IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
	:	
HI-CRUSH INC., *et al.*,[1]	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF JOINT PLAN OF REORGANIZATION FOR HI-CRUSH INC. AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: September 22, 2020

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number (where available), are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D&I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), Bulk Tracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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Hi-Crush Inc. and the other above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby submit this memorandum of law (this "**Memorandum**") in support of confirmation of the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as amended, modified, or supplemented from time to time, the "**Plan**")[2] [Docket No. 289]. This Memorandum presents the legal support for confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

PRELIMINARY STATEMENT

1. The tremendous support for the Plan among the Debtors' stakeholders is unsurprising: the Plan preserves the Debtors' business and enhances their value by substantially deleveraging the Debtors' balance sheet. Among other things, the Plan eliminates approximately $450 million of funded debt, which will allow the Debtors to focus on long-term growth prospects and their competitive position in the market, and emerge from the chapter 11 cases (the "**Chapter 11 Cases**") as a stronger company, less burdened by debt service obligations.

2. The Plan is the product of months of good-faith, arms'-length negotiations among the Debtors and an ad hoc group of holders of the Prepetition Notes (the "**Ad Hoc Group**"), which resulted in an agreement on a global restructuring as memorialized into that certain Restructuring Support Agreement, dated as of July 12, 2020, by and among the Debtors and the Ad Hoc Group (as may be amended from time to time, the "**RSA**") and thereby paved the way for an expeditious and value-maximizing prearranged cases.

3. The Debtors' only two voting classes—Class 4 Prepetition Notes Claims and Class 5 General Unsecured Claims—overwhelmingly support the Plan. On September 21, 2020, the

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement (as defined below)..

Debtors filed the *Declaration of Varouj Bakhshian Regarding the Solicitation and Tabulation of Votes on the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 400], which reports the voting results for the Plan (the "**Voting Report**"). As shown in the Voting Report and the summary chart in paragraph 20 below, (a) 100% of Holders of Class 4 Prepetition Notes Claims and 100% in amount of Class 4 Prepetition Notes Claims voted in favor of the Plan, and (b) 92.06% of Holders of Class 5 General Unsecured Claims and 99.57% in amount of Class 5 General Unsecured Claims voted in favor of the Plan. The remarkable support for the Plan by each voting class speaks volumes as to its fairness and its compliance with the Bankruptcy Code.

4. The Debtors received fourteen formal objections and seven informal comments in connection with the Cure Notice (as defined below) and confirmation of the Plan. As shown in the Response Chart attached hereto as Exhibit A, most of these objections and comments have been resolved. The few objections that have not been resolved—which were filed by (a) shareholders concerned with the "cram down," notice, or release provisions of the Plan and (b) a licensing agreement counterparty concerned with the release, discharge, and injunction provisions of the Plan as they relate to the Debtors' rejection of such counterparty's licensing agreement—are provided in the Response Chart attached hereto as Exhibit B.

5. For the reasons set forth herein and in the Confirmation Declarations (as defined below), the Plan satisfies the requirements for confirmation set forth in section 1129 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended and modified, the "**Bankruptcy Code**"). Accordingly, the Plan should be confirmed.

BACKGROUND

A. Prepetition Restructuring Efforts and Restructuring Support Agreement

6. The Debtors are a fully-integrated provider of proppant and logistics services used in hydraulic fracturing of oil and gas wells. Since late 2017, the Debtors have continued to experience revenue, cash flow, and liquidity challenges. In particular, prior to the Petition Date (as defined below), the Debtors' earnings significantly declined as a result of depressed demand for one of its main products—Northern White Sand—and the substantial reduction in hydraulic fracturing caused by the COVID-19 pandemic and the Saudi-Russian oil price war. At the same time, the Debtors' costs were significantly inflated due to the above-market rates associated with their seven master railcar leases (the "**Railcar Leases**" and, the lessors thereunder, the "**Railcar Lessors**")—pursuant to which Debtor D & I Silica, LLC leased approximately 4,800 railcars—as well as the oversupply of leased railcars that the Debtors no longer require.[3]

7. To help alleviate the increasing strain on the Debtors' operations, the Debtors engaged in multiple cost-cutting initiatives—including, but not limited to, idling production facilities and implementing reductions in force and workforce-related benefits—and retaining advisors to assist in the evaluation of strategic alternatives, including Latham & Watkins LLP as counsel, Lazard Frères and Co. LLP as investment banker, and Alvarez & Marsal North America, LLC as financial advisor.

8. Nevertheless, the strain on the Debtors' operations prevented them from meeting the fixed charge coverage ratio covenant under that certain Credit Agreement, dated as of August 1, 2018 (as the same may be amended, modified or supplemented, the "**Prepetition Credit**

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[3] For additional information regarding the Debtors' business and the events leading up to the Chapter 11 Cases, please refer to the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] (the "**First Day Declaration**").

Agreement" and, together with the "Loan Documents" as defined in the Prepetition Credit Agreement, the "**Prepetition Loan Documents**"), by and among Hi-Crush Partners LP, as borrower, JPMorgan Chase Bank, N.A. (the "**Prepetition Credit Agreement Agent**"), as administrative agent and as an issuing lender, and the other lenders party thereto from time to time (the "**Prepetition Credit Agreement Lenders**"). As a result of this event of default, on June 22, 2020, the Debtors entered into that certain Forbearance Agreement (the "**Forbearance Agreement**") with the Prepetition Credit Agreement Lenders, in order to, among other things, allow time for the Debtors to explore various strategic alternatives. On July 3, 2020, the Debtors entered into that certain First Amendment to Forbearance Agreement and Amendment to Credit Agreement with the Prepetition Credit Agreement Lenders, thereby extending the forbearance period under the Forbearance Agreement to July 12, 2020.

9. Concurrently with the efforts described above, the Debtors and their advisors engaged in extensive discussions and negotiations with various stakeholders—including the Railcar Lessors, the Prepetition Credit Agreement Agent on behalf of the Prepetition Credit Agreement Lenders, and the Ad Hoc Group—regarding a potential restructuring of the Debtors' balance sheet and business operations. As a result of such extensive negotiations, the Debtors and the Ad Hoc Group entered into the RSA, pursuant to which the parties agreed to the restructuring transaction for the Debtors set forth in the Plan.[4]

10. The Plan, which embodies the terms of the RSA, contemplates: (a) a conversion of the Debtors' DIP ABL Facility into an Exit Facility; (b) a $43.3 million rights offering (the "**Rights Offering**"), backstopped by certain members of the Ad Hoc Group whereby Holders of Prepetition Notes Claims and Eligible General Unsecured Claims will receive the rights to

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[4] A copy of the RSA is attached as Exhibit B to the First Day Declaration and as Exhibit D to the Plan.

purchase New Secured Convertible Notes to be issued by the Reorganized Debtors on the Effective Date; and (c) a debt-for-equity exchange of Prepetition Notes Claims and General Unsecured Claims for the New Equity Interests in the Reorganized Hi-Crush Inc. The Debtors believe that the restructuring contemplated by the Plan is in the best interests of their stakeholders and will both maximize the value of the Debtors' estates and provide a solid foundation for their operations going forward.

B. The Chapter 11 Cases and Solicitation Process

11. On July 12, 2020 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced these Chapter 11 Cases. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

12. On August 14, 2020, the Court entered an *Order (I) Approving Adequacy of Disclosure Statement, (II) Scheduling Hearing on Confirmation of Plan, (III) Establishing Deadline to Object to Plan and Form of Notice Thereof; (IV) Approving (A) Solicitation Procedures, (B) Forms of Ballots and Notices of Non-Voting and Limited Voting Status, and (C) Rights Offering Materials, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Cure Notice, and (VI) Granting Related Relief* [Docket No. 288] (the "**Disclosure Statement Order**"). Pursuant to the Disclosure Statement Order, the Bankruptcy Court, among other things, approved the *Disclosure Statement for the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 290] (the "**Disclosure Statement**") and established certain solicitation and voting procedures. Specifically, September 18, 2020 was established as the objection deadline for confirmation of the Plan and the deadline by which all ballots to accept or reject the Plan and to opt-out of the third party releases must be completed and received by Kurtzman Carson

Consultants LLC (the "**Voting and Claims Agent**"). In addition, a hearing to consider confirmation of the Plan was scheduled for September 23, 2020 (the "**Confirmation Hearing**").

13. Following the entry of the Disclosure Statement Order, the Debtors distributed their Disclosure Statement and solicitation package containing, among other things, the applicable Ballot to vote to accept or reject the Plan to all Holders of Claims in Classes 4 (Prepetition Notes Claims) and 5 (General Unsecured Claims).[5]

14. The Debtors also distributed their Disclosure Statement and solicitation package containing, among other things, the applicable Opt-Out Form to all Holders of Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), and Class 3 (Secured Tax Claims), and to all Holder of Equity Interests in Class 8 (Old Parent Interests).[6]

15. On August 20, 2020, the Debtors published the Confirmation Hearing Notice in *The New York Times* and the *Houston Chronicle*.[7] On August 27, 2020, the Debtors filed with this Court the *Notice of (I) Plan Confirmation Hearing, (II) Objection and Voting Deadlines, and (III) Solicitation and Voting Procedures* [Docket No. 326] (the "**Confirmation Hearing Notice**").

16. On September 4, 2020, the Debtors filed with this Court the *Notice of Cure Amounts in Connection with Contracts and Leases* [Docket No. 344] (the "**Cure Notice**"), which provided notice of the proposed cure claim amounts associated with the Debtors' executory contracts and unexpired leases listed therein.

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[5] *See BNC Certificate of Service re: Order (I) Approving Adequacy of Disclosure Statement, (II) Scheduling Hearing on Confirmation of Plan, (III) Establishing Deadline to Object to Plan and Form of Notice Thereof; (IV) Approving (A) Solicitation Procedures, (B) Forms of Ballots and Notices of Non-Voting and Limited Voting Status, and (C) Rights Offering Materials, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Cure Notice, and (VI) Granting Related Relief*, dated August 16, 2020 [Docket No. 292].

[6] *See id.*

[7] *See Affidavit of Publication of the Notice of (I) Plan Confirmation Hearing, (II) Objection and Voting Deadlines, and (III) Solicitation and Voting Procedures in the Houston Chronicle*, dated August 27, 2020 [Docket No. 323]; *Affidavit of Publication of the Notice of (I) Plan Confirmation Hearing, (II) Objection and Voting Deadlines, and (III) Solicitation and Voting Procedures in the New York Times*, dated August 27, 2020 [Docket No. 324].

17. On September 9, 2020, the Debtors commenced the Rights Offering, consistent with the Rights Offering Procedures, the Disclosure Statement Order, and the Backstop Order. Consistent with the foregoing, the Debtors expect to timely complete the Rights Offering on September 29, 2020.

18. On September 11, 2020, the Debtors filed with this Court the *Notice of Filing of Plan Supplement for the Joint Prepackaged Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 365] (as may be amended and supplemented from time to time, the "**First Plan Supplement**"), and on September 21, 2020, the Debtors filed with this Court the *Notice of Filing of Second Plan Supplement for the Joint Prepackaged Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 401] (as may be amended and supplemented from time to time, the "**Second Plan Supplement**" and, together with the First Plan Supplement, the "**Plan Supplement**").

19. In connection with the filing of this Memorandum, and in further support hereof and of confirmation of the Plan, the Debtors filed on September 21, 2020 the following declarations: (a) the *Declaration of J. Philip McCormick in Support of Confirmation of the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 397] (the "**McCormick Declaration**"), (b) the *Declaration of Ari N. Lefkovits in Support of Confirmation of the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 399] (the "**Lefkovits Declaration**"), and (c) the *Declaration of Ryan Omohundro in Support of Confirmation of the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the*

Bankruptcy Code [Docket No. 398] (the "**Omohundro Declaration**" and, together with the McCormick Declaration and the Lefkovits Declaration, the "**Confirmation Declarations**").

C. The Voting Results

20. The Voting Report sets forth the dollar amounts of Claims and number of Holders voting in favor of the Plan in each Class, with respect to the votes actually cast, which is summarized in the charts below:

Dollars Actually Voted

Class	Class Description	Total Dollars Voted	Dollars Accepted	Dollars Rejected	Dollars Abstained	% of Dollars Accepted	% of Dollars Rejected
4	Prepetition Notes Claims	$435,274,000	$435,274,000	$0	$0	100%	0%
5	General Unsecured Claims	$90,580,824.01	$90,188,211.24	$392,612.77	$875,453.23	99.57%	0.43%

Numbers Actually Voted

Class	Class Description	Total Number Voted	Number Accepted	Number Rejected	Number Abstained	% of Voters Accepted	% of Voters Rejected
4	Prepetition Notes Claims	137	137	0	0	100%	0%
5	General Unsecured Claims	63	58	5	6	92.06%	7.94%

21. Accordingly, the Plan is overwhelmingly supported by Holders of Class 4 Prepetition Notes Claims and Class 5 General Unsecured Claims.

OUTSTANDING OBJECTIONS

22. In connection with confirmation of the Plan and the Cure Notice, certain parties filed objections with this Court, while others provided informal comments to the Debtors (collectively, the "**Confirmation Objections**"). The Debtors and the relevant parties have worked together to resolve most of the Confirmation Objections. For the convenience of the Court, the Debtors have attached two response charts to this Memorandum (together, the "**Response Charts**"). The first Response Chart attached hereto as Exhibit A provides the methods by which the Debtors resolved each of the Confirmation Objections that have been resolved as of the date

hereof. The second Response Chart attached hereto as Exhibit B provides the Debtors' responses to each of the Confirmation Objections that have not been resolved as of the date hereof.[8]

BASIS FOR RELIEF

23. To obtain confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. *See Heartland Fed. Savs. & Loan Ass'n v. Briscoe Enters., Ltd. II* (*In re Briscoe Enters., Ltd. II*), 994 F.2d 1160, 1165 (5th Cir. 1993) (stating that "the combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof under both § 1129(a) and in a cramdown."); *In re Cypresswood Land Partners I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009).

24. Through filings with the Bankruptcy Court, the Confirmation Declarations, and the testimonial evidence that may be adduced at the Confirmation Hearing, the Debtors will demonstrate, by a preponderance of the evidence, that all applicable subsections of section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan.

A. The Plan Satisfies the Requirements for Confirmation Under Section 1129(a) of the Bankruptcy Code, Other Than Section 1129(a)(8)

25. As addressed in detail herein and in the Response Charts attached hereto, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8). However, as described more fully below and in the Response Charts attached hereto, the Plan may be confirmed notwithstanding the fact that not all Classes of Claims and

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[8] For the avoidance of doubt, (a) any party that has an unresolved objection to the Cure Notice listed in Exhibit B maintains the right to continue to pursue such objection until it is adequately resolved, and (b) the Debtors reserve the right to respond to any and all Confirmation Objections, whether or not contained or listed in this Memorandum or in the Response Charts.

Equity Interests, as applicable, have accepted the Plan pursuant to section 1129(b) of the Bankruptcy Code.

1. Section 1129(a)(1): The Plan Complies with Applicable Provisions of the Bankruptcy Code

26. Section 1129(a)(1) of the Bankruptcy Code provides that a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) informs that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977); *see also In re Idearc Inc.*, 423 B.R. 138, 159 (Bankr. N.D. Tex. 2009), *subsequently aff'd sub nom. In re Idearc, Inc.*, 662 F.3d 315 (5th Cir. 2011); *In re Mirant Corp.*, No. 03-46590DML11, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007); *In re Johns-Manville Corp.*, 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom., Kane v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 843 F.2d 636 (2d Cir. 1988).

27. As demonstrated below, the Plan fully complies with the requirements of sections 1122 and 1123 and all other applicable provisions of the Bankruptcy Code.

(a) Section 1122: The Plan Complies with Section 1122 of the Bankruptcy Code

28. Section 1122(a) of the Bankruptcy Code provides in pertinent part as follows:

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

11 U.S.C. § 1122(a).

29. 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). For a classification structure to satisfy section 1122 of the Bankruptcy Code, it is not necessary

that all substantially similar claims or interests be designated to the same class, but only that all claims or interests designated to a particular class be substantially similar to each other. *In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 596 (Bankr. S.D. Tex. 1991) ("A classification scheme satisfies section 1122(a) of the Bankruptcy Code when a reasonable basis exists for the choices made and all claims within a particular class are substantially similar.").

30. The Plan provides for the separate classification of Claims and Equity Interests based upon differences in the legal nature and/or priority of such Claims and Equity Interests. The Plan designates the following classes of Claims and Equity Interests: Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), Class 4 (Prepetition Notes Claims), Class 5 (General Unsecured Claims), Class 6 (Intercompany Claims), Class 7 (Old Affiliate Interests in any Parent Subsidiary), and Class 8 (Old Parent Interests).

31. A plan proponent is afforded significant flexibility in classifying claims and interests into different classes, provided that there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar. *See In re Pisces Energy LLC*, No. 09-36591, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009) ("[A] plan proponent is afforded significant flexibility in classifying claims under section 1122(a) of the Bankruptcy Code provided there is a reasonable basis for the classification scheme and all claims within a particular class are substantially similar."); *In re Sentry Op. Co. of Tex., Inc.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (noting that "[section] 1122 is permissive of any classification scheme that is not proscribed, and that substantially similar claims may be separately classified"). The classification structure of the Plan is rational and complies with the Bankruptcy Code. Each of the Claims or Equity Interests in each Class is substantially similar to the other Claims or Equity Interests in such Class. Accordingly, the Debtors' classification of Claims and Equity Interests

does not prejudice the rights of Holders of such Claims and Equity Interests and is consistent with the requirements of the Bankruptcy Code and, thus, is appropriate.

(b) Section 1123(a): The Plan Complies with All Requirements of Section 1123(a) of the Bankruptcy Code

32. Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which every chapter 11 plan must comply. *See* 11 U.S.C. § 1123(a). As demonstrated herein, the Plan fully complies with each enumerated requirement.

(1) *Section 1123(a)(1): Designation of Classes of Claims and Equity Interests*

33. Section 1123(a)(1) requires that a plan must designate classes of claims and interests subject to section 1122 of the Bankruptcy Code. As discussed above, the Plan designates six Classes of Claims and two Classes of Equity Interests subject to section 1122. Accordingly, the Plan satisfies the requirements of section 1123(a)(1) of the Bankruptcy Code.

(2) *Section 1123(a)(2): Classes That Are Not Impaired by the Plan*

34. Section 1123(a)(2) requires a plan to specify which classes of claims or interests are unimpaired by the plan. Article III of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), and Class 7 (Old Affiliate Interests in any Parent Subsidiary) are Unimpaired. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

(3) *Section 1123(a)(3): Treatment of Classes That Are Impaired by the Plan*

35. Section 1123(a)(3) requires a plan to specify how classes of claims or interests that are impaired by the plan will be treated. Article III of the Plan sets forth the treatment of Impaired Claims in Class 4 (Prepetition Notes Claims), Class 5 (General Unsecured Claims), Class 6

(Intercompany Claims), and Class 8 (Old Parent Interests). Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(4) *Section 1123(a)(4): Equal Treatment Within Each Class*

36. Section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder agrees to receive less favorable treatment than other class members. Pursuant to the Plan, the treatment of each Claim against or Equity Interest in the Debtors, in each respective Class, is the same as the treatment of each other Claim or Equity Interest in such Class. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(5) *Section 1123(a)(5): Adequate Means for Implementation*

37. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide "adequate means for the plan's implementation." Article V of the Plan provides adequate and proper means for the implementation of the Plan, including, without limitation, the issuance of the New Equity Interests, and the consummations of the Rights Offering and attendant issuance of the New Secured Convertible Notes, the Exit Facility Loan Documents and the Amended/New Organizational Documents of the Reorganized Debtors.

38. The transactions contemplated by the Plan are designed to maximize the value of the Debtors' business and assets. Accordingly, the Plan, together with the documents and agreements contemplated by the Plan and the Plan Supplement, provide the means for implementation of the Plan as required by and in satisfaction of section 1123(a)(5) of the Bankruptcy Code.

(6) *Section 1123(a)(6): Amendment of the Reorganized Debtors' Charters*

39. Section 1123(a)(6) prohibits the issuance of non-voting equity securities, and requires amendment of a debtor's charter to so provide. It also requires that a corporate charter provide an appropriate distribution of voting power among the classes of securities possessing voting power. The Plan does not provide for the issuance of non-voting equity securities, and the form of amended and restated organizational documents for Hi-Crush Inc. (as reorganized pursuant to the Plan on or after the Effective Date, the "**Reorganized Parent**"), which was filed with the First Plan Supplement on September 11, 2020, prohibits the issuance of non-voting equity securities. Accordingly, the Plan satisfies section 1123(a)(6) of the Bankruptcy Code.

(7) *Section 1123(a)(7): Provisions Regarding Directors and Officers*

40. Section 1123(a)(7) of the Bankruptcy Code 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 and any successor to such officer, director, or trustee." Article V.L of the Plan provides that the initial five member board of directors of Reorganized Parent (the "**New Board**") shall be identified in the Plan Supplement and shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. The New Board shall comprise the chief executive officer of Reorganized Parent and four other directors designated by the Backstop Parties prior to the Effective Date in accordance with the terms of the New Stockholders Agreement, a form of which was filed with the First Plan Supplement. Consistent with the foregoing, the Debtors filed the Second Plan Supplement with the Court on September 21, 2020. The manner of selecting the New Board and the proposed members thereof are consistent with Delaware corporate law, the

Bankruptcy Code, the interests of creditors and equity security holders, and public policy. Therefore, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

(c) Section 1123(b): The Plan Incorporates Certain Permissible Provisions

41. Section 1123(b) of the Bankruptcy Code sets forth certain permissive provisions that may be incorporated into a chapter 11 plan. The contents of the Plan are consistent with these provisions.

(1) *Section 1123(b)(1): Impairment of Claims and Interests*

42. Section 1123(b)(1) of the Bankruptcy Code provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). In the cases at hand, Claims in Class 4 (Prepetition Notes Claims), Class 5 (General Unsecured Claims), Class 6 (Intercompany Claims), and Class 8 (Old Parent Interests) are Impaired, and Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), and Class 7 (Old Affiliate Interests in any Parent Subsidiary) are Unimpaired by the Plan. Accordingly, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

(2) *Section 1123(b)(2): Assumption or Rejection of Executory Contracts and Unexpired Leases*

43. Section 1123(b)(2) of the Bankruptcy Code allows a plan to provide for assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. Article VI.A of the Plan provides that, as of the Effective Date, the Debtors shall be deemed to have assumed each Executory Contract and Unexpired Lease to which they are party except for those Executory Contracts and Unexpired Leases that (a) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court; (b) are the subject of a motion to reject filed by the Debtors that is pending on the Effective

Date; (c) are identified in the Plan Supplement on the Schedule of Rejected Executory Contracts and Unexpired Leases; or (d) are rejected by the Debtors or terminated pursuant to the terms of the Plan. These provisions of the Plan are permitted by section 1123(b)(2) of the Bankruptcy Code.

(3) *Section 1123(b)(3): Retention of Claims or Interests by the Debtors*

44. Section 1123(b)(3)(B) of the Bankruptcy Code provides that a plan may provide for "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose" of any claim or interest. 11 U.S.C. 1123(b)(3)(B) (emphasis added). In this case, the Plan preserves the Reorganized Debtors' rights to enforce any claims, rights, or causes of action that the Debtors may hold against any person or entity, except those causes of action that are explicitly released under the Plan. *See* Plan, Art. X.F. These provisions of the Plan are expressly permitted by section 1123(b)(3) of the Bankruptcy Code and, for the reasons discussed more fully below, appropriate in this case.

(4) *Section 1123(b)(6): Provisions Not Inconsistent with the Bankruptcy Code*

45. Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."

(d) Releases, Exculpation, and Injunction.

46. In accordance with section 1123(b)(6) of the Bankruptcy Code, Article X of the Plan contains certain release, exculpation, and injunction provisions that are consistent with the applicable provisions of the Bankruptcy Code and conform to the requirements of Fifth Circuit case law. The release, exculpation, and injunction provisions are the product of good-faith, arms'-length negotiations between the Debtors, the Prepetition Credit Agreement Agent on behalf of the

Prepetition Credit Agreement Lenders, the DIP Agents on behalf of the DIP Lenders, and the Ad Hoc Group. These provisions enable the Debtors to emerge from chapter 11 with a clean slate and focus on their business operations going forward. The Debtors believe that this Court should approve them because they are fair and reasonable under the circumstances, supported by consideration, and essential to the reorganization in the Chapter 11 Cases.

47. *Releases by the Debtors*. Section 1123(b)(3)(A) of the Bankruptcy Code states that a plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). The Bankruptcy Code, thus, clearly contemplates that the Debtors are permitted to settle or release any claim or cause of action that they might otherwise have against a third party. In this circuit, courts have generally found that chapter 11 debtors are generally allowed to release claims pursuant to section 1123(b)(3)(A) of the Bankruptcy Code if the release is (a) "fair and equitable" and (b) "in the best interests of the estate." *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)); *In re Bigler LP*, 442 B.R. 537, 543 n.6 (Bankr. S.D. Tex. 2010); *In re Derosa-Grund*, 567 B.R. 773, 784–85 (Bankr. S.D. Tex. 2017); *see also In re Mirant Corp.*, 348 B.R. 725, 738 (Bankr. N.D. Tex. 2006). The "fair and equitable" prong is generally interpreted, consistent with that term's usage in section 1129(b) of the Bankruptcy Code, to require compliance with the Bankruptcy Code's absolute priority rule. *See Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355-56 (5th Cir. 1997) ("The words 'fair and equitable' are terms of art—they mean that senior interests are entitled to full priority over junior ones.") (citations omitted); *see also In re Mirant Corp.*, 348 B.R. at 738 ("'[F]air and

equitable' translates to the absolute priority rule."). Courts generally determine whether a release is "in the best interest of the estate" by reference to the following factors:

a. The probability of success of litigation, with due consideration for the uncertainty in fact and law;

b. The complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection;

c. The paramount interest of the creditors and a proper deference to their respective views;

d. The extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and

e. All other factors bearing on the wisdom of the compromise.

See In re Moore, 608 F.3d 253, 263 (5th Cir. 2010); *In re Foster Mortg. Corp.*, 68 F.3d 914, 917-18 (5th Cir. 1995); *see also In re Derosa-Grund*, 567 B.R. at 784-85; *In re Roqumore*, 393 B.R. 474, 479-80 (Bankr. S.D. Tex. 2008).

48. The Plan provides for a release of the Released Parties and their respective assets and properties, by the Debtors and Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, as more fully set forth in Article X.B.1 of the Plan (the "**Debtor Release**"). Under the Plan, the terms "Released Parties" and "Related Persons" are defined in Article I.B as follows:

> "*Released Party*" means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Prepetition Credit Agreement Agent; (d) the Prepetition Credit Agreement Lenders; (e) the Prepetition Notes Indenture Trustee; (f) the DIP Agents; (g) the DIP Lenders; (h) the Ad Hoc Noteholder Committee and the members thereof in their capacities as such; (i) the Releasing Prepetition Noteholders; (j) the Backstop Parties; (k) the Distribution Agents; (l) the Exit Facility Agent and the Exit Facility Lenders; (m) the New Secured Convertible Notes Indenture Trustee and the New Secured Convertible Noteholders; (n) the Releasing Old Parent Interestholders; and (o) with respect to each of the foregoing Persons

> or Entities in clauses (a) through (n), the Related Persons of each such Person or Entity, in each case solely in their capacity as such; *provided*, that the Designated Persons shall not be Released Parties under this Plan.
>
> "*Related Persons*" means, with respect to any Person or Entity, such Person's or Entity's respective predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including ex officio members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory or subcommittee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, **in each case acting in such capacity at any time on or after the Petition Date**, and any Person or Entity claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees; *provided*, *however*, that no insurer of any Debtor shall constitute a Related Person.

Plan, Art. I.B (emphasis added).

49. The Debtor Release was the product of comprehensive and arms'-length negotiations among the Debtors and the Ad Hoc Group, the results of which were memorialized in the RSA. The Debtors, in their business judgment, determined that the Debtor Release was necessary to reach consensus on the Plan and was critical to the Debtors' successful reorganization.

50. Pursuant to the Debtor Release, the Debtors have determined to release their own Claims, Causes of Action, and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities against the Released Parties. Importantly, however, the Debtor Release expressly excludes "claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes a criminal act, fraud, willful misconduct, or gross negligence, in each case as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction." Plan, Art. X.B.1.

51. The Debtors do not believe that any valid claims or causes of action exist against any of the Released Parties. Moreover, given that these causes of action belong to the Debtors themselves, it is plainly within the purview of the Debtors to release their own causes of action. Additionally, the Plan, including the Debtor Release, was vigorously negotiated by sophisticated entities that were represented by able counsel and advisors. Accordingly, the Debtor Release is fair, equitable, justified, in the best interests of the Debtors' estates.

52. Finally, because the scope of Related Persons is expressly limited to the applicable Person "acting in such capacity at any time on or after the Petition Date," it necessarily means that each of the Released Parties has participated in the Plan process, contributed to the Restructuring Transactions consistent with the RSA, or otherwise provided value to the Estates by, for example, assisting in the confirmation or consummation of the Plan. And if the Debtor Release did not include the "Related Persons," then the release would be toothless as parties could easily circumvent the release by litigating with such Related Persons.

53. In sum, the Debtors have determined, in a proper exercise of their business judgment, that they will not pursue any of these causes of action, as among other things, they have no value and the Ad Hoc Group has agreed with this assessment. Rather than dwelling on the past, the Debtors would like to emerge from chapter 11 keenly focused on the future. Allowing litigation overhang to remain will only cloud the Debtors' pursuit of their business objectives after the Effective Date. The Debtor Release is not only fair, equitable, and necessary to the Debtors' reorganization, but it is also appropriate under prevailing Fifth Circuit case law.

54. *Release by Third Parties*. In addition to the release granted by the Debtors in Article X.B.1 of the Plan, Article X.B.2 of the Plan provides for the release of the Released Parties and their respective assets and properties, from any Claims, Causes of Action, and other debts,

obligations, rights, suits, damages, actions, remedies, and liabilities held by each Non-Debtor Releasing Party[9] that does not affirmatively opt out of such release on its respective ballot or form (the "**Third Party Release**"). Absent the Third Party Release, the Debtors believe that the parties in interest that both negotiated for, and relied upon the prospect of the release in negotiations, would not have committed to the result reflected in the Plan. The Third Party Release is narrowly tailored to reflect the arms'-length, good-faith negotiations that resulted in the Plan and global settlement with the Ad Hoc Group, both in the best interest of the Debtors and their estates.

55. Under Fifth Circuit law, third party releases do not violate the Bankruptcy Code and should be allowed and included in the plan if they are, as here, (a) consensual, (b) specific in language, (c) integral to the plan, (d) a condition of the settlement, and (e) given for consideration. *See In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775-76 (Bankr. N.D. Tex. 2007) (citing *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 5th Cir. 1987)); *see also FOM Puerto Rico S.E. v. Dr. Barnes Eyecenter Inc.*, 255 Fed. Appx. 909, 911-12 (5th Cir. 2007). The critical factor in determining whether a release is consensual is whether—after the Debtors' due process obligations of providing appropriate notice—"the affected creditor *timely objects* to the provision." *See In re Wool Growers Cent. Storage*, 371 B.R. at 776 (citing *In re Zale Corp.*, 62 F.3d 746, 760-61 (5th Cir. 1995)) (emphasis added). Courts in this district have adopted this standard articulated in *Wool Growers*. *See* Conf. Hr'g Tr. at 14 (D.I. 352), *In re Warren Res., Inc.*, No. 16-32760 (MI)

[9] The Plan defines a "**Non-Debtor Releasing Party**" as, collectively: "(a) the Prepetition Credit Agreement Agent; (b) the Prepetition Credit Agreement Lenders; (c) the Prepetition Notes Indenture Trustee; (d) the DIP Agents; (e) the DIP Lenders; (f) the Ad Hoc Noteholder Committee and the members thereof in their capacities as such; (g) the Releasing Prepetition Noteholders; (h) the Backstop Parties; (i) the Distribution Agents; (j) the Exit Facility Agent and the Exit Facility Lenders; (k) the New Secured Convertible Notes Indenture Trustee and the New Secured Convertible Noteholders; (l) those Holders of Claims deemed to accept this Plan that do not affirmatively opt out of the Third Party Release as provided on their respective Ballots/Opt-Out Forms; (m) those Holders of General Unsecured Claims that do not affirmatively opt out of the Third Party Release as provided on their respective Ballots/Opt-Out Forms; (n) all Holders of Claims that vote to accept this Plan; and (o) the Releasing Old Parent Interestholders."

(Bankr. S.D. Tex. Sept. 14, 2016) ("If there are third-party releases that are negotiated between the Debtor and third parties as part of their deal, that doesn't seem to me to really run afoul of anything.").

56. Importantly, the Third Party Release in this case is consensual. Each of the Ballots/Opt-Out Forms sent to Holders of Claims and Equity Interests pursuant to the Disclosure Statement Order specifically advise creditors and interest holders in bold type that "BY NOT CHECKING THE [OPT OUT] BOX BELOW YOU ELECT TO GRANT THE THIRD PARTY RELEASE . . . . YOU MUST AFFIRMATIVELY CHECK THE BOX BELOW IN ORDER TO OPT-OUT OF THE THIRD PARTY RELEASE." Further, each Ballot/Opt-Out Form restates the Third-Party Release set forth in the Plan in its entirety. Thus, all creditors and equity holders were both clearly advised of the opportunity to vote "no" to the Third Party Release and provided with the opportunity to act accordingly. Accordingly, the Debtors believe that the Third Party Release is appropriate and should be approved by this Court.

57. *Exculpation*. By requesting that the Court approve the exculpation in Article X.E of the Plan, the Debtors are essentially asking the Court to make a finding of fact that the Exculpated Parties have participated in good faith with respect to the Chapter 11 Cases, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan.

58. The Debtors believe that the Exculpated Parties have and will continue to participate in all of the foregoing in good faith. Further, the scope of the exculpation is targeted and has no effect on liability resulting from gross negligence, actual fraud, or willful misconduct, as determined by a Final Order. Thus, the Debtors believe that the exculpation provision is

consistent with applicable law and should be approved in connection with the Confirmation of the Plan.

59. Injunction. Article X.G of the Plan provides that Confirmation of the Plan shall have the effect of permanently enjoining all entities from (a) commencing or continuing any suit, action or other proceeding; (b) enforcing, attaching, collecting, or recovering any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a setoff or right of subrogation of any kind; or (e) commencing or continuing any action or other proceeding, in each case on account of or with respect to any claim, demand, liability, obligation, debt, right, cause of action, equity interest, or remedy released, exculpated, settled, or discharged pursuant to the Plan or the Confirmation Order against any person or entity released, discharged, or exculpated party under the Plan. The injunction is necessary to preserve and enforce the releases and exculpation granted by the Plan, and it is narrowly tailored to achieve that purpose.

(5) *Section 1123(b)(6): Securities Law Exemptions*

60. Article V.I of the Plan addresses the securities laws exemptions for the securities to be provided or issued under and in accordance with the Plan. Section 1145(a)(1) of the Bankruptcy Code provides:

> Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section 5 of the Securities Act of 1933 and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in, a security do not apply to . . . the offer or sale under a plan of a security of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan . . . in exchange for a claim against, interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate.

11 U.S.C. § 1145(a)(1).

61. Each of the Debtors, the Reorganized Debtors, the Ad Hoc Group, and their respective Affiliates is relying on section 1145(a)(1) of the Bankruptcy Code to exempt the offer and delivery of the Plan Securities from the registration requirements of the Securities Act and state securities and "blue sky" laws insofar as: (a) the securities are issued by a debtor, an affiliate of a debtor, or a successor to a debtor under a plan approved by a Bankruptcy Court; (b) the recipients of securities hold a claim against, an interest in, or a claim for administrative expense in the case concerning the debtor or such affiliate; and (c) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or are issued "principally" in such exchange and "partly" in exchange for cash or property.

62. Accordingly, such securities may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder of such securities is an "underwriter" with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy Code (such holder, a "**Restricted Holder**"). Restricted Holders would, however, be permitted to resell such securities without registration if they are able to comply with the provisions of Rule 144 under the Securities Act, or if such securities are registered with the Securities and Exchange Commission pursuant to a registration statement or otherwise. In addition, subject to applicable law, such securities generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.[10]

63. Additionally, the Debtors believe that the issuance of the New Secured Convertible Notes (a) to the Backstop Parties, including the Put Option Notes, pursuant to the Backstop

[10] Notwithstanding the foregoing, section VIII of Disclosure Statement urges any Persons who receive securities under the Plan to consult their own counsel with respect to restrictions applicable under the Securities Act and any appropriate rules and the circumstances under which securities may be sold in reliance upon any such rules.

Purchase Agreement in satisfaction of their obligation to purchase any unsubscribed shares in the Rights Offering, and (b) to the Rights Offering Participants pursuant to the terms and conditions of the Rights Offering will, in each case, be exempt from the registration requirements of the Securities Act pursuant to section 4(a)(2) of the Securities Act or other applicable exemptions promulgated thereunder, as transactions by an issuer not involving any public offering and equivalent exemptions in state securities laws.

64. Based upon the foregoing, the Plan fully complies with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

2. Section 1129(a)(2): The Debtors, as Plan Proponents, Have Complied with Applicable Provisions of the Bankruptcy Code

65. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). The legislative history of section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 262 (Bankr. S.D. Tex. 2015) ("Courts interpret [section 1129(a)(2)] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code §§ 1125 and 1126."). The Debtors have complied with section 1129(a)(2) of the Bankruptcy Code by distributing the Disclosure Statement and soliciting acceptances of the Plan through the Voting and Claims Agent, in accordance with the procedures approved by this Court pursuant to the Disclosure Statement Order. Furthermore, pursuant to the

Disclosure Statement Order, this Court approved the content of the Disclosure Statement as containing adequate information in compliance with section 1125 of the Bankruptcy Code. Based upon the foregoing, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

3. Section 1129(a)(3): The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

66. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Good faith is determined through consideration of whether the plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success." *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985). The plan must also achieve a result consistent with the Bankruptcy Code. *See In re Block Shim Dev. Co-Irving*, 939 F.2d 289, 292 (5th Cir. 1991). The good faith standard is "viewed in light of the totality of circumstances surrounding establishment of a chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code to give debtors a reasonable opportunity to make a fresh start." *In re Sun Country Dev.*, 764 F.2d at 408; *In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) ("Good faith should be evaluated 'in light of the totality of the circumstances' . . . mindful of the purposes underlying the Bankruptcy Code.") (citing *In re Cajun Elec. Power Co-op., Inc.*, 150 F.3d 503, 519 (5th Cir. 1998)); *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997)).

67. The Debtors have met their good faith obligation under the Bankruptcy Code. The Plan, Plan Supplement and all documents necessary to effect the Plan were developed after months of analysis and negotiations between the Debtors and other key constituents and were proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and effectuating a successful reorganization of the Debtors.

68. Moreover, the Plan addresses all Claims against the Debtors and enables the Debtors to emerge from chapter 11 as going concern entities. Given that the Plan is the product of negotiations among the Debtors' key constituents and provides for reorganization of the Debtors' operations, it is clear that the Plan has been proposed in good faith as interpreted under the Bankruptcy Code. Additionally, the Plan will achieve a result consistent with the overall objectives and purposes of the Bankruptcy Code. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."). Inasmuch as the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code, the Plan and the related documents have been filed in good faith and the Debtors have satisfied their obligations under section 1129(a)(3).

4. Section 1129(a)(4): The Payment for Certain Services or for Certain Costs and Expenses Is Subject to Court Approval

69. Section 1129(a)(4) of the Bankruptcy Code states that "any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees made from estate assets be subject to review and approval as to their reasonableness by the court. *See In re Cajun Elec. Power Coop.*, 150 F.3d at 518 ("Section 1129(a)(4) by its terms requires court approval of '[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case.'"). This is a "relatively open-ended standard" involving a case-by-case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged.

Id. (finding with respect to routine legal fees and expenses that have been approved, "the court will ordinarily have little reason to inquire further with respect to the amount charged.").

70. Here, all payments made or to be made by the Debtors on account of Professional Fee Claims are subject to Bankruptcy Court approval. Pursuant to Article II.A.2 of the Plan, Professionals and other Entities asserting Professional Fee Claims must file with the Bankruptcy Court an application for final allowance of such Professional Fee Claim. Furthermore, all monthly and interim compensation of Professionals by the Debtors prior to final allowance of such Professional Fee Claims have been or will be approved by the Court and paid in accordance with the procedures established by the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and (II) Granting Related Relief* [Docket No. 305].

5. Section 1129(a)(5): Necessary Information Regarding Directors and Officers of the Debtors Under the Plan Has Been Disclosed

71. 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 debtor; 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 that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtor.

72. The members of the New Board shall comprise the chief executive officer of Reorganized Parent and other directors designated by the Backstop Parties. Consistent with section 1129(a)(5) of the Bankruptcy Code, the Second Plan Supplement discloses the identities of the directors of the New Board. In addition, to the extent applicable, the Debtors will disclose the identity and affiliations of any Person proposed to serve as an officer of Reorganized Parent,

and—to the extent such Person is an insider other than by virtue of being a director, managing member or an officer—will disclose the nature of any compensation for such Person. Each such director, manager, managing member and/or officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended/New Organizational Documents. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

6. Section 1129(a)(6) of the Bankruptcy Code Is Not Applicable

73. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable because after confirmation of the Plan, the Debtors' businesses will not involve rates established or approved by, or otherwise subject to, any governmental regulatory commission.

7. Section 1129(a)(7): The Plan Is in the Best Interests of Creditors and Equity Interest Holders

74. Section 1129(a)(7) of the Bankruptcy Code is often referred to as the "best interests test" or the "liquidation test," and provides, in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class –
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date . . . .

11 U.S.C. § 1129(a)(7).

75. The best interests test focuses on individual dissenting creditors rather than classes of claims. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 (1999). Under the best interests test, the court "must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated [under chapter 7 of the Bankruptcy Code]." *Id.* at 442; *United States v. Reorganized CF&I Fabricators, Inc.*, 518 U.S. 213, 228 (1996); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1159 n.23 (5th Cir. 1988) (noting that a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation). As section 1129(a)(7) makes clear, the liquidation analysis applies only to non-accepting impaired claims or interests.

76. As described more fully in the Omohundro Declaration to be filed, the Debtors completed their Liquidation Analysis after extensive due diligence and it includes a detailed description of the assumptions, analysis, and results of a hypothetical chapter 7 liquidation of the Debtors. The Liquidation Analysis, including a complete description of the process and results, is set forth in Exhibit C to the Disclosure Statement.

77. As stated in the Liquidation Analysis, subject to the assumptions and limitations described therein, the proceeds from a hypothetical chapter 7 liquidation would yield between approximately $65.7 million to $107.7 million in net proceeds (after taking into account liquidation expenses). Thus, as set forth in the Liquidation Analysis, after subtracting liquidation expenses, the proceeds from a hypothetical chapter 7 liquidation would provide each impaired class with the estimated recoveries set forth in the table below. As shown therein, none of these estimated chapter 7 recoveries is more than the estimated recoveries as set forth in the Plan.

Class	Claim	Low End Chapter 7 Recovery	High End Chapter 7 Recovery	Plan Recovery
1	Other Priority Claims	N/A	N/A	100%
2	Other Secured Claims	N/A	N/A	100%
3	Secured Tax Claims	64.7%	84%	100%
4	Prepetition Notes Claims	0.6%	4.7%	26.2-37.4%
5	General Unsecured Claims	0%	0.5%	26.2-37.4%
6	Intercompany Claims	0%	0%	0%
7	Old Affiliate Interests in any Parent Subsidiary	0%	0%	100%
8	Old Parent Interests	0%	0%	0%

78. As demonstrated by the foregoing estimates, if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code, the value that creditors would recover would significantly diminish (except, of course, for those classes receiving no distribution under the Plan). The Debtors, therefore, submit that the best interests test established pursuant to section 1129(a)(7) of the Bankruptcy Code is satisfied.

8. Section 1129(a)(8): Acceptance by All Impaired Classes

79. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either accept the plan or not be impaired by a plan. Class 4 (Prepetition Notes Claims) and Class 5 (General Unsecured Claims) are Impaired Classes of Claims that were entitled to vote on, and have accepted, the Plan. In addition, Class 6 (Intercompany Claims) is an Impaired Class of Claims that was deemed to accept the Plan since the Claims are held by other Debtor entities, while Class 8 (Old Parent Interests) is an Impaired Class of Equity Interests that was deemed to reject the Plan. Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Secured Tax Claims), and Class 7 (Old Affiliate Interests in any Parent Subsidiary) are Unimpaired Classes and deemed to accept the Plan. The Plan, therefore, does not satisfy section 1129(a)(8) of the

Bankruptcy Code with respect to rejecting Class 8. Nevertheless, the Plan is confirmable because, as discussed below and in the Response Charts and Confirmation Declarations to be filed, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to such rejecting Classes.

9. Section 1129(a)(9): The Plan Provides for Payment in Full of Allowed Administrative and Priority Claims

80. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code requires a plan to satisfy administrative claims, priority unsecured claims and priority tax claims in full in cash. The Plan satisfies these requirements. *See* Plan, Art. II.A & C, Art. III.B.1 & B.3.

10. Section 1129(a)(10): The Plan Has Been Accepted by at Least One Impaired Class That Is Entitled To Vote

81. Section 1129(a)(10) of the Bankruptcy Code is an alternative requirement to the section 1129(a)(8) requirement that each class of claims or interests must either accept the plan or be unimpaired under a plan. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. 11 U.S.C. § 1129(a)(10). Here, the Debtors have met this standard because the Holders of Class 4 (Prepetition Notes Claims) and Class 5 (General Unsecured Claims) have voted to accept the Plan, as determined without including any acceptance of the Plan by any insider holding a Claim in those Classes. *See* Voting Report, Ex. A. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

11. Section 1129(a)(11): The Plan Is Feasible

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

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

11 U.S.C. § 1129(a)(11).

83. The statute requires the Bankruptcy Court to determine whether a plan is workable and has a reasonable likelihood of success. *See In re Armstrong World Indus., Inc.*, 348 B.R. 136, 167 (D. Del. 2006); *In re NII Holdings*, 288 B.R. 356, 364 (Bankr. D. Del. 2002); *In re The Leslie Fay Cos*., 207 B.R. 764, 788 (Bankr. S.D.N.Y. 1997). The statute, however, does not require a guarantee of a plan's success to demonstrate a plan's feasibility. *See Heartland Fed. Savs. & Loan Ass'n v. Briscoe Enters., Ltd. II* (*In re Briscoe Enters., Ltd. II*), 994 F.2d 1160, 1166 (5th Cir. 1993) ("[T]he [bankruptcy] court need not require a guarantee of success . . . [o]nly a reasonable assurance of commercial viability is required."). Rather, courts will find that a plan is feasible if a debtor offers a reasonable assurance that consummation of the plan is not likely to be followed by a further need for financial reorganization. *See In re Save Our Springs (S.O.S.) Alliance, Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) ("To obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'"). Neither speculative prospects of failure nor the possibility of future uncertainty are sufficient to render a plan unfeasible. *See In re WorldCom, Inc.*, 2003 Bankr. LEXIS 1401, at *170 (Bankr. S.D.N.Y. 2003); *see also In re Adelphia Business Solutions, Inc.*, 341 B.R. 415, 421 (Bankr. S.D.N.Y. 2003) ("However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.").

84. While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence, which requires that the debtors present proof that a given fact is "more likely than not." *See In re T-H New Orleans*, 116 F.3d at 801; *In re Briscoe Enters.*, 994 F.2d at 1164. A number of courts have held that this constitutes a "relatively low threshold of proof." *In re Mayer Pollack Steel Corp.*, 174 B.R. 414, 423 (Bankr. E.D. Pa. 1994) (stating that the debtors "have established that they meet the requisite low threshold of support for the plan as a viable undertaking."). In assessing feasibility, courts have identified, among others, the following factors: (a) the adequacy of the capital structure; (b) the earning power of the business; (c) the economic conditions; (d) the ability of management; (e) the probability of the continuation of the same management; and (f) any other matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. *See, e.g.*, *In re M&S Assocs., Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992).

85. Applying the foregoing legal standards, the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code. In this regard, the Debtors and their advisors have analyzed the ability of the Reorganized Debtors to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their businesses based on the Financial Projections, attached as Exhibit B to the Disclosure Statement.

86. While the Bankruptcy Court must independently determine the feasibility of the Plan, it should be noted that the Plan was supported by the Ad Hoc Group, which is comprised of sophisticated financial institutions or investment funds that meticulously evaluated, and by their vote endorsed, the likelihood of the Plan's success. In general, as illustrated by the Financial Projections and as to be discussed more fully in the Lefkovits Declaration, the Debtors believe that the Plan is feasible and satisfies the requirement of section 1129(a)(11) of the Bankruptcy Code.

12. Section 1129(a)(12): The Plan Provides for Full Payment of Statutory Fees

87. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 [of title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan." 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] chapter 123 of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(1). In accordance with these provisions, Article XII.B of the Plan provides that all fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid when due. All such fees payable after the Effective Date shall be paid in the ordinary course of business. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

13. Sections 1129(a)(13) through 1129(a)(16) Do Not Apply

88. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(13). No retiree benefits existed in the Chapter 11 Cases. As such, the Debtors are not obligated to pay any such benefits, and section 1129(a)(13) is not applicable. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtors are not subject to any domestic support obligations, and, as such, this section of the Bankruptcy Code does not apply. Section 1129(a)(15) applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). Not one of the Debtors is an "individual." Finally, section 1129(a)(16) of the Bankruptcy Code provides that property transfers by a corporation or trust that is not a moneyed, business or commercial corporation or trust be made in accordance with applicable provisions of non-bankruptcy law; however, as the Debtors are moneyed, business, or commercial corporations, this section is not applicable to the Plan.

B. Section 1129(b): Confirmation of the Plan Over Nonacceptance of Impaired Classes

89. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances in which the plan is not accepted by all impaired classes of claims and interests. This mechanism is known colloquially as "cram down." Section 1129(b) provides in pertinent part:

> [I]f all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

90. Thus, under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may "cram down" a plan over rejection by impaired classes of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes. *See, e.g., In re Johns-Manville Corp.*, 843 F.2d at 650.

91. Class 8 (Old Parent Interests) is Impaired under the Plan and has rejected the Plan. The Plan may nonetheless be confirmed over the rejection by such Class pursuant to section 1129(b) of the Bankruptcy Code because the Plan does not discriminate unfairly and is fair and equitable with respect to all non-accepting Impaired Classes. The Plan is confirmable because the Debtors have satisfied the requirements of section 1129(a)(10) and 1129(b) of the Bankruptcy Code: at least one Impaired Class of Claims has accepted the Plan (Class 4 – Prepetition Notes Claims and Class 5 – General Unsecured Claims); and the Debtors have met the requirements to "cram down" as to Class 8.

1. The Plan Does Not Discriminate Unfairly

92. The unfair discrimination standard of section 1129(b) of the Bankruptcy Code ensures that a plan does not unfairly discriminate against a dissenting class with respect to the value it will receive under a plan when compared to the value given to all other similarly situated classes. *In re Armstrong World Indus, Inc.*, 348 B.R. at 121; *In re Barney and Carey Co.*, 170 B.R. 17, 25 (Bankr. D. Mass 1994). Section 1129(b)(1) does not prohibit discrimination between classes; it prohibits only discrimination that is unfair. *In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar classes are treated differently without a reasonable basis for the disparate treatment. *See In re Buttonwood Partners, Ltd.*, 111 B.R. 57 (Bankr. S.D.N.Y. 1990). Accordingly, between two classes of claims or two classes of interests, there is no unfair discrimination if (a) the classes are comprised of dissimilar claims or interests, *see, e.g.*, *Johns-Manville Corp.*, 68 B.R. at 636, or (b) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *See, e.g.*, *Buttonwood Partners*, 111 B.R. at 63; *In re Rivera Echevarria*, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

93. In this case, the Plan's treatment of Class 8 Old Parent Interests is proper. There is no Class of Equity Interests that is similarly situated to Class 8 because the only other class of Equity Interests (Class 7 – Old Affiliate Equity Interests in any Parent Subsidiary) is structurally senior to the Class 8 Equity Interests. Thus, the Plan does not unfairly discriminate with respect to the Impaired Classes who are deemed to reject the Plan, and the Plan satisfies the "unfair discrimination" prong of the test.

2. The Plan Is Fair and Equitable

94. Section 1129(b)(2)(B)(ii) and section 1129(b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if the plan provides that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain any property under the plan on account of such junior claim or interest. *See* 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii). This central tenet of bankruptcy law is a codification of established law known as the "absolute priority rule." Sections 1129(b)(2)(B)(ii) and C(ii) require that if the holders of claims in a particular class receive less than full value for their claims, no holders of claims or interests in a junior class may receive property under the plan on account of such junior claim or interest. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988). The corollary of the absolute priority rule is that senior classes cannot receive more than a 100% recovery for their claims. *See In re Exide Techs*., 303 B.R. 48, 61 (Bankr. D. Del. 2003).

95. As described in the Confirmation Declarations, the Plan satisfies the absolute priority rule with respect to Class 8 because the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain any property under the Plan on account of such junior claims or interests.[11] Moreover, no holder of a Claim senior to such Classes will receive more than full value on account of its Claim. For these reasons, the Debtors believe that the Plan satisfies the "fair and equitable" requirement of section 1129(b) of the Bankruptcy Code.

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[11] The Debtors note that Class 7 (Old Affiliate Interests in any Parent Subsidiary) is junior to Class 5 Claims, but are being preserved. This is merely a technical preservation of Old Affiliate Interests that is solely a means to preserve the corporate and organizational structure of the Debtors. It is being done in order to avoid the unnecessary cost of reconstituting that exact same structure in connection with the consummation of the Plan. *See In re Ion Media Networks, Inc.*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009). The Plan's treatment of these Old Affiliate Interests has no economic substance and does not enable any junior creditor or interest holder to retain or recover any property of value under the Plan.

CONCLUSION

For the foregoing reasons, the Debtors submit that the Plan fully satisfies all applicable requirements of the Bankruptcy Code and respectfully requests that the Bankruptcy Court enter an order confirming the Plan and granting such other and further relief as is just and proper.

Signed: September 22, 2020
Houston, Texas

Respectfully Submitted,

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Exhibit A

Response Chart – Resolved Objections

Party	Debtors' Responses
Filed Confirmation Objections	
Lexon Insurance Company/Endurance Insurance Company [Docket No. 278]	**Resolved** by adding the language in paragraph 56 of the Confirmation Order.
Wisconsin Tort Claimants [Docket No. 345].	**Resolved** by adding the language in paragraph 54 of the Confirmation Order.
Midland Central Appraisal District [Docket No. 378]	**Resolved** by adding the language in paragraph 60 of the Confirmation Order.
Cypress-Fairbanks ISD, Ector CAD and Harris County [Docket No. 380]	**Resolved** by adding the language in paragraph 60 of the Confirmation Order.
Informal Confirmation Objections	
Securities and Exchange Commission	**Resolved** by adding the language in paragraph 55 of the Confirmation Order.
Office in the Department of Justice Representing the Environmental Protection Agency	**Resolved** by adding the language in paragraph 55 of the Confirmation Order.
Chevron U.S.A.	**Resolved** by adding the language in paragraph 53 of the Confirmation Order.
Texas Comptroller of Public Accounts	**Resolved** by adding the language in paragraph 64 of the Confirmation Order.
Storlie, et al./ Paddock Family Limited Partnership	**Resolved** by adding the language in paragraphs 57 and 58 of the Confirmation Order.
Filed Cure Claim Objections	
Caterpillar Financial Services Corporation [Docket No. 354]	**Resolved** by confirmation from the Debtors that they already paid the amounts owed. Objection has been withdrawn.

QS Pecos, LLLP [Docket No. 357]	**Resolved** by confirmation from the Debtors that they already paid the amounts owed. Objection has been withdrawn.
Target Logistics Management LLC [Docket No. 381]	**Resolved** by confirmation from the Debtors that they already paid the amounts owed. Objection has been withdrawn.
RS Energy Group, Inc. [Docket No. 384]	**Resolved** by adding the language in paragraph 61 of the Confirmation Order.
EOG Resources Inc. [Docket No. 386]	**Resolved** by adding the language in paragraph 62 of the Confirmation Order.
Informal Cure Claim Objections	
CyrusOne LLC	**Resolved** by adding the language in paragraph 59 of the Confirmation Order.
Sirius Solutions, L.L.L.P.	**Resolved** by confirmation from the Debtors that they will pay the amounts owed.

Exhibit B

Response Chart – Unresolved Objections[12]

Party	Objection(s)	Debtors' Responses
Shareholder John F. Eppling [Docket No. 229]	The objector asserts that the Debtors are breaching their fiduciary duties owed to equityholders by providing creditors with shares in the Reorganized Debtors at the expense of equityholders and otherwise violating the fundamental due process rights of equityholders. *See* Objection at ¶1, ¶2.	As discussed in paragraphs 88 through 95 of the Memorandum, under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may "cram down" the Plan over rejection by an impaired class of interests because the Plan does not "discriminate unfairly" and is "fair and equitable." Moreover, as discussed in paragraphs 73 through 77 of the Memorandum, the Plan satisfies the best interests test as equityholders would not receive a distribution in a hypothetical chapter 7 liquidation.
Shareholder Roza Galustyan [Docket No. 379]	The objector objects to all sections of the Plan and Disclosure Statement that classify his or her claim as Class 8 and cancel his or her shares without distributing new shares to equityholders.	As discussed in paragraphs 88 through 95 of the Memorandum, under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may "cram down" the Plan over rejection by an impaired class of interests because the Plan does not "discriminate unfairly" and is "fair and equitable." Moreover, as discussed in paragraphs 73 through 77 of the Memorandum, the Plan satisfies the best interests test as equityholders would not receive a distribution in a hypothetical chapter 7 liquidation.
Bowlin Enterprises, LLC /Endeco Engineers, Inc [Docket No. 385]	The objectors object to the release, discharge, and injunction provisions of the Plan as they relate to the Debtors' rejection of the objectors' license agreement.	The Debtors proposed language in paragraph 63 of the Confirmation Order that they believe is sufficient to address this Confirmation Objection. The objectors have indicated that such language is not sufficient. The Debtors will continue to discuss a resolution with the objectors prior to the Confirmation Hearing.
Former Shareholder Marc Merrill [Docket No. 387]	The objector objects to the Plan to the extent it releases or otherwise extinguishes claims that may be brought derivatively against management or directors.	As discussed in paragraphs 47 through 53 of the Memorandum, the Debtor Release is appropriate because it is "fair and equitable" and in the best interests of the Debtors' estates. Moreover, in conjunction with the negotiation of the Restructuring Support Agreement, the Debtors considered whether they might have any potential Causes of

[12] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the relevant Confirmation Objection or the Memorandum, as applicable. For the avoidance of doubt, the Debtors reserve the right to respond to any and all Confirmation Objections, whether or not argued in the Memorandum or listed in this summary chart.

		Action against the Debtors' managers, officers, employees, affiliates, or other Released Parties. The Debtors were aware of no credible factual allegations of legitimate causes of action, and therefore did not believe, and still do not believe, that any valid claims or Causes of Action exist against any of these parties.
Shareholder Bruce Sampson [Docket No. 388]	The objector asserts that the timing and quality of the notice of the Chapter 11 Cases given to equityholders was inadequate.	This Court will retain jurisdiction to decide any due process and notice issues to the extent relevant to a particular equityholder, but the assertions set forth in this objection are largely speculative and have no bearing on whether the Plan satisfies the requirements for plan confirmation under the Bankruptcy Code.