Docket #0475 Date Filed: 06/23/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
F21 OPCO, LLC, *et al.*,[1]	Case No. 25-10469 (MFW)
Debtors.	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE DEBTORS' JOINT AMENDED PLAN PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

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F21 OpCo, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, "**Forever 21**,"the "**Debtors**," or the "**Company**") in the above-captioned cases (these "**Chapter 11 Cases**"), respectfully submit this memorandum of law in support of confirmation of the *Debtors' Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 472] (as modified, amended, or supplemented from time to time in accordance with its terms, the "**Plan**").[1] The Debtors refer the Court to the Plan, the Disclosure Statement, the Disclosure Statement Order, the Plan Supplement, the Confirmation Declarations,[2] any other declarations that may be proffered or submitted in connection with the Confirmation Hearing, as well as the record of these Chapter 11 Cases for an overview of the Debtors' business and other relevant facts that may bear on the confirmation of the Plan. In support of confirmation of the Plan, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. In a sound exercise of their fiduciary duties, the Debtors commenced these Chapter 11 Cases to, among other things, maximize value for their estates by implementing an orderly and efficient wind down of their brick-and-mortar retail operations in the United States (such sales, the "**Store Closing Sales**") and, simultaneously therewith, prosecute and confirm a chapter 11 plan of liquidation that was, as discussed below, negotiated prepetition. At the same time, the Debtors continued marketing their business to third parties potentially interested in

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] Certain facts and circumstances supporting the confirmation of the Plan are set forth in, among other things, the *Declaration of Michael Brown in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 473] (the "**Brown Declaration**"), the *Declaration of Scott Vogel in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 474] (the "**Vogel Declaration**"), and the *Declaration of P. Joe Morrow IV with Respect to the Tabulation of Votes on the Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 465] (the "**Voting Declaration**" and, collectively with the Brown Declaration and the Vogel Declaration, the "**Confirmation Declarations**"), each filed contemporaneously herewith and incorporated herein by reference.

purchasing all or a subset of the Company or its assets on a going concern basis (such marketing and sale process, the "**Going Concern Sale Process**"). As always contemplated, the Store Closing Sales concluded no later than April 30, 2025, and with the Going Concern Sale Process having not produced any viable transactions, the Debtors have been winding down their operations in anticipation of confirming the Plan on the timeline negotiated with their largest constituents.

2. Now that the Store Closing Sales and Going Concern Sale Process have run their course, the Debtors seek an orderly exit from these Chapter 11 Cases through the Plan. The Plan reflects the terms of the Plan Support Agreement, as well as the extensive arm's-length negotiations among the Debtors, the Debtors' secured lenders, the SPARC Parties, the Committee, and other key stakeholders, which culminated in the Committee Settlement and the SPARC Settlement. The Plan provides a full recovery for holders of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims and Other Priority Claims; provides a meaningful recovery for Holders of Allowed General Unsecured Claims that is significantly greater than their potential recovery in a liquidation; and enjoys the support of the Consenting Creditors, the SPARC Parties and the Committee. *See Statement of Official Committee of Unsecured Creditors in Support of Debtors' Amended Joint Plan* [Docket No. 430] (the "**Committee Support Letter**"). Additionally, the Debtors have reached a consensual resolution of the one formal objection to confirmation of the Plan filed by the Texas Taxing Authorities through revisions to the proposed Confirmation Order. As demonstrated by the overwhelming creditor support for the Plan, discussed below, and the lack of any unresolved objections thereto, the Plan represents the best possible outcome for these Chapter 11 Cases, and should be confirmed.

3. For the reasons set forth herein and in the Confirmation Declarations, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code

and, the Debtors submit, should be confirmed. A proposed form of Confirmation Order was initially filed on June 16, 2025, and incorporated various resolutions reached with certain interested parties. A revised form of proposed Confirmation Order is being filed concurrently with this memorandum and reflects additional resolutions reached with certain interested parties.

RELEVANT BACKGROUND

I. THE PLAN SUPPORT AGREEMENT, SPARC SETTLEMENT, CHAPTER 11 PLAN AND COMMITTEE SETTLEMENT

4. On March 16, 2025, prior to the commencement of these Chapter 11 Cases, the Debtors and the Consenting Creditors entered into the Plan Support Agreement. The Plan Support Agreement sets forth the material terms of the initial Plan and, by virtue of the Plan Support Agreement, each Consenting Creditor agreed to support, and vote in favor of, the Plan Support Agreement. The Plan Support Agreement was heavily negotiated, allowed the Debtors to conduct the Store Closing Sales and remain administratively solvent, and provided the Debtors with a defined path to ensure the timely and efficient wind down of their estates and bring finality to these Chapter 11 Cases and their stakeholders.

5. On March 28, 2025, the Debtors filed the initial Plan [Docket No. 123] and Disclosure Statement [Docket No. 124].[3] As further described in the Plan, the Disclosure Statement and the Vogel Declaration, prior to filing the Plan, the Debtors and the SPARC Parties entered into the SPARC Settlement at the conclusion of the independent Board's investigation into, among other things, potential claims or causes of action against the SPARC Parties and other insiders. After reviewing extensive documentation and conducting other thorough due diligence

[3] The Plan and Disclosure Statement were subsequently revised. *See* Docket Nos. 311 and 312. On May 12, 2025, the Court entered the Disclosure Statement Order. On May 14, 2025, the Debtors filed solicitation versions of the Plan [Docket No. 343] and the Disclosure Statement [Docket No. 344]. These versions were distributed with the Solicitation Packages (as defined below) on May 19, 2025. See Certificate of Service [Docket No. 399] at ¶ 5; Voting Decl. at ¶ 5

with respect to any hypothetical estate claims or causes of action against the Debtors' insiders, the Board determined that the Debtors did not have any colorable or valuable claims or causes of action against the Debtors' insiders, including the SPARC Parties, relating to any prepetition conduct of such parties. Notwithstanding this conclusion, the Debtors, at the instruction of the Board, engaged in good faith, arms-length negotiation with the SPARC Parties with respect to potential releases from the Debtors, which resulted in the SPARC Settlement memorialized in the initial Plan. Specifically, in exchange for the releases contemplated in the Plan, SPARC Group LLC agreed to unconditionally waive its right to any recovery on account of 75% of the SPARC Payable (approximately $323 million) upon the Effective Date, thereby significantly reducing the general unsecured claims pool and improving recoveries for Holders of Allowed General Unsecured Claims.

6. Once the Committee was formed, the Committee and its advisors initiated their own investigation into potential estate claims and causes of action, including with respect to the SPARC Parties. Throughout this process, the Debtors, the Committee and the SPARC Parties continued to discuss a potential global resolution for these Chapter 11 Cases, and after multiple months and an exhaustive inquiry by the Committee and its advisors, as a result of those good-faith negotiations, and the Committee's conclusion that, to the extent that there are any colorable claims against the SPARC Parties or the Debtors' other insiders, such claims would not generate additional value for the Debtors' estates or unsecured creditors beyond what is provided under the Plan, the Debtors, the ABL Agent (on behalf of the ABL Lenders), the Committee and the SPARC Parties reached a global settlement that, among other things, materially improves the recovery for Holders of Allowed General Unsecured Claims under the Plan. The Committee Settlement is

memorialized in the amended Plan that the Debtors filed on June 10, 2025 [Docket No. 426] (the "**Amended Plan**").

7. Specifically, the Committee Settlement set forth in the Amended Plan revises the SPARC Settlement and provides that: (1) the SPARC Payable shall be deemed Allowed as a General Unsecured Claim in the amount of not less than approximately $323,000,000; (2) on the Effective Date of the Plan, the SPARC Parties shall waive the right to recover from the Debtors or Distribution Co. as to one hundred percent (100%) of the SPARC Payable; and (3) the SPARC Parties shall be Released Parties under the Plan and receive the releases specified in Article VIII of the Plan. Moreover, the Amended Plan, as discussed immediately below, contemplates that each Holder of an Allowed General Unsecured Claim will receive its pro rata share of 70% of the Net Proceeds, rather than the maximum 6% initially contemplated by the initial Plan, as well as 70% of certain other buckets of recovery, including potentially valuable insurance proceeds arising out of the estates' Cyber Claims.

8. The Amended Plan resolves all potential Committee objections to confirmation of the Plan. Accordingly, the Committee subsequently filed the Committee Support Letter, which was provided to all Holders of General Unsecured Claims shortly before the Voting Deadline.

9. On June 9, June 10 and June 13, 2025, the Debtors filed initial and amended versions of the Plan Supplement [Docket Nos. 420, 427 & 452]. The Plan Supplement, in the aggregate, includes the following exhibits: (a) the identity of the Plan Administrator; (b) the Plan Administration Agreement; (c) the Schedule of Assumed Executory Contracts and Unexpired Leases; (d) the Schedule of Retained Causes of Action; and (e) the identity of the Distribution Co. entities.

II. SOLICITATION AND VOTING PROCESS

A. Plan Solicitation

10. The Disclosure Statement Order (a) established certain solicitation and voting procedures with respect to the Plan (the "**Solicitation and Voting Procedures**"); (b) established notice and objection procedures with respect to the Plan; (c) established June 16, 2025, as the Voting Deadline; (d) established June 16, 2025, as the date by which to file objections to confirmation of the Plan (the "**Objection Deadline**"); and (e) scheduled the Confirmation Hearing for June 24, 2025 at 11:30 a.m. (prevailing Eastern Time).

11. The Debtors were not required to solicit votes from Holders of Claims in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Equity Interests) (such Classes, collectively, the "**Non-Voting Classes**") because the Non-Voting Classes are either unimpaired under the Plan and presumed to accept the Plan, or receive no distributions under the Plan and accordingly, are deemed to reject the Plan. Instead, in accordance with the Disclosure Statement Order, the Debtors' claims and solicitation agent, Kurtzman Carson Consultants, LLC dba Verita Global ("**Solicitation Agent**"), distributed to Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 9 (Existing Equity Interests) a *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan* and *Notice of Non-Voting Status to Holders of Impaired Interests Deemed to Reject the Plan*, as applicable. Solicitation Aff. at ¶¶14–15. Pursuant to paragraph 20 of the Disclosure Statement Order, the Debtors were not required to provide Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) with a Solicitation Package or any other type of notice in connection with solicitation or Plan confirmation.

B. Voting Results

12. In accordance with the Disclosure Statement Order, on May 19, 2025, the Solicitation Agent distributed copies of the Solicitation and Voting Procedures, the applicable ballot with voting instructions (the "**Ballot**"), a cover letter from the Debtors, an initial letter from the Committee indicating that the Committee, at that time, did not support the Plan, the Disclosure Statement, and exhibits thereto, including the Plan, the Disclosure Statement Order, and the notice of the Confirmation Hearing (the "**Solicitation Package**"), to Holders of Claims in Class 3 (ABL Claims), Class 4 (Term Loan Claims), Class 5 (Subordinated Loan Claims), and Class 6 (General Unsecured Claims) (collectively, the "**Voting Classes**"). Solicitation Aff. at ¶¶9–13. The Solicitation Agent was also designated to tabulate which Holders of Claims elected to opt into the Third-Party Releases, by checking the appropriate box on their Ballot.

13. All valid Ballots cast by Holders entitled to vote in the Voting Classes and received by the Solicitation Agent on or before the Voting Deadline were tabulated pursuant to the Solicitation and Voting Procedures. Voting Decl. at ¶ 12. The Voting Classes overwhelmingly voted to accept the Plan. *Id.* at Ex. A. Indeed, 98.12% voting Holders in Class 6 (General Unsecured Claims) voted in favor of the Plan, constituting 91.57% in total amount of General Unsecured Claims. Because the Plan meets the requirements of section 1129(b) of the Bankruptcy Code, as further described below, the Debtors respectfully submit that the Court should confirm the Plan notwithstanding the Classes that were deemed to reject the Plan.

14. Finally, as reflected in the Voting Decl., 236 parties opted into the Third-Party Releases and, as a result thereof, will receive a mutual release from the Debtors.

ARGUMENT

I. THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION

A. The Amended Plan Complies with the Applicable Provisions of the Bankruptcy Code as Required by Section 1129(a)(1) of the Bankruptcy Code

15. To obtain confirmation of the Plan, the Debtors must demonstrate that the Amended Plan satisfies the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006) ("[T]he debtor's standard of proof that the requirements of § 1129 are satisfied is preponderance of the evidence."). The principal goal of this provision is to ensure compliance with the sections of the Bankruptcy Code governing classification of claims and interests and the contents of a plan of liquidation.[4] Through filings with the Court, including the Confirmation Declarations, and any evidence that may be adduced at the Confirmation Hearing, the Debtors will demonstrate that the Amended Plan complies with all relevant sections of the Bankruptcy Code and the Bankruptcy Rules. In particular, the Amended Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code. Each such requirement is addressed individually below. As a result, the Amended Plan should be confirmed.

1. *The Amended Plan Satisfies the Classification Requirements of Section 1122(a) of the Bankruptcy Code*

16. The Amended Plan's classification of Claims and Interests complies with section 1122(a) of the Bankruptcy Code, which provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims

[4] *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977); *see also In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008) (same); *In re S&W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was most directly aimed at were [s]ections 1122 and 1123.").

or interests of such class." 11 U.S.C. § 1122(a). Because claims need only be "substantially" similar to be placed in the same class, plan proponents have broad discretion in determining the classification of claims and interests. *See John Hancock Mut. Life Ins. Co.* v. *Route 37 Bus. Park Assocs.*, 987 F.2d 154, 159 (3d Cir. 1993) (As long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper.); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060–61 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes). Courts have identified several grounds justifying the separate classification of claims, including: (a) where members of a class possess different legal rights; and (b) where sound business reasons support separate classification. *John Hancock*, 987 F.2d at 159. Additionally, section 1122(b) of the Bankruptcy Code expressly permits separate classification of certain claims for purposes of administrative convenience. 11 U.S.C. § 1122(b). Here, the Amended Plan appropriately classifies Claims and Interests as follows:

Class	Claim or Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	ABL Claims	Impaired	Entitled to Vote
4	Term Loan Claims	Impaired	Entitled to Vote
5	Subordinated Loan Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote

Class	Claim or Interest	Status	Voting Rights
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept / Deemed to Reject)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept / Deemed to Reject)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

17. The Amended Plan's classification scheme satisfies the requirements of section 1122. The Amended Plan provides for separate classification of Claims and Interests based upon differences in the nature and legal rights arising from such Claims and Interests. Accordingly, the Debtors can establish a reasonable basis for the classification scheme under the Amended Plan. *See In re Nuverra Env't Sols., Inc.*, 590 B.R. 75, 96 (D. Del. 2018) ("In determining whether the separate classification of substantially similar claims is permissible[,] '[i]t is a well-recognized principle that the classification of claims or interests must be reasonable.'") (quoting *W.R. Grace & Co.*, 475 B.R. 34, 110 (D. Del. 2012)). The Plan complies with section 1122 of the Bankruptcy Code.

2. *The Amended Plan Satisfies the Mandatory Requirements of Section 1123 of the Bankruptcy Code*

18. Section 1123 of the Bankruptcy Code sets forth both mandatory and optional provisions that a chapter 11 plan must and may include. As set forth below, the Amended Plan satisfies each of section 1123's seven applicable mandatory requirements related to the specification of claims treatment and classification, the equal treatment of claims within classes, and the mechanics of implementing a plan.

19. ***Proper Classification***. The first requirement of section 1123(a) is that the plan specify the classification of claims and interests. 11 U.S.C. § 1123(a)(1). Articles III.A and

III.B of the Amended Plan set forth these specifications in detail. Thus, the Amended Plan satisfies section 1123(a)(1) of the Bankruptcy Code.

20. ***Specified Unimpaired and Impaired Classes***. The second and third requirements of section 1123(a) are that the plan specify (a) the status (*i.e.*, impaired or unimpaired) of such claims and interests and (b) the precise nature of their treatment under the plan. 11 U.S.C. §§ 1123(a)(2), (a)(3). Articles III.A and III.B of the Amended Plan also set forth these specifications in detail. Thus, the Amended Plan satisfies sections 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code.

21. ***No Disparate Treatment***. The fourth requirement of section 1123(a) is that a plan must "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." 11 U.S.C. § 1123(a)(4). The Amended Plan satisfies this requirement because Holders of Allowed Claims or Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Interests within such Holders' respective Class, unless a Holder of an Allowed Claim or Interest agrees to less favorable treatment. *See* Plan Art. III.B. Accordingly, the Amended Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

22. ***Adequate Means for Implementation***. The fifth requirement of section 1123(a) is that a plan must provide adequate means for its implementation. *See* 11 U.S.C. § 1123(a)(5). Article IV of the Amended Plan, in particular, sets forth the means for implementation of the Amended Plan, which include, among other things, the: (a) implementation of the Committee Settlement and the SPARC Settlement, respectively; (b) vesting of the Distribution Co. Assets in Distribution Co. on the Effective Date, including the Debtors' Causes of Action as provided for in the Amended Plan and the Schedule of Retained

Causes of Action; (c) funding of the Plan Administration Amount; and (d) appointment of the Plan Administrator. Thus, the Amended Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

23. ***Non-Voting Equity Securities***. The sixth requirement of section 1123(a) is that a plan must contemplate a provision in the reorganized debtor's corporate charter, if the debtor is a corporation, which prohibits the issuance of non-voting equity securities or, with respect to preferred stock, adequate provisions for the election of directors upon an event of default. *See* 11 U.S.C.§ 1123(a)(6). The Amended Plan is a liquidating plan pursuant to which the Debtors' remaining assets as of the Effective Date will be liquidated and distributed by Distribution Co. in accordance with the terms of the Amended Plan and the Confirmation Order. As such, the Amended Plan does not provide for the issuance of non-voting equity securities, and section 1123(a)(6) of the Bankruptcy Code is inapplicable to the Amended Plan. *See* Brown Decl. at ¶ 8.

24. ***Selection of Officers and Directors***. Finally, section 1123(a)(7) requires that a plan "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." 11 U.S.C. § 1123(a)(7). The Amended Plan provides that on the Effective Date, all members or managers of existing boards or governance bodies of the Debtors shall be deemed to have resigned and the employees of the Debtors shall be deemed terminated, and the Plan Administrator shall be appointed as the sole officer and director of each of the post-Effective Date Debtors and authorized to act on behalf of the Estates in accordance with the Amended Plan and Plan Administration Agreement. The Debtors disclosed the identity and proposed compensation of the Plan Administrator in the Plan Supplement. *See* Plan Supplement, Exs. A, B. Accordingly, the Debtors respectfully submit that the Amended Plan satisfies section 1123(a) of the Bankruptcy Code.

B. The Amended Plan Satisfies Section 1129(a)(2) of the Bankruptcy Code

25. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent to comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). Case law and legislative history indicate this section principally reflects the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code, which prohibits solicitation of plan votes without a court-approved disclosure statement. *See In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000); *In re Lapworth*, No. 97-34529 (DWS), 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2).") (citations omitted).[5]

1. *The Debtors Complied with the Disclosure and Solicitation Requirements of Section 1125*

26. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). Section 1125 ensures that parties in interest are fully informed regarding a debtor's condition so that they may make an informed decision whether to approve or reject the plan.[6] *See Momentum Mfg. Corp.* v. *Emp. Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (noting that section 1125 of the Bankruptcy Code

[5] *See also In re Worldcom, Inc.*, No. 02-13533 (AJG), 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with applicable provisions of the Bankruptcy Code, including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code") (citations omitted); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

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

obliges a debtor to engage in full and fair disclosure that would enable a hypothetical reasonable investor to make an informed judgment about the plan).

27. On May 12, 2025, the Court approved the Disclosure Statement as containing "adequate information" within the meaning of section 1125(b) of the Bankruptcy Code when it entered the Disclosure Statement Order. The Solicitation Agent solicited votes on the Plan consistent with the Court-approved Solicitation and Voting Procedures. *See generally* Solicitation Aff.[7] Finally, the Debtors did not solicit acceptances of the Plan from any Holder of a Claim or Interest prior to entry of the Disclosure Statement Order, thus complying with section 1125(b) of the Bankruptcy Code. *See* Voting Decl. at ¶ 5. By distributing the Disclosure Statement and soliciting acceptances of the Plan through their Solicitation Agent in accordance with the Disclosure Statement Order, the Debtors have complied with sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018.

28. Accordingly, the Debtors complied with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order.

2. *The Debtors Only Solicited Parties Entitled to Vote Under Section 1126 of the Bankruptcy Code*

29. Section 1126 of the Bankruptcy Code provides that only holders of claims and equity interests allowed under section 502 of the Bankruptcy Code in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. 11 U.S.C. § 1126. As noted above, the Debtors did not solicit votes on the Plan from the following Classes: Class 1 (Other Secured Claims); Class 2 (Other Priority

[7] The Debtors did not resolicit the Amended Plan. To the extent Holders of General Unsecured Claims received the Committee Support Letter or a copy of the Amended Plan prior to the Voting Deadline, such parties may have voted on the Amended Plan. Nonetheless, Holders in Class 6 voted overwhelmingly to support the Plan.

Claims); Class 7 (Intercompany Claims); Class 8 (Intercompany Interests); and Class 9 (Existing Equity Interests).

30. Holders of Claims in the Unimpaired Classes are presumed to accept the Plan, and Holders of Claims and Interests in Class 9 (Existing Equity Interests), which are deemed to reject the Plan and, as applicable, Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) (collectively, the "**Rejecting Classes**") were not entitled to vote on the Plan. *See* 11 U.S.C. § 1126(f), (g). Thus, the Debtors solicited votes only from Holders of Claims in the Voting Classes. *See* Plan, Art. III.B, Solicitation Aff. The Voting Declaration, summarized above, reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code.[8] As set forth in the Voting Declaration, the Voting Classes voted overwhelmingly to accept the Plan. *See* Voting Decl. at Ex. A.

31. Based on the foregoing, the Debtors submit that the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. The Amended Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law in Compliance with Section 1129(a)(3) of the Bankruptcy Code

32. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Where the plan proponent proposes the plan with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the plan proponent satisfies the good faith requirement of

[8] "A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan." 11 U.S.C. 1126(c). No Class of Interests was entitled to vote on the Plan. *See* Plan, Art. III.C. Therefore, the Debtors need not comply with section 1126(d) of the Bankruptcy Code.

section 1129(a)(3) of the Bankruptcy Code. *See In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002) (concluding that 1129(a)(3) is satisfied when "the Plan has been proposed with the legitimate purpose of reorganizing the business affairs of each of the Debtors and maximizing the returns available to creditors of the Debtors."). Thus, "good faith" should be evaluated in light of the totality of the circumstances surrounding the development of the plan. *See Platinum Cap., Inc.* v. *Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074 (9th Cir. 2002); *see also In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984) (stating that to determine compliance with section 1129(a)(3), the court examines the plan "in light of the totality of the circumstances surrounding confection of the plan") (internal quotation marks and citations omitted).

33. Here, the Debtors have proposed the Amended Plan in good faith and for the legitimate and beneficial purposes of preserving and maximizing the value of the Debtors' estates, effectuating a comprehensive and feasible liquidation, and maximizing recoveries for creditors. Brown Decl. at ¶ 11. The Plan (including all documents necessary to effectuate the Amended Plan) was negotiated extensively, at arm's-length, and in good faith among representatives of the Debtors, the ABL Agent (on behalf of the ABL Lenders), the Term Loan Agent (on behalf of the Term Loan Lenders), the Subordinated Loan Agent (on behalf of the Subordinated Loan Lenders), the SPARC Parties, and the Committee, all of which have worked diligently to negotiate the terms of the Amended Plan and effectuate the liquidation of the Debtors and their estates in a timely and efficient manner to preserve and enhance the value of the Debtors' estates. Each of these creditor constituencies supports confirmation of the Amended Plan. The Amended Plan additionally provides greater value to the Holders of Allowed General Unsecured

Claims, which voted to accept the Plan, than compared to the alternative of a chapter 7 liquidation. Brown Decl. at ¶ 16.

34. Accordingly, the Amended Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code.

D. The Amended Plan Provides for Court Approval of Certain Administrative Payments in Compliance with Section 1129(a)(4) of the Bankruptcy Code

35. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under the plan be subject to approval of the Court as reasonable. *See* 11 U.S.C. § 1129(a)(4); *see also In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *23 (Bankr. D. Del. May 13, 2010) (discussing requirements under section 1129(a)(4) for plan confirmation, including review of fees by the Court for reasonableness).

36. Here, all Professionals requesting compensation pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code for services rendered or reimbursement of expenses incurred before the Confirmation Date must file a fee application for final allowance of their Professional Fee Claims no later than thirty (30) days after the Effective Date. Accordingly, the Amended Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Debtors Complied with the Governance Disclosure Requirement in Compliance with Section 1129(a)(5) of the Bankruptcy Code

37. Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors; that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and, to the extent that

there are any insiders that will be retained or employed by the debtors, that there be disclosure of the identity and nature of any compensation of any such insiders. 11 U.S.C. § 1129(a)(5).

38. The Amended Plan provides that all members or managers of existing boards or governance bodies shall be deemed to have resigned, and the Plan Administrator will be appointed as the sole officer and director of each of the post-Effective Date Debtors, on the Effective Date. The identity and compensation of the Plan Administrator was disclosed in the Plan Supplement. Accordingly, the Amended Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

F. The Amended Plan Does Not Require Governmental Approval of Rate Changes and Therefore Complies with Section 1129(a)(6) of the Bankruptcy Code

39. 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. 11 U.S.C. § 1129(a)(6). The Amended Plan does not provide for any rate changes. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Amended Plan.

G. The Amended Plan is in the Best Interests of Creditors and Holders of Interests in Accordance with Section 1129(a)(7) of the Bankruptcy Code

40. Section 1129(a)(7) of the Bankruptcy Code—the "best interests of creditors" test—requires that, with respect to each impaired class of claims or interests, either: (a) each holder of a claim or interest of such class has accepted the plan; or (b) each holder will receive or retain under the plan 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 debtors liquidated under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(7). This test applies if a class of claims or interests entitled to vote does not vote unanimously to accept a plan, even if the class as a whole votes to accept the plan. *See Bank of Am. Nat'l Trust and Sav. Ass'n* v. *203 N. LaSalle St. P'ship*,

526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."). The best interests test is satisfied where the estimated recoveries under a proposed plan for a debtor's stakeholders that reject that plan are greater than or equal to the recoveries such stakeholders would receive in a hypothetical chapter 7 liquidation. *In re Adelphia Commc'ns Corp.*, 368 B.R., 140, 252 (Bankr. S.D.N.Y. 2007) ("In determining whether the best interests standard is met, the court must measure what is to be received by rejecting creditors in the impaired classes under the plan against what would be received by them in the event of liquidation under chapter 7."). Because the best interests test by its terms does not apply to unimpaired Classes under the Amended Plan, it is not relevant for Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims).

41. The "best interests test" requires a determination of what the holders of Allowed Claims and Allowed Interests in each impaired class would receive in a hypothetical liquidation of the Debtors' assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if the Amended Plan is in the best interests of Holders of Allowed Claims and Interests in each Impaired Class, the value of the distributions from the proceeds of the hypothetical liquidation of the Debtors' assets and properties is compared with the value offered to such classes of Claims and Interests under the Amended Plan. Brown Decl. at ¶¶ 16 – 19. Exhibit D of the Disclosure Statement contained the liquidation analysis that the Debtors' financial advisor, Berkeley Research Group, LLC ("**BRG**"), performed in connection with the Disclosure Statement and Plan (the "**Liquidation Analysis**"). Subject to the assumptions and qualifications contained therein, the Liquidation Analysis establishes that all Holders of Claims and Interests in Impaired Classes will receive or retain property under the Amended Plan valued, as of the Effective Date, in an amount greater than or equal to the value of what they would receive

if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. As demonstrated by the Liquidation Analysis, if these Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code, creditors would receive no more than their respective Amended Plan recoveries and, indeed, Holders of General Unsecured Claims would likely receive no recovery on account of their Claims. Brown Decl. at ¶ 19.

42. In addition, the SPARC Settlement, the Committee Settlement, and the funding of the Plan Administration Amount are all contingent upon confirmation of the Amended Plan and the occurrence of the Effective Date. Therefore, if these Chapter 11 Cases were converted to chapter 7, the various concessions and contributions provided by the SPARC Parties and the ABL Lenders, as applicable, including the SPARC Parties' waiver of the right to recover from the Debtors any amounts on account of the SPARC Payable, and the ABL Lenders allowing the Debtors to fund the Plan Administration Amount from the Debtors' cash on hand (which is cash collateral subject to the ABL Liens under the Cash Collateral Order), would not be available to the Debtors' estates.

43. Without the SPARC Settlement, the Committee Settlement, and the funding of the Plan Administration Amount, among other things, Holders of Allowed General Unsecured Claims would likely receive no recovery at all. On the other hand, the Amended Plan will result in, among other things, Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims being paid in full, and Holders of Allowed General Unsecured Claims receiving a significantly greater distribution on account of their Allowed General Unsecured Claims, none of which is likely to occur if the Chapter 11 Cases were converted to chapter 7.

44. Accordingly, the Debtors submit that the Amended Plan fully complies with and satisfies the "best interest test" and all other requirements of section 1129(a)(7) of the Bankruptcy Code.

H. At Least One Impaired Class of Claims Has Accepted the Amended Plan as Required by Section 1129(a)(8) of the Bankruptcy Code

45. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either accept a plan or not be impaired by a plan. 11 U.S.C. § 1129(a)(8). A class of claims or interests that is not impaired under a plan is "conclusively presumed" to have accepted the plan and need not be further examined under section 1129(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 1126(f). As set forth above, the Voting Classes have voted to accept the Plan. Voting Decl., Ex. A. However, Class 9 is deemed to have rejected the Plan. Therefore, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Amended Plan is nevertheless confirmable because, as discussed below, it satisfies section 1129(b) of the Bankruptcy Code with respect to these rejecting classes.

I. The Plan Treats Priority Claims in Accordance with Section 1129(a)(9) of the Bankruptcy Code

46. 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 holders of certain other priority claims receive deferred cash payments, unless such holders agree to different treatment for such claim. 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 (*i.e.*, 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. 11 U.S.C. § 1129(a)(9)(A). Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally 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). 11 U.S.C. § 1129(a)(9)(B)(i), (ii). Finally, section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (*i.e.*, priority tax claims) must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim. 11 U.S.C. § 1129(a)(9)(C)(i), (ii).

47. The Amended Plan satisfies section 1129(a)(9) of the Bankruptcy Code.

- *First*, the Amended Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because Article II.A provides that each Holder of an Allowed Administrative Claim will receive payment in full on the Effective Date.
- *Second*, the Amended Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because no Holders of the types of Claims specified by section 1129(a)(9)(B) are Impaired under the Amended Plan or such Claims have been paid in the ordinary course.
- *Third,* the Amended Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because Article II.C specifically provides that the Holders of Allowed Priority Tax Claims will be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

48. Accordingly, the Debtors submit that the Amended Plan satisfies all of the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. The Amended Plan Was Accepted by at Least One Impaired Class Without Including Acceptance by any Insiders as Required by Section 1129(a)(10) of the Bankruptcy Code

49. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Amended Plan by at least one Class of impaired Claims, "determined without

including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). The Voting Classes are Impaired and have accepted the Amended Plan, without including the acceptance of the Amended Plan by any insiders in such Classes. Voting Decl., Ex. A. Accordingly, the Amended Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. The Amended Plan is Feasible Within the Meaning of Section 1129(a)(11) of the Bankruptcy Code

50. Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find a plan is feasible as a condition precedent to confirmation. Specifically, the bankruptcy court must determine that confirmation of the Amended Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is provided for in the plan. *See* 11 U.S.C. § 1129(a)(11).

51. 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 In re Tonopah Solar Energy, LLC*, Case No. 20-11844 (KBO), 2022 WL 982558 (D. Del. March 31, 2022) ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.") (quoting *Kane* v. *Johns-Manville Corp (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988)); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 298 ("§ 1129(a)(11) does not require a guarantee of the plan's success; rather the proper standard is whether the plan offers a 'reasonable assurance' of success.").[9] Instead, courts will find that a plan is feasible if a debtor

[9] *See also In re W.R. Grace & Co.*, 475 B.R. 34, 115 (D. Del. 2012) (finding that a court "need not require a guarantee of success, but rather only must find that the plan presents a workable scheme of organization and operation from which there may be reasonable expectation of success"); *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (observing that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility") (internal quotation marks omitted);

demonstrates a reasonable assurance that consummation of the plan will not likely be followed by a further need for financial reorganization. *In re Indianapolis Downs*, 486 B.R. at 298. "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).

52. The Amended Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code because there are adequate means by which to implement the Amended Plan. As an initial matter, the Amended Plan is a plan of liquidation, and provides that the Debtors will liquidate and be dissolved at some time after the Effective Date. The Amended Plan provides for the appointment of the Plan Administrator to effectuate the distributions under the Amended Plan, administer the Claims resolution process, liquidate or otherwise monetize the Distribution Co. Assets, and wind down the Debtors and their estates. As explained in the Brown Declaration, the Plan Administration Amount and the Professional Fee Escrow Amount, as applicable, will be sufficient to allow the Plan Administrator to make all payments required under the Amended Plan on account of anticipated Allowed Administrative Claims, including Professional Fee Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims and otherwise administer the Amended Plan and wind down the Debtors and their estates. Brown Decl. at ¶ 24. Thus, the liquidation proposed under the Amended Plan is feasible (to the extent necessary)[10] because it: (a) provides the financial wherewithal necessary to implement the

[10] *In re Heritage Organization, L.L.C.*, 375 B.R. 230, 311 n.100 (Bankr. N.D. Tex. 2007) ("Several courts take a narrow approach and interpret the plain language of § 1129(a)(11) to say that feasibility need not be established when liquidation is proposed in the plan . . . . Other courts take a broader approach and apply the feasibility test to plans of liquidation, focusing their analysis on whether the liquidation itself, as proposed in the plan, is feasible.").

Amended Plan; and (b) offers reasonable assurance that the Amended Plan is workable and has a reasonable likelihood of success.

53. Accordingly, the Amended Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

L. The Amended Plan Complies with Section 1129(a)(12) of the Bankruptcy Code

54. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan[.]" 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). Article XII.E of the Amended Plan provides that on the Effective Date, the Debtors shall pay, in full in cash, any fees due and owing to the U.S. Trustee as of the Effective Date. Thereafter, Distribution Co. (or the Plan Administrator on behalf of Distribution Co.), shall pay all U.S. Trustee fees due and owing under section 1930 of the Judicial Code in the ordinary course until the earliest of the Chapter 11 Cases being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Finally, the Amended Plan provides that the U.S. Trustee shall not be required to file any proof of claim or any request for administrative expense for any U.S. Trustee fees.

55. The Amended Plan, therefore, complies with section 1129(a)(12) of the Bankruptcy Code.

M. Sections 1129(a)(13)–(16) of the Bankruptcy Code Are Inapplicable to the Debtors

56. Section 1129(a)(13) of the Bankruptcy Code applies only where debtors provide retiree benefits as defined by section 1114(a) of the Bankruptcy Code. The Debtors do

not provide such retiree benefits. Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable.

57. Sections 1129(a)(14) and (15) of the Bankruptcy Code apply only to debtors that are individuals. The Debtors are not individuals. Therefore, sections 1129(a)(14) and (15) of the Bankruptcy Code are inapplicable.

58. Section 1129(a)(16) of the Bankruptcy Code applies only to debtors that are non-profit entities or trusts. The Debtors are not non-profit entities or trusts. Therefore, section 1129(a)(16) of the Bankruptcy Code is inapplicable.

N. The Amended Plan Satisfies the "Cram Down" Requirements Under Section 1129(b) of the Bankruptcy Code for Non-Accepting Classes

59. Section 1129(b) of the Bankruptcy Code provides a mechanism (known as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes of claims. 11 U.S.C. § 1129(b)(1). Under section 1129(b)(1), the bankruptcy court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes. *Id*.

60. The Debtors respectfully submit that the Amended Plan may be confirmed over the rejection by the Rejecting Classes pursuant to section 1129(b) of the Bankruptcy Code, because the Amended Plan does not discriminate unfairly and is fair and equitable with respect to all non-accepting Impaired Classes.

1. *The Amended Plan Does Not Discriminate Unfairly*

61. The Amended Plan does not discriminate unfairly with respect to the Rejecting Classes. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of the

particular case to make the determination. *See In re 203 N. LaSalle St. Ltd. P'ship.*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev'd on other grounds, Bank of Am.*, 526 U.S. 434 (1999) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established"); *see also In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) ("[W]hether or not a particular plan does so [unfairly] discriminate is to be determined on a case-by-case basis . . ."). Generally, courts have held that a plan unfairly discriminates in violation of section 1129(b) only if similarly situated claims receive materially different treatment without a reasonable basis for the disparate treatment. *See In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 228 (Bankr. D.N.J. 2000) (noting that one of the "[t]he hallmarks of the various tests" is "whether there is a reasonable basis for the discrimination . . ."). A plan does not unfairly discriminate where it provides different treatment to two or more classes that are comprised of dissimilar claims or interests. *See, e.g.*, *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 657 (9th Cir. 1997); *In re Johns-Manville Corp.*, 68 B.R. at 636. Likewise, there is no unfair discrimination if, taking into account the particular facts and circumstances of the case, there is a reasonable basis for the disparate treatment. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) ("The hallmarks of the various tests have been whether there is a reasonable basis for the discrimination[.]") (quoting *In the Matter of Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 660 (Bankr. D. Del. 2003)).

62. Here, the Amended Plan's treatment of the Rejecting Classes is proper because all similarly situated Holders of Claims and Interests will receive substantially similar treatment, and the Amended Plan's classification scheme rests on a legally acceptable rationale that treats each Rejecting Class based on its particular facts and circumstances under these Chapter

11 Cases. Accordingly, the Amended Plan does not discriminate unfairly with respect to the Rejecting Classes and satisfies the requirements of section 1129(b) of the Bankruptcy Code.

2. *The Amended Plan is Fair and Equitable*

63. For a plan to be "fair and equitable" with respect to an impaired class of unsecured claims or interests that rejects a plan (or is deemed to reject a plan), the plan must follow the "absolute priority" rule and satisfy the requirements of section 1129(b)(2). *See* 11 U.S.C. § 1129(b)(2)(B)(ii); 11 U.S.C. § 1129(b)(2)(C)(ii); *see also 203 N. LaSalle*, 526 U.S. at 441–42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'"). Generally, this requires that an impaired rejecting class of claims or interests either be paid in full or that a class junior to the impaired rejecting class not receive any distribution under a plan on account of its junior claim or interest. *See 203 N. LaSalle*, 526 U.S. at 459.

64. The Amended Plan is fair and equitable with respect to Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Equity Interests). While these Classes are not paid in full, no Classes junior to these Classes will receive a recovery under the Amended Plan, and no Holder of a Claim or Interest in a Class senior to Holders in the Rejecting Classes will receive or retain any property under the Plan in an amount in excess of such

Holder's Claims or Interests.[11] Accordingly, the Amended Plan is "fair and equitable" with respect to all Rejecting Classes and satisfies section 1129(b) of the Bankruptcy Code.

O. The Amended Plan is the Only Plan for Purposes of Section 1129(c) of the Bankruptcy Code

65. Section 1129(c) of the Bankruptcy Code provides that a bankruptcy court may confirm only one plan. 11 U.S.C. § 1129(c). Because the Amended Plan is the only plan before the Court, section 1129(c) of the Bankruptcy Code is satisfied.

P. The Amended Plan's Principal Purpose is Not Avoidance of Taxes or Section 5 of the Securities Act as Prohibited by Section 1129(d) of the Bankruptcy Code

66. 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 Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933, and no Governmental Unit or any other party has requested that the Court decline to confirm the Amended Plan on the grounds that the principal purpose of the Amended Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. Brown Decl. at ¶ 32. Accordingly, the Amended Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

[11] To the extent Classes 7 (Intercompany Claims) and 8 (Intercompany Interests) receive a recovery, such treatment is not "on account of" such Intercompany Claims or Intercompany Interests within the meaning of section 1129(b)(2)(B)(ii) of the Bankruptcy Code. Rather, it is simply to maintain the Debtors' prepetition organizational structure for administrative benefit and has no economic substance. Courts have recognized that such technical preservations for the purpose of corporate formalities do not violate the absolute priority rule, and the unimpairment of such Claims and Interests, if any, affects neither the economic substance of the Plan, nor any recoveries to the Debtors' creditors. *See In re Glob. Ocean Carriers Ltd.*, 251 B.R. 31, 47–48 (Bankr. D. Del. 2000) (holding that "the retention of the corporate structure among the Debtors will not adversely affect any creditors" and does not violate absolute priority rule); *In re ION Media Networks, Inc.*, 419 B.R. 585, 661 (Bankr. S.D.N.Y. 2009) ("This technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan.").

Q. Section 1129(e) of the Bankruptcy Code Does Not Apply to the Amended Plan

67. The provisions of section 1129(e) of the Bankruptcy Code apply only to a "small business case" as defined therein. 11 U.S.C. § 1129(e). These Chapter 11 Cases are not "small business cases." Accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Amended Plan.

II. THE DISCRETIONARY CONTENTS OF THE AMENDED PLAN ARE APPROPRIATE AND SHOULD BE APPROVED

A. The Amended Plan Satisfies the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

68. Section 1123(b) of the Bankruptcy Code allows a plan to include a variety of non-mandatory provisions. Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11. *See* 11 U.S.C. § 1123(b)(1)-(3), (6). Each of the Amended Plan's permissive provisions comport with these requirements:[12]

- as permitted under section 1123(b)(1) of the Bankruptcy Code, Article III classifies and describes the treatment for Claims and Interests under the Amended Plan, and identifies which Claims and Interests are impaired or unimpaired;
- as permitted under section 1123(b)(2) of the Bankruptcy Code, Article V provides for the rejection of all Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Court, except for any Executory Contract or Unexpired Lease which is (a) the subject of a motion to assume or reject that is pending on the Effective Date, (b) identified on the Schedule of Assumed Executory Contracts and Unexpired Leases,

[12] Section 1123(b)(4), which authorizes the sale of substantially all of a debtor's property pursuant to a plan, is inapplicable here.

or (c) a contract, release, or other document entered into in connection with the Plan. The Debtors are not assuming any Executory Contracts or Unexpired Leases and, thus, have not listed any on their Schedule of Assumed Executory Contracts and Unexpired Leases filed with the Plan Supplement. *See* Plan Supplement at Ex. C;

- pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, the Amended Plan (a) is premised on the SPARC Settlement and the Committee Settlement, respectively and as affected by each other, and (b) provides that, unless waived, relinquished, exculpated, released, compromised, or settled in the Amended Plan or a Court order, the Debtors' Causes of Action will be reserved and assigned to Distribution Co. as set forth in the Amended Plan and on the Schedule of Retained Causes of Action. As discussed below, the SPARC Settlement and Committee Settlement satisfy the standard for approval under Bankruptcy Rule 9019; and

- as permitted by section 1123(b)(5) of the Bankruptcy Code, Article III of the Amended Plan modifies the rights of Holders of Claims as set forth therein.

B. The Amended Plan's Cure Process is Appropriate under Section 1123(d) of the Bankruptcy Code

69. Section 1123(d) of the Bankruptcy Code provides that amounts necessary to cure defaults under executory contracts proposed to be assumed shall be "determined in accordance with the underlying agreement and applicable nonbankruptcy law." 11 U.S.C. § 1123(d). As noted above, Article V of the Plan provides for the rejection of all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Court, other than those Executory Contracts or Unexpired Leases that are (a) the subject of a motion to assume or reject that is pending on the Effective Date, (b) identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, or (c) a contract, release, or other agreement or document entered into in connection with the Plan. Because the Debtors are not assuming or assigning any Executory Contracts or Unexpired Leases, there are no cure amounts. *See* Plan Supplement at Ex. C. The Debtors' determinations regarding the rejection of Executory Contracts or Unexpired Leases are based on and within the sound

business judgment of the Debtors, necessary to the implementation of the Plan and the wind down of the Debtors' Estates, and in the best interests of the Debtors and their Estates. Brown Decl. at ¶ 35.

C. The Amended Plan's Release, Exculpation, and Injunction Provisions Are Reasonable, in the Best Interests of the Debtors' Estates, and Comply with the Bankruptcy Code

70. Among other discretionary provisions, the Amended Plan contains certain release, exculpation, and injunction provisions. These provisions are the product of extensive good faith, arm's-length negotiations among the Debtors' largest constituents, were an essential element of the negotiations between the Debtors and the Consenting Creditors in connection with the Plan Support Agreement, were a pivotal component of the SPARC Settlement and the Committee Settlement, are critical to the forging consensus with respect to the Amended Plan, and are consistent with applicable precedent in this District.

71. Indeed, the independent Board—which conducted a thorough independent investigation of potential estate claims and causes of action against insiders, including the SPARC Parties—concluded that the releases from the Debtors and their estates provided for in Article VIII.B of the Amended Plan (the "**Debtor Release**"), including with respect to the SPARC Parties, were reasonable, appropriate and supported by material consideration before approving the SPARC Settlement and the releases granted as a result thereof. Vogel Decl., ¶ 20. As discussed in the Vogel Declaration, the independent Board oversaw the independent investigation of any potential claims and causes of action of the Debtors that may exist against any of the Debtors' directors, officers, managers, members, equity holders, principals, employees, and any other individual that is an insider of the Debtors, and determined that the SPARC Settlement was reasonable and appropriate under the circumstances. Accordingly, the initial Plan reflected the significant concessions made by the SPARC Parties in exchange for the Debtor Release.

1. *The Debtor Release is Appropriate and Should Be Approved*

72. Section 1123(b) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." *See In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004) (holding that standards for approval of settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019). Generally, courts in the Third Circuit approve a settlement by the debtors if the settlement "exceed[s] the lowest point in the range of reasonableness." *See, e.g.*, *In re Exaeris, Inc.*, 380 B.R. 741, 746–47 (Bankr. D. Del. 2008) (internal citation omitted); *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that settlement must be within reasonable range of litigation possibilities). Furthermore, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate." *In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether 'the compromise is fair, reasonable, and in the best interest of the estate.'") (internal citation omitted).

73. In addition to analyzing debtor releases under the business judgment standard, some courts within the Third Circuit assess the propriety of a "debtor release" in light of five "*Zenith* factors" in the context of a chapter 11 plan:[13]

- whether there is an identity of interest between the debtor and the third party;
- whether the third party has made a substantial contribution to the debtor's reorganization;

[13] *See, e.g.*, *In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013) (citing *In re Zenith Elecs. Corp.*, 241 B.R. 92 (Bankr. D. Del. 1999)).

- whether the release is essential to the debtor's reorganization;
- whether a substantial majority of creditors support the release; and
- whether the plan provides for payment of all or substantially all of the claims in the class or classes affected by the release.

No one factor is dispositive, nor is a plan proponent required to establish each factor for the release to be approved. *Wash. Mut.*, 442 B.R. at 346 ("These factors are neither exclusive nor conjunctive requirements, but simply provide guidance in the [c]ourt's determination of fairness."); *In re Exide Techs.*, 303 B.R. 48, 72 (Bankr. D. Del. 2003) (finding that *Zenith* factors are not exclusive or conjunctive requirements).

74. The Debtors have satisfied the business judgment standard in granting the Debtor Release because it is fair, reasonable, and in the best interests of the Debtors' estates and, at this time, enjoys the support from the Committee given the terms of the Committee Settlement.

75. The Debtor Release of the Consenting Creditors was negotiated in connection with the Plan Support Agreement, but with respect to the SPARC Parties was only approved after the Debtors and the SPARC Parties entered into the SPARC Settlement prior to finalizing and filing the initial Plan. In turn, at the conclusion of the Committee's own independent investigation that largely considers the propriety (or impropriety) of the Debtor Release of the SPARC Parties, the Committee concluded that, to the extent there are colorable claims against the Debtors' insiders, including the SPARC Parties, such claims would not generate additional value for the Debtors' estates or unsecured creditors beyond what is provided under the Amended Plan, and entered into the Committee Settlement as a result thereof. The Debtor Release – whether a product of the Plan Support Agreement, the independent Board's investigation, the SPARC Settlement or the Committee Settlement – is a vital component of the Plan. Critically, without the

Debtor Release, the Debtors would not have secured support for the Plan from the Debtors' secured lenders, the SPARC Parties and certain other Released Parties. Vogel Decl. ¶ 21.

76. In analyzing the Debtor Release, it is important to recognize that the Debtor Release reflects the review and assessment of potential claims by the independent Board as well as the Committee. To carry out its mandate and discharge its responsibilities, the Board retained Young Conaway Stargatt & Taylor, LLP to conduct the investigation and make recommendations in connection therewith. Vogel Decl., ¶ 7. In regular consultation with the Board, Young Conaway performed an independent factual examination and a review and analysis of applicable federal and state law. At the conclusion of the investigation, which is further detailed in the Vogel Declaration, the Board determined that there were no colorable claims against the Released Parties. *Id.* at ¶ 11. Accordingly, the Board approved the Debtor Release on the terms captured in the SPARC Settlement.

77. Additionally, to the extent the *Zenith* factors apply to the Debtor Release,[14] these factors support its approval here. ***First***, there is an identity of interest between the Debtors and many of the parties to be released. The Released Parties generally include stakeholders and proponents that are and have been critical participants in the Plan process, sharing a common goal in seeing the Amended Plan succeed. Like the Debtors, these parties seek to confirm and consummate the Amended Plan.

78. Moreover, with respect to certain of the releases—*e.g.*, those releasing the Debtors' current and former directors and officers—there is a clear identity of interest supporting the release because the Debtors owe certain indemnification obligations to such parties pursuant

[14] *See In re W.R. Grace & Co.*, 475 B.R. 34, 107 n.69 (D. Del. 2012) ("Moreover, since *Zenith* was decided, other courts have noted its weaknesses . . . stating that the holding of *Zenith* is 'neither conclusive nor . . . [is it] a list of conjunctive requirements,' but rather is merely 'helpful in weighing the equities of the particular case after a fact-specific review.'") (internal citations omitted).

to the Debtors' governance documents, which would otherwise increase the Claims pool and delay distributions to Holders of Allowed Claims to the detriment of all parties in interest.[15] Thus, a lawsuit commenced by the Debtors (or derivatively on behalf of the Debtors) against certain individuals would effectively be a lawsuit against the Debtors themselves, except to the extent the lawsuit is instituted for the limited and sole purpose of triggering coverage under any applicable Insurance Policies.

79. ***Second***, many of the Released Parties are providing integral concessions and contributions to support to the Debtors in connection with these Chapter 11 Cases and the Amended Plan. For example, under the Plan, the ABL Lenders are allowing the Debtors to fund the Plan Administration Amount from the Debtors' cash on hand, which is cash collateral subject to the ABL Liens under the Cash Collateral Order, and facilitating meaningful (and now drastically improved) recoveries for Holders of Allowed General Unsecured Claims from assets of the Debtors that are subject to the ABL Lenders Liens, which recoveries would not be available absent such concession. Meanwhile, the SPARC Parties are waiving the right to recover from the Debtors any amounts on account of the $323 million SPARC Payable, thereby affording Holders of Allowed General Unsecured Creditors greater recoveries than would otherwise be available to them. Vogel Decl., ¶ 13.

80. ***Third***, the Debtor Release is essential to the Amended Plan itself.[16] Absent the Debtor Release, it is highly unlikely that the Released Parties would have entered into the Plan Support Agreement, the SPARC Settlement or the Committee Settlement and agreed to support

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

[16] The Debtor Release expressly excludes claims or Causes of Action that are found to be the result of actual fraud, willful misconduct, or gross negligence. In light of the foregoing, the Debtors believe that the record of these Chapter 11 Cases fully supports the essential nature of these releases.

the Amended Plan and the transactions contemplated thereby. *Id.* at ¶ 12. In short, the evidence demonstrates that the Debtors would not have been able to build the level of consensus with respect to the Amended Plan and the transactions contemplated thereby, without the Debtor Release. Finally, no creditors or interested parties have objected to the proposed Debtor Release.

81. ***Fourth***, as evidence by the Voting Declaration, (i) 100% of voting Holders in Classes, 3, 4, and 5 voted to accept the Plan, and (ii) over 98% in number and 91% in amount of Holders of General Unsecured Claims voted to accept the Plan. As such, a majority of creditors support and/or otherwise do not object to the Debtor Release.

82. ***Fifth***, while the Amended Plan, as revised following the Committee Settlement, does not provide "full" recoveries to Holders of General Unsecured Claims, it does provide meaningful recoveries to Holders of Allowed General Unsecured Claims in the form of a pro rata share of (a) 70% of the Net Proceeds; (b) after the conclusion of the Liquidation Process, 70% of any remaining portion of the Plan Administration Amount held by Distribution Co., (c) 70% of any remaining funds held in the Professional Fee Escrow Account, (d) 70% of any Cash received from the liquidation or other monetization of Distribution Co. Assets that are subject to the ABL Lenders' Liens, and (e) 100% of any Cash received form the liquidation or other monetization of Distribution Co. Assets that are unencumbered, including Avoidance Actions.

83. For these reasons, the Debtors submit that the Debtor Release is justified, in the best interests of creditors, constitutes an integral part of the Plan, and satisfies the factors considered by courts in determining whether a debtor release is proper.

2. *The Third-Party Releases Are Consensual and Should Be Approved*

84. The Plan provides for appropriately tailored Third-Party Releases that apply only to parties that have been provided notice of and consented to the Third-Party Releases and, therefore, should be approved. Generally, a chapter 11 plan may provide for a consensual release

of claims by third parties. Courts in this jurisdiction routinely approve such release provisions if, as here, they are consensual.[17] Indeed, "[t]he Court is not aware…of any court that has found that a creditor cannot consensually release a claim against a third-party under a debtor's plan of reorganization."[18] Such consensual releases are consistent with governing law.[19] The determination as to whether a third-party release is consensual ultimately relies on the particular circumstances at issue in a particular case. *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013). Nor is affirmative consent to a third party release (as opposed to opting out of that release) required for such release to be "consensual." *See id.*; *In re Spansion, Inc.*, 426 B.R. 114, 144 (Bankr. D. Del. 2010).

85. Here, the Third-Party Releases are fully consensual under applicable authority in this District. All parties subject to the Third-Party Releases had ample opportunity to evaluate the Third-Party Releases and elect to grant (i.e., opt into) such Third-Party Releases through an affirmative selection of the "Release Opt-In Election" feature set forth in the Ballot. Brown Decl. at ¶ 45. Moreover, the Disclosure Statement, the notice of the Confirmation Hearing and the Ballots provided recipients with timely, sufficient, appropriate, and adequate notice of the Third-Party Releases. *See* Disclosure Statement Order, Exs. 1-2.

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[17] *See Wash. Mut.*, 442 B.R. at 352 (observing that consensual third-party releases are permissible); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (approving non-debtor releases for creditors that voted in favor of the plan); *see also Pace Indus., LLC*, No. 20-10927 (MFW), 2020 WL 5015839, at *8 (Bankr. D. Del. May 29, 2020) [Docket No. 215] (approving plan releases and finding them consensual where creditors were required to file objections to the releases to opt out); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Apr. 2, 2018) [Docket No. 357] (approving third-party release as consensual given notice and consideration provided to releasing parties).

[18] *In re Smallhold, Inc.*, No. 24-10267 (CTG), 2024 Bankr. LEXIS 2332, at *25 (Bankr. D. Del. September 25, 2024).

[19] *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 266 (2024) ("Nothing in what we have said [in rejecting a chapter 11 plan's grant of *nonconsensual* third-party releases] should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan[.]")

86. Accordingly, the Debtors submit that the consensual Third-Party Releases are appropriately tailored under the circumstances of these Chapter 11 Cases, justified by the record of these Chapter 11 Cases, consistent with the accepted practices within the Third Circuit, and should be approved.

3. *The Exculpation Should Be Approved*

87. Courts within the Third Circuit have held exculpation provisions to be appropriate where limited to estate fiduciaries and to conduct not constituting gross negligence or willful misconduct. *See, e.g.*, *Wash. Mut.*, 442 B.R. at 350–51 (holding that exculpation must be limited to estate fiduciaries and conduct not constituting gross negligence or willful misconduct). Unlike third-party releases, exculpation provisions do not affect the liability of third parties *per se*, but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an "Exculpated Party" for acts arising out of the Debtors' restructuring. *See In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (finding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code").

88. Article VIII.D of the Amended Plan provides for the exculpation of the Exculpated Parties[20] (the "**Exculpation**"). The Debtors submit that the Exculpation is fair and appropriate under both applicable law and the facts and circumstances of these Chapter 11 Cases. The Exculpated Parties are limited to: (a) the Debtors; (b) the Committee and each of its members, solely in their capacity as such, (c) the Debtors' current and former directors, managers, and officers that served in such capacity between the Petition Date and Effective Date, and

[20] "Exculpated Parties" means, collectively, and in each case solely in its capacity as such, (a) each Debtor; (b) the Committee and each of its members; (c) the Debtors' current and former directors, managers, and officers that served in such capacity between the Petition Date and Effective Date; and (d) attorneys, financial advisors, consultants or other professionals or advisors retained by the Debtors or the Committee in these Chapter 11 Cases.

(d) attorneys, financial advisors, consultants or other professionals or advisors retained by the Debtors or the Committee in these Chapter 11 Cases. Additionally, the scope of the Exculpation does not protect the Exculpated Parties from liability resulting from actual fraud, willful misconduct, or gross negligence.

89. The Debtors believe that the Exculpation is necessary and appropriate to protect parties who have been critical to the Debtors' chapter 11 efforts from future collateral attacks related to actions taken in good faith in connection with these Chapter 11 Cases. The Exculpated Parties have participated in good faith throughout these Chapter 11 Cases and played a critical role in preserving and maximizing the value of the Debtors' Estates, and formulating, negotiating, soliciting, and implementing, as applicable, the Plan Support Agreement, the Plan, the Disclosure Statement, the SPARC Settlement, the Committee Settlement and related documents, in furtherance of these Chapter 11 Cases.

90. Accordingly, the Debtors respectfully submit that the Exculpation provides reasonable and appropriate protections and should be approved.

4. ***The Injunction is Narrowly Tailored and Should Be Approved***

91. Article VIII.E of the Plan provides for an injunction (the "**Injunction**") that is necessary to implement the Amended Plan's release and exculpation provisions. The Injunction generally provides that all entities are permanently enjoined from commencing or maintaining any action against the Debtors, Distribution Co. (but solely to the extent such action is brought against the Debtors or Distribution Co. to directly or indirectly recover upon any of the Distribution Co. Assets), the Released Parties, or the Exculpated Parties on account of or in connection with or with respect to any Claims or Interests released or exculpated pursuant to the Amended Plan. The Amended Plan's release and exculpation provisions, each of which were agreed to among the parties to the Plan Support Agreement, the SPARC Settlement and the Committee Settlement,

respectively, and embodied in the Amended Plan, would be substantially weakened without the Injunction provision. Thus, the Injunction is a key provision of the Amended Plan because it enforces the release and exculpation provisions that are centrally important to the Amended Plan and is thereby necessary to implement the Amended Plan's terms. As such, to the extent that the Court finds that the exculpation and release provisions are appropriate, it should likewise find that the Injunction is appropriate. In addition, the Injunction is narrowly tailored to meet its purpose. Accordingly, the Injunction should be approved.

D. The Amended Plan's Other Compromises and Settlements Are Reasonable and Should Be Approved

92. The Amended Plan's compromises and settlements are appropriate and should be approved. "Compromises are generally favored in bankruptcy." *In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011). "A bankruptcy court may approve settlements under Bankruptcy Rule 9019 or as part of a debtor's plan. The standards for approving settlements under Rule 9019 or as part of a plan are the same." *In re Woodbridge Grp. of Companies, LLC*, 592 B.R. 761, 772 (Bankr. D. Del. 2018). Courts typically consider four factors when evaluating a proposed settlement: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (d) the paramount interest of the creditors. *Id.* "The law is clear that the threshold for approving a settlement is not high. All that is required is that the settlement exceed 'the lowest point in the range of reasonableness.'" *In re Exaeris, Inc.*, 380 B.R. 741, 746 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 351 B.R. 321, 330 (Bankr. D. Del. 2004)).

93. The plan proponent bears the burden of persuading the court that a settlement falls within the range of reasonableness. *See In re Wash. Mut.*, 442 B.R. at 328. However, in determining whether a settlement is appropriate and should be approved, a bankruptcy

court "should not have a 'mini-trial' on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014) (quoting *In re W.R. Grace & Co.*, 475 B.R. 34, 77–78 (D. Del. 2012)). Here, the Plan settlements and compromises, including the SPARC Settlement and Committee Settlement, are the result of good-faith, arm's-length negotiations among the parties, and readily satisfy the "lowest point in the range of reasonableness" required for the approval of the settlements.

94. As set forth in the Amended Plan, the Debtors, the SPARC Parties, the Committee, and the ABL Agent (on behalf of the ABL Lenders) agreed to the implementation of both the SPARC Settlement and the Committee Settlement. Pursuant to the SPARC Settlement, as revised by the Committee Settlement as applicable: (a) the SPARC Payable shall be deemed Allowed as a General Unsecured Claim in the amount of not less than approximately $323,000,000.00, (b) on the Effective Date of the Amended Plan, the SPARC Parties shall waive the right to recover from the Debtors as to one hundred percent (100%) of the SPARC Payable, and (c) the SPARC Parties shall be Released Parties under the Amended Plan and receive the Debtors Release and the Third-Party Releases. The Committee Settlement, meanwhile, resolved any potential objection to the Amended Plan by the Committee.

95. As discussed above and in the Brown Declaration, the concessions made by the ABL Lenders, along with the SPARC Settlement and the Committee Settlement, provide significant value to the Debtors and their estates, including recoveries to Holders of Allowed General Unsecured Claims and enable the prompt and efficient monetization of the Distribution Co. Assets and wind-down of the Debtors and their estates through the Amended Plan. Additionally, absent the funding of the Plan Administration Amount from the Debtors' cash on

hand (which is cash collateral subject to the ABL Liens under the Cash Collateral Order), the ABL Lenders' agreeing to meaningful recoveries for Holders of Allowed General Unsecured Claims from the Debtors' assets that are subject to the ABL Lenders Liens, the SPARC Parties waiving the right to recover from the Debtors any amounts on account of the SPARC Payable, and the benefits of the Committee Settlement, the Debtors would lack sufficient funds to develop and implement the Amended Plan, and no distributions would be available for Holders of Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed General Unsecured Claims.

96. The Amended Plan was negotiated extensively, at arm's-length, and in good faith among representatives of the Debtors (including the Debtors' independent managers and Co-Chief Restructuring Officers on behalf of the Debtors), the ABL Agent (on behalf of the ABL Lenders), the Term Loan Agent (on behalf of the Term Loan Lenders), the Subordinated Loan Agent (on behalf of the Subordinated Loan Lenders), the SPARC Parties, and the Committee, all of whom are represented by experienced and competent counsel and advisors who vigorously negotiated these settlements and compromises, as applicable, and agree that approval of the Amended Plan is a significantly better outcome than the alternatives. Accordingly, the Amended Plan's settlements and compromises collectively represent a reasonable resolution of the issues raised in these Chapter 11 Cases, result in a Plan that is fair and equitable and in the best interest of the Debtors' estates —and surely above the lowest point in the range of reasonableness—and should therefore be approved by the Court.

III. THE PROPOSED MODIFICATIONS TO THE PLAN ARE APPROPRIATE

97. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. Further, when the proponent of a plan files the plan with modifications with the court, the plan as modified becomes the plan.

Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity holders who have previously accepted the plan if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or the interest of any equity security holder. Courts interpreting Bankruptcy Rule 3019 have consistently held that a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated. *See, e.g.*, *In re Glob. Safety Textiles Holdings LLC*, No. 09-12234 (KG), 2009 WL 6825278, at *4 (Bankr. D. Del. Nov. 30, 2009) (finding that nonmaterial modifications to plan do not require additional disclosure or resolicitation); *In re Burns & Roe Enters., Inc.*, No. 08-4191 (GEB), 2009 WL 438694, at *23 (D.N.J. Feb. 23, 2009) (confirming plan as modified without additional solicitation or disclosure because modifications did "not adversely affect creditors").

98. As previously stated, the Debtors filed the Amended Plan on June 10, 2025. Additionally, the Debtors filed a further amended version of the Amended Plan on June 23, 2025 [Docket No. 472] to incorporate certain modifications (collectively, the "**Modifications**") supported by the ABL Agent (on behalf of the ABL Lenders), the SPARC Parties, the Committee, and other parties in interest. The Modifications address, among other things, (i) how certain insurance assets will be treated under the Plan and (ii) comments that the Debtors received from their secured lenders and the Committee.

99. Neither the Amended Plan nor the Modifications adversely affect the treatment of creditors and stakeholders who voted to accept the Plan prior to the filing thereof. Accordingly, the Debtors submit that no additional solicitation or disclosure is required on account

of the Amended Plan or the Modifications, and that the Amended Plan and the Modifications should be deemed accepted by all creditors that previously voted to accept the Amended Plan.

IV. GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

100. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

101. The Debtors submit that good cause exists for waiving and eliminating any stay of the Confirmation Order (once entered) pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the Confirmation Order will be effective immediately upon its entry. *See, e.g.*, *In re Maremont Corp.*, 601 B.R. 1, 116 (Bankr. D. Del. 2019) (waiving stay of enforcement including pursuant to Bankruptcy Rule 3020(e)). As noted above, these Chapter 11 Cases and related transactions have been negotiated and implemented in good faith and each day the Debtors remain in chapter 11, they incur significant administrative and professional costs that directly reduce the amount of distributable value for creditors. Brown Decl. at ¶ 47. Given that time is of the essence, immediate effectiveness of the Confirmation Order would facilitate the Debtors' efforts to take the steps necessary to consummate the Plan by the Effective Date.

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

[*Remainder of page intentionally left blank.*]

CONCLUSION

WHEREFORE, the Amended Plan complies with all of the requirements of section 1129 of the Bankruptcy Code, and the Debtors respectfully request that the Court enter the Confirmation Order and confirm the Plan.

Dated: June 23, 2025

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