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

In re:	)	Chapter 11
CUMULUS MEDIA INC., *et al.*,[1]	)	Case No. 26-90346 (ARP)
Debtors.	)	(Jointly Administered)

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF (A) FINAL APPROVAL OF THE DEBTORS' DISCLOSURE STATEMENT AND (B) CONFIRMATION OF THE DEBTORS' PLAN AND (II) REPLY TO U.S. TRUSTEE OBJECTION THERETO

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at www.veritaglobal.net/cumulusmedia. The Debtors' service address for purposes of these chapter 11 cases is: 780 Johnson Ferry Road, N.E., Suite 500, Atlanta, Georgia 30342.

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The above-captioned debtors and debtors in possession (the "Debtors") submit this memorandum of law (a) in support of an order (i) approving, on a final basis, the *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* [Docket No. 21] (as modified, amended, or supplemented from time to time, the "Disclosure Statement"), and (ii) confirming the *Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* filed at Docket No. [20] (as modified, amended, or supplemented from time to time, the "Plan")[2] and (b) in reply to the Objections (as defined below).

In further support of Confirmation of the Plan and final approval of the Disclosure Statement, prior to or substantially contemporaneously with the filing of this brief (the "Confirmation Brief"), the Debtors also filed the following documents:

(a) *Declaration of Francisco J. Lopez-Balboa in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 15] (the "First Day Declaration");

(b) *Certificate of Service* [Docket No. 41], *Certificate of Service* [Docket No. 142], and *Certificate of Service* [Docket No. 183] (collectively, the "Solicitation Certificates");

(c) *Certificate of Publication* [Docket No. 164] (the "Publication Certificate");

(d) *Declaration of Darlene S. Calderon Regarding the Solicitation and Tabulation of Votes on the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* filed substantially contemporaneously herewith (the "Voting Report");

(e) *Declaration of Francisco J. Lopez-Balboa, Executive Vice President and Chief Financial Officer, in Support of Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* filed substantially contemporaneously herewith (the "Lopez-Balboa Declaration");

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[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan or the Disclosure Statement, as applicable. All references to an Article refer to the applicable article of the Plan unless otherwise specified herein.

(f) *Declaration of Milad Sedeh in Support of Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* filed substantially contemporaneously herewith (the "Sedeh Declaration");

(g) *Declaration of Jonathan Henness in Support of Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* filed substantially contemporaneously herewith (the "Henness Declaration"); and

(h) *Declaration of Carol Flaton in Support of Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* filed substantially contemporaneously herewith (the "Flaton Declaration" and, collectively with Voting Report, Lopez-Balboa Declaration, the Sedeh Declaration, and the Henness Declaration, the "Supporting Declarations").

PRELIMINARY STATEMENT

1. The Plan enjoys overwhelming support from the Debtors' major stakeholders across the capital structure. All Voting Classes have voted to accept the Plan. Specifically, of the Holders that voted, Holders of 100.00% in principal amount of the ABL Facility Claims, 100.00% in principal amount of the 2029 Secured Claims, and 98.93% in principal amount of the Other Funded Debt Claims voted to accept the Plan.

2. The Plan is the result of extensive, arm's-length negotiations between the Debtors and their key constituencies over several months, which culminated in the execution of the Restructuring Support Agreement on March 4, 2026 with the Consenting 2029 Holders, who at such time held, in the aggregate, approximately 72.05% of the 2029 Debt Claims.[3] The Plan represents a comprehensive and value-maximizing restructuring for the benefit of all stakeholders. Among other things, the Plan provides for (a) the deleveraging of $592 million of funded debt on the Debtors' balance sheet through the equitization of 2029 Secured Claims and Other Funded Debt Claims, (b) a reduction in annual cash interest expense by approximately $49 million, (c) the

[3] Since execution of the Restructuring Support Agreement, this percentage has increased to approximately 82.70% of the 2029 Debt Claims.

entry into the Restated ABL Credit Agreement, which will provide the Reorganized Debtors with approximately $100 million in revolving credit facility commitments to fund emergence costs and ongoing operations, (d) the issuance of $50 million in Exit Convertible Notes on the Effective Date, and (e) the treatment of all General Unsecured Claims as Unimpaired, ensuring that such claims will continue to be paid in the ordinary course of business. Following Consummation of the Plan, the Debtors will emerge with approximately $105 million in principal amount of debt obligations and a sustainable capital structure that positions the Reorganized Debtors for execution of their business plan.

3. The Debtors received three formal objections to confirmation of the Plan (collectively, the "Objections") and a handful of informal comments to the Plan. The Debtors have worked constructively with these parties to narrow issues and, where possible, reach consensual resolutions, including through the addition of provisions in the Confirmation Order. The objections, resolutions, and the Debtors' responses are summarized in the chart annexed hereto as **Exhibit A** (the "Response Chart"). As set forth below and in the Response Chart, two Objections remain outstanding: (a) the *United States Trustee's Objection to Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization of Cumulus Media Inc. and Its Debtor Affiliates* [Docket No. 186] (the "U.S. Trustee Objection"), which is addressed *infra* at pages 64 through 78, and (b) *SoundExchange, Inc.'s Limited Objection to Confirmation of the Joint Prepacked Chapter 11 Plan of Reorganization of Cumulus Media, Inc. and Its Debtor Affiliates* [Docket No. 185] (the "SoundExchange Objection"), which is addressed *infra* in the Response Chart.

4. For the reasons set forth herein and based upon the evidence to be adduced at the Combined Hearing, the Court should approve the Disclosure Statement on a final basis, confirm

the Plan over the U.S. Trustee Objection, and permit the Debtors to emerge from these Chapter 11 Cases for the benefit of all stakeholders.

BACKGROUND

I. THE RESTRUCTURING SUPPORT AGREEMENT

5. In the months leading to the Petition Date, the Debtors and their advisors engaged in discussions with the Ad Hoc Group regarding a restructuring support agreement to facilitate an efficient and value-maximizing restructuring process. Following months of arm's-length and hard-fought negotiations, the Debtors achieved a significant milestone when they entered into the Restructuring Support Agreement with the Ad Hoc Group on March 4, 2026.

6. Among other things, the Restructuring Support Agreement contemplates, with the support of the Debtors' key stakeholders, a prepackaged restructuring, to be implemented through the Plan, including a balance sheet restructuring that will eliminate approximately $592 million of the Debtors' $697 million prepetition funded debt obligations. Specifically, the Restructuring Support Agreement contemplates, and the Plan implements, among other things:

(a) the entry into the Restated ABL Credit Agreement on the Effective Date;

(b) the equitization of approximately $592 million of Allowed 2029 Secured Claims and Other Funded Debt Claims;

(c) the issuance on the Effective Date (or as soon as reasonably practicable thereafter) of $50 million in Exit Convertible Notes;

(d) the Unimpairment of Allowed General Unsecured Claims, which will be paid in the ordinary course;

(e) the assumption by the Debtors of the Amended CEO Agreement and the Amended CFO Agreement as of the Confirmation Date and the assumption by the Reorganized Debtors of all other employment agreements and plans on the Effective Date; and

(f) the cancellation of all Existing Equity Interests on the Effective Date.

7. The Debtors' obligations under the Restructuring Support Agreement are subject to a fiduciary-out provision, thus ensuring that the Debtors have been able to consider unsolicited alternative proposals during these Chapter 11 Cases. As of the date hereof, the Debtors have not received any viable alternative proposal that would provide greater value for all stakeholders in these Chapter 11 Cases.[4]

II. SOLICITATION AND FILING OF PLAN DOCUMENTS

8. On March 4, 2026, prior to commencing these Chapter 11 Cases, but after the execution of the Restructuring Support Agreement, the Debtors launched solicitation of votes on the solicitation version of the Plan [Docket No. 20] by causing their claims, noticing, and solicitation agent, Kurtzman Carson Consultants, LLC d/b/a Verita Global (the "Solicitation Agent") to transmit, via electronic mail, copies of the solicitation package containing the Disclosure Statement, including the Plan and other exhibits thereto, a cover letter from the Debtors, and one or more Ballots, as applicable (the "Solicitation Package"), to Eligible Holders (defined below) of (a) ABL Facility Claims in Class 3, (b) 2029 Secured Claims in Class 4, and (c) Other Funded Debt Claims in Class 5 (collectively, the "Voting Classes").[5] The Debtors were not required to solicit votes from Holders of Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 6 (General Unsecured Claims), Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Equity Interests and 510(b) Claims) (collectively, the "Non-Voting Classes") because the Holders in the Non-Voting Classes are either Unimpaired under the Plan and presumed to accept the Plan, or are deemed to reject the Plan. In accordance with the Scheduling Order (as defined below), the Debtors caused the Solicitation Agent to

[4] Lopez-Balboa Decl. ¶ 6.

[5] Voting Report ¶ 11.

distribute a notice of non-voting status (the "Notice of Non-Voting Status") to the Holders of Claims or Interests in the Non-Voting Classes, other than Holders in Class 7 and Class 8, on March 10, 2026.[6] The Notice of Non-Voting Status also included a return form and instructions for such Holders to, at their election and depending on the classification of their Claim or Interest, opt out of or opt in to the Third-Party Release, as applicable (the "Release Opt Out Form" or the "Release Opt In Form," respectively). Further, the Disclosure Statement contained the Debtors' (a) valuation analysis prepared by Moelis & Company LLC ("Moelis"), the Debtors' investment banker, attached to the Disclosure Statement as Exhibit D (the "Valuation Analysis"); (b) the liquidation analysis prepared by Alvarez & Marsal North America, LLC ("A&M"), the Debtors' financial advisor, attached to the Disclosure Statement as Exhibit E (the "Liquidation Analysis"); and (c) financial projections (together with certain related assumptions) prepared by the Debtors' management and A&M, attached to the Disclosure Statement as Exhibit F (the "Financial Projections").

9. Following the launch of solicitation, on March 4, 2026 (the "Petition Date"), the Debtors commenced filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).[7] No trustee, examiner, or statutory committee has been appointed in these Chapter 11 Cases.

10. On March 5, 2026, the Debtors filed the solicitation versions of the Plan and Disclosure Statement, as well as several other motions requesting relief to continue the Debtors'

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[6] *See* Solicitation Certificates.

[7] *Order (I) Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 17].

operations in the ordinary course during the pendency of the Chapter 11 Cases, including authority to use cash collateral on a consensual basis in their *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 16].

11. On March 5, 2026, after notice and hearing, this Court entered the *Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of the Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Fixing Deadline to Object to the Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Conditionally (A) Directing the United States Trustee Not to Convene Section 341 Meeting of Creditors and (B) Waiving Requirement of Filing Statements of Financial Affairs, Schedules of Assets and Liabilities, and 2015.3 Reports; and (VII) Granting Related Relief* [Docket No. 62] (the "Scheduling Order").

12. The Scheduling Order: (a) conditionally approved the Disclosure Statement; (b) finally approved the solicitation and voting procedures with respect to the Plan (the "Solicitation Procedures") and the Solicitation Package related thereto; (c) approved the Notice of Non-Voting Status, the Release Opt Out Form, the Release Opt In Form, and the Combined Notice; (d) established notice and objection procedures with respect to Confirmation of the Plan and final approval of the Disclosure Statement; (e) set February 23, 2026 as the voting record date; (f) set April 7, 2026, at 4:00 p.m. (Central Time) as the deadline for (i) Holders of Claims entitled to vote on the Plan to submit their votes (the "Voting Deadline") and (ii) Holders

of Claims or Interests in the Non-Voting Classes to return their Release Opt Out Forms or Release Opt In Forms, as applicable; (g) set April 7, 2026, at 4:00 p.m. (Central Time) as the date by which to file objections to the Plan and/or final approval of the Disclosure Statement (the "Objection Deadline"); and (h) scheduled the commencement of the hearing to consider confirmation of the Plan and final approval of the Disclosure Statement (the "Combined Hearing") for April 15, 2026, at 1:00 p.m. (Central Time).

13. The materials in the Solicitation Package also established and communicated how the Solicitation Agent would tabulate the votes and elections contained in the Ballots. Those Solicitation Procedures provided that, among other things: (a) a timely, properly completed Ballot submitted by a Holder of Claims in a Voting Class would supersede and revoke any prior Ballot(s) submitted by that Holder; (b) Ballots that attempt to partially accept and partially reject the Plan would not be counted; (c) illegible Ballots would not be counted; (d) Ballots containing insufficient information to identify the Holder would not be counted; (e) any form of ballot other than the official form of Ballot sent by the Solicitation Agent would not be counted; and (f) Ballots received after the Voting Deadline (provided that such Voting Deadline has not been extended) would not be counted.

14. In addition, the Debtors also caused the Solicitation Agent to serve a notice of the Combined Hearing and the Objection Deadline (the "Combined Notice") to all Holders of Claims in the Voting Classes, all Holders of Claims or Interests in the Non-Voting Classes, and all other parties in interest on March 10, 2026.[8] The Combined Notice was distributed at least 28 calendar days before the Objection Deadline, as required by Bankruptcy Rule 2002(b). As further authorized by the Scheduling Order, the Debtors caused the Solicitation Agent to publish a

[8] *See* Solicitation Certificates.

substantially similar Combined Notice in the national edition of the *New York Times* on March 19, 2026.[9]

15. On March 31, 2026, the Debtors filed the *Notice of Filing of Plan Supplement*, which included the following exhibits (including drafts or forms of such documents, as applicable): (a) the Special Warrant Agreement, (b) the Restated ABL Credit Agreement, (c) the Restructuring Transaction Memorandum, (d) the Schedule of Retained Causes of Action, and (e) the Schedule of Rejected Executory Contracts and Unexpired Leases [Docket No. 172] (the "Initial Plan Supplement"). On April 6, 2026, the Debtors filed the *Notice of Filing of First Supplement to Plan Supplement*, which included the following exhibits (including drafts or forms of such documents, as applicable): (a) the Amended CEO Agreement, (b) the Amended CFO Agreement, (c) the Exit Notes Term Sheet, and (d) the Identity of Members of the New Board [Docket No. 184] (the "First Supplement to Plan Supplement"). On April 7, 2026, the Debtors filed the *Notice of Filing of Second Supplement to Plan Supplement*, which included as exhibit the Governance Term Sheet [Docket No. 187] (the "Second Supplement to Plan Supplement," together with the Initial Plan Supplement and the First Supplement to Plan Supplement, and as may be further amended, supplemented, or otherwise modified from time to time, the "Plan Supplement").

A. Voting Results

16. In accordance with the Bankruptcy Code, only Holders of Claims in Impaired Classes receiving or retaining property on account of such Claims were entitled to vote on the Plan. Holders of Claims and Interests were not entitled to vote if their rights are (a) Unimpaired by the Plan or (b) Impaired by the Plan such that they will receive no distribution of property under the

[9] *See* Publication Certificate.

Plan. As a result, the Non-Voting Classes were not entitled to vote on the Plan, and the Debtors did not solicit votes from the Holders of Claims and Interests in the Non-Voting Classes.

17. Substantially contemporaneously with the filing of this Confirmation Brief, the Solicitation Agent filed the Voting Report. As set forth in the Voting Report, the Solicitation Agent tabulated the Ballots received by the Voting Deadline from Holders of Claims in the Voting Classes.[10] All validly executed Ballots cast by Holders of Claims entitled to vote in the Voting Classes received by the Solicitation Agent on or before the Voting Deadline were tabulated in accordance with the Solicitation Procedures.

18. The voting results, as reflected in the Voting Report, are summarized as follows:

Class	Ballots Not Tabulated	Members Voted	Members Accepted	Members Rejected	% Members Accepted	% Members Rejected	Total $ Voted	$ Accepted	$ Rejected	% $ Accepted	% $ Rejected	Voting Result
Class 3 - ABL Facility Claims	**0**	**1**	**1**	**0**	**100.00%**	**0.00%**	**$55,000,000.00**	**$55,000,000.00**	**$0.00**	**100.00%**	**0.00%**	**Accept**
Class 4 - 2029 Secured Claims	**0**	**160**	**160**	**0**	**100.00%**	**0.00%**	**$113,893,867.17**	**$113,893,867.17**	**$0.00**	**100.00%**	**0.00%**	**Accept**
Class 4 - 2029 Secured Term Loan Claims	0	104	104	0	100.00%	0.00%	$73,706,155.76	$73,706,155.76	$0.00	100.00%	0.00%	Accept
Class 4 - 2029 Secured Notes Claims	11	56	56	0	100.00%	0.00%	$40,187,711.41	$40,187,711.41	$0.00	100.00%	0.00%	Accept
Class 5 - Other Funded Debt Claims	**13**	**183**	**178**	**5**	**97.27%**	**2.73%**	**332,527,105.51**	**328,964,184.50**	**$3,562,921.01**	**98.93%**	**1.07%**	**Accept**
Class 5 - 2029 Deficiency Term Loan Claims	0	104	104	0	100.00%	0.00%	205,632,720.89	205,632,720.89	$0.00	100.00%	0.00%	Accept
Class 5 - 2029 Deficiency Note Claims	13	54	54	0	100.00%	0.00%	106,645,316.90	106,645,316.90	$0.00	100.00%	0.00%	Accept
Class 5 - 2026 Term Loan Claims (Other Funded Debt Claims)	0	2	1	1	50.00%	50.00%	1,202,709.48	202,709.50	$999,999.98	16.85%	83.15%	Reject
Class 5 - 2026 Note Claims (Other Funded Debt Claims)	0	23	19	4	82.61%	17.39%	19,046,358.24	16,483,437.21	$2,562,921.03	86.54%	13.46%	Accept

19. Based on the Voting Report, the voting results indicate that each of the Voting Classes (Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims)) voted to accept the Plan.

20. The Solicitation Agent was also designated to tabulate which Holders of Claims elected to not grant the Third-Party Release, either (a) in the case of Holders in the Non-Voting Classes, by submitting the Release Opt Out Form, or (b) in the case of Holders in the Voting Classes, by checking the appropriate opt out box on their Ballot. The Voting Report sets forth that

[10] *See* Voting Report ¶ 22–25.

195 Holders of Claims that submitted Ballots or the Release Opt Out Forms validly elected to opt out of the Third-Party Release. In addition, the Voting Report sets forth that 18 Holders of Claims validly elected to opt in to the Third-Party Release.[11]

21. The Debtors refer the Court to the Plan, the Disclosure Statement, the Scheduling Order, the Plan Supplement, the Supporting Declarations, and the record of the Chapter 11 Cases for an overview of the Debtors' business and any other relevant facts that may bear on Confirmation of the Plan. The Supporting Declarations and any testimony and other declarations that may be proffered or submitted in connection with the Combined Hearing are fully incorporated herein.

ARGUMENT

22. This Confirmation Brief is divided into three parts. First, the Debtors request approval of the Disclosure Statement on a final basis and a finding that the Debtors have satisfied all notice requirements approved in the Scheduling Order. Second, the Debtors address the confirmation requirements of section 1129 of the Bankruptcy Code and the applicable requirements for the settlements contained in the Plan pursuant to Bankruptcy Rule 9019. Third, the Debtors respond to the Objections and demonstrate why they should be overruled.

I. THE DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" AS REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE, AND THE DEBTORS COMPLIED WITH APPLICABLE NOTICE REQUIREMENTS

A. The Debtors Provided Sufficient Notice of the Hearing and Objection Deadline for Final Approval of the Disclosure Statement

23. Under Bankruptcy Rule 3017(a), a hearing on the adequacy of the disclosure statement generally requires 28 days' notice. Similarly, Bankruptcy Rule 2002(b) provides that

[11] *See id.*, Ex. C and Ex. E.

parties in interest should receive 28 days' notice of the objection deadline and the hearing to consider approval of a disclosure statement.

24. Consistent with longstanding Supreme Court precedent, the Fifth Circuit has found that due process requires that "notice be 'reasonably calculated, under all the circumstances, to inform interested parties of the pendency' of a proceeding."[12] When evaluating the notice and the sufficiency thereof, courts will consider first, whether "the notice apprised the claimant of the pendency of the action," and second, whether "it was sufficiently timely to permit the claimant to [act]."[13] Whether a particular method of notice is reasonably calculated to inform interested parties is determined on a case-by-case basis.[14]

25. As noted above, the Court entered the Scheduling Order on March 5, 2026, which among other things, scheduled the Combined Hearing, approved certain related objection and reply deadlines, and approved the form of Combined Notice and manner of service thereof. The Combined Notice informed recipients of, among other things: (a) the commencement of the Chapter 11 Cases, (b) the date and time set for the Combined Hearing, and (c) the Objection Deadline, and was served by the Solicitation Agent on March 10, 2026.[15] Accordingly, the Debtors submit that all parties in interest had at least 36 days' notice prior to the Combined Hearing and 28 days' notice prior to the Objection Deadline, in compliance with both Bankruptcy Rule 3017(a) and Bankruptcy Rule 2002(b).

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[12] *See Williams* v. *Placid Oil Co. (In re Placid Oil Co.)*, 753 F.3d 151, 154 (5th Cir. 2014) (citing *Mullane* v. *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

[13] *Sequa Corp.* v. *Christopher (In re Christopher)*, 28 F.3d 512, 518 (5th Cir. 1994) (applying two-part test); *Otto* v. *Tex. Tamale Co. (In re Tex. Tamale Co., Inc.)*, 219 B.R. 732, 739–40 (Bankr. S.D. Tex. 1998) (same).

[14] *See Walters* v. *Hunt (In re Hunt)*, 146 B.R. 178, 182 (Bankr. N.D. Tex. 1992) ("Whether a particular method of notice is reasonably calculated to reach interested parties depends upon the particular circumstances of each case.").

[15] *See* Solicitation Certificates.

26. Further, the Debtors caused the Publication Notice to be published in the national edition of the *New York Times* on March 19, 2026, which, among other things, disclosed the date of the Combined Hearing and the Objection Deadline.[16] Both the Combined Notice and the Publication Notice included instructions regarding how to obtain the Plan and the Disclosure Statement free of charge through the Solicitation Agent's website. Accordingly, the Debtors have satisfied Bankruptcy Rules 2002(b) and 3017(a).

B. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code and Should Be Approved

1. The Disclosure Statement Contains Adequate Information

27. The primary purpose of a disclosure statement is to provide "adequate information" that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.[17] "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[18] Courts within the Fifth Circuit and elsewhere acknowledge that bankruptcy courts have broad discretion in determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code.[19]

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16 *See* Publication Certificate.

17 *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988).

18 *See, e.g.*, *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401 (Bankr. S.D. Tex. 2016) ("What constitutes adequate information is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties.") (quoting *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988)); *In re J.D. Mfg., Inc.*, No. 07-36751, 2008 WL 4533690, at *2 (Bankr. S.D. Tex. Oct. 2, 2008) ("'Adequacy' of information is a determination that is relative both to the entity (e.g. assets/business being reorganized or liquidated) and to the sophistication of the creditors to whom the disclosure statement is addressed."); *Floyd* v. *Hefner*, No. 03-5693, 2006 WL 2844245, at *30 (S.D. Tex. Sept. 29, 2006) (noting that what constitutes "adequate information" is a "flexible standard"); *In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) ("The purpose of the disclosure statement is . . . to provide enough information to interested persons so they may make an informed choice . . . .").

19 *See, e.g.*, *Mabey* v. *Sw. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.) (Cajun II)*, 150 F.3d 503, 518 (5th Cir. 1998) ("The legislative history of § 1125 indicates that, in determining what constitutes 'adequate information' with respect to a particular disclosure statement, . . . the kind and form of information are left essentially to the judicial discretion of the court and that the information required will necessarily be governed by the circumstances of the case." (internal quotation marks and citations omitted)); *In re Applegate Prop., Ltd.*, 133

28. Courts generally look for certain information when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

- the events that led to the filing of a bankruptcy petition;
- the relationship of the debtors with their affiliates;
- a description of the debtors' available assets and their value;
- the anticipated future of the companies;
- the source of information stated in the disclosure statement;
- the present condition of the debtors while in chapter 11;
- claims asserted against the debtors;
- the estimated return to creditors under a chapter 7 liquidation;
- the chapter 11 plan or a summary thereof;
- financial information, valuations, and projections relevant to the creditors' decision to accept or reject the chapter 11 plan;
- information relevant to risks posed to creditors under the plan;
- the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
- litigation likely to arise in a nonbankruptcy context; and
- tax attributes of the debtors.[20]

B.R. 827, 831 (Bankr. W.D. Tex. 1991) ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for *themselves* what impact the information might have on their claims and on the outcome of the case . . . ." (emphasis in original)).

[20] *See U.S. Brass*, 194 B.R. at 424–25 (citing *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)); *see also In re Phoenix Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (citing factors that courts have considered in determining the adequacy of information provided in a disclosure statement); *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). Disclosure regarding all of the aforementioned topics is not necessary in every case. *See U.S. Brass*, 194 B.R. at 425; *see also Phoenix Petrol.*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.").

29. The Disclosure Statement contains adequate information and was previously approved on a conditional basis by this Court on March 5, 2026. The Disclosure Statement contains descriptions and summaries of, among other things, (a) the Plan, (b) the Debtors' business operations, (c) key events leading to the commencement of these Chapter 11 Cases, (d) the Debtors' prepetition indebtedness, (e) the proposed capital structure of the Reorganized Debtors, (f) the Financial Projections demonstrating the Debtors' ability to meet their obligations under the Plan, (g) the Valuation Analysis setting forth the Debtors' estimated implied going-concern equity value upon emergence from chapter 11, (h) the Liquidation Analysis setting forth the estimated return that Holders of Claims and Interests would receive in a hypothetical chapter 7 liquidation, (i) securities disclosures with respect to the Plan, (j) certain FCC considerations related to the Debtors' emergence from these Chapter 11 Cases, (k) risk factors associated with the Plan, and (l) federal tax law consequences of the Plan. Furthermore, the Consenting Stakeholders' advisors had an opportunity to review and comment on the Disclosure Statement in advance of solicitation to ensure that the Disclosure Statement contained adequate information for their respective clients.

30. Accordingly, the Debtors submit that the Disclosure Statement contains sufficient information to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations. Moreover, the Disclosure Statement contains "adequate information" (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated by the Plan, and should be approved.

2. The Disclosure Statement Demonstrates that the Debtors Complied with Applicable Nonbankruptcy Law.

31. The Debtors commenced the solicitation of votes on the Plan from Holders of Claims in the Voting Classes prior to commencing the Chapter 11 Cases.[21] To determine whether a prepetition solicitation of votes to accept or reject a plan should be approved, the Court must determine whether the solicitation complied with sections 1125 and 1126(b) of the Bankruptcy Code, as well as Bankruptcy Rules 3017(d), 3017(e), 3018(b), and 3018(c). Similarly, section 1125(b) of the Bankruptcy Code prohibits solicitation of a plan unless the plan (or a summary thereof) and "a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information" are transmitted to those persons whose votes are being solicited. For the reasons set forth herein, the Debtors satisfied the requirements of the Bankruptcy Code and the Bankruptcy Rules in connection with the solicitation.

32. Section 1126(b) of the Bankruptcy Code expressly permits a debtor to solicit votes from holders of claims and interests prepetition without a court-approved disclosure statement if the solicitation complies with applicable nonbankruptcy law—including generally applicable federal and state securities laws or regulations—or, if no such laws exist, the solicited holders receive "adequate information" within the meaning of section 1125(a) of the Bankruptcy Code.[22]

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[21] Lopez-Balboa Decl. ¶ 21.

[22] *See* 11 U.S.C. § 1126(b) ("[A] holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if— (1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or (2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title."); *see also id.* § 1125(g) ("[A]n acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.").

33. To the extent that the Debtors' prepetition solicitation was deemed to constitute an offer of new securities, such solicitation procedures are exempt from the registration requirements under the Securities Act pursuant to Section 4(a)(2) of the Securities Act ("Section 4(a)(2)", Regulation D under the Securities Act ("Regulation D"), and/or Regulation S promulgated under the Securities Act ("Regulation S")),[23] or any similar exemptions from any rules, regulations, or statutes that apply to the offer and sale of securities, as may be applicable to any recipient deemed to be an offeree. Specifically, Section 4(a)(2) of the Securities Act exempts from registration requirements under the Securities Act transactions by an issuer not involving a "public offering," Regulation D provides a safe harbor for transactions by an issuer not involving a "public offering" and Regulation S creates an exemption from the registration requirements under the Securities Act for offerings deemed to be made outside of the United States.

34. To the extent the prepetition solicitation of votes is deemed to be an offering of securities, the Debtors have complied with the requirements of Section 4(a)(2) and/or Regulation D and Regulation S, as applicable, such that these transactions are exempt from the registration requirements under the Securities Act. Specifically, the prepetition solicitation was made to those Holders of Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims) who certified that they were one of the following: (a) a "qualified institutional buyer" (as such term is defined in Rule 144A under the Securities Act); (b) an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D); or (c) located outside the United States and were a person other than a "U.S. person" (as defined in Rule 902(k) of Regulation S) and not participating on behalf of, or on account of, a U.S. person.

[23] The Securities Act of 1933 (the "Securities Act").

35. Pursuant to section 1145 of the Bankruptcy Code and applicable nonbankruptcy law, the Equity Plan Securities to be issued on account of the 2029 Secured Claims and Other Funded Debt Claims will be freely transferable by the recipients thereof, subject to (a) any limitations that may be applicable to any Person receiving such securities that is an "affiliate" of the Reorganized Debtors as determined in accordance with applicable U.S. securities law and regulations or is otherwise an "underwriter" as defined in section 1145(b) of the Bankruptcy Code; (b) any transfer restrictions imposed on such securities in the New Organizational Documents; and (c) compliance with applicable securities laws and any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities.

36. The Equity Plan Securities issued to an entity that is an "underwriter" with respect to such securities (as such term is defined in section 1145(b) of the Bankruptcy Code), or issued to a Person in a transaction for which section 1145 of the Bankruptcy Code exemption from registration is otherwise not permitted or not applicable, will be offered, issued and distributed in reliance upon Section 4(a)(2) of the Securities Act, Regulation D, and/or Regulation S, will be considered "restricted securities," and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption from the registration requirements under the Securities Act and subject to the restrictions on transfer in the New Organizational Documents.

37. Accordingly, the prepetition solicitation meets the requirements of applicable nonbankruptcy law and, thus, complies with section 1126(b)(1) of the Bankruptcy Code. Moreover, no party in interest has objected to final approval of the Disclosure Statement, much less on account of noncompliance with applicable nonbankruptcy law.

C. The Solicitation Procedures Complied with the Bankruptcy Code, the Bankruptcy Rules, and the Scheduling Order

38. Prior to the Petition Date, the Debtors distributed the Solicitation Packages to all Eligible Holders,[24] which consisted of Holders of Claims in each of the Voting Classes: Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims). The Debtors distributed the Solicitation Packages (including the Ballots) only to Eligible Holders prior to entry of the Scheduling Order. Subsequently, after the entry of Scheduling Order and in accordance with the terms thereof, the Debtors caused the Solicitation Agent to distribute the Solicitation Packages to all Holders of Claims in the Voting Classes and the Notice of Non-Voting Status to the members of the Non-Voting Classes, other than the Holders in Class 7 and Class 8, on March 10, 2026.[25] The Notice of Non-Voting Status also included, as applicable, either (a) the Release Opt Out Form, with instructions for such Holders to opt out of the Third-Party Release at their election, or (b) the Release Opt In Form, with instructions for such Holders to opt in to the Third-Party Release at their election, in each case, based on the class of Claims or Interests held by such Holder.

39. The solicitation was undertaken in accordance with sections 1125 and 1126 of the Bankruptcy Code.[26] In addition, Bankruptcy Rule 3017(d) enumerates those materials that must be provided to holders of claims and interests for the purpose of soliciting votes to accept or reject

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[24] "Eligible Holder" means any Holder that is (a) a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an "accredited investor" (as defined in Rule 501(a) of Regulation D under the Securities Act) or (b) located outside the United States and is a person other than a "U.S. person" (as defined in Rule 902 under the Securities Act) and not participating on behalf of or on account of a U.S. person.

[25] *See* Solicitation Certificates.

[26] *See* 11 U.S.C. § 1125(b) (debtors may solicit votes following filing if the holders of claims or interested solicited are sent a summary of the plan and an approved disclosure statement); 11 U.S.C. § 1125(g) (debtors may commence solicitation prior to filing chapter 11 petitions); *see also id.* § 1126(b)(2) (holders of claims or interests that accepted or rejected a plan before the commencement of a chapter 11 case are presumed to accept or deemed to reject the plan so long as the solicitation provided adequate information).

a plan of reorganization.[27] As set forth in more detail below, the solicitation complied with the Bankruptcy Code and the Bankruptcy Rules.

1. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Bankruptcy Rules

40. Bankruptcy Rule 3017(d) requires the debtor to transmit a form of ballot, which substantially conforms to Official Form No. 314, only to "creditors and equity security holders entitled to vote on the plan."[28] Bankruptcy Rule 3018(c) provides that "[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form."[29] As set forth in the Solicitation Certificates, each Holder in each of the Voting Classes received the Solicitation Package, including the Ballots.[30] The forms of Ballots distributed to the Voting Classes complied with the Bankruptcy Rules, are consistent with Official Form No. 314, and were approved by the Bankruptcy Court in the Scheduling Order.[31] Further, there have been no objections to the sufficiency of the Ballots. Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rules 3017(d) and 3018(c).

2. The Voting Record Date Complied with Bankruptcy Rules and the Scheduling Order

41. When a debtor solicits votes prepetition, the holders of record of the applicable claims against and interests in a debtor entitled to receive ballots and related solicitation materials are to be determined "on the date specified in the solicitation."[32] For a postpetition solicitation,

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27 *See* FED. R. BANKR. P. 3017(d).

28 *See id.*

29 *See id.* at 3018(c).

30 *See* Solicitation Certificates.

31 *See* Scheduling Order.

32 FED. R. BANKR. P. 3018(b).

the holders of record of the applicable claims against and interests in a debtor entitled to receive ballots and related solicitation materials are to be determined "on the date the order approving the disclosure statement is entered or on another date fixed by the court . . . after notice and a hearing."[33] The Scheduling Order, the Disclosure Statement, and the Ballots clearly identify February 23, 2026, as the Voting Record Date.[34]

3. The Debtors' Solicitation Period Complied with Bankruptcy Rule 3018 and the Scheduling Order

42. The Debtors' solicitation period complied with Bankruptcy Rule 3018. First, as set forth above, the Debtors caused the Plan and Disclosure Statement to be transmitted to all Holders of Claims in each of the Voting Classes in accordance with Bankruptcy Rule 3018(b).[35] Second, the solicitation period—which lasted from March 4, 2026 through April 7, 2026, for Eligible Holders (35 days) and from March 10, 2026 through April 7, 2026, for Non-Eligible Holders (29 days)—complied with the deadlines set forth in the Scheduling Order and were adequate under the particular facts and circumstances of this case and applicable bankruptcy law. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 3018.

4. The Debtors' Vote Tabulation Was Appropriate and Complied with the Scheduling Order

43. The Debtors request that the Court find that the tabulation of votes was completed in a manner consistent with the Solicitation Procedures approved in the Scheduling Order and in accordance with applicable bankruptcy law. As described in the Solicitation Procedures and the Voting Report, the Solicitation Agent used standard tabulation procedures in tabulating votes from all Holders of Claims in the Voting Classes. Specifically, the Solicitation Agent reviewed

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[33] *Id.* at 3018(a).

[34] *See* Scheduling Order ¶¶ 1, 14; Ex. 1, 2A, 2B, 3, 4A, 4B, 4C, 5A, 5B & 5C; Disclosure Statement, Art. XII.

[35] *See* Solicitation Certificates.

and tabulated all valid Ballots received through the Voting Deadline, each in accordance with the court-approved Solicitation Procedures and the Disclosure Statement.[36]

5. Waiver of Certain Solicitation Package Mailings Is Reasonable and Appropriate and Complied with the Scheduling Order

44. As further described in the *Debtors' Emergency Motion for Entry of an Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of the Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Fixing Deadline to Object to the Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Conditionally (A) Directing the United States Trustee Not to Convene Section 341 Meeting of Creditors and (B) Waiving Requirement of Filing Statements of Financial Affairs, Schedules of Assets and Liabilities, and 2015.3 Reports; and (VII) Granting Related Relief* [Docket No. 23] (the "Scheduling Motion"), certain Holders of Claims or Interests in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 6 (General Unsecured Claims), Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Equity Interests and 510(b) Claims) were not provided a Solicitation Package because such Holders are conclusively presumed to accept or deemed to reject the Plan pursuant to sections 1126(f) and (g) of the Bankruptcy Code. In the Scheduling Order, the Court approved the Solicitation Procedures, which provided that the Debtors would not mail a copy of the Solicitation Package to Holders of Claims or Interests presumed to accept or deemed to reject the Plan. As set forth above, the Court-approved Combined Notice was sent to the Debtors' full creditor matrix and provided

[36] *See* Voting Report ¶¶ 22–27.

instructions for obtaining copies of the Disclosure Statement and Plan, which are available at no cost on the Solicitation Agent's website. In addition, the Debtors sent the Court-approved Notice of Non-Voting Status, with either an attached Release Opt Out Form or Release Opt In Form, as applicable, to all Holders of Claims and Interests in Non-Voting Classes in accordance with the Scheduling Order, except for Holders of Claims in Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests), because such Holders are Affiliates of the Debtors.

6. Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith

45. Section 1125(e) of the Bankruptcy Code provides that "[a] person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title, . . . is not liable, on account of such solicitation . . . for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan."[37] As set forth in the Disclosure Statement and the Scheduling Motion, and as demonstrated by the Debtors' compliance with the Scheduling Order,[38] the Debtors at all times solicited acceptances and rejection of the Plan in good faith and in compliance with section 1125 of the Bankruptcy Code. Therefore, the Debtors request that the Bankruptcy Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

II. THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE AND SHOULD BE CONFIRMED

46. In order to confirm a plan, a court must find that both the plan and the debtor comply with each of the requirements of section 1129 of the Bankruptcy Code. The debtor must

[37] 11 U.S.C. § 1125(e).

[38] *See generally* Solicitation Certificates.

demonstrate such compliance by a preponderance of the evidence.[39] The Debtors submit the Plan satisfies the requirements of section 1129 of the Bankruptcy Code and complies with all other applicable sections of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules and should be confirmed.[40]

A. Section 1129(a): The Plan Meets Each of the Applicable Requirements for Confirmation Under Section 1129(a) of the Bankruptcy Code

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

47. Section 1129(a)(1) of the Bankruptcy Code requires a plan to comply with all applicable provisions of the Bankruptcy Code, including the rules governing the classification of claims and interests (section 1122) and the provisions dictating the contents of a plan (section 1123).[41] The Plan so complies with these provisions of the Bankruptcy Code.

(a) Section 1122: The Plan's Classification Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

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

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[39] *See, e.g.*, *Heartland Fed. Sav. & Loan Ass'n* v. *Briscoe Enters., Ltd., II (In re Briscoe Enters., Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The . . . preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *see also 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).

[40] Sections 1129(a)(14) through 1129(a)(16) of the Bankruptcy Code do not apply to the Debtors. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations to which the Debtors are not subject. *See* 11 U.S.C. § 1129(a)(14). Similarly, section 1129(a)(15) of the Bankruptcy Code applies only to "individual[s]" as that term is defined in the Bankruptcy Code, and not companies such as the Debtors. Finally, section 1129(a)(16) of the Bankruptcy Code governs property transfers by entities that, unlike the Debtors, are something other than a "moneyed, business, or commercial corporation or trust."

[41] 11 U.S.C. §§ 1122, 1123, 1129(a)(1). *See In re Star Ambulance Serv., LLC*, 540 B.R. 251, 260 (Bankr. S.D. Tex. 2015) ("Courts interpret [section 1129(a)(1)] to mean that a plan must meet the requirements of Bankruptcy Code Sections 1122 and 1123."); *see also* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978).

class."[42] Substantial similarity, however, does not require that claims or interests in a particular class be identical, or that all similarly situated claims or interests must receive the same plan treatment.[43] Courts afford a plan proponent with "significant flexibility" in classifying claims and interests under section 1122(a), provided that there is a reasonable, non-gerrymandering basis for the classification scheme and all claims or interests within a particular class are substantially similar.[44]

49. Here, the Plan appropriately classifies Claims and Interests as follows:[45]

Class	Claims and Interests	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
2	Other Priority Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
3	ABL Facility Claims	Impaired	Entitled to Vote
4	2029 Secured Claims	Impaired	Entitled to Vote
5	Other Funded Debt Claims	Impaired	Entitled to Vote

[42] 11 U.S.C. § 1122(a).

[43] *See In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (recognizing that "[section] 1122 is permissive of any classification scheme that is not proscribed, and that substantially similar claims may be *separately* classified"); *see also In re Vitro Asset Corp.*, No. 11-32600, 2013 WL 6044453, at *5 (Bankr. N.D. Tex. Nov. 14, 2013) ("[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or interests in that class.").

[44] *See In re Deming Hosp., LLC*, No. 11-12-13377, 2013 WL 1397458, at *2 (Bankr. D.N.M. Apr. 5, 2013) ("The main judicial gloss on § 1122(a) is that the subsection prohibits a debtor from separately classifying similar claims to 'gerrymander' a consenting class . . . ."); *In re Pisces Energy LLC*, No. 09-36591, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009) ("Significantly, a plan proponent is afforded significant flexibility in classifying claims under section 1122(a) of the Bankruptcy Code provided there is a reasonable basis for the classification scheme and all claims within a particular class are substantially similar."); *In re Mirant Corp.*, No. 03-46590, 2005 WL 6443614, at *19 (Bankr. N.D. Tex. Dec. 9, 2005); *In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 596 (Bankr. S.D. Tex. 1991) ("A classification scheme satisfies section 1122(a) of the Bankruptcy Code when a reasonable basis exists for the choices made and all claims within a particular class are substantially similar."); *see also Aetna Cas. & Sur. Co.* v. *Clerk, U.S. Bankr. Ct. (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996) ("[C]lassification is constrained by two straight-forward rules: [d]issimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason.").

[45] In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Allowed Professional Fee Claims, Restructuring Expenses, Adequate Protection Claims, all fees and charges assessed against the Estates under section 1930 of title 28 of the Judicial Code), and Priority Tax Claims are not classified and are separately treated under the Plan.

Class	Claims and Interests	Status	Voting Rights
6	General Unsecured Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote *(Presumed to Accept / Deemed to Reject)*
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote *(Presumed to Accept / Deemed to Reject)*
9	Existing Equity Interests and 510(b) Claims	Impaired	Not Entitled to Vote *(Deemed to Reject)*

50. The Plan's classification of Claims and Interests is reasonable and complies with the Bankruptcy Code. All Claims and Interests within each Class have substantially similar rights against the Debtors. The Plan provides for the separate classification of Claims against and Interests in the Debtors based upon the differences in such Claims' and Interests' legal nature or priority. With respect to the Voting Classes, the Debtors determined to classify (a) all ABL Facility Claims in Class 3, given that such Claims arise under the ABL Credit Agreement, (b) all 2029 Secured Claims in Class 4, given that such Claims share identical lien priority, attach to the same collateral, and have substantially similar legal rights and remedies with respect to that collateral, and (c) all Other Funded Debt Claims in Class 5, given that such Claims all arise under the Debtors' funded debt documents and are either unsecured or undersecured and thus share the same priority and have substantially similar rights and recovery expectations.[46] In addition, ABL Facility Claims, 2029 Secured Claims, and Other Funded Debt Claims have been classified separately because of their unique proposed treatment under the Plan, as negotiated in connection with the Restructuring Support Agreement.[47] Class 6 consists of all General Unsecured Claims, which primarily include claims of trade and other unsecured creditors that are important to the Debtors'

[46] Lopez-Balboa Decl. ¶ 12.

[47] *Id.*

go-forward business operations. Under the Plan, each holder of an Allowed General Unsecured Claim will continue to be paid or treated in the ordinary course of business, in recognition of the importance of such creditors to the Debtors' future business operations.[4849] Courts have routinely recognized that certain trade creditors may be classified separately from other unsecured creditors where there is a legitimate business justification for such separate classification.[50] Moreover, the classification structure generally corresponds to the Debtors' prepetition capital structure and designates Claims and Interests into Classes based on the instruments giving rise to such Claims and Interests. Further, Intercompany Claims, Intercompany Interests, and Existing Equity Interests and 510(b) Claims have been classified separately due to their distinct nature and their separate proposed treatment under the Plan. Accordingly, the Plan complies with section 1122 of the Bankruptcy Code.

(b) Section 1123: The Plan Satisfies the Requirements of Section 1123 of the Bankruptcy Code

51. Section 1123 of the Bankruptcy Code sets forth both mandatory and optional provisions for a chapter 11 plan. For the reasons set forth below, the Plan: (a) satisfies each of the mandatory requirements of section 1123(a) of the Bankruptcy Code; (b) includes several of the optional provisions permitted under section 1123(b) of the Bankruptcy Code;

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48 *Id.*

49 Under the Plan, Lease Rejection Claims shall be treated as General Unsecured Claims and shall be calculated pursuant to section 502(b)(6) of the Bankruptcy Code.

50 *See, e.g., In re Bernhard Steiner Pianos USA, Inc.*, 292 B.R. 109, 114 (Bankr. N.D. Tex. 2002) ("[I]n this Circuit, separate classification is permitted for "good business reasons." . . . In the present case, the Debtor has met the good business reason test."); *In re Aegerion Pharms., Inc.*, 605 B.R. 22, 31-32 (Bankr. S.D.N.Y. 2019) ("[C]ourts have confirmed plans that separately classify trade creditors and other general unsecured creditors where, as is the case here, trade creditors are vital to the debtors' ongoing, post-emergence business."); *In re Adelphia Comms. Corp.*, 368 B.R. 140, 247 (Bankr. S.D.N.Y. 2007) (finding a reasonable basis for a plan's classification of trade claims separately from other unsecured claims).

and (c) includes other provisions not inconsistent with other applicable provisions of the Bankruptcy Code within the meaning of section 1123(b)(6) of the Bankruptcy Code.

(i) Section 1123(a): The Plan Satisfies the Mandatory Provisions of Section 1123(a) of the Bankruptcy Code

52. The Plan satisfies the seven mandatory requirements of section 1123(a) of the Bankruptcy Code:

(a) Section 1123(a)(1): The first requirement of section 1123(a) is that the plan specify the classification of claims and interests.[51] Article III of the Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code.

(b) Sections 1123(a)(2) and (3): The second and third requirements of section 1123(a) are that the plan specify (i) the status (*i.e.*, impaired or unimpaired) of such claims and interests and (ii) the precise nature of their treatment under the plan.[52] The Plan meets these requirements by identifying each Unimpaired and Impaired Class in Article III of the Plan.

(c) Section 1123(a)(4): The fourth requirement of section 1123(a) is that a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment."[53] Article III of the Plan provides the same treatment for each Claim or Interest of a particular Class, unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of such particular Claim or Interest as required by section 1123(a)(4) of the Bankruptcy Code. This applies to Holders within each Class.

(d) Section 1123(a)(5): The fifth requirement of section 1123(a) is that a plan must provide adequate means for its implementation.[54] Article IV of the Plan, in conjunction with various other Plan provisions, provides adequate means for implementing the Plan as required by section 1123(a)(5) of the Bankruptcy Code, including, *inter alia*: (i) consummation of the Restructuring Transactions and generally allowing for all corporate action necessary to effectuate the Restructuring Transactions; (ii) funding distributions under the Plan with (A) cash on hand on the

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[51] *See* 11 U.S.C. § 1123(a)(1).

[52] *See id.* § 1123(a)(2), (3).

[53] *See id*. § 1123(a)(4).

[54] *See id*. § 1123(a)(5). Section 1123(a)(5) specifies that adequate means for implementation of a plan may include, among other things: (a) retention by the debtor of all or part of its property; (b) the transfer of property of the estate to one or more entities; (c) cancellation or modification of any indenture; (d) curing or waiving of any default; (e) amendment of the debtor's charter; or (f) issuance of securities for cash, for property, for existing securities, in exchange for claims or interests, or for any other appropriate purpose.

Effective Date, (B) the Plan Securities, and (C) the New ABL Loans; (iii) entry into the Restated ABL Documents; (iv) entry into the Exit Notes Documents; (v) the continued corporate existence of the Debtors, except as otherwise provided in the Plan or the Plan Supplement; (vi) vesting of assets in the Reorganized Debtors; (vii) the rejection, assumption, and/or assumption and assignment of Executory Contracts and Unexpired Leases; (viii) authorization and approval of all corporate actions contemplated under the Plan; (ix) the release of guarantees and liens under the Prepetition Debt documents; (x) adoption of the New Organizational Documents; (xi) the cancellation of existing securities and agreements; (xii) the exemption from registration requirements pursuant to section 1145 of the Bankruptcy Code; (xiii) the expiration of the terms of the members of the Debtors' boards of directors and appointment of the initial boards of directors or managers of the Reorganized Debtors, including the New Board; (xiv) preservation of certain of the Debtors' Causes of Action; (xv) exemption from transfer taxes pursuant to section 1146 of the Bankruptcy Code; and (xvi) the implementation of the Management Incentive Plan by the New Board in accordance with the Plan.

(e) Section 1123(a)(6): The sixth requirement of section 1123(a) is that a plan must contemplate a provision in the reorganized debtor's corporate charter, if the debtor is a corporation, that prohibits the issuance of non-voting equity securities or, with respect to preferred stock, adequate provisions for the election of directors upon an event of default.[55] Section 1123(a)(6) is satisfied here because Article IV.N of the Plan provides that the New Organizational Documents shall prohibit the issuance of any non-voting equity securities, except to the limited extent required in connection with obtaining FCC Approval. Accordingly, the Debtors respectfully submit that the requirements of section 1123(a)(6) of the Bankruptcy Code have been satisfied.

(f) Section 1123(a)(7): Finally, section 1123(a)(7) requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan."[56] Article IV.O of the Plan provides that on the Effective Date, the New Board will be appointed in accordance with the Restructuring Support Agreement and the New Organizational Documents. Further, the Debtors disclosed in the Plan Supplement the known proposed members of the New Board and the appointment rights of any additional members of the New Board.[57] As set forth in the Plan, the officers of the Debtors immediately before the Effective Date shall serve as the initial officers of the Reorganized Debtors on the Effective Date. As required by sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code, the appointment of the New Board is consistent with the

[55] *See id.* § 1123(a)(6).

[56] *See* 11 U.S.C. § 1123(a)(7).

[57] *See* First Supplement to Plan Supplement, Ex. C.

interests of creditors and equity security holders and complies with public policy with respect to the manner of selection of the directors for the New Board.[58]

(ii) Section 1123(b): The Plan Satisfies the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

53. Section 1123(b) of the Bankruptcy Code allows a plan to include a variety of different permissive provisions. Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11.[59] Each of the Plan's permissive provisions comport with these requirements:

(a) Section 1123(b)(1): Per section 1123(b)(1) of the Bankruptcy Code, Article III of the Plan classifies and describes the treatment for Claims and Interests under the Plan, and identifies which Claims and Interests are Impaired or Unimpaired.

(b) Section 1123(b)(2): As set forth in section 1123(b)(2) of the Bankruptcy Code, a plan may provide for the assumption, rejection, or assignment of any executory contract or unexpired lease not previously rejected.[60] Pursuant to Article V of the Plan, and except as otherwise provided therein, all of the Debtors' Executory Contracts and Unexpired Leases shall be deemed assumed as of the Effective Date except for any Executory Contract and Unexpired Lease that (i) was previously assumed or rejected by the Debtors, pursuant to an Order of the Bankruptcy Court, (ii) previously expired or terminated pursuant to its terms, (iii) is the subject of a motion to reject Filed on or before the Effective Date, or (iv) is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases, if any. The Plan provides that entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

(c) Section 1123(b)(3): Per section 1123(b)(3)(A) of the Bankruptcy Code, Article VIII.C of the Plan provides for a release of certain of the Debtors' Claims and Causes of Action. In addition, per section 1123(b)(3)(b) of the Bankruptcy

[58] *See generally* 11 U.S.C. § 1123(a)(1)–(7).

[59] *See id.* § 1123(b)(1)–(3), (6).

[60] *See id.* § 1123(b)(2).

Code, Article IV.K of the Plan and the Plan Supplement provide that, except as otherwise provided in the Plan, all of the Debtors' Causes of Action will vest in the applicable Reorganized Debtor and the Reorganized Debtors will retain, and may compromise or settle all such Causes of Action.[61]

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

(iii) Section 1123(b)(6): The Discretionary Contents of the Plan are Permitted by Section 1123(b)(6) of the Bankruptcy Code

54. Section 1123(b)(6) of the Bankruptcy Code also authorizes the inclusion of "any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[62] The Plan includes several such discretionary provisions, including (a) various terms settling, discharging, releasing, and enjoining the pursuit of Claims, and (b) a consensual Third-Party Release of certain potential Claims. The release and exculpation provisions result from extensive good-faith and arm's-length negotiations by and among the Debtors and certain of the Released Parties.[63] Such provisions are consistent with applicable Fifth Circuit case law and

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61 *See* Plan, Art. IV.K; Initial Plan Supplement, Ex. D.

62 11 U.S.C. § 1123(b)(6).

63 Pursuant to Article I.170 of the Plan, the term "Released Parties" means, each of, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Consenting Stakeholder; (d) the Ad Hoc Group; (e) the 2029 Agent; (f) the 2029 Trustee; (g) the ABL Parties; (h) all Holders of Claims and Interests in Class 9 (Existing Equity Interests and 510(b) Claims) that affirmatively elect to "opt in" to the releases set forth in Article VIII.D of the Plan by checking the box on the Release Opt In Form indicating that they elect to grant the releases provided in the Plan; (i) all Holders of Claims in the Opt Out Classes that abstain from voting on the Plan, vote to accept or reject the Plan, or are presumed to accept the Plan (as applicable) and, in each case, who do not affirmatively opt out of the releases set forth in Article VIII.D of the Plan by checking the box on the applicable ballot or Release Opt Out Form (as applicable) indicating that they opt not to grant the releases provided in the Plan; (j) with respect to each of the foregoing Entities in clauses (a) through (i), each such Entity's current and former Affiliates; (k) with respect to each of the Entities in the foregoing clauses (a) through (j), each such Entity's current and former predecessors, participants, successors, assigns, subsidiaries, direct and indirect equityholders, interest holders, limited partners, co-investors, funds (including affiliated investment funds or investment vehicles), portfolio companies, and management companies; and (l) with respect to each of the Entities in the foregoing clauses (a) through (k), each such Entity's current and former directors, officers, managers, members, principals, partners, employees, independent contractors, agents, representatives, managed accounts or funds (including any beneficial holders for the account of whom such funds are managed), management companies, fund advisors, investment advisors, advisory board members, financial advisors, partners (including both general and limited partners), consultants, financial advisors, attorneys, accountants, investment bankers,

precedent in this District, comply with the Bankruptcy Code in all respects, were a material inducement for parties to enter into the Restructuring Support Agreement, are overwhelmingly supported by the Debtors' key stakeholders, and are in the best interests of the Debtors' Estates and the Chapter 11 Cases. In addition, the Third-Party Release contained in the Plan is consensual and consistent with Fifth Circuit precedent. None of the release, exculpation, or injunction provisions are inconsistent with the Bankruptcy Code and, thus, the requirements of section 1123(b) of the Bankruptcy Code are satisfied.

55. The Debtor Release. Article VIII.C of the Plan provides for a release of any and all Claims and Causes of Action, including contingent, unliquidated, unknown, and derivative claims, of the Debtors, the Reorganized Debtors, and their Estates, against the Released Parties in connection with, among other things and in whole or in part, the Debtors, the Reorganized Debtors, their Estates, the Plan, the Restructuring Transactions, or the Chapter 11 Cases (the "Debtor Release").

56. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may include "the settlement or adjustment of any claim or interest belonging to the Debtor or to the estate."[64] In considering the appropriateness of such settlements, courts in the Fifth Circuit generally examine whether the release is "'fair and equitable' and 'in the best interests of the

and other professionals; *provided that*, with respect to the 2029 Agent, the release received by such Entity shall not extend to any Affiliate(s), trading desk(s), fund(s), account, branch, unit, and/or business group(s) of the 2029 Agent (that is not acting at the direction of or for the benefit of the 2029 Agent in its agency capacity) unless such Affiliate(s), trading desk(s), fund(s), account, branch, unit, and/or business group(s) has itself submitted a Ballot or Release Opt In Form (as applicable) or specifically authorized a third party to submit a Ballot or Release Opt In Form (as applicable) on its behalf; *provided further* that, in each case, an Entity shall not be a Released Party if it (x) elects to opt out of the releases contained in the Plan, if permitted to opt out, or (y) does not elect to opt in to the releases contained in the Plan, if required to opt in.

64 *See* 11 U.S.C. § 1123(b)(3)(A); *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (holding that a plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan").

estate.'"[65] The "fair and equitable standard" incorporates the absolute priority rule.[66] Courts in the Fifth Circuit generally weigh the following factors in determining whether a settlement is in the best interests of the estate: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection; (c) the paramount interest of the creditors and a proper deference to their respective views; (d) the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and (e) all other factors bearing on the wisdom of the compromise.[67]

57. In determining whether a settlement is appropriate and should be approved, "a bankruptcy court need not 'conduct a mini-trial' . . . [but] [r]ather . . . must 'apprise [itself] of the relevant facts and law so that [it] can make an informed and intelligent decision.'" Although the debtor bears the burden of establishing that a settlement is fair and equitable based on a balance of the above factors, "the [debtor's] burden is not high." Indeed, the court need only determine that the settlement does not "'fall beneath the lowest point in the range of reasonableness.'"[68]

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[65] *See Matter of Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (citing *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc.* v. *Anderson*, 390 U.S. 414, 424–25 (1968)); *Bigler*, 442 B.R. at 543 n.6; *In re Derosa-Grund*, 567 B.R. 773, 784–85 (Bankr. S.D. Tex. 2017).

[66] *See In re Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 355–56 (5th Cir. 1997) ("'The words 'fair and equitable' are terms of art—they mean that senior interests are entitled to full priority over junior ones.'") (citation omitted); *see also In re Mirant Corp.*, 348 B.R. 725, 738 (Bankr. N.D. Tex. 2006) ("'fair and equitable' translates to the absolute priority rule").

[67] *See In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010); *In re Foster Mortg. Corp.*, 68 F.3d 914, 917-18 (5th Cir. 1995); *In re Roqumore*, 393 B.R. 474, 479-80 (Bankr. S.D. Tex. 2008).

[68] *In re Idearc, Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009), *aff'd In re Idearc, Inc.*, 662 F.3d 315 (5th Cir. 2011) (citations omitted); *In re Allied Props., LLC*, 2007 WL 1849017, at *4-5 (Bankr. S.D. Tex. June 25, 2007) ("[t]he Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives.'").

58. The Debtor Release satisfies the applicable legal standard. The Plan (including the Debtor Release) complies with the Bankruptcy Code's absolute priority rule. While Class 9 (Existing Equity Interests and 510(b) Claims) is deemed to reject the Plan, the Debtor Release and the settlements embodied therein and elsewhere in the Plan, do not result in any junior Classes receiving or retaining any property on account of junior Claims or Interests. Thus, the Debtor Release is fair and equitable and consistent with Fifth Circuit precedent.

59. In addition to being fair and equitable, the Debtor Release is in the best interest of the Estates. First, the Debtors are not aware of the existence of any Claims or Causes of Action of any value being released by the Debtors. As discussed in Article III.E. of the Disclosure Statement, in January 2026, the Board established the Investigation Committee to conduct an independent investigation into potential claims against the Debtors' insiders and equity holders and to determine whether any claims against insiders or equity holders should be pursued.[69] Prior to the Petition Date, the Investigation Committee began an independent investigation of potential Causes of Action of the Company that may exist against any of the Company's directors, officers, managers, members, equity holders, principals, employees, and any other individual that may be an insider.[70] As set forth in the Flaton Declaration, the Investigation Committee found no plausible or colorable potential Causes of Action likely to provide value to the Debtors' estates.[71] The Investigation Committee accordingly concluded that the releases set forth in Article VIII of the Plan are supported by its findings, and that such releases are appropriate in the circumstances.[72]

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[69] Flaton Decl. ¶ 6.

[70] *Id.* ¶ 7–9.

[71] *Id.* ¶ 10.

[72] *Id.* ¶ 18.

60. Moreover, the Plan, including the Debtor Release, was negotiated in good faith and at arm's length by sophisticated entities that were represented by able advisors and that each conditioned their support for and acceptance of the Plan, among other things, on the grant of the Debtor Release.[73] No party has objected to the Debtor Release and, most importantly, the Debtor Release has provided a material benefit to the Estates by securing the votes in favor of the Plan by Holders who executed the Restructuring Support Agreement, in return for the Debtor Release and the Third-Party Release discussed below.[74] The Released Parties have played integral roles in the Chapter 11 Cases, made substantial concessions that underpin the consensual resolution of the Chapter 11 Cases that will allow the Debtors to expeditiously exit bankruptcy with a deleveraged capital structure, and the Released Parties may be unwilling to support the Plan without the Debtor Release.[75]

61. The resulting compromise reflects a true arm's-length negotiation process. Accordingly, the Debtor Release is fair, equitable, and in the best interest of the Estates, and should therefore be approved.

62. Third-Party Release. Article VIII.D of the Plan provides for a fully consensual release of any and all Claims and Causes of Action, including derivative claims, by certain non-Debtor Releasing Parties[76] against the Released Parties in connection with, among other things,

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[73] Lopez-Balboa Decl. ¶ 54.

[74] *Id.* ¶¶ 54–55.

[75] *Id.* ¶ 54.

[76] Pursuant to Article I.171 of the Plan, the term "Releasing Parties" means, each of, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Consenting Stakeholder; (d) the Ad Hoc Group; (e) the 2029 Agent; (f) the 2029 Trustee; (g) the ABL Parties; (h) all Holders of Claims and Interests in Class 9 (Existing Equity Interests and 510(b) Claims) that affirmatively elect to "opt in" to the releases set forth in Article VIII.D of the Plan by checking the box on the Release Opt In Form indicating that they elect to grant the releases provided in the Plan; (i) all Holders of Claims in the Opt Out Classes that abstain from voting on the Plan, vote to accept or reject the Plan or are presumed to accept the Plan (as applicable) and, in each case, who do not affirmatively opt out of the releases set forth in Article VIII.D of the Plan by checking the box on the applicable

the Debtors, the Plan, the Restructuring Transactions, or the Chapter 11 Cases (the "Third-Party Release"). The Third-Party Release is fully consensual and should be approved.

63. The Third-Party Release conforms with Fifth Circuit precedent.[77] In its recent decision in *Purdue*, the Supreme Court recognized the validity of third-party releases when they are consensual.[78] Although the Fifth Circuit has not directly defined what constitutes a consensual third-party release, the District Court for the Southern District of Texas has affirmed this Court's holding that a claimant who received notice of the Debtors' chapter 11 filing and the proposed plan, which included a third-party release, but failed to object to the plan, was deemed to have consented to the third-party release.[79] The Fifth Circuit has also shed light on the issue through a

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ballot or Release Opt Out Form (as applicable) indicating that they opt not to grant the releases provided in the Plan; (j) with respect to each of the foregoing Entities in clauses (a) through (i), each such Entity's current and former Affiliates; (k) with respect to each of the Entities in the foregoing clauses (a) through (j), each such Entity's current and former predecessors, participants, successors, assigns, subsidiaries, direct and indirect equityholders, interest holders, limited partners, co-investors, funds (including affiliated investment funds or investment vehicles), portfolio companies, and management companies; and (l) with respect to each of the Entities in the foregoing clauses (a) through (k), each such Entity's current and former directors, officers, managers, members, principals, partners, employees, independent contractors, agents, representatives, managed accounts or funds (including any beneficial holders for the account of whom such funds are managed), management companies, fund advisors, investment advisors, advisory board members, partners (including both general and limited partners), consultants, financial advisors, attorneys, accountants, investment bankers, and other professionals; *provided that*, with respect to the 2029 Agent, the release provided by such Entity shall not extend to any Affiliate(s), trading desk(s), fund(s), account, branch, unit, and/or business group(s) of the 2029 Agent (that is not acting at the direction of or for the benefit of the 2029 Agent in its agency capacity) unless such Affiliate(s), trading desk(s), fund(s), account, branch, unit, and/or business group(s) has itself submitted a Ballot or Release Opt In Form (as applicable) or specifically authorized a third party to submit a Ballot or Release Opt In Form (as applicable) on its behalf; *provided further* that, in each case, an Entity shall not be a Releasing Party if it (x) elects to opt out of the releases contained in the Plan, if permitted to opt out, or (y) does not elect to opt in to the releases contained in the Plan, if required to opt in.

[77] *See Bigler*, 442 B.R. at 543–44 ("The recognition that *Pacific Lumber* does not restrict the availability of settlements of claims under § 1123(b)(3)(A) thus provides an avenue for a Chapter 11 plan to provide for releases of liability for non-debtors. But, such releases . . . . would require . . . consent and consideration . . . ."); *see also In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) ("[T]he Fifth Circuit does allow permanent injunctions *so long as there is consent*."); *In re Pilgrim's Pride Corp.*, No. 08-45664, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) (stating that under *Pacific Lumber* "the court may not, over objection, approve through confirmation of the Plan third-party protections").

[78] *Purdue*, 603 U.S. at 225–27.

[79] *See, e.g.*, *In re CJ Holding Co.*, 597 B.R. 597, 608 (S.D. Tex. 2019) ("The Fifth Circuit does not preclude bankruptcy courts from approving a 'consensual non-debtor release.' Bankruptcy courts within the Fifth Circuit commonly exercise jurisdiction to approve nonparty releases based on agreed plans.").

series of decisions addressing the *res judicata* effect of a confirmed chapter 11 plan that contains a third-party release provision, holding that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization."[80]

64. Accordingly, third-party releases that are, as here, (a) consensual, (b) specific in language, (c) integral to the Plan, (d) a condition of the settlement, and (e) given for consideration, do not violate the Bankruptcy Code and should be allowed and included in the Plan.[81] The critical factor in determining whether a release is consensual is whether—after the Debtors' due process obligations of providing appropriate notice—"the affected creditor *timely objects* to the provision."[82] Furthermore, paragraph 40 of the Procedures for Complex Cases in the Southern District of Texas (the "Complex Case Procedures") provides that ballots sent to voting and non-voting classes "must inform the creditors of such releases and provide a box to check to indicate assent or opposition to such consensual releases together with a method for returning the ballot or notice."[83]

65. The Third-Party Release satisfies the Fifth Circuit's standard set forth in *Shoaf* and its progeny, and satisfies the Complex Case Procedures. First, the Third-Party Release is fully consensual. As set forth above, parties in interest were provided extensive notice of the Chapter 11 Cases, the Plan, the Voting Deadline, and the Objection Deadline for Confirmation of the Plan

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[80] *See Republic Supply Co.* v. *Shoaf*, 815 F.2d 1046, 1050, 1053 (5th Cir. 1987); *see also FOM P.R. S.E.* v. *Dr. Barnes EyeCenter Inc.*, 255 F. App'x 909, 912 (5th Cir. 2007) (approving a third-party release that was "an integral part of the Plan and [was] specific enough to satisfy the standard in *Shoaf*").

[81] *See FOM P.R.*, 255 F. App'x at 911–12 (discussing Fifth Circuit standard under *Shoaf*); *In re Treyson Dev., Inc.*, No. 14-70256, 2016 WL 1604347, at *15–17 (Bankr. S.D. Tex. Apr. 19, 2016) (citing *Hernandez* v. *Larry Miller Roofing, Inc.*, 628 F. App'x 281, 288–89 (5th Cir. 2016)).

[82] *See In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007) (emphasis added) (citing *In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995)).

[83] *See* Complex Case Procedures ¶ 40.

and final approval of the Disclosure Statement. The Combined Notice, the Notice of Non-Voting Status, and the Ballots expressly included the terms of the Third-Party Release, as set forth in Article VIII.D of the Plan. In addition, the Notice of Non-Voting Status and the Ballots set forth the procedures for assenting to, electing to opt out of, or electing to opt into, as applicable, such Third-Party Release and attached the appropriate Release Opt Out Form or Release Opt In Form, as applicable, in compliance with paragraph 40 of the Complex Case Procedures and the District Court for the Southern District of Texas's most recent decision on consensual third-party releases.[84] The Combined Notice, the Notice of Non-Voting Status, and the Ballots all advised careful review and consideration of the terms of the Third-Party Release, along with the other release, exculpation, and injunction provisions included in the Plan. The release, exculpation, and injunction provisions, including the Third-Party Release, were also emphasized with bold font in both the Plan and the Disclosure Statement.

66. Second, the Third-Party Release is sufficiently specific to put the Releasing Parties on notice of the claims being released. The Third-Party Release describes the nature and type of claims being released, including with respect to the management and operation of the Debtors, the Restructuring Transactions, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Plan, and the negotiation thereof, the Chapter 11 Cases generally, the solicitation of votes with respect to the Plan, or any other act or omission relating to the foregoing taking place on or before the Effective Date.

67. Third, the Third-Party Release is an integral part of the Plan and a condition of the settlement set forth therein and the Restructuring Support Agreement. The Third-Party Release facilitated participation by the Released Parties in both the Plan and the chapter 11 process and

[84] *Epstein* v. *Container Store Grp. Inc. (In re Container Store Grp., Inc.)*, 676 B.R. 356 (S.D. Tex. 2026).

was critical in reaching consensus to support the Plan through a prepackaged streamlined process for the benefit of all stakeholders.[85] Indeed, the Plan was attached as an exhibit to the Restructuring Support Agreement, set forth the global settlement among the parties, and incorporated the Third-Party Release as an integral component of this global settlement. As such, the Third-Party Release was a core negotiation point and appropriately offers certain protections to parties that constructively participated in the restructuring.[86]

68. Fourth, the Third-Party Release is given for substantial contributions. Certain of the Released Parties have played an extensive and integral role in the Debtors' restructuring. The Debtors' creditors benefit from the Restructuring Transactions contemplated by the Restructuring Support Agreement and the Plan—including the distributions under the Plan and the deleveraging of the Debtors' balance sheet by $592 million—which will allow the Debtors to emerge as reorganized entities to the benefit of the Debtors' employees, vendors, and customers.[87] That accomplishment is a direct result of the significant contributions of and, in some cases, material concessions made by the Released Parties. Such substantial contributions include, among other things: (a) compromising Claims and accepting Impaired recoveries; (b) providing continued financing to fund implementation of the Plan and enable the Debtors to execute on their go-forward business plan; (c) permitting the use of encumbered assets and cash collateral during the Chapter 11 Cases; and (d) negotiating and supporting the Plan and other documents essential to the success of the Chapter 11 Cases.[88] Furthermore, those Releasing Parties in the Unimpaired Non-Voting Classes are only able to receive payment in full on their respective Claims, a material

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85 Lopez-Balboa Decl. ¶ 57.

86 *Id.*

87 *See* First Day Decl. ¶ 15; Lopez-Balboa Decl. ¶ 58.

88 Lopez-Balboa Decl. ¶ 58.

consideration these parties are receiving in this process, due to the various agreements and concessions made by the Consenting Stakeholders, which required the Third-Party Release as an integral part of the Plan and the Restructuring Transactions. These Releasing Parties, particularly Holders of General Unsecured Claims, would have been materially impaired if the Consenting Stakeholders did not agree to pursue prepackaged Restructuring Transactions, which required the Third-Party Release. These contributions will allow for a holistic restructuring that will enable the Debtors to significantly reduce their debt obligations and emerge with sufficient operational liquidity following the Effective Date.[89]

69. Based on the foregoing, the Third-Party Release complies with the controlling Fifth Circuit standards, is appropriate and justified under the circumstances, and should therefore be approved.

70. Exculpation. Article VIII.E of the Plan contains a customary exculpation benefitting the Exculpated Parties, which are limited to the Debtors, for claims arising out of or relating to the Chapter 11 Cases and the agreements made in connection therewith (the "Exculpation"). The Exculpation carves out acts or omissions that are determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct.[90]

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[89] In addition to the above, the Debtors' directors and officers: (a) made substantial and valuable contributions to the Debtors' restructuring and the Estates, including extensive negotiations with various stakeholders, and ensured the uninterrupted operation of the Debtors' business during the Chapter 11 Cases; (b) invested significant time and effort to make the Debtors' restructuring a success and preserve the value of the Estates in a challenging operating environment; (c) prepared for and attended hearings on "first day" motions filed by the Debtors in these Chapter 11 Cases; (d) attended numerous board meetings related to the restructuring and directed the restructuring negotiations that led to the Restructuring Support Agreement and the Plan; (e) are entitled to indemnification from the Debtors under applicable law, organizational documents, and agreements; (f) invested significant time and effort in the preparation of the Plan, the Disclosure Statement, all supporting analyses, and the numerous other pleadings filed in the Chapter 11 Cases, thereby ensuring the smooth administration of the Chapter 11 Cases; and (g) are entitled to all other benefits under any current employment contracts with the Debtors.

[90] The above description is only a summary of the Exculpation, which is qualified entirely by the language of the Exculpation and the applicable definitions in the Plan, which shall control.

71. Unlike the Third-Party Release, the Exculpation does not affect the liability of third parties *per se*, but rather sets a standard of care of gross negligence, fraud, or willful misconduct in hypothetical future litigation against an Exculpated Party for acts arising out of the Debtors' restructuring.[91] An exculpation provision represents a legal determination that flows from several different findings a bankruptcy court must reach in confirming a plan, as well as the statutory exculpation in section 1125(e) of the Bankruptcy Code.[92] Thus, once the court makes a finding of good faith, it is appropriate to set the standard of care of the parties involved in the formulation of that chapter 11 plan.[93] Exculpation provisions, therefore, properly prevent future collateral attacks against estate fiduciaries.

72. Here, the Exculpation is appropriate as it represents an integral component of the Plan, is the product of good-faith, arm's-length negotiations among various parties (including the key constituents of the Chapter 11 Cases), is properly and narrowly tailored in time and scope under applicable law, and is authorized pursuant to the Court's authority under sections 105, 1123(b), 1125, and 1129(a)(1) of the Bankruptcy Code. The Exculpated Parties are similarly narrowly tailored to comprise only the Debtors, consistent with the Fifth Circuit's most recent decision in *In re Highland Capital Management, L.P.*, 132 F.4th 353, 360–62 (5th Cir. 2025) ("*Highland II*").

73. Injunction. Article VIII.F of the Plan contains an injunction provision that permanently enjoins all Entities who have held, hold, or may hold Claims, Interests, or Causes of

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[91] *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code").

[92] *See* 11 U.S.C. § 1125(e); *see also* 28 U.S.C. § 157(b)(2)(L) (confirmations of plans are core proceedings).

[93] *See PWS*, 228 F.3d at 246–47 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties").

Action that have been released, discharged, or are subject to the Exculpation, from, among other things, commencing or continuing any action against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, and/or the Released Parties on account of such Claims or Interests (the "Injunction"). The Injunction is necessary to implement, preserve, and enforce the Plan's release, discharge, exculpation, and gatekeeping provisions, which are integral to the Plan. Furthermore, the Injunction is properly tailored to achieve its objective and only encompasses Claims or Causes of Action that have been consensually released. As the District Court for the Southern District of Texas in *Container Store* noted, "[c]ourts routinely uphold permanent injunctions coextensive with proper releases contained in reorganization plans."[94] The Court should, therefore, approve the Injunction in connection with approving the discharge, release, and exculpation provisions included in the Plan.

74. The Plan also includes a "gatekeeping" provision to implement the Plan's exculpation and release provisions (the "Gatekeeping Provision"). As only the Debtors and their Estates are Exculpated Parties under the Plan, the beneficiaries of the Gatekeeping Provision are coextensive with the Exculpated Parties, satisfying the standard articulated in *Highland II*.[95] Moreover, the Gatekeeping Provision is consistent with the District Court's recent decision in *Container Store* and necessary to implement the Plan's exculpation and release provisions.[96]

75. Plan Settlement. The settlements and compromises embodied in the Plan should be approved because they are fair and equitable and in the best interests of the Debtors' Estates. "The standard for evaluating the validity of a settlement contained in a Chapter 11 plan is the same as the standard for evaluating a settlement between a debtor and another party outside the context

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94 *Container Store*, 676 B.R. at 393.

95 *Highland II*, 132 F.4th at 358–360.

96 *Container Store*, 676 B.R. at 394–396.

of a plan . . . . Stated differently, settlement provisions in a Chapter 11 plan must satisfy the standards used to evaluate compromises under [Bankruptcy] Rule 9019."[97] Accordingly, approval should be given "if the settlement is 'fair and equitable and in the best interest of the estate.'"[98] The "fair and equitable standard" incorporates the absolute priority rule when the debtor seeks approval of a settlement contained in a plan of reorganization, as is the case here.[99] However, a creditor in a class of claims that accepts a plan cannot raise an absolute priority argument to a settlement.[100]

76. To determine whether a settlement is fair and equitable, courts "apply [a] three-part test . . . with a focus on comparing 'the terms of the compromise with the likely rewards of litigation.'"[101] Specifically, a bankruptcy court evaluates: (a) "the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law;" (b) "the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay;" and (c) "all other factors bearing on the wisdom of the compromise," including (i) "the best interests of the creditors, with proper deference to their reasonable views,"

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97 *Bigler*, 442 B.R. at 543 n.6 (citing *In re MCorp Fin., Inc.*, 160 B.R. 941, 951 (S.D. Tex. 1993)).

98 *Off. Comm. of Unsecured Creditors* v. *Cajun Elec. Power Coop., Inc. ex rel. Mabey (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355 (5th Cir. 1997) (quoting *Conn. Gen. Life Ins. Co.* v. *United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995) (additional citations omitted)).

99 *See TMT Trailer Ferry*, 390 U.S. at 424 ("The requirements . . . that plans of reorganization be both 'fair and equitable,' apply to compromises just as to other aspects of reorganizations.").

100 *Mirant Corp.*, 348 B.R. at 739, *aff'd sub nom. Objecting Class 3 Claimholders* v. *New Mirant Entities*, No. 06-CV-744-A, 2006 WL 3780884 (N.D. Tex. Dec. 26, 2006) ("In the case at bar, however, because Class 3 Claims have been fully satisfied under the Plan, the Settlement cannot, as a matter of law, violate the absolute priority rule, and, hence, the fair and equitable standard. The court therefore holds that the Settlement is 'fair and equitable,' giving that term its statutory meaning.").

101 *Off. Comm. of Unsecured Creditors* v. *Moeller (In re Age Refin., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (quoting *Rivercity* v. *Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980)).

and (ii) "the extent to which the settlement is truly the product of arm's-length bargaining, and not of fraud or collusion."[102]

77. In determining whether a settlement is appropriate and should be approved, "a bankruptcy court need not 'conduct a mini-trial . . . .' [but r]ather . . . must 'apprise [itself] of the relevant facts and law so that [it] can make an informed and intelligent decision.'"[103] Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, "the [debtor's] burden is not high."[104] Indeed, the court need only determine that the settlement does not "fall beneath the lowest point in the range of reasonableness."[105]

78. Here, the Plan's settlements and compromises are the result of good-faith, arm's-length negotiations among the parties. Specifically, as of the Confirmation hearing, (i) Holders of 2029 Secured Claims representing 100.00% in amount and 100.00% in number of those who voted, and (ii) Holders of Other Funded Debt Claims representing 98.93% in amount and 97.28% in number of those who voted, have voted to accept the Plan, which compromises their 2029 Debt Claims and 2026 Debt Claims and significantly deleverages the Debtors' balance sheet. The compromises and settlements embodied in the Plan are integral to the Plan and preserve value by enabling the Debtors to avoid extended, value-eroding litigation that could delay the Debtors' emergence from chapter 11. As demonstrated by the overwhelming support for the Plan, the compromises and settlements embodied in the Plan are fair, equitable, represent the exercise of the

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[102] *Id.* (internal quotation marks omitted) (quoting *Jackson Brewing*, 624 F.2d at 602).

[103] *Id.* at 541 (fourth and fifth alterations in original) (citations omitted).

[104] *See Roqumore*, 393 B.R. at 480.

[105] *See Idearc, Inc.*, 423 B.R. at 182, *subsequently aff'd*, 662 F.3d 315 (5th Cir. 2011) (citation omitted); *Roqumore*, 393 B.R. at 480 ("The Trustee need only show that his decision falls within the 'range of reasonable litigation alternatives.'" (citations omitted)).

Debtors' sound business judgment, are in the best interests of the Debtors' stakeholders, and well within the range of reasonableness required by Bankruptcy Rule 9019.[106] Accordingly, the compromises and settlements embodied in the Plan are in the best interest of the Estates, are justified under the controlling Fifth Circuit standard and Bankruptcy Rule 9019, and should be approved.

(iv) Section 1123(d): The Plan's Cure Process is Appropriate under Section 1123(d)

79. Section 1123(d) of the Bankruptcy Code provides that amounts necessary to cure defaults under a plan shall be "determined in accordance with the underlying agreement and applicable nonbankruptcy law."[107] Article V.C of the Plan provides for the satisfaction of the Cure Claims associated with each Executory Contract or Unexpired Lease to be assumed in accordance with section 365(b)(1) of the Bankruptcy Code. Specifically, the Debtors or the Reorganized Debtors, as applicable, shall pay the undisputed Cure Claims, if any, on (a) the Effective Date or as soon as reasonably practicable thereafter, for Executory Contracts and Unexpired Leases assumed as of the Effective Date, (b) in the ordinary course of the Debtors' business in accordance with the terms of such Executory Contract or Unexpired Lease, or (c) the assumption effective date, if different than the Effective Date.[108] Any disputed Cure Claim will be determined in accordance with the procedures set forth in Article V.C of the Plan and applicable law. As such, the Plan provides that the Debtors will cure, or provide adequate assurance that the Debtors will promptly cure, defaults with respect to assumed Executory Contracts or Unexpired Leases in

[106] Lopez-Balboa Decl. ¶ 51.

[107] 11 U.S.C. § 1123(d).

[108] *See* Plan, Art. V.C.

compliance with section 365(b)(1) of the Bankruptcy Code, and therefore complies with section 1123(d) of the Bankruptcy Code.

80. Based upon the foregoing, the Plan complies fully with sections 1122 and 1123, and therefore satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

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

81. As confirmed by its legislative history, section 1129(a)(2) of the Bankruptcy Code requires compliance with the disclosure, solicitation, and voting requirements set forth in sections 1125 and 1126 of the Bankruptcy Code.[109]

(a) Section 1125: Postpetition Disclosure Statement and Solicitation

82. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[110] As set forth above in Part I of this Confirmation Brief, and as evidenced by the Voting Report and the Solicitation Certificates, the Debtors have complied with all solicitation and disclosure requirements set forth in the Bankruptcy Code, the Bankruptcy Rules, and the Scheduling Order governing notice, disclosure, and solicitation in connection with the Plan and the Disclosure Statement.[111] Following the execution of the Restructuring Support Agreement and immediately prior to commencing these

[109] *See* 11 U.S.C. § 1129(a)(2); H.R. Rep. No. 95-595, at 412 (1977) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see Cypresswood Land Partners*, 409 B.R. at 424 ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125.").

[110] 11 U.S.C. § 1125(b).

[111] *See generally supra* Part I; Voting Report; Solicitation Certificates.

Chapter 11 Cases, the Solicitation Agent solicited votes on the Plan consistent with the Court-approved Solicitation Procedures.[112] In addition, the Debtors and their professionals acted in good faith in all respects in connection with the solicitation of votes on the Plan and the tabulation of such votes.[113] Accordingly, the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.[114]

(b) Section 1126: Acceptance of the Plan

83. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a plan and determining acceptance thereof. Pursuant to section 1126, only holders of allowed claims or equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.[115] As set forth above in Part I of this Confirmation Brief, the Debtors solicited acceptances of the Plan only from the Holders of Claims in the Voting Classes, which are the only Classes that are Impaired and entitled to vote on the Plan.[116] The Debtors did not solicit votes to accept or reject the Plan from the Holders of Claims and Interests in the Non-Voting Classes, all of which are either (a) Unimpaired and, therefore, deemed to have accepted the Plan pursuant to

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[112] *See generally* Solicitation Certificates.

[113] *See* 11 U.S.C. § 1126(b) ("[A] holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or (2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title."); *see also id.* § 1125(g) ("[A]n acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.").

[114] *See In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 769 (Bankr. S.D.N.Y. 1992) (holding section 1129(a)(2) satisfied where the debtors complied with all provisions of Bankruptcy Code and Bankruptcy Rules governing notice, disclosure and solicitation relating to plan).

[115] *See* 11 U.S.C. § 1126(a), (f), & (g).

[116] *See* Solicitation Certificates; Voting Report ¶¶ 11-16.

section 1126(f) of the Bankruptcy Code, or (b) deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

84. Sections 1126(c) and (d) of the Bankruptcy Code specify that holders of an impaired class of claims or interests must vote in favor of a plan by at least two-thirds in amount and more than one-half in number of the allowed claims, or interests, of such class to accept the plan.[117] Of those who timely voted, Holders of Claims in Classes 3, 4, and 5 voted to accept the Plan in excess of this statutory threshold.[118] Based on the foregoing, the requirements of sections 1125 and 1126 of the Bankruptcy Code have been satisfied, and thus, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

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

85. 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."[119] In assessing good faith, courts in the Fifth Circuit consider whether the plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success."[120] A plan must also "achieve a result consistent with the [Bankruptcy] Code."[121] The fundamental purpose of chapter 11 is to enable a debtor to reorganize its affairs to prevent job losses and the adverse economic effects associated with disposing of assets at liquidation value.[122] To determine whether a plan seeks relief consistent

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[117] *See* 11 U.S.C. § 1126(c)–(d).

[118] Voting Report, Ex. A.

[119] 11 U.S.C. § 1129(a)(3).

[120] *See In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985).

[121] *See In re Block Shim Dev. Company-Irving*, 939 F.2d 289, 292 (5th Cir. 1991) (citation omitted).

[122] *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *B.D. Int'l Disc. Corp.* v. *Chase Manhattan Bank* (*In re B.D. Int'l Disc. Corp.*), 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) ("[T]he two major purposes of bankruptcy [are] achieving equality among creditors and giving the debtor a fresh start.").

with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[123]

86. The Plan satisfies section 1129(a)(3) of the Bankruptcy Code. Here, the Plan and the accompanying Restructuring Transactions will enable the Debtors to substantially deleverage their balance sheet and raise sufficient financing through the New ABL Loans to, among other things, provide sufficient liquidity for the Debtors to operate successfully post-emergence. The Restructuring Support Agreement, the Plan, and all related documents were negotiated, proposed, and entered into by the Debtors and the respective parties thereto in good faith and from arm's-length bargaining positions, without any collusion, fraud, or attempt to take unfair advantage of any party. The near-universal support for the Plan from the Holders of Claims in Classes 3, 4, and 5 is strong evidence that the Plan has a proper purpose and is likely to succeed. Finally, as set forth herein, the Plan complies with bankruptcy and applicable non-bankruptcy law. Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

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

87. Section 1129(a)(4) of the Bankruptcy Code requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, . . . [be] approved by, or [be] subject to the approval of, the court as reasonable."[124] Section 1129(a)(4) has been construed to require that all payments of estate professional fees that are made from estate assets be subject to review

[123] *See, e.g.*, *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997) (citing *In re Sun Country Dev., Inc.*, 764 F.2d at 408); *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012); *In re Century Glove*, *Inc.*, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993).

[124] 11 U.S.C. § 1129(a)(4).

and approval as to their reasonableness by the court.[125] As to routine legal fees and expenses that have been approved as reasonable in the first instance, "the court will ordinarily have little reason to inquire further with respect to the amount charged."[126]

88. Article II.C of the Plan provides that all final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date must be reviewed and approved by the Court as reasonable pursuant to final fee applications. Article XI(b) of the Plan provides that the Bankruptcy Court retains jurisdiction to "decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code, the Confirmation Order, or this Plan."[127] Accordingly, the applicable provisions in the Plan comply with section 1129(a)(4) of the Bankruptcy Code.

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

89. Section 1129(a)(5) of the Bankruptcy Code requires (a) that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor, (b) that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and (c) to the extent there are any insiders that will be retained or employed by the Debtors, that there be disclosure of

[125] *See Cajun II*, 150 F.3d at 517–18 ("What constitutes a reasonable payment will clearly vary from case to case and, among other things, will hinge to some degree upon who makes the payments at issue, who receives those payments, and whether the payments are made from assets of the estate."); *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan can be confirmed, "there must be a provision for review by the Court of any professional compensation").

[126] *Cajun II*, 150 F.3d at 517.

[127] *See* Plan, Art. II.C, XI(b).

the identity and nature of any compensation of any such insiders.[128] These provisions are meant to ensure that the post-confirmation governance of a reorganized debtor is in "good hands."[129]

90. As part of the Plan Supplement, the Debtors have disclosed (a) the process for selecting candidates to serve as the initial members of the New Board in the Governance Term Sheet and (b) the identities and affiliations of individuals that are proposed to serve on the New Board following the Effective Date to the extent known prior to the Combined Hearing. Accordingly, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

91. The Plan Supplement also disclosed the forms of the Amended CEO Agreement and Amended CFO Agreement (together, the "Amended Employment Agreements"). The terms and conditions of the Amended Employment Agreements, including the Debtors' assumption of such agreements on the Confirmation Date, are the product of good-faith, arm's-length negotiations, were a material inducement for parties to support the comprehensive restructuring embodied in the Plan, are supported by the Debtors and their key constituents, and are integral to Restructuring Transactions. Accordingly, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

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[128] 11 U.S.C. § 1129(a)(5).

[129] *See In re Landing Assocs., Ltd.*, 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993) ("[T]o lodge a valid objection under § 1129(a)(5), a creditor must show that a debtor's management is unfit or that the continuance of this management post-confirmation will prejudice its creditors."); *In re Am. Solar King Corp.*, 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988) ("The subsection does not (and cannot) compel the debtor to do the impossible, however. If there is no proposed slate of directors as yet, there is simply nothing further for the debtor to disclose under subsection (a)(5)(A)(i)."); *In re Charter Commc'ns*, 419 B.R. 221, 260 n.30 (Bankr. S.D.N.Y. 2009) ("Although section 1129(a)(5) requires the plan to identify all directors of the reorganized entity, that provision is satisfied by the Debtors' disclosure at this time of the identities of the *known* directors.") (citing *Am. Solar King Corp.*, 90 B.R. at 815).

6. Section 1129(a)(6): The Plan Does Not Contain Any Rate Changes

92. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of "any rate change provided for in the plan."[130] Section 1129(a)(6) is inapplicable to the Chapter 11 Cases, as the Plan does not provide for any rate changes.

7. Section 1129(a)(7): The Plan Satisfies the "Best Interests" Test

93. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code at that time.[131] This "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 Debtors' plan of reorganization that rejects the plan.[132] Because the best interests test by its terms does not apply to Classes of Unimpaired Claims under the Plan, it is not relevant for Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 6 (General Unsecured Claims). Therefore, the best interests test is deemed satisfied for all members of the Classes of Unimpaired Claims.

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130 11 U.S.C. § 1129(a)(6).

131 *Id*. § 1129(a)(7).

132 *See 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."); *see also Tex. Extrusion Corp.*, 844 F.2d at 1159 n.23 (stating that, under section 1129(a)(7) of the Bankruptcy Code, a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation); *In re Adelphia Commc'ns Corp.*, 368 B.R. at 252 ("In determining whether the best interests standard is met, the court must measure what is to be received by rejecting creditors in the impaired classes under the plan against what would be received by them in the event of liquidation under chapter 7.").

94. Here, the best interests test is satisfied with respect to the Holders to which it applies: the Holders of Claims in Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims) that abstained from voting on or voted to reject the Plan, Holders of Claims in Class 9 (Existing Equity Interests and 510(b) Claims) who are deemed to have rejected the Plan, and Holders of Interests in Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) who are, as applicable deemed to have rejected or presumed to have accepted the Plan.[133] As set forth in the Henness Declaration, A&M, in collaboration with the Debtors' management, performed the Liquidation Analysis that was attached as Exhibit E to the Disclosure Statement.[134] Subject to the assumptions and qualifications contained therein, the Liquidation Analysis establishes that all Holders of Claims and Interests in Impaired Classes will receive or retain property under the Plan valued, as of the Effective Date, in an amount greater than or equal to the value of what they would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.[135]

95. The Debtors' Liquidation Analysis is reasonable and incorporates justified assumptions and estimates regarding the liquidation of the Debtors' assets and claims, including assumptions that (a) the Debtors initiate proceedings under chapter 7 of the Bankruptcy Code on July 31, 2026, (b) the Debtors' operations would be wound down in an orderly manner, with assets liquidated in an organized process expected to be substantially completed within a twelve-month period, and (c) the Debtors' two primary operating segments would continue operations following conversion to chapter 7 and be marketed and sold as a single integrated operating platform during

[133] *See* Henness Decl. ¶¶ 9, 15.

[134] *See generally id*.

[135] *See* Liquidation Analysis; Henness Decl. ¶¶ 14-15.

an approximate eight-month marketing period.[136] The assumptions and estimates in the Liquidation Analysis are appropriate in the context of the Chapter 11 Cases and are based upon the collective knowledge and expertise of the Debtors' management and advisors, all of whom have intimate knowledge of the Debtors' business and relevant industry or restructuring experience.[137] Based on the foregoing, the Plan satisfies the requirements of the best interests test under section 1129(a)(7) of the Bankruptcy Code.[138]

8. Section 1129(a)(8): The Plan Has Been Accepted by Each Impaired Voting Class

96. Section 1129(a)(8) of the Bankruptcy Code requires the following: "[w]ith 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."[139] As reflected in the Voting Report, the voting results indicate that each of the Voting Classes (Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims)) has voted to accept the Plan.[140] More particularly, the Debtors received votes in favor of the Plan from (a) 100.00% in amount of the Class 3 ABL Facility Claims, (b) 100.00% in amount of the Class 4 2029 Secured Claims that voted, and (c) 98.93% in amount of the Class 5 Other Funded Debt Claims that voted.[141] Class 9 (Existing Equity Interests and 510(b) Claims) is deemed to reject the Plan, and Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) are presumed to accept or deemed to reject the Plan under section 1126(g) of the Bankruptcy Code. As discussed below, the Debtors have satisfied the requirements of

136 *See* Henness Decl. ¶¶ 11–13.

137 *See id*. ¶¶ 10, 16.

138 *See id*. ¶ 15.

139 11 U.S.C. § 1129(a)(8).

140 Voting Report, Ex. A.

141 *Id*.

section 1129(a)(10) of the Bankruptcy Code, and thus are able to "cram-down" Classes 7, 8, and 9 under section 1129(b) of the Bankruptcy Code notwithstanding the requirements of section 1129(a)(8).

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

97. Section 1129(a)(9) of the Bankruptcy Code requires that claims entitled to priority under section 507(a) of the Bankruptcy Code be paid in full in cash unless the holders thereof agree to a different treatment with respect to such claims.[142] The Plan provides that, except as otherwise agreed with the relevant Holder of such Claims, Allowed Administrative Claims and Allowed Other Priority Claims (which exclude Priority Tax Claims) will be paid in full in Cash on the Effective Date, and Allowed Priority Tax Claims shall receive treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code and, to the extent that an Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtors and the Holder of such Claim, or as may be due and payable under applicable nonbankruptcy law, or in the ordinary course of business by the Reorganized Debtors. The Plan accordingly complies with section 1129(a)(9)(A)–(C) of the Bankruptcy Code.[143]

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

98. 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."[144] Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and

[142] 11 U.S.C. § 1129(a)(9).

[143] *See* Plan, Art. II.

[144] 11 U.S.C. § 1129(a)(10).

Class 5 (Other Funded Debt Claims) are Impaired and accepted the Plan based on voting results, without including the acceptance of the Plan by any insiders in such Class.[145] Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

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

99. Section 1129(a)(11) of the Bankruptcy Code requires the court to determine that a plan is feasible, and that "[c]onfirmation of the plan is not likely to be followed by [a] liquidation, or the need for further financial reorganization."[146] The feasibility inquiry is fact-intensive and requires a case-by-case analysis, but has a relatively low threshold of proof necessary to satisfy the feasibility requirement.[147] A debtor does not have to guarantee the success of a plan to demonstrate its feasibility under section 1129(a)(11) of the Bankruptcy Code.[148] Instead, courts will find that a plan is feasible if a debtor demonstrates a reasonable assurance that consummation of the plan will not likely be followed by a further need for financial reorganization. "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

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145 Voting Report, Ex. A.

146 11 U.S.C. § 1129(a)(11).

147 *See Mercury Cap. Corp.* v. *Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) ("[A] 'relatively low threshold of proof' will satisfy the feasibility requirement." (quoting *Comp. Task Grp., Inc.* v. *Brotby (In re Brotby)*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003))).

148 *See Save Our Springs (S.O.S.) All., Inc.* v. *WSI (II)-COS, L.L.C. (In re Save Our Springs (S.O.S.) All., Inc.)*, 632 F.3d 168, 172 (5th Cir. 2011) ("[T]o obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'" (quoting 11 U.S.C. § 1129(a)(11))); *Briscoe*, 994 F.2d at 1166 ("Only a reasonable assurance of commercial viability is required." (citation omitted)); *Landing Assocs.*, 157 B.R. at 820 (stating that section 1129(a)(11) only requires a finding that a plan offers "a reasonable probability of success"); *In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (finding that feasibility "contemplates whether the debtor can realistically carry out its plan and whether the plan offers a reasonable prospect of success and is workable" (citations omitted)); *In re Cajun Elec. Power Co-op, Inc. (Cajun III)*, 230 B.R. 715, 745 (Bankr. M.D. La. 1999) ("The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds . . . .").

confirmation."[149] Therefore, the applicable standard of proving plan feasibility is by a preponderance of the evidence,[150] which means presenting proof that a given fact is "more likely than not."[151]

100. In assessing feasibility, courts consider the following factors, among others: (a) the adequacy of the capital structure; (b) the earning power of the business; (c) the economic conditions; (d) the ability of management; (e) the probability of the continuation of the same management; and (f) any other matter that determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[152]

101. Here, the Financial Projections attached to the Disclosure Statement demonstrate that the Plan is feasible and that the Debtors are expected to have sufficient earnings to meet their obligations under the Plan. The Financial Projections were integral to the development of the Reorganized Debtors' Valuation Analysis and are based on assumptions, including as to: (a) timely Confirmation and Consummation pursuant to the terms of the Plan; (b) the anticipated future performance of the Reorganized Debtors; (c) market conditions and projected market conditions in each of the Reorganized Debtors' respective markets as of the time the Financial Projections were prepared; (d) the ability to maintain sufficient working capital to fund operations; (e) general business and economic conditions; (f) final approval by the FCC to permit the Transfer of Control; and (g) other matters or circumstances, many of which are beyond the control of

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[149] *See Pizza of Haw., Inc.* v. *Shakey's, Inc*. (*In re Pizza of Haw., Inc.*), 761 F.2d 1374, 1382 (9th Cir. 1985) (citation omitted).

[150] *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, 801 (5th Cir. 1997); *Briscoe*, 994 F.2d at 1164.

[151] *Briscoe*, 994 F.2d at 1164.

[152] *See, e.g.*, *In re M&S Assocs. Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992); *see also In re Indianapolis Downs, LLC*, 486 B.R. 286, 298 (Bankr. D. Del. 2013); *In re WorldCom, Inc.*, No. 02-13533, 2003 WL 23861928, at *58 (Bankr. S.D.N.Y. Oct. 31, 2003); *In re Prudential Energy Co.*, 58 B.R. 857, 862–63 (Bankr. S.D.N.Y. 1986).

the Debtors, and some or all of which may not materialize.[153] As demonstrated in the Financial Projections, the Debtors believe that the Reorganized Debtors will be able to make all payments required pursuant to the Plan, and will be able to satisfy obligations related to their post-emergence business operations in the ordinary course of business.[154] The Financial Projections show that the Debtors will emerge with a deleveraged balance sheet and with debt service payments reduced to a manageable level.[155] Therefore, Confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization.[156]

102. The Plan also contemplates that the Debtors will enter into the Restated ABL Documents on the Effective Date. Entry into the Restated ABL Documents will provide access to liquidity upon emergence from the Chapter 11 Cases, and thus serves the interests of the Reorganized Debtors and represents a reasonable exercise of their business judgment, including with respect to the fees and premiums incurred under the facility.[157]

103. Furthermore, the Plan is the product of extensive negotiations and discussions among the Debtors and their key stakeholders. The Debtors' stakeholders extensively reviewed the Financial Projections, which ultimately resulted in the terms incorporated into the Plan.[158] Together with the settlements negotiated with the Debtors' key counterparties and stakeholders, the Plan contemplates a comprehensive restructuring that provides for a substantial deleveraging of the Debtors' balance sheet and provides approximately sufficient liquidity to execute on the

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153 *See* Financial Projections at 2–3.

154 *See* Financial Projections at 2; Lopez-Balboa Decl. ¶ 42.

155 *See* Financial Projections at 5–7; Lopez-Balboa Decl. ¶ 42.

156 *See* Financial Projections at 2; Lopez-Balboa Decl. ¶ 42.

157 *See* Lopez-Balboa Decl. ¶ 15.

158 *See* Lopez-Balboa Decl. ¶ 42.

Reorganized Debtors' go-forward business plan.[159] Accordingly, the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

12. Section 1129(a)(12): All Statutory Fees Have or Will Be Paid Under the Plan

104. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under section 1930 of title 28 of the United States Code, which are afforded priority as administrative expenses.[160] In accordance with these requirements, the Plan provides that all such fees due and payable before the Effective Date shall be paid by the Debtors or the Reorganized Debtors, as applicable, for each quarter, until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.[161] The Plan therefore complies with section 1129(a)(12) of the Bankruptcy Code.

13. Section 1129(a)(13): The Plan Does Not Modify Retiree Benefits

105. Section 1129(a)(13) of the Bankruptcy Code requires that the Plan provide for the continuation, after the Effective Date, of all retiree benefits.[162] The Plan does not modify any retiree benefits provided by the Debtors within the meaning of section 1114 of the Bankruptcy Code, and pursuant to Article IV.U of the Plan, any such retiree benefits shall continue to be paid in accordance with applicable law.[163] Accordingly, the Plan satisfies section 1129(a)(13) of the Bankruptcy Code.

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[159] *See* Sedeh Decl. ¶ 11.

[160] 11 U.S.C. §§ 507(a)(2), 1129(a)(12).

[161] *See* Plan, Art. XII.C.

[162] 11 U.S.C. §§ 1114, 1129(a)(13).

[163] *See* Plan, Art. IV.U.

B. Section 1129(b): The Plan Satisfies the "Cram-Down" Requirements

106. Under section 1129(b)(1) of the Bankruptcy Code, the court may "cram-down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes. By its express terms, section 1129(b) of the Bankruptcy Code is only applicable to a class of creditors or equityholders that has not accepted a plan.[164] Accordingly, a dissenting holder in an accepting class lacks standing to object to the plan on the basis of unfair discrimination or absolute priority.[165]

107. As discussed above, Holders of Claims in all Voting Classes (Class 3 (ABL Facility Claims), Class 4 (2029 Secured Claims), and Class 5 (Other Funded Debt Claims)) voted to accept the Plan.[166] Accordingly, cram-down is only relevant to Class 9 (Existing Equity Interests and 510(b) Claims), which is deemed to reject the Plan, and Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests), which are presumed to accept or deemed to reject the Plan. The Plan may be confirmed as to each of these Classes pursuant to the cram-down provisions of section 1129(b) of the Bankruptcy Code.

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[164] *See* 11 U.S.C. § 1129(b)(1) ("[T]he court . . . shall confirm the plan notwithstanding the requirements of [section 1129(a)(8)] 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." (emphasis added)).

[165] *See Off. Comm. of Equity Sec. Holders* v. *Off. Comm. of Unsecured Creditors (In re Adelphia Commc'ns Corp.)*, 544 F.3d 420, 426 (2d Cir. 2008) ("[A] plan need not satisfy the Absolute Priority Rule so long as any class adversely affected by the variation accepts the plan . . . ."); *Kane* v. *Johns-Manville Corp.*, 843 F.2d 636, 650 (2d Cir. 1988) (refusing to consider objection of dissenting creditor in accepting class because section 1129(b) did not need to be satisfied as to an accepting class); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1062 (3d Cir. 1987) (overruling cram-down objection because objecting party was a member of an accepting class and therefore section 1129(b)(1) afforded no protection to such party).

[166] *See* Voting Report, Ex. A.

1. The Plan Does Not Discriminate Unfairly

108. The Bankruptcy Code does not provide a standard for determining "unfair discrimination."[167] Courts instead examine the facts and circumstances of the particular case to determine whether there is unfair discrimination.[168] The unfair discrimination requirement ensures that similarly situated creditors and interest holders do not receive materially different treatment under a proposed plan without a compelling justification.[169]

109. The Plan does not discriminate unfairly with respect to any potential rejecting Class. There is no unfair discrimination among Class 7 (Intercompany Claims), Class 8 (Intercompany Interests), and Class 9 (Existing Equity Interests and 510(b) Claims).

110. Claims in Class 7 (Intercompany Claims) and Interests in Class 8 (Intercompany Interests) are entirely unique from Claims or Interests in any other Class, and, therefore, are appropriately placed in their own Classes. The Debtors separately classified Intercompany Claims from other Claims, and Intercompany Interests from other Interests, in order to preserve the option to, as applicable, reinstate, set off, settle, distribute, contribute, merge, cancel, or release such Claims and Interests. Such treatment allows for greater flexibility for the Debtors to determine whether it is more efficient to maintain their organizational structure when they are implementing the Restructuring Transactions. Importantly, this optionality does not affect any

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[167] *See Idearc*, 423 B.R. at 171.

[168] *See In re Kolton*, No. 89-53425-C, 1990 WL 87007, at *5 (Bankr. W.D. Tex. Apr. 4, 1990) (citing *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985)); *Bowles*, 48 B.R. at 507 ("[W]hether or not a particular plan does [unfairly] discriminate is to be determined on a case-by-case basis . . . ."); *see also In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances").

[169] *See Idearc*, 423 B.R. at 171 ("[T]he unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so."); *Liberty Nat'l Enters.* v. *Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship)*, 115 F.3d 650, 656 (9th Cir. 1997); *In re Aztec Co.*, 107 B.R. 585, 589–91 (Bankr. M.D. Tenn. 1989); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane* v. *Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

stakeholders' recovery under the Plan, including General Unsecured Claims, which are Unimpaired under the Plan, and is intended only for administrative convenience in the restructuring process.

111. Interests in Class 9 (Existing Equity Interests and 510(b) Claims) are also legally distinct in nature from all other Classes, as they represent the ultimate equity Interests in the Debtor Cumulus Media Inc. ("Cumulus"). All other Debtors are wholly owned subsidiaries of Cumulus.[170] All Interests in Cumulus are classified together and afforded the same treatment under the Plan. Class 9 therefore represents legally distinct Interests from Class 8.

112. Thus, the Plan does not "discriminate unfairly" with respect to any Impaired Classes of Claims or Interests.

2. The Plan Is Fair and Equitable

113. Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if under the plan no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest.[171] In other words, a plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan if it follows the "absolute priority" rule.[172] The absolute priority rule mandates that a junior class of claims or interests cannot receive a distribution under the plan on account of such claims or interests unless senior classes are rendered unimpaired or give their consent.[173] Additionally, in order for a plan to be

[170] *See* First Day Declaration. ¶¶ 38–40.

[171] *See* 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii).

[172] *See* 11 U.S.C. § 1129(b); *203 N. LaSalle*, 526 U.S. at 441–42.

[173] *See* 11 U.S.C. § 1129(b).

"fair and equitable," no creditor may be paid more than what it is owed (*i.e.*, no class of creditors may receive more than 100% of its claims).[174]

114. There is no class junior to Class 9 (Existing Equity Interests and 510(b) Claims), and thus no possible violation of the "fair and equitable" rule with respect to such Class. The "fair and equitable" rule is likewise satisfied as to the other Classes that may be deemed to reject the Plan (*i.e.*, Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests)). To the extent Classes 7 and 8 receive a recovery, such treatment is not "on account of" such Intercompany Claims or Intercompany Interests within the meaning of section 1129(b)(2)(B)(ii) of the Bankruptcy Code. Rather, it is simply to maintain the Debtors' prepetition organizational structure for the administrative benefit of the Reorganized Debtors and has no economic substance. Courts have recognized that such technical preservations for the purpose of corporate formalities do not violate the absolute priority rule, and the unimpairment of such Claims and Interests, if any, affects neither the economic substance of the Plan, nor any recoveries to the Debtors' creditors.[175] Furthermore, no Claims and Interests junior to each such Class, as applicable, will receive or retain any property under the Plan on account of such junior Claims or Interests. Further, as set forth in Article III of the Plan, no Class of Claims or Interests is being paid more than it is owed.[176]

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[174] *See In re Granite Broad. Corp.*, 369 B.R. 120, 140 (Bankr. S.D.N.Y. 2007) ("There is no dispute that a class of creditors cannot receive more than full consideration for its claims, and that excess value must be allocated to junior classes of debt or equity, as the case may be.").

[175] *See In re Glob. Ocean Carriers Ltd.*, 251 B.R. 31, 47–48 (Bankr. D. Del. 2000) (holding that "the retention of the corporate structure among the Debtors will not adversely affect any creditors" and does not violate the absolute priority rule); *ION Media Networks, Inc.* v. *Cyrus Select Opportunities Master Fund Ltd. (In re ION Media Networks, Inc.)*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) ("This technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan.").

[176] *See* Plan, Art. III.

115. Accordingly, because the Plan does not discriminate unfairly and is fair and equitable, the Plan satisfies the "cram-down" requirements of section 1129(b) of the Bankruptcy Code and may be confirmed.

C. Section 1129(c): The Plan Is the Only Plan Currently on File

116. The Plan is the only plan filed in the Chapter 11 Cases and, accordingly, section 1129(c) of the Bankruptcy Code does not apply.

D. Section 1129(d): The Purpose of the Plan Is Not Tax or Securities Law Avoidance

117. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act, and no governmental unit has objected to Confirmation of the Plan on such grounds. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

E. Section 1129(e): Does Not Apply to the Plan

118. The provisions of section 1129(e) of the Bankruptcy Code apply only to a "small business case." The Chapter 11 Cases are not a "small business case."

III. The U.S. Trustee Objection to Confirmation Should Be Overruled[177]

119. As previewed above, the Debtors have worked constructively with the few parties that filed confirmation objections and those that submitted informal comments to reach consensual resolutions where possible. Aside from the SoundExchange Objection, which the Debtors have addressed with language in the Confirmation Order as described in the Response Chart, the only outstanding objection is the U.S. Trustee Objection. As explained below, this objection lacks merit because the Third-Party Release and the Plan's opt-out mechanism are fully

[177] Capitalized terms used but not defined in this section shall have the meanings ascribed to such terms in each of the U.S. Trustee Objection.

consistent with the Supreme Court's decision in *Purdue*, the District Court's opinion in *Container Store*, long-standing Fifth Circuit practice, and this Court's own precedents. This Court has repeatedly overruled substantially similar objections and the U.S. Trustee offers no principled basis to depart from those rulings. For the reasons below, the Debtors request that the Court overrule the U.S. Trustee Objection and confirm the Plan.

A. *Purdue* Does Not Support the U.S. Trustee's Objection

120. The U.S. Trustee contends that the Third-Party Release constitutes an impermissible non-consensual release, asserting categorically that an opt-out mechanism can never confer consent to a non-debtor release in a chapter 11 plan. The U.S. Trustee derives this argument from *Harrington* v. *Purdue Pharma, L.P.*, 603 U.S. 204 (2024), which prohibited *nonconsensual* third-party releases absent statutory authority. But the U.S. Trustee's argument is based on a fundamental misreading of *Purdue*. Third-party releases are permitted under Fifth Circuit precedent when the release is consensual.[178] Indeed, bankruptcy courts within the Fifth Circuit "commonly exercise jurisdiction to approve [consensual third-party] releases…"[179] As discussed in detail above, the Third-Party Releases here are consensual, effectuated through a robust opt-out or opt-in mechanism that provides every affected party a meaningful choice. Accordingly, the Third-Party Release is permissible under Fifth Circuit precedent. The U.S. Trustee's claim that *Purdue* somehow warrants revisiting the long-established practice in this Circuit is foreclosed by the Supreme Court's express statements to the contrary.

121. The Supreme Court in *Purdue* expressly declined to disturb settled law on consensual third-party releases, stating:

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[178] *In re CJ Holding Co.*, 597 B.R. at 608–09 ("The Fifth Circuit does not preclude bankruptcy courts from approving a 'consensual non-debtor release.'") (citation omitted).

[179] *Id.*

> As important as the question we decide today are ones we do not. Nothing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.[180]

122. The Fifth Circuit prohibited nonconsensual third-party releases long before *Purdue*, and therefore, as the Court in *Robertshaw* recognized, "Purdue did not change the law in this Circuit" and "[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan."[181] The U.S. Trustee nonetheless asserts that *Purdue* somehow mandates revisiting whether "imposing non-debtor releases based on a failure to opt out is permissible."[182] The Supreme Court expressly stated the opposite: *Purdue* neither calls into question consensual third-party releases nor offers a view as to what qualifies as a consensual release. As this Court observed, "[t]hese words must be read literally."[183]

123. The U.S. Trustee invites the Court to expand *Purdue*, in contravention of the Supreme Court's own statements, to upend the existing practice in the Southern District of Texas of finding third-party releases to be consensual when a creditor fails to properly opt out of such release. As this Court recognized in *Robertshaw*, the "[U.S.] Trustee wants to use the *Purdue* holding as an opportunity to advance its long-held position that consensual third-party releases in a plan should require an opt-in feature, rather than an opt-out."[184] No such expansion is warranted.

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[180] *Purdue Pharma, L.P.*, 603 U.S. at 226.

[181] *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 322 (Bankr. S.D. Tex. 2024) (internal citations omitted).

[182] *See* U.S. Trustee Obj. ¶ 15.

[183] *Robertshaw*, 662 B.R. at 323.

[184] *Robertshaw*, 662 B.R. at 322; *Container Store*, 676 B.R. at 373.

"[W]hat constitutes consent, including opt-out features and deemed consent for not opting out, has *long been settled in this District*."[185] Accordingly, the U.S. Trustee Objection should be overruled.

124. Further, there is substantial precedent for approving the Third-Party Release in this District and in others (often over the objection of the U.S. Trustee).[186] The Third-Party Release and opt-out procedures under the Plan are almost identical to the provisions and procedures approved in *Robertshaw*, *Independence Contract Drilling*, *The Container Store*, *Cutera*, and *DocuData Solutions*, and the U.S. Trustee does not present any new arguments as to why the result

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[185] *Robertshaw*, 662 B.R. at 323 (emphasis added).

[186] *See, e.g.,* Conf. Hrg Tr. 23: 3-7, *In re DocuData Solutions, LLC*, No. 25-90023 (CML) (Bankr. S.D. Tex. Jun. 23, 2025) [Docket No. 914] ("the opt outs work. They're consistent with Fifth Circuit case law as I understand it. And I do find that the concept of consent and not speaking when you have the opportunity to speak, is consent, under federal law."); Conf. Hr'g Tr. 92:18-19, *In re Cutera, Inc.*, No. 25-90088 (ARP) (Bankr. S.D. Tex. Apr. 16, 2025) [Docket No. 251] ("I think that . . . the release provision was appropriate."); Conf. Hr'g Tr. 43:4-7, *In re The Container Store Group, Inc.*, No. 24-90627 (ARP) (Bankr. S.D. Tex. Jan. 24, 2025) [Docket No. 201] ("I think that, based on the facts in this case and the process that was run, that the releases are -- because of the opportunity for all the parties to have opted out, are consensual."); Conf. Hr'g Tr. 31:25-32:13, *In re Independence Contract Drilling, Inc.*, No. 24-90612 (ARP) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 127] ("*Purdue* does not address the use of injunctions in consensual third party releases, as the one before the Court today. Case law in the Fifth Circuit allows the use of injunctions in consensual third party releases… Therefore, for all of these reasons, the Court overrules the objections and will confirm the Plan."); Conf. Hr'g Tr. 20:20-23, *In re Vroom*, Inc., No. 24-90571 (CML) (Bankr. S.D. Tex. Jan. 8, 2025) [Docket No. 128] ("I'm comfortable that [the third-party release] runs afoul of no law and that these should be approved and that they[]… don't run afoul of *Purdue*."); Conf. Hr'g Tr. 32:18-35:9, *In re Intrum AB*, No. 24-90575 (CML) (Bankr. S.D. Tex. Dec. 31, 2024) [Docket No. 275] (approving third party releases for which consent was confirmed through opt outs); Conf. Hr'g Tr. 66:3-6, *In re Diamond Sports Grp., LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Nov. 14, 2024) [Docket No. 2680] ("When I look at everything, I'm going to approve the Plan under the law. I think it complies with every provision under the law. I think the opt-outs worked."); Corrected Findings of Fact, Conclusions of Law, and Order (I) Confirming Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. *et al.* and (II) Granting Related Relief, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (MI) (Bankr. S.D. Tex. Jan. 6, 2025) [Docket No. 2550]; Memorandum Decision on Plan Confirmation at 28; *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex. Aug. 16, 2024) [Docket No. 959] ("[T]he consensual third-party releases in the Plan are appropriate, afforded affected parties constitutional due process, and a meaningful opportunity to opt out. There is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan. . . . And, again, *Purdue* did not change the law in this Circuit."); Conf. Hr'g Tr. 14:10-13, *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. July 23, 2024) [Docket No. 869] (overruling the Office of the U.S. Trustee's objections, predicated on *Purdue*, with respect to plan releases, the opt out mechanism, and gatekeeper provisions); see also *In re Spirit Airlines, Inc.*, 668 B.R. 689, 721 (Bankr. S.D.N.Y. 2025) (approving consensual third-party release with opt-out mechanism); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013) (confirming a plan that provided that creditors were deemed to have consented to the plan's third party release provisions where: (a) the creditor voted to reject or accept the plan and failed to "opt-out", (b) the creditor failed to return his/her ballot, or (c) the creditor's claims were unimpaired, and therefore, were not entitled to vote).

should be any different here. As set forth below, the Third-Party Release here has also been structured to comply with the most recent guidance from the *Container Store* decision by requiring non-voting creditors to opt in to the Third Party Release.

B. The U.S Trustee's Reliance on State Contract Law is Without Support

125. The U.S. Trustee urges this Court to apply state contract law to determine whether the Third-Party Release is "consensual," contending that the Bankruptcy Court lacks federal authority to evaluate consent under a federal standard.[187] That position is inconsistent with the District Court's precedent in *Container Store*, which held that "two separate and independent bases of federal authority" require applying federal law, not state contract law, to the question of whether affected parties "consented" to third-party releases in a chapter 11 plan: (i) the Bankruptcy Code, including §§ 1123(b)(6) and 105(a) and (ii) federal courts' inherent authority to enter consent-decree-like judgments in equity.[188] Either basis independently supports applying federal law.[189]

126. With respect to the first basis, the U.S. Trustee argues that *Purdue's* interpretation of § 1123(b)(6) forecloses using that section as a basis for consensual releases, because the catchall provision must be read in light of its preceding paragraphs, "all of which concern the debtor."[190] The U.S. Trustee also contends that *Container Store's* reliance on *United States* v. *Energy Resources Co*., 495 U.S. 545 (1990), was erroneous. But this argument conflates nonconsensual releases—which Purdue held § 1123(b)(6) cannot authorize—with consensual releases, which *Container Store* held can be supported as part of the textual framework of the Code. *Purdue's* holding that the catchall provision does not confer "radically different power[s]" to impose

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187 *See* U.S. Trustee Obj. ¶ 17–34.

188 *Container Store* 676 B.R. at 375.

189 *Id*.

190 *See* U.S. Trustee Obj. ¶ 30; *Purdue*, 603 U.S. at 218.

involuntary releases on nonconsenting parties does not preclude the use of § 1123(b)(6) to memorialize releases to which parties have voluntarily consented through a proper opt-out mechanism. *Container Store's* interpretation of § 1123(b)(6) as providing a textual basis for consensual releases in a plan has not been disturbed on appeal.

127. The U.S. Trustee challenges *Container Store's* second independent basis (federal courts' inherent authority to enter consent decrees), arguing that consent decrees require "actual agreement by the parties to the litigation" and that the court "fails to explain why under federal law a consent decree could be entered based on the silence or inaction of a party."[191] But each of *Container Store's* two bases independently supports application of federal law. Even if this Court found the consent decree analogy imperfect, the Bankruptcy Code basis alone is sufficient. Moreover, the opt-out mechanism, combined with robust notice and disclosure, constitutes a form of assent—not mere silence—analogous to the practical consent recognized in consent-decree jurisprudence. The U.S. Trustee's narrow reading of consent decrees does not undermine *Container Store's* holding.

128. Further, the U.S. Trustee argues that third-party releases should be viewed as a collection of "separate agreements," each of which is governed by state law.[192] But treating each third-party release as a "separate bilateral contract entirely unrelated to the Plan" is "divorced from . . . reality[.]"[193] The Plan's Third-Party Releases are not free-floating settlement agreements, they are an "integral" part of—and a "necessary component of"—implementing the Plan under the

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[191] *See* U.S. Trustee Obj. ¶ 32.

[192] *See* U.S. Trustee Obj. ¶¶ 18–22.

[193] *In re Spirit Airlines, Inc.*, 668 B.R. 689, 718 (Bankr. S.D.N.Y. 2025); *see In re LaVie Care Ctrs.*, LLC, No. 24-55507, 2024 WL 4988600, slip op. at *14 (Bankr. N.D. Ga. Dec. 5, 2024) ("[T]he basis for the enforcement of consensual releases has not as far as this Court has been able to determine been described anywhere as a 'contract' for them, or an 'agreement' to them.").

Bankruptcy Code.[194] The creditors providing third-party releases here are doing so only by virtue of the Plan, which is a creature of the Chapter 11 Cases that the creditors are involved in. "[T]he plan . . . serves as the mechanism to have the release take effect. . . ."[195] Determining whether a creditor has provided consent to a particular term contained in the Plan "is a matter of federal bankruptcy law, with an already existing and well developed body of case law on consent in the context of a collective bankruptcy proceeding."[196]

129. The U.S. Trustee also relies heavily on *Rodriguez* v. *FDIC*, 589 U.S. 132 (2020) for the proposition that federal courts cannot displace state law absent a "uniquely federal interest," and cites *Matter of Walker*, 51 F.3d 562 (5th Cir. 1995) for the proposition that bankruptcy does not constitute such an interest.[197] *Container Store* rejected this exact argument, holding that unique federal interests do compel application of a federal rule in the specific context of plan-based releases in collective bankruptcy proceedings.[198] *Rodriguez* involved the allocation of tax refunds in a chapter 7 case—an entirely different context that does not control the analysis of plan releases. And *Walker's* general observation about bankruptcy and federal common law does not override *Container Store's* well-reasoned holding that the collective nature of bankruptcy reorganization and the Bankruptcy Code's textual framework present the kind of uniquely federal interest that justifies applying a federal standard to the consent inquiry.

130. The U.S. Trustee's state-law arguments are not novel—*Container Store* considered and rejected each of them. The U.S. Trustee's reliance on *Butner* v. *United States*, 440 U.S. 48

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[194] Lopez-Balboa Decl. ¶ 57.

[195] *In re Mallinckrodt PLC*, 639 B.R. 837, 879–80 (Bankr. D. Del. 2022) (citation omitted), *abrogated in part on other grounds by Purdue*, 603 U.S. 204.

[196] *Spirit Airlines*, 668 B.R. at 716.

[197] *See* U.S. Trustee Obj. at ¶ 27.

[198] *Container Store*, 676 B.R. at 375–379.

(1979), and *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Electric Co*., 549 U.S. 443 (2007), for the proposition that state law governs the "substance of claims" in bankruptcy is inapposite.[199] *Container Store* correctly distinguished between the role of state law in defining prepetition claims (which is not disputed) and the separate question of what law governs the *treatment* of claims through releases in a confirmed chapter 11 plan. As the Fifth Circuit has held, "[T]he validity of any interest that may have accrued prior to the filing of the petition is resolved generally by state law. But, once the petition is filed, federal law controls."[200]

131. Additionally, the U.S. Trustee argues that if state contract law doesn't apply, federal contract law should, and the result would be the same as if state contract law applied.[201] This assertion, regardless of whether it is true or not, is of no consequence. As explained above, federal bankruptcy law governs the confirmation of chapter 11 plans and the appropriateness of third-party releases. When approving chapter 11 plans and third-party releases, bankruptcy courts ensure that the plans and releases comport with the Bankruptcy Code and federal bankruptcy law, not federal contract law.

132. The U.S. Trustee asks this Court to disregard this precedent and instead follow the non-binding decision of a district court in another circuit—*In re GOL Linhas Aéreas Inteligentes S.A*., No. 25cv4610, 2025 WL 3456675 (S.D.N.Y. Dec. 1, 2025).[202] *GOL* is not binding on this Court and does not undermine *Container Store's* holding. The U.S. Trustee's insistence on citing out-of-circuit decisions is a tacit admission that the law of this District does not support its position.

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199 U.S. Trustee Obj. at ¶ 17.

200 *Kellogg* v. *United States* (*In re West Tex. Mktg. Corp*.), 54 F.3d 1194, 1196 (5th Cir. 1995) (emphasis added).

201 *See* U.S. Trustee Obj. ¶ 33.

202 *See id*. at ¶ 33.

This Court should reject the U.S. Trustee's invitation to abandon *Container Store* in favor of non-controlling authority.

133. Because *Purdue* did not upset established Fifth Circuit law permitting consensual third-party releases, and because *Container Store* confirmed that federal law governs the consent inquiry, there is no need or basis to resort to state contract law to determine what constitutes consent.

C. *Container Store* Established Reasonable Guardrails That are Reflected in the Plan

134. The U.S. Trustee contends that there is "no basis to infer consent" from nonvoting parties who also do not opt out.[203] *Container Store* addressed this exact concern by drawing a narrow, well-defined guardrail: the opt-out mechanism may not be used to obtain consent from a class of creditors that is not entitled to vote because they are receiving no recovery under the Plan.[204] This guardrail protects parties who are "wiped out" under a plan and therefore have no reason to surrender claims against third parties in exchange for nothing.[205] The Plan already adopts this guardrail. Holders in Class 9—the only fully impaired Class that is deemed to reject the Plan (aside from Intercompany Claims and Intercompany Interests)—are bound by the Third-Party Release only if they affirmatively opt in by submitting a Release Opt In Form. The U.S. Trustee expressly acknowledges this opt in structure and "does not oppose" it.[206] The remaining nonvoting classes (Classes 1, 2, and 6), which received Release Opt Out Forms, are Unimpaired under the

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[203] *See id*. at ¶ 38.

[204] *Container Store*, 676 B.R. at 390.

[205] *Id*.

[206] U.S. Trustee Obj. ¶ 9.

Plan. Holders in these Classes do not fall within the narrow guardrail established by *Container Store*, which was designed to protect claimants receiving no recovery.

135. Under *Container Store*'s federal-law standard it is reasonable in a noticed, reliance-based bankruptcy process to treat the failure to opt out—after clear disclosure—as indicative of assent where the class is receiving value (or is unimpaired) and is given a meaningful opportunity to decline.

D. The Opt Out Mechanism Properly Establishes Consent for Both Voting and Non-Voting Creditors

136. The U.S. Trustee categorically asserts that a failure to opt out can never constitute the "affirmative consent" required for a third-party release.[207] *Container Store* squarely rejects this categorical rule and reaffirms this District's "long-established view" that "procedurally proper opt-out provisions can create consent to third-party releases," and that *Purdue* did not disturb that settled practice.[208] Under *Container Store*, the consent inquiry is practical and contextual. As the District Court explained, bankruptcy is a collective process among parties with a preexisting financial relationship, which involves robust notice procedures and reliance by other stakeholders on claims being released as part of the negotiated bargain.[209] In this context, the failure to opt out after receiving clear disclosure and a meaningful opportunity to do so is properly understood as indicative of assent—not mere "silence."

137. The U.S. Trustee relies on *Norcia* v. *Samsung Telecommunications America, LLC*, 845 F.3d 1279 (9th Cir. 2017), for the proposition that a failure to opt out can never constitute consent. But *Norcia* is wholly inapplicable: it involved a consumer who purchased a Samsung

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[207] *Id.* ¶¶ 15, 38.

[208] *Container Store*, 676 B.R. at 374.

[209] *Id.* at 384–387.

phone containing a warranty with an embedded arbitration clause—a typical consumer transaction between complete strangers.[210] The Ninth Circuit held that in that arms-length commercial context, the consumer's failure to opt out of the arbitration clause did not constitute acceptance.[211] *Container Store* expressly addressed and rejected the analogy to such one-off consumer transactions, explaining that bankruptcy is not a single transaction between total strangers, but a collective process among parties with a preexisting financial relationship, which involves robust notice procedures, and reliance by other stakeholders on whether claims will be released as part of the bargain.[212] The U.S. Trustee's attempt to equate a consumer electronics warranty with a court-supervised, collective reorganization process (with detailed disclosure statements, robust notice, and multiple opportunities to object) ignores the fundamental differences *Container Store* identified.

138. The U.S. Trustee also contends that voting creditors who return a ballot without checking the opt-out box have not manifested consent.[213] *Container Store* squarely rejects this contention as well, holding that there is "ample basis" to find consent where a creditor "undertook an affirmative act by returning a ballot" and "affirmatively chose to not check the opt-out box," regardless of whether it voted to accept or reject the plan.[214] The Plan's voting classes (Classes 3, 4, and 5) fall precisely within this category.

139. The U.S. Trustee further argues, citing *In re Chassix Holdings, Inc.*, 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015), that creditors who vote to reject the plan should be "presumed to have

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[210] *Norcia*, 845 F.3d at 1282.

[211] *Id*. at 1290.

[212] *Container Store*, 676 B.R. at 384–387.

[213] *See* U.S. Trustee Obj. ¶ 35.

[214] *Container Store*, 676 B.R. at 389.

also rejected the third-party releases," and that imposing an additional opt-out requirement is "a Court-endorsed trap for the careless or inattentive creditor."[215] This argument fails for two reasons. First, the Plan provides a separate, clearly labeled mechanism for opting out of releases distinct from submitting a plan vote and every creditor who returns a ballot is presented with the opt-out choice on its face. A creditor's vote on the Plan and its decision on the Third-Party Releases are independent choices, and the Plan treats them as such. Second, *Container Store* found "ample basis" to find consent where creditors returned ballots without checking the opt-out box, regardless of whether they voted to accept or reject the plan. A creditor who returns a ballot and affirmatively chooses not to check the opt-out box has made a deliberate decision, not a careless oversight.

140. Finally, *Container Store* found that a rule that permits opt-outs can comply with the general rules of contract law.[216] In particular, the Restatement (Second) of Contracts § 69 recognizes that silence may operate as acceptance in defined circumstances—particularly where it is reasonable to expect parties to speak because other stakeholders rely on finality and collective resolution.[217] The U.S. Trustee's invocation of § 69 is misleading and inapplicable to the facts here.[218] First, it omits § 69's express recognition that silence does constitute acceptance where, among other things, "the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer."[219] Second, there is no "resulting uncertainty" with respect to the Third-Party

[215] *See* U.S. Trustee Obj. ¶ 47.

[216] *Container Store*, 676 B.R. at 385–86.

[217] *Id.*

[218] *See* U.S. Trustee Obj. ¶ 42.

[219] RESTATEMENT (SECOND) OF CONTRACTS § 69(1)(b) (AM. L. INST. 1981).

Release. As described below, all affected parties were provided with sufficient and adequate notice of the terms of the release and the process for opting out, consistent with long-standing practice in this District. Neither the terms of the Third-Party Release nor its applicability to affected parties is ambiguous. *Container Store* correctly recognized that bankruptcy reorganizations, with their collective procedures, reliance on finality, and preexisting relationships, fall squarely within the circumstances where consent can be inferred from silence.[220]

E. The U.S. Trustee's "Procedural Default" Reframing Should Be Rejected

141. Contrary to the U.S. Trustee's assertions, this Court does not need to rely on a "procedural default theory" to approve the Third-Party Release. *Container Store* expressly addressed and rejected the U.S. Trustee's attempt to reframe opt-outs as an impermissible "procedural default" (*i.e.*, forfeiture by inaction), affirming that consent can be inferred in appropriate circumstances from the failure to opt out after proper, court-approved notice.[221] The Plan's structure is consistent with *Container Store* and is not based on "forfeiture principles": the Plan provides a simple mechanism to decline the release (the opt out box) and expressly excludes opt-outs from the release by definition. For the one class receiving no recovery (Class 9), the Plan requires an affirmative opt-in, consistent with *Container Store's* guardrail. This two-track system—opt-outs for classes receiving value and opt-ins for the fully impaired class—demonstrates that the Plan's release mechanism is designed to respect the choice of each affected party. The failure of a claimant to opt out follows a robust, court-approved notice process specifically instructing recipients that they can demonstrate their consent by not opting out. In this context, as compared to a default judgment, the inference of consent from a non-response is

[220] *Container Store*, 676 B.R. at 387.

[221] *Container Store*, 676 B.R. at 387–388 (expressly rejecting the procedural default argument and the U.S. Trustee's reliance on *Smallhold*.).

meaningfully different—and stronger. And the result of the non-response here is not an adverse ruling being entered against a party, but instead a mutually beneficial release designed to maximize the value of the bankruptcy plan for the benefit of all stakeholders.

142. The U.S. Trustee's reliance on *In re Smallhold, Inc.*, 665 B.R. 704 (Bankr. D. Del. 2024) and other out-of-circuit decisions for the "procedural default" argument is similarly unavailing. *Smallhold* is a Delaware bankruptcy court decision that is not binding in this District and reflects a minority approach. To the extent *Smallhold's* reasoning conflicts with *Container Store*, this Court should follow *Container Store*.

F. Courts in This District Have Repeatedly Rejected Identical Objections

143. Courts in this District have repeatedly overruled similar objections by the U.S. Trustee to third party releases that were effectuated consensually through notice and opt-out procedures substantially similar to the Solicitation Procedures here, such as in *Vroom*, *The Container Store*, and *Robertshaw*. In each of these cases, the court found that the third party releases satisfied applicable law and the Complex Cases Procedures in the Southern District of Texas.[222]

144. The U.S. Trustee does not identify any meaningful distinction between the notice and opt-out mechanisms in this case and the mechanisms previously approved over similar

[222] *See also In re Pipeline Health Sys., LLC*, No. 22-90291, 2025 Bankr. LEXIS 495, at *11 (Bankr. S.D. Tex. Mar. 3, 2025) ("Opt-out procedures are a proper means to obtain consent to third-party releases in a chapter 11 plan."); Corrected Findings of Fact, Conclusions of Law, and Order (I) Confirming Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. *et al.* and (II) Granting Related Relief at II, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (MI) (Bankr. S.D. Tex. Jan. 6, 2025) [Docket No. 2550] ("Consistent with [Purdue], the releases by non-Debtors contained in the Plan (the 'Third Party Release') are consensual, and all Releasing Parties have received due and adequate notice of the Third-Party Release and sufficient opportunity and instruction to elect to opt out of the Third Party Release."); Conf. H'rg Tr. at 34–36, *In re Intrum AB*, No. 24-90575 (CML) (Bankr. S.D. Tex. Dec. 31, 2024) [Docket No. 275] (approving third party releases for which consent was confirmed through opt-outs); Conf. H'rg Tr. at 66, *In re Diamond Sports Grp., LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Nov. 14, 2024) [Docket No. 2680] ("When I look at everything, I'm going to approve the Plan under the law. I think it complies with every provision under the law. I think the opt-outs worked.").

objections in *Posigen*[223], *The Container Store*, and *Robertshaw*—because there is none. As in those cases, here: (a) parties were provided with notice about the Plan filing, the Objection Deadline, and the Voting Deadline, and provided the opportunity to opt out of the Third-Party Release; (b) the Disclosure Statement included detailed descriptions about the Third-Party Release; (c) all ballots provided claimants with the opportunity to opt out; (d) the claimants in the non-voting classes received a notice that provided the same opportunity to opt out; and (e) the ballots and the notice of non-voting status (i) informed all Releasing Parties of the Third-Party Release (including its full text), (ii) included a box to check to indicate whether they would opt out, and (c) informed them of the method for returning the ballot or notice.[224] The Ballots and Notices of Non-Voting Status "allowed parties to carefully review and consider the terms of the third-party release and the consequences of electing not to opt out."[225] Each Holder was then able to determine, in its sole discretion, whether to opt out of the Third-Party Releases in accordance with the clearly labeled procedures set forth in its Ballot. Indeed, as of the date hereof, 195 Holders of Claims or Interests have opted out of the Third-Party Releases.

145. Further, here, as in *Container Store*, Allowed General Unsecured Claims are unimpaired, which "support[s] finding the opt-out third-party releases consensual."[226] The U.S. Trustee has not cited a single decision in this Court or the Fifth Circuit in which its position

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223 *In re PosiGen, PBC, el al.*, No. 25-90787 (CML).

224 Lopez-Balboa Decl. ¶ 59; Solicitation Certificates.

225 *See Robertshaw*, 662 B.R. at 323.

226 Order Denying the United States Trustee's Motion for a Stay of Confirmation Order Pending Appeal at 13, *In re the Container Store Grp.*, No. 24-90627 (ARP) (Bankr. S.D. Tex. Apr. 7, 2025) [Docket No. 280] at 10. ("Here, unsecured creditors likely did not opt out of the third-party releases because they were being paid in full. While not determinative, it is an important fact that unsecured creditors in this case were paid in full. Based on the Liquidation Analysis, the company would have been 'hopelessly insolvent' and secured creditors would have received pennies on the dollar. As a result of the TSA, unsecured creditors are getting a hundred cents on the dollar and the old ABL was paid off. In these cases, facts matter, and the facts here support finding the opt-out third-party releases consensual.").

regarding the opt-out mechanism has prevailed, nor does it advance any argument as to why the result here should differ from the numerous cases in which identical arguments have been rejected.

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

146. 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."[227] Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

147. The Debtors submit that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the proposed Confirmation Order will be effective immediately upon its entry.[228] The restructuring contemplated by the Plan was vigorously negotiated among sophisticated parties and is premised on preserving value of the Debtors as a going concern. The Debtors will move swiftly to consummate the Plan, but must have certainty that the Confirmation Order is a Final Order to ensure they are able to do so.

148. Finally, as set forth above, given the Debtors' extensive efforts to provide each of the voting parties, as well as their other stakeholders, a full measure of adequate notice, staying the Confirmation Order will not serve any due process-related ends. Accordingly, the Debtors

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[227] Fed. R. Bankr. P. 3020(e).

[228] *See, e.g.*, *In re Energy Partners, Ltd.*, 2009 WL 2898876, at *19 (Bankr. S.D. Tex. Aug. 3, 2009) (waiving stay of confirmation order); *In re Idearc Inc.*, 423 B.R. at 158 (stay of confirmation order waived since debtors needed to consummate their chapter 11 plan before December 31, 2009).

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

CONCLUSION

149. For all of the reasons set forth herein and in the Supporting Declarations, and as will be further shown at the Combined Hearing, the Debtors respectfully request that the Court finally approve the Disclosure Statement and confirm the Plan as fully satisfying all of the applicable requirements of the Bankruptcy Code by entering the Confirmation Order and granting such other and further relief as is just and proper.

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Dated: April 13, 2026

Respectfully submitted,

/s/ John F. Higgins

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Certificate of Service

I certify that on April 13, 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/ John F. Higgins
John F. Higgins

Exhibit A

Response Chart

Summary Chart of Informal Comments and Objections[229][230]

Objector	Resolved / Unresolved	Summary of Comment or Objection	Debtors' Response
Tennessee Department of Revenue ("TDOR") [Dkt. No. 174]	Resolved per Notice of Withdrawal [Dkt. No. 188]	• Although section II-D of the Plan references 11 U.S.C. § 1129(a)(9)(C), the Plan could be interpreted as prohibiting postpetition interest, due to the language in Section VII-G thereof which prohibits the payment of postpetition interest without specifically exempting postpetition interest to be paid on priority tax claims as required by 11 U.S.C. § 1129(a)(9)(C) and 11 U.S.C. § 511. ¶1. • TDOR proposes that the following language be added to the Plan, either in section VII-G or in section II-D: "Postpetition interest shall be paid on priority tax claims as required by 11 U.S.C. § 1129(a)(9)(C) and 11 U.S.C. § 511." ¶ 2.	The Debtors have resolved this objection with agreed language in the Confirmation Order. Proposed Confirmation Order ¶ 44. This objection has been withdrawn.
SoundExchange, Inc. ("SoundExchange") [Dkt. No. 185]	Unresolved	• The Plan's discharge and injunction provisions impermissibly impair SoundExchange's audit claims, including the Pending Audits for 2017–2019 and 2020–2022, notwithstanding the promise of Unimpaired treatment. ¶¶ 21–22. • The Plan's treatment of Late Fees does not leave SoundExchange's claims Unimpaired, as late fees prescribed by 37 C.F.R. §§ 380.2(d), 380.42(d)(1), and 380.42(d)(2) must continue to accrue and be paid in the ordinary course. ¶¶ 23–26.	The Debtors have addressed this objection with language in the Confirmation Order. Proposed Confirmation Order ¶ 52. The Debtors remain engaged in discussions with SoundExchange on the proposed language ahead of the Confirmation Hearing.

[229] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan. This chart summarizes certain key issues raised in the Objections. To the extent that an Objection or a specific point raised in an Objection is not addressed herein, the Debtors reserve the right to respond to such Objection up to and at the Combined Hearing.

[230] Subject to change.

Objector	Resolved / Unresolved	Summary of Comment or Objection	Debtors' Response
		• The Plan's gatekeeping (Colorable Claim Finding) and exclusive-jurisdiction provisions improperly restrict SoundExchange's ability to exercise statutory rights "as if the Chapter 11 Cases had never been commenced." ¶ 27. • The Plan's setoff and recoupment provisions improperly alter the Overpayment Policy and condition SoundExchange's defensive rights on a pre-Effective Date motion practice. ¶¶ 28–30. • The bankruptcy-driven delay before the Effective Date (pending FCC approvals) risks eroding SoundExchange's time-limited audit and enforcement rights; tolling and authority to continue pending audits during such period is required. ¶¶ 31–32. • SoundExchange has proposed specific Confirmation Order language to resolve the foregoing issues. ¶ 33.	
The U.S. Trustee [Dkt. No. 186]	Unresolved	• The Bankruptcy Code does not authorize nonconsensual third-party releases of non-debtor third parties by other non-debtor third parties. ¶¶ 12–14. • The Debtors' proposed opt-out provisions in the Ballots and Non-Voting Notices are ineffective to confer affirmative consent to the Third-Party Releases; state contract law governs and silence/failure to opt out does not constitute consent. ¶¶ 15–53. • The Plan should expressly state that it does not release claims asserted by governmental entities acting under their police and regulatory authority, including claims arising under the Internal Revenue Code, environmental laws, and criminal laws. ¶ 54 • The UST has proposed specific Confirmation Order language to resolve the foregoing governmental entity release issue. ¶ 55.	The Debtors address the U.S. Trustee Objection in this Confirmation Brief at ¶¶ 119–145, *supra*. The opt-out mechanism for the Third-Party Release in the Plan is consistent with Fifth Circuit precedent for consensual third-party releases. Holders were provided sufficient notice and opportunity to opt out of the releases in the Plan through the Disclosure Statement, instructions on the Ballots, the Combined Notice, the Notice of Non-Voting Status, and the Publication Notice. The release provisions were also included in these materials in clear, conspicuous, and bold-face type. Further, as reflected in the Voting Report, the Solicitation Agent received 195 opt-out elections with respect to the Third-Party Release, further indicating that parties entitled to opt out

Objector	Resolved / Unresolved	Summary of Comment or Objection	Debtors' Response
			understood the opt-out option and had adequate notice and opportunity to exercise it.