Docket #0650 Date Filed: 08/16/2026

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

In re:	§	
	§	CASE NO. 26-90440 (CML)
ASCEND ELEMENTS, INC., ET AL.,	§	Chapter 11
	§	
Debtors.[1]	§	(Jointly Administered)
	§	

THE DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF (I) FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND (II) CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION FOR ASCEND ELEMENTS, INC., ET AL.

NORTON ROSE FULBRIGHT US LLP
Ryan Manns (SBT 24041391)
Maria Mokrzycka (SBT 24119994)
1550 Lamar, Suite 2000
Houston, TX 77010
Tel: (713) 651-5151
Email: ryan.manns@nortonrosefulbright.com
Email: maria.mokrzycka@nortonrosefulbright.com

-and-

Jason I. Blanchard (SBT 24130197)
Michael Berthiaume (SBT 24066039)
2200 Ross Avenue, Suite 3600
Dallas, TX 75201
Tel: (214) 855-8210
Email: jason.blanchard@nortonrosefulbright.com
Email: michael.berthiaume@nortonrosefulbright.com

Counsel to the Debtors and Debtors in Possession

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The Debtors' service address is 133 Flanders Road, Westborough, MA 01581.

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Ascend Elements, Inc. and Ascend Elements US, LLC (collectively, the "Debtors"), as debtors and debtors-in-possession in the above-captioned chapter 11 cases, submit this memorandum of law (this "Memorandum") in support of final approval of the *Combined Disclosure Statement and Joint Plan of Liquidation for Ascend Elements, Inc., et al.* (as amended, supplemented, or modified from time to time, the "Plan" or the "Combined Disclosure Statement and Plan").[1] Pursuant to sections 1125, 1126, and 1129 of title 11 of the United States Code (the "Bankruptcy Code"), the Debtors seek final approval of the Combined Disclosure Statement and confirmation of a liquidating Plan that will wind down the Debtors' Estates, transfer remaining assets and Retained Causes of Action to the GUC Trust, and distribute value to holders of Allowed General Unsecured Claims. In further support, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The Debtors commenced these Chapter 11 Cases just over four months ago to preserve and maximize value through a court-supervised sale process and orderly wind-down. To that end, the Debtors, with the assistance of their restructuring advisors, successfully completed three value-maximizing transactions on an expedited timeline across three separate asset groups. In addition to the other benefits realized by the Estates, the respective sales paved the way for the Debtors to preserve a significant number of employee jobs, address over $100 million in secured note obligations, resolve numerous contested mechanic's and materialman's lien claims, and resolve millions of dollars in uncertain liabilities for the Debtors' Estates through a settlement with the Department of Energy.

2. Having sold or liquidated substantially all of their operating assets, the Debtors now seek final approval of the Combined Disclosure Statement and confirmation of a

[1] Capitalized terms used but not defined herein have the meanings ascribed to them in the Combined Disclosure Statement and Plan, or the Solicitation Procedures Order, as applicable.

liquidating Plan that allows for the wind-down of the Debtors' businesses, the liquidation of their remaining assets, resolution of creditor claims, and the orderly conclusion of these Chapter 11 Cases. The Plan, which is supported by the Committee, provides creditors with the best available opportunity for a recovery under the circumstances. Allowed Administrative Claims and Priority Tax Claims will be paid in full while Holders of Allowed General Unsecured Claims will receive a pro rata share of the GUC Trust, which entitles them to a pro rata share of the net proceeds of GUC Trust Assets, consisting of available Cash and recoveries from Retained Causes of Action. That share exceeds any distribution General Unsecured Creditors might otherwise receive in a chapter 7 liquidation. General Unsecured Creditors appear to share this view having voted to accept the Plan by 85.93% in amount and 85.29% in number.

3. To date, the Debtors have received two objections to final approval of the Combined Disclosure Statement or Confirmation of the Plan: one from the Office of the United States Trustee [Docket No. 639] (the "UST Objection") and one from the Georgia Department of Natural Resources, Environmental Protection Division [Docket No. 645] (the "GA EPD" and the "GA EPD Objection"). With the further changes made to the Plan, the Debtors believe they have narrowed the UST Objection to one issue: the exculpation of the sole member of the Debtors' Special Committee, which the Debtors submit is supported under Fifth Circuit law and this Court's prior precedents. As to the GA EPD Objection, GA EPD primarily objects to the Covington Sale Order, a final and unappealable order which was entered by the Court over six weeks ago, which is not a basis for denying confirmation of the Plan. The other arguments raised in the GA EPD Objection are in support of the UST Objection, and are therefore rendered moot by the revised Plan. While the Debtors received informal comments to the Plan and Confirmation Order from various parties in interest, the Debtors believe those comments have

been resolved through incorporation of additional requested language in the proposed Confirmation Order.

4. For the reasons set forth herein and in the Confirmation Declaration,[2] the Debtors submit (i) the Combined Disclosure Statement provides adequate information within the meaning of section 1125(a)(1); (ii) the solicitation complied with section 1126(b); and (iii) the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. Accordingly, the Debtors request that the Court approve the Combined Disclosure Statement on a final basis and confirm the Plan.

BACKGROUND

I. The Bankruptcy Cases

5. On April 9, 2026 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and have continued to operate and manage their properties as debtors in possession under sections 1107(a) and 1108.

6. The United States Trustee appointed the Committee on April 26, 2026. [Docket No. 139]. No trustee or examiner has been appointed, and the Chapter 11 Cases are jointly administered for procedural purposes only.

7. Additional information about the Debtors' businesses and affairs, capital structure, as well as the events leading to the commencement of the Chapter 11 Cases, can be found in the First Day Declaration, the Confirmation Declaration, and Article II of the Combined Disclosure Statement and Plan. A summary of certain events that occurred following the commencement of the Chapter 11 Cases can be found in Article III of the Combined Disclosure Statement and Plan.

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[2] *Declaration of Adam Titus in Support of (i) Final Approval of the Disclosure Statement on a Final Basis, and (II) Confirmation of the Plan of Liquidation for Ascend Elements, Inc. et al.* [Docket No. 646] (the "Confirmation Declaration").

A. Overview of the Combined Disclosure Statement and Plan and Plan Supplement

8. On July 8, 2026, the Debtors filed the *Combined Disclosure Statement and Joint Plan of Liquidation for Ascend Elements, Inc., et al*. (as amended and supplemented from time to time), [Docket No. 550, 570, 642, 648], and on August 10, 2026, the Debtors filed the Plan Supplement [Docket No. 627, 647], consisting of Exhibit A—the GUC Trust Agreement, Exhibit B—the Schedule of Assumed Contracts, and Exhibit C—the Schedule of Retained Causes of Action.[3]

9. The Combined Disclosure Statement and Plan describes the Debtors' history, assets, liabilities, events leading up to and during the Chapter 11 Cases, Sale transactions, settlements, Claims and Interests, liquidation analysis, GUC Trust, contemplated distributions, and confirmation standards.

10. The structure of the Plan is fairly straightforward. The Plan is a plan of liquidation that provides for the establishment of the GUC Trust and the transfer of the Debtors' remaining assets to the GUC Trust, which includes the Retained Causes of Action. The GUC Trustee is charged with the resolving Claims, making distributions to Holders of Allowed General Unsecured Claims, investigating the Retained Causes of Action, and otherwise collecting, prosecuting, selling, or disposing of the GUC Trust Assets. The GUC Trust will be funded with the Debtors' available Cash as of the Effective Date.

11. Under the Plan, certain claims are not classified and are entitled to a full recovery under the Bankruptcy Code (*e.g.* Administrative Claims and Priority Tax Claims). The Plan places Claims and Interests in six (6) Classes. Other Priority Claims (Class 1) and Other Secured Claims (Class 2) will receive a full recovery and are therefore unimpaired and not entitled to vote on the Plan. Holders of Allowed General Unsecured Claims (Class 3), the

[3] The Plan Supplement and the Combined Disclosure Statement and Plan are available free of charge through the Debtors' restructuring website at https://www.veritaglobal.net/ascend.

only voting Class, will receive pro rata shares of the GUC Trust, which will entitle them to a pro rata share of Distributions from the GUC Trust after payment of all senior claims and trust expenses. There will be no distributions on account of Intercompany Claims (Class 4), Intercompany Interests (Class 5) or to Holders of Interests in Ascend Elements (Class 6), which are impaired and deemed to reject the Plan.

12. Although proposed jointly for administrative purposes, the Plan constitutes a separate plan for each Debtor for the resolution of Claims against and Interests in that Debtor.

B. The Solicitation Process and Voting Results

13. On July 15, 2026, the Bankruptcy Court entered the Solicitation Procedures Order [Docket No. 575], which (a) conditionally approved the Disclosure Statement for solicitation purposes, (b) established August 14, 2026 at 4:00 p.m. (prevailing Central Time) as the Objection Deadline, (c) approved the solicitation and notice procedures, and (d) approved the forms of Ballots, the Opt-In Form, the Combined Hearing Notice, and the Notices of Non-Voting Status. The Order also established July 14, 2026 at 4:00 p.m. as the Voting Record Date, August 14, 2026 at 4:00 p.m. as the Voting and Opt-In Deadline, August 15, 2026 at 4:00 p.m. as the Voting Report Deadline, and August 17, 2026 at 1:00 p.m. as the Combined Hearing.

14. After the Bankruptcy Court entered the Solicitation Procedures Order, the Debtors caused solicitation of the Combined Disclosure Statement and Plan [Docket No. 570] and subsequently filed the Combined Hearing Notice [Docket No. 600].

i. Voting Classes

15. On July 17, 2026, the Debtors caused Kurtzman Carson Consultants, LLC d/b/a Verita Global ("Verita") to transmit the Solicitation Packages to eligible Holders of Class 3 General Unsecured Claims, the only Class entitled to vote on the Plan, as of the July 14, 2026 Voting Record Date. [Docket No. 630].

16. The Solicitation Packages transmitted to Holders of Class 3 Claims included the Solicitation Procedures Order without exhibits, the Combined Disclosure Statement and Plan, the applicable Ballot and Opt-In Form, the Combined Hearing Notice, and a pre-addressed, postage-prepaid return envelope, with the Plan and related materials available electronically through the Debtors' restructuring website. *See id.*

ii. Non-Voting Classes

17. The Debtors caused Verita to transmit Non-Voting Status Notices to Holders of Claims and Interests in Classes 1, 2, 4, 5, and 6. *See id.* Classes 1 and 2 are Unimpaired and deemed to accept the Plan, while Classes 4, 5, and 6 are Impaired, receive no property, and are deemed to reject the Plan. The Notices explained how Holders could obtain the Combined Disclosure Statement and Plan and related materials free of charge, summarized the Release, Exculpation, and Injunction Provisions, provided the Objection Deadline and Combined Hearing information, and included an Opt-In Form.

iii. Voting Results

18. After the Voting Deadline, and following a complete review by Verita of all Ballots received, Verita tabulated all timely and properly completed Ballots cast by Holders entitled to vote on the Plan. As reflected in the Voting Declaration,[4] the Plan was accepted by the Holders of Class 3, the only voting Class, as 31 of the 37 votes tabulated (approximately 85% in amount and 84% in number) voted in favor of the Plan.

ARGUMENT

19. Based on the evidence to be submitted at the Combined Hearing, the Combined Disclosure Statement should be approved on a final basis and the Plan should be confirmed. Section I of this Memorandum demonstrates that final approval of the Combined Disclosure

[4] *Declaration of Darlene Calderon Regarding the Solicitation and Tabulation of Votes on the Combined Disclosure Statement and Joint Plan of Liquidation for Ascend Elements, Inc., et. al.* [Docket No. 643] (the "Voting Declaration").

Statement is warranted and that the Debtors complied with the Solicitation Procedures Order. Section II demonstrates that the Plan satisfies each of the requirements for confirmation under section 1129 of the Bankruptcy Code and all objections to Confirmation should be overruled. Section III demonstrates that the other discretionary elements of the Plan are appropriate and should be approved. Section IV demonstrates that good cause exists for waiving the stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) and any other applicable Bankruptcy Rule.

I. Final Approval of the Disclosure Statement is Warranted.

20. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a chapter 11 plan from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b).

21. On July 15, 2026, the Bankruptcy Court entered the Solicitation Procedures Order [Docket No. 575] in connection with the Debtors' Solicitation Motion [Docket No. 551], which, *inter alia*, conditionally approved the Disclosure Statement as containing adequate information within the meaning of section 1125(b) of the Bankruptcy Code and established the Voting Record Date, Voting Deadline, Objection Deadline, Opt-In Deadline, Voting Report Deadline, and Combined Hearing, and approved the form and manner of the Combined Hearing Notice, Ballots, Opt-In Form, and Notices of Non-Voting Status. As demonstrated below, the Debtors complied with the solicitation procedures and timeline approved by that Order and the applicable Bankruptcy Rules, and the Disclosure Statement contains adequate information. Accordingly, approval of the Disclosure Statement on a final basis as part of the Confirmation Order is appropriate.

A. The Debtors Complied with the Solicitation and Other Requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order in Soliciting the Disclosure Statement.

i. The Solicitation Materials Were Appropriate and Complied with the Relevant Bankruptcy Rules and the Solicitation Procedures Order.

22. Bankruptcy Rule 3017(d) requires that, unless a court orders otherwise, a debtor must transmit to all creditors, equity security holders, and the United States Trustee the following: the plan (or a court-approved summary of the plan), the disclosure statement approved by the court, notice of the time within which acceptances and rejections of such plan may be filed, and such other information as the court may direct, including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. Fed. Bankr. P. 3017(d). Bankruptcy Rule 3018(c) requires that an acceptance or rejection of a plan be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or an authorized agent, and conform to the appropriate Official Form. Fed. R. Bankr. P. 3018(c).

23. The Solicitation Packages conditionally approved by the Bankruptcy Court included the Combined Disclosure Statement and Plan, including the Liquidation Analysis, the applicable Ballot and Opt-In Form, the Combined Hearing Notice, and notice of the Voting Deadline and Objection Deadline. *See* [Docket No. 575]. The Solicitation Procedures Order approved the procedures for distributing those materials and authorized Verita to serve as the Solicitation Agent. *Id.*

24. Verita transmitted the Solicitation Packages to Holders in Class 3 in accordance with the Solicitation Procedures Order, and the Combined Disclosure Statement and Plan was made available free of charge on the Debtors' restructuring website. *See* [Docket No. 630]. The Solicitation Procedures Order authorized Non-Voting Status Notices in lieu of Solicitation Packages for Non-Voting Classes, and those Holders were provided access to the Plan and the required release and deadline information. *Id.*

25. Furthermore, the Ballots were based on Official Form No. 314, modified for the facts of these Chapter 11 Cases and Class 3, and approved by the Bankruptcy Court in the Solicitation Procedures Order. The Ballots included clear and conspicuous language regarding the Third-Party Releases and the procedures for affirmatively opting in to such releases. The Ballots also required a single election to accept or reject the Plan, contained the required certifications, and could be submitted through the court-approved E-Ballot process. No party has objected to the sufficiency of the Ballots. Accordingly, the Debtors submit they have satisfied Bankruptcy Rules 3017(d) and 3018(c).

ii. Parties in Interest Received Sufficient Notice of the Objection Deadline and Combined Hearing.

26. Bankruptcy Rule 3017(a) requires twenty-eight (28) days' notice of a hearing on the adequacy of a disclosure statement, and Bankruptcy Rule 3020(b)(1) authorizes the Court to fix a time for filing objections to confirmation of a chapter 11 plan. *See* Fed. R. Bankr. P. 3017(a), 3020(b). Bankruptcy Rule 2002(b) requires twenty-eight (28) days' notice by mail to creditors of the time fixed for filing objections to approval of a disclosure statement or confirmation of a chapter 11 plan, subject to the Court's authority under Bankruptcy Rule 9006(c)(1). Fed. R. Bankr. P. 2002(b). In addition, section 105(d) of the Bankruptcy Code permits the Bankruptcy Court to combine the hearing on approval of a disclosure statement with the hearing on confirmation of the plan. 11 U.S.C. § 105(d)(2)(B)(vi).

27. The Solicitation Procedures Order established July 17, 2026 as the Solicitation and Notice Deadline, August 14, 2026 as the Objection Deadline, and August 17, 2026 as the date of the Combined Hearing. Verita served the Combined Hearing Notice on known Holders of Claims and Interests as of the Voting Record Date and other parties entitled to notice under Bankruptcy Rule 2002 on July 17, 2026. *See* [Docket No. 630]. The notice period from July 17 to August 14 provided at least twenty-eight (28) days before the Objection Deadline, and the Combined Hearing was scheduled more than twenty-eight (28) days after service.

28. Accordingly, the Debtors submit that all parties in interest had sufficient notice of the Combined Hearing and Objection Deadline, and no party has been prejudiced by this schedule.

iii. The Vote Tabulation and Tabulation Procedures Complied with the Bankruptcy Code, Bankruptcy Rules, and the Solicitation Procedures Order.

29. Section 1126(c) of the Bankruptcy Code provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Only holders of allowed claims and interests in impaired classes that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject a plan. 11 U.S.C. § 1126(f)–(g).

30. As described in the Voting Declaration, the Debtors used standard tabulation procedures in soliciting acceptances and rejections of the Plan and tabulating Ballots received from Holders of Claims in Class 3, the only impaired, voting class of claims under the Plan. Verita was authorized to review, receive, tabulate, and report on Ballots in accordance with the procedures described in the Solicitation Motion [Docket No. 551] and Solicitation Procedures Order. The Voting Declaration illustrates the results of the Class 3 vote. Every validly cast Ballot was counted and considered when tabulating votes for the acceptance or rejection of the Plan. Taken together, the notice, solicitation, opt-in, and tabulation procedures complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, 3018, and 3019, and the Solicitation Procedures Order.

B. The Disclosure Statement Contains Adequate Information Within the Meaning of Section 1125(a)(1) of the Bankruptcy Code.

31. Section 1125(a)(1) of the Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).

32. Accordingly, a debtor's disclosure statement must provide sufficient information to permit an informed judgment by impaired creditors entitled to vote on the plan. *See, e.g., In re Woerner*, 783 F.3d 266, 271 (5th Cir. 2015) ("The proponent of a reorganization plan . . . must provide a court-approved disclosure statement that contains 'adequate information' about the assets, liabilities, and financial affairs of the debtor sufficient to enable creditors to make an 'informed judgment' about the plan.") (quoting 11 U.S.C. §§ 1121, 1125); *In re Tex. Rangers Baseball Partners*, 521 B.R. 134, 176 (Bankr. N.D. Tex. 2014) ("Section 1125 of the Bankruptcy Code entitles creditors to 'adequate information' so they can make an informed decision on whether to accept or reject a chapter 11 plan.") (quoting *In re Tex. Wyo. Drilling, Inc.*, 647 F.3d 547, 551 (5th Cir. 2011)).

33. The essential requirement of a disclosure statement is it "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Keisler*, No. 08-34321, 2009 WL 1851413, at *4 (Bankr. E.D. Tenn. June 29, 2009) (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991)). Whether a disclosure statement contains adequate information "is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation . . . ." 11 U.S.C. § 1125(d). Instead, courts have broad discretion to determine the adequacy of the information contained in a disclosure statement. *See, e.g., In re Tex. Extrusion Corp.*, 844 F.2d

1142, 1157 (5th Cir. 1988) (noting that the determination of what is adequate information is "largely within the discretion of the bankruptcy court").

34. Congress granted courts this broad discretion to facilitate effective reorganizations of debtors in a broad range of businesses, taking into account the various facts and circumstances that accompany chapter 11 cases. *See* H.R. Rep. No. 95-595, at 408-09 (1977) ("Precisely what constitutes adequate information will develop on a case-by-case basis."); *see also Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop.)*, 150 F.3d 503, 518 (5th Cir. 1998) ("[W]ith respect to a particular disclosure statement, 'both the kind and form of information are left essentially to the judicial discretion of the court.'") (quoting S. Rep. No. 95-989, at 121 (1978)). Accordingly, the determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *Tex. Extrusion*, 844 F.2d at 1157.

35. To determine whether a disclosure statement contains adequate information, courts generally examine whether the disclosure statement contains the following types of information, as applicable:

i. the circumstances that gave rise to the filing of the petition;

ii. an explanation of the available assets and their value;

iii. the anticipated future of the Debtors;

iv. the source of the information provided in the Combined Disclosure Statement and Plan;

v. a disclaimer, which typically indicates that no statements or information concerning the Debtors or their assets or securities are authorized, other than those set forth in the Combined Disclosure Statement and Plan;

vi. the condition and performance of the Debtors while in chapter 11;

vii. information regarding Claims against the Estates;

viii. a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;

ix. the accounting and valuation methods used to produce the financial information in the Combined Disclosure Statement and Plan;

x. information regarding the future management of the Debtors, including the amount of compensation to be paid to any insiders, directors, and/or officers of the Debtors;

xi. a summary of the Plan of liquidation;

xii. an estimate of all administrative expenses, including attorneys' fees and accountants' fees;

xiii. the collectability of any accounts receivable;

xiv. any financial information, valuations, or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the Plan;

xv. information relevant to the risks being taken by the creditors and Interest holders;

xvi. the actual or projected value that can be obtained from avoidable transfers;

xvii. the existence, likelihood, and possible success of nonbankruptcy litigation;

xviii. the tax consequences of the Plan; and

xix. the relationship of the Debtors with their affiliates.

See In re U.S. Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996) (citing *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)); *see also In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (setting forth a non-exhaustive list of 19 categories of information that may be included in a disclosure statement).

36. The above list is not meant to be comprehensive, and a debtor is not required to provide all of the information on the list. Rather, a court decides what is appropriate on a case-by-case basis in light of the particular facts and circumstances present in each case. *See U.S. Brass*, 194 B.R. at 425; *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (making use of a similar list but cautioning that "no one list of categories will apply in every case.").

37. The Combined Disclosure Statement and Plan provides many of the types of information identified in the applicable categories above, including, but not limited to:

Category	Disclosure	Location
Business and Corporate Structure	Overview of Ascend's battery-recycling business, Debtors, affiliates, and facilities.	Combined DS/Plan Arts. II.A-C
Events Leading to Filing	Liquidity constraints, Apex 1 delays and cost overruns, Apex 0 limitations, and adverse pricing.	Combined DS/Plan Art. II.G
Chapter 11 Cases	Committee, Verita, cash collateral, sale process, settlements, and wind-down activities.	Combined DS/Plan Art. III
Plan Summary	Classification, treatment, GUC Trust, distributions, and releases.	Combined DS/Plan Arts. V-VIII, XIII
DOE and AMCON	DOE settlement terms, the Court-approved AMCON settlement, payment from and release of the Covington Proceeds Escrow, and the mutual releases.	Combined DS/Plan Arts. III.G-H, XIII.A
Liquidation Analysis	Chapter 7 comparison, projected recoveries, the AMCON settlement and escrow distribution, and assumptions regarding residual assets.	Combined DS/Plan Art. XV.B and Ex. A
Confirmation Requirements	Requirements and procedures for final approval and confirmation under section 1129.	Combined DS/Plan Art. XV
Risks	Risks affecting the Plan, confirmation, the GUC Trust, and creditor recoveries.	Combined DS/Plan Art. XVI
Taxes and Recommendation	Tax consequences and the Debtors' recommendation that holders accept the Plan.	Combined DS/Plan Arts. XVII-XVIII

38. In addition to the type of information that courts typically look for in a disclosure statement, the Combined Disclosure Statement and Plan provides an analysis of the alternatives to confirmation and consummation of the Plan (Articles XV-XVI). Finally, the Combined Disclosure Statement and Plan concludes with the Debtors' recommendation that the Plan is in the best interests of all stakeholders and urges eligible creditors to vote in favor thereof (Article XVIII).

39. Based on the foregoing, the Debtors submit that the Combined Disclosure Statement and Plan contains adequate information for Holders of Claims eligible to vote on the Plan to make an informed judgment regarding whether to vote to accept or reject the Plan, and therefore satisfies the requirements of section 1125 of the Bankruptcy Code. Accordingly, the

Debtors request that the Bankruptcy Court approve the Disclosure Statement as containing adequate information in satisfaction of the requirements of section 1125 of the Bankruptcy Code.

C. The Disclosure Statement Provides Sufficient Notice of the Release, Exculpation, and Injunction Provisions in the Plan.

40. Bankruptcy Rule 3016(c) requires that, when a plan provides for an injunction against conduct not otherwise enjoined by the Bankruptcy Code, the plan and disclosure statement describe in specific and conspicuous language all acts to be enjoined and identify the entities subject to the injunction. *See* Fed. R. Bank. P. 3016(c).

41. Article XIII of the Plan provides the Release, Exculpation, and Injunction Provisions in conspicuous and bold print, identifies the relevant entities, and describes the acts and Claims subject to those provisions. The Combined Disclosure Statement and Plan likewise sets forth the operative language and the consequences of Confirmation.

42. Accordingly, the Debtors submit that the Combined Disclosure Statement and Plan complies with Bankruptcy Rule 3016(c) and provides sufficient notice of the Release, Exculpation, and Injunction Provisions.

II. The Plan Satisfies the Bankruptcy Code's Confirmation Requirements and Should Be Approved.

43. To achieve confirmation of the Plan, the Debtors must demonstrate by a preponderance of the evidence that the Plan satisfies section 1129(a) of the Bankruptcy Code. *See In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009); *In re J T Thorpe Co.*, 308 B.R. 782, 785 (Bankr. S.D. Tex. 2003). The Confirmation Declaration, the Voting Declaration, and the evidence presented at the Combined Hearing will establish that the Plan complies with the Bankruptcy Code and applicable nonbankruptcy law.

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

44. Section 1129(a)(1) requires that a plan comply with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1). Courts interpret section 1129(a)(1) to require compliance with sections 1122 and 1123. *See In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168, 174 (5th Cir. 2011); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 260 (Bankr. S.D. Tex. 2015); *In re J T Thorpe Co.*, 308 B.R. at 785. The Plan satisfies those requirements as described below.

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

45. Section 1122(a) of the Bankruptcy Code provides that, "[e]xcept as otherwise provided in [section 1122(b) of the Bankruptcy Code], a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). The Fifth Circuit has recognized that under section 1122 of the Bankruptcy Code plan proponents have flexibility to place similar claims into different classes if there is a valid business, factual, or legal justification for doing so. *See In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009) ("Under the Bankruptcy Code, classes must contain 'substantially similar' claims, but similar claims can be separated into different classes for 'good business reasons.'"). Courts are also 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. *See In re LeBlanc*, 622 F.2d 872, 879 (5th Cir. 1980) ("The fact that bankruptcy courts are courts of equity, however, allows exceptions to any strict rules of classification of claims.").

46. The Plan classifies Claims and Interests as follows:

Class	**Designation**	Status	**Voting Rights / Projected Recovery**
1	Other Priority Claims	Unimpaired	*Deemed to Accept; 100% recovery*

Class	**Designation**	Status	**Voting Rights / Projected Recovery**
2	Other Secured Claims	Unimpaired	*Deemed to Accept; 100% recovery*
3	General Unsecured Claims	Impaired	*Entitled to Vote; 0–0.4% projected recovery*
4	Intercompany Claims	Impaired	*Deemed to Reject; 0% recovery*
5	Intercompany Interests	Impaired	*Deemed to Reject; 0% recovery*
6	Interests in Ascend Elements	Impaired	*Deemed to Reject; 0% recovery*

47. The Plan properly classifies Claims and Interests in accordance with section 1122 of the Bankruptcy Code. Each Class is comprised of Claims or Interests that are substantially similar to the other Claims or Interests in that Class, and the separate classification of priority, secured, unsecured, intercompany, and equity Claims and Interests reflects their distinct legal and economic rights. Class 1 and Class 2 are separately classified because priority and secured status create distinct legal rights. Class 3 contains the General Unsecured Claims that share in the GUC Trust. Classes 4 through 6 consist of intercompany Claims or Interests and existing equity that receive no distribution.

48. The Plan's classification scheme is not designed to gerrymander an accepting impaired class. It reflects the Debtors' capital structure and the different rights and treatment applicable to priority, secured, unsecured, intercompany, and equity interests. Accordingly, the Plan satisfies section 1122 of the Bankruptcy Code.

ii. The Plan Satisfies the Mandatory Requirements of Section 1123 of the Bankruptcy Code.

49. Section 1123(a) of the Bankruptcy Code sets forth eight requirements that a plan must satisfy. *See* 11 U.S.C. § 1123(a). The Plan satisfies each such applicable requirement, or it is otherwise not applicable to these Chapter 11 Cases:

- Section 1123(a)(1). Article V of the Plan designates Classes of Claims and Interests as required by section 1123(a)(1). In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, Professional Fee Claims, and U.S. Trustee Fees have not been classified and, thus, are excluded from the classification of Claims and Interests set forth in Article V of the Plan.

- Section 1123(a)(2). Article V of the Plan specifies whether each Class of Claims or Interests is Impaired or Unimpaired under the Plan as required by section 1123(a)(2).

- Section 1123(a)(3). Article V of the Plan specifies the treatment of any Class of Claims or Interests that is Impaired as required by section 1123(a)(3).

- Section 1123(a)(4). Article V of the Plan provides that, except as otherwise agreed to by a holder of a particular Claim or Interest, each Claim or Interest of a particular class is provided the same treatment, as required by section 1123(a)(4).

- Section 1123(a)(5). The Plan, including the Plan Supplement, provides adequate means for its implementation by way of payment of Unclassified and Unimpaired Claims, transfer of remaining Cash and other assets to the GUC Trust, preservation of Retained Causes of Action, resolution of Claims, and Distributions to GUC Trust Beneficiaries. As provided in Article VII of the Plan, on the Effective Date, the Debtors will fund Distributions and reserves for applicable Allowed Claims and transfer remaining Cash and GUC Trust Assets to the GUC Trust. The GUC Trust will then administer the remaining assets, resolve Claims, and make Distributions under the Plan and GUC Trust Agreement. The Plan also provides for limited substantive consolidation solely for voting, Confirmation, Claim resolution, and Distributions; cancellation of existing securities and intercompany obligations; rejection or assumption of executory contracts as provided in Article X; and preservation of GUC Trust Claims under Article VII.

- Section 1123(a)(6). The Plan does not issue new securities or provide for a reorganized operating company. Rather, the Plan is a liquidating plan that cancels existing securities and Interests on the Effective Date.

- Section 1123(a)(7). The Plan provides for the resignation of the Debtors' directors, managers, and officers on the Effective Date and transfers authority to act for the Debtors and Estates to the GUC Trustee in accordance with the Plan and GUC Trust Agreement.

- Section 1123(a)(8). This provision is inapplicable because neither Debtor is an individual.

50. The Plan therefore satisfies the applicable mandatory requirements of section 1123(a) of the Bankruptcy Code.

iii. The Discretionary Provisions of the Plan are Consistent with Section 1123 of the Bankruptcy Code.

51. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a plan. *See* 11 U.S.C. § 1123(b). Here, the relevant provisions of the Plan are permissible under section 1123(b):

- Section 1123(b)(1). Pursuant to Article V of the Plan, Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are Unimpaired under the Plan, and Classes 4 (Intercompany Claims), 5 (Intercompany Interests), and 6 (Interests in Ascend Elements) are Impaired under the Plan.

- Section 1123(b)(2). Article X of the Plan provides for the rejection of all remaining executory contracts and unexpired leases of the Debtors as of the Effective Date, unless and except as otherwise provided by prior orders of the Court or assumed as set forth in the Schedule of Assumed Contracts.

- Section 1123(b)(3)(A). The provisions of the Plan represent a good faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, equitable, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. Additionally, as discussed in more detail herein, the Debtor Releases, the Third-Party Releases, Exculpation Provision, and Injunction are permitted pursuant to various sections of the Bankruptcy Code.

- Section 1123(b)(3)(B). The Plan preserves and retains certain rights, claims, and Causes of Action of the Estates to be pursued by the GUC Trustee on behalf of the Beneficiaries of the GUC Trust. *See* Plan, Article VII., F.

- Section 1123(b)(4). This section is inapplicable because the Plan does not provide for the sale of substantially all the Debtors' assets.

- Section 1123(b)(5). Article V of the Plan modifies the rights of Holders of General Unsecured Claims (Class 3), Intercompany Claims (Class 4), Intercompany Interests (Class 5), and Interests in Ascend Elements (Class 6), which are Impaired under the Plan, and leaves Unimpaired the rights of holders of Other Priority Claims (Class 1) and Other Secured Claims (Class 2).

- Section 1123(b)(6). There are no provisions in the Plan that are inconsistent with the Bankruptcy Code. In accordance with section 1123(b)(6) of the Bankruptcy Code, Article XIII of the Plan includes certain release, exculpation, and injunction provisions that are essential to the Plan and are consistent with the provisions of the Bankruptcy Code and Fifth Circuit precedent as set forth more fully below.

52. Accordingly, each of the Plan's permissive provisions are consistent with section 1123(b) of the Bankruptcy Code. For the foregoing reasons, the Plan complies fully with sections 1122 and 1123 of the Bankruptcy Code, and, therefore, satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

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

53. Section 1129(a)(2) requires the plan proponent to comply with the "applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The "applicable provisions" of the Bankruptcy Code have been interpreted to primarily include sections 1125 and 1126 of the Bankruptcy Code. *See, e.g., Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 512 n.3 (5th Cir. 1998) (noting that section 1129(a)(2) includes requirement of compliance with section 1125); *In re Star Ambulance Serv. LLC,* 540 B.R. 251, 262 (Bankr. N.D. Tex. 2015) ("Courts interpret this language 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 the requirements of those Bankruptcy Code sections.

i. The Debtors Complied with Section 1125 of the Bankruptcy Code.

54. Section 1125 requires a plan proponent to provide the plan or a summary of the plan and a written disclosure statement containing adequate information before soliciting acceptances or rejections. *See* 11 U.S.C. § 1125(b). As discussed above, the Debtors caused Verita to transmit the Combined Disclosure Statement and Plan, according to the Court-approved Solicitation Procedures, and provided Class 3 Holders with Ballots and the required release disclosures. *See* Voting Declaration ¶¶ 5-12. The Debtors therefore complied with section 1125(b). The Solicitation Procedures Order conditionally approved the Combined Disclosure Statement and Plan for solicitation purposes, approved the Ballots and notices, and authorized the Debtors to solicit votes through Verita. Those procedures satisfied the disclosure and solicitation requirements applicable to these Chapter 11 Cases.

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

55. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a chapter 11 plan and determining whether it has been accepted. It permits solicitation of votes from holders of claims or interests in impaired classes that will receive or retain property under a plan. *See* 11 U.S.C. § 1126. Section 1126 further provides that a class of claims accepts a plan when creditors holding at least two-thirds in amount and more than one-half in number of the claims voting in the class accept it. *See* 11 U.S.C. § 1126(c).

56. In addition section 1126(d) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of interests entitled to vote to accept or reject the plan:

> A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(d).

57. As set forth in the Voting Declaration, the Debtors solicited votes only from Holders of Class 3 General Unsecured Claims because Class 3 is impaired and entitled to receive property under the Plan. Voting Declaration ¶¶ 5-6. Class 3 accepted the Plan in accordance with section 1126(c) of the Bankruptcy Code because at least two-thirds in amount and more than one-half in number in Class 3 voted to accept. *Id.* ¶ 15. Accordingly, the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied with respect to the voting Class. Classes 1 and 2 are Unimpaired and deemed to accept the Plan. *See* 11 U.S.C. § 1126(f). Classes 4, 5, and 6 are Impaired, receive no property, and are deemed to reject the Plan. *See* 11 U.S.C. § 1126(g). The Debtors therefore solicited votes only from the Class entitled to vote under the Plan.

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

58. Section 1129(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). Courts have found that the requirement of good faith must be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan and that, when a plan proponent proposes the plan with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the plan proponent satisfies the good faith requirement of section 1129(a)(3) of the Bankruptcy Code. *See Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 802 (5th Cir. 1997); *Star Ambulance*, 540 B.R. at 262; *see also W. Real Estate Equities, L.L.C. v. Village at Camp Bowie I, L.P. (In re Village 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.") (quoting *Cajun Elec.*, 150 F.3d at 519).

59. The Debtors negotiated, developed, and proposed the Plan in good faith for the legitimate purpose of completing the orderly wind down and liquidation of the Estates, maximizing recoveries to Holders of Allowed Claims in accordance with the provisions of the Plan, and distributing remaining value through the GUC Trust. The Plan is the product of extensive arm's-length negotiations among the Debtors, the Committee, the parties involved in the Sale transactions, the DOE, AMCON, and the professionals representing them. Confirmation Declaration ¶¶ 13, 29. Further, the Plan is in full compliance with the Bankruptcy Code and applicable nonbankruptcy law, and it is not "forbidden by law." 11 U.S.C. § 1129(a)(3). Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (Section 1129(a)(4)).

60. Section 1129(a)(4) of the Bankruptcy Code requires payments for services or expenses connected with the chapter 11 cases and made from estate assets to be approved by the court as reasonable or subject to such approval. *See* 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 by the Bankruptcy Court as reasonable. *See Cajun Elec*., 150 F.3d at 514–515 (explaining that section 1129(a)(4) ensures that payments for professional services connected with a chapter 11 case will be subject to court's approval as being reasonable); *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 503 (D.N.J. 2005) ("Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court."), *aff'd,* 241 F. App'x 1 (3d Cir. 2007); *In re Future Energy Corp*., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *In re Chapel Gate Apartments, Ltd*., 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation.").

61. The Plan requires Professionals to file final applications for Professional Fee Claims and provides for the Court's determination of the Allowed amounts. Plan Art. IV.D. Allowed Professional Fee Claims will be paid from the Professional Fee Escrow Account or the GUC Trust, and the Court retains jurisdiction over those applications. The Plan therefore satisfies section 1129(a)(4) of the Bankruptcy Code.

E. The Debtors Have Complied with the Governance Disclosure Requirement (Section 1129(a)(5)).

62. Section 1129(a)(5) requires disclosure of the identity and affiliation of any individual proposed to serve as a director, officer, or successor to the Debtors and requires the

appointment or continuance to be consistent with the interests of creditors and public policy. *See* 11 U.S.C. § 1129(a)(5).

63. The Plan discloses that the Debtors' directors, managers, and officers will be deemed to have resigned on the Effective Date. Plan Art. VII.I. It further identifies the GUC Trustee and authorizes the GUC Trustee to act in the fiduciary capacity otherwise applicable to the Debtors' directors and officers for purposes of completing the liquidation and administering the GUC Trust. *See* Plan Art. VII.D. The Plan therefore complies with section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Does Not Require Governmental Approval of Rate Changes (Section 1129(a)(6)).

64. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of "any rate change provided for in the plan." *See* 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) of the Bankruptcy Code is inapplicable because the Plan is a liquidation plan and does not provide for any rate change requiring approval by a governmental regulatory commission.

G. The Plan is in the Best Interests of Creditors and Interest Holders (Section 1129(a)(7)).

65. Section 1129(a)(7) of the Bankruptcy Code—the "best interests of creditors" test—requires that with respect to each impaired class of claims or interests, each holder of a claim or interest of such class either: (a) has accepted the plan, or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtors liquidated under chapter 7 of the Bankruptcy Code on such date. *See* 11 U.S.C. § 1129(a)(7). The best interests test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor's plan. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St.*

P'ship, 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *Tex. Extrusion Corp. v. Lockheed Corp. (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).

66. The Debtors with the assistance of A&M prepared a liquidation analysis estimating the effect of a hypothetical chapter 7 liquidation on the estimated recoveries for the Voting Class that was attached as Exhibit A to the Combined Disclosure Statement and Plan (the "Liquidation Analysis"). [Docket No. 552-1]. The Liquidation Analysis shows that the Plan provides better or equal recoveries: Classes 1 and 2 receive 100% under the Plan under either scenario, and Class 3 receives an estimated 0% to 0.4% under the Plan compared with 0% in chapter 7. Classes 4 through 6 receive no recovery under either scenario.

67. The Liquidation Analysis was prepared before the AMCON settlement and assumed that AMCON's asserted lien attached to the full $1.9 million held in the Covington Proceeds Escrow. The settlement removes that uncertainty: $1,175,000.00 is payable to AMCON's allowed secured claim, and the remaining balance of the Covington Proceeds Escrow is released to the Debtors. *See* [Docket No. 615]. That released balance is available for administration and, after required payments and reserves, for transfer to the GUC Trust under the Plan, thereby increasing the pool of available funds for Distributions to GUC Trust Beneficiaries.

68. The Plan's higher projected recoveries result from an orderly chapter 11 wind-down through the GUC Trust, which avoids the additional trustee and professional fees and delay expected in a chapter 7 case. Chapter 7 would also require a new claims process and could generate additional Claims. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

H. Class 3 Has Voted to Accept the Plan (Section 1129(a)(8)).

69. Section 1129(a)(8) requires each Class to accept the Plan or be unimpaired. 11 U.S.C. § 1129(a)(8). Classes 1 and 2 are unimpaired and deemed to accept. Class 3 is the only voting Class and accepted the Plan by the statutory threshold. *See* 11 U.S.C. § 1126(c); Voting Declaration ¶ 15. Classes 4, 5, and 6 are impaired and deemed to reject because they receive no property under the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code is satisfied.

I. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims (Section 1129(a)(9)).

70. The Plan provides for payment in full in Cash of Allowed Administrative Claims, Priority Tax Claims, U.S. Trustee Fees, and Professional Fee Claims, subject to the timing, reserves, and procedures set forth in the Plan. *See* Plan Art. IV. Class 1 Other Priority Claims are Unimpaired and paid in full, and Class 2 Other Secured Claims receive treatment that leaves them Unimpaired. *See* Plan Art. V.A.-B. The Plan therefore satisfies section 1129(a)(9) of the Bankruptcy Code.

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

71. Section 1129(a)(10) of the Bankruptcy Code provides that if any class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. 11 U.S.C. § 1129(a)(10). As provided in the Voting Declaration, Class 3 (General Unsecured Claims) is Impaired and has voted to accept the Plan. Voting Declaration ¶¶ 5, 15. Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

K. The Plan is Feasible (Section 1129(a)(11)).

72. Section 1129(a)(11) requires a finding that confirmation is not likely to be followed by liquidation or further financial reorganization unless that liquidation or reorganization is proposed in the Plan. 11 U.S.C. § 1129(a)(11). Specifically, the Bankruptcy

Court must determine 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." The feasibility standard "contemplates whether the debtor can realistically carry out its plan." *In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (noting that the feasibility standard "contemplates whether the debtor can realistically carry out its plan").

73. To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success. *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988); *In re Flintkote Co*., 486 B.R. 99, 139 (Bankr. D. Del. 2012); *In re W.R. Grace & Co*., 475 B.R. 34, 115 (D. Del. 2012); *see also Capmark Fin. Grp*., No. 09-13684, 2011 WL 6013718, at *61 (Bankr. D. Del. Aug. 24, 2011) ("The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.") (quoting *Pizza of Haw. Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985)). There is a relatively low threshold of proof necessary to satisfy the feasibility requirement. *See, e.g., In re Prussia Assocs*., 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting approvingly that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility") (internal citations omitted); *Berkeley Fed. Bank & Tr. v. Sea Garden Motel & Apartments (In re Sea Garden Motel & Apartments)*, 195 B.R. 294, 305 (D. N.J. 1996) ("[I]t is clear that there is a relatively low threshold of proof necessary to satisfy the feasibility requirement."); *In re Tribune Co*., 464 B.R. 126, 185 (Bankr. D. Del. 2011), overruled in part on other grounds, 464 B.R. 208 (Bankr. D. Del. 2011) (same).

74. In the context of a liquidating plan, some courts have interpreted feasibility to mean that a plan that provides for liquidation automatically satisfies section 1129(a)(11). *See*

In re 47th and Belleview Partners, 95 B.R. 117, 120 (Bankr. W.D. Mo. 1988) (finding a liquidating plan feasible because "feasibility, under the literal wording of § 1129(a)(11) of the Bankruptcy Code, is unnecessary to be shown").

75. The Plan expressly proposes liquidation of the Debtors' remaining assets through the GUC Trust, subject to the conditions precedent set forth in Article IX of the Plan. The Plan is feasible because the GUC Trust will have access to the GUC Trust Assets and sufficient funds are projected to satisfy the Plan's obligations, administer Claims, pay expenses and reserves, and make Distributions. Article VII and the GUC Trust Agreement govern the transfer and administration of those assets. The principal asset sales have already occurred, substantially reducing execution risk.

76. The remaining work consists of collecting or liquidating residual assets, resolving Claims, pursuing or settling GUC Trust Claims, and making Distributions. The Debtors' wind-down activities and the De Minimis Asset Procedures provide a practical mechanism for completing that work. Because the Plan proposes the liquidation that will follow Confirmation, Confirmation is not likely to be followed by an unanticipated liquidation or further financial reorganization. The Plan therefore satisfies section 1129(a)(11) of the Bankruptcy Code.

L. The Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12)).

77. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. 11 U.S.C. § 1129(a)(12). The Plan requires all fees payable under 28 U.S.C. § 1930 through the Effective Date to be paid in full. Plan Art. IV.C. Any U.S. Trustee Fees arising after the Effective Date will be paid by the GUC Trustee until the Chapter 11 Cases are closed, dismissed, or converted. *Id.* The Plan therefore satisfies section 1129(a)(12) of the Bankruptcy Code.

M. No Retiree Benefits Obligations Remain (Section 1129(a)(13)).

78. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(13). The Debtors have no remaining obligations to pay retiree benefits as defined in section 1114 of the Bankruptcy Code. Section 1129(a)(13) of the Bankruptcy Code is therefore inapplicable to the Chapter 11 Cases and the Plan.

N. The Remaining Requirements of Section 1129(a) are Inapplicable (Sections 1129(a)(14)-(16)).

79. Section 1129(a)(14) of the Bankruptcy Code concerns domestic support obligations. Because neither Debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, section 1129(a)(14) is inapplicable.

80. Section 1129(a)(15) of the Bankruptcy Code applies only to an individual debtor. The Debtors are a corporation and a limited liability company, and therefore section 1129(a)(15) of the Bankruptcy Code is inapplicable.

81. Section 1129(a)(16) of the Bankruptcy Code applies to plans proposed by nonprofit entities. Neither Debtor is a nonprofit entity, and therefore section 1129(a)(16) of the Bankruptcy Code is inapplicable.

O. The Plan Satisfies the "Cramdown" Requirements (Section 1129(b)).

82. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and interests. This mechanism is known colloquially as "cram down." 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* 11 U.S.C. § 1129(b).

83. Classes 4, 5, and 6 are Impaired and deemed to reject because Holder of Claims and Interests within those Classes receive no property under the Plan. Because the Plan does

not discriminate unfairly and is fair and equitable with respect to each rejecting Class, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding that rejection. *See* 11 U.S.C. § 1129(b)(1); *In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995); *Liberty Nat. Enters. v. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship)*, 115 F.3d 650, 654-55 (9th Cir. 1997).

i. The Plan Does Not Discriminate Unfairly.

84. The Bankruptcy Code does not prohibit all differences in treatment among classes; it prohibits unfair discrimination. Courts evaluate the particular facts and circumstances, including whether similarly situated Claims or Interests receive materially different treatment without a reasonable basis. *See In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) (case-by-case inquiry); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (totality of the circumstances); *In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990) (section 1129(b)(1) prohibits unfair discrimination, not all differences in treatment).

85. Classes 4 and 5 comprise intercompany Claims and Interests, while Class 6 comprises Interests in Ascend Elements; each is legally and economically distinct from the Classes receiving distributions. *See* Plan Arts. V.D.-F.; XV.A.4. As each of these Classes receives no distribution under the Plan, no similarly situated Holder receives materially different treatment without a reasonable basis. *Id.*

ii. The Plan Is Fair and Equitable.

86. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code require that no holder of a claim or interest junior to a rejecting class receive or retain property on account of that junior claim or interest. S*ee In re 203 N. LaSalle St. P'ship*, 526 U.S. at 459. Consistent with the absolute priority rule, no class may receive more than full consideration for its claims. 7 COLLIER ON BANKRUPTCY ¶ 1129.03. No Holder junior to Classes 4

through 6 will receive or retain any property on account of that junior Claim or Interest, and no senior Class receives more than 100% of its Allowed Claim. *See* Plan Art. V. The Plan therefore respects the absolute priority rule and leaves no value for existing equity on account of its Interests.

87. The Plan therefore satisfies section 1129(b) of the Bankruptcy Code and may be confirmed over the deemed rejection of Classes 4, 5, and 6.

P. The Plan is the Only Plan Currently on File (Section 1129(c)).

88. The Plan is the only plan currently before the Court, and therefore section 1129(c) of the Bankruptcy Code does not bar confirmation of the Plan.

Q. The Principal Purpose of the Plan is Not the Avoidance of Taxes or Section 5 of the Securities Act (Section 1129(d)).

89. Section 1129(d) of the Bankruptcy Code provides that the Court may not confirm a plan if its principal purpose is the avoidance of taxes or the application of section 5 of the Securities Act of 1933. *See* 11 U.S.C. § 1129(d). The principal purpose of the Plan is to complete the Debtors' orderly liquidation and distribute remaining value to creditors, not to avoid taxes or section 5 of the Securities Act. Section 1129(e) of the Bankruptcy Code is inapplicable because these are not small business cases. Accordingly, section 1129(d) of the Bankruptcy Code does not bar confirmation of the Plan.

III. The Other Discretionary Elements of the Plan are Appropriate.

A. The Settlement, Release, Exculpation, and Injunction Provisions Are Appropriate and Should Be Approved.

90. Article XIII of the Plan provides releases by the Debtors and their Estates, consensual Third-Party Releases by Releasing Parties, an Exculpation and limitation of liability for specified participants in the Chapter 11 Cases, and an Injunction enforcing those provisions. The provisions are integral to the Plan's liquidation structure, are supported by good and valuable consideration, and are subject to the scope limitations, exceptions, and procedures set

forth in Article XIII. For these reasons, the Debtors submit that the Plan's Release, Exculpation, and Injunction Provisions are appropriate and should be approved.

i. The Debtor Releases are Appropriate.

91. Article XIII.D of the Plan releases Claims and Causes of Action held by the Debtors, the GUC Trust, and the Estates against the Released Parties,[5] subject to express exceptions, including post-Effective Date obligations and acts determined in a Final Order to constitute actual fraud, willful misconduct, or gross negligence. The releases concern Claims and Causes of Action arising from or relating to the Debtors, their governance and operations, the Chapter 11 Cases, the Sale transactions, the Plan, and the transactions and settlements implemented through the Plan.

92. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, a plan may "provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estate." 11 U.S.C. § 1123(b)(3)(A). Section 524(e) does not preclude a chapter 11 plan from settling estate-held Claims under section 1123(b)(3)(A), provided the settlement is fair and equitable and in the best interests of the Estates. *In re Heritage Org., L.L.C.*, 375 B.R. 230, 308 (Bankr. N.D. Tex. 2007) ("[T]he plain language of § 1123(b)(3) provides for the inclusion in a plan of a settlement of claims belonging to the debtor or to the estate . . . .") (emphasis omitted); *In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("To the extent that . . . the plan purports to release any causes of action against the [creditor] which the [d]ebtor could assert, such provision is authorized by § 1123(b)(3)(A) . . . .").

93. In *Bigler*, the Court explained that section 1123(b)(3)(A) provides an avenue for plan-based settlements of estate claims, including releases of non-debtors, when the

[5] Under the Plan, "Released Party" is defined as "collectively, and in each case only in its capacity as such: (i) each of the Debtors; (ii) the CRO; (iii) the members of the Special Committee; (iv) the Professionals; (v) the Committee in its capacity as such; (vi) each member of the Committee, solely in its capacity as a member of the Committee; (vii) each of the Prepetition Secured Parties, solely in their capacities as such; and (viii) with respect to each of the foregoing Entities identified in subsections (i) through (vii), each of such Entity's Related Parties, in each case other than the Non-Released Parties."

requirements for a valid settlement are met. *See In re Bigler*, 442 B.R. 537, 543 (Bankr. S.D. Tex. 2010). The relevant considerations include the probability of success in the released litigation, the complexity, likely duration, and expense of litigation, and other factors bearing on the wisdom of the settlement, including creditor views and whether the settlement resulted from arm's-length bargaining. *See Heritage Org., L.L.C.*, 375 B.R. at 259-60 (citing *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997)). The Court need not conduct a mini-trial; it must make an informed decision and determine only that the settlement falls within the range of reasonableness. *In re Age Refining, Inc.*, 801 F.3d 530, 541 (5th Cir. 2015); *In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008).

94. The Debtor Releases satisfy that standard. The probability of success on potential Estate Claims is subject to factual and legal uncertainty, and pursuing those Claims would require additional investigation, professional expense, delay, and litigation risk. Plan Art. VIII; Confirmation Declaration ¶ 53. The Debtors are not aware of the existence of any Claims or Causes of Action of material value being released by the Debtors. Confirmation Declaration ¶ 52. The Plan instead preserves meaningful sources of recovery—including commercial tort Claims, Avoidance Actions, insurance rights, and other Retained Causes of Action—for the GUC Trust under Plan. *Id.* The releases were negotiated at arm's length, benefit the Estates and their creditors, and do not release post-Effective Date obligations or the preserved Claims transferred to the GUC Trust. Confirmation Declaration ¶¶ 50, 52. Accordingly, the Debtors' Releases are fair, equitable, and in the best interest of their Estates, and should therefore be approved.

ii. The Consensual Third-Party Releases by Non-Debtors are Appropriate.

95. Article XIII.E of the Plan provides releases by Releasing Parties, including Consenting Creditors and other Holders that timely and affirmatively elect to grant the releases. The Third-Party Releases here are wholly consensual because the Plan uses an opt-in

mechanism: each Holder must affirmatively check the opt-in box on its Ballot or Non-Voting Status Notice to become a Releasing Party on account of that Claim or Interest. A Holder that votes to accept or reject, abstains, does not vote, or receives a Non-Voting Status Notice is not bound by the Third-Party Releases unless it timely makes that affirmative election; a timely unresolved objection likewise prevents the Holder from becoming a Releasing Party.

96. Under Fifth Circuit authority, consensual non-Debtor releases are permissible when they are consensual, specific in language, integral to the Plan, a condition of the settlement, and given in exchange for consideration. *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775-76 (Bankr. N.D. Tex. 2007); *see also Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987) (acknowledging that Bankruptcy Code does not prohibit a non-debtor release "when it has been accepted and confirmed as an integral part of a plan of reorganization.").

97. The Third-Party Releases satisfy this standard. The Ballot, Non-Voting Status Notices, Combined Hearing Notice, and Plan identify the Third-Party Releases, the Released Parties and Releasing Parties, the scope of the released Claims, the exceptions, and the consequences of opting in or not opting in. Article XIII sets forth the operative release, exculpation, and injunction language in bold print. Recent post-*Purdue* authorities likewise support consensual releases where parties receive clear notice and a meaningful choice.[6]

98. The Third-Party Releases are integral to the Plan's negotiated resolution and provide finality to parties that contributed to the Sale transactions, settlements, and administration of the Chapter 11 Cases. Because the Plan uses opt-in rather than opt-out

[6] *In re Purdue Pharma, L.P.*, 675 B.R. 632, 672 (Bankr. S.D.N.Y. 2025) ("Only claimants that affirmatively opt into the releases provided to the Sackler Parties waive their rights to pursue such claims. These sorts of consensual releases are specifically carved out of the Harrington decision, where the Supreme Court stated that '[n]othing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan[.]'"); *In re Container Store Group, Inc.*, 676 B.R. 356, 374 (Bankr. S.D. Tex. 2026) (citing *Purdue* as permitting *consensual* third-party releases); *In re Tehum Care Svcs., Inc.*, 672 B.R. 108, 113-14 (Bankr. S.D. Tex. 2025) (permitting opt-*out* mechanics for third-party releases).

procedures, no Holder becomes a Releasing Party absent an affirmative election, and a timely unresolved objection prevents the release from applying. The opt-in structure therefore makes the releases clearly consensual and supports approval under section 1123(b), Bankruptcy Rule 9019, and Plan, Art. XIII.E.

iii. The Exculpation Provision is Appropriate and Consistent with Fifth Circuit Jurisprudence.

99. Article XIII.F of the Plan protects the Debtors, the Special Committee,[7] the Committee, and Committee members, solely in their stated capacities, from liability for acts or omissions in connection with the solicitation, Chapter 11 Cases, Sales, Confirmation, Consummation, and Plan administration, except for actual fraud, gross negligence, or willful misconduct.[8] The provision is limited to the restructuring process, preserves the stated carve-outs, and permits reasonable reliance on counsel. It is consistent with Fifth Circuit authority approving appropriately tailored exculpation provisions. *In re Highland Cap. Mgmt. L.P.*, 48 F.4th 419, 437 (5th Cir. 2022); *Pac. Lumber Co.*, 584 F.3d at 252-53.

100. In *Highland Capital*, the Fifth Circuit held that debtors, creditors' committees and their members, and under appropriate circumstances, non-debtor parties may be properly exculpated under a chapter 11 plan. *See Highland Cap. Mgmt. L.P.*, 48 F.4th 437-38. Regarding non-debtors, the Fifth Circuit approved the exculpation's provision with respect to the debtors' independent directors for conduct within the scope of their duties, reasoning that they were effectively acting as the bankruptcy trustee for the debtors and therefore were entitled to qualified immunity. *Id*. at 437.

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[7] The Special Committee refers to "the special committee of the Board of Directors of Ascend Elements, Inc., established on March 24, 2026" and consists "solely of Bill Transier, an independent director, to oversee the Debtors' restructuring efforts and address potential conflicts of interest." Plan, Art. I.A.

[8] The Debtors removed the CRO as an Exculpated Party in the Second Amended Plan filed contemporaneously herewith. *See* [Docket No. 648]

101. Since the Fifth Circuit's decision in *Highland Capital*, this Court has regularly approved plan exculpation provisions that apply to independent directors. *See, e.g., In re Pine Gate Renewables, LLC*, No. 25-90669 (CML) (Bankr. S.D. Tex. Feb. 19, 2026) (Docket No. 1483) (approving plan containing exculpation that applied to independent managers); *In re DocuData Sols., L.C.*, No. 25 90023 (CML) (Bankr. S.D. Tex. June 23, 2025) (Docket No. 834) (approving plan containing exculpation provision that applied to disinterested director); *In re Wellpath Holdings, Inc.*, No. 24 90533 (ARP) (Bankr. S.D. Tex. May 1, 2025) (Docket No. 2596) (approving plan containing exculpation provision that applied to independent directors); *In re DRF Logistics, LLC*, No. 24 90447 (CML) (Bankr. S.D. Tex. Nov. 25, 2024) (Docket No. 530) (same); *In re Everstream Solutions, LLC*, No. 25-90144 (CML) (Bankr. S.D. Tex. Nov. 19, 2025) (Docket No. 594) (same); *see also In re Instant Brands Acquisition Holdings*, 2025 WL 685756, at * (Bankr. S.D. Tex. Mar. 3, 2025) (holding that the independent directors acting as disinterested fiduciaries of the debtor-in-possession may be exculpated for conduct within the scope of their duties, absent gross negligence or willful misconduct). The U.S. Trustee fails to address these authorities, relying entirely on *Pacific Lumber* and *Highland Capital* and ignoring the facts of these Chapter 11 Cases or acknowledging the Special Committee's independence. UST Objection ¶¶ 3-5.

102. Here, the Exculpated Parties include the sole member of the Special Committee, an independent director, who has acted on behalf of the Debtors throughout these Chapter 11 Cases in a fiduciary capacity in a manner akin to a bankruptcy trustee. As set forth in the Confirmation Declaration, the Special Committee was duly authorized by the Debtors' Board of Directors and granted authority to, among other things, oversee all aspects of the Debtors' restructuring efforts, approve the Debtors' restructuring and other transactions, supervise management's implementation of approved transactions. Confirmation Declaration ¶ 63. The Special Committee exercised such authority throughout the Chapter 11 Cases in connection

with, among other things, supervising the Debtors' management, liquidating the Debtors assets through the Sale transactions, investigating and resolving claims in connection with the DOE and AMCON settlements, and negotiating the Plan. Accordingly, the Exculpation Provision is appropriate, narrowly tailored, and complies with Fifth Circuit precedents and those of this Court. Therefore, the Exculpation Provision should be approved.

iv. The Injunction Provision is Appropriate.

103. Article XIII.G of the Plan permanently enjoins Entities holding Claims against or Interests in the Debtors, the Estates, or the GUC Trust from commencing or continuing actions to enforce those Claims or Interests, attaching or collecting judgments, creating or enforcing liens, or otherwise acting inconsistently with the Plan, subject to the Plan, the Confirmation Order, and applicable law. The Injunction is necessary to implement and preserve the Debtor Releases, the consensual Third-Party Releases, the Exculpation, and the distribution process. It is narrowly tailored and preserves the right to litigate a timely filed Claim and to enforce obligations preserved by the Plan. *In re Camp Arrowhead, Ltd.*, 451 B.R. 676, 701-02 (Bankr. W.D. Tex. 2011); *In re Pilgrim's Pride*, No. 08-45664-DML-11, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010); *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992).

104. The Release, Exculpation, and Injunction Provisions are therefore integral, appropriately tailored, supported by consideration, and consistent with the Plan's liquidation and distribution objectives.

B. The Plan Satisfies Section 1123(d) of the Bankruptcy Code.

105. Section 1123(d) requires that, if a plan proposes to cure a default, the amount necessary to cure the default must be determined in accordance with the underlying agreement and applicable nonbankruptcy law. 11 U.S.C. § 1123(d). Article X of the Plan provides that executory contracts and unexpired leases not previously rejected and not expressly assumed or

assumed and assigned to a Purchaser will be rejected on the Effective Date under sections 365 and 1123. To the extent executory, the APAs and documents related to the Sales will be assumed, and Insurance Policies benefiting the Estates, the Debtors' officers, managers, and directors, and the GUC Trust are preserved.

106. Any previously rejected contract or lease is treated under the applicable rejection notice or order, and any timely rejection-damages Claim is classified as a Class 3 General Unsecured Claim under Article X. Cure Claims for assumed contracts are addressed under the Plan, the applicable Sale Orders, the underlying agreements, and applicable nonbankruptcy law. The Plan therefore satisfies section 1123(d) of the Bankruptcy Code.

C. Good Cause Exists to Waive the Stay of the Confirmation Order.

107. Bankruptcy Rule 3020(e) stays a Confirmation Order for fourteen days unless the Court orders otherwise. *See* Fed. R. Bankr. P. 3020(e). Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. *See* Fed. R. Bankr. P. 6004(h), 6006(d). The Court may waive a stay for good cause.

108. Good cause exists for waiving any stay of the Confirmation order because the Debtors have completed the principal Sale transactions, substantially ceased operations, and must move promptly into GUC Trust administration. Continuing to incur chapter 11 professional and administrative costs during the wind-down would reduce recoveries and delay distributions. Immediate effectiveness will facilitate the transfer of GUC Trust Assets and the Debtors' transition to post-Confirmation administration.

109. The Debtors provided the required notice and process to parties in interest, and the Confirmation Order's immediate effectiveness will facilitate appointment of the GUC

Trustee, administration of Claims, and commencement of the distribution process. The Court should therefore waive the stay.

IV. The GA EPD Objection Should Be Overruled

110. The GA EPD Objection is a procedurally improper, untimely and moot collateral attack on a final sale order – none of which constitutes a basis to deny confirmation. At its core, the GA EPD Objection is nothing more than a thinly disguised Covington Sale objection, cosmetically labeled as an objection to confirmation notwithstanding the overwhelming majority of the objection focuses on the Covington APA and Covington Sale Order. This transparent recharacterization cannot obscure what GA EPD is actually attempting to do: mount an improper collateral attack on the Covington Sale Order, a final order entered by this Court (that GA EPD reviewed and approved before its entry) over six weeks ago. The Debtors submit that such arguments are untimely with respect to the Covington Sale Order and entirely irrelevant as to the matter before the Court—final approval of the Disclosure Statement and confirmation of the Plan.

111. The Covington Sale Order was entered on June 30, 2026, and the Covington Sale closed on July 7, 2026. *See* [Docket No. 548]. The Covington Sale Order stands as a final, unappealed order of the Court. Any attack on the Covington Sale Order is moot under 11 U.S.C. § 363(m). *See Matter of Fieldwood Energy*, 93 F.4th 817, 821-22 (5th Cir. 2024) (affirming the "statutory mootness" provided in § 363(m) to an attack on a consummated sale order, notwithstanding the Supreme Court's decision in *MOAC Mall Holdings*); *see also In re Sneed Shipbuilding, Inc.*, 916 F.3d 405, 409 (5th Cir. 2019) ("If deference were not paid to the policy of speedy and final bankruptcy sales, potential buyers would not even consider purchasing any bankrupt's property.").

112. Moreover, to the extent the GA EPD Objection is deemed a motion to vacate the Covington Sale Order—a strained reading thereof—then the GA EPD must establish one

of the grounds set forth in Fed. R. Bankr. P. 9024 (incorporating Fed. R. Civ. P. 60(b)), and the "motion" must have been filed "within a reasonable time." The Debtors posit that (i) the GA EPD fails to satisfy or even mention the grounds to vacate a prior order under Fed. R. Bankr. P. 9024, and (ii) the facts and circumstances of the Chapter 11 Cases illustrate that it was patently unreasonable for the GA EPD to wait over six weeks after entry of the Covington Sale Order to lodge its objections. *See First RepublicBank Fort Worth v. Norglass, Inc.*, 958 F.2d 117, 119 (5th Cir. 1992) ("What constitutes a reasonable time under Rule 60(b) depends on the particular facts of the case in question.") (internal citation omitted).

113. Notwithstanding the GA EPD Objection's focus on late and irrelevant arguments, GA EPD is also substantively incorrect. To begin, the Debtors sought and obtained GA EPD's review of and consent to the Covington Sale Order prior to its entry, and the Court cannot and should not permit GA EPD to retract its previously granted consent to a final sale order. Additionally, the Covington Sale Order expressly preserved all police and regulatory rights of governmental entities like GA EPD:

> *Notwithstanding any provision to the contrary in this Order, the Asset Purchase Agreement, or any other sale document*, . . . nothing shall (i) release nullify, preclude, or enjoin the enforcement of any police or regulatory power or any liability that any entity would be subject to as the owner, lessor, lessee, or operator of property that such entity owns, operates, or leases after the date of entry of this Order . . . .

Covington Sale Order ¶ 36 (emphasis added). The GA EPD Objection fails to address this provision. Its argument that the Covington Sale Order and Covington APA "directly conflict[] with Georgia law" is plainly incorrect. GA EPD Objection ¶ 18.[9]

[9] Notwithstanding GA EPD's approval of the Covington Sale Order, it has failed to comply with the order. Specifically, paragraph 43 of the Covington Sale Order (i) memorializes the consent of GA EPD to transfer an existing variance to R3 Lithium, Inc. ("R3 Lithium"); (ii) reflects R3 Lithium's agreement to adhere to the requirements of the variance; and (iii) provides that the variance will remain in place while R3 Lithium and GA EPD determine whether the variance, a permit, or neither is ultimately required. This provision was designed to ensure an immediate transfer of the variance to R3 Lithium so that operations could continue without interruption. GA EPD has failed to transfer the variance. Instead, it seeks to repudiate the negotiated terms of the sale order to which it consented.

114. GA EPD's remaining arguments as to the Covington Sale Order (which again, are untimely and irrelevant to confirmation) argue technical points on alleged inconsistencies[10] within the Covington Sale Order (that it previously agreed to), inconsistencies which can either be addressed with the purchaser under the Covington APA or by filing a separate motion before this Court at the appropriate time. With respect to financial assurance, the purchaser has repeatedly stated that it is in process of obtaining replacement security in its own name. GA EPD's speculation as to the potential insufficiency of the existing security rings hollow. As reported to GA EPD, the Covington facility will be non-operational for the next several months during an upgrade project, such that the existing security likely will be excessive. In either case, if the parties' joint review of planned operations indicates that the existing security is no longer appropriate, an adjustment can be made at that time.

115. The GA EPD Objection joins in certain arguments made in the UST Objection – arguments which have already been addressed either through revisions to the Combined Disclosure Statement and Plan or by the Fifth Circuit case law concerning exculpation of independent directors discussed *supra*.

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[10] Regarding the timelines referenced in the Covington Sale Order, they were designed to establish a period of 90 days to determine whether the variance, a permit, or neither is required, and if applicable, an additional period of time to obtain the permit. In any event, purchaser already has offered to work directly with GA EPD to establish a detailed scope of inquiry, inspections, document exchange, and a mutually-agreeable schedule, whereby neither party is prejudiced by the delay of the other.

CONCLUSION

116. For all of the reasons set forth herein, the Debtors respectfully request that the Bankruptcy Court (a) approve the Combined Disclosure Statement on a final basis, (b) confirm the *Joint Plan of Liquidation for Ascend Elements, Inc., et al*., (c) authorize the formation of the GUC Trust and the appointment of the GUC Trustee, (d) approve the Plan's releases, exculpation, injunction, settlements, and other implementation provisions, (e) waive the stay of the Confirmation Order, and (f) grant such other and further relief as may be appropriate under the circumstances.

Dated: August 16, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: */s/ Ryan Manns*
Ryan Manns (SBT 24041391)
Maria Mokrzycka (SBT 24119994)
1550 Lamar, Suite 2000
Houston, TX 77010
Tel: (713) 651-5151
Email: ryann.manns@nortonrosefulbright.com
Email: maria.mokrzycka@nortonrosefulbright.com

Jason I. Blanchard (SBT 24130197)
Michael Berthiaume (SBT 24066039)
2200 Ross Avenue, Suite 3600
Dallas, TX 75201
Tel: (214) 855-8210
Email: jason.blanchard@nortonrosefulbright.com
Email: michael.berthiaume@nortonrosefulbright.com

Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on August 16, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Ryan Manns
Ryan Manns