Docket #0454 Date Filed: 02/18/2022

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SEQUENTIAL BRANDS GROUP, INC., *et al*.,	)	Case No. 21-11194 (JTD)
	)	Jointly Administered
Debtors.[1]	)	

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF LIQUIDATION OF SEQUENTIAL BRANDS GROUP, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The Debtors, along with the last four digits of each Debtor's tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), TBM Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe's Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), G. Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors' corporate headquarters and the mailing address for each Debtor is 105 E. 34th Street, St. #249, New York, NY 10016.

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The debtors and debtors in possession (collectively, the "Debtors") in the above-captioned jointly administered chapter 11 cases hereby submit this memorandum of law (this "Memorandum") in support of confirmation, pursuant to section 1129 of the Bankruptcy Code, of the *First Amended Joint Plan of Liquidation of Sequential Brands Group, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 380] (together with all exhibits thereto, and as may be amended, modified or supplemented, the "Plan").[2] In support thereof, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. Following the liquidation and sale of substantially all of the Debtors' assets, the Debtors engaged in extensive, good-faith, and arm's length negotiations regarding a chapter 11 plan that will transfer the Debtors' remaining assets to the Liquidating Trust which will, among other things, reconcile claims, monetize assets, pursue Causes of Action, and make distributions to the Holders of Allowed Term B Secured Claims. Utilizing the Liquidating Trust structure is the most efficient and cost-effective way to wind-down the Debtors' Estates and bring certainty and finality to the Debtors, their creditors, and the Chapter 11 Cases.

2. More specifically, and as described in detail in the Court-approved Disclosure Statement, the Plan provides for (a) the transfer of the Debtors' remaining assets to the Liquidating Trust, (b) satisfaction of all Administrative Claims, Priority Tax Claims, Professional Fee Claims, Other Priority Claims, and Other Secured Claims through funds reserved in the Wind-Down Reserve Accounts, (c) distributions to Holders of Allowed Term B Secured Claims of the Net Proceeds of the Liquidating Trust Assets, (e) certain release, exculpation, and injunction provisions, and (f) an orderly wind-down of the Debtors' estates.

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

3. Following the Bankruptcy Court's entry of the Disclosure Statement Order [D.I. 392], the Debtors solicited acceptances of the Plan from Holders of Term B Secured Claims in Class 3, the only Holders of Claims or Interests entitled to vote on the Plan. The deadline to vote has passed and, as is evidenced by the *Declaration of Varouj Bakhshian Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the First Amended Disclosure Statement for Joint Plan of Liquidation of Sequential Brands Group, Inc. and its Debtors Affiliates Pursuant to Chapter 11 of the Bankruptcy Code Submitted by the Debtors* [D.I. 453] (the "Voting Declaration"), Holders of Class 3 Claims unanimously support the Plan. The following table summarizes the Plan voting results:

CLASS	**RECEIVED BALLOTS**			
	Accept		***Reject***	
	AMOUNT (% of Amount Voted)	**NUMBER (% of Number voted)**	**AMOUNT (% of Amount Voted)**	**NUMBER (% of Number Voted)**
Class 3 – Term B Secured Claims	$30,488,870 (100%)	9 (100%)	$0 (0%)	0 (0%)

4. The only two objections to the Plan are from (i) the United States, on behalf of the Internal Revenue Service [D.I. 445] and (ii) the United States Trustee [D.I. 446] (the "U.S. Trustee Obj."). The Debtors have added language provided by the United States to the proposed Confirmation Order (filed concurrently herewith), which the Debtors believe resolves all of the United States' objections.

5. The U.S. Trustee takes aim at the Plan's inclusion of certain related parties (e.g., current and former affiliates and subsidiaries, officers, directors, employees) of the parties expressly named in the definition of "Releasing Party." In short, the U.S. Trustee asserts that, because of the inclusion of such related parties, the non-debtor release under the Plan amounts to

an impermissible nonconsensual third-party release. As described in more detail below, the Debtors respectfully submit that the U.S. Trustee's objection misses the mark. Not only is the inclusion of such related parties typical and routine, but their exclusion would completely undermine the efficacy of the releases under the Plan.

6. While, as described in more detail below, the Debtors believe that the U.S. Trustee's objection simply ignores the purpose and narrow scope of the Plan's release provisions and fundamental principles of agency law that justify extending the release to those related parties and, therefore, lacks merit, the Debtors have nevertheless proposed revisions to the Plan and Confirmation Order (also described below) in an attempt to resolve the U.S. Trustee's objection. The Debtors are awaiting a response from the U.S. Trustee, but are prepared to move forward with these changes in any event and reserve all rights to respond to any remaining objections at the Confirmation Hearing.

7. As described below, the Plan satisfies all applicable elements of section 1129 of the Bankruptcy Code and otherwise complies with the applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and non-bankruptcy law. The Plan should be confirmed.

FACTS

8. The pertinent facts relating to the Chapter 11 Cases and the Plan are set forth in the Disclosure Statement, the Plan, the Voting Declaration, and the *Declaration of Lorraine DiSanto in Support of Confirmation of the First Amended Joint Plan of Liquidation of Sequential Brands Group, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "DiSanto Declaration," and together with the Voting Declaration, the "Declarations"), filed concurrently herewith.

THE PLAN MEETS THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE

9. 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.[3] Through this Memorandum, the record of the Chapter 11 Cases, the Declarations, and any evidence that may be presented 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 and, accordingly, the Plan should be confirmed.

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

10. Section 1129(a)(1) of the Bankruptcy Code requires 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) of the Bankruptcy Code indicates that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing the classification of claims and contents of a chapter 11 plan, respectively.[4] As demonstrated below, the Plan complies with sections 1122, 1123, and all other applicable provisions of the Bankruptcy Code.

A. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

11. Section 1122 of the Bankruptcy Code provides that the claims or interests within a given plan class must be "substantially similar." 11 U.S.C. § 1122(a). Section 1122 of the Bankruptcy Code, however, does not require that all substantially similar claims or interests must

[3] *See In re Tribune Co.*, 464 B.R. 126, 151-52 (Bankr. D. Del. 2011) (explaining that the plan proponent bears the burden of establishing the plan's compliance with section 1129 of the Bankruptcy Code) (internal citations omitted).

[4] H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963; *see also In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008).

be classified together. Instead, courts have recognized that similar claims may be classified separately, provided there is a reasonable basis for doing so.[5] Courts also are afforded broad discretion in approving a plan proponent's classification structure, and should consider the specific facts of each case when making such a determination.[6]

12. The Plan provides for separate classification of Claims against and Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests. The Plan designates the following eight Classes: Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 3 (Term B Secured Claims), Class 4 (General Unsecured Claims), Class 5 (Section 510 Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), and Class 8 (Existing Parent Equity Interests). *See* Plan, Article III. Classes 1 through 6 constitute Classes of Claims, and Classes 7 and 8 constitute classes of Interests. *See id*.

13. The Plan's classification scheme complies with section 1122 of the Bankruptcy Code because each Class of Claims or Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within such Class. Indeed, the Claims and Interests in each Class differ from the Claims and Interests in each other Class based on their differing natures. Accordingly, the classification of Claims and Interests in the Plan satisfies section 1122 of the Bankruptcy Code.

B. The Plan Complies with Section 1123(a) of the Bankruptcy Code

[5] *See, e.g.*, *Aetna Cas. & Sur. Co. v. Clerk, U.S. Bankr. Court N.Y., N.Y. (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996).

[6] *See, e.g.*, *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987) (observing that "Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case").

14. Section 1123(a) of the Bankruptcy Code sets forth eight requirements. 11 U.S.C. § 1123(a). As shown below, the Plan complies with each of these requirements, to the extent applicable to Confirmation.

i. Section 1123(a)(1): Designation of Classes of Claims and Interests

15. Section 1123(a)(1) of the Bankruptcy Code requires that a chapter 11 plan designate classes of claims and interests, subject to section 1122 of the Bankruptcy Code. As discussed above, the Plan designates three Classes of Claims and two Classes of Interests, subject to section 1122 of the Bankruptcy Code. *See* Plan, Article III. Thus, the Plan satisfies section 1123(a)(1) of the Bankruptcy Code.

ii. Section 1123(a)(2): Classes that Are Not Impaired by the Plan

16. Section 1123(a)(2) of the Bankruptcy Code requires that a chapter 11 plan specify which classes of claims or interests are unimpaired under such plan. The Plan specifies that Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) are Unimpaired. *See* Plan, Article III. Therefore, the Plan satisfies section 1123(a)(2) of the Bankruptcy Code.

iii. Section 1123(a)(3): Treatment of Classes that Are Impaired by the Plan

17. Section 1123(a)(3) of the Bankruptcy Code requires that a chapter 11 plan specify how the classes of claims or interests that are impaired under such plan will be treated. The Plan designates Class 3 (Term B Secured Claims), Class 4 (General Unsecured Claims), Class 5 (Section 510 Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), and Class 8 (Existing Parent Equity Interests) as Impaired and specifies the treatment of Claims and Interests in such Classes. *See* Plan, Article III. As a result, the Plan satisfies section 1123(a)(3) of the Bankruptcy Code.

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

18. Section 1123(a)(4) of the Bankruptcy Code requires that a chapter 11 plan provide the same treatment for each claim or interest within a particular class, unless the holder of a claim or interest agrees to receive less favorable treatment than other class members. Pursuant to the Plan, the treatment of each Claim against or Interest in the Debtors, in each respective Class, is the same as the treatment of each other Claim or Interest in such Class, unless the Holder has agreed to receive less favorable treatment than other members in such class. *See* Plan, Article III. Thus, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

v. Section 1123(a)(5): Adequate Means for Implementation

19. Section 1123(a)(5) of the Bankruptcy Code requires that a chapter 11 plan provide "adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). Article IV of the Plan, the Implementation Memorandum, and the Liquidating Trust Agreement provide a detailed description of the transactions that are contemplated by the Plan. Specifically, the Plan provides adequate means for implementation of the Plan through, among other things (a) the establishment of the Liquidating Trust, (b) the transfer of the Liquidating Trust Assets and the Wind-Down Reserve Accounts to the Liquidating Trust, (c) distributions to Holders of Administrative/Priority Claims and Other Secured Claims from the Wind-Down Reserve Accounts, (d) distribution of the Net Proceeds of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries in accordance with the Plan and the Liquidating Trust Agreement, and (f) the dissolution of the Debtors and an orderly wind-down of the Debtors' Estates. *See* Plan, Article IV. As a result, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

vi. Section 1123(a)(6): Prohibitions on Issuance of Non-Voting Securities

20. The Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtors are being dissolved on, or as soon as practicable after, the Effective

Date, in accordance with the Implementation Memorandum. In light of this, section 1123(a)(6) of the Bankruptcy Code is not applicable.

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

21. Section 1123(a)(7) of the Bankruptcy Code requires that the 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." 11 U.S.C. § 1123(a)(7). Here, the Plan provides for the dissolution of the Debtors on, or as soon as practicable after, the Effective Date and the establishment of a Liquidating Trust, which shall be governed by the Liquidating Trustee in consultation with the Class 3 Representative. *See* Plan, Article IV. The Plan and Liquidating Trust Agreement set forth the procedures for appointing the Liquidating Trustee and Class 3 Representative. Specifically, the Plan and Liquidating Trust Agreement provide that (i) the Debtors shall appoint the Liquidating Trustee, whose identity shall be acceptable to the Debtors and the Requisite Consenting Lenders, and (ii) the Class 3 Representative shall be selected by the Requisite Consenting Lenders. *See id.*, Articles I.A.27, IV.B.6; Liquidating Trust Agreement § 1.2. As disclosed in the Plan Supplement, Drivetrain, LLC was appointed as the initial Liquidating Trustee. *See* Liquidating Trust Agreement § 1.2. The Requisite Consenting Lenders have selected Joshua Gruenbaum to serve as the Class 3 Representative. The successor, if any, to the Liquidating Trustee shall be appointed by the Class 3 Representatives pursuant to the procedures set forth in the Liquidating Trust Agreement.

22. The selection process for the Liquidating Trustee and Class 3 Representative were negotiated at arms' length and are consistent with the interests of creditors and with public policy. Accordingly, the Plan's provisions related to the selection of directors, officers, or trustees are

consistent with the interests of Holders of Claims and Interests and with public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

viii. Section 1123(a)(8): Provisions Regarding Treatment of Earnings and Future Income

23. Section 1123(a)(8) of the Bankruptcy Code applies to cases where the debtor is an individual and, accordingly, is inapplicable to the Debtors and the Plan.

C. The Plan Complies with Section 1123(b) of the Bankruptcy Code

24. Section 1123(b) of the Bankruptcy Code sets forth certain permissive provisions that may be incorporated into a chapter 11 plan. *See* 11 U.S.C. § 1123(b). Each provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

i. Section 1123(b)(1): Impairment/Unimpairment of Claims and Interests

25. 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). As discussed above, Claims and Interests in Classes 3 through 8 are Impaired under the Plan, and Claims in Classes 1 and 2 are Unimpaired under the Plan. Thus, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

ii. Section 1123(b)(2): Assumption/Rejection of Executory Contracts and Leases

26. Section 1123(b)(2) of the Bankruptcy Code allows a chapter 11 plan to provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases. *See* 11 U.S.C. § 1123(b)(2). Article V of the Plan provides that, on the Effective Date, each of the Debtors' Executory Contracts and Unexpired Leases not previously assumed or rejected pursuant to an order of the Bankruptcy Court shall be deemed rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code except any Executory Contract or Unexpired Lease (a) identified on the Assumed Executory

Contract and Unexpired Lease List (which is included in the Plan Supplement) as an Executory Contract or Unexpired Lease designated for assumption, (b) which is the subject of a separate motion or notice to assume or reject Filed by the Debtors and pending as of the Confirmation Hearing, (c) that previously expired or terminated pursuant to its own terms, or (d) that was previously assumed or rejected by any of the Debtors.

27. Assumption or rejection of an executory contract or unexpired lease of a debtor is subject to judicial review under the business judgment standard.[7] This standard is satisfied when a debtor determines that assumption or rejection will benefit the estate.[8]

28. Here, on the Effective Date, the Debtors shall assume or assume and assign certain Executory Contracts and Unexpired Leases listed on the Assumed Executory Contract and Unexpired Lease List contained in the Plan Supplement. The Executory Contracts to be assumed are Executory Contracts identified by the Debtors as necessary for the wind-down of the Debtors' Estates through the Liquidating Trust. It is more cost efficient for the Debtors to assume these Executory Contracts than for the Liquidating Trust to enter into new contracts post-Effective Date. Accordingly, the assumption or assumption and assignment of certain Executory Contracts and Unexpired Leases is a valid exercise of the Debtors' sound business judgment.

29. All of the Debtors' Executory Contracts and Unexpired Leases not identified on the Assumed Executory Contract and Unexpired Lease List and which otherwise (a) are not the subject of a separate motion or notice to assume or reject Filed by the Debtors and pending as of the Confirmation Hearing, (b) did not previously expire or terminate pursuant to its own terms, or (c) were not previously assumed or rejected by any of the Debtors, shall be rejected on the

[7] *See, e.g., Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989).

[8] *See, e.g., id.*

Effective Date. Such rejection will benefit the Debtors' Estates because the Debtors are liquidating through the Chapter 11 Cases and the Debtors have exercised their sound business judgment in their decision to reject the Debtors' remaining Executory Contracts and Unexpired Leases.

30. Accordingly, the treatment of executory contracts and unexpired leases in the Plan is consistent with section 1123(b)(2) of the Bankruptcy Code.

iii. Section 1123(b) of the Bankruptcy Code: Compromises and Settlements Under and in Connection with the Plan

31. Section 1123(b)(3) of the Bankruptcy Code allows a Plan to provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate" or "the retention and enforcement by the debtor, the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest." 11 U.S.C. § 1123(b)(3).

(i) Compromises and Settlements

32. The Plan reflects and incorporates settlements and compromises, as permitted by section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019. Compromises are favored in bankruptcy because they minimize the costs of litigation and further the parties' interests in expediting administration of a bankruptcy estate.[9] In deciding whether to approve a compromise under Bankruptcy Rule 9019, the Bankruptcy Court must determine if the settlement is fair, reasonable, and in the interests of the estate.[10] The compromises and settlements pursuant to and in connection with the Plan, are each fair, reasonable and in the best interests of the Debtors, their Estates and their creditors for the reasons set forth in the Plan and the Disclosure Statement and, therefore, should be approved.

(ii) Causes of Action

[9] *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996).

[10] *See, e.g.,, In re Key3Media Grp., Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (citation omitted)).

33. Section 1123(b)(3)(B) provides that a plan may "provide for the retention and enforcement . . . by a representative of the estate appointed for such purpose, of any . . . claim or interest [belonging to the debtor or to the estate]." 11 U.S.C. § 1123(b)(3)(B). The Plan provides that the Debtors shall retain and transfer to the Liquidating Trust all rights to enforce, commence, and pursue, as appropriate, any and all Causes of Action that have not been waived, relinquished, exculpated, released, compromised, or settled pursuant to the Plan or a Final Order (including, for the avoidance of doubt, the Released Causes of Action), whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, including, without limitation, the right to commence, prosecute, or settle such Causes of Action, which shall be preserved notwithstanding the occurrence of the Effective Date. The Liquidating Trustee, on behalf of the Liquidating Trust, may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust. *See* Plan, Article IV.K. These provisions are consistent with, and supported by, section 1123(b)(3)(B) of the Bankruptcy Code.

iv. Releases, Exculpations, and Injunction

34. As is customary, the Plan includes certain release, exculpation, and injunction provisions. *See* Plan, Article VIII. These provisions are proper because, among other things, they are the product of arm's length negotiations, have been critical to obtaining the support of the various constituencies for the Plan, and have received support from the Holders of Allowed Term B Secured Claims, who unanimously voted to accept the Plan. Such release, exculpation, and injunction provisions are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their Estates. These provisions are consistent with the Bankruptcy Code and applicable law and, thus, section 1123(b) of the Bankruptcy Code is satisfied.

(i) <u>Debtor Releases</u>

35. Under the Plan, the Debtors propose to release the Released Parties[11] from Claims or Causes of Action that the Debtors and their Estates may have (such releases, the "Debtor Releases"). *See* Plan, Article VIII.B. The Debtor Releases represent a valid settlement of any claims the Debtors and their Estates may have against the Released Parties pursuant to section 1123(b)(3)(A) and Bankruptcy Rule 9019 .

36. A debtor may release claims under Bankruptcy Code section 1123(b)(3)(A) "[i]f the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate." [12] In determining whether a release of a debtor's claim is appropriate, courts consider the following factors: (a) whether an identity of interest between the debtors and the releasees exists, such that a suit against the releasees is, in essence, a suit against the debtors or would deplete assets of the estates; (b) the contribution of the releasees since the petition date; (c) the essential nature of the releases to the approval of the plan; (d) whether a substantial majority of the impacted creditors support the plan; and (e) whether the plan pays substantially all of the claims of the impacted creditors.[13] "These factors are neither exclusive nor conjunctive

[11] The Plan defines the "Released Party" as: "each of the following in its respective capacity as such: (i) the Debtors, (ii) the Term B Lenders, (iii) the Term B Agent, (iv) the DIP Lenders, (v) the DIP Agent, and (vi) with respect to each of the Entities in clauses (i) through (v), each such Entity's current and former Affiliates and subsidiaries and each such Entity's, Affiliate's, and subsidiary's respective current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; provided that in each case, an Entity shall not be a Released Party if it timely "opts-out" of the releases set forth in Article VIII.B.2 of this Plan by checking the box on its respective Ballot." Plan, Article I.A.97. As describe below, however, the Debtors have modified this definition in response to the U.S. Trustee's objection.

[12] *U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co. (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.") (alteration added) (internal quotation marks and citation omitted).

[13] *E.g.*, *In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)), *aff'd sub nom. Nordoff Invs., Inc. v. Zenith Elecs. Corp.*, 258 F.3d 180 (3d Cir. 2001).

requirements, but simply provide guidance in the Court's determination of fairness."[14] The Debtor Releases under the Plan are fair, appropriate, and justified under this standard.

37. First, the Debtor Releases are narrowly tailored and reasonable under the circumstances. Each Released Party is either a stakeholder, a critical participant in the Plan process, or an agent or representative of a Released Party. The Debtor Releases are also subject to a standard carve out for actual fraud, willful misconduct, criminal acts, and reckless or gross negligence.

38. Second, the Debtors believe that pursuing claims against the Released Parties would not be in the best interest of the Debtors' stakeholders because the costs involved would likely outweigh any potential benefit to the Debtors' Estates from pursuing such claims.

39. Third, the Debtor Releases and the contributions of the Released Parties were integral to the development of the RSA and the Plan. The Debtor Releases as provided for in Article VIII of the Plan is a key component of the consensual Plan process, and no constructive purpose would be served by preserving or seeking to prosecute any of the Debtors' or Estates' claims against the Released Parties.

40. Fourth, no party has objected to the Debtors Releases and, as evidenced in the Voting Declaration, 100% of voting creditors have voted to accept and support the Plan.

41. Accordingly, the Debtors submit that providing the Debtor Releases represent a sound exercise of the Debtors' business judgment and the Debtors Releases are fair, reasonable, and in the best interests of the Estates.

(ii) Third-Party Releases

42. Article VIII of the Plan also provides for non-debtor third-party releases of the

[14] *Wash. Mut.*, 442 B.R. at 346.

Released Parties by the Releasing Parties (the "Third-Party Releases").[15] Courts in this jurisdiction have recognized that (a) a chapter 11 plan may include third-party releases when the releases are consensual[16] and (b) third-party releases are consensual when the releasing parties had an opportunity to opt out of such releases.[17] Here, the Third-Party Releases are consensual and

[15] The Plan defines such "Releasing Party" as: "(i) the Debtors, (ii) the Estates, (iii) any Entity seeking to exercise the rights of the Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, (iv) all Holders of Claims that (a) vote to accept this Plan and/or (b) are entitled to vote to accept or reject this Plan and that abstain from voting on this Plan or vote to reject this Plan but, in either case, do not "opt-out" of the releases set forth in Article VIII.B.2 of this Plan by checking the opt-out box on their respective Ballot and submitting the Ballot such that the Ballot is timely received and effective, and (v) the Released Parties." Plan, Article I.A.98.

[16] *See, e.g.*, *In re Seventy Seven Fin. Inc.*, No. 16-11409 (Bankr. D. Del. July 14, 2016) (approving substantially similar third-party releases); *In re Quiksilver Inc.*, No. 15-11880 (Bankr. D. Del. Jan. 29, 2016) [Docket No. 740] (same); *In re EveryWare Glob., Inc.*, No. 15-10743 (Bankr. D. Del. May, 22, 2015) (same); *Spansion*, 426 B.R. at 144 (stating that "a third party release may be included in a plan if the release is consensual"); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013) (collecting cases).

[17] *See*, *e.g.*, *In re AeroCentury Corp.*, Ch. 11 Case No. 21-10636 (JTD) (Bankr. D. Del. Aug. 31, 2021), *Findings of Fact, Conclusions of Law and Order Approving and Confirming the Combined Disclosure Statement and Joint Chapter 11 Plan of the Debtors* [D.I. 296] at ¶ O ("The releases . . . are consensual as they pertain to the Releasing Parties because they are given and made after due notice and an opportunity to object and be heard with respect thereto, as the Combined Disclosure Statement and Plan, the Confirmation Hearing Notice, and the Ballots each unambiguously state that (a) the Plan contains such releases, (b) affected parties may object to such releases, and (c) the Release Opt-Election may be exercised as provided for in the Plan."); *In re Cred Inc.*, Ch. 11 Case No. 20-12836 (JTD) (Bankr. D. Del. Mar. 11, 2021), *Order Confirming and Approving on a Final Basis Modified First Amended Combined Plan of Liquidation and Disclosure Statement of Cred Inc. and Its Subsidiaries Under Chapter 11 of the Bankruptcy Code* [D.I. 629] at ¶ 27 ("all Holders of Claims or Equity Interests, who (1) vote in favor of the Combined Plan and Disclosure Statement or (2) (A) abstain from voting, are not entitled to vote, or vote to reject the Combined Plan and Disclosure Statement and (B) do not opt out of the this release by timely submitting a Ballot or the Opt-Out Election Form shall be deemed to have released and discharged each Released Party from any and all claims and Causes of Action"); *In re RTI Holding Co., LLC*, Ch. 11 Case No. 20-12456 (JTD) (Bankr. D. Del. Feb. 17, 2021), *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Second Amended Chapter 11 Plan, as Modified* [D.I. 1144] at ¶ O.(ix)b. ("[T]he Third Party Release is consensual as the Releasing Parties were given the opportunity to opt out of the Third Party Release, and the release provisions of the Plan were conspicuous in the Confirmation Hearing Notice, the Plan, the Disclosure Statement, the Ballots and Non-Voting Class Notice."); *In re AAC Holdings*, Ch. 11 Case No. 20-11648 (JTD) (Bankr. D. Del. Oct. 20, 2020), *Order Confirming Second Amended Joint Chapter 11 Plan of AAC Holdings, Inc. and Its Debtor Affiliates* [D.I. 695] at ¶ 36 ("[E]ach Releasing Party was given due and adequate notice that they would be granting the Third Party Release by voting to accept the Plan, failing to opt out of the Third Party Release if voting against the Plan or abstaining from voting on the Plan, failing to object to the Third Party Release prior to the deadline to object to Confirmation of the Plan or as otherwise described in the Plan. Accordingly, the Third Party Release is consensual."); *In re PQ New York, Inc.*, Ch. 11 Case No. 20-11266 (JTD) (Bankr. D. Del. Sept. 25, 2020), *Finding of Fact and Conclusion of Law (I) Approving Disclosure Statement on a Final Basis; and (II) Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of PQ New York, Inc. and Affiliated Debtors Dated September 18, 2020* [D.I. 597] at ¶ OO at 17 ("The releases . . . are binding on all (a) Creditors who are unimpaired, (b) Creditors who returned a Ballot and did not check the opt-out box on the Ballot, and (c) Creditors who were sent a solicitation package but did not vote and did not return a Ballot with the opt-out box checked").

otherwise reasonable, appropriate, and permissible under the Bankruptcy Code and applicable Third Circuit law.

43. First, and most importantly, the Third-Party Releases are consensual. Holders of Claims and Interests who are not entitled to vote on the Plan are not bound by the Third-Party Releases. Voting creditors that are Releasing Parties (*i.e.*, creditors in Class 3), on the other hand, had already agreed to grant such releases as part of the RSA and, in any event, have unanimously consented to the Third-Party Releases.

44. Second, the Third-Party Releases are narrowly tailored. As with the Debtor Releases, each Released Party is either a stakeholder, a critical participant in the Plan process, or an agent or representative of a Released Party, and the Third Party Releases are subject to a standard carve out for actual fraud, willful misconduct, criminal acts, and reckless or gross negligence. Moreover, the Third-Party Releases only provide for the release of claims relating to the Debtors and their restructuring and are narrowly tailored to bring finality to these Chapter 11 Cases.

45. Third, the Third-Party Releases are a product of extensive, arm's length negotiations and were a material inducement for the Releasing Parties' entry into the RSA and/or a material condition for their support of the Plan. Because, absent the Third-Party Releases, the Releasing Parties would not have entered into the RSA, supported the Plan, and/or made the concessions in connection with such support, the Third-Party Releases are also essential to the Plan and bringing finality to these Chapter 11 Cases.

46. Lastly, the Third-Party Releases were granted in exchange for the concrete and substantial contributions of value by the Releasing Parties throughout these Chapter 11 Cases and are, therefore, supported by ample consideration.

47. Because the Third-Party Releases are consensual under applicable law, appropriately tailored under the circumstances of these Chapter 11 Cases, and consistent with the practices of this jurisdiction, the Third-Party Releases are fair, reasonable, and in the best interests of the Estates and, therefore, should be approved.

(iii) The U.S. Trustee's Objection to the Releases Should Be Overruled

48. The U.S. Trustee objects to confirmation of the Plan, arguing that the proposed release provisions (the "Releases") – whereby the Debtors and the Term B Agent, Term B Lenders, DIP Agent, and DIP Lenders (collectively, the "Lenders") have agreed to give one another a mutual release of claims relating to the Debtors' restructuring – are, in fact, impermissible non-consensual "third-party" releases, rather than a mutual, "bargained-for" settlement. Specifically, the U.S. Trustee objects to the definition of "Releasing Party," which includes certain "related parties" (*i.e.*, affiliates and subsidiaries, former and current employees, and professionals) (the "Related Parties") who, the U.S. Trustee alleges, may not have received appropriate notice of the Plan or the Releases contained therein. This argument is misguided, and attempts to transform the bargained-for Releases into nonconsensual third-party releases (like those that have recently been the subject of close scrutiny in mass-tort cases like *In re Mallinckrodt, PLC* and *In re Purdue Pharma, L.P.*). Unlike these recent high-profile cases, however, the Releases are consensual, mutual, limited in scope, and involve the appropriate exercise of a principal/agent relationship. Indeed, the Releases are substantively identical to mutual release provisions that are routinely approved in bankruptcy cases in this District (and others).[18]

[18] *See*, *e.g.*, *In re Quorum Health Corp.*, Case No. 20-10766 (KBO); *In re American Blue Ribbon Holdings*, LLC, Case No. 20-10161 (LSS); *In re Superior Air Charter, LLC*, Case No. 20-11007 (CSS); *In re Klausner Lumber One LLC*, Case No. 20-11033 (KBO); *In re Tonopah Solar Energy, LLC*, Case No. 20-11884 (KBO); *In re Pennsylvania Real Estate Inv. Trust*, Case No. 20-12737 (KBO) (excerpts of relevant provisions of the plans cited here are attached as Exhibit A, with emphasis added).

49. First, unlike cases involving true third-party releases, the Releases afford a mutual benefit to all parties involved, in that they provide that all "Releasing Parties" that are giving a release are, in turn, receiving a release of identical scope. This formulation is standard and necessary, as it would clearly be untenable for a Released Party to obtain the benefit of a release without also providing a corresponding release to the Releasing Party. Conversely, following the logic of the U.S. Trustee's objection to its conclusion,[19] if "Related Parties" were removed from the definition of "Releasing Parties," this would provide the Related Parties with a windfall, whereby they obtain the benefit of releases without having to provide any of their own. More importantly, mutual releases are critical where, as here, the parties seek to have a chapter 11 plan fully and finally resolve all issues among the parties. Failure of mutuality would create a potential hole for additional litigation, and the Releases are specifically designed to foreclose this risk.

50. Second, the "Related Parties" include only Related Parties of the Debtors and the Lenders. Thus, unlike the recent mass-tort cases, the Releases do not implicate other constituencies, such as general unsecured creditors, tort victims, unimpaired parties, or other third parties involved in the case that have not fully participated in these chapter 11 cases. In addition, the RSA between the Debtors and the Lenders contemplated releases that included the Related Parties, as well as other critical features that have allowed these Chapter 11 Cases to run so smoothly, including multiple successful asset sales and the Lenders' commitment to fund the Plan so that it can be consummated and the Debtors can be wound down in an orderly fashion. It would be inequitable at this stage, after both the Debtors and the Lenders have substantially complied

[19] *See*, *e.g.*, U.S. Trustee Obj. ¶ 22.

with the terms of the Restructuring Support Agreement, to vitiate a key component of the RSA by creating non-mutual releases and the concomitant litigation risks associated therewith.[20]

51. Third, the Related Parties are agents of the Debtors and the Lenders–-the principals who have bargained for the Releases. Given the narrow scope of the Releases, the claims relinquished by the Releases are all properly claims of, or related to, the Debtors and Lenders in connection with the Debtors' restructuring. A principal has the ability to release claims of an agent that the principal could assert.[21] The Releases seek to do no more than that—the Debtors are not seeking to bind the "Related Parties" to a release of any claim that is unrelated to the Debtors' restructuring efforts, which necessarily is limited only to claims that could be asserted by or are related to the Debtors and the Lenders.

52. Fourth, the intent and the scope of the Releases are narrowly-tailored to cover only matters relating to the Debtors and their restructuring efforts. If approved, the Releases would not release potential claims by a "Related Party" that it might have against a third party that are unrelated to the Debtors' restructuring efforts. And, given this limited scope, it is unlikely that any "Related Party" would have a claim captured by the Release and also be unaware or not engaged with the Debtors' restructuring efforts. In his objection, the U.S. Trustee presents the Court with

[20] Moreover, the U.S. Trustee's objection that such parties may be unable to "understand that they would be deemed to release not only the Debtors, but a number of non-debtor parties as well," U.S. Trustee Obj. ¶ 20, is misplaced. The *Notice of (I) Approval of Disclosure Statement, (II) Establishment of Voting Record Date, (III) Hearing on Confirmation of Plan and Procedures and Deadline for Objecting to Confirmation of Plan, and (IV) Procedures and Deadline for Voting on Plan* [D.I. 403] contained the Release provisions from the Plan and, further, made clear that "**THE PLAN CONTAINS CERTAIN RELEASE, INJUNCTION AND EXCULPATION PROVISIONS. YOU ARE ADVISED TO CAREFULLY REVIEW THE PLAN, INCLUDING THESE PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED**." (emphasis in the original).

[21] *See In re Gibson Brands*, Case No. 18-11025 (CSS) (Bankr. D. Del. Oct. 2, 2018) [D.I. 873, Hr'g Tr., 64:23-65:5] (approving releases where the releasing parties included a broad definition of "Related Parties"—even though the related parties did not necessarily receive notice—because a principal can bind an agent in connection with the principal's business and "any claims that would be assertible by the agent as a result of its relationship through . . . the principal, the principal can release.").

the hypothetical specter of an employee of the Lenders being forced by the Releases to relinquish all claims he or she might have against the Lenders. But this concern is misplaced, as the intent of the Release is not to affect any claims that this employee might have against the Lenders unrelated to the Debtors' restructuring. There is no risk that this employee would be giving up a claim untethered to the restructuring (*e.g.*, an employment discrimination claim). Moreover, to the extent that a principal party here (*e.g.*, the Lenders) are unable to bind a particular Related Party (*e.g.*, the Lenders' employee), such Related Party is not foreclosed from arguing that it could not be bound.[22]

53. In short, the Releases, including with respect to the Related Parties, are fair, reasonable, and narrowly tailored to ensure that the Releases operate as they were intended and are integral components of the RSA and Plan, which were negotiated at arms' length and in good faith. Accordingly, the Debtors believe that the U.S. Trustee's objection should be overruled and the Releases should be approved in their current form. Nevertheless, in an effort to address the issues raised by the U.S. Trustee's objection, the Debtors have made the following revisions to the definition of "Released Party" (reflected in the Confirmation Order):

> "Released Party" means each of the following in its respective capacity as such: (i) the Debtors, (ii) the Term B Lenders, (iii) the Term B Agent, (iv) the DIP Lenders, (v) the DIP Agent, and (vi) (A) ~~with respect to each of the Entities in clauses (i) through (v),~~ each of the Debtors' ~~such Entity's~~ current and former Affiliates, ~~and~~ subsidiaries ~~and each such Entity's, Affiliate's, and subsidiary's respective current and former~~ officers, directors, ~~managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives,~~ and ~~other~~ professional advisors and (B) with respect to each of the Entities in clauses (ii) through (v) each of such Entity's professional advisors in connection with the Chapter 11 Cases; provided that in each case, an Entity shall not be a Released Party if it timely "opts-out" of the releases set forth in Article VIII.B.2 of this Plan by checking the box on its respective Ballot.

With this modification, the Third-Party Releases are now limited to only those Released Parties, each of whom are also Releasing Parties under the Plan, and each of whom has received

[22] *See*, *e.g.*, *In re Mallinckrodt plc*, Case No. 20-12522 (JTD) (Bankr. D. Del. Feb. 8, 2022) [D.I. 6378] at 51, n.130 (quoting Judge Gross as observing "[a]nd I just have never seen in 14 years, a released party come into court and say, Judge, please, we didn't know about this case – we didn't know about the releases – please lift the release.").

appropriate notice of the Plan and the Releases contained therein. Accordingly, the Releases that are now being provided by the Related Parties, even if they were viewed as typical third-party releases (which, to be clear, they are not), are fully consensual and should no longer be objectionable even under the standard advanced by the U.S. Trustee. Although the Debtors are awaiting final confirmation from the U.S. Trustee, the Debtors believe these revisions should resolve the U.S. Trustee's objection to the Plan.

(iv) Exculpation and Limitation of Liability

54. The Plan provides for the exculpation of, and limitation of liability for, the Exculpated Parties. *See* Plan, Article VIII.C.[23] The exculpation and limitation of liability is subject to a standard carve out for actual fraud, willful misconduct, criminal acts, and reckless or gross negligence.

55. It is well established that exculpation is appropriate for fiduciaries of a bankruptcy estate, including the debtor, its directors, officers, and professionals, and the unsecured creditors' committee and its members and professionals.[24] In the instant case, the Exculpated Parties have participated in good faith in formulating and negotiating the Plan, and they are entitled to protection from exposure to claims against them relating to their participation in the Chapter 11 Cases, consistent with section 1125(e) of the Bankruptcy Code. *See* 11 U.S.C. § 1125(e). Furthermore, interested parties received sufficient notice of the exculpation provision and had ample time to raise any objections thereto, and no such objections (other than that of the United

[23] The Plan defines "Exculpated Party" as: "each of the following in their respective capacities as fiduciaries of any Debtor and/or any Estate solely during the Chapter 11 Cases, from the Petition Date through and including the Effective Date: (i) each of the Debtors, each of the Estates, and each of the Debtors' and their Estates' respective current and former officers, directors, principals, partners, employees, agents, and advisory board members and (ii) each Debtor-Retained and/or Estate-retained financial advisor, attorney, accountant, investment banker, consultant, representative, and other professionals" Plan, Article I.A.50.

[24] *In re PWS Holding Corp.*, 228 F.3d 224, 245-47 (3d Cir. 2000).

States which the Debtors believe is resolved) were filed. As a result, the exculpation provision set forth in Article VIII.C of the Plan is appropriate and should be approved.[25]

(v) Injunction.

56. Finally, Article VIII.D of the Plan contains an injunction provision (the "Injunction") that the Debtors believe is necessary to enforce and preserve the release and exculpation provisions provided for in Article VIII, and should, therefore, be approved. Furthermore, in compliance with Bankruptcy Rule 3016, the Disclosure Statement, the Plan, and the proposed Confirmation Order filed with the Bankruptcy Court identify all acts to be enjoined by, and all entities that would be subject to, the Injunction. The Injunction is, therefore, appropriate and should be approved.

v. Other Appropriate Provisions Not Inconsistent with the Applicable Provisions of the Bankruptcy Code

57. Section 1123(b)(6) of the Bankruptcy Code is a "catchall" provision which permits a chapter 11 plan to include any appropriate provision as long as such provision is not inconsistent with applicable sections of the Bankruptcy Code.

(i) Retention of Jurisdiction

58. Article XII of the Plan provides that, among other things, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases, the Plan, and each of the Plan Documents pursuant to sections 105(a) and 1142 of the Bankruptcy Code to the extent provided under applicable law. The post-confirmation retention of jurisdiction by the Bankruptcy Court is permitted by the Bankruptcy Code.[26] The continuing jurisdiction of

[25] The definition of "Exculpated Party" clarifies that the enumerated parties are only Exculpated Parties in their respective capacities as Estate fiduciaries solely during the Chapter 11 Cases, from the Petition Date through and including the Effective Date. *See* Plan, Article I.A.50.

[26] *See, e.g.*, *Gruen Mktg. Corp. v. Asia Commercial Co. (In re Jewelcor Inc.)*, 150 B.R. 580, 582 (Bankr. M.D. Pa. 1992) ("There is no doubt that the bankruptcy court's jurisdiction continues post confirmation to protect its

the Bankruptcy Court, as set forth in Article XII of the Plan, is appropriate and wholly consistent with applicable law.

II. Section 1129(a)(2): The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code

59. Section 1129(a)(2) of the Bankruptcy Code requires that the "proponent of the plan comply with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). Whereas section 1129(a)(1) of the Bankruptcy Code focuses on the form and content of a plan itself, section 1129(a)(2) is concerned with the activities of the plan proponent.[27] In determining whether the plan proponent has complied with this section, courts focus on whether the proponent has adhered to the disclosure and solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code.[28]

60. The Debtors have complied with all applicable disclosure and solicitation requirements set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan and the Disclosure Statement. The Disclosure Statement, the Plan, the ballots, the notice of the Confirmation Hearing, and all other related documents were distributed to parties in accordance with the Disclosure Statement Order. *See* Docket Nos. 346, 348, 376, 378, 384, 429, 430, 437, 440, and 443. Accordingly, section 1129(a)(2) of the Bankruptcy Code has been satisfied.

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

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confirmation decree, to prevent interference with the execution of the plan and to aid otherwise in its operation.") (internal citations omitted).

[27] *See* 7 *Collier on Bankruptcy* ¶ 1129.02[2] (16th ed. 2016).

[28] *See, e.g., In re PWS Holding Corp.*, 228 F.3d at 248.

61. 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 generally interpreted to mean that there exists a reasonable likelihood that the "plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code."[29] Good faith is to be viewed in light of the particular facts and circumstances of the case.[30]

62. The Debtors have proposed the Plan in good faith. Throughout the Chapter 11 Cases, the Debtors worked to build consensus among the various creditor constituencies. The Plan and the process leading up to its formulation are the result of extensive arm's length negotiations among the Debtors, the Term B Lenders, and other key stakeholders in the Chapter 11 Cases. Accordingly, section 1129(a)(3) of the Bankruptcy Code has been satisfied.

IV. Section 1129(a)(4): The Plan Provides that Professional Fees and Expenses Are Subject to Court Approval

63. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by a debtor "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," either be approved by the court as reasonable or subject to 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 on account of professional fees and expenses from estate assets be subject to the Bankruptcy Court's review and approval.[31]

64. In accordance with section 1129(a)(4) of the Bankruptcy Code, no payments will be made on account of Professional Fee Claims by the Debtors other than payments that are

[29] *Id.* at 242 (internal quotation marks and citation omitted).

[30] *See, e.g., In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002); *In re PPI Enters. (U.S.), Inc.*, 228 B.R. 339, 347 (Bankr. D. Del. 1998).

[31] *See*, e.g., *Lisanti Foods, Inc. v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 503 (D.N.J. 2005); *Resorts Int'l, Inc.*, 145 B.R. 412, 476 (Bankr. D.N.J. 1990).

authorized by order of the Bankruptcy Court. Pursuant to Article II.D of the Plan, all final applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served on the Debtors, counsel for the Requisite Consenting Lenders, and the Liquidating Trustee on or before the Professional Fee Claims Bar Date (4:00 p.m. prevailing Eastern Time on the date that is 90 days after the Effective Date) or such later date as may be agreed to by the Liquidating Trustee. *See* Plan, Article II.D. The Plan also provides that the Bankruptcy Court shall retain jurisdiction to "decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan." *Id.*, Article XII.2. Accordingly, section 1129(a)(4) of the Bankruptcy Code has been satisfied.

V. Section 1129(a)(5): The Debtors Have Disclosed All Necessary Information Regarding Directors, Officers, and Insiders

65. Section 1129(a)(5) of the Bankruptcy Code requires that (a) the proponent of a plan disclose the identity and affiliations of the proposed directors, officers, or voting trustees of the debtors, an affiliate of a debtor participating in a joint plan with a debtor, or a successor to the debtor under the plan, (b) the appointment or continuance of such individuals be consistent with the interests of creditors and equity security holders and with public policy, and (c) there be disclosure of the identity and nature of the compensation of any insiders to be retained or employed by the reorganized debtors. *See* 11 U.S.C. § 1129(a)(5).

66. Here, the Plan provides for the dissolution of the Debtors, on, or as soon as practicable, after the Effective Date, and the establishment of the Liquidation Trust, which shall be tasked with administering certain post-Effective Date responsibilities and wind-down under the Plan and governed by the Liquidating Trustee in consultation with the Class 3 Representative. *See* Plan, Article IV. The Plan and Liquidating Trust Agreement set forth the procedures for appointing

the Liquidating Trustee and Class 3 Representative. Specifically, the Plan and Liquidating Trust Agreement provide that (i) the Debtors shall appoint the Liquidating Trustee, whose identity shall be acceptable to the Debtors and the Requisite Consenting Lenders, and (ii) the Class 3 Representative shall be selected by the Requisite Consenting Lenders. *See id.*, Articles I.A.27, IV.B.6; Liquidating Trust Agreement § 1.2. As disclosed in the Plan Supplement, Drivetrain, LLC was appointed as the initial Liquidating Trustee. *See* Liquidating Trust Agreement § 1.2. The Requisite Consenting Lenders have selected Joshua Gruenbaum to serve as the Class 3 Representative. [cite]. The appointment of these parties is consistent with the interests of the Debtors' creditors and public policy. Accordingly, section 1129(a)(5) of the Bankruptcy Code has been satisfied.

VI. Section 1129(a)(6): The Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission

67. Section 1129(a)(6) of the Bankruptcy Code requires that any governmental regulatory commission having jurisdiction over the rates charged by the debtor in the operation of its business approve any rate change provided for in a plan of reorganization. *See* 11 U.S.C. § 1129(a)(6). After the Confirmation Date, the Debtors will not have any businesses involving the establishment of rates over which any regulatory commission has or will have jurisdiction. Therefore, section 1129(a)(6) is inapplicable to the Plan.

VII. Section 1129(a)(7): The Plan Is in the Best Interest of All Creditors

68. Section 1129(a)(7) of the Bankruptcy Code requires that holders of impaired claims or interests which do not vote to accept the chapter 11 plan at issue "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 [the Bankruptcy Code] on such date." 11 U.S.C. § 1129(a)(7)(A).

Section 1129(a)(7) of the Bankruptcy Code is often referred to as the "best interests test." This test focuses on individual creditors' claims rather than classes of claims.[32]

69. As demonstrated by the Liquidation Analysis attached as Exhibit C to the Disclosure Statement (the "Liquidation Analysis"), the best interests test is satisfied as to each Holder of an Impaired Claim or Interest, and no party in interest has argued otherwise. As an initial matter, the Plan is a plan of liquidation. As such, it is difficult to conceive how creditors here could do better in a chapter 7, where there would be a negative impact on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, including, without limitation, as a result of the increased costs of liquidation under chapter 7, which would include, among others, (a) the fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, and (b) the establishment of a new claims bar date, which could result in new General Unsecured Claims being asserted against the Estates, thereby diluting the recoveries of other Holders of Allowed General Unsecured Claims,.

70. Furthermore, the Voting Declaration and the Liquidation Analysis demonstrate that each Holder of a Claim or Interest in an Impaired Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. As set forth more fully in the DiSanto Declaration, the Debtors believe that the estimated liquidation values set forth in the Liquidation Analysis are fair and reasonable estimates of the value of the Debtors Assets' upon a hypothetical liquidation under chapter 7 of the Bankruptcy Code, and that based on those

[32] *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999).

estimates, each Class of Claims and Interests under the Plan will receive under the Plan at least as much as that Class would receive in a hypothetical chapter 7 liquidation.

71. In sum, conversion of the Chapter 11 Cases to chapter 7 would likely prolong these proceedings, delay distributions to creditors, and result in greater costs and expenses, thereby reducing the assets available to distribute to creditors. Accordingly, section 1129(a)(7) of the Bankruptcy Code has been satisfied.

VIII. Section 1129(a)(8): The Plan Complies with Section 1129(a)(8) of the Bankruptcy Code, with the Exception of Classes 4 through 8

72. Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accepts the plan, as follows: "With respect to each class of claims or interests – (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8).

73. As set forth above, Holders of Claims in Classes 1 (Other Secured Claims) and 2 (Other Priority Claims) are Unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have voted to accept the Plan. Thus, section 1129(a)(8) has been satisfied as to Classes 1 and 2.

74. As set forth above, and as reflected in the Voting Declaration, the Plan has been accepted by 100% of the creditors in Class 3 (Term B Secured Claims), which is impaired. Thus, as to this impaired and accepting Class, section 1129(a)(8) likewise has been satisfied.

75. Holders of Claims in Class 4 (General Unsecured Claims), Holders of Claims in Class 5 (Section 510 Claims), and Holders of Claims in Class 6 (Intercompany Claims) will not receive any recovery under the Plan on account of such Claims. Holders of Interests in Class 7 (Intercompany Interests) and Holders of Interests in Class 8 (Existing Parent Equity Interests) are not entitled to receive or retain any property under the Plan on account of such Interests.

Accordingly, these Holders of Claims or Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. *See* 11 U.S.C. § 1126(g). The Plan nonetheless may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code, as discussed below.

IX. Section 1129(a)(9): The Plan Provides for Payment in Full of All Allowed Administrative Claims, Priority Tax Claims, Professional Fee Claims, , and Other Priority Claims

76. Section 1129(a)(9) of the Bankruptcy Code requires that entities holding allowed claims entitled to priority under section 507(a)(1)-(8) of the Bankruptcy Code receive specified cash payments under a plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) requires a plan to provide as follows:

> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of [the Bankruptcy Code], on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of [the Bankruptcy Code], each holder of a claim of such class will receive –
>
> (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of [the Bankruptcy Code], the holder of such claim will receive on account of such claim regular installment payments in cash –
>
> (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

> (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
>
> (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and
>
> (D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S.C. § 1129(a)(9).

77. Here, the Plan provides the treatment required by section 1129(a)(9) for each of the various Claims specified in sections 507(a)(1)-(8) of the Bankruptcy Code.

78. Specifically:

(a) Article II.A of the Plan provides that, except to the extent that a Holder of an Allowed Administrative Claim agrees to a less favorable treatment of its Allowed Administrative Claim, each Holder of an Allowed Administrative Claim will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either (i) on the Effective Date, or as soon as practicable thereafter or (ii) if the Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which such Administrative Claim is Allowed by a Final Order, or as soon as reasonably practicable thereafter;

(b) Article II.B of the Plan provides that, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax

Claim, the Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code;

(c) Article II.D of the Plan provides that, all final applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served on the Debtors, counsel for the Requisite Consenting Lenders, and the Liquidating Trustee on or before the Professional Fee Claims Bar Date or such later date as may be agreed to by the Liquidating Trustee. Each holder of an Allowed Professional Fee Claim shall be paid in Cash from the Liquidating Trust in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed, unless such holder shall agree to a different treatment of such Claim; and

(d) Article III.B of the Plan provides that, except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment of its Allowed Other Priority Claim, on the Effective Date or as soon as reasonably practicable thereafter or, if the Other Priority Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which such Other Priority Claim is Allowed by Final Order, or as soon as reasonably practicable thereafter, each Holder of an Allowed Other Priority Claim shall receive, in full and complete settlement, release, and discharge of such Claim, at the option of the Debtors and the Requisite Consenting Lenders, the following treatment: (i) payment in full (in Cash) of such Allowed Other Priority Claim on the later of (a) the Effective Date (or as soon thereafter as reasonably practicable) and (b) as soon as practicable after the date such Allowed Other Priority Claim becomes due and payable or (ii) such other treatment rendering such Allowed Other Priority Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.

Accordingly, section 1129(a)(9) of the Bankruptcy Code has been satisfied.

X. Section 1129(a)(10): At Least One Class of Impaired Claims Has Accepted the Plan

79. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the 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). As set forth above and in the Voting Declaration, Class 3 (Term B Secured Claims) is an Impaired Class of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, section 1129(a)(10) of the Bankruptcy Code has been satisfied.

XI. Section 1129(a)(11): The Plan Provides for the Liquidation of the Debtors and is Not Likely to be Followed by Conversion to Chapter 7

80. Section 1129(a)(11) of the Bankruptcy Code requires that:

> [c]onfirmation 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).

81. Here, the Plan provides for the establishment of a Liquidating Trust to administer certain post-Effective Date responsibilities and wind-down under the Plan and that the Liquidating Trust shall consist of the Liquidating Trust Assets and the Wind-Down Reserve Accounts. *See* Plan, Articles IV.B.3, 4. On the Effective Date, as provided in the Implementation Memorandum, the Debtors shall transfer all of the Liquidating Trust Assets and the Wind-Down Reserve Accounts then held by the Debtors to the Liquidating Trust. *See id.*, Article IV.B.4. The Plan further provides that on the Effective Date, or as soon as practicable thereafter, as provided in the Implementation Memorandum, the Debtors shall effect the Plan Transactions. *See id.*, Article IV.A. The Debtors believe that the Liquidating Trust Assets and the Wind-Down Reserve Accounts will be sufficient to allow the Liquidating Trustee to make all payments required to be

made under the Plan. Accordingly, the feasibility standard under section 1129(a)(11) of the Bankruptcy Code has been satisfied.

XII. Section 1129(a)(12): All Statutory Fees Have Been or Will Be Paid

82. 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, have been paid or the plan provides for the payment of all such fees on the effective date of the Plan." 11 U.S.C. § 1129(a)(12). In accordance with section 1129(a)(12), Article XIII.C of the Plan provides that all fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid on the Effective Date. As a result, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

XIII. Sections 1129(a)(13) Through 1129(a)(16) Do Not Apply to the Plan

83. Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable to the Debtors and the Plan, as the Debtors: (a) are not obligated to pay retiree benefits (as defined in section 1114(a) of the Bankruptcy Code) (*see* 11 U.S.C. § 1129(a)(13)), (b) have no domestic support obligations (*see* 11 U.S.C. § 1129(a)(14)), (c) are not individuals (*see* 11 U.S.C. § 1129(a)(15)), and (d) are not nonprofit corporations (*see* 11 U.S.C. § 1129(a)(16)).

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

84. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a chapter 11 plan in circumstances where not all impaired classes of claims and interests vote to accept that plan. This mechanism is known colloquially as "cram down."

85. Specifically, section 1129(b)(1) provides, in pertinent part, that:

> [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).

86. Thus, under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may "cram down" a plan as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to unimpaired classes that did not vote to accept the plan.[33]

87. Here, as noted above, five Impaired Classes – Class 4 (General Unsecured Claims), Class 5 (Section 510 Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), and Class 8 (Existing Parent Equity Interests) — were deemed to reject the Plan. Accordingly, the Debtors invoke section 1129(b) to "cram down" the Plan with respect to Classes 4 through 8.

A. The Plan Does Not Discriminate Unfairly

88. The unfair discrimination standard of section 1129(b) of the Bankruptcy Code requires that a chapter 11 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.[34] Generally, 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.[35] Accordingly, as between two classes of claims or two classes of interests,

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[33] *See, e.g.*, *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005); *In re Dura Auto. Sys., Inc.*, 379 B.R. 257, 271-72 (Bankr. D. Del. 2007); *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 660 (D. Del. 2003).

[34] *See, e.g., In re Barney & Carey Co.*, 170 B.R. 17, 25 (Bankr. D. Mass 1994).

[35] *See, e.g., In re Rubicon U.S. REIT, Inc.*, 434 B.R. 168, 175 (Bankr. D. Del. 2010) (noting that courts generally look to whether "[v]alid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan"); *In re Lernout*, 301 B.R. at 660 ("The hallmarks of the various [unfair discrimination] tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination").

there is no unfair discrimination if (a) the classes are comprised of dissimilar claims or interests[36] or (b) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment.[37]

89. Here, the Plan does not "discriminate unfairly" with respect to Class 4 (General Unsecured Claims), Class 5 (Section 510 Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), and Class 8 (Existing Parent Equity Interests) as there are no similarly-situated Classes receiving more favorable treatment. Each of the remaining Classes that are receiving value under the Plan – Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 3 (Term B Secured Claims) – contains Claims that are either secured or otherwise entitled to priority in right of payment under section 507(a) of the Bankruptcy Code and is not similarly-situated compared to Classes 4 through 8.

B. The Plan Is Fair and Equitable

90. Section 1129(b)(2)(B)-(C) define the phrase "fair and equitable" as to impaired classes of unsecured creditors and interest holders as follows:

> As to unsecured creditors: Either (i) each impaired unsecured creditor receives or retains under the plan property of a value, as of the effective date of the plan, equal to the amount of its allowed claim, or (ii) the holders of claims and interests that are junior will not receive or retain any property under the plan on account of their claims or interests.
>
> As to equity interest holders: Either (i) each holder of an interest will receive or retain under the plan property of a value, as of the effective date of the plan, equal to the greatest of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of the interest, or (ii) the holder of any interest that is junior to the non-accepting class will not receive or retain any property under the plan on account of their its interest.

11 U.S.C. § 1129(b)(2)(B)-(C).[38]

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[36] *See, e.g.*, *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (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*, *In re Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

[37] *See, e.g.*, *In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990).

[38] *See also 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,

91. In the instant case, the "fair and equitable" requirement is satisfied as to Class 4 (General Unsecured Claims), Class 5 (Section 510 Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), and Class 8 (Existing Parent Equity Interests) because (a) no Claims or Interests junior to either Class 4, Class 5, Class 6, Class 7, or Class 8 will receive or retain any property under the Plan on account of such junior Claims or Interests, and (b) no Claims or Interests senior to Class 4, Class 5, Class 6, Class 7, or Class 8 will receive more than payment in full on account of such Claims or Interests. Therefore, the Plan is "fair and equitable" with respect to all impaired Classes of Claims or Interests under the Plan that did not accept the Plan.

XV. The Plan Satisfies the Requirements of Section 1129(c), (d), and (e) of the Bankruptcy Code

92. The Plan is the only pending plan on file in the Chapter 11 Cases and, as such, section 1129(c) of the Bankruptcy Code is satisfied. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, and no party in interest has alleged otherwise. In light of this, section 1129(d) of the Bankruptcy Code is inapplicable. Finally, the Chapter 11 Cases are not "small business cases" and, therefore, section 1129(e) of the Bankruptcy Code is inapplicable.

XVI. Waiver of Bankruptcy Rules Regarding Stay of Confirmation Order

93. 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). Given that all formal and informal objections to the Plan are resolved, anticipated to be resolved, or otherwise lack merit and the Plan has been overwhelmingly accepted by creditors entitled to vote on the Plan, the Debtors respectfully request that the 14-day stay

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.'").

imposed by operation of Bankruptcy Rule 3020(e) be waived, and that the Confirmation Order be effective immediately upon its entry. For the same reason, the Debtors additionally request that the Confirmation Order be effective immediately upon its entry notwithstanding any other provision of the Bankruptcy Rules, including Bankruptcy Rule 6004(h), or otherwise.

CONCLUSION

94. The Plan complies with and satisfies all applicable requirements of section 1129 of the Bankruptcy Code. Therefore, the Debtors request that the Bankruptcy Court (a) confirm the Plan and (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 18, 2022

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EXHIBIT A

(Excerpts from Relevant Plan Provisions)

In re Quorum Health Corp., **Case No. 20-10766 (KBO), Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization, D.I. 21, Art. I.A.130 and 132**:

130. "Related Party" means, each of, and in each case in its capacity as such, current and former directors, managers, officers, investment committee members, special or other committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

132. "Releasing Parties" means collectively and in each case in their capacity as such: (a) the Released Parties identified in subsection (a)–(l) and those Released Parties identified in subsection (m) of the definition of "Released Party" on behalf of whom the parties identified in subsections (a)–(l) of the definition of "Released Party" have the authority, including under any agreement or applicable non-bankruptcy law, to grant the Third-Party Release set forth in Article VIII.E (b) the Holders of all Claims and Interests who vote to accept the Plan; (c) the holders of all Claims or Interests that are Unimpaired under the Plan; (d) the holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan; (e) the holders of all Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth herein; (f) the holders of all Claims or Interests who are deemed to reject the Plan and who do not file a timely objection to the releases provided for in Article VIII.E; (g) the holders of all Claims and Interests who were given notice of the opportunity to opt out of granting the releases set forth herein but did not opt out; and (h) **each Related Party of each Entity in clause (b) through clause (g).**

In re American Blue Ribbon Holdings, LLC**, Case No. 20-10161 (LSS), Debtors' Second Amended Combined Disclosure Statement and Chapter 11 Plan of Reorganization, D.I. 543, Art. II.A.121 and 123:**

121. "Related Parties" means, with respect to any Person or Entity, such Person's or Entity's current and former direct or indirect subsidiaries and affiliates and each of their respective current and former stockholders, members, limited partners, general partners, equity holders, directors, managers, officers, employees, agents, designees, attorneys, financial advisors, investment bankers, accountants, and other professionals or representatives.

123. "Releasing Parties" means the following Entities, each in their respective capacities as such, (a) the Debtors; (b) the DIP Lender; (c) the Committee; (d) Cannae; (e) each Holder of a Claim that (x) votes to accept the Plan or (y) does not opt out of the voluntary release contained in Section XII.C hereof by checking the opt out box on the ballot, and returning it in accordance with the

instructions set forth thereon, indicating that they opt not to grant the releases provided in the Plan; (f) each Holder of a Claim that is deemed to accept the Plan or otherwise unimpaired under the Plan; (g) each Holder of an Equity Interest that does not elect to opt out of the voluntary release contained in Section XII.C hereof by timely filing an objection to such release; **and (h) the Related Parties of the foregoing**; provided, however, that for the avoidance of doubt, Holders whose Claims arise under the Perishable Agricultural Commodities Act ("PACA") shall not be deemed Releasing Parties with respect to such PACA Claims.

***In re Superior Air Charter, LLC*, Case No. 20-11007 (CSS), The Debtor and Official Committee and Unsecured Creditors' First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Reorganization, D.I. 158, Art. II.A.103 and 105:**

103. "Related Parties" means, with respect to any Person or Entity, such Person's or Entity's current and former direct or indirect subsidiaries and affiliates and each of their respective current and former stockholders, members, limited partners, general partners, equity holders, directors, managers, officers, employees, agents, designees, attorneys, financial advisors, investment bankers, accountants, and other professionals or representatives.

105. "Releasing Parties" means the following Entities, each in their respective capacities as such, (a) the Debtor; (b) the DIP Lenders; (c) the Committee and its members; (d) each Holder of a Claim; (e) each Holder of an Equity Interest; **and (f) the Related Parties of the foregoing**. For the avoidance of doubt, the United States Trustee is not a Releasing Party.

***In re Klausner Lumber One LLC*, Case No. 20-11033 (KBO), Second Amended Joint Chapter 11 Plan for Klausner Lumber One LLC Proposed by the Debtor and the Official Committee of Unsecured Creditors, D.I. 1014-1, Art. I.A.112:**

112. "*Releasing Party"* means, collectively, and in each case solely in its capacity as such: (a) the Post-Confirmation Debtor and the Plan Administrator; (b) the DIP Lender; (c) the Creditors' Committee and each of its members; (d) each Creditor Releasing Party; **and (e) any person or entity claiming by or through each of the foregoing Entities described in clauses (a) through (d), including such Entities' current and former affiliates, and such Entities' and such affiliates' partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, officers, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns**.

***In re Tonopah Solar Energy, LLC*, Case No. 20-11884 (KBO), Second Amended Chapter 11 Plan for Tonopah Solar Energy, LLC, D.I. 291-1, Art. I, § 1.107:**

1.107. Third Party Releasing Parties means, collectively, all Persons with a Claim, including a Cause of Action, against and/or Interest in the Debtor or related to the Crescent Dunes Solar Energy Project who (i) are deemed to accept the Plan and who affirmatively opt in to the releases provided by the Plan by checking the box on the applicable notice of non-voting status indicating that they opt to grant the releases provided in the Plan (provided, that Cobra and its Affiliates shall be deemed to consent to such releases), and (ii) are deemed to reject the Plan and who affirmatively opt in to the releases provided by the Plan by checking the box on the applicable notice of non-voting status indicating that they opt to grant the releases provided in the Plan, and (iii) **each of the foregoing's respective current and former parents, Affiliates and subsidiaries, predecessors, successors, and assigns, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such**.

***In re Pennsylvania Real Estate Inv. Trust*, Case No. 20-12737 (KBO), Joint Prepackaged Chapter 11 Plan of Reorganization of Pennsylvania Real Estate Investment Trust and Certain of its Direct and Indirect Subsidiaries, D.I. 213-2, Art. I., §§ 1.108 and 1.110:**

1.108. "Related Party" means, each of, and in each case in its capacity as such, current and former directors, trustees, managers, officers, investment committee members, special or other committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, managers, employees, agents, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director, trustee or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates and nominees.

1.110. "Releasing Party" means, collectively, and in each case in their capacity as such: (i) each Released Party; (ii) each Holder of Impaired Claims that are not Released Parties, except any such Holder that voted to reject, or abstained from voting on, the Plan and has also checked the box on the applicable ballot indicating that they opt out of granting the releases provided in the Plan (including, for the avoidance of doubt, the Holders of all Claims whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth herein); (iii) the Holders of all Claims or Interests that are Unimpaired under the Plan; and (iv) **each Related Party with respect to each of the foregoing in clauses (i) through (iii)**.