATES AND ASSUMPTIONS ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE PLAN PROPONENTS’ CONTROL. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RESULTS SET FORTH IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTORS WERE ACTUALLY LIQUIDATED PURSUANT TO CHAPTER 7 OF THE BANKRUPTCY CODE, ACTUAL RESULTS IN SUCH A CASE COULD VARY MATERIALLY FROM THOSE PRESENTED HEREIN, AND DISTRIBUTIONS AVAILABLE TO HOLDERS OF CLAIMS AND INTERESTS IN SUCH A CASE COULD DIFFER MATERIALLY FROM THE PROJECTED RECOVERIES SET FORTH IN THE LIQUIDATION ANALYSIS.*

*THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE, GOOD- FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE COMMENCEMENT DATE. THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER*

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Liquidation Analysis is attached as an appendix.

PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE VALUES AND RECOVERIES REPRESENTED IN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE PLAN PROPONENTS. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THE LIQUIDATION ANALYSIS. THE PLAN PROPONENTS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE ANALYSIS SET FORTH HEREIN.

The Liquidation Analysis should be read in conjunction with the foregoing notes and assumptions:

## **II. Summary Notes to Liquidation Analysis**

### **A. Basis of Presentation**

The Liquidation Analysis has been prepared assuming the Debtors converted their Chapter 11 Cases to Chapter 7 cases on June 30, 2024 (the "Commencement Date").

The Debtors have not issued audited financial statements since 2017. Further, to Batuta's knowledge, the Debtors have not provided any *Management Discussion and Analysis* since 2018, nor any material consolidated or subsidiary financial statements after December 30, 2023. As such, where noted below, Batuta has relied on unaudited financial information disclosed by the Debtors in the Chapter 11 Cases. Where appropriate and available, Batuta has relied on recognized third-party market data to inform its analysis.

The Liquidation Analysis assumes that the Debtors would be liquidated in a jointly administered and substantively consolidated proceeding.

### **B. Dependence on Assumptions**

The Liquidation Analysis relies on multiple estimates and assumptions in identifying potential outcomes of a liquidation of the Debtors and their assets under Chapter 7 of the Bankruptcy Code. Given the historical volatility and the commodity nature of the petroleum product tanker market in which the Debtors operate, any estimates or projections are inherently subject to market uncertainties. In addition, historical spot rates have displayed significant volatility and wide ranges of daily rates—directly impacting the demand and value of transportation vessels such as the Debtors' tankers. The Liquidation Analysis is also based on Batuta's reasonable best judgment as to various assumptions and numerous uncertainties surrounding various legal challenges still ongoing. In addition, Batuta used its reasonable best efforts to account for costs associated with undertaking an expedited sale process of approximately three to six months. The Liquidation Analysis does not include the legal expenses or other costs that would be associated with the pursuit of various claims and causes of action belonging to the Debtors and their Estates or the collection of any resulting judgments.



As such, there can be no guarantee that the values presented in the Liquidation Analysis would be realized in the event an actual liquidation under Chapter 7 of the Bankruptcy Code was to be pursued. As such, the results of any actual Chapter 7 liquidation could vary materially and adversely from those contained herein.

The SMEs (as defined herein) are operated by the Debtors pursuant to finance leases with an end-of-term purchase option, which may not be exercisable by the Debtors if the agreement is terminated by the contract counterparty. Accordingly, in any actual Chapter 7 liquidation, to the extent that one or more of the applicable finance leases is terminated by the applicable contract counterparty, the Debtors may not be able to purchase one or more of the SMEs. In such scenarios, the Debtors may be unable to recover some or all of the value ascribed to the SMEs set forth herein.

#### C. Additional Claims

The cessation of a business that would occur in a Chapter 7 liquidation would likely trigger additional claims that would not exist where the Debtors' business and assets continue as a going concern. Given that many, if not all, of the existing fleet owned and/or operated by Eleton Holdings or its subsidiaries are operated pursuant to finance leases or secured by debt, some of these claims could be significant and would potentially be entitled to priority payment over general unsecured claims. Any such priority claims would be required to be paid in full from the liquidation proceeds before any remaining proceeds would be available to pay the general unsecured claims. Although, Batuta has considered all of the limited data available from Debtors to ascertain those additional claims, it is not possible to guarantee that all potential claims have been accounted for, or the results of the outcome of any such claims.

Furthermore, in a Chapter 7 liquidation, it is possible that various counterparties assert various rights that would not exist in a going concern sale, such as the attempted termination of contract or other valuable rights. Because many of these rights exist at non-Debtor subsidiaries that would potentially not be protected by the provisions of the Bankruptcy Code (such as the automatic stay under section 362 of the Bankruptcy Code), there are substantial risks in a Chapter 7 liquidation that counterparties take or attempt to take actions that would result in materially less proceeds (and, in turn, less value for creditors) than that reflected herein.

#### D. Potential Causes of Action

In the Chapter 7 liquidation, a Chapter 7 trustee (the "Trustee") may elect to pursue various claims and causes of action belonging to the Debtors and their Estates. The Liquidation Analysis does not provide an estimate of the likely outcomes of any such claims, the costs and risks attendant to pursuing such claims, and the proceeds that might be realized (including after accounting for the risks of collectability, among other issues with enforcing any judgment).

#### E. Chapter 7 Liquidation Costs and Length of Process

Batuta has assumed that the initial phase of a liquidation would involve minimal business operations and would require the Trustee to oversee the handling of disposing

of remaining assets, including retaining a broker to assist in the liquidation of vessels, distribute available net proceeds and arrange for the closing of the Debtors' Estates. Given the aforementioned volatility of the value of the Debtors' assets, there can be no assurance either of the realized value nor the timing of completing such divestitures. As such, the realized recoveries in an actual liquidation can vary greatly from those presented in this analysis.

In a Chapter 7 liquidation, the Trustee's administrative expenses incurred with managing the liquidation process will be entitled to full payment, as well as a statutory commission on all distributions to creditors, prior to making any distribution to administrative and other priority claims in connection with the Chapter 11 Cases (and thereafter, if any remainder, to general unsecured claims). 11 U.S.C § 726.<sup>2</sup> Furthermore, the Debtors do not have any cash, and Batuta has limited information on what, if any, cash may be available from the Debtors' non-Debtor subsidiaries at the commencement of the liquidation process. With limited or no cash available, the Trustee might have to obtain alternate sources of financing and contingency arrangements that could significantly further reduce recoveries from that reflected herein.

Finally, Batuta has assumed that the Trustee will engage professionals related both to the sale(s) process(es) for the Debtors' tangible assets (such as their vessels owned by subsidiaries) as well as reviewing, analyzing, and investigating potential claims and causes of action against the Debtors' insiders and other third parties. The costs reflected herein do not include the costs and expenses associated with pursuing any such potential claims and causes of action. The Trustee may determine to withhold liquidation proceeds from creditors (thereby reducing or, at the minimum, delaying their recoveries until proceeds, if any, net of costs are recovered) to fund the costs and expenses associated with pursuing potential claims and causes of action. Alternatively, the Trustee may obtain litigation funding or contingency fee arrangements that may significantly reduce the amount of proceeds ultimately available on account of any such potential claims and causes of action that would otherwise be distributable to creditors.

The foregoing costs and risks imply that any sale(s) process(es) might take materially longer and cost materially more than the amounts reflected herein, further increasing administrative and priority claims and related amounts that would be paid prior to general unsecured creditors receiving any distribution. The costs and timing and duration of the Chapter 7 liquidation are currently unknown, but the Liquidation Analysis reflected herein reflects Batuta's reasonable best judgment as to what creditors might recover—actual results are subject to change and may vary significantly.

The Liquidation Analysis assumes a process of approximately three to six months from the Commencement Date to conduct the orderly disposition of substantially all of the Debtors' assets (excluding the pursuit of various claims and causes of action belonging

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<sup>2</sup> The Bankruptcy Court may allow reasonable compensation for the Trustee's services on a sliding scale based upon all moneys disbursed or turned over in the liquidation proceedings, by the Trustee. 11 U.S.C. § 326. For purposes of the Liquidation Analysis, these fees are estimated at 3% of the estimated gross liquidation proceeds.

to the Debtors and their Estates and the collection of any resulting judgments), arrange for distributions, and wind-down the Debtors' Estates.

F. Broker Fees

Liquidation of the Debtors' assets (namely liquified petroleum product tankers) would likely require a broker to conduct an auction process. Batuta has assumed that a broker and other associated fees related to the sale(s) process(es) for the Debtors' vessels of 5% of the Gross Transaction Value. Given the illiquidity of these assets, there can be no assurance that actual proceeds received (and therefore, creditors' recoveries) will equal those amounts reflected herein.

G. Claims Estimates

Claims are estimated based upon known liabilities as of May 2024 using the Debtors' schedules and statements as well as proofs of claim filed in these Chapter 11 Cases. For an explanation of these matters, please see the Disclosure Statement to which the Liquidation Analysis is attached.

H. Conclusion

Batuta has concluded that, based on the analysis presented herein, confirmation of the Plan Proponents' Plan included herewith, will provide creditors with a recovery that is not less than what they would otherwise receive pursuant to a hypothetical liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

**Liquidation Analysis**

Liquidation Analysis							Low	Base	High	Low	Base	High		Low	Base	High	
Vessel Name	Type	Year Built	Shipyard	DWT	Class	Market Value <sup>1</sup>	Liquidation Discount			Implied Liquidation Discount				Liquidation Value before fees			
Fourni	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51600	MR	26,563,261	25%	20%	15%	19,922,446	21,250,609	22,578,772		19,922,446	21,250,609	22,578,772	
Kastos	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51900	MR	25,864,665	25%	20%	15%	19,398,499	20,691,732	21,984,965		19,398,499	20,691,732	21,984,965	
Kimolos	HandyMax	2010	Hyundai Mipo Dockyard, S. Korea	51500	MR	28,080,000	25%	20%	15%	21,060,000	22,464,000	23,868,000		21,060,000	22,464,000	23,868,000	
Kinaros	HandyMax	2009	Hyundai Mipo Dockyard, S. Korea	51600	MR	27,010,000	25%	20%	15%	20,257,500	21,608,000	22,958,500		20,257,500	21,608,000	22,958,500	
Estimated Remaining OCM Leases & Other SME Liabilities														80,638,444	86,014,340	91,390,237	
Ch.7 Trustee Fee <sup>4</sup>							3%	3%	3%					(53,300,000)	(53,300,000)	(53,300,000)	
Ch.7 Professional Fees <sup>5</sup>														(2,419,153)	(2,580,430)	(2,741,707)	
Broker Fee & Other Fees							5%	5%	5%					(5,000,000)	(4,500,000)	(4,000,000)	
US Trustee Fees <sup>6</sup>							0.8%	0.8%	0.8%					(4,031,922)	(4,300,717)	(4,569,512)	
														(645,108)	(688,115)	(731,122)	
Distributable Value to Creditors														15,242,261	20,645,079	26,047,896	
														Recovery Waterfall			
														Low	Base	High	
Priority & Administrative Claims														26,200,000	27,200,000	28,200,000	
recovery														58%	76%	92%	
Remaining Value to GUCs														(10,957,739)	(6,554,921)	(2,152,104)	
General Unsecured Claims														768,479,112	637,229,112	505,979,112	
recovery														0.0%	0.0%	0.0%	

Notes:

- 1) Vessel 3rd party market value assessment (VesselsValue.com 5/7/2024); adjusted for estimated spot vs. time charter rates through lease period
- 2) See Debtors' Valuation Analysis, filed on May 14, 2024 [Docket No. 687]
- 3) 3rd Amended 2015.3 filings
- 4) 11 U.S.C § 326
- 5) Includes general administration of estates and review / investigation of potential claims; does not include cost of pursuing claims
- 6) <https://www.justice.gov/ust/chapter-11-quarterly-fees>

### III. Specific Notes to Liquidation Analysis

In addition to the footnotes set forth in the Liquidation Analysis above, the following contain additional notes to the Liquidation Analysis.

#### A. Special Maritime Enterprise Vessels

The principal assets of the Debtors are 4 MR class tankers that are secured by Bareboat Charters, and operate under four separate Special Maritime Enterprises (the “SMEs”): Kastos Special Maritime Enterprise (“Kastos”), Fourni Special Maritime Enterprise (“Fourni”), Kinaros Special Maritime Enterprise (“Kinaros”), Kimolos II Special Maritime Enterprise (“Kimolos”). All vessels are encumbered. Estimated recoveries are based on independent third-party market assessments, which have been reduced by 15% in the “high” scenario and 25% in the “low” scenario based on an accelerated sale of assets under a Chapter 7 proceeding which will be perceived to be highly distressed. In addition, additional allowances for the Trustee and professional fees, broker and other fees, and U.S. Trustee Fees to account for the potential of depressed valuations in an unfunded time-sensitive liquidation.

#### B. Cash

The latest (unaudited) financial information received in the *Debtors’ Second Periodic Report Pursuant to Bankruptcy Rule 2015.3*, filed on February 12, 2024 [Docket No. 409] (the “2015.3 Report”) for the period ending on December 31, 2023. At such time, none of the SMEs had reported material cash balances (collectively less than \$100,000 USD). As such, Batuta deemed these unlikely to be collected and an immaterial outcome of the Liquidation Analysis.

#### C. Other Current Assets

The latest (unaudited) financial information received in the 2015.3 Report relates to the period ending on December 31, 2023. As stated above, Batuta deemed other current assets unlikely to be collected and an immaterial outcome of the Liquidation Analysis.

#### D. Litigation Claims

As noted in the Disclosure Statement included herewith, the Debtors and their non- Debtor subsidiaries will retain various claims and causes of action, including relating to Eletson Gas, LLC (“Eletson Gas”), Levona Holdings, Ltd. (“Levona”), and others. Given the costs and risks associated with such claims and causes of action, the Liquidation Analysis does not provide an estimate of (i) the fees and expenses needed to bring those claims and causes of action, including, among others, issues associated with collectability and enforcement of any judgments, and (ii) the gross recovery resulting from those claims and causes of action (if any).

E. Land, Buildings & Other PP&E

The latest (unaudited) financial information received in the 2015.3 Report for the period ending on December 31, 2023. As of that date, none of the SMEs reported any Fixed Assets or PP&E in addition to vessels.

F. Non-Special Maritime Enterprise Subsidiaries

Pursuant to the 2015.3 Report, all of the non- subsidiaries with the exception of Eletson Gas were deemed to be insolvent.

G. Intercompany Receivables

As stated above, for the purposes of the Liquidation Analysis any current or potential future claims arising from Intercompany transactions are treated as potential claims and are not assigned value in the Liquidation Analysis.

H. Payables & Current Liabilities

Given the independent operating structure of the SMEs, the Liquidation Analysis assumes that the SME's payables and current liabilities are satisfied from liquidation proceeds before any distributions to Claims of the Debtors. The remaining SMEs' lease obligations are accounted for in the Estimated Recovery Lease Obligations.

I. Wind-Down Expenses

Wind-Down Expenses include the non-resource related costs to wind down the Debtors' Estates after the Commencement Date, including, but not limited to any costs to maintain and repair the Debtors' assets, payments for any utilities, insurance, fuel, taxes, and other overhead costs.

J. Hypothetical Recoveries by Class

- Administrative Claims: For the purposes of the Liquidation Analysis, Administrative Claims include Claims for costs and expenses of administration of the Chapter 11 Cases, including Professional Fee Claims, U.S. Trustee Claims, Fees under section 503(b) of the Bankruptcy Code (including the Petitioning Creditors' section 503(b)(3)(A) claims [Docket Nos. 265, 322], the 2022 Notes Trustee's section 503(b)(3)(A) claim [Docket No. 323], and New Agathonissos Finance's ("NAF") section 503(b)(3)(A) claim [Docket No. 324]. The Liquidation Analysis concludes that Holders of Administrative Claims are not likely to be paid in full in a Chapter 7 liquidation.
- Priority Claims: The Liquidation Analysis concludes that Holders of Priority Claims are not likely to be paid in full in a Chapter 7 liquidation.
- Other Priority Claims: The Plan Proponents are not aware of any Other Priority Claims against the Debtors. Accordingly, the Liquidation Analysis concludes

that, to the extent there are any Other Priority Claims, Holders of Other Priority Claims are not likely to be paid in full in a Chapter 7 liquidation.

- Secured Claims: The Plan Proponents are not aware of any Secured Claims against the Debtors other than the Claims filed by the Azure Claimants (as defined in the Disclosure Statement) [Proof of Claim Nos. 9-1, 10-1, 11-1, 12-1] (the “Azure Guaranty Claims”), which are secured by certain collateral. In a Chapter 7 liquidation, the Liquidation Analysis concludes (i) Holders of Azure Guaranty Claims will receive their collateral in satisfaction of such Secured Claims and (ii) to the extent there are any Secured Claims other than the Azure Guaranty Claims, Holders of any such Secured Claims will likely be paid in full.
- General Unsecured Claims: In a Chapter 7 liquidation, the Liquidation Analysis concludes that Holders of General Unsecured Claims would not receive any recovery in a Chapter 7 liquidation.

For purposes of a hypothetical Chapter 7 liquidation, the term “General Unsecured Claims” means, collectively, any Claim against any Debtor as of the Petition Date that is neither secured by collateral nor entitled to priority under the Bankruptcy Code, including, among others, the Old Notes Claims, the 2022 Notes Claims, the Claims filed by NAF [Proof of Claim No. 13-1], the Azure Guaranty Claims, and Convenience Claims. In addition, the “low” end of the recovery range includes the claim asserted by Levona [Proof of Claim No. 21-1] (the “Levona Claim”); in the “high” end of the recovery range, the Levona Claim is excluded.

- Convenience Claims: In a Chapter 7 liquidation, the Convenience Claims would be treated as General Unsecured Claims.
- OCM Guaranty Claims: In a Chapter 7 liquidation, the OCM Guaranty Claims would be treated as General Unsecured Claims; however, such OCM Guaranty Claims are contingent and not expected to require any recovery from the distributions made by the Trustee on account of claims against the Debtors.
- Subordinated Claims: The Liquidation Analysis concludes that Holders of Subordinated Claims will likely receive no recovery in a Chapter 7 liquidation.
- Intercompany Claims: The Liquidation Analysis concludes that Holders of Intercompany Claims will likely receive no recovery in a Chapter 7 liquidation.
- Intercompany Interests: The Liquidation Analysis concludes that Holders of Intercompany Interests will likely receive no recovery in a Chapter 7 liquidation.
- Existing Equity Interests: The Liquidation Analysis concludes that Holders of Existing Equity Interests will likely receive no recovery in a Chapter 7 liquidation.

### **Liquidation Analysis: Appendix 1**

Batuta analyzed recoveries in a hypothetical Chapter 7 liquidation to assess recoveries to creditors and perform a best interests test in conjunction with the valuation analysis pertaining to the PC Plan.

To initiate this analysis, Batuta used the starting value of the vessels obtained in the Net Asset Value analysis. These initial vessel values were obtained from current market value estimates in the Vessels Value database, a recognized maritime industry source on vessel value and economics, and as described in the Net Asset Value section of Appendix 1 to the Valuation Analysis. These values were then discounted by a range of 15-25% to reflect a time sensitive fire sale forced liquidation under liquidity constraints for a Chapter 7 Trustee, resulting in gross proceeds in the range of \$80.6-\$91.4 million, with a midpoint of \$86.0 million. Our discounts reflect the potential reality of a Chapter 7 without any cash to fund it, which would force the Chapter 7 Trustee to quickly sell at least one of the vessels. In addition, we would expect that Oak Tree Capital Management L.P. ("Oaktree"), as the lender to the vessels, would demand that they be sold quickly. Last, we expect that because these are liquidation sales in a Chapter 7 that require cash in an expedited manner, cash buyers that can move quickly will demand a bigger discount.

The range of gross proceeds was then reduced by outstanding vessel trade debt, lease obligations and accrued interest owed to Oaktree of \$53.3 million, which was disclosed by the Debtors in their May 14, 2024 valuation analysis (ECF 687, Ex. A). Further consideration was given to hypothetical fees associated with Chapter 7 trustee and other professional fees, broker and other fees related to gaining possession of the vessels, and U.S. Trustee fees resulting in a range of distributable value to creditors of \$15.2 - \$26.0 million, with a midpoint of \$20.6 million.

Next, Batuta applied this \$15.2 to \$26.0 million range of distributable value to Priority and Administrative Fees of \$26.2 - \$28.2 million, which results in a recovery to the Priority and Administrative class of 58% to 92%. Consequently, in all liquidation scenarios there is no recovery to unsecured creditors.



**EXHIBIT E**

**Financial Projections**

## **FINANCIAL PROJECTIONS**

### **I. Introduction**

In connection with the negotiation and development of the Plan<sup>1</sup>, and for the purpose of determining whether the Plan meets the feasibility standard outlined in section 1129(a)(11) of the Bankruptcy Code, Batuta Capital Advisors LLC ("Batuta"), at the direction of the Plan Proponents, prepared financial projections (the "Projections"). Batuta analyzed Reorganized Holdings' ability to satisfy its financial obligations while maintaining sufficient liquidity and capital resources and projected these forward during the Projection Period (as defined below). With limited access to recent financial data provided by the Debtors, Batuta prepared consolidated financial projections for the years ending December 31, 2024 through December 31, 2029 (the "Projection Period").

The Plan Proponents believe that the Plan meets the feasibility requirements, as Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of Reorganized Holdings or any successors under the Plan.

The Projections are based on a number of assumptions by Batuta with respect to the future performance of the assets currently held by the Debtors, namely, the four (4) special maritime entity subsidiaries ("SMEs") constituting the principal tangible assets of Reorganized Holdings. Certain assumptions were based on information available to Batuta, including information derived from public sources that have not been independently verified. No representations or warranties, express or implied, are provided in relation to the fairness, accuracy, correctness, completeness, or reliability of the information, opinions, or conclusions expressed herein.

The likelihood, and related financial impact, of a change in any of these factors cannot be predicted with certainty. Consequently, actual financial results could differ materially from the Projections. The Projections assume the Plan will be implemented in accordance with its stated terms and Reorganized Holdings will emerge from Chapter 11 as contemplated therein. The Projections should be read in conjunction with the assumptions and qualifications contained herein and as set out in the Disclosure Statement.

The Projections present, to the best of Batuta's knowledge and belief, Reorganized Holdings' projected financial position, results of operations, and cash flows for the Projection Period and reflect Batuta's assumptions and judgments of the projections based on an assumed emergence date of July 31, 2024 (the "Assumed Effective Date"). Although Batuta believes that these assumptions are reasonable under current circumstances, such assumptions are subject to inherent uncertainties, including, but not limited to:

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Financial Projection is attached as an appendix.

- Upward or downward changes in product tanker demand;
- Highly volatile charter rates;
- Changes in environmental standards and requirements;
- Geopolitical uncertainty in markets in which Reorganized Holdings and its subsidiaries will conduct business;
- Supply and demand dynamics in the crude oil and petroleum products markets and the resulting volatility in prices;
- Significant weather events impacting shipping in markets in which Reorganized Holdings and its subsidiaries will conduct business;
- Inherent risks associated with operating product tanker vessels;
- The impact of economic conditions outside of the control of Reorganized Holdings' and its subsidiaries control and any corresponding impact on charter rates;
- Reorganized Holdings' and its subsidiaries' ability to generate sufficient cash to service debt to which any one or more of them may be a party post the Assumed Effective Date;
- Reorganized Holdings' and its subsidiaries' ability to comply with any financial covenants contained in debt agreements to which any one or more of them may be a party post-Assumed Effective Date;
- Changes in interest rates;
- Regulatory changes and judicial rulings impacting Reorganized Holdings' and its subsidiaries' businesses;
- Adverse results from litigation, governmental investigations, or tax related proceedings or audits, whether initiated prior or subsequent to the Assumed Effective Date;
- Reorganized Holdings' and its subsidiaries' ability to maintain and/or enter into agreements with customers;
- Reorganized Holdings' and its subsidiaries' reliance on third-party vendors for various goods or services;
- Other events beyond the control of Reorganized Holdings and its subsidiaries that may result in unexpected adverse operating results;
- The possibility that the Bankruptcy Court does not confirm the Plan or the Assumed Effective Date does not timely occur as projected herein; and
- The risks related to other parties objecting to the Plan and the resulting cost and expense of delays in the Chapter 11 Cases.

The Projections contain certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including those summarized herein. When used in the Projections, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Plan Proponents believe that their plans, intentions, and expectations reflected in the forward-looking statements are reasonable, the Plan Proponents cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and

uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Plan Proponents expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

THE PROJECTIONS WERE NOT PREPARED WITH A VIEW TOWARDS COMPLIANCE WITH PUBLISHED GUIDELINES OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ("GAAP") IN THE UNITED STATES. FURTHERMORE, THE PROJECTIONS HAVE NOT BEEN (A) AUDITED OR REVIEWED BY A REGISTERED INDEPENDENT PUBLIC ACCOUNTING FIRM OR (B) CONFIRMED WITH THE DEBTORS.

THE PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE BASED UPON MULTIPLE ESTIMATES AND ASSUMPTIONS WHICH MAY NOT BE REALIZED AND ARE SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES WHICH ARE RECOGNIZED BY BATUTA TO BE BEYOND ITS CONTROL TO FULLY ASSESS. CONSEQUENTLY, THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION OR WARRANTY BY BATUTA, OR ANY OTHER PERSON AS TO THE ACCURACY OF THE PROJECTIONS OR THAT THE PROJECTIONS WILL BE REALIZED BY REORGANIZED HOLDINGS, POST THE ASSUMED EFFECTIVE DATE. ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE PRESENTED IN THE PROJECTIONS. HOLDERS OF CLAIMS MUST MAKE THEIR OWN ASSESSMENT AS TO THE REASONABLENESS OF SUCH ASSUMPTIONS AND THE RELIABILITY OF THE PROJECTIONS IN MAKING THEIR DETERMINATION OF WHETHER TO ACCEPT OR REJECT THE PLAN.

## **II. Current Business Description**

The Debtors are an integrated owner, operator, and manager of a fleet of product tankers and LPG/LEG carriers specializing in the transport of refined petroleum products, liquefied petroleum gas ("LPG") and ammonia (NH<sub>3</sub>). The Debtor(s) have offices located in Piraeus, London, and Stamford, Connecticut and charter its fleet to customers including major international oil, LPG, ammonia (NH<sub>3</sub>), ethylene and other petrochemical gases ("LEG") companies and traders.

The Debtors' product tanker vessels are capable of carrying a wide range of petroleum products, such as fuel oil and vacuum gas oil (often referred to as "dirty products") and gas oil, gasoline, jet fuel, kerosene and naphtha (often referred to as "clean products"), and crude oil.

The Debtors own 100% of the common units in Eletson Gas LLC, which owns handy-sized semi-ref and medium-sized fully ref LPG/LEG carriers, which are gas carriers that transport LPG, ammonia (NH<sub>3</sub>), ethylene, and other petrochemical gases. LPG, which consists of propane and butane, is a clean and efficient source of energy used as a heating, cooking, and transportation fuel and as a petrochemical and refinery feedstock,

while ammonia is mainly used in the agricultural industry as a fertilizer and ethylene is a feed stock material.

### **III. Summary of Significant Assumptions and Basis for Presentation**

The Projections were developed by Batuta using assumptions based on limited information for the revenues and costs of the Debtors' and their subsidiaries' current business and projecting such assumptions forward for the Projection Period as to Reorganized Holdings and its subsidiaries. Batuta considered the following factors in developing the Projections:

- Current and projected market conditions in each of the respective markets in which the Debtors and their subsidiaries are currently active and believe Reorganized Holdings and its subsidiaries will remain active;
- Ability to sufficiently fund debt service payments;
- Capital expenditures needed, based on historic capital expenditures, to keep the vessel fleet in class post-Assumed Effective Date;
- Ability to realize sufficient charter rates to cover vessel operating expenditures and general and administrative expenses;
- No foreseeable material acquisitions or divestitures;
- The Debtors' emergence from Chapter 11 as Reorganized Holdings on or around the Assumed Effective Date.

The Projections do not set forth expenses related to the pursuit of various claims and causes of action belonging to the Debtors and their Estates or any proceeds derived therefrom (if any).

The Projections have been prepared in good faith and are based upon assumptions believed to be reasonable, including those set out under the Plan. The Projections include assumptions with respect to unaudited and in some cases dated financial accounts of the Debtors.

### **IV. Projected Cash Flow Statement and Balance Sheet Assumptions**

**EBITDA:** EBITDA is measured as earnings (defined as total vessel operating revenue less vessel operating expenses, as described below) before interest, taxes, depreciation, and amortization. Pro Forma EBITDA is not a measurement of operating performance computed in accordance with GAAP and should not be considered as a substitute for net income (loss) prepared in conformity with GAAP. In addition, Pro Forma EBITDA may not be comparable to similarly titled measures of other companies. Batuta believes that these non-GAAP financial measures are important indicators of the future operations of the respective Reorganized Holdings and provide a baseline for analyzing Reorganized Holdings' underlying business. EBITDA, broadly defined, is a metric used by the financial community to provide insight into an organization's operating trends and to facilitate comparisons between peer companies, since interest, taxes, depreciation, and amortization can differ greatly between organizations as a result of differing capital structures and tax strategies.

Leveraged Free Cash Flow: Leveraged Free Cash Flow is the free cash flow that remains after Reorganized Holdings has paid their obligations on their debt—both interest and principal repayments. Leveraged Free Cash Flow is not a measurement of operating performance computed in accordance with GAAP and should not be considered as a substitute for cash flow from operations prepared in conformity with GAAP. In addition, Leveraged Free Cash Flow may not be comparable to a similarly titled measure of other companies. Batuta believes that this cash flow measure provides investors and holders of Claims with a relevant measure of liquidity and a useful basis for assessing Reorganized Holdings' ability to fund their activities and obligations post-emergence from these Chapter 11 Cases.

Capex: Capital expenditures ("Capex") include the Plan Proponents' estimates of maintenance and growth Capex.

Chapter 11 Professional Services Fees and D&O Insurance: Chapter 11 professional services and other fees as well as D&O insurance related to post-Assumed Effective Date chapter 11 filings and activities until the close of the Chapter 11 Cases.

## **V. Financial Assumptions/Projections**

The future results of Reorganized Holdings are dependent upon various factors, many of which are beyond the control or knowledge of the Plan Proponents, and consequently are inherently difficult to project. Reorganized Holdings' actual future result may differ materially from the Projections and as a result, the actual total value of Reorganized Holdings may be significantly higher or lower than the estimated range herein. *See* Disclosure Statement ("Risk Factors").

The following summarizes the underlying key financial assumptions upon which the Projections were based.

### **1. Voyage Revenue**

Reorganized Holdings will derive operating revenue primarily from the operation of four MR class product tankers ("Voyage Revenue"). Voyage Revenue primarily includes revenues from spot charters and time charters. Spot market revenues are recognized ratably over the duration of the spot market voyages from loading to discharge of the cargo and time charter revenues over the duration of the time charters. Reorganized Holdings and its subsidiaries also generate demurrage revenue, which represent fees charged to charterers associated with our spot market voyages when the charterer exceeds the agreed upon time required to load or discharge a cargo.

### **2. Time Charter Equivalent Rate**

The time charter equivalent rate ("TCE Rate") is a standard industry measure of the average daily revenue performance of a vessel. TCE Rate is equal to Voyage Revenue, less voyage expenses during a period, divided by the number of available days during the period. TCE Rate is used primarily to compare daily earnings generated by vessels on time charters with earnings generated by vessels on spot charters, because charter rates for vessels on spot charters are generally not expressed in per day amounts, and

charter rates for vessels on time charters generally are expressed in such amounts. Time charter equivalent revenue and TCE Rate are not measures of financial performance under GAAP and may not be comparable to similarly titled measures of other companies.

### 3. Spot Charter

A spot charter is an agreement to charter a vessel for an agreed amount of cargo from specified loading port(s) to specified discharge port(s). In contrast to a time charter, the vessel owner is generally required to pay substantially all of the voyage expenses, including port costs, canal charges and fuel expenses, in addition to the vessel operating expenses.

### 4. Time Charter

A time charter is a contract for the use of a vessel for a specific period of time during which the charterer pays substantially all of the voyage expenses, including port costs, canal charges and fuel expenses. The vessel owner pays commissions on gross voyage revenues and the vessel operating expenses, which include crew wages, insurance, technical maintenance costs, spares, stores and supplies. Time charter rates are usually fixed during the term of the charter. Fluctuations in time charter rates are influenced by changes in spot charter rates. Prevailing time charter rates do fluctuate on a seasonal and year-to-year basis and may be substantially higher or lower from a prior time charter agreement when the subject vessel owner is seeking to renew the time charter agreement with the existing charterer or enter into a new time charter agreement with another charterer.

Drivers of time charter rates include, among others:

- General economic and market conditions affecting the shipping industry;
- Supply / demand balance for tankers and the types and sizes of comparable tankers;
- Demand for petroleum products;
- Vessel acquisitions and disposals;
- Cost of new buildings and the ability of shipyards and shipowners to finance the cost of construction of newbuilds;
- Governmental and other regulations; and
- Regulation of the tanker industry.

### 5. Vessel Operating Expenses

These expenses generally represent direct expenses incurred for costs associated with the operation of the vessels and activities related to the delivery of products and services to customers. Vessel operating expenses generally represent fixed costs. Vessel operating expenses mainly consist of the following:

- Crew Expenses;
- Victualling;
- Deck and Engine Stores;

- Insurance;
- Lubricants;
- Maintenance Repairs; and
- Spare Parts.

6. Depreciation

The cost of the Debtors' vessels is depreciated on a straight-line basis over the expected useful life of each vessel. Depreciation is based on the cost of the vessel less its estimated residual value. Batuta depreciated the Debtors' product tankers over 25 years.

7. General and Administrative Expenses

General and administrative expenses are composed of general corporate overhead expenses, including personnel costs, property costs, legal and professional fees, and other general administrative expenses. Personnel costs include, among other things, salaries, pension costs, fringe benefits, travel costs and health insurance.

These costs also include post-Assumed Effective Date general corporate costs and costs related to the final administration and closing of the Chapter 11 Cases in accordance with the Plan.

8. Post-Assumed Effective Date Debt Structure

Solely for the purpose of the analysis set forth herein, Batuta has assumed that the debt structure of Reorganized Holdings will consist of one or more secured credit facilities (collectively, the "Secured Debt") collateralized by the 4 MR class product tankers. The assumed interest rate on the credit facility(ies) is assumed to be 7.5% per year.



	6 mths					
<b><u>SME Consolidated Projections (\$mm USD)</u></b>	2024	2025	2026	2027	2028	2029
Voyage Revenue	\$19.5	\$38.9	\$32.9	\$31.2	\$31.6	\$32.1
YoY Growth			-15.4%	-5.3%	1.5%	1.5%
Vessel Operating Expenses (including management fees)	\$6.2	\$12.8	\$13.1	\$13.3	\$13.6	\$13.9
YoY Growth			2.0%	2.0%	2.0%	2.0%
General & Administrative	\$2.2	\$4.4	\$4.5	\$4.6	\$4.7	\$4.8
YoY Growth			2.0%	2.0%	2.0%	2.0%
Ongoing Expenses from Chapter 11 proceedings	\$1.5	\$1.2	\$0.0	\$0.0	\$0.0	\$0.0
EBITDA	\$9.6	\$20.5	\$15.4	\$13.3	\$13.4	\$13.5
YoY Growth			-25.1%	-13.6%	0.8%	0.8%
Check Depreciation	\$3.8	\$7.7	\$6.5	\$6.5	\$6.5	\$6.5
Cash Interet/Amortization	\$4.0	\$3.9	\$3.6	\$3.6	\$3.6	\$3.6
Net Profit/Loss	\$1.8	\$8.9	\$5.3	\$3.2	\$3.3	\$3.4
EBITDA	\$9.6	\$20.5	\$15.4	\$13.3	\$13.4	\$13.5
Cash Interest/Financing Costs	(\$4.0)	(\$3.9)	(\$3.6)	(\$3.6)	(\$3.6)	(\$3.6)
Capex	(\$1.7)	(\$3.4)	(\$3.4)	(\$3.4)	(\$3.4)	(\$3.4)
FCF	\$3.9	\$13.2	\$8.3	\$6.2	\$6.3	\$6.4
Debt	\$48.1	\$48.1	\$48.1	\$48.1	\$48.1	\$48.1
Cash	\$8.9	\$22.1	\$30.4	\$36.7	\$43.0	\$49.5
Net Debt	\$39.2	\$26.0	\$17.7	\$11.4	\$5.1	(\$1.4)
Debt/EBITDA	5.0x	2.3x	3.1x	3.6x	3.6x	3.6x
Net Debt/EBITDA	10.x	2.0x	2.1x	1.8x	.8x	-.2x

### **Financial Projections: Appendix 1**

The financial projections for the fiscal years 2024 – 2029 are principally based on the analysis and inputs of the Discounted Cash Flow analysis.

Batuta analyzed the operating profitability of each SME Vessel (Kastos, Fourni, Kimolos, Kinaros) independently, as is common industry practice, incorporating applicable Spot Rate curves and/or Time Charter Equivalent contracted rate with individual daily Operating Expenses plus an inflation factor over the life of the Discounted Cash Flow (making adjustments for the duration of the current Time Charter Agreements of Fourni and Kastos). The estimated Operating Expenses were sourced from 2024 Vessel operating and opex budget data provided by the Debtors to the Petitioning Creditors.<sup>1</sup> The Daily Operating Expenses for these vessels incorporate the majority of the principal operating costs of each vessel. We then combined this individual operating data into a consolidated amount for the SME Vessels to generate consolidated un-levered Vessel EBITDA. We then reduced this amount by the corporate General and Administrative overhead costs based on historical information provided by the Debtors in their financial statements and 2015.3 Reports, once again applying an inflation factor over the life of the Discounted Cash Flow. We assumed a reasonable estimate for the continuation of ongoing expenses relating to the Chapter 11 proceedings over the 18 month period post emergence.

In evaluating Reorganized Holdings' ability to service fixed cost charges associated with the current Oaktree lease obligations, we assumed that the company would refinance these agreements into more traditional term loan facilities, as is standard across the industry. We collected and analyzed recent comparable financing facilities over the preceding twelve month period to estimate a fair and reasonable market interest rate. As described in the Discounted Cash Flow section of the Valuation Analysis Appendix, we estimated depreciation and capital expenditures based on Debtor-provided historical financials and 2015.3 Reports.

### **Conclusion**

Given the current and medium term industry spot rate outlook, Reorganized Holdings will generate sufficient EBITDA to meet interest and capital expenditure requirements while maintaining an advantageous leverage profile (net debt/EBITDA).

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<sup>1</sup> See EletsonBK119493 (4.c.Budget 2024).

**EXHIBIT F**

**Valuation Analysis**

## VALUATION ANALYSIS

THE VALUATION INFORMATION CONTAINED HEREIN IS NOT A PREDICTION OR GUARANTEE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED THROUGH THE SALE OF ANY SECURITIES TO BE ISSUED PURSUANT TO THE PLAN. THE VALUATION ANALYSIS IS PRESENTED SOLELY FOR THE PURPOSE OF PROVIDING ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE TO ENABLE THE HOLDERS OF CLAIMS OR INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND SHOULD NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS. **THE PLAN PROPONENTS<sup>1</sup> RESERVE THE RIGHT TO SUPPLEMENT OR MODIFY THE VALUATION ANALYSIS, INCLUDING BY CHANGING THE ASSUMPTIONS OR ANALYSIS SET FORTH HEREIN.**

Batuta Captial Advisors LLC ("Batuta"), at the direction of the Plan Proponents, performed a valuation analysis of Reorganized Holdings (the "Valuation Analysis").

Based upon and subject to the review and analysis described herein, and subject to the assumptions, limitations and qualifications described herein, Batuta's view, as of May 8, 2024, was that the estimated going concern enterprise value of Reorganized Holdings, as of an assumed Effective Date for purposes of the Valuation Analysis of July 31, 2024 (the "Assumed Effective Date"), would be in a range of between \$103.9 million and \$116.4 million. The midpoint of the enterprise valuation range is \$110.2 million. Based upon our range of estimated going concern enterprise value of Reorganized Holdings of between \$103.9 million and \$116.4 million, assumed leases of \$48.1 million (assuming net leases for the use of certain vessels owned by entities affiliated or associated with Oaktree Capital Management as of July 31, 2024), the Rights Offering in the amount of up to \$43.5 million, and cash distributions to Holders of Administrative Claims, Priority Tax Claims, Other Priority Claims, Secured Claims, OCM Guaranty Claims, Subordinated Claims, Intercompany Claims, and Convenience Claims and General Unsecured Claims opting for a cash-out option of between \$28.7 million and \$37.2 million, the ascribed estimate of the range of equity value for Reorganized Holdings as of the Assumed Effective Date, is between approximately \$55.8 million and \$68.3 million, with a midpoint estimate of \$62.1 million.

Batuta's views are based on economic, monetary, market, and other conditions in effect, and the information available to Batuta as of the date of the Valuation Analysis. It should be understood that, although subsequent developments may affect Batuta's views, Batuta does not have any obligation to update, revise, or reaffirm its estimate.

The Valuation Analysis is based on a number of assumptions, including, among other assumptions, that (i) the Debtors will be reorganized in accordance with the Plan Proponent's proposed Plan which will be consummated on the Assumed Effective Date,

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or in the Disclosure Statement, to which the Valuation Analysis is attached as an appendix.

(ii) Reorganized Holdings will achieve the results set forth in the accompanying Financial Projections prepared by Batuta (as per the Disclosure Statement and the Appendices thereto) for 2024 through 2029 (the “Projection Period”) prepared by Batuta based on information available from the Debtors and publicly available sources, (iii) Reorganized Holdings’ capitalization and available cash will be as set forth in the Plan and this Disclosure Statement, and (iv) Reorganized Holdings will be able to obtain all future financings, on the terms and at the times, necessary to achieve the results set forth in the Financial Projections. Batuta makes no representation as to the achievability or reasonableness of such assumptions. In addition, Batuta assumed that there will be no material change in economic, monetary, market, and other conditions as in effect on, and the information made available to Batuta, as of the Assumed Effective Date. Batuta assumed that the Financial Projections it prepared based on the limited data available from the Debtors and publicly available are reasonable on the basis that it currently reflects the best available estimates and judgments as to the future financial and operating performance of Reorganized Holdings. The future results of Reorganized Holdings are dependent upon various factors, many of which are beyond the control or knowledge of the Plan Proponents and their advisors, including Batuta, and consequently are inherently difficult to project. Reorganized Holdings’ actual future results may differ materially (positively or negatively) from the Financial Projections and, as a result, the actual enterprise value of Reorganized Holdings may be materially higher or lower than the estimated range herein. Among other things, failure to consummate the Plan in a timely manner, including any delay in the Assumed Effective Date, may have a materially negative impact on the enterprise value of Reorganized Holdings.

The estimated enterprise value in the Valuation Analysis represents a hypothetical enterprise value of Reorganized Holdings as the continuing operators of the business and assets of the Debtors, after giving effect to the Plan, based on consideration of certain valuation methodologies as described below. The estimated enterprise value in this section does not purport to constitute an appraisal or necessarily reflect the actual market value that might be realized through a sale or liquidation of Reorganized Holdings, its securities or its assets, which may be materially higher or lower than the estimated enterprise value range herein.

The actual value of an operating business such as Reorganized Holdings’ business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in various factors affecting the financial condition and prospects of such a business. In conducting its analysis, Batuta, among other things: (i) reviewed certain publicly available business and financial information relating to Reorganized Holdings that Batuta deemed relevant; (ii) reviewed certain information relating to the business, earnings, cash flow, assets, liabilities, and prospects of Reorganized Holdings which are mostly dated, including the Financial Projections prepared by Batuta based on historical data and market information; (iii) reviewed publicly available financial and stock market data for certain selected publicly traded companies; (iv) reviewed publicly available financial data for certain selected precedent vessel transactions that Batuta deemed relevant; (v) reviewed a draft of the Amended Plan dated April 8, 2024 filed by the Debtors [Docket No. 570]; and (vi) conducted such other financial studies and analyses and took into account such other information as Batuta deemed appropriate. In connection with its review, Batuta did not assume any responsibility for independent

verification of any of the information supplied to, discussed with, or reviewed by Batuta and relied on such information being complete and accurate in all material respects. Batuta did not make any independent evaluation or appraisal of any of the assets or liabilities (contingent, derivative, off-balance-sheet, tax-related or otherwise) of Reorganized Holdings, nor was Batuta furnished with any such evaluation or appraisal.

THE ESTIMATED ENTERPRISE VALUE IN THE VALUATION ANALYSIS DOES NOT CONSTITUTE A RECOMMENDATION TO ANY HOLDER OF A CLAIM OR INTEREST AS TO HOW SUCH HOLDER OF A CLAIM OR INTEREST SHOULD VOTE OR OTHERWISE ACT WITH RESPECT TO THE PLAN. BATUTA HAS NOT BEEN ASKED TO AND DOES NOT EXPRESS ANY VIEW AS TO WHAT THE TRADING VALUE OF REORGANIZED HOLDINGS' SECURITIES WOULD BE WHEN ISSUED PURSUANT TO THE PLAN OR THE PRICES AT WHICH THEY MAY TRADE IN THE FUTURE. THE ESTIMATED ENTERPRISE VALUE SET FORTH HEREIN DOES NOT CONSTITUTE AN OPINION AS TO FAIRNESS FROM A FINANCIAL POINT OF VIEW TO ANY HOLDER OF A CLAIM OR INTEREST OF THE CONSIDERATION TO BE RECEIVED BY SUCH HOLDER OF A CLAIM OR INTEREST UNDER THE PLAN OR OF THE TERMS AND PROVISIONS OF THE PLAN. THE VALUATION ANALYSIS DOES NOT SHOW EXPENSES RELATED TO THE INVESTIGATION, COMMENCEMENT, OR PURSUIT OF POTENTIAL CLAIMS AND CAUSES OF ACTION OR ANY INCOME DERIVED THEREFROM ON ACCOUNT OF ANY PROCEEDS THEREOF (IF ANY).

## **I. Valuation Methodologies**

In preparing the Valuation Analysis, Batuta performed a variety of financial analyses and considered a variety of factors. The following is a brief summary of the material financial analyses performed by Batuta, which consisted of (a) a selected publicly traded companies analysis, (b) a net asset value (NAV) analysis and (c) discounted cash flow analysis. This summary does not purport to be a complete description of the analyses performed and factors considered by Batuta. The preparation of a valuation analysis is a complex analytical process involving various judgmental determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to particular facts and circumstances, and such analyses and judgments are not readily susceptible to summary description. As such, the Valuation Analysis must be considered as a whole. Reliance on only one of the methodologies used, or portions of the analysis performed, could create a misleading or incomplete conclusion as to enterprise value.

### **A. Selected Publicly Traded Companies Analysis**

The selected publicly traded companies analysis is based on the enterprise values of selected publicly traded shipping companies that have operating and financial characteristics comparable in certain respects to Reorganized Holdings. For example, such characteristics may include similar size and scale of operations, end-market exposure, product mix, operating margins, growth rates, and geographical exposure.

Under this methodology, certain financial multiples that measure financial performance and value are calculated for each selected company and then applied to Reorganized Holdings' financials to imply an enterprise value for Reorganized Holdings. Batuta used, among other measures, enterprise value (defined as market value of equity, plus book value of debt and book value of preferred stock and minority interests, less cash, subject to adjustments for underfunded pension and retirement obligations and other items where appropriate) for each selected company as a multiple of such company's publicly available consensus projected EV / EBITDA multiple for fiscal year 2025. Although the selected companies were used for comparison purposes, no selected publicly traded company is either identical or directly comparable to the business of Reorganized Holdings. Accordingly, Batuta's comparison of selected publicly traded companies to the business of Reorganized Holdings and analysis of the results of such comparisons was not purely mathematical, but instead involved considerations and judgments concerning differences in operating and financial characteristics and other factors that could affect the relative values of the selected publicly traded companies and Reorganized Holdings. The selection of appropriate companies for this analysis is a matter of judgment and subject to limitations due to sample size and the public availability of meaningful market-based information. Batuta also took into account a private discount to the public comparable values as per Damodaran<sup>2</sup> to take into account the private nature of the Debtors' business.

B. Net Asset Value (NAV) Analysis

The selected transactions analysis is based on the implied enterprise value of companies and assets involved in publicly disclosed and Vessels Value asset valuations (an independent, third party research widely used in the industry) for which the targets had operating and financial characteristics comparable in certain respects to Reorganized Holdings. Under this methodology, the asset value of each such target is determined by an analysis of the consideration paid net of debt encumbering the asset. Other factors not directly related to a company's business operations can affect a valuation in a transaction, including, among others factors, the following: (a) circumstances surrounding the specific age and condition of the vessel may introduce "diffusive quantitative results" into the analysis (e.g., a buyer may pay an additional premium for reasons that are not solely related to competitive bidding); (b) the market environment is not identical for transactions occurring at different periods of time; (c) circumstances pertaining to the financial position of the company may have an impact on the resulting purchase price (e.g., a company in financial distress may receive a lower price due to perceived weakness in its bargaining leverage); and (d) the ongoing tax environment at the time of the transaction.

C. Discounted Cash Flow Analysis

The discounted cash flow ("DCF") analysis is a valuation methodology that estimates the value of an asset or business by calculating the present value of expected future cash flows to be generated by that asset or business plus a present value of the estimated terminal value of that asset or business. The DCF analysis used the Financial Projections' estimated free cash flows through December 31, 2040. These cash flows

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<sup>2</sup> Valuation, Damodaran, Aswath, 2016.

were then discounted at a range of estimated cost of equity ("Discount Rate") for Reorganized Holdings. Rate reflects the estimated rate of return that would be expected by equity investors to invest in Reorganized Holdings' business. The value was determined by estimating the weighted average cost of capital for such debt instruments and common equity as appropriate for Reorganized Holdings' capitalization. Batuta estimated the duration of cash flows by the average useful life of comparable assets. To determine the total enterprise value, assumed secured vessel debt was added to the derived equity value, and the estimated cash balance as of the Assumed Effective Date was added to the derived equity value.

To determine the Discount Rate, Batuta estimated the cost of equity for Reorganized Holdings based on (I) the capital asset pricing model, which assumes that the expected equity return is a function of the risk-free rate, equity market premium, and the correlation of the stock performance of the selected publicly traded companies to the return on the broader market and (II) an adjustment related to Reorganized Holdings' status as a private company.

## **II. Reorganized Holdings—Valuation Considerations**

The estimated value in the Valuation Analysis is not necessarily indicative of actual value, which may be significantly higher or lower than the ranges set forth herein. Accordingly, neither Batuta nor any other person assumes responsibility for the accuracy of such estimated value. Depending on the actual financial results of the Debtors or changes in the economy and the financial markets, the value of Reorganized Holdings as of the Assumed Effective Date may differ from the estimated value set forth herein as of the Assumed Effective Date. In addition, the market prices, to the extent there is a market, of Reorganized Holdings' securities will depend upon, among other things, prevailing interest rates, conditions in the economy and the financial markets, the investment decisions of prepetition creditors receiving such securities under the Plan (some of whom may prefer to liquidate their investment rather than hold it on a long-term basis), and other factors that generally influence the prices of securities.

As noted in the Disclosure Statement included herewith, the Debtors and their non-Debtor subsidiaries will retain various claims and causes of action, including relating to Eletson Gas LLC, Levona Holdings, Ltd., and others. Given the costs and risks associated with such claims and causes of action, this Valuation Analysis does not provide an estimate of (i) the fees and expenses needed to bring those claims and causes of action, including, among others, issues associated with collectability and enforcement of any judgments, and (ii) the gross recovery resulting from those claims and causes of action (if any).



### **Valuation Analysis: Appendix 1**

The principal assets analyzed in the Valuation Analysis were the four (4) Special Maritime Entity (“SME”) vessels. To conduct our valuation analysis, we used an industry standard approach of a composite matrix based on three independent valuation methodologies that were weighted based on what we judged to be their relative accuracy to generate our valuation range of \$103.9 – \$116.4 million, with a midpoint of \$110.2 million. A description of each methodology and our approach is below.

#### **Comparable Trading Multiple**

We identified public tanker companies through Bloomberg LLP (“Bloomberg”), a widely used and recognized industry resource for financial data. We then selected eight (8) publicly traded comparable companies from the Bloomberg database.<sup>1</sup> The companies were those that, in our judgment, were most similar to the Debtors’ business through a combination of factors, including, size, type of vessels, and other specifics in their business.

We then compiled market capitalization, enterprise value, and Earnings before Depreciation, Amortization, Interest and Tax Expenses (EBITDA) data for the comparable companies.<sup>2</sup> We then assessed the widely used valuation ratio(s) of Enterprise Value divided by the latest twelve months (LTM), 1-year forward EBITDA and 2-year forward EBITDA to obtain the ratios of EV to EBITDA (EV/EBITDA).

The market capitalization and enterprise values were determined by the most recently available closing share price and the reported debt and cash balance found on the most recent SEC financial filing date for each comparable company. EBITDA estimates are average estimates collected by Bloomberg from publishing sell side industry analysts. We selected the average Enterprise Value/1-year forward EBITDA multiple and adjusted the mean EV/EBITDA multiple which equated to 5.5x by 0.5x in the low and high case to be used in generating a low to high valuation range. The 1-year forward EBITDA was chosen because it helps assess a company’s value based on its expected future earnings potential, providing a forward looking perspective that aligns with market expectations and allows for more accurate comparisons across companies, particularly for a highly volatile commodity related industry, such as the shipping industry. We used the 0.5 variation for the EBITDA multiple since it was approximately 10% up and down for the middle point of the EBITDA multiple. We then applied those

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<sup>1</sup> The selected comparable companies include: Scorpion Tankers Inc., Frontline Ltd., Tsakos Energy Navigation Ltd., Nordic American Tankers Ltd., SFL Corporation Ltd., Capital Products Partners L.P., Teekay Tankers Ltd., and Ardmore Shipping Corporation.

<sup>2</sup> “Market Capitalization” refers to the total of the fully diluted shares outstanding of a company multiplied by its current share price. “Enterprise Value” refers to the market value of equity, plus book value of debt, preferred stock and minority interests, less cash, subject to adjustments for underfunded pension and retirement obligations and other items where appropriate.

multiples to the estimated 2025 EBITDA generated based on our projections in the Discounted Cash Flow Analysis (described in detail below) to generate an implied Enterprise Value for the SME Vessels.

We then deducted remaining lease obligations associated with each of the SME Vessels to compute their implied comparable equity market value. In our original analysis we relied on the remaining lease obligations supplied by the Debtors on July 25, 2023<sup>3</sup>, and we then subsequently relied on the updated information provided in the Debtors' May 14, 2024 valuation analysis (ECF 687, Ex. A). We then applied an appropriate discount of 22%, using the methodology described in NYU, "Private Company Valuation", Damodaran to appropriately reflect for the liquidity risk inherent in a private vs. public company investment.<sup>4</sup> This resulted in an implied equity valuation range of \$47.2 – \$64.1 million, with a midpoint of \$55.7 million.

### **Net Asset Value**

The second valuation approach we used was based on the Net Asset Value ("NAV") of the SME Vessels. This data was collected on May 7, 2024 from the website of Vessels Value. Vessels Value is an industry recognized and relied upon third party independent data aggregator of maritime industry assets consisting of a database of over 74,000 vessels. Using its proprietary database and the specifics of each individual ship value, Vessels Value generates the Net Asset Value for each vessel separately. We further adjusted the Net Asset Value found in Vessels Value down for the Fourni and Kastos vessels to account for the impact to revenue due to the difference in spot and projected spot rates from the Time Charter Agreement (TCE) rate through each vessel's Time Charter Equivalent contract life. Vessels Value does not have insight into the privately negotiated time charter agreements in place for the Fourni and Kastos, and that is the reason why those values had to be adjusted.

In our Net Asset Value analysis, we assumed an orderly liquidation of the SME Vessels and added the Net Asset Value provided by Vessels Value and the adjusted NAV described above as our base case valuation, and again applied an appropriate adjustment of a 5% discount and premium to generate a range of low to high consolidated gross vessel value.<sup>5</sup>

We then decreased the gross consolidated SME NAV value by remaining lease obligations (as described above) to generate a consolidated SME NAV equity valuation range of \$54.1 - \$64.8 million, with a midpoint of \$59.4 million.

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<sup>3</sup> See EletsonBK091662 (Oaktree repayment schedule.xlsx).

<sup>4</sup> See Aswath Damodaran, Private Company Valuation, at 181.

<sup>5</sup> We believe 5% is appropriate in an orderly sale process, marketed as a going concern without distress with no time sensitivities.

### **Discounted Cash Flow**

Our third valuation approach involved constructing a Discounted Cash Flow (DCF) model over the remaining useful life of the SME Vessels. Given the average useful life of 25-30 years for comparable vessels, we assumed a useful life through 2040 for the SME Vessels. As each of the SME Vessels are generally operated under separate Spot or Time Charter Equivalent rate agreements and have distinct cost structures, we analyzed the operating profitability of each Vessel (Kastos, Fourni, Kimolos, and Kinaros) independently, as is common industry practice, incorporating applicable Spot Rate curves sourced from Vessels Value and/or Time Charter Equivalent contracted rate with individual daily Operating Expense plus an appropriate inflation factor over the life of the DCF.

The Daily Operating Expense for these vessels incorporates the majority of the principal operating costs for each vessel. These Operating Expenses were sourced from 2024 Vessel operating and opex budget data provided by the Debtors to the Petitioning Creditors.<sup>6</sup> We then combined this individual operating data into a consolidated amount for the SME Vessels to generate consolidated Vessel EBITDA prior to taking the debt on these entities into account. We then reduced this amount by the corporate General and Administrative costs based on historical information provided by the company in financial statements and 2015.3 Reports, again applying an inflation factor over the life of the DCF.

We then calculated the unlevered Free Cash Flow by calculating EBITDA minus capital expenditures estimates based on data in the 2015.3 Reports. We estimated the terminal value as the salvage value of the vessels at the end of their useful life using the mean of historical 10-year scrap values. We calculated an appropriate discount rate to generate the present value of cash flows using the widely accepted capital asset pricing model (CAPM) and applying the same private company adjustment of 22% from professor Damodaran used in the comparable multiple analysis. We reduced the Net Present Value of future cash flows by the outstanding vessel lease obligations to calculate a Discounted Cash Flow to equity of \$52.7 million.

### **Valuation Summary Conclusion**

Upon completion of the above analyses, we then assigned weights to each methodology to generate a composite low to high valuation range. We assigned the following weights to the above methodologies: Comparable Trading Multiple (45%), Net Asset Value (45%), Discounted Cash Flow (10%). The larger weights were applied to the Comparable Trading Multiple and the Net Asset Value methods because they are shorter dated in nature (multiples of 2025 estimated EBITDA and current market Net Asset Values respectively for each method). We believe that because of the commodity and highly volatile nature of the shipping market the Debtors operate in, a longer term

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<sup>6</sup> See EletonsonBK119493 (4.c.Budget 2024).

valuation such as the Discounted Cash Flow inserts a significant amount of uncertainty to the valuation and as such received a smaller weighting on our overall valuation. Applying this weighting and adjusting for \$5 million of cash at emergence per the PC Plan, results in an equity valuation range of \$55.8 - \$68.3 million, with a midpoint of \$62.1 million. We assumed that no cash would be available from the SMEs because when the Plan sponsor takes over the vessels, the Debtors would not agree to turn over the cash in the bank accounts. Adjusting for \$48.1 million of outstanding Oaktree leases results in an enterprise value of \$103.9 and \$116.4 million, with a midpoint of \$110.2 million.

We selected the weightings above due to the following factors:

The Comparable Trading Multiple valuation is primarily based on independent industry analyst forecasts and current market data. Industry analyst forecasts incorporate the key performance drivers and risks inherent to companies operating within the tanker industry, including, but not limited to: commodity and product forward pricing curves and demand / supply forecasts, newbuild tanker deliveries, anticipated tanker scrapings, daily tanker spot rate curves, daily vessel operating expenses, inflation estimates, crew availability and changes to maritime law. We use multiples for 2025 which we believe provide a balance between the current historically elevated spot prices moderated by a reversion to historical mean rates. This justifies our high weighting for the Comparable Trading Multiple method.

The information considered in the Net Asset Value valuation is principally derived from a maritime industry recognized third party database and Debtor filings disclosing outstanding vessel lease obligations. These Net Asset Value estimates include the factors described above including secondary market transaction of vessels of similar class and demolition values. The Net Asset Value method is more weighted towards the current market value for vessels which is factual as opposed to longer range projections, which are subjective and insert potential errors into the valuation. This justifies our high weighting for the Net Asset Valuation method.

Discounted Cash Flow analysis is inherently volatile, given both the number and length of duration of assumptions required. These include, but are not limited to, risks and high volatility inherent to all commodity focused industries, commodity and product forward pricing curves and demand / supply forecasts, newbuild tanker deliveries, anticipating tanker scrapings, daily tanker spot rate curves, daily vessel operating expenses, inflation estimates, crew availability, interest rates, ability to refinance outstanding indebtedness at favorable terms, variability over time to the appropriate discount rate due to evolving risk profiles and overall financial market conditions and changes to maritime law. This justifies our low weighting for the Discounted Cash Flow analysis.

**Other Sources of Value**

For the Levona litigation, we have assumed no value for that asset as this analysis does not include the value of any potential litigation claims or causes of action.

**EXHIBIT G**

**Summary of Documents Considered**

<b>Bankruptcy Court Docket</b>
Docket No. 216 - Summary of Assets & Liabilities (Eletson Holdings)
Docket No. 217 - SOFA (Eletson Holdings)
Docket No. 218 - Summary of Assets & Liabilities (Agathonissos)
Docket No. 219 - SOFA (Agathonissos)
Docket No. 220 - Summary of Assets & Liabilities (Eletson Finance)
Docket No. 221 - SOFA (Eletson Finance)
Docket No. 268 - Eletson Holdings Inc - MOR Sept. 2023
Docket No. 269 - Agathonissos MOR Sept. 2023
Docket No. 270 - Eletson Finance - MOR Sept. 2023
Docket No. 271 - Rule 2015.3 Reports
Docket No. 276 - Agathonissos Finance LLC MOR Oct. 31, 2023
Docket No. 277 - Eletson Finance (US) LLC MOR Oct. 31, 2023
Docket No. 280 - 2023-11-22 EHI MOR Oct. 31, 2023
Docket No. 298 - Amended Rule 2015.3 Reports
Docket No. 325 - Agathonissos MOR Nov. 23
Docket No. 326 - EHI MOR Nov. 23
Docket No. 327 - Finance MOR Nov. 23
Docket No. 340 - Revised Schedule A/B Eletson Holdings
Docket No. 341 - Second Am. 2015.3 Report
Docket No. 361 - Agathonissos MOR Dec. 23
Docket No. 362 - EHI MOR Dec. 23
Docket No. 363 - Finance MOR Dec. 23
Docket No. 370 - Debtor Plan
Docket No. 371 - Debtor DS
Docket No. 389 - Amended MORs Nov. 23
Docket No. 409 - Third Am. 2015.3 report
Docket No. 427 - Agathonissos MOR Jan. 24
Docket No. 428 - EHI MOR Jan. 24
Docket No. 429 - Finance MOR Jan. 24
Docket No. 531 - PC Plan
Docket No. 532 - PC DS
Docket No. 570 - Debtor Amended Plan
Docket No. 591 - Trial Presentations
Docket No. 687, Ex. A - Debtors' Valuation Analysis
Docket No. 962 - Third Periodic 2015.3 Report
<b>Proofs of Claim (23-10321 - Agathonissos)</b>
POC No. 1 - New Agathonissos Finance LLC
POC No. 2 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 2 - (Amended) - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 3 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 4 - Pach Shemen LLC
POC No. 5 - VR Global Partners LP
POC No. 6 - Alpine Partners (BVI) LP

<b>Proofs of Claim (23-10322 - Eletson Holdings Inc (Lead Case))</b>
POC No. 1 - Tracy Lee Gustafson
POC No. 2 - Deutsche Bank Trust Company Americas
POC No. 3 - TR IXI W J. FLEISCHMANN DORETTE
POC No. 4 - Aegean Baltic Bank S.A.
POC No. 5 - OCM Maritime Rhine LLC
POC No. 6 - OCM Maritime Yukon LLC
POC No. 7 - OCM Maritime Autumn LLC
POC No. 8 - OCM Maritime Thames LLC
POC No. 9 - Azure Nova Spring Co., Limited
POC No. 10 - Azure Nova Summer Co., Limited
POC No. 11 - Azure Nova Autumn Co., Limited
POC No. 12 - Azure Nova Winter Co., Limited
POC No. 13 - New Agathonissos Finance LLC
POC No. 14-1 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 14-2 - Wilmington Savings Fund Society, FSB, as Trustee (Amended)
POC No. 15 - Middle East Shipping Agencies Overseas Ltd.
POC No. 16 - Hermes Acquisitions B Dac Serviced by Cepal Hellas
POC No. 17 - Pach Shemen LLC
POC No. 18 - VR Global Partners
POC No. 19 - Alpine Partners (BVI) LP
POC No. 20 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 21 - Levona Holdings Ltd.
POC No. 22 - Sunrise 1 NPL Finance Dac
POC No. 23 - IRS
<b>Proofs of Claim (23-10322 - Eletson Finance (US) LLC)</b>
POC No. 1 - New Agathonissos Finance LLC
POC No. 2 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 2 (Amended) - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 3 - Wilmington Savings Fund Society, FSB, as Trustee
POC No. 4 - Pach Shemen LLC
POC No. 5 - VR Global Partners LP
POC No. 6 - Alpine Partners (BVI) LP
<b>Eletson Materials</b>
EHI Org. Chart (All Cos) Jan2024_17229399_1.xls
EHI Org. Chart (Short Form).xls
2014 EHI Annual Report (Audited)
2017 EHI Annual Report (Audited)
2018 EHI Annual Report (Unaudited)
2019 EHI Annual Report (Unaudited)
2020 EHI Annual Report (Unaudited)
2021 EHI Annual Report (Unaudited)
2022 EHI Financial Statements (Unaudited)
2022 Q1 – EHI Financial Statements (Unaudited)



2022 Q2 – EHI Financial Statements (Unaudited)
2022 Q3 – EHI Financial Statements (Unaudited)
2023 Q1 – EHI Financial Statements (Unaudited)
2023 Restated Q1 – EHI Financial Statements (Unaudited)
2017 – Eleston Gas Annual Report
2018 – Eleston Gas Annual Report
2019 – Eletson Gas Annual Report
2020 – Eleston Gas Financial Statement
2021 – Eleston Gas Financial Statement
2021 Q1 – Eletson Financial Report
2022 - Eletson Gas Consolidated Financial Statement
TB to FS 31.12.2021 (EHI).XLSX
TB to FS 31.12.2022 (EHI).XLSX
TB to FS 31.03.2023 (EHI).XLSX
EHI _ 1Q23 General Ledger Items.xlsx
acc. AC305 - Accounting entries - EletsonBK091654.xlsx
Management Accounts per quarter 2019-2022.011723- EletsonBK085988.xlsx
Ex 3 Other non-current liabilities & waterfall - EletsonBK086002.xlsx
Liquidity Support - ELETSONBK088543.xlsx
Summary of Corp. Claims Against Gas - EletsonBK026163.xlsx
1.d.ii Budget to actual performance 2023.xlsx
1h ehi 2022.XLS
1h ehi 2023.XLS
1q egas 2021.XLS
1q egas 2023.XLS
1q ehi 2021.XLS
2.a. 2021 Intercompany matrix.XLSX
2.a. 2022 Intercompany matrix.XLSX
2.a. 2023 Intercompany matrix.XLSX
2.a.iii. Sources & Uses of Bond.xlsx
2.d.i General Ledger for all intercompany accounts.xlsx
2h ehi 2022.XLS
2h ehi 2023.XLS
2q egas 2021.XLS
2q egas 2023.XLS
2q ehi 2021.XLS
3q egas 2021.XLS
3q egas 2022.XLS
3q egas 2023.XLS
3q ehi 2021.XLS
4.a. FS per Company 31.12.2021.XLSX
4.a. FS per Company 31.12.2022.XLSX
4.c. Budget 2024.xlsx
4q egas 2021.XLS
4q egas 2022.XLS
4q egas 2023.XLS
4q ehi 2021.XLS

TB to FS EGAS 31.12.2023.xlsx
TB to FS EHI 31.12.2023.xlsx
TB to FS 31.03.2023.XLSX
TB to FS 31.12.2021.XLSX
TB to FS 31.12.2022.XLSX
MarineManagementModule December 2023.xls
Oaktree Repayment schedule.xlsx
REPOBU 2019.xlsx
REPOBU 2020.xlsx
REPOBU 2021.xlsx
REPOBU 2022.xlsx
REPOBU 2023.xlsx
Offering Memorandum, dated Dec. 12, 2013.pdf
Indenture, dated December 19, 2013.pdf
Noteholder Forbearance Agreement executed 15 Feb. 2018.pdf
Transaction Support Agreement [Execution Version]...+Signatures.pdf
New Notes Indenture 2July2018.pdf
Offer to Exchange, dated May 25, 2018 - VRG00004140.pdf
First Preferred Ship Mortgage Notes due 2022.pdf
Pledge Agreement 2July2018.pdf
Preferred Shares Escrow Agreement 2July2018.pdf
Forbearance Agreement, dated Jan. 25, 2019.pdf
Notice Events of Default, dated 04-08-2019.pdf
Notice of Acceleration 6-24-2019 - WSFS_MTD_0000069.pdf
Notice of Proposal of Strict Foreclosure 24 June 2019.pdf
Escrow Agreement 24 June 2019.pdf
Restructuring Support Agreement, dated June 24, 2019.pdf
Notice of Termination of First RSA, dated Aug. 9, 2019.pdf
Supplemental Indenture.pdf
Restructuring Support Agreement, dated Oct. 29, 2019 - Docket No. 42-3 .pdf
Nov. 15, 2019 Salamina Direction Letter.pdf
OCM Financing Stipulation.pdf
2018-06-28 - Preferred Share Escrow Agreement.pdf
2018-09-11 - Eletson Preferred Share Collateral.pdf
13133864_11_Eletson - New Indenture - Supplemental Indenture - Noteholder Lien Releases (Executed Version).pdf
Aegean Baltic Bank Guarantee - Oct. 9, 2014 .pdf
Aegean Baltic Overdraft Facility Agreement - Oct. 9, 2014.pdf
Aegean Baltic Overdraft Facility Addendum No.1 - Dec. 23, 2015.pdf
AB Bank Overdue Invoice & Reference to April 22, 2019 EOD & Acceleration.pdf
Alpha Simvasi – 31Mar2014.pdf
Alpha Bank Guarantee & Indemnity – Mar 31, 2014.pdf
Piraeus Bank LoanAgreement-29 July 2002.pdf
Piraeus Bank Addendum No. 1- May 6 2004.pdf
Piraeus Bank Addendum No 2 - Sept 23 2005.pdf
Piraeus Bank Addendum No 3 - April 4 2012.pdf
Piraeus Bank Addendum No 4- June 3 2013.pdf

Piraeus Bank Addendum No 5- July 19 2013.pdf
Piraeus Bank Addendum No 6- Oct 15 2013.pdf
Piraeus Bank Addendum No 7- Feb 6 2015.pdf
Piraeus Bank Addendum No 8 - April 28 2016.pdf
Piraeus Bank Addendum No 9 - June 29 2016.pdf
Piraeus Bank Addendum No 10 - Dec 29 2016.pdf
Piraeus Bank Addendum No 11 - Aug 9 2017.pdf
Piraeus Bank Tripartite Agreement - Dec29 2016.pdf
Piraeus Bank Reducing Overdraft Facility \$20m - August 9, 2017.pdf
(Executed) SP Agreement - Argironissos - 19 April 2021.pdf
(Executed) SP Agreement - Folegandros - 3 May 2021.pdf
(Executed) SP Agreement - Kastelorizo - 30 April 2021.pdf
(Executed) SP Agreement - Salamina - 19 April 2021.pdf
2020.06.24 - Guarantee KinarosSME a.pdf
2020.06.24 - Guarantee KinarosSME b.pdf
2020.06.24_BBC & Riders - FOURNI.pdf
2020.06.24_BBC & Riders - KASTOS.PDF
2020.06.24_BBC & Riders - KIMOLOS.PDF
2020.06.24_BBC & Riders - KINAROS.PDF
2020.06.24_Guarantee KastosSME a.pdf
2020.06.24_Guarantee KastosSME b.pdf
2020.06.24_Guarantee KimolosIISME a.pdf
2020.06.24_Guarantee KimolosIISME b.pdf
2020.06.24_Memorandum of Agreement - OCM Maritime Autumn LLC (Fourni).pdf
2020.06.24_Memorandum of Agreement - OCM Maritime Rhine LLC (Kinaros).pdf
2020.06.24_Memorandum of Agreement - OCM Maritime Thames LLC.pdf
2020.06.24_Memorandum of Agreement - OCM Maritime Yukon LLC (Kimolos).pdf
2020.06.24_Oakree Guarantee Kimolos June 2020.pdf
2020.06.24_Oaktree Guarantee Fourni June 2020.pdf
2020.06.24_Oaktree Guarantee Kastos June 2020 .pdf
2020.06.24_Oaktree Guarantee Kinaros June 2020.pdf
2022.02.09_Oaktree & Eletson Standstill Agreement - 09.02.2022 (dated & fully executed).PDF
2022.09.16_Eletson HCOB Draft Bilateral Settlement Letter_executed by Eletson 16 Sept 2022.pdf
2022.09.28_Deed of Release.pdf
2022.09.28_Settlement Agreement in Relation to Loan Agreement dated 16 July 2020, dated 28 Sept. 2022.pdf
2022.12.16_EletsonBK000899_Eletson _ Oaktree amendment ts Dec. 2022.pdf
Repayment Amounts_Oaktree version.xlsx
Collateral Agreement (Salamina).pdf
Collateral Agreement (Kastelorizo).pdf
Collateral Agreement (Folegandros).pdf
Collateral Agreement (Argironissos).pdf
Addenda to Collateral Agreement.pdf
(Executed) SP Agreement - Salamina - 19 April 2021.pdf
(Executed) SP Agreement - Kastelorizo - 30 April 2021.pdf

(Executed) SP Agreement - Folegandros - 3 May 2021.pdf
(Executed) SP Agreement - Argironissos - 19 April 2021.pdf
(Executed) Escrow Agreement - SALAMINA - (Fully Signed and Dated) - 19 April 2021.PDF
(Executed) Escrow Agreement - ARGIRONISSOS (Fully Signed and Dated) 19 April 2021.PDF
EHI CertificateOfIncumbency Dec2019 signed.pdf
EHI Certificate 2020 signed&certified.pdf
2022.08.09 - EHI executed.pdf
2022.08.09 - Eletson Corporation executed.pdf
EHI StockTransferLedger.pdf
EHI5 – ArticlesOfAmendment-June2018.pdf
EletsonGasLLC_Agreement-_Amended_and_Restated_No.3__16Aug2019_.pdf
149Eletson - Notice of Replacement and Appointment of BX Directors.pdf
Eletson - Membership Interest Power (Blackstone Family).pdf
Eletson - Membership Interest Power (BTO SMD).pdf
Eletson - Membership Interest Power (BX).pdf
EXECUTED Eletson Gas - 1st Amendment to 3rd AR LLCA 4851-1788-4602, 1.pdf
Debtors Mediation – EHI Liquidation Analysis.pdf
Debtors Liquidation Analysis (DRAFT 5-1-24).docx
Eletson Management Review.pdf
Founi Novum – Time Charter Party.pdf
Fourni_Q88 (Oil)_08Jan2023.pdf
Kastos Novum – Time Charter Pary.pdf
Kastos_Q88 (Oil)_08Jan2023.pdf
Kimolos_Q88 (Oil)-20Oct2023.pdf
Kinaros_Q88 (Oil)_03Jan2024.pdf
02.15.2024 FTI Initial Diligence List.pdf
Debtors’ Reply to FTI Diligence List.pdf
SDNY – Opinion & Order.pdf
Final Arb Award.pdf
Feb 2, 2022 Email to Swiftbulk – EletsonBK014661.pdf
EGAS Loans and accrued interest.xlsx
Eletson Gas preferred equity.xlsx
Historical Eletson – Company Performance Model (to Lenders Advisor –AMA)
1A. 2020.01.21 - Eletson to AMA re Company Model.pdf
Eletson CF model (12 Tankers) 2019-2020 AMA apply Budget OPEX.xlsx
Operational performance of the fleet.xlsx
OPEX budget.xlsx
2023.01.30 - Eletson Expert Report of Harold Furchtgott-Roth.pdf
2023.01.30 - Eletson Expert Report of Nikolaos Veraros.pdf
2023.01.30 - Expert Report of Peter Daniel.pdf
2023.02.20 - Second Expert Report of Harold Furchtgott-Roth.pdf
2023.02.20 - Second Expert Report of Nikolaos Veraros.pdf
2023.02.20 - Second Expert Report of Peter Daniel.pdf
2023.01.11 - Email re MR Refinance Model - EletsonBK022187.pdf
MR Refinance model (Jan. 2023) - EletsonBK022188.xlsx

Docket No. 524 - UNREDACTED Cordasco Decl ISO UCC Motion to Appoint Trustee.pdf
Email (BBC and Charters) - Fwd Eletson Debtors Mediation Proposal.pdf
LEG Vessels Auction, LOI, Jul 22 & Jan 23 (est).xlsx
<b>Other Data Sources</b>
J.P. Morgan Research - Oil Tanker Monthly 03/01/2024
J.P. Morgan Research - Scorpio Tankers Forecast updates, 03/27/2024
Carrier's Charting Corp - April 2024 Market Report
Scorpio Tankers 2023 20_F (03/22/2024)
Scorpio Tankers 4Q 2023 Earnings presentation
Scorpio Tankers 2204 6k (5/13/2024)
Jefferies LLC Tankers Report 03/21/2024
Vessel Value SME Overview (Data as of 5/7/2024)
Bloomberg LLP Eletson Comp Multiples
NYU, "Valuing a Private Company", Damodaran
Bloomberg Data for Comparable Financing
Bloomberg Data for WACC
<a href="https://www.justice.gov/ust/chapter-11-quarterly-fees">https://www.justice.gov/ust/chapter-11-quarterly-fees</a>

**EXHIBIT B**

**Batuta Rebuttal Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Eletson Holdings Inc., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 23-10322 (JPM)

Jointly Administered

**DECLARATION OF ALEX ZYNGIER IN RESPONSE  
TO EXPERT REPORT OF NIKOLAOS VERAROS**

I, Alex Zyngier, make this declaration, pursuant to 28 U.S.C. § 1746:

1. I submitted an expert declaration in this proceeding on August 26, 2024 (the “First Zyngier Declaration”). The background information and statements set forth in paragraphs 1-15 of the First Zyngier Declaration are incorporated by reference into this second declaration.<sup>2</sup>

2. I have been asked by counsel to the Petitioning Creditors to (a) review the Expert Report of Nikolaos Veraros, dated August 26, 2024 (the “Veraros Report”), and (b) to evaluate, in my professional opinion, (i) whether anything in the Veraros Report changes the analyses or opinions set forth in the First Zyngier Declaration, and (ii) whether the Veraros Report contains any errors in the assumptions, analyses, or conclusions described therein.

3. A list of additional sources and materials that I relied upon in connection with the below analyses is set forth in **Appendix 1** hereto.

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<sup>1</sup> The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors’ corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors’ mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

<sup>2</sup> Unless otherwise stated, all defined terms contained herein reference such terms as defined in the Debtors’ Plan, the PC Plan, and the PC Alternative Plan, as well as the related Disclosure Statements, as applicable.

### **Conclusions and Summary of Opinions**

4. After considering the Batuta analyses described in the First Zyngier Declaration, as well as my careful review of the Veraros Report and related Debtor materials, I conclude, as set forth in detail below, that:

- a. The composite low to high valuation range set forth in the First Zyngier Declaration—which provides relative weighting to the Comparable Companies (45%), NAV (45%), and DCF (10%) valuation methods—provides a reasonable and reliable estimate of the equity value for the Reorganized Debtors. Nothing in the Veraros Report changes the analyses or opinions set forth in the First Zyngier Declaration.
- b. The Debtors' sole reliance on the DCF method, as well as significant flaws and errors in methodology and assumptions used by the Debtors in their valuation analysis, results in their estimated equity value for the Reorganized Debtors being unreasonably understated.
- c. Veraros's analyses are fundamentally flawed.

#### **I. The Petitioning Creditors' Valuation Analysis is Reasonable and Reliable**

5. Valuing the equity of shipping companies like the Debtors, is complex due to the sector's unique characteristics, such as cyclicalities, asset-heavy nature, and exposure to global economic conditions. To account for these factors, Batuta used a composite valuation approach that includes Comparable Companies, Net Asset Value (NAV), and Discounted Cash Flow (DCF) analyses to provide a comprehensive and reliable method of estimating the equity value in the Reorganized Debtors. In Batuta's opinion, a composite valuation approach is the most reliable approach to valuing the Reorganized Debtors' equity because it provides a balanced perspective by incorporating market conditions, asset values, and long-term cash flow potential; provided, however, that the susceptibility of the shipping industry to unpredictable market conditions often means that the DCF method's assumptions and long term projections can be unreliable. For this reason, Batuta's composite valuation analysis is



weighted heavily towards (a) market data, including a multiple of forward EBITDA for public comparable companies, and (b) independent third-party appraisals from industry-standard sources such as Vessels Value. *See* First Zyngier Decl. ¶¶ 26-28; *see also id.*, Ex. F.

6. Specifically, the Valuation Analysis set forth in the First Zyngier Declaration weighted the three valuation methodologies as follows: (i) Comparable Companies – forty five percent (45%) weight; (ii) Net Asset Value (NAV) – forty five percent (45%) weight; and (iii) Discounted Cash Flow – ten percent (10%) weight. This weighting reflects Batuta’s reliance on market data such as in the Net Asset Value method as well as the short-dated nature of projections in the Comparable Companies method, both of which we judge incur less need for long term assumptions and potential for errors. *See* **Exhibit 1** (Valuation Analysis, dated May 8, 2024).

7. In addition, we updated the original Valuation Analysis, dated May 8, 2024, to reflect current market data limited only to (a) Vessels Value appraisals for the SME Vessels, as of August 29, 2024, and (b) updated Comparable Company values from Bloomberg, as of August 30, 2024. The only other changed variable was an increase in equity value of \$2.9 million due to a reduction in outstanding amounts owed under the SME leases. We found that from the First Zyngier Declaration to August 31, 2024, both NAVs and Comparable Companies are higher resulting in an Equity Value range of \$60.4 million to \$73.4 million with a midpoint of \$66.9 million. *See* **Exhibit 2** (Updated Valuation Analysis, dated August 31, 2024). Thus, if anything, our original equity value range of \$50.8 million to \$63.3 million with a midpoint of \$57.1 million was conservative.

**A. Discounted Cash Flow Analysis**

8. Veraros states that the Enterprise Value resulting from the Debtors' Discounted Cash Flow is \$26 million lower than the Petitioning Creditors' valuation (\$84.3 million vs. \$110.2 million). *See* Veraros Report at 12. As I stated in the First Zyngier Declaration, using the DCF method, Batuta generated an equity value of \$52.7 million versus the Debtors' calculation of \$30.3 million. Critically, however, based on the weight of 10% to the DCF method in the composite matrix utilized in our Valuation Analysis, even if I agreed (which I do not) with the Debtors' calculated DCF equity value of \$30.3 million, the resulting reduction in equity value would be \$2.7 million (or 4.7% of our composite midpoint equity value) from \$57.1 million to \$54.4 million.

9. But, as explained in greater detail below, my view is that there were multiple errors in the Debtors' calculation of equity value and that these errors imply that the Debtors' equity value (using a number of the Debtors' own assumptions and projections) should have a range of \$47.5 million to \$52.1 million. *See infra* ¶¶ 20-21 & Figure 1. When we apply the 10% DCF weighting to this corrected equity value range (\$47.5 million to \$52.1 million), the resulting reduction in equity value would be \$0.5 million to \$1.0 million. In other words, the Debtors' valuation, applying the Debtors' own methodology, should be very close to Batuta's valuation.

10. Veraros also challenges the useability of the four vessels for up to thirty years and argues it should be no more than twenty-five years. When we calculate the discounted cash flow using twenty-five years instead of thirty years, and apply the 10% weight to the DCF, we compute an equity value resulting in only a \$1.6 million reduction in value from our midpoint equity value of \$57.1 million.

11. Finally, while the Debtors used a 9.0% discount rate in their model (Veraros Report at 14), Batuta used a more conservative 10.4% discount rate, which

results in a lower equity value. Veraros does not describe the methodology that the Debtors used to arrive at 9.0% for the discount rate. Further, he describes this as “conservative,” but then follows with “[t]he highly volatile nature of the market, which normally would justify higher discount rates.” *Id.*

12. Our methodology to calculate the discount rate included calculating an appropriate weighted average cost of capital (WACC), where the weightings were determined by the percentage of total capitalization per (i) outstanding SME lease debt and (ii) the implied equity valuation per the PC Plan. We then determined the appropriate rates to assign to this percentage for both debt and equity components. To determine the interest rate applicable to debt (7.5%), we examined four recent secured financings of similar vessels within the past 12 months.<sup>3</sup> For the required return on equity, we followed the industry standard Capital Asset Pricing Model (“CAPM”) approach defined as: the risk-free rate + (beta \*(market risk premium)).

13. We selected the current 10-year U.S. Treasury rate as the risk-free rate. We selected the average annual return of the S&P500 Index over the past 10 years as the market return proxy. We calculated the beta by running an individual regression analysis on the weekly returns of the eight companies in our Market Comparable Analysis over a 5-year period.

14. Notably, applying the Debtors’ 9.0% discount rate in our DCF valuation would increase our DCF equity value by \$9.4 million from \$52.7 to \$62.1 million.

#### **B. Comparable Company Analysis**

15. Veraros identified two recent reports from Jefferies and Seaborne to evaluate the appropriate multiple of EBITDA to be used in the Comparable Companies

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<sup>3</sup> PC\_PLAN\_000054715 (Eletson Comparable Financings); *see also* PC\_PLAN\_000074602-74755.

approach. *See* Veraros Report at 14-15. Veraros only applied the multiples of EV/EBITDA from these two firms to estimate the Enterprise Value of the Company. We have taken a more precise approach where we chose eight specific tanker companies of varying sizes, spot exposure, underlying business focus and governance. We sourced these forward EBITDA figures from Bloomberg with a median number of six analysts providing estimates for each one of these companies. This methodology eliminates the potential bias of choosing only two sell side brokerage firms. Based on these values, we calculated an average 5.5x multiple of EBITDA for 2025 in our base case.

16. Veraros also argues that these larger companies are not comparable to the Debtors because the Debtors are a small and private business. *See* Veraros Report at 14. However, we did take these factors into account and used professor Damodaran's research to discount the equity value of the Debtors by 22% to arrive at a private company valuation.<sup>4</sup> After applying that discount, the implied multiple of EBITDA is 4.8x compared to Veraros's range of 4.3x to 4.8x EBITDA.

### **C. Net Asset Value Analysis**

17. Veraros argues that the market accepts target prices set by Jefferies and Seaborne at 81% and 74% of NAV. Veraros Report at 15. It is important to note that these are larger companies, with dozens of ships, which would face a significant challenge trying to liquidate a large number of vessels in the market at any given moment. Therefore, these companies would have to settle for a significant discount if they were to sell all of their vessels at once, which might justify the discount to NAV endorsed by Veraros. However, the Debtors only have four vessels and an orderly sale

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<sup>4</sup> *See* PC\_PLAN\_000054460-PC\_PLAN\_000054503 (Aswath Damodaran, Private Company Valuation, NYU, pages 180-181).

is possible and should result in the realization of amounts consistent with NAV after broker fees. Therefore, the discounts relied upon by Veraros are not warranted here.

## **II. Errors in the Debtors' Valuation Analysis**

18. Veraros states that the DCF model of the “Debtors seems . . . reasonable, in terms of revenue, estimated terminal value and discount rate used,” and describes those variables as being the “most important” affecting the model. *See* Veraros Report at 16. Veraros further states that the single most important source of deviation affecting the projected cash flows between the Debtors’ and our model is \$17.2 million in higher revenues for the SMEs from 2025-2028. *See id.* at 6.

19. Based on our review of the analyses in the Veraros Report and related Debtor materials, however, we have identified certain flaws and/or errors in the methodology and assumptions used by the Debtors, including flaws in the methodology used in the Debtors’ valuation analysis for the determination of equity value, such as (i) the improper adjustment of equity value for trade debt and cash contributions and distributions associated with the payment of administrative expenses and creditor claims (Veraros Report at 4), and (ii) a method for calculating the terminal value of the SME Vessels that results in a unreasonably low value for those vessels (*id.* at 13); and (b) fundamental errors in the Debtors’ assumptions such as the reduction of revenues by brokerage fees of 5%,<sup>5</sup> which are well in excess of industry standard brokerage fees of 1.25%. These deficiencies, whether taken individually or in the aggregate, make the Debtors’ valuation of the equity for the Reorganized Debtors artificially low.

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<sup>5</sup> *See* EletsonBK142739 at Valuation DCF Worksheet, cells C52-C55 & C59-C62 (reporting revenues as net of 5% brokerage commission).

20. Specifically:

- a. SME trade debt and accrued interest should not be subtracted to calculate Equity Value: A DCF analysis values future cash flows of a going concern. For that reason, SME trade debt and accrued interest should not be deducted when calculating equity value as done by the Debtors. Rather such line items are paid off by cash flows generated by the SME Vessels in the normal course of business post emergence from Chapter 11. At a minimum, if the Debtors are proposing that these obligations totaling \$5.8 million—SME trade debt (\$4.7 million) and accrued interest (\$1.1 million)—not be paid off during the going concern period after emergence from Chapter 11, then these amounts should be satisfied from proceeds from the sale of the SME Vessels in 2028, and should be discounted to a present value. This results in an increase in the equity value range of \$1.8 million - \$5.8 million, by shrinking the aggregate reduction to equity value for accrued interest and SME trade debt from \$5.8 million to \$4.0 million in the Low case and from \$5.8 million to \$0 in the High case. *See Figure 1 infra.*
- b. New Cash Contribution, Administrative Expenses, Cash Paid to Unsecured Creditors: These cash contributions and payments are not relevant to the valuation of the enterprise as a going concern. Any new money contributions and payments to fund Chapter 11 administrative expenses or to make distributions to creditors do not affect the value of the enterprise. Only the cash that already is part of the enterprise, and that will be part of the Reorganized Debtors, should be included as part of equity value. The combined effect of removing these items from the valuation analysis adds \$3.3 million to the equity value in both the Low and High cases. *See Figure 1 infra.*
- c. Discounted Broker Chartering Fees: The Debtors' revenue projections incorporate a non-industry standard and unreasonable 5% brokerage fee deducted from their gross SME Vessel revenues.<sup>6</sup> While we do not have clarity on the reason for these high fees, based on our discussions with ship brokers we understand that broker chartering fees of 1.0%-1.5% are in the range of reasonableness (1.25% is the standard).<sup>7</sup> The Debtors do not disclose why they project 5.0% fees (or to whom those fees are being paid) and Veraros does not opine on the reasonableness of such fees. When we substitute the 5.0% fees with 1.0% to 1.5%

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<sup>6</sup> See EletsonBK142739 at Valuation DCF Worksheet, cells C52-C55 & C59-C62 (reporting revenues as net of 5% brokerage commission).

<sup>7</sup> Based on discussions with two independent industry brokers; PC\_PLAN\_000074852-PC\_PLAN\_000074876 - PC\_PLAN\_000074878 (Lloyd's List article Tanker Rates hit fresh 15-year high date 14 Oct 2019; PC\_PLAN\_000074756-PC\_PLAN\_000074764 (Ardmore Shipping Corporation Announces Financial Results For The Three Months Ended March 31, 2024 (May 8, 2024) at n. 5); PC\_PLAN\_000074873-PC\_PLAN\_000074875 (Her Majesty Revenue and Customs TTM15260 - Background Material; Brokers and agents for shipping companies published 19 Mar 2016).

standard industry fees, we calculate an incremental \$5.2-\$5.9 million in additional revenues over the projection period. Furthermore, this increase in net revenue results in an increase to equity value of \$4.2 million in the Low case and \$4.8 million in the High case. *See Figure 1 infra.*

- d. Terminal Value of SME Vessels: Veraros states that the terminal values of the SME vessels in the year 2028 are the second most important assumption for Equity Value. Veraros Report at 12-13. We believe this method for backing into the valuation of \$46.1 million is faulty in many respects. First of all, it is hard to justify why the Debtors would liquidate the vessels when they are at 18 years old and still have several years of operation ahead of them. Today, 13.5% of all vessels in the MR2 tanker market are over 20 years old and still operate in the market.<sup>8</sup> Veraros takes the historical average price today (2001-2024) of \$57.6 million (\$14.39 million x four vessels). *See id.* at 13. We disagree with what seems to be a highly discounted approach when the book value for these vessels according to the Debtor balance sheet is \$93.7 million<sup>9</sup> and the market value of these vessels is \$125.2 million.<sup>10</sup> It does not stand to reason as to why the Debtors would wait until 2028 to liquidate the vessels for \$46.1 million while they could either (i) take advantage of the market value which is a full \$79.1 million higher today than what they could receive in 2028 and (ii) they could rely on their own book value, which today is \$47.6 million more than what they would receive in 2028. We note that both of these methods generate proceeds that are 2.0 to 2.7 times more than the Debtors suggest they would sell the vessels for in 2028. With that information on hand, we took an even more conservative approach and used Veraros's \$57.5 million historical average value (2001-2024) for the vessels today (Veraros Report at 13) and assumed that was the sale price in 2028. We then discounted it to 2024 using the Debtors 9% discount rate and computed an incremental increase of \$7.8 million in Equity Value. *See Figure 1 infra.*

21. After correcting these flaws in methodology and errors in assumptions, while keeping the Debtors' other projections and assumptions constant, we determined that the Debtors' valuation analysis would actually result in an equity value range of \$47.5 million to \$52.1 million (*see infra* Figure 1), rather than the Debtors' stated equity

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<sup>8</sup> PC\_PLAN\_000074799-PC\_PLAN\_000074821 (Pyxis Tankers Second Quarter earning presentation (August 20, 2024) at 9 (citing Drewry)).

<sup>9</sup> ECF 962 (Rule 2015.3 Report) at 12-15.

<sup>10</sup> *See* PC\_PLAN\_000074597-PC\_PLAN\_000074601 (Vessels Value ship Value Estimates (August 29, 2024)).

value of \$30.3 million (*see* ECF 839, Ex. 8; Veraros Report at 4). The difference between the revised Debtors' equity value and the equity value in the First Zyngier Declaration is \$5.0 million to \$9.6 million. *See* Figure 1:

**Figure 1: Adjusted Debtors' Equity Value Calculation**

	Veraros/ Debtor Equity Valuation	Range of Equity Value after Adjustments	
		<u>Low</u>	<u>High</u>
<u>Debtor Calculaton of Equity Value</u>			
Enterprise Value	84.3	84.3	84.3
OCM leases	(48.1)	(48.1)	(48.1)
Accrued Interest	(1.1)	(0.8)	-
Trade Debt at SME	(4.7)	(3.2)	-
Cash	3.3	3.3	3.3
Broker Commision Impact		4.2	4.8
New Cash Distribution	30.0	-	-
Administrative Expenses	(14.5)	-	-
Cash paid to Unsecured Creditor	(18.8)	-	-
Terminal Value Adjustment		7.8	7.8
Equity Value	30.3	47.5	52.1

### **III. Errors and Inaccuracies in the Veraros Report**

#### **A. Broker Fees Discrepancy**

22. As stated above, Veraros argues that the single most important source of deviation between the Debtors' and Petitioning Creditors' models is the estimations by the Petitioning Creditors for \$17.2 million higher revenues out of the operation of the SME Vessels in the period 2025-2028. Veraros Report at 6.

**Table 3: Differences between Debtors model and Creditors' model (figures of Debtors minus Creditors)**

\$mn	2025	2026	2027	2028	Total 2025- 2028
Revenues	-4.9	1.3	-6.6	-7.0	-17.2



23. This purported discrepancy is overstated. What is not disclosed in Table 3 of the Veraros Report is that the Debtors' reported revenues are net of an unreasonable 5.0% broker commission, also described above.<sup>11</sup>

24. Figure 2 below provides our estimate of commissions netted off of the Debtors' top line revenue. Figure 3 accurately reflects a revenue difference between 2025 and 2028. After accounting for the hidden commissions, the difference in projected revenues is \$11.0 million instead of \$17.2 million.

**Figure 2: Commissions Deducted from Debtors' Projected Revenue**

Rate Commissions	Rate	Jul-24	Dec-24	Dec-25	Dec-26	Dec-27	Dec-28	2025-2028
Fourni	5.0%	74,420	186,660	439,200	0	0	0	
Kastos	5.0%	74,420	186,660	439,200	0	0	0	
Kimolos	5.0%	102,175	206,025	0	0	0	0	
Kinaros	5.0%	96,075	240,975	47,250	0	0	0	
<b>Total Secured Commission</b>		<b>347,090</b>	<b>820,320</b>	<b>925,650</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>925,650</b>

Rate Commissions	Rate	Dec-24	Dec-25	Dec-26	Dec-27	Dec-28	2025-2028
Fourni	5.0%	0	0	450,000	324,000	324,000	
Kastos	5.0%	0	0	450,000	324,000	324,000	
Kimolos	5.0%	42,000	450,000	450,000	324,000	324,000	
Kinaros	5.0%	0	412,500	450,000	324,000	324,000	
<b>Total Unsecured Commission</b>		<b>42,000</b>	<b>862,500</b>	<b>1,800,000</b>	<b>1,296,000</b>	<b>1,296,000</b>	<b>5,254,500</b>

<b>Total Secured and Unsecured Commission (2025-2028)</b>							<b>6,180,150</b>
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**Figure 3: Actual Variance in Revenue Projections**

<b>Broker Adjusted Revenue Comparison</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>Total Veraros reported difference</b>	<b>Total adjusted difference</b>
Debtor Estimated Revenues (\$mm)	34.0	34.2	24.6	24.6		
Batuta Revenue Projections (\$mm)	38.9	32.9	31.2	31.6		
Veraros Reported Difference ( 2025-2028)	(4.9)	1.3	(6.6)	(7.0)	(17.2)	(17.2)
<b>Adjustments</b>						
Plus: 5% broker commissions reducing Debtor net revenue						6.2
<b>Adjusted net 2025-2028 revenue difference</b>						<b>(11.0)</b>

<sup>11</sup> See EletsonBK142739 at Valuation DCF Worksheet, cells C52-C55 & C59-C62 (reporting revenues as net of 5% brokerage commission).

## B. Veraros's Flawed Day Rates Methodology

25. Veraros states that he disagrees with our projection of higher day rates after 2025 for a variety of reasons (Veraros Report at 7-12), which are described below. We also explain our differences in assumptions.

26. The day rates we assumed in future years are disclosed below for comparison purposes. We incorporated the existing time charters (secured rate) agreements for Fourni and Kastos at a rate of \$24,400 through 2025 and spot rates (unsecured) for Kimolos and Kinaros through 2025. We continue to assume spot rates for Kimolos and Kinaros from 2026 onwards and assume Kastos and Fourni revert to spot (unsecured) rates after their charter expirations after January 12, 2026 (Kastos) and February 15, 2026 (Fourni) at 98% utilization:

**Figure 4: Day Rates Utilized by Batuta**

Spot Rate Assumptions	2024	2025	2026	2027	2028
Fourni	0	0	23,000	21,750	22,087
Kastos	0	0	23,000	21,750	22,087
Kimolos	30,000	30,000	23,000	21,750	22,087
Kinaros	30,000	30,000	23,000	21,750	22,087
TCE Rate Assumptions					
Fourni	24,400	24,400	24,400	0	0
Kastos	24,400	24,400	24,400	0	0
Kimolos	0	0	0	0	0
Kinaros	0	0	0	0	0
Vessel Opex Assumptions					
Fourni	7,620	7,772	7,928	8,086	8,248
Kastos	7,612	7,764	7,920	8,078	8,239
Kimolos	7,639	7,792	7,948	8,107	8,269
Kinaros	9,033	9,214	9,398	9,586	9,778

### i. Rate Assumptions

27. While Veraros cites several studies describing the volatility and the unpredictable nature of the shipping market (*see* Veraros Report at 8), as well as a Clarksons description of historical rates (*id.* at 9), Batuta has taken a more comprehensive approach, evaluating several factors driving the shipping market today and how we would expect them to change in the future. Veraros specifically refers to

GDP growth of 2.0-3.5% as a measure of growth of oil volumes (Veraros Report at 10), which we believe only partially drives future changes in rates. We present broad evidence below that several other factors, in addition to GDP, support trough pricing levels remaining elevated for a prolonged period of time.

**ii. Geopolitical Environment**

28. Our first important consideration is the geopolitical situation in the middle east and the war in the Ukraine / Russia, which have driven the distances navigated by ships to much longer routes.<sup>12</sup> Also, a large portion of ships currently avoid the Red Sea and Suez Canal routings to avoid the Houthis and the ongoing Israel / Gaza conflict and instead sail through the Cape of Good Horn with significant increase in ton-mileage.<sup>13</sup> The most recent example of over one hundred attacks since November 2023 to vessels, which illustrates the dramatic risk posed by the Houthis, was the explosion of a Greek flagged tanker in the Red Sea on August 29, 2024.<sup>14</sup>

29. Additionally, routes coming out of Russia into Europe have been dramatically reduced due to the Ukraine / Russia war.<sup>15</sup> The Russian Baltic crude is now estimated to travel three times longer to China and India.<sup>16</sup> The European Union has

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<sup>12</sup> PC\_PLAN\_000074799-PC\_PLAN\_000074821 (Pyxis Tankers Second Quarter Earnings Presentation (Aug. 20, 2024) at 7-9); PC\_PLAN\_000074765-PC\_PLAN\_000074798 (Navios Maritime Partners LP Second Quarter Earnings Presentation (Aug. 20, 2024) at 19, 22); PC\_PLAN\_000074864-PC\_PLAN\_000074866 (Hellenic Shipping News, Tanker Market Overview and Outlook).

<sup>13</sup> *Id.*

<sup>14</sup> Jon Gambrell, Houthi video shows the Yemeni rebels planted bombs on tanker now threatening Red Sea oil spill, Associated Press, Aug. 30, 2024 (<https://apnews.com/article/red-sea-attack-sounion-yemen-houthi-rebels-israel-hamas-war-76c68f18a984d18905ce7c84e5cabe0c>) (last visited Aug. 31, 2024).

<sup>15</sup> See n.12 *supra*.

<sup>16</sup> *Id.*

adjusted by importing product from the United States, Brazil, India and the Middle East.<sup>17</sup>

30. An additional permanent driver of higher ton-mileage is the increase in refining capacity in Asia and the Middle East.<sup>18</sup> These products will have to permanently travel longer distances to reach the end consumer in places like the European Union.

31. Our base assumption is that these geopolitical factors will persist over the next several years pushing product tanker ton mileage up which has had the largest effect on rates over the last two years.

**iii. Inflation**

32. Veraros's analysis only considers historical freight rates going back to 2001. *See* Veraros Report at 9 (Figure 2).

33. We believe that by limiting his frame of reference to this time period, Veraros fails to account for the current inflationary environment, which has not been seen since the early 1980s. The recent return of inflation has driven up the prices of vessel newbuilds as well as operating costs,<sup>19</sup> which we do not expect to necessarily revert to the mean in the future. In fact, according to Greek shipbroker Xclusiv and BIMCO (Baltic and International Maritime Counsel), newbuild tanker prices have increased over 50% since 2020 while prices only increased by 2.3% between 2020 and

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<sup>17</sup> *Id.*

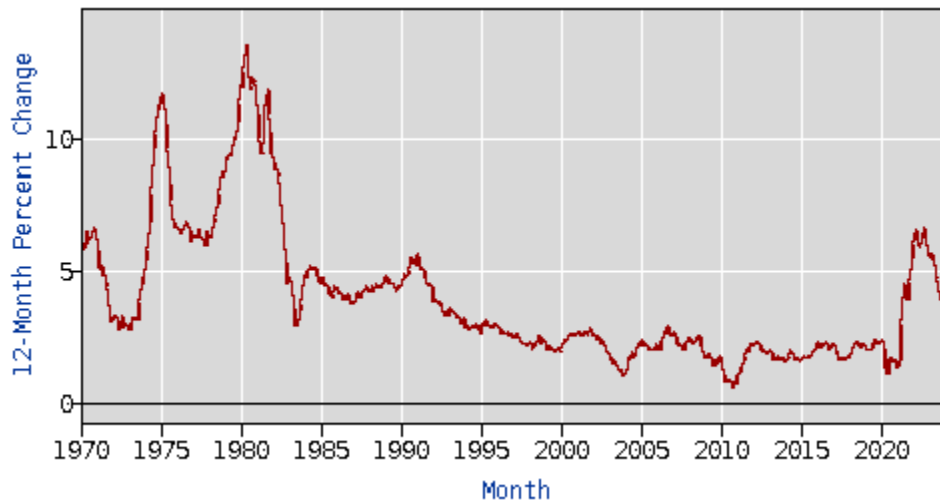
<sup>18</sup> *Id.*

<sup>19</sup> PC\_PLAN\_000074867-PC\_PLAN\_000074872 (*Tanker Prices Are Soaring, and Shipyards Stand to Benefit*, The Maritime Executive, Feb. 28, 2024 (<https://maritime-executive.com/article/tanker-prices-are-soaring-and-shipyards-stand-to-benefit>) (last visited Aug. 31, 2024)); PC\_PLAN\_000074847-PC\_PLAN\_000074851 (*Shipbuilding Prices Climb to Highest Level in 16 Years*, MarineLink, June 12, 2024).

2024.<sup>20</sup> The recent price increases are partly due to demand for vessels, but it is also important to note that during the 2010 to 2024 period, wages in China, where a large part of vessels are built, has increased threefold and the increase in global inflation has been dramatic.

34. We reviewed the inflation rate since the early 1970s, which suggests that the recent increase in shipping rates will need to stay higher for longer to justify market participants chartering their vessels for a profit. We also note from Figure 4 below that since the early 1970s, we have not had any events of deflation, so we should not expect prices of newbuilds and operations costs to go down.

**Figure 4: US Annual Inflation Change (%) - 1970-2024**



Source: US Bureau of Labor Statistics<sup>21</sup>

#### **iv. Newbuilds and Scraping**

35. Veraros refers to Clarksons to suggest that the current orderbook for vessels is 20% of the fleet. Veraros Report at 10. We believe Veraros' numbers (i) refer

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<sup>20</sup> See n.19 *supra*.

<sup>21</sup> PC\_PLAN\_000074596 (BLS Inflation Data).

to the overall product tanker market and not to the MR2 type vessels of the Debtor, (ii) fail to account for the prolonged schedule and slippage of delivery, and (iii) fail to account for the negative effect of scrapping of older vessels on overall supply. In sum, we believe that the Veraros Report overstates the impact of newbuilds on the market.

36. In fact, we found that according to Drewry's, there are 274 newbuilds under order with a current fleet of 1,707 MR2 vessels for a total of 16.1% orderbook.<sup>22</sup> A total of 104 vessels are expected to be delivered by the end of 2025 and another 170 thereafter. Importantly, in 2023, 9.7% of the orderbook slipped (*i.e.*, was not delivered) and only 11 MR2 tankers have been delivered year to date in 2024.<sup>23</sup>

37. The orderbook is only one side of the supply/demand equation. A total of 13.5% of the fleet is over 20 years old.<sup>24</sup> Based on Veraros's view that MR2 vessels would be difficult to operate after 20 years, this would suggest that 13.5% of the vessels will need to be scrapped over the next few years, which would partially offset new supply entering the MR2 tanker market.

**v. Time Charter vs. Spot Markets**

38. Finally, Veraros uses five-year charters to explain that rates will go down over the next several years. *See* Veraros Report at 11-12. Time charters allow a vessel owner to lock in rates for the next several years. In order to guarantee a rate for five years, an owner gives up the potential upside while ensuring there is no downside on rates (subject to counterparty credit risk). This downside protection comes at a discount

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<sup>22</sup> *See* PC\_PLAN\_000074765-PC\_PLAN\_000074798 (Navios Maritime Partners LP Second Quarter Earnings Presentation (Aug. 20, 2024) at 24); *see also* PC\_PLAN\_000074852-PC\_PLAN\_000074857 (Lloyd's List Suezmax and Aframax segments lead tanker newbuildings as orderbook surges (Aug. 23, 2024)).

<sup>23</sup> *Id.*

<sup>24</sup> PC\_PLAN\_000074799-PC\_PLAN\_000074821 (Pyxis Tankers Second Quarter Earnings Presentation (Aug. 20, 2024) at 9 (citing Drewry)).

to future rates. Moreover, the longer the duration of the time charter, the more uncertain the rates will be and the higher discount is expected to be applied to the rates.

39. In my opinion, time charters are not a reliable predictor of future rates. If the Debtors in fact thought such time charter rates were an accurate measure of future rates, we believe that all four vessels owned by the Debtors would be locked into long term time charters. The Debtors, however, only have two of the four SME Vessels on time charter, and those vessels are on charter for short periods of time, specifically through early 2026 (Kastos expiration 1/12/2026; Fourni expiration 2/15/2026). The Debtors have two of their vessels in the spot market in order to take advantage of potentially better spot rates that they likely expect will still be available over the next several years.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: September 3, 2024  
New York, New York

/s/Alex Zyngier  
Alex Zyngier  
Founder and Managing Partner

## **Appendix 1**

### **Additional Sources and Materials Considered**

- *Declaration of Alex Zyngier in Support of the Petitioning Creditors' Chapter 11 Plans*, dated August 26, 2024.
- *Expert Report of Nikolaos Veraros*, dated August 26, 2024.
- Company Q1 24 financials and\_Valuation.xls (EletsonBK142739).
- ECF 839, Exhibit 8 (Debtors' Valuation Analysis).
- Vessels Value ship value estimates as of 8/29/24.
- *Second Quarter Ended June 30, 2024 Results*, PYXIS Tankers, Aug. 12, 2024 ([https://irp.cdn-website.com/fedb857f/files/uploaded/Pyxis\\_Q2\\_2024\\_Deck\\_-\\_08092024\\_Final\\_.pdf](https://irp.cdn-website.com/fedb857f/files/uploaded/Pyxis_Q2_2024_Deck_-_08092024_Final_.pdf)) (last visited Aug. 31, 2024).
- Pyxis Tankers Second Quarter earnings presentation pages 7, 8 and 9, August 20, 2024. Navios Maritime
- Hellenic Shipping News, Tanker Market Overview and Outlook (Aug. 30, 2024).
- Jon Gambrell, *Houthi video shows the Yemeni rebels planted bombs on tanker now threatening Red Sea oil spill*, Associated Press, Aug. 30, 2024 (<https://apnews.com/article/red-sea-attack-sounion-yemen-houthi-rebels-israel-hamas-war-76c68f18a984d18905ce7c84e5cabe0c>) (last visited Aug. 31, 2024)
- *Tanker Prices Are Soaring, and Shipyards Stand to Benefit*, The Maritime Executive, Feb. 28, 2024 (<https://maritime-executive.com/article/tanker-prices-are-soaring-and-shipyards-stand-to-benefit>) (last visited Aug. 31, 2024).
- *Shipbuilding Prices Climb to Highest Level in 16 Years*, MarineLink, June 12, 2024 (<https://www.marinelink.com/news/shipbuilding-prices-climb-highest-level-514441>) (last visited Aug. 31, 2024).
- Navios Maritime Partners LP Second Quarter Earnings Presentation (Aug. 20, 2024).
- Lloyd's List Suezmax and Aframax segments lead tanker newbuildings as orderbook surges (Aug. 23, 2024).
- Aswath Damodaran, Private Company Valuation, NYU, pages 180-181.



- PC\_PLAN\_000052532 - PC\_PLAN\_000074595.
- PC\_PLAN\_000074596 - PC\_PLAN\_000074878.

**EXHIBIT 1**

**Valuation Analysis (May 8, 2024)**

**Eletson SME Summary Composite Valuation<sup>1</sup>**

<u>Method:</u>	<u>Implied SME Equity Value</u>		<u>Weighting</u>	<u>Range of Implied Equity Values</u>		
	<u>Low</u>	<u>High</u>		<u>Low</u>	<u>Midpoint</u>	<u>High</u>
Discounted Cash Flow <sup>2</sup>	\$52.7	\$52.7	10%	\$5.3	\$5.3	\$5.3
Comparable Market Multiple <sup>3</sup>	\$47.2	\$64.1	45%	\$21.2	\$25.1	\$28.9
Net Asset Valuation <sup>4</sup>	\$54.0	\$64.8	45%	\$24.3	\$26.7	\$29.2
Consolidated weighted implied SME equity value				\$50.8	\$57.1	\$63.3
Plus: Cash at Emergence <sup>5</sup>				\$5.0	\$5.0	\$5.0
<b>Total weighted implied SME equity value</b>				<b>\$55.8</b>	<b>\$62.1</b>	<b>\$68.3</b>
Plus: Outstanding SME Leases				\$48.1	\$48.1	\$48.1
<b>Implied SME Enterprise Value at Emergence</b>				<b>\$103.9</b>	<b>\$110.2</b>	<b>\$116.4</b>

Notes:

1) as of 5/14/2024

2) as of 5/14/2024

3) as of 5/5/2024

4) as of 5/7/2024

5) Per Petitioning Creditor Plan

6) Docket #687 Notice of Filing Valuation Analysis

DCF Model Assumptions:

Spot Rate Assumptions <sup>2</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kastos				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kimolos				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kinaros				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564

TCE Rate Assumptions <sup>3</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kastos				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kimolos				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kinaros				0	0	0	0	0	0	0	0	0	0	0	0	0	0

Vessel Opex Assumptions <sup>4</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				8,086	8,248	8,413	8,581	8,753	8,928	9,107	9,289	9,475	9,664	9,857	10,054	10,256	10,461
Kastos				8,078	8,239	8,404	8,572	8,744	8,919	9,097	9,279	9,465	9,654	9,847	10,044	10,245	10,450
Kimolos				8,107	8,269	8,434	8,603	8,775	8,950	9,129	9,312	9,498	9,688	9,882	10,079	10,281	10,487
Kinaros				9,586	9,778	9,973	10,173	10,376	10,584	10,795	11,011	11,231	11,456	11,685	11,919	12,157	12,400

SME Discounted Cash Flow Valuation

(in millions USD)	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
SME Revenue				31.1	31.6	32.1	32.6	33.1	33.6	34.1	34.7	35.2	35.7	36.3	36.9	37.3	37.7
Vessel Operating Expenses				12.4	12.6	12.9	13.1	13.4	13.6	13.9	14.2	14.5	14.8	15.1	15.4	15.7	16.0
Management Expenses <sup>5</sup>				1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2
Corporate G&A (less management expenses) <sup>6</sup>				4.5	4.6	4.6	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
Ongoing Expenses from Chapter 11 proceedings <sup>7</sup>																	
Corporate EBITDA				13.3	13.4	13.5	13.8	14.0	14.2	14.4	14.7	14.9	15.1	15.4	15.6	15.7	15.8
Free Cash Flow																	
EBITDA				13.3	13.4	13.5	13.8	14.0	14.2	14.4	14.7	14.9	15.1	15.4	15.6	15.7	15.8
Less: Interest Expense <sup>8</sup>				3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	2.9	2.2	1.4	0.7	0.0
Less: Capex <sup>6</sup>				3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	1.7	1.7	1.7	1.7	1.7
Free Cash Flow				6.3	6.4	6.6	6.8	6.9	7.2	7.4	7.6	7.8	10.5	11.5	12.4	13.3	14.1

Present Value of Un-levered Cash Flows

Weighted Average Cost of Capital <sup>9</sup>	10.4%																
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
PV of FCF				7.0	6.4	5.9	5.5	5.0	4.7	4.3	4.0	3.7	3.9	3.6	3.3	3.0	2.8
PV of Salvage CF																	6.0
Sum of PV of CF	100.8																
Less: Debt	(48.1)																
SME Equity Value	52.7																

Notes:

- 1) as of 5/14/2024 (original analysis)
- 2) JP Morgan Research - Oil Tanker Monthly 03/21/2024
- 3) see Fourni (BK126790) and Kastos (BK126837) charter agreements
- 4) see 2024 Budget
- 5) see 4.12 Summary of Corp Claims against Gas
- 6) see Docket 409 (Second Amended 2015.3 report)
- 7) per estimates of counsel
- 8) Bloomberg Data (financings)
- 9) Bloomberg (Equity Premium)

### Competitor Trading Valuations<sup>1</sup>

Company	Market Capitalization	Enterprise Valuation	EV/ LTM EBITDA	EV/EBITDA FY1	EV/EBITDA FY2
SCORPIO TANKERS INC	3,572.4	4,687.3	5.6x	5.1x	5.6x
FRONTLINE PLC	5,117.2	7,958.7	9.3x	6.5x	5.8x
TSAKOS ENERGY NAVIGATION LTD	719.1	1,871.9	4.3x	3.5x	3.4x
NORDIC AMERICAN TANKERS LTD	770.2	1,014.8	6.1x	5.4x	4.7x
SFL CORP LTD	1,725.5	3,872.3	9.7x	7.7x	8.6x
CAPITAL PRODUCT PARTNERS LP	854.0	2,284.8	10.1x	7.7x	7.0x
TEEKAY TANKERS LTD-CLASS A	1,914.2	1,779.6	3.1x	3.4x	3.6x
ARDMORE SHIPPING CORP	675.4	754.3	5.2x	4.6x	5.5x
<b>Average</b>			<b>6.7x</b>	<b>5.5x</b>	<b>5.5x</b>

SME 2025 Estimated EBITDA (excluding Chapter 11 costs)

\$21.7

	Low	Base	High
SME Public Competitor Multiples	5.0x	5.50x	6.0x
SME Implied Enterprise Value	\$108.6	\$119.5	\$130.3
Less: SME Outstanding Leases <sup>2</sup>	(\$48.1)	(\$48.1)	(\$48.1)
SME Implied Public Equity Market Value	\$60.5	\$71.4	\$82.2
Less: Private Company Discount <sup>3</sup>	22%	22%	22%
<b>SME Implied Private Company Equity Value</b>	<b>\$47.2</b>	<b>\$55.7</b>	<b>\$64.1</b>

### Notes:

1) Bloomberg, LLP (5/5/2024)

2) Docket No: 687 Second Amended Periodic Filing 2015.3

3) Aswath Damodaran, Private Company Valuation, NYU, pages 180-181

**SME Net Asset Valuation<sup>1</sup>**

Vessel	Vessel Value <sup>2</sup>	Low	Base	High	Low	Base	High
		Value Adjustment			Implied Sales Proceeds		
Fourni	26.6	-5%	0%	5%	25.2	26.6	27.9
Kastos	25.9	-5%	0%	5%	24.6	25.9	27.2
Kimolos	28.1	-5%	0%	5%	26.7	28.1	29.5
Kinaros	27.0	-5%	0%	5%	25.7	27.0	28.4
Consolidated Implied Proceeds					102.1	107.5	112.9
Less: OCM Leases <sup>3</sup>					(48.1)	(48.1)	(48.1)
Net Asset Equity Value					<b>54.0</b>	<b>59.4</b>	<b>64.8</b>

**Notes:**

1) as of 5/14/2024

2) VesselsValue.com (5/7/2024)

3) Docket No: 687 Second Amended Periodic Filing 2015.3

**EXHIBIT 2**

**Valuation Analysis (August 31, 2024)**

**Updated SME Summary Composite Valuation<sup>1</sup> (includes updated market data as of August 29-30 and OCM lease obligations as of 6/30)**

<u>Method:</u>	<u>Implied SME Equity Value</u>			<u>Range of Implied Equity Values</u>		
	Low	High	Weighting	Low	Midpoint	High
Discounted Cash Flow <sup>2</sup>	\$52.7	\$52.7	10%	\$5.3	\$5.3	\$5.3
Comparable Market Multiple <sup>3</sup>	\$53.7	\$70.6	45%	\$24.2	\$28.0	\$31.8
Net Asset Valuation <sup>4</sup>	\$68.7	\$80.7	45%	\$30.9	\$33.6	\$36.3
Consolidated weighted implied SME equity value				\$60.4	\$66.9	\$73.4
Plus: Cash at Emergence <sup>5</sup>				\$5.0	\$5.0	\$5.0
<b>Total weighted implied SME equity value</b>				<b>\$65.4</b>	<b>\$71.9</b>	<b>\$78.4</b>
Plus: Outstanding SME Leases <sup>6</sup>				\$45.2	\$45.2	\$45.2
<b>Implied SME Enterprise Value at Emergence</b>				<b>\$110.6</b>	<b>\$117.1</b>	<b>\$123.6</b>

Notes:

1) as of 8/31/2024

2) as of 5/14/2024

3) as of 8/30/2024

4) as of 8/29/2024

5) Per Petitioning Creditor Plan

6) Docket #962 Third Periodic Report 2015.3



DCF Model Assumptions:

Spot Rate Assumptions <sup>2</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kastos				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kimolos				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564
Kinaros				21,750	22,087	22,429	22,777	23,130	23,489	23,853	24,222	24,598	24,979	25,366	25,760	26,159	26,564

TCE Rate Assumptions <sup>3</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kastos				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kimolos				0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kinaros				0	0	0	0	0	0	0	0	0	0	0	0	0	0

Vessel Opex Assumptions <sup>4</sup>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Fourni				8,086	8,248	8,413	8,581	8,753	8,928	9,107	9,289	9,475	9,664	9,857	10,054	10,256	10,461
Kastos				8,078	8,239	8,404	8,572	8,744	8,919	9,097	9,279	9,465	9,654	9,847	10,044	10,245	10,450
Kimolos				8,107	8,269	8,434	8,603	8,775	8,950	9,129	9,312	9,498	9,688	9,882	10,079	10,281	10,487
Kinaros				9,586	9,778	9,973	10,173	10,376	10,584	10,795	11,011	11,231	11,456	11,685	11,919	12,157	12,400

SME Discounted Cash Flow Valuation

(in millions USD)	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
SME Revenue				31.1	31.6	32.1	32.6	33.1	33.6	34.1	34.7	35.2	35.7	36.3	36.9	37.3	37.7
Vessel Operating Expenses				12.4	12.6	12.9	13.1	13.4	13.6	13.9	14.2	14.5	14.8	15.1	15.4	15.7	16.0
Management Expenses <sup>5</sup>				1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2
Corporate G&A (less management expenses) <sup>6</sup>				4.5	4.6	4.6	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
Ongoing Expenses from Chapter 11 proceedings <sup>7</sup>																	
Corporate EBITDA				13.3	13.4	13.5	13.8	14.0	14.2	14.4	14.7	14.9	15.1	15.4	15.6	15.7	15.8
Free Cash Flow																	
EBITDA				13.3	13.4	13.5	13.8	14.0	14.2	14.4	14.7	14.9	15.1	15.4	15.6	15.7	15.8
Less: Interest Expense <sup>8</sup>				3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	2.9	2.2	1.4	0.7	0.0
Less: Capex <sup>6</sup>				3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	1.7	1.7	1.7	1.7	1.7
Free Cash Flow				6.3	6.4	6.6	6.8	6.9	7.2	7.4	7.6	7.8	10.5	11.5	12.4	13.3	14.1

Present Value of Un-levered Cash Flows

Weighted Average Cost of Capital <sup>9</sup>	10.4%																
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
PV of FCF				7.0	6.4	5.9	5.5	5.0	4.7	4.3	4.0	3.7	3.9	3.6	3.3	3.0	2.8
PV of Salvage CF																	6.0
Sum of PV of CF	100.8																
Less: Debt	(48.1)																
SME Equity Value	52.7																

Notes:

- 1) as of 5/14/2024 (original analysis)
- 2) JP Morgan Research - Oil Tanker Monthly 03/21/2024
- 3) see Fourni (BK126790) and Kastos (BK126837) charter agreements
- 4) see 2024 Budget
- 5) see 4.12 Summary of Corp Claims against Gas
- 6) see Docket 409 (Second Amended 2015.3 report)
- 7) per estimates of counsel
- 8) Bloomberg Data (financings)
- 9) Bloomberg (Equity Premium)

**Updated Competitor Trading Valuations<sup>1</sup> (Updated for market capitalization, enterprise value and EV/EBITDA multiples as of 08/30 and OCM lease obligations as of 06/30)**

<b>Company</b>	<b>Market Capitalization</b>	<b>Enterprise Valuation</b>	<b>EV/ LTM EBITDA</b>	<b>EV/EBITDA FY1</b>	<b>EV/EBITDA FY2</b>
SCORPIO TANKERS INC	3,438.3	4,145.5	4.86x	4.57x	5.36x
FRONTLINE PLC	4,863.5	8,122.0	8.93x	6.59x	5.71x
TSAKOS ENERGY NAVIGATION LTD	666.7	1,886.4	4.74x	4.39x	3.78x
NORDIC AMERICAN TANKERS LTD	702.9	931.6	7.03x	5.69x	4.73x
SFL CORP LTD	1,563.9	3,881.7	8.13x	7.82x	8.15x
CAPITAL CLEAN ENERGY CARRIER	884.1	3,207.9	14.48x	10.14x	9.30x
TEEKAY TANKERS LTD-CLASS A	1,765.6	1,426.8	3.16x	2.92x	3.24x
ARDMORE SHIPPING CORP	713.0	753.3	4.79x	4.11x	5.33x
<b>Average</b>			<b>7.02x</b>	<b>5.78x</b>	<b>5.70x</b>

SME 2025 Estimated EBITDA (excluding Chapter 11 costs)

21.7

	<u>Low</u>	<u>Base</u>	<u>High</u>
SME Public Competitor Multiples	<b>5.25x</b>	<b>5.75x</b>	<b>6.25x</b>
SME Implied Enterprise Value	\$114.0	\$124.9	\$135.8
Less: SME Outstanding Leases <sup>2</sup>	(45.2)	(45.2)	(45.2)
SME Implied Public Equity Market Value	68.8	79.7	90.6
Less: Private Company Discount <sup>3</sup>	22.00%	22.00%	22.00%
<b>SME Implied Private Company Equity Value</b>	<b>\$53.7</b>	<b>\$62.2</b>	<b>\$70.6</b>

Notes:

- 1) Bloomberg, LLP (8/30/2024)
- 2) Docket #962 Third Periodic Report 2015.3
- 3) Aswath Damodaran, Private Company Valuation, NYU, pages 180-181

**Updated SME Net Asset Valuation<sup>1</sup> (Updated for Vessels Value estimates as of 08/29 and OCM lease obligations as of 06/30)**

Vessel	Vessel Value <sup>2</sup>	Low	Base	High	Low	Base	High
		Value Adjustment			Implied Sale Proceeds		
Fourni	29.7	-5%	0%	5%	28.2	29.7	31.2
Kastos	29.0	-5%	0%	5%	27.6	29.0	30.5
Kimolos	31.2	-5%	0%	5%	29.6	31.2	32.7
Kinaros	30.0	-5%	0%	5%	28.5	30.0	31.5
<b>Total Liquidation Value Before OCM Leases</b>					<b>113.9</b>	<b>119.9</b>	<b>125.9</b>
Less: OCM Leases <sup>3</sup>					<b>(45.2)</b>	<b>(45.2)</b>	<b>(45.2)</b>
<b>Net Asset Equity Value</b>					<b>68.7</b>	<b>74.7</b>	<b>80.7</b>

**Notes:**

1) as of 8/29/2024

2) VesselsValue.com (8/29/2024)

3) Docket #962 Third Periodic Report 2015.3