KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Steven N. Serajeddini, P.C. (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
steven.serajeddini@kirkland.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Rachael M. Bentley (admitted *pro hac vice*)
Peter A. Candel (admitted *pro hac vice*)
Lindsey J. Blumenthal (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
rachael.bentley@kirkland.com
peter.candel@kirkland.com
lindsey.blum@kirkland.com

Co-Counsel to the Debtors and Debtors in Possession

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

Co-Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
MULTI-COLOR CORPORATION, *et al*.,	Case No. 26-10910 (MBK)
Debtors.[1]	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF AN ORDER APPROVING THE DEBTORS' DISCLOSURE STATEMENT FOR, AND CONFIRMING, THE JOINT PREPACKAGED PLAN OF REORGANIZATION OF MULTI-COLOR CORPORATION AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The last four digits of Debtor Multi-Color Corporation's tax identification number are 5853. 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 https://www.veritaglobal.net/MCC. The location of the Debtors' service address for purposes of these chapter 11 cases is: 3284 Northside Parkway NW, Suite 400, Atlanta, Georgia 30327.

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RELIEF REQUESTED

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this memorandum of law (this "Memorandum") in support of approval of their *Disclosure Statement Relating to the Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 18] (as may be modified, amended, or supplemented from time to time, the "Disclosure Statement") and Confirmation of their *Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith (as may be modified, amended, or supplemented from time to time, the "Plan") pursuant to sections 1125, 1126, and 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"). In further support of Confirmation of the Plan, contemporaneously herewith, the Debtors have filed:

- the *Declaration of Garrett Gabel, Chief Restructuring Officer of Multi-Color Corporation and its Debtor Affiliates, in Support of the Debtor's Disclosure Statement for, and Confirmation of, the Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Gabel Declaration");

- the *Declaration of Brent Banks in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Banks Declaration");

- the *Declaration of Matthew Basch in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Basch Declaration");

- the *Declaration of Eric Koza in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Koza Declaration");

- the *Declaration of Jeffrey Kopa in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Kopa Declaration"); and

The Debtors also rely on the:

- *Declaration of James Lee With Respect to the Solicitation and Tabulation of Votes on the Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 482] (the "Voting Report");

- *Supplemental Declaration of James Lee With Respect to the Solicitation and Tabulation of Votes on the Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith (the "Supplemental Voting Report"); and

- *Declaration of Roger Meltzer in Support of Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 488] (the "Meltzer Declaration");

- *Declaration of Peter Laurinaitis in Support of Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith (the "Laurinaitis Declaration"); and

- *Supplemental Declaration of Roger Meltzer in Further Support of Amended Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith (the "Supplemental Meltzer Declaration," and, together with each of the foregoing declarations, the "Confirmation Declarations").

In support of Confirmation of the Plan and approval of the Disclosure Statement, the Debtors respectfully state as follows.

PRELIMINARY STATEMENT[2]

1. The fully consensual Plan is a monumental achievement for the Debtors and should be approved. Just over sixty days after the Petition Date, the Debtors, the Plan Sponsor, the Secured Ad Hoc Group, the Cross-Holder Ad Hoc Group, the Excluded First Lien Lenders, and the Committee (collectively, the "Settlement Parties") have reached a negotiated resolution of the issues that have burdened these chapter 11 cases. As the Court is aware, this negotiated, consensual outcome was not arrived at easily. It is the result of months of diligence, analysis, significant litigation on a range of issues, and weeks of compromise and hard-fought negotiations. Following multiple in-person and virtual mediation sessions, on April 10, 2026, the Settlement Parties reached an agreement-in-principle on the terms of the Plan Settlement, which forms the cornerstone of the Plan that is before the Court for approval. After incorporating the Plan Settlement into the Plan, the Plan has reached complete consensus across the Debtors' capital structure.

2. The Plan is clearly the best path forward. The compromises achieved in the Plan will deleverage the Debtors' balance sheet by approximately $3.9 billion, raise new debt and equity financing, and ensure the Reorganized Debtors are well capitalized at emergence, all while leaving General Unsecured Claims unimpaired. Importantly, the Plan preserves thousands of jobs for the Debtors' hardworking employees and provides a clear path to execute an orderly, value-maximizing transaction that will halt disruption to the Debtors' business operations and instill confidence in the Debtors' customers, vendors, and employees—all of whom are critical to

[2] A detailed description of the Debtors, their business, and the facts and circumstances giving rise to the Debtors' chapter 11 cases is set forth in the *Declaration of Garrett Gabel, Chief Restructuring Officer of Multi-Color Corporation and Certain of Its Affiliates, in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 23] (the "First Day Declaration"). Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration, the Disclosure Statement, the Plan, or the Scheduling Motion (as defined herein), as applicable.

the Reorganized Debtors' long-term success. The Plan represents the best and only alternative for the Debtors to swiftly emerge from chapter 11 and creates a viable path for the Company to maintain its position as a leading global manufacturer in prime label solutions.

3. In the lead up to Confirmation, the Debtors have addressed comments to the Plan from a variety of stakeholders. The Debtors have reached resolution on substantially all of these matters, as reflected in the amended Plan and proposed Confirmation Order, filed substantially concurrently herewith. The only outstanding objection to Confirmation was filed by the U.S. Trustee. The U.S. Trustee recites its standard objection regarding the "opt out" mechanism in the Third-Party Release renders the Third-Party Release nonconsensual. Next, the U.S. Trustee takes the position that the Plan cannot include a settlement of Claims and Interests, and controversies related thereto, under the Bankruptcy Code and the Bankruptcy Rules. Finally, the U.S. Trustee argues that the inclusion of a standard "gatekeeper" provision is improper. As detailed in section III below, the U.S. Trustee has raised substantially similar objections in numerous cases in this district and has consistently been overruled on the merits. The same outcome is justified here, especially following the achievement of the Plan Settlement that enjoys the support of the Committee and all of the Debtors' economic stakeholders.

4. The Disclosure Statement and the Plan satisfy the applicable elements of the Bankruptcy Code. In particular, as demonstrated by the Kopa Declaration,[3] the Plan meets the "best interests" test because each individual holder of an Impaired Claim has either accepted the Plan or will receive or retain property not less than the value than such creditor would receive or retain in a case under chapter 7. The Plan was proposed in "good faith." As set forth in the Gabel

[3] Kopa Decl. ¶ 15.

Declaration,[4] the Plan is the result of good-faith negotiations between the Debtors, the Consenting Stakeholders, and other parties-in-interest to reach a fair and equitable resolution of various complex business and legal issues. Turning to valuation, the Banks Declaration demonstrates that the Debtors' valuation methodologies and assumptions are credible. The Plan is based on an appropriate valuation of total enterprise value, and Evercore Group L.L.C. ("Evercore"), as the Debtors' investment banker, performed an extensive review of the Debtors' business and application of generally accepted valuation techniques.[5] Finally, the Plan is feasible, as confirmation of the Plan is not likely to be followed by a liquidation based on the detailed projections prepared by the Debtors and attached to the Disclosure Statement as Exhibit C (the "Financial Projections"). Such projections demonstrate the Reorganized Debtors' ability to generate sufficient cash to meet ongoing financial obligations of the business and otherwise meet their obligations under the Plan. For these and other reasons set forth more fully in this Memorandum, the Debtors respectfully request that the Bankruptcy Court overrule all objections, approve the Disclosure Statement, and confirm the Plan.

BACKGROUND

I. Facts and Circumstances Leading to the Chapter 11 Cases.

5. Although the prime label industry has enjoyed historic long-term stability, short-term sector volatility beginning in 2021 caused a series of significant setbacks to Multi-Color Corporation (together with its non-Debtor affiliates collectively, "MCC" or the "Company") and its business. Between 2021 and 2022, MCC, like others in the label industry, experienced rapid, unanticipated cost inflation and significant raw material and labor constraints. As these issues

[4] *See* Gabel Decl. ¶ 27.

[5] Banks Decl. ¶¶ 9–15, Ex. A.

began to subside, a sustained period of destocking caused significant and unanticipated volume decline in demand for MCC's products. As described more fully in the First Day Declaration, MCC undertook various efforts in response to these issues. Despite these efforts, industry headwinds, acquisition integration issues, and the customer attrition reaction to hyperinflation, among other factors, led to significant operational and financial challenges for the Debtors. As a result, MCC experienced a fourteen percent decrease in revenue from 2022 through year-end 2025.

6. Beginning in September 2025, MCC commenced discussions with its secured and unsecured creditors, and CD&R, in its capacities as a secured creditor, unsecured creditor, equity sponsor, and, potentially, a new money plan sponsor, on the terms of one or more potential transactions. In the following months MCC worked diligently and frequently communicated with the various groups of its funded debt holders and their advisors. From November 2025 through January 2026, MCC engaged in robust, competitive negotiations with each of its constituents to find a solution to address the Company's anticipated liquidity shortfall at the end of January 2026 and to maximize value for all stakeholders while preserving the business as a going concern.

7. The Debtors, the Special Committee, and their respective advisors undertook a thorough and informed decision-making process in the months prior to the Petition Date, which included dozens of meetings, analysis of multiple proposals, and around the clock negotiations with key constituents. These efforts ultimately resulted in the Debtors entry into the Restructuring Support Agreement on January 25, 2026 to pave the path for implementation of the Restructuring Transactions set forth in the Plan, providing for, among other things, a $3.9 billion reduction of net debt of the business—a benefit not achievable through any of the alternatives available to the Company in the months preceding the chapter 11 filing.

II. The Solicitation Process and Voting Results.

8. On January 27, 2026, prior to commencing these chapter 11 cases and as more fully described in the Scheduling Motion,[6] the Debtors caused their notice, claims, and solicitation agent, Kurtzman Carson Consultants, LLC (d/b/a Verita Global) (the "Solicitation Agent"), to distribute solicitation packages (the "Solicitation Packages") containing the Solicitation Cover Letter, the Disclosure Statement, the Plan, and the appropriate Ballots[7] for voting on the Plan to all known Holders of First Lien Secured Claims (Class 4) and Junior Funded Debt Claims (Class 5) (each, a "Voting Class," and collectively, the "Voting Classes") holding the relevant Claims as of January 15, 2026 (the "Voting Record Date") and, with regard to Holders of Secured Notes and Unsecured Notes, to such Holders' nominees and/or brokers (collectively, the "Nominees"), in accordance with sections 1125 and 1126 of the Bankruptcy Code. The Solicitation Agent transmitted the Solicitation Packages to the Holders of Claims in the Voting Classes and the applicable Nominees via email and/or first-class mail service.[8] Shortly after filing these chapter 11 cases, the Debtors filed, among other things, the Plan, the Disclosure Statement, and the

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[6] The "Scheduling Motion" means the *Debtors' Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement as Containing Adequate Information, (III) Approving Related Dates, Deadlines, Notices, and Procedures, (IV) Approving the Solicitation Procedures and Related Dates, Deadlines, and Notices, (V) Conditionally Waiving the Requirements that (a) the U.S. Trustee Convene a Meeting of Creditors and (b) the Debtors File Schedules of Assets and Liabilities, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (VI) Granting Related Relief* [Docket No. 16], filed on January 29, 2026.

[7] The approved form of Ballots used in solicitation are attached as Exhibit 4, Exhibit 5, and Exhibit 6 to the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement as Containing Adequate Information, (III) Approving Related Dates, Deadlines, Notices, and Procedures, (IV) Approving the Solicitation Procedures and Related Dates, Deadlines, and Notices, (V) Conditionally Waiving the Requirement That (A) the Us Trustee Convene a Meeting of Creditors and (B) the Debtors File Schedules of Assets and Liabilities, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (VI) Granting Related Relief* [Docket No. 97] (the "Disclosure Statement Order").

[8] *See Certificates of Service* [Docket Nos. 49, 286].

Scheduling Motion seeking a combined hearing to consider approval of the Disclosure Statement and Confirmation of the Plan (the "Combined Hearing").

9. On February 2, 2026, the Bankruptcy Court entered the Disclosure Statement Order that, in relevant part, (a) established March 3, 2026, at 4:00 p.m., prevailing Eastern Time, which the Court, by its ruling on February 20, 2026, extended to March 17, 2026, at 5:00 p.m., prevailing Eastern Time,[9] and finally extended to April 9, 2026, as the deadline to object to the Disclosure Statement and Confirmation of the Plan (the "Objection Deadline") and approved related procedures, (b) conditionally approved the solicitation procedures set forth in the Scheduling Motion (the "Solicitation Procedures"), (c) approved the form and manner of the Ballots, the Solicitation Cover Letter, the Combined Hearing Notice, the Publication Notice, the Notice of Non-Voting Status, Opt-Out Form, and the New Preferred Equity Investment and Claims Election Procedures and related forms, (d) waived the requirement to (i) convene a meeting pursuant to section 341(a) of the Bankruptcy Code and (ii) file Schedules, SOFAs, and 2015.3 Reports if the Plan is confirmed and the Effective Date occurs within 75 days of the Petition Date, and (e) allowed the notice period for the Disclosure Statement and Combined Hearing to run simultaneously, all as more fully set forth in the Scheduling Motion. Shortly after entry of the Disclosure Statement Order, the Debtors arranged for a short-form version of the Combined Hearing Notice (the "Publication Notice") to be published in *The New York Times* (national edition) and the *Financial Times* (global edition).[10] On March 10, 2026, the Debtors caused an

[9] *See* Feb. 20, 2026 Hr'g Tr. [Docket No. 331] at 21:16–22.

[10] The Publication Notice was published in *The New York Times* (national edition) on February 5, 2026, and in the *Financial Times* (global edition) on February 6, 2026. *See Proof of Publication* [Docket No. 202]; *Affidavit of Publication* [Docket No. 203].

amended Publication Notice to be published in *The New York Times* (national edition) and the *Financial Times* (global edition).[11]

10. The Disclosure Statement and the Ballots directed Holders of Claims in the Voting Classes to follow the instructions contained in the Ballots (and described in the Disclosure Statement) to complete and submit their respective Ballots to cast a vote to accept or reject the Plan. The Disclosure Statement and Ballot conspicuously informed each Holder of a Claim in a Voting Class that such Holder needed to submit its Ballot such that it was actually received by the Solicitation Agent by March 3, 2026, at 4:00 p.m., prevailing Eastern Time (the "Voting Deadline") to be counted.

11. Holders of Claims and Interests that are either (a) Unimpaired under and conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code[12] or (b) Impaired and entitled to receive no distribution on account of such Claims or Interests under the Plan, and therefore deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code,[13] in each case, received the Combined Hearing Notice and applicable Notice of Non-Voting Status and Opt-Out Form.[14]

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[11] *See Affidavit of Publication* [Docket No. 430]; *Proof of Publication* [Docket No. 431].

[12] Classes 1, 2, 3, and 6 are Unimpaired

[13] Classes 9 and 10 are Impaired under the Plan and not entitled to receive any distribution thereunder. Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) are either Unimpaired or Impaired and not entitled to receive any distribution on account of such Intercompany Claims and Intercompany Interests. In either case, Holders of Claims and Interests in Classes 7 and 8 are not entitled to vote on the Plan.

[14] *See Certificates of Service* [Docket Nos. 49, 286]. The Debtors were not required to mail Solicitation Packages, other solicitation materials, or a Non-Voting Status Notice and Opt-Out Form to Holders of Intercompany Claims (Class 7) or Intercompany Interests (Class 8). *See* Disclosure Statement Order ¶ 21.

12. The Debtors completed their final tabulation of Ballots after the Voting Deadline, following a complete review and audit of all Ballots received.[15] As set forth below and in the Voting Report, the overwhelming majority of Holders of Claims in the Voting Classes that submitted a Ballot accepted the Plan, which resulted in acceptance of the Plan. Notwithstanding the below, in connection with the Plan Settlement and subject to the terms of the Stipulation, the Cross-Holder Ad Hoc Group and the Excluded First Lien Lenders are deemed to have voted to accept the Plan. Prior to the hearing to consider Confirmation of the Plan, the Debtors will file an amended Voting Report reflecting acceptance of the Plan by the Cross-Holder Ad Hoc Group and the Excluded First Lien Lenders.

VOTING CLASS	ACCEPT		REJECT	
	NUMBER	AMOUNT	NUMBER	AMOUNT
Class 4 First Lien Secured Claims (Including CD&R Votes)	1,090 **99.82%**	$1,765,670,900.13 **99.83%**	2 **0.18%**	$2,995,783.12 **0.17%**
Class 4 First Lien Secured Claims (Excluding CD&R Votes)	1,088 **99.82%**	$1,547,259,171.53 **99.81%**	2 **0.18%**	$2,995,783.12 **0.19%**
Class 5 Junior Funded Debt Claims	1,088 **97.40%**	$2,745,535,425.29 **99.30%**	29 **2.60%**	$19,408,959.27 **0.70%**

13. On March 3, 2026, the Debtors filed the Plan Supplement (as amended, the "Plan Supplement") and, on March 16, 2026 and March 17, 2026, served the Plan Supplement on their master service list and certain contract counterparties.[16] On March 13, 2026, the Debtors filed an amended Plan Supplement.[17] On April 13, 2026, the Debtors filed a further amended Plan

[15] For additional discussion regarding the solicitation and vote tabulation processes, see the Voting Report.

[16] *See Notice of Filing of Plan Supplement* [Docket No. 432]; *Certificates of Service* [Docket No. 476, 497, and 516].

[17] *See Notice of Filing of Amended Plan Supplement* [Docket No. 451].

Supplement.[18] Concurrently with the filing of this Memorandum, the Debtors filed the proposed Confirmation Order.

III. The Debtors' Marketing Process.

14. On February 3, 2026, in the days following the commencement of these Chapter 11 Cases, the Debtors, with the assistance of Evercore, commenced a marketing process to solicit interest in a sale of all or substantially all of the Debtors' assets to either a financial sponsor or a strategic company.[19]

15. To that end, Evercore initially reached out to, in addition to the Crossover Ad Hoc Group, twenty potential financial and strategic parties across the globe (collectively, the "Initial Outreach Parties"), including seven strategic buyers and thirteen financial sponsors.[20] Evercore, together with the Debtors, identified the Initial Outreach Parties based on a number of factors, including, among other things, their experience and potential interest in providing financing or participating in a transaction and their familiarity with the Debtors' industry.[21] Evercore's initial outreach was fulsome, conducted in a manner to reach an appropriate set of potentially interested parties, and consistent with Evercore's typical marketing approach under similar circumstances.[22] Subsequently, the Crossover Ad Hoc Group provided the names of eleven parties that the Crossover Ad Hoc Group reasonably believed, in good faith, may be interested in partnering with

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[18] *See Notice of Filing of Second Amended Plan Supplement*, filed contemporaneously herewith.

[19] Basch Decl. ¶ 1.

[20] Basch Decl. ¶ 8

[21] *Id.*

[22] *Id.*

them to participate in the Debtors' marketing process.[23] The Debtors reached out to seven of the eleven parties provided by the Crossover Ad Hoc Group (the "Subsequent Outreach Parties"), as four of the parties were previously contacted as Initial Outreach Parties.[24] Additionally, two parties contacted the Company directly (together with the Initial and Subsequent Outreach Parties, the "Potential Counterparties").[25]

16. Although Evercore, on behalf of the Debtors, initially requested that any indications of interest be submitted by February 24, 2026, the deadline was subsequently extended to March 18, 2026 at 5:00 p.m., prevailing Eastern Time.[26] Thirteen of the Potential Counterparties entered into confidentiality agreements with the Debtors and/or received access to a virtual data room containing additional information regarding the Debtors' business, including but not limited to, historical financials from 2021 to 2025 and a confidential information memorandum.[27] On March 18, 2026, the Debtors received one non-binding indication of interest (the "Truelink IOI") from a consortium comprised of Truelink Capital Management, a financial sponsor, and members of the Crossover Ad Hoc Group (the "Consortium").[28] Subsequently, the Consortium progressed to the advanced diligence stage, where they were provided more detailed information on the Debtors' business and financial projections, including trial balance data, Company business plan forecasts, and customer sales details, offered the opportunity to participate in telephone

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[23] *Id.; see Order Resolving the Cross-Holder Ad Hoc Group's Emergency Motion for Relief from the Sale Process and for Modification of Certain Related Materials* [Docket No. 399].

[24] Basch Decl. ¶ 8.

[25] *Id.*

[26] *Id.* ¶ 9.

[27] *Id.*

[28] *Id.*

conferences with, and ask questions to, the Debtors' management team and AlixPartners, LLP, and given the chance to request additional diligence information.[29] On March 30, 2026, the Consortium submitted an updated proposal and requested additional diligence information. Evercore facilitated the process in order to ensure that the Debtors received, and had the ability to react to, any potentially value-maximizing transaction, including by responding to diligence questions from Potential Counterparties.[30]

17. Ultimately, the Truelink IOI did not set forth a proposal on terms superior to those provided by the Restructuring Transactions contemplated by the Plan. Given the Debtors' extensive marketing process and discussions with its key stakeholders, the Restructuring Transactions contemplated by the Plan represent the best, and only viable path to emergence available to the Debtors.

IV. Mediation and the Amended Plan.

18. On February 2, 2026, at the continued first day hearing, the Court directed the Debtors, the Plan Sponsor, the Secured Ad Hoc Group, the Cross-Holder Ad Hoc Group, and the Excluded First Lien Lenders (the "Mediation Parties") into mediation. *See* Feb. 2, 2026 Hr'g Tr. at 31:17–25. The Mediation Parties agreed to the entry of the Original Mediation Order,[31] which the Court entered on February 24, 2026. Subsequently the Mediation Parties agreed to the

[29] *Id.* Specifically, during the advanced diligence stage, Truelink Capital Management was provided with access to approximately eighty diligence items.

[30] *Id.*

[31] *Stipulation and Agreed Order (I) Appointing Hon. Joseph A. Greenaway, Jr. (Ret.) as Mediator to Mediate the Mediation Topics, (II) Referring Such Matters to Mediation, (III) Directing the Mediation Parties to Participate in the Mediation, and (IV) Granting Related Relief* [Docket No. 330] (the "Original Mediation Order").

Extended Mediation Order,[32] which the Court entered on March 18, 2026, extending mediation through March 31, 2026. Thereafter, on March 31, 2026, the Mediation Parties and the Committee (the "Plan Settlement Parties") agreed to, and the Court entered, the Agreed Mediation Order,[33] pursuant to which the Plan Settlement Parties agreed to appoint the Honorable Judge Michael B. Kaplan to act as consensual mediator with regard to the issues subject to mediation.

19. The Plan Settlement Parties engaged in extensive, arm's-length negotiations, including four in-person Mediation sessions, a virtual Mediation session, and extensive negotiations outside Mediation. The Plan Settlement Parties exchanged several mediator's term sheets regarding potential settlement terms and continued negotiations for several weeks. On April 10, 2026, the Debtors, the Plan Sponsor, and the Secured Ad Hoc Group delivered a final proposal to the Cross-Holder Ad Hoc Group and the Excluded First Lien Lenders, which the Cross-Holder Ad Hoc Group and the Excluded First Lien Lenders accepted. Thereafter, the Plan Settlement Parties worked collaboratively over the following days to finalize an amended Plan and the remaining Plan Supplement documents to document the terms of the Plan Settlement.

20. On April 15, 2026, the Plan Settlement Parties entered into the *Stipulation and Agreement Regarding Plan Settlement* (the "Settlement Stipulation") and the Plan Sponsor, the Cross-Holder Group, and the Excluded First Lien Lenders entered into the Settlement and Release Agreement (the "Plan Sponsor Settlement"). The Plan, the Settlement Stipulation, and the Plan Sponsor Settlement collectively memorialize the Plan Settlement.

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[32] *Stipulation and Agreed Order Regarding the Mediation Order [Docket No. 330]* entered at [Docket No. 492] (the "Extended Mediation Order").

[33] *Stipulation and Agreed Mediation Order* [Docket No. 647] (the "Agreed Mediation Order," and, together with the Original Mediation Order and the Extended Mediation Order, the "Mediation Orders").

ARGUMENT

21. This Memorandum is organized into three sections.

- The first part of this Memorandum requests approval of the Disclosure Statement and a finding that the Debtors complied with the Disclosure Statement Order.
- The second part of this Memorandum contains the Debtors' "case in chief" that the Plan satisfies section 1129 of the Bankruptcy Code.
- The third part of this Memorandum contains the Debtors' response to the objection to confirmation of the Plan in the UST Objection.

22. For the reasons stated herein, and in light of the evidentiary support to be offered at the Combined Hearing, the Debtors request that the Bankruptcy Court approve the Disclosure Statement and confirm the Plan.

I. Approval of the Disclosure Statement Is Warranted.

A. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code and the Bankruptcy Rules.

23. To determine whether a prepetition solicitation of votes to accept or reject a plan should be approved, the Bankruptcy Court must determine whether the solicitation complied with sections 1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 3017(d), 3018(b), and 3018(c).

24. Section 1125(g) of the Bankruptcy Code provides that:

> Notwithstanding subsection (b), an 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.[34]

25. Section 1126(b) of the Bankruptcy Code provides that:

[34] 11 U.S.C. § 1125(g). Section 1125(b) of the Bankruptcy Code prohibits postpetition solicitation of a plan unless and until a disclosure statement is approved. *See* 11 U.S.C. § 1125(b). As further explained herein, section 1125(b) does not apply to the Debtors' prepetition solicitation.

> [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.[35]

26. Prepetition solicitations must therefore either comply with applicable federal or state securities laws and regulations (including the registration and disclosure requirements thereof) or, if such laws and regulations do not apply, the solicited holders must receive "adequate information," as such term is defined in section 1125(a)(1) of the Bankruptcy Code. As discussed below, the Debtors satisfied sections 1125(g) and 1126(b), as applicable, of the Bankruptcy Code.

1. The Debtors' Prepetition Solicitation Was Exempt from Registration and Disclosure Requirements Otherwise Applicable under Nonbankruptcy Law.

27. The Debtors' prepetition solicitation of the Plan is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") under one or more of the exemptions from registration provided thereunder, including section 4(a)(2) thereof, state "Blue Sky" laws, or any similar rules, regulations, or statutes. In particular, the New Equity Interests and New Notes will be issued in reliance on either (a) section 1145 of the Bankruptcy Code, which creates an exemption from, among other things, the registration requirements under the Securities Act and any other applicable U.S. state or local law for securities issued under a plan of reorganization, or (b) section 4(a)(2) of the Securities Act and/or Regulation D (a safe harbor regulation promulgated under that section), which creates an exemption from the Securities Act's

[35] 11 U.S.C. § 1126(b).

registration requirements and otherwise applicable state law for transactions not involving a "public offering."[36] With respect to Holders of Claims in the Voting Classes—First Lien Secured Claims (Class 4) and Junior Funded Debt Claims (Class 5)—such Holders were not offered and will not receive securities pursuant to a "public offering." Moreover, all Holders of Claims in the Voting Classes—which are entitled to receive New Common Equity under the Plan on account of their Claims—are "accredited investors."[37] Therefore, the requirements of section 1126(b)(1) of the Bankruptcy Code are inapplicable to the Debtors' prepetition solicitation.

28. Additionally, whether or not a registration statement is required, the Securities Act and regulations promulgated thereunder contain additional disclosure requirements.[38] Under those generally applicable requirements, a party offering or selling securities may not make "any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."[39] "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."[40]

29. Accordingly, for the reasons set forth herein, the Disclosure Statement contains adequate information in satisfaction of section 1126(b)(2) of the Bankruptcy Code and should be approved.

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[36] 15 U.S.C. § 77d(a)(2).

[37] Holders of Class 4 Claims were provided with a *Qualified Investor Questionnaire and Distribution and Registration Procedures for New Equity Interests* (the "Registration Form") as part of the Solicitation Packages, which, among other things, requested the information necessary to determine whether such Holder constituted an Accredited Investor (as defined in Rule 501 of Regulation D of the Securities Act).

[38] *See, e.g.*, 15 U.S.C. § 77q(a)(2); 17 C.F.R. § 240.10b-5(b); *see also* 7 Collier on Bankruptcy ¶ 1126.03[d] (16th ed. 2021) (recognizing that the securities laws contain provisions regarding the accuracy of disclosure).

[39] 15 U.S.C. § 77q(a)(2); *see also* 17 C.F.R. § 240.10b-5(b) (same).

[40] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (internal quotations omitted).

2. The Disclosure Statement Contains Adequate Information.

30. The primary purpose of a disclosure statement is to provide material information, or "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.[41] "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[42] Determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code is within the broad discretion of the Court.[43] "Adequate information" means information that is "reasonably practicable" to permit an "informed judgment" by creditors and interest holders eligible to vote on a plan of reorganization.[44] On the other hand, "overburdening a proponent's disclosure statement with information significant and meaningful to lawyers alone may result

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[41] *See Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321 (3d Cir. 2003) ("Under 11 U.S.C. § 1125(b), a party seeking chapter 11 bankruptcy protection has an affirmative duty to provide creditors with a disclosure statement containing adequate information to enable a creditor to make an informed judgment about the Plan.") (internal quotations omitted); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.") (internal citations omitted).

[42] 11 U.S.C. § 1125(a)(1) ("'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records."); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.") (internal citations omitted); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources) (internal citations omitted).

[43] *See Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.") (internal citations omitted); *In re River Vill. Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (same); *In re Phx. Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); *see also Cadle Co. II, Inc., v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes adequate information in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.") (internal citations omitted); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) ("Section 1125 affords the Bankruptcy Court substantial discretion in considering the adequacy of a disclosure statement."), *aff'd*, 241 F. App'x 1 (3d Cir. 2007).

[44] *See In re Lower Buck Hosp.*, 571 Fed. Appx. 139, 142 (3d Cir. 2014).

ultimately in reducing the disclosure statement to an overlong incomprehensible, ineffective collection of words to those whose interests are to be served by disclosure."[45]

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

a. the events which led to the filing of the bankruptcy petition;

b. a description of the available assets and their value and the present condition of a debtor while in chapter 11;

c. the anticipated future of the company;

d. the claims asserted against a debtor;

e. the source of information stated in the disclosure statement;

f. the estimated return to creditors under a chapter 7 liquidation;

g. the future management of a debtor;

h. the chapter 11 plan or a summary thereof;

i. the financial information, valuations, and projections relevant to the claimants' decision to accept or reject the chapter 11 plan;

j. the information relevant to the risks posed to claimants under the plan;

k. the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

[45] *In re Stanley Hotel, Inc.*, 13 B.R. 926, 933 (Bankr. D. Colo. 1981); *see id.* at 933–34 ("Thus, compounding a disclosure statement for the sake of a lawyer's notion of completeness, or because some additional information might enhance one's understanding, may not always be necessary or desirable, and the length of a document should not be the test of its effectiveness."); *see also In re Applegate Prop., Ltd.*, 133 B.R. 827, 829–30 (Bankr. W.D. Tex. 1991) ("[A] disclosure statement need not meet the extensive disclosure requirements of the securities laws for registration statements and the like."); *In re Waterville Timeshare Grp.*, 67 B.R. 412, 413 (Bankr. D.N.H. 1986) ("[O]verly technical and extremely numerous additions to a disclosure statement suggested by an objecting party may themselves be self-defeating in terms of the resulting clarity and understandability of the document to the average investor.").

l. the litigation likely to arise in a nonbankruptcy context; and

m. the tax attributes of a debtor.[46]

32. The Disclosure Statement contains, among other things, descriptions and summaries of: (a) the Debtors' corporate history and corporate structure, business operations, and prepetition organizational and capital structure and indebtedness;[47] (b) the events leading to these chapter 11 cases, including the Debtors' prepetition restructuring efforts and entry into the Restructuring Support Agreement;[48] (c) the classification and treatment of Claims and Interests under the Plan, including who is entitled to vote and how to vote on the Plan;[49] (d) a summary of the Plan;[50] (e) important effects of Confirmation of the Plan;[51] (f) the discharge, releases, exculpations, and injunctions contemplated by the Plan;[52] (g) financial information about the Debtors, including financial projections and a liquidation analysis, and a discussion of the valuation of the Reorganized Debtors;[53] (h) the statutory requirements for confirming the Plan;[54] (i) risk factors Holders of Claims should consider before voting to accept or reject the Plan and

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[46] *See In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Publ'g. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *See In re Phx. Petrol.*, 278 B.R. at 393; *In re U.S. Brass*, 194 B.R. at 425.

[47] *See* Disclosure Statement, Art IV.

[48] *See id*. Art. V and Art. VII.

[49] *See id*. Art. III.D, Art. III.F, and Art. III.J.

[50] *See id*. Art. VII.B and Art. VIII.

[51] *See id*. Art. III.N and Art. XI.

[52] *See id*. Art. III.T.

[53] *See id*. Art. XI.F, Exhibit C, Exhibit D, and Exhibit E.

[54] *See id*. Art. XI.

information regarding alternatives to Confirmation of the Plan;[55] (j) certain important disclosures regarding securities laws;[56] and (k) certain U.S. federal income tax consequences of the Plan.[57] In addition, prior to solicitation, the Disclosure Statement and the Plan were subject to review and comment by the Consenting Stakeholders and their respective advisors.[58]

33. Any objections to the adequacy of the information contained in the Disclosure Statement have been withdrawn or otherwise resolved. For the reasons set forth above, the Disclosure Statement contains adequate information in satisfaction of section 1126(b)(2) and should be approved.

B. The Debtors Complied with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order.

34. As set forth in the Scheduling Motion,[59] the Debtors complied with the requirements of Bankruptcy Rules 2002, 3017(d), 3018(b), and 3018(c) with respect to the prepetition solicitation of the Plan, the form of Ballots used to solicit acceptances of the Plan, and notice of the deadline to object to the Plan and/or the Disclosure Statement. Accordingly, the Solicitation Procedures complied with the Bankruptcy Code and the Bankruptcy Rules.

35. On February 2, 2026, the Bankruptcy Court entered the Disclosure Statement Order establishing the Voting Record Date, the Voting Deadline, and the Objection Deadline and approving the form and manner of the Combined Hearing Notice, the Publication Notice, the

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[55] *See id*. Art. IX.

[56] *See id*. Art. XII.

[57] *See id*. Art. XIII.

[58] *See* Gabel Decl. ¶ 10.

[59] For the avoidance of doubt, the factual and legal arguments set forth in the Scheduling Motion are incorporated herein by reference in their entirety.

Solicitation Cover Letter, the Ballots, the Notices of Non-Voting Status and Opt-Out Form, and the Solicitation Packages. In the Disclosure Statement Order, the Bankruptcy Court found that the notice provided by the Combined Hearing Notice and the Publication Notice of the matters set forth therein constituted good and sufficient notice of such matters for all purposes and no other or further notice shall be necessary.[60] The Debtors have complied with the procedures approved by the Disclosure Statement Order.

1. The Debtors Complied with the Notice Requirements Set Forth in the Disclosure Statement Order and the Bankruptcy Rules.

36. The Debtors satisfied the notice requirements set forth in the Disclosure Statement Order, Bankruptcy Rules 2002(b) and 3017, and Local Rule 3017-1. ***First***, on January 27, 2026, the Debtors caused the Solicitation Agent to distribute the Solicitation Packages to Holders of Claims in the Voting Classes as of the Voting Record Date. Specifically, the Solicitation Package contained: (a) the applicable Ballot; (b) the Solicitation Cover Letter; (c) the Plan; and (d) the Disclosure Statement.[61] ***Second***, starting on February 2, 2026, in accordance with the Disclosure Statement Order, the Debtors caused the Solicitation Agent to distribute the Combined Hearing Notice to all parties-in-interest listed on the Debtors' creditor matrix (over 170,000 parties), informing the recipients of, among other things: (a) the date of commencement of these chapter 11 cases; (b) the date for the hearing to consider approval of the Disclosure Statement and Confirmation of the Plan; and (c) the deadline for filing objections to the Plan and the Disclosure Statement.[62] ***Third***, on February 3, 2026, in accordance with the Disclosure Statement Order, the

[60] *See* Disclosure Statement Order ¶ 17.

[61] *See Certificate of Service* [Docket No. 49].

[62] *See Certificate of Service* [Docket No. 286].

Debtors caused the Solicitation Agent to distribute the Notices of Non-Voting Status and Opt-Out Forms to all members of the Non-Voting Classes, as applicable.[63] ***Fourth***, on February 5, 2026, and February 6, 2026, the Debtors caused the Publication Notice to be published in *The New York Times* (national edition) and the *Financial Times* (global edition).[64] ***Fifth***, the Combined Hearing Notice included instructions on how to obtain the Plan and the Disclosure Statement without a fee through the Debtors' restructuring website or for a fee at the Bankruptcy Court's PACER website.

2. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Disclosure Statement Order.

37. The form of Ballots used by the Debtors comply with the Bankruptcy Rules and were approved by the Court in the Disclosure Statement Order.[65] No party has objected to the sufficiency of the Ballots. Based on the foregoing, the Debtors complied with the Disclosure Statement Order and satisfied the requirements of Bankruptcy Rules 3017(d) and 3018(c).

3. The Debtors' Solicitation Period Complied with the Disclosure Statement Order and Bankruptcy Rule 3018(b).

38. The Debtors' solicitation period complied with the Disclosure Statement Order and Bankruptcy Rule 3018(b). The Court approved the Voting Record Date and the Voting Deadline in the Disclosure Statement Order.[66]

4. The Debtors' Vote Tabulation Procedures Complied with the Disclosure Statement Order.

39. As described in the Voting Report, the Debtors used standard tabulation procedures in tabulating votes received from Holders of Claims in the Voting Classes. The Solicitation Agent

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[63] *See* Voting Report ¶ 8; *Certificate of Service* [Docket No. 286].

[64] *See Proof of Publication* [Docket No. 202]; *Affidavit of Publication* [Docket No. 203].

[65] *See* Disclosure Statement Order ¶ 15.

[66] *See id*. ¶ 10.

reviewed all Ballots received in accordance with the procedures described in the Scheduling Motion and the Disclosure Statement.[67] The Court should approve the Debtors' tabulation of votes confirming overwhelming acceptance of the Plan by Holders of Claims in the Voting Classes that cast a Ballot, and as such, for each of Class 4 and Class 5, the requisite majorities in amount and number of Claims voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code.

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

40. 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 or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan."[68]

41. As set forth in the Voting Report, the First Day Declaration, and the Gabel Declaration, and as demonstrated by the Debtors' compliance with the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules demonstrates, the Debtors at all times engaged in arm's-length, good-faith negotiations and took appropriate actions in connection with the solicitation of the Plan in compliance with section 1125 of the Bankruptcy Code.[69] Therefore, the Debtors request that the Court grant the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys, the protections provided under section 1125(e) of the Bankruptcy Code.[70]

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67 *See generally* Voting Report.

68 11 U.S.C. § 1125(e).

69 *See* Gabel Decl. ¶¶ 17.

70 *See* Plan, Art. XII.J.

II. The Plan Satisfies the Requirements of Section 1129 of the Bankruptcy Code and Should Be Confirmed.[71]

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

42. Under section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]."[72] The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the content of a plan of reorganization, respectively.[73] As explained below, the Plan complies with the requirements of sections 1122, 1123, and 1129 of the Bankruptcy Code, as well as all other applicable provisions.

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

43. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, 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 class."[74] For a classification structure to satisfy section 1122 of the Bankruptcy Code, substantially similar claims

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71 *See In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *4 (Bankr. D. Del. Apr. 29, 2010) (holding that the plan proponent must prove each element of section 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 148 (Bankr. D.N.J. 2010) ("The plan proponent bears the burden to show by a preponderance of the evidence that the proposed Chapter 11 plan has a reasonable probability of success, and is more than a visionary scheme") (citing *In re Wiersma*, 227 F. App'x 603, 606 (9th Cir. 2007)) (internal quotation marks omitted).

72 11 U.S.C. § 1129(a)(1).

73 S. Rep. No. 95-989, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008); *In re S&W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was most directly aimed at were [s]ections 1122 and 1123.").

74 11 U.S.C. § 1122(a).

or interests need not be grouped in the same class.[75] Instead, claims or interests placed in a particular class must be substantially similar to each other.[76] Plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.[77]

44. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into separate Classes based on legal or factual distinctions or otherwise based on other relevant criteria.[78] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

a. Class 1: Other Secured Claims;

b. Class 2: Other Priority Claims;

c. Class 3: ABL Facility Claims;

d. Class 4: First Lien Secured Claims;

e. Class 5: Junior Funded Debt Claims;

f. Class 6: General Unsecured Claims;

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75 *See, e.g.*, *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 159 (Bankr. D. Del. 2006).

76 *Id.*

77 Courts have identified grounds justifying separate classification, including where members of a class possess different legal rights or there are good business reasons for separate classification. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs. (In re Route 37 Bus. Park Assocs.)*, 987 F.2d 154, 158–59 (3d Cir. 1993) (as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060–1061 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *see also Frito Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because the classification scheme had a rational basis on account of the bankruptcy court-approved settlement); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) ("[T]he only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan.").

78 *See* Plan, Art. III.

g. Class 7: Intercompany Claims;

h. Class 8: Intercompany Interests;

i. Class 9: Section 510(b) Claims; and

j. Class 10: Existing Equity Interests.

45. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class.[79] The Plans' classification scheme generally corresponds to the Debtors' corporate and capital structure, thereby taking into account the relative priority among Claims and Interests. In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among Holders of Claims and Interests.[80] Namely, the Plan separately classifies the Claims and Interests because each Holder of such Claims or Interests may hold (or may have held) rights in the Debtors' Estates legally dissimilar to the Claims or Interests in other Classes.

46. For example, the classification scheme distinguishes Other Priority Claims (Class 2) due to their relative priority and required treatment under the Bankruptcy Code. In addition, the Plan classifies Existing Equity Interests (Class 10) separately from Intercompany Interests (Class 8) because the Debtors' ownership structure is dependent upon maintaining the Intercompany Interests and such Interests are preserved under the Plan for the administrative convenience of ensuring the preservation of the Debtors' corporate structure after the Effective Date. Finally, the Junior Funded Debt Claims (Class 5) are classified differently from General Unsecured Claims (Class 6) because Claims in Class 5 constitute Claims arising from or related to

[79] *See* Gabel Decl. ¶ 12.

[80] *See id*. at ¶ 14.

the Debtors' funded debt obligations, namely, First Lien Deficiency Claims and Unsecured Notes Claims. Class 6 largely comprises Claims held by trade creditors and employees that are integral to the Reorganized Debtors' ability to drive revenue necessary for their future success.[81] Separately classifying financial stakeholders' Claims from trade creditors with whom the Reorganized Debtors must maintain an ongoing commercial relationship in a going-concern, balance sheet restructuring is consonant with both the differing legal rights underlying those Claims and a legitimate business purpose.

47. Accordingly, the Plan fully complies with and satisfies section 1122(a) of the Bankruptcy Code. Any objections asserting otherwise have been withdrawn or otherwise resolved.

2. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code.

48. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that every chapter 11 plan must satisfy. The Plan satisfies each of these requirements.

a. Designation of Classes of Claims and Equity Interests, Specification of Unimpaired Classes, and Treatment of Impaired Classes (Section 1123(a)(1)–(3)).

49. The first three requirements of section 1123(a) of the Bankruptcy Code are that a plan specify (a) the classification of claims and interests, (b) whether such claims and interests are impaired or unimpaired, and (c) the treatment of any impaired class under the plan.[82] Article III of the Plan sets forth these specifications in detail, in satisfaction of these three requirements.[83] No party has asserted otherwise.

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[81] *See id*.

[82] 11 U.S.C. § 1123(a)(1)–(3).

[83] Plan, Art. III.A–B.

b. Equal Treatment Within Classes (Section 1123(a)(4)).

50. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "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 of such particular claim or interest."[84] The Plan satisfies this requirement because Holders of Allowed Claims or Interests will receive the same treatment as other Holders of Allowed Claims or Interests within such Holders' respective Class, unless such Holder has agreed to less favorable treatment. Any objections asserting otherwise have been withdrawn or otherwise resolved.

c. Means for Implementation (Section 1123(a)(5)).

51. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[85] The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provide the means by which the Plan will be implemented. Among other things, Article IV of the Plan describes the means for the cancellation of documents evidencing existing Claims and Interests and implementation of the transactions provided for in the Plan, including, among other things: (a) the Restructuring Transactions; (b) the sources of consideration for Plan Distributions; (c) the consummation of the New Debt and New ABL Facility, including the execution, delivery, and implementation of all New Debt Documents and New ABL Facility Documents; (d) the consummation of the New Preferred Equity Investment and the Plan Sponsor Equity Investment; (e) the issuance and distribution of the New Common Interests; (f) the adoption of the New Governance Documents; (g) the consummation of various corporate transaction steps necessary to implement the new corporate structure upon

[84] 11 U.S.C. § 1123(a)(4).

[85] 11 U.S.C. § 1123(a)(5).

emergence; and (h) the preservation of certain Causes of Action. In addition to these core transactions, the Plan sets forth the other critical mechanics of the Debtors' emergence, such as the vesting of Estate assets in the Reorganized Debtors, the assumption or assumption and assignment of Executory Contracts and Unexpired Leases, and the settlement of Claims and Interests.

52. The precise terms governing the execution of these transactions are set forth in the applicable Definitive Documents or forms of agreements included in the Plan Supplement.[86] Thus, the Plan sets forth adequate means for its implementation and satisfies section 1123(a)(5) of the Bankruptcy Code. No party has asserted otherwise.

d. Issuance of Non-Voting Securities (Section 1123(a)(6)).

53. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of non-voting equity securities.[87] Article IV.I of the Plan provides that the New Governance Documents will prohibit the issuance of non-voting equity Securities to the extent required under section 1123(a)(6) of the Bankruptcy Code. The relevant New Governance Documents for the Reorganized Debtors similarly reflect such prohibition.[88] Thus, the Plan satisfies section 1123(a)(6) of the Bankruptcy Code. No party has asserted otherwise.

e. Directors and Officers (Section 1123(a)(7)).

54. Section 1123(a)(7) of the Bankruptcy Code requires that plan provisions be "consistent with the interests of creditors and equity security holders and with public policy with

[86] *See* Plan Supplement.

[87] 11 U.S.C. § 1123(a)(6).

[88] Plan Supplement, Ex. A.

respect to the manner of selection of any officer, director, or trustee under the plan."[89] On the Effective Date, the term of the current members of the board of directors or other Governing Body of each of the Debtors shall expire, such current directors shall be deemed to have resigned, and all of the directors for the initial term of the New Board shall be appointed in accordance with the appointment rights detailed in the Governance Term Sheet and New Governance Documents. As discussed below, the Debtors will disclose the known members of the New Board in the Plan Supplement. Certain of the Debtors' existing officers will remain in their current capacities as officers of the Reorganized Debtors and serve pursuant to the New Governance Documents and their respective employment agreements. From and after the Effective Date, each of the directors and officers of each of the Reorganized Debtors shall serve pursuant to the terms of the applicable New Governance Documents of such Reorganized Debtor. The selection of the members of the New Board is consistent with the interests of all Holders of Claims and Interests and public policy. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. No party has asserted otherwise.

3. The Plan Complies with the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code.

a. Overview of the Plan's Compliance with Section 1123(b) of the Bankruptcy Code.

55. Section 1123(b) of the Bankruptcy Code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. 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

[89] 11 U.S.C. § 1123(a)(7).

or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of the Bankruptcy Code.[90]

56. The Plan is consistent with section 1123(b) of the Bankruptcy Code. Specifically, under Article III of the Plan, Classes 1, 2, 3, and 6 are Unimpaired because the Plan leaves unaltered the legal, equitable, and contractual rights of the Holders of Claims within such Classes. On the other hand, Classes 4, 5, 9, and 10 are Impaired since the Plan modifies the rights of the Holders of Claims and Interests within such Classes as contemplated in section 1123(b)(1) of the Bankruptcy Code.[91] Classes 7 and 8 may be impaired or unimpaired under the Plan at the option of the Debtors.

57. In addition, and consistent with section 1123(b)(2) of the Bankruptcy Code, Article V.A of the Plan provides for the assumption or assumption and assignment of all Executory Contracts and Unexpired Leases under section 365 of the Bankruptcy Code, except to the extent set forth in the Plan.[92]

58. The Plan, as revised, provides for the compromise and settlement of certain Claims and Interests between and among the Debtors and each of the Released Parties, including the Consenting Stakeholders, who affirmatively entered into the Restructuring Support Agreement to settle their Claims against and Interests in the Debtors pursuant to the Restructuring Transactions, to the extent consistent with the Bankruptcy Code. The standards for approval of a settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy

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[90] *See* 11 U.S.C. §§ 1123(b)(1)–(3), (6).

[91] *See* Plan, Art. III. Holders of Intercompany Claims and Intercompany Interests in Class 7 and Class 8, respectively, will either be Reinstated and therefore, Unimpaired, or set off, settled, discharged, contributed, cancelled, or released without any distribution on account of such Claims or Interests, and therefore, Impaired, at the option of the Reorganized Debtors. *Id.*

[92] *See* Plan, Art. V.A.

Rule 9019.[93] The Third Circuit has provided the following four criteria that a bankruptcy court should consider when approving a settlement pursuant to Bankruptcy Rule 9019:

a. the probability of success in litigation;

b. the likely difficulties in collection;

c. the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and

d. the paramount interest of creditors.[94]

59. The Debtors satisfy the above factors, as discussed herein. The Debtors and their advisors have worked diligently to ensure the Debtors' creditors are receiving the greatest value on their Claims or Interests through the Plan, in the best interest of all stakeholders. The Plan and Confirmation Order embody a settlement of Claims and Interests between the Debtors and certain other parties in interest, including the Debtors, the Debtors' directors and officers, and the Consenting Stakeholders. If the Debtors were forced to litigate the issues necessary to resolve such Claims and Interests outside of the Plan, such litigation would be costly, protracted, inherently uncertain, and would leave the Debtors and all stakeholders in a substantially worse-off position. Litigation would prolong the Debtors' bankruptcy process, draining the Debtors' Estates and distracting the Debtors' key personnel and advisors, who would otherwise be focused on implementing the Restructuring Transactions and strengthening the Debtors' go-forward business.

60. Finally, the Plan contains release, exculpation, and injunction provisions that, for the reasons set forth below, are consistent with section 1123(b) of the Bankruptcy Code.

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[93] *See In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004).

[94] *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *In re Neshaminy Office Bldg. Assocs.,* 62 B.R. 798, 803 (E.D. Pa. 1986)).

61. Accordingly, the Plan's discretionary general settlement provisions satisfy the requirements of section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019.

62. The U.S. Trustee objected to certain terms and provisions of the Plan setting forth the settlements provided thereunder. The Debtors address the UST Objection in section III hereof.

4. The Plan Complies with Section 1123(d) of the Bankruptcy Code.

63. Section 1123(d) of the Bankruptcy Code provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law."[95]

64. The Plan complies with section 1123(d) of the Bankruptcy Code. The Plan provides for the satisfaction of monetary defaults under each Executory Contract and Unexpired Lease to be assumed under the Plan by payment of the default amount, if any, on the Effective Date or as soon as reasonably practicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be Filed with the Bankruptcy Court on or before 20 days after the Effective Date.[96]

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

65. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code.[97] The legislative history to section 1129(a)(2) of the Bankruptcy Code

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[95] 11 U.S.C. § 1123(d).

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

[97] 11 U.S.C. § 1129(a)(2).

reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code.[98] As discussed below, the Debtors have complied with sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and solicitation of the Plan.

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

66. As discussed in section I of this Memorandum, the Debtors complied with the notice and solicitation requirements of section 1125 of the Bankruptcy Code.

2. The Debtors Complied with Section 1126 of the Bankruptcy Code.

67. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed interests in impaired classes of claims or interests that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject such plan. Section 1126 of the Bankruptcy Code provides, in pertinent part, that:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan. . . .
>
> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
>
> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any

[98] *See, e.g.*, *In re Lapworth*, No. 97-34529, 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2).") (internal citations omitted); *In re Worldcom, Inc.*, No. 02-13533 (AJG), 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with applicable provisions of the Bankruptcy Code, including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code").

> property under the plan on account of such claims or interests.[99]

68. As set forth in section I of this Memorandum, in accordance with section 1125 of the Bankruptcy Code, the Debtors solicited votes from the Holders of Allowed Claims in Classes 4 and 5—the only Classes entitled to vote on the Plan. The Debtors did not solicit votes from Holders of Claims and Interests in Classes 1, 2, 3, 6, 7, 8, 9, or 10 because Holders of such Claims and Interests are either Unimpaired and conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code or Impaired and conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

69. With respect to the Voting Classes, section 1126(c) of the Bankruptcy Code provides that a class of claims has accepted the Plan if the Plan has been accepted by creditors that "hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted" the Plan.[100]

70. The Voting Report reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code.[101] Based upon the foregoing, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. No party has asserted otherwise.

C. The Plan Is Proposed in Good Faith (Section 1129(a)(3)).

71. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law."[102] Where a plan satisfies the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement

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[99] 11 U.S.C. §§ 1126(a), (f), (g).

[100] *Id.* § 1126(c).

[101] *See generally* Voting Report.

[102] 11 U.S.C. § 1129(a)(3).

of section 1129(a)(3) of the Bankruptcy Code is satisfied.[103] To determine whether a plan seeks relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[104]

72. The Debtors negotiated, developed, and proposed the Plan in good faith, and the Plan satisfies section 1129(a)(3) of the Bankruptcy Code. The Plan, as amended to reflect the Plan Settlement, was negotiated with, and is supported by, the Plan Settlement Parties, representing substantially all of the Debtors' financial stakeholders. These parties only came to consensus after several weeks of intense, arm's-length negotiations. As provided in the Banks Declaration and the Kopa Declaration, the Plan delivers significant value to creditors (including leaving General Unsecured Claims Unimpaired), and preserves the Reorganized Debtors as a going concern.[105] Additionally, the Plan has been overwhelmingly accepted by each Voting Class.[106] The Plan was proposed in good faith and not by any means forbidden by law, has a high likelihood of success, and will achieve a result consistent with the objectives of the Bankruptcy Code.

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[103] *See, e.g.*, *In re PWS Holding*, 228 F.3d at 242 (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986)); *Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 802 (5th Cir. 1997) (quoting *Brite v. Sun Country Dev., Inc. (In re Sun Country Dev., Inc.)*, 764 F.2d 406, 408 (5th Cir. 1985)); *In re Century Glove, Inc.*, Civ. A. Nos. 90-400-SLR and 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993); *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002).

[104] *See, e.g.*, *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012) ("[A] determination of good faith associated with a Chapter 11 reorganization plan requires a factual inquiry into the totality of the circumstances surrounding the plan's proposal.") (citing *In re Sun Country Dev., Inc.*, 764 F. 2d at 408); *Century Glove*, 1993 WL 239489, at *4 ("The requirement of good faith must be viewed in light of the totality of the circumstances surrounding establishment of a Chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start.") (citing *In re Sun Country Dev., Inc.*, 764 F.2d at 408); *T-H New Orleans*, 116 F.3d at 802 (same).

[105] *See* Banks Decl. ¶ 16; Kopa Decl. ¶¶ 11–13.

[106] *See* Voting Report; Plan Settlement Order, Ex. B ¶ 3 (deeming Plan Settlement Parties' votes cast to reject the Plan to be changed to votes cast to accept the Plan).

73. The fundamental purpose of chapter 11 is to enable a distressed business to reorganize its affairs to prevent job losses and the adverse economic effects associated with disposing of assets at liquidation value.[107] Here, the Plan will enable the Debtors to deleverage their balance sheet, leave operational obligations unimpaired, and position the Reorganized Debtors for long-term success.[108] The Plan's nearly unanimous support from the Debtors' financial stakeholders is strong evidence that the Plan is likely to succeed. Finally, throughout the negotiation of the Plan and these chapter 11 cases, the Debtors have upheld their fiduciary duties to stakeholders and protected the interests of all constituents with an even hand. Accordingly, the Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code. Any objections asserting otherwise have been withdrawn or otherwise resolved.

D. The Plan Provides that the Debtors' Payment of Professional Fees and Expenses Are Subject to Court Approval (Section 1129(a)(4)).

74. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions or property under the plan be subject to approval by the Bankruptcy Court as reasonable.[109] This section requires

[107] *See NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 528 (1984); *B.D. Int'l Disc. Corp. v. Chase Manhattan Bank, N.A. (In re B.D. Int'l Disc. Corp.*), 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) (stating that "the two major purposes of bankruptcy [are] achieving equality among creditors and giving the debtor a fresh start") (internal citations omitted).

[108] *See* Gabel Decl. ¶¶ 11, 29; Banks Decl. ¶ 16.

[109] *See* 11 U.S.C. § 1129(a)(4).

that all payments of professional fees paid out of estate assets be subject the court's review and approval as to their reasonableness.[110]

75. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code. The Plan provides that Professional Fee Claims and corresponding payments are subject to prior Bankruptcy Court approval and the reasonableness requirements under sections 328 and 330 of the Bankruptcy Code.[111] Moreover, the Plan provides that the Debtors' and Committee's Professionals shall file all final requests for payment of the Professional Fee Claims no later than forty-five days after the Effective Date, thereby providing an adequate period of time for interested parties to review such Professional Fee Claims.[112] Any objections asserting that the Plan fails to comply with section 1129(a)(4) have been withdrawn or otherwise resolved.

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

76. Section 1129(a)(5) of the Bankruptcy Code requires that the proponent of a plan disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors. In addition, the Bankruptcy Code provides 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.[113] The "public policy requirement would enable [the court] to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed

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[110] *See In re Lisanti Foods, Inc.*, 329 B.R. at 503 ("Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court."); *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988) (holding that fees and expenses related to the plan are subject to the approval by the Bankruptcy Court); *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation").

[111] 11 U.S.C. §§ 328(a), 330(a)(1)(A).

[112] Plan, Art. II.D.1.

[113] 11 U.S.C. § 1129(a)(5)(A)(ii).

management."[114] Section 1129(a)(5) of the Bankruptcy Code further requires that the plan proponent disclose the identity of insiders the reorganized debtor will retain and the nature of any compensation for such insider.[115] These provisions ensure that the post-confirmation governance of a reorganized debtors is in "good hands."

77. With respect to directors, the Plan satisfies section 1129(a)(5)(A) of the Bankruptcy Code. The New Board will be selected in accordance with the Governance Term Sheet and the New Governance Documents, and the Debtors have disclosed the known members of the New Board in the Plan Supplement. Control of the Reorganized Debtors by the proposed individuals or individuals to be appointed in accordance with the Plan and pursuant to the New Governance Documents is consistent with public policy. Therefore, the requirements under section 1129(a)(5)(A) are satisfied.

78. The Debtors satisfy section 1129(a)(5)(B) with respect to their officers because the Debtors propose that their existing officers remain in their current capacities as officers of the Reorganized Debtors, and serve pursuant to the New Governance Documents and their respective employment agreements.[116] The Debtors' existing officers have at all times proceeded in good faith and with diligence and care in connection with these chapter 11 cases. Furthermore, the Reorganized Debtors' proposed officers have significant knowledge and solid business and industry experience, are competent, and will provide the Reorganized Debtors with continuity in running the business.[117] Accordingly, it is reasonable to continue such officers' employment

[114] 7 Collier on Bankruptcy ¶ 1129.02[5][b] (16th ed. 2021).

[115] 11 U.S.C.§ 1129(a)(5)(B).

[116] *See* Gabel Decl. ¶ 19.

[117] *Id.*

post-emergence. Thus, the Plan complies with section 1129(a)(5). No party has asserted otherwise.

F. The Plan Does Not Require Governmental Regulatory Approval (Section 1129(a)(6)).

79. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. The Plan does not provide for any rate changes and the Debtors are not subject to any such regulation. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to these chapter 11 cases, and no party has asserted otherwise.

G. The Plan Is in the Best Interests of All the Debtors' Creditors (Section 1129(a)(7)).

80. Section 1129(a)(7) of the Bankruptcy Code, commonly known as the "best interests test," 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 of not less than that which such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.[118] The best interests test applies to individual dissenting holders of impaired claims and interests rather than classes,[119] and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7

[118] *See* 11 U.S.C. § 1129(a)(7)(A)(ii).

[119] *See Bank of Am. Nat. Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 442 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."); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (stating that section 1129(a)(7) is satisfied when an impaired holder of claims would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation").

liquidation of that debtor's estate against the estimated recoveries under that debtor's plan of reorganization.[120]

81. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test. As set forth in the Disclosure Statement[121] and the Kopa Declaration, the Debtors, with the assistance of their financial advisors, prepared a liquidation analysis that estimates recoveries for members of each Class under the Plan.[122] As set forth in the Kopa Declaration, projected recoveries for each Class under the Plan are not less than the recoveries estimated in a hypothetical chapter 7 liquidation. All Holders of Claims entitled to vote on the Plan received the Liquidation Analysis (which was attached to the Disclosure Statement) and have been provided ample time to consider the contents thereof. Accordingly, the Plan complies with section 1129(a)(7), and no party has asserted otherwise.

H. The Plan Is Confirmable Notwithstanding the Requirements of Section 1129(a)(8) of the Bankruptcy Code.

82. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. If any class of claims or interests rejects the plan, the plan must satisfy the "cramdown" requirements with respect to the claims or interests in that class.[123] Of the impaired classes of Claims and Interests under the Plan, Classes 4 and 5 voted nearly unanimously to accept the Plan. Holders of Claims and Interests in Classes 9

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[120] *See In re Neff*, 60 B.R. 448, 452 (Bankr. N.D. Tex. 1985) (stating that "best interests" of creditors means "creditors must receive distributions under the Chapter 11 plan with a present value at least equal to what they would have received in a Chapter 7 liquidation of the Debtor as of the effective date of the plan"), *aff'd*, 785 F.2d 1033 (5th Cir. 1986); *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.") (internal citation and quotation marks omitted).

[121] *See* Disclosure Statement, Ex. E.

[122] *See* Kopa Decl. ¶ 9.

[123] 11 U.S.C. § 1129(b).

and 10 are deemed to have rejected the Plan and thus were not entitled to vote. Although the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to the Impaired Classes that were deemed to reject the Plan, the Plan is confirmable nonetheless because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code, as discussed below, as both Impaired Voting Classes has voted to accept the Plan, and the Plan does not discriminate unfairly and is fair and equitable with respect to the Classes deemed to reject.

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

83. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan or receive certain other specified treatment as agreed by the claim holder in satisfaction of the claim and that the holders of certain other priority claims receive deferred cash payments.[124] In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.[125] Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan) or cash of a value equal to the allowed amount of such claim on the

[124] *See* 11 U.S.C. § 1129(a)(9).

[125] 11 U.S.C. § 1129(a)(9)(A).

effective date of the plan (if such class has not accepted the plan).[126] Finally, section 1129(a)(9)(C) provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the Petition Date, the present value of which equals the allowed amount of the claim.[127]

84. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code. ***First***, Article II.A of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because it provides that each Holder of an Allowed Administrative Claim will receive Cash equal to the amount of such Allowed Claim. ***Second***, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because no Holders of the types of Claims specified by 1129(a)(9)(B) are Impaired under the Plan. ***Third***, Article II.B of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides that Holders of Allowed Priority Tax Claims shall be treated in accordance with the terms of section 1129(a)(9)(C) of the Bankruptcy Code. The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code. No party has asserted otherwise.

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

85. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider."[128] Here, Classes 4 and 5, which are Impaired, voted to accept the Plan independent of any insiders' votes.[129] Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

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[126] 11 U.S.C. § 1129(a)(9)(B).

[127] 11 U.S.C. § 1129(a)(9)(C).

[128] 11 U.S.C. § 1129(a)(10).

[129] *See* Supplemental Voting Report, Ex. A (showing voting results including and excluding votes cast by insiders).

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

86. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that a plan is feasible as a condition precedent to confirmation. Specifically, the Bankruptcy Court must determine that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."[130] To demonstrate that a plan is feasible, a debtor's success need not be guaranteed.[131] Rather, a debtor must provide reasonable assurance of success.[132] The threshold of proof necessary to satisfy the feasibility requirement is low.[133] As demonstrated below, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code.

87. In determining feasibility, the following factors are probative:

a. the adequacy of the capital structure;

b. the earning power of the business;

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130 11 U.S.C. § 1129(a)(11).

131 *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); *In re Flintkote Co.*, 486 B.R. 99, 139 (Bankr. D. Del. 2012) (stating that the bankruptcy court "need not require a guarantee of success") (internal citations and quotation marks omitted); *In re W.R. Grace & Co.*, 475 B.R. at 115; *In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd,* 800 F.2d 581 (6th Cir. 1986).

132 *Kane*, 843 F.2d at 649; *In re Flintkote Co.*, 486 B.R. at 139; *In re W.R. Grace & Co.*, 475 B.R. at 115; *see also Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (holding that "[t]he purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation") (internal quotation marks omitted) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] (15th ed. 1984)); *In re Capmark Fin. Grp. Inc.*, No. 09-13684 (CSS), 2011 WL 6013718, at *61 (Bankr. D. Del. Oct. 5, 2011) (same).

133 *See, e.g.*, *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting approvingly that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility") (internal quotation marks and citations omitted); *In re Sea Garden Motel & Apartments*, 195 B.R. 294, 305 (D.N.J. 1996); *In re Tribune Co.*, 464 B.R. 126, 185 (Bankr. D. Del. 2011), *on reconsideration,* 464 B.R. 208 (Bankr. D. Del. 2011).

c. the economic conditions;

d. the ability of management;

e. the probability of the continuation of the same management; and

f. any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[134]

88. The Plan is feasible. As set forth in the Gabel Declaration, the Debtors and their advisors have thoroughly analyzed the Reorganized Debtors' ability to meet their post-confirmation obligations under the Plan and continue as a going concern without the need for further financial restructuring.[135] Additionally, as set forth in the Plan and the Gabel Declaration, the Debtors negotiated and secured commitments for exit funding in the form of the New Preferred Equity Investment, the Plan Sponsor Equity Investment, and the New ABL Facility.[136] The Consenting Stakeholders have committed to invest an additional $889 million in the Reorganized Debtors through the New Preferred Equity Investment and the Plan Sponsor Equity Investment. Accordingly, the Reorganized Debtors will emerge from chapter 11 with sufficient liquidity available to meet their obligations in the ordinary course.[137] The Debtors' management team and their advisors have made significant progress in designing and implementing a business plan that will enable the Reorganized Debtors to succeed in their go-forward operations.[138]

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134 *See, e.g.*, *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *28 (Bankr. D. Del. May 13, 2010) (internal citations omitted).

135 *See* Gabel Decl. ¶ 22.

136 *See id.*

137 *See id*.

138 *Id.* ¶ 23.

89. Moreover, as set forth in the Disclosure Statement, the Debtors prepared projections (the "Financial Projections") of the Debtors' financial performance for fiscal years 2026 through 2030 (the "Projection Period").[139] These Financial Projections reflect a series of realistic assumptions regarding the Debtors and their industries and demonstrate the Debtors' liquidity and ability to meet their obligations in the ordinary course. The Financial Projections demonstrate the Reorganized Debtors' ability to generate sufficient cash to meet ongoing financial obligations of the business and otherwise meet their obligations under the Plan. In sum, the Financial Projections demonstrate a reasonable assurance that the Reorganized Debtors will have and maintain sufficient liquidity and assets to pay amounts due under the Plan, including post-confirmation obligations, and fund their operations during the Projection Period without the need for further financial restructuring.[140]

90. In addition, upon the Effective Date, the Debtors expect to have sufficient funds to make all payments contemplated by the Plan as a result of the enhanced liquidity provided by the New Preferred Equity Investment, the Plan Sponsor Equity Investment, the New Debt, and the New ABL Facility. The Debtors, along with their professionals, have closely evaluated their cash flows to ensure that they will be able to make all Plan payments required on the Effective Date as well as in the months to come.[141] The Plan is feasible and Confirmation is not likely to be followed by liquidation or need for further financial reorganization of the Debtors or any successor to the

[139] *See* Disclosure Statement, Ex. C.

[140] *See* Gabel Decl. ¶¶ 23–25.

[141] *See id* ¶ 26.

Debtors under the Plan.[142] Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code. No party has asserted otherwise.

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

91. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan."[143] Section 507(a)(2) of the Bankruptcy Code provides that "any fees and charges assessed against the estate under section 1930 of chapter 123 of title 28" are afforded priority as administrative expenses.[144]

92. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article II.E of the Plan provides that, on the Effective Date, the Debtors shall pay all such fees and charges, to the extent applicable, due before the Effective Date. After the Effective Date, all such fees will be paid when due and payable until these chapter 11 cases are converted, dismissed, or closed, whichever occurs first.[145]

93. Accordingly, the Plan fully complies with and satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code, and no party has asserted otherwise.

M. All Retiree Benefits Will Continue Post-Confirmation (Section 1129(a)(13)).

94. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits established at any level continue post-confirmation in accordance with section 1114 of the Bankruptcy Code.

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142 *See id.* ¶ 22.

143 11 U.S.C. § 1129(a)(12).

144 11 U.S.C. § 507(a)(2).

145 Plan, Art. II.E.

95. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code because Article V.G of the Plan provides that from and after the Effective Date, all retiree benefits, as defined in section 1114 of the Bankruptcy Code, if any, will continue to be paid in accordance with applicable law.[146] The Plan therefore satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code, and no party has asserted otherwise.

N. Sections 1129(a)(14) through 1129(a)(16) Do Not Apply to the Plan.

96. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. Because the Debtors are not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. Because none of the Debtors is an "individual," the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply. Finally, because none of the Debtors is a nonprofit corporation or trust, section 1129(a)(16) of the Bankruptcy Code, which relates only to nonprofit corporations or trusts, does not apply.

[146] *Id*., Art. V.G.

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

97. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied.[147] To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[148]

98. The Plan satisfies section 1129(b) of the Bankruptcy Code. The two Impaired Classes entitled to vote on the Plan (Classes 4 and 5) voted to accept the Plan. Classes 9 and 10 will receive no recovery and are deemed to reject the Plan. Classes 7 and 8 may be deemed to reject the Plan based on the Debtors' ultimate determination on whether to Reinstate or cancel Intercompany Claims and Intercompany Interests. With respect to Classes 7, 8, 9, and 10, the Plan is fair and equitable and does not discriminate unfairly.

1. The Plan Is Fair and Equitable (Section 1129(b)(2)(B)(ii)).

99. A plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the "absolute priority" rule.[149] With

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147 *See* 11 U.S.C. § 1129(b).

148 *See* 11 U.S.C. § 1129(b)(1); *In re Route 37 Bus. Park Assocs.*, 987 F.2d at 157 n.5; *Liberty Nat'l Enter. v. Ambanc La Mesa L.P. (In re Ambanc La Mesa L.P.)*, 115 F.3d 650, 653 (9th Cir. 1997) ("the [p]lan satisfies the 'cramdown' alternative . . . found in 11 U.S.C. § 1129(b), which requires that the [p]lan 'does not discriminate unfairly' against and 'is fair and equitable' towards each impaired class that has not accepted the [p]lan.").

149 *203 N. LaSalle,* 526 U.S. at 441–42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

respect to any dissenting class of creditors, such creditors' claims must be fully satisfied before any junior creditor receives anything on account of its claim.[150] With respect to a class of equity interests that is receiving no recovery under a plan, the absolute priority rule requires only that no class junior to such equity interest receive any distribution under a plan.[151] Although Holders of General Unsecured Claims in Class 6 are Unimpaired under the Plan, such treatment does not violate the absolute priority rule because every senior Class is either Unimpaired or voted to accept the Plan. With respect to each Impaired Class that is deemed to have rejected the Plan, the Plan nonetheless satisfies the absolute priority rule because no Class that is junior to such Impaired Class will receive or retain any property on account of the Claims or Interests in such Class.

100. The corollary of the absolute priority rule requires that, if the holders of claims or interests in a particular class receive less than full value for their claims or interests, then senior classes cannot receive more than a 100 percent recovery for their claims or interests.[152] As set forth in more detail in the Gabel Declaration, the Plan satisfies the corollary to the absolute priority rule because no Class of Claims is receiving more than a 100 percent recovery under the Plan.[153]

101. Accordingly, given the adherence to the absolute priority rule and its corollary, the Plan fully complies with, and satisfies the "fair and equitable" requirements of, section 1129(b) of the Bankruptcy Code.

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[150] *See id.*

[151] 11 U.S.C. § 1129(b)(2)(C)(ii).

[152] *See In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 612 (Bankr. D. Del. 2001) ("A corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims.").

[153] *See* Gabel Decl. ¶ 32; *see also* Disclosure Statement, Art. III.E; Plan, Art. VII.I.

2. The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes that Have Not Voted to Accept the Plan (Section 1129(b)(1)).

102. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of the particular case to make the determination.[154] In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if (a) it provides different treatment to a dissenting class of creditors than to another class of creditors with similar legal rights, taking into account whether the different treatment is material and the relative risks associated with each class's treatment, and (b) there is not sufficient justification for doing so.[155] A threshold inquiry to assessing whether a proposed plan of reorganization unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly

[154] *See Hargreaves v. Nuverra Env't Sols., Inc. (In re Nuverra)*, 590 B.R. 75, 93 (D. Del. 2018), *aff'd*, 834 F. App'x 729 (3d Cir. 2021), *as amended* (Feb. 2, 2021) ("As unfair discrimination is not defined in the Bankruptcy Code, courts must examine the facts and circumstances of the particular case to determine whether unfair discrimination exists."); *In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established."), *rev'd on other grounds*, *203 N. LaSalle St. P'ship*, 526 U.S. 434; *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"); *In re Aztec Co.*, 107 B.R. 585, 589–91 (Bankr. M.D. Tenn. 1989) ("Courts interpreting language elsewhere in the Code, similar in words and function to § 1129(b)(1), have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination.").

[155] *See In re Nuverra*, 590 B.R. at 93 (holding that a plan's unequal treatment of substantially similar claims did not constitute unfair discrimination where such unequal treatment was justified); *In re Aleris Int'l*, 2010 WL 3492664, at *31 ("section 1129(b) of the Bankruptcy Code ensures that a plan does not unfairly discriminate against a dissenting class with respect to the value the dissenting class will receive under a plan when compared to the value given to all other similarly situated classes") (citing *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (Bankr. D. Del. 2006)); *In re Coram Healthcare Corp.*, 315 B.R. at 349 (citing cases and noting that separate classification and treatment of claims is acceptable if the separate classification is justified because such claims are essential to a reorganized debtor's ongoing business); *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 661 (Bankr. D. Del. 2003) (permitting different treatment of two classes of similarly situated creditors upon a determination that the debtors showed a legitimate basis for such discrimination), *aff'd sub nom. In re Lernout & Hauspie Speech Prod. N.V.*, 308 B.R. 672 (D. Del. 2004); *Ambanc La Mesa*, 115 F.3d at 656–57 (same); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) (stating that interests of objecting class were not similar or comparable to those of any other class and thus there was no unfair discrimination).

receiving more favorable treatment.[156] The "hallmarks of the various tests [for unfair discrimination] have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination."[157] For example, preferable treatment of general unsecured creditors who primarily represent the applicable debtors' vendors, customers, and employees, as compared to the debtors' prepetition funded debt, is permitted, even where the difference in treatment is significant, because such general unsecured creditors are essential to the debtors' reorganization.[158]

103. As an initial matter, the protections of section 1129(b) apply only to Impaired Classes that voted to reject the Plan.[159] Here, any objections regarding the Plan's compliance with section 1129(b) of the Bankruptcy Code have been withdrawn or otherwise resolved.

104. In any case, the Plan's classification scheme rests on a sound, legally acceptable rationale because it separates substantively dissimilar Claims into separate Classes. Because of the ongoing business relationship among the Debtors and the Holders of General Unsecured

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156 *See In re Aleris Int'l*, 2010 WL 3492664, at *31 (citing *In re Armstrong World Indus.,* 348 B.R. at 121).

157 *In re Lernout*, 301 B.R. at 660; *see also In re Exide Techs.*, 303 B.R. at 78 ("Therefore, in order to confirm the [p]lan, the [d]ebtor must show that (i) there is a reasonable basis for the [d]ebtor's separate classification of the general unsecured creditors, the 10% Senior Noteholders, and the 2.9% Convertible Note Claims; and (ii) that the Debtor cannot confirm a plan absent the separate classification of unsecured claims.").

158 *See, e.g.*, *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026) (confirming plan in which holders of general unsecured claims were unimpaired and holders of funded debt claims were impaired); *In re United Site Servs. ,Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 27, 2026) (same); *In re Lannett Co.*, No. 23-10559 (JKS) (Bankr. D. Del. June 8, 2023) (confirming plan in which trade creditors received a 100% recovery and unsecured debt claims received a nominal recovery); *Nuverra*, 590 B.R. at 92 (confirming plan in which trade creditors received a 100% recovery and other general unsecured creditors received a 4% to 6% recovery); *In re Richard Buick, Inc.*, 126 B.R. 830 (Bankr. E.D. Pa. 1991) (confirming plan where trade creditors received a 100% recovery and other general unsecured creditors received a 5% recovery); *In re Robertshaw US Holdings Corp.*, No. 24-90052, 2024 WL 3897812 (Bankr. S.D. Tex. Aug. 16, 2024) (confirming plan where trade creditors received a 100% recovery and other general unsecured creditors received a 0% to 5% recovery); *In re Charter Commcn's*, 419 B.R. 221 (Bankr. S.D.N.Y. 2009) (confirming plan where trade creditors received a 100% recovery and unsecured note holders received a 32.7% recovery).

159 11 U.S.C. § 1129(b)(1) (requiring that the plan "does not discriminate unfairly, and is fair and equitable, with respect to ***each class*** of claims . . . that is impaired under, ***and has not accepted***, the plan" (emphasis added)).

Claims, the treatment of such Claims will have a material impact on the Debtors' future day-to-day operations and ultimately weigh heavily on the prospects of a successful reorganization. By contrast, any ongoing, post-Effective Date relationship among the Debtors and the Holders of Claims in Class 5 is incidental to distributions made on account of such Claims in the form of New Common Equity and/or New Debt. The Debtors need not rely on Holders of Claims in Class 5 to provide future financing nor any other product or service necessary to the Debtors' post-Effective Date operations.

105. Further, Class 5 voted nearly unanimously in favor of the Plan. The Plan's treatment of Claims in Class 5 is proper because the favorable treatment of Class 6 stems from the essential role such creditors will play in the Debtors' go-forward business and the success of their reorganization.

106. Claims in Class 7 and Class 8 are not similarly situated to any other Classes, given their distinctly different legal character from all other Claims and Interests, and may be Unimpaired. These Intercompany Claims and Intercompany Interests, which exist to support the Debtors' corporate structure, may be Reinstated because Reinstatement of intercompany claims and interests advances an efficient reorganization by avoiding the need to unwind and recreate the corporate structure and relationships of the Reorganized Debtors. This Reinstatement does not affect the economic substance of the Plan for the Debtors' stakeholders.

107. With respect to Section 510(b) Claims (Class 9), the Debtors do not believe any Section 510(b) Claims exist. Out of an abundance of caution, the Debtors formed Class 9 to include Holders of Claims that may be subordinated pursuant to section 510(b) of the Bankruptcy Code. The Plan's treatment of Class 9 is proper because no similarly situated Class will receive

more favorable treatment. As there are no Holders of Section 510(b) Claims, no distributions should or will be made to Class 9. No party in interest has asserted otherwise.

108. Finally, with respect to Existing Equity Interests (Class 10), the Debtors formed Class 10 to include Holders of Existing Equity Interests in Labels Buyer, LLC. Existing Equity Interests are classified separately from Intercompany Interests because they reflect the economic entitlements of shareholders that own the Existing Equity Interests in the Debtors' enterprise.[160] Significantly, Holders of Intercompany Interests will not receive a recovery under the Plan and Intercompany Interests may be Reinstated only for administrative convenience in the restructuring process. Thus, the Plan's treatment of Class 10 is proper because no similarly situated Class will receive more favorable treatment. No party has asserted otherwise.

109. Thus, the Plan does not discriminate unfairly in contravention of section 1129(b)(1) of the Bankruptcy Code and the Plan may be confirmed notwithstanding the deemed rejection by Classes 7, 8, 9, and 10 (as applicable).

P. The Plan Complies with the Other Provisions of Section 1129 of the Bankruptcy Code (Section 1129(c)–(e)).

110. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. Section 1129(c), prohibiting confirmation of multiple plans, is not implicated because there is only one proposed plan of reorganization.[161]

111. Section 1129(d) of the Bankruptcy Code provides that "on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities

[160] *See* Gabel Decl. ¶ 32.

[161] *See* 11 U.S.C. § 1129(c).

Act of 1933."[162] The principal purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act. The Debtors filed the Plan to accomplish their objective of reorganizing their capital structure and maximizing value for all of their stakeholders.[163] Moreover, no governmental unit or any other party has asserted otherwise. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

112. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases is a "small business case."[164] Thus, the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements.

Q. Modifications to the Plan Do Not Require Resolicitation.

113. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code.[165] Further, when the proponent of a plan files the plan with modifications with the court, the plan as modified becomes the plan. Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who have previously accepted the plan if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or the interest of any equity security holder. Interpreting Bankruptcy Rule 3019, courts have held that a proposed modification to a previously accepted plan will be deemed accepted where the

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[162] 11 U.S.C. § 1129(d).

[163] *See id.*

[164] *See* 11 U.S.C. § 1129(e). A "small business debtor" cannot be a member "of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,725,625[] (excluding debt owed to 1 or more affiliates or insiders)." 11 U.S.C. § 101(51D)(B).

[165] *See* 11 U.S.C. § 1127(a).

proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated.[166] Bankruptcy Rule 3019 allows a creditor that is negatively impacted by a change to accept the change in writing.

114. The Debtors made certain modifications reflected in the amended Plan (the "Modifications"). The Modifications are: (a) immaterial or technical clarifications; (b) material but implemented with the consent of the applicable Holders of Claims; or (c) modifications that resolve informal comments or objections to the Plan. Thus, the Modifications comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Accordingly, no additional solicitation or disclosure is required on account of the modifications, and that such modifications should be deemed accepted by all creditors that previously accepted the Plan.

III. The UST Objection Should Be Overruled.

115. The Debtors worked collaboratively with the U.S. Trustee to narrow the UST Objection in advance of the Combined Hearing. The UST Objection sets forth the remaining issues. The primary thrust of the UST Objection is that (a) the Third-Party Release set forth in Article VIII.D of the Plan is impermissible and nonconsensual, (b) the Debtor Release is overbroad, (c) the injunction and Gatekeeping Provision are improper; (d) the Debtors' request for a waiver of the stay under Bankruptcy Rule 3020(e) is improper; and (e) the Plan cannot constitute

[166] *See, e.g.*, *In re Am. Solar King Corp.*, 90 B.R. 808, 823 (Bankr. W.D. Tex. 1988); *see also In re Gen. Wireless Operations Inc.*, 2017 WL 5461361, at *4 (Bankr. D. Del. Oct. 26, 2017) (finding that additional disclosure was not required where modifications did not "materially and adversely change the treatment of any Claims or Interests"); *In re Nat'l Truck Funding LLC*, 588 B.R. 175, 178 (Bankr. S.D. Miss. 2018) ("The disclosure requirements under § 1125 apply to a modified plan only if the modification is material.").

a settlement under Bankruptcy Rule 9019.[167] Contrary to the UST Objection, extensive case law in this district—unchanged by the Supreme Court's ruling in *Purdue*—is clear that third-party releases with an opt-out mechanism similar to the one contemplated in the Plan and related documents are appropriate and consensual, and gatekeeping provisions represent valid exercise of the bankruptcy court's power to enforce the release and injunction provided by the Plan. For the reasons set forth below, the UST Objection should be overruled.

A. The Third-Party Release is Appropriate and Consensual and Should be Approved.

1. A Third-Party Release with Opportunity to Opt Out is Consensual.

116. By requiring parties in interest to affirmatively indicate their consent to the Third-Party Release,[168] the U.S. Trustee is seeking to impose a requirement for third-party releases that is not required by the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P.*[169] Claiming that the opt-out mechanism is not sufficient to indicate consent, the UST Objection restates pre-*Purdue* arguments that did not pass muster then and have been repeatedly overruled by courts in this district since. Nothing in *Purdue* holds that third-party releases with an opportunity to opt out are non-consensual or *per se* improper. Indeed, the Supreme Court was clear in its opinion that it does "not express a view on what qualifies as a consensual release" and that "[n]othing in the opinion should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan."[170]

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[167] *See generally* UST Obj. With respect to the remaining objections in the UST Objection regarding the scope of Exculpated Parties and certain language deeming classes casting no votes to have accepted the Plan, the Debtors have amended the Plan and understand that the revisions resolved the U.S. Trustee's concerns.

[168] *See* UST Obj. ¶¶ 34–35.

[169] 603 U.S. 204 (2024)

[170] *Purdue Pharma*, 144 S. Ct. at 2074.

117. To that end, in the time since *Purdue* was decided, courts in this district have consistently held that third-party releases with opt-out mechanism similar to the one the Plan proposes are consensual and appropriate, and that the *Purdue* decision does not alter the consensual nature of third-party releases where a creditor is given—but chooses not to exercise—its right to object to or opt out of such releases.[171] Indeed, in a string of post-*Purdue* decisions, this Court and others in this district have declined to mandate opt-ins, held that adequate notice and an opportunity to object or otherwise opt out is sufficient to bind creditors to the terms of a third-party release, and confirmed plans containing similar opt-out third-party releases as the Debtors propose here.[172]

118. For example, just last month in *United Site Services*, this Bankruptcy Court overruled a similar objection from the U.S. Trustee and confirmed a chapter 11 plan with a substantially similar opt-out third-party release.[173] Just days before that, another court in this district overruled a similar objection from the U.S. Trustee.[174] Likewise, in *New Rite Aid*, this

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[171] *See In re New Rite Aid, LLC*, No. 25-14861 (MBK), Nov. 4, 2025 Hr'g Tr. at 58:1–4 ("Indeed, in the District of New Jersey our court—our courts have been rather uniform in recognizing opt out provisions as fundamentally fair and consistent with due process and applicable bankruptcy law.").

[172] *See, e.g.*, *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 27, 2026); *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026); *In re CCA Construction, Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Feb. 11, 2026); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025); *In re Sam Ash Music Corp.*, No. 24-14727 (SLM) (Bankr D.N.J. Aug. 15, 2024).

[173] *See In re United Site Services, Inc.*, No. 25-23630 (MBK), Hr'g Tr. 35:15–39:14 (Bank. D.N.J. Feb. 25, 2026); *see also* Confirmation Order, Ex. A., ArtI.A.1.191 (defining "Releasing Parties" to include "(xii) the Holders of Claims or Interests who vote to accept the Plan and who do not affirmatively opt out of the Third-Party Release, (xiii) the Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the Third-Party Release, (xiv) the Holders of Claims or Interests who abstain from voting on the Plan and who do not affirmatively opt out of the Third-Party Release, (xv) the Holders of Claims or Interests who are deemed to reject the Plan and who do not affirmatively opt out of the Third-Party Release, and (xvi) the Holders of Claims or Interests who vote to reject the Plan and who do not affirmatively opt out of the Third-Party Release").

[174] *See In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) Hr'g Tr. 16:5–10 (Bankr. D.N.J. Feb. 23, 2026) ("It's easy enough to opt out . . . in a bankruptcy case where we're talking about restructuring a global entity, or even a national entity, that contributes to our economy, that employs numbers of people, an opt-out seems to me the only sensible, fair way to address these issues.").

Court overruled the U.S. Trustee on the same issue, emphasizing that "[t]o be clear, this Court's [pre-*Purdue*] position has not changed and joins other courts in this district, the circuit, and the 93 other districts which approve the use of informed opt out procedures to reflect consent, to propose consensual releases under the Chapter 11 plan."[175] Similarly, in *Sam Ash Music*, Judge Meisel held that *Purdue* does not change pre-existing practice regarding the appropriateness of third-party releases.[176]

119. The U.S. Trustee contends that opt-out third-party releases are inappropriate, arguing that because silence generally does not indicate consent under state contract law, an opt-out mechanism does not indicate consent either under federal bankruptcy law.[177]

120. The U.S. Trustee is mistaken. The power granted to Congress to enact uniform bankruptcy laws displaces state law where "state law interferes with uniformity or federal law directly governs the matter."[178] Consent under federal bankruptcy law, including with respect to the third-party releases under plan, is one such matter that is not controlled by state contract law; instead:

> Opt Out consent procedures are governed by federal rules. They involve questions concerning balance structure, disclosure adequacy, plan solicitation and release mechanisms, and they are governed by Sections 1125, 1126 and Federal Rule of Bankruptcy Procedure 3017 and 3018. These are procedural federal rules and Federal Court statutes and, thus, the Federal Courts maintain exclusive authority over them. ***State law cannot dictate the legal effect of federal voting and solicitation process, and applying state***

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[175] *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr'g Tr. 57:21–25 (Bankr. D.N.J. Nov. 4, 2025).

[176] *In re Sam Ash*, No. 24-14727 (SLM), Hr'g Tr. 53:23–54:3 (Bankr. D.N.J. Aug. 15, 2024) ("[W]e don't have a Supreme Court decision that addresses this issue as to what is consent. I mean, you all are trying to bind me to *Purdue*, and I will be the first to say I am bound by the Supreme Court, except *Purdue* doesn't bind me to the definition of consent because it's not there.").

[177] *See* UST Obj. § II.C.

[178] *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr'g Tr. 58:12–14 (Bankr. D.N.J. Nov. 4, 2025).

> ***law would defeat national uniformity.*** A Chapter 11 plan is a federal judgment, not a contract . . . ***Courts have repeatedly emphasized that a Chapter 11 plan is a Federal Court order, not merely a private contract with state law consent requirements.*** Courts evaluating releases [] apply federal bankruptcy standards, such as good faith, fairness, adequacy of notice and not necessarily state assent doctrines. ***Bankruptcy laws routinely treat[] silence as consent.*** Bankruptcy law often recognized deemed consent in various contexts . . . ***Thus, federal law already treats notice and no objection as consent in appropriate situations. State contract law, which often requires affirmative consent, conflicts with this fundamental bankruptcy structure.*** (emphasis added).[179]

Under the alternative, opt-in mechanism, creditors who ignore the plan process may "miss out" on the benefits provided under the plan, and "[t]he very constituency that the U.S. Trustee wishes to protect may fare worse in an opt in process, all in the name of providing them with an opportunity to bring lawsuits, which in reality [they] are highly unlikely to pursue."[180]

121. Accordingly, under this district's pre- and post-*Purdue* case law, a third-party release is consensual with respect to non-debtor parties if the releasing parties have received appropriate notice of a plan's release provisions and have had the opportunity to object or

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[179] *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr'g Tr. 58:15–59:19 (Bankr. D.N.J. Nov. 4, 2025) (emphasis added); *see also In re Extraction Oil and Gas*, No. 20-11548 (CSS) (Bankr. D. Del. 2020) (holding that "I don't believe [the opt out mechanism] is necessarily a contractual point . . . as much as it is a point of notice under the Bankruptcy Code and the Bankruptcy Rules, because it's the plan that serves as the mechanism to have the release take effect and, thus, ***it's really the rules, the Federal Rules of Bankruptcy Procedure that figure out whether someone has achieved proper notice and has, by not responding, given their implied consent.*** Importantly, the Supreme Court recently, in the context of whether someone is consenting to the Article III jurisdiction of an Article I court, specifically held that you could imply consent by failure to preserve the right to argue that I don't have Article III powers. This is no different. This is a court who set up a mechanism to confirm a plan that contains releases and has provided a noticing mechanism under which, if it's complied with, consent can be implied.") (emphasis added).

[180] *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr'g Tr. 60:8–13 (Bankr. D.N.J. Nov. 4, 2025). Courts recognize that shareholders and creditors have an obligation to read their mail. *See In re Mallinckrodt PLC*, 639 B.R. at 880 (quoting *In re EV Energy Partners*, No. 18-10814 (CSS), Hr'g Tr. at 214 (Bankr. D. Del. May 16, 2018) ("[S]hareholders and creditors have to read legal notices; that's just the way it is. And if you don't know that, then you're proceeding at your own risk when you invest in stocks and credit and bonds.")); *see also In re Arsenal Intermediate Holdings, LLC,* No. 23-10097 (CTG), 2023 WL 2655592, at *7 (Bankr. D. Del. Mar. 27, 2023) ("[T]he creditor who throws away the plan unopened is barred from arguing that the third-party release failed to meet the *Continental* standard.").

otherwise opt out of the release but fail to do so, whether by not returning the ballot or the opt-out form or not checking the opt-out box on the ballot, and no other form of affirmative consent is necessary.[181]

2. The Facts and Circumstances of these Chapter 11 Cases Support the Approval of the Third-Party Release.

122. The Bankruptcy Code provides a chapter 11 plan may include "any other appropriate provision not inconsistent with the applicable provisions of this title."[182] Courts in this jurisdiction regularly approve release provisions similar to the Third-Party Release if, as here, they are consensual and appropriately tailored.[183] The determination as to whether a third-party release is consensual depends on the particular circumstances at issue in a particular case.[184] The proposed Third-Party Release is appropriate under the facts and circumstances, is consistent with similar third-party releases previously approved by courts in this district, and should be approved.

123. The Third-Party Release is an integral and essential provision of the Plan, provides finality for the Released Parties regarding such parties' respective obligations under the Plan, is in exchange for good and valuable consideration (*i.e.*, the material concessions, benefits, and commitments) provided by the Released Parties, is in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests, is fair, equitable, and reasonable, and is given and made after due notice and opportunity to be heard. The Third-Party Release certainly does not provide

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[181] *See, e.g.*, *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 27, 2026) (confirming a chapter 11 plan with an opt-out third-party release); *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026) (same); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025) (same); *In re Sam Ash Music Corp.*, No. 24-14727 (SLM) (Bankr D.N.J. Aug. 15, 2024) (same); *In re Bowflex Inc.*, No. 24-12364 (ABA) (Bankr. D.N.J. Aug. 18, 2024) (same).

[182] 11 U.S.C. § 1123(b)(6).

[183] *See supra* n.179.

[184] *See In re Indianapolis Downs*, 486 B.R. at 305

blanket immunity, but is tailored to claims or Causes of Actions related to the Debtors and their restructuring, capital initiatives, and related efforts.[185]

124. Generally, whether a third-party release is consensual depends on a fact-specific inquiry that takes into account the form of the notice sent, the process for sending such notice, whether the parties solicited were given a full and fair opportunity to respond, and the identity of the parties, including their relationship to the bankruptcy case.[186] In particular, courts in this district have emphasized the importance of providing adequate, clear, and conspicuous notice to parties that may opt out of the third-party releases.[187] Based on these factors, as discussed further below, the proposed Third-Party Release is appropriate and should be approved.

a. *Creditors Received Clear and Conspicuous Notice of the Third-Party Release.*

125. All creditors received clear and conspicuous notice of the Third-Party Release through Bankruptcy Court approved Ballots, Opt-Out Forms, Publication Notices, and the Combined Hearing Notice. As described above, and pursuant to the procedures set forth in the Disclosure Statement Order, the Solicitation Agent served the Solicitation Packages as instructed to creditors in the Voting Classes on January 27, 2026, and the Notice of Non-Voting Status and

[185] *See* Plan, Art. VIII.D (providing that the Third-Party Release does not release "any Claims or Causes of action arising from such Released Party's willful misconduct or actual fraud as determined by a final non-appealable order entered by a court of competent jurisdiction").

[186] *See In re Tricida*, No. 23-10024 (JTD), Hr'g Tr. 144:9–20 (Bankr. D. Del. May 19, 2023); *see also In re Indianapolis Downs*, 486 B.R. at 305.

[187] *See, e.g.*, *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK), Hr'g Tr. 38–40 (Bankr. D.N.J. Sept. 12, 2023) ("What is essential, though, is that the parties be given notice of that obligation. That is critical. And here there can be no question that there was adequate clear and conspicuous notice. The obligation to affirmatively opt out appears in the plan, in the disclosure statement, in the ballots. It should come as no surprise . . . Again, [the notices have] been conspicuous. They've been clear. There's transparency and I don't view it as burdensome in order to protect their interests. The ability to opt out and pursue claims exists. It takes the simple task of reading a document, either digitally or in paper, and exercising opt out.").

Opt-Out Form to creditors in the Non-Voting Classes on February 3, 2026.[188] In addition to the Notices of Non-Voting Status and Opt-Out Form, the Debtors caused the publication of the Publication Notice in *The New York Times* (national edition) and the *Financial Times* (global edition),[189] and the Combined Hearing Notice was also posted on the Debtors' case website maintained by the Solicitation Agent. The Solicitation Agent also served the Combined Hearing Notice on the parties-in-interest listed on the Debtors' creditor matrix.[190] The Ballots, the Opt-Out Forms, and the Combined Hearing Notice contained the full text of the Third-Party Release and the related defined terms;[191] the Ballots and the Opt-Out Form clearly and conspicuously informed creditors of the consequences of failing to opt out of or object to the Third-Party Releases;[192] and the Publication Notice advised all stakeholders to "carefully review and consider the Plan, including the release, exculpation, discharge, and injunction provisions, as [their] rights may be affected" and informed them how they may obtain copies of the Plan, the Disclosure Statement, and other documents filed in these chapter 11 cases free of charge.[193] In addition, as in many cases in this district, each Ballot in these chapter 11 cases informed creditors that a vote in favor of a plan includes an agreement to be bound by the third-party releases contained therein.[194] Thus, all creditors and stakeholders had notice of the Third-Party Release and its terms.

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188 *See* Voting Report ¶ 8.

189 *See Proof of Publication* [Docket No. 202]; *Affidavit of Publication* [Docket No. 203].

190 *See Certificate of Service* [Docket No. 286].

191 *See* Disclosure Statement Order, Exhibits 1, 4, 5, and 6.

192 *See* Disclosure Statement Order, Exhibits 4 and 5.

193 *See Proof of Publication* [Docket No. 202]; *Affidavit of Publication* [Docket No. 203].

194 *See, e.g.*, *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Apr. 29, 2024) (order approving the adequacy of the disclosure statement, whose ballots provided that "if you voted to accept the plan . . . you may not opt out of the third-party release."); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 18, 2024)

126. The notice provided to all creditors clearly explained the terms of the Third-Party Release and instructed creditors on how to respond. Specifically, the Ballots, the Notice of Non-Voting Status and Opt-Out Forms, and the Combined Hearing Notice quoted the entirety of the Third-Party Release in bold, conspicuous font, and clearly informed such Holders that they would be bound by the Third-Party Release if they (i) voted to accept the Plan, (ii) voted to reject the Plan and did not "opt out" of the Third-Party Release on the applicable Ballot, or (iii) were not eligible to vote on the Plan and either (a) did not opt out of the Third-Party Release on the applicable Opt-Out Form or (b) did not timely File an objection on the docket of these chapter 11 cases, as applicable.

127. Courts have been clear: creditors have a responsibility to read and respond to legal notices as appropriate, and "simply checking a box to preserve [one's] right is not onerous, is not an obstacle, and is not a hindrance as long as [one is] on notice of the need to do so."[195] This Court recently reinforced that responsibility.[196]

b. *Creditors Had a Fair Opportunity to Opt Out of, or Otherwise Object to, the Third-Party Release.*

128. All parties to be bound by the Third-Party Release had sufficient opportunity to evaluate the Third-Party Release and, to the extent they were not already bound by the Restructuring Support Agreement to consent to such release, either opt out of such release or file

(order approving the adequacy of the disclosure statement, whose ballots provided that "if you vote to accept the plan . . . you will be deemed to consent to the releases set forth in . . . the plan.").

[195] *In re BlockFi Inc.* No. 22-19361 (MBK) Hr'g Tr. at 111 (Bankr. D.N.J. Sept. 26, 2023); *see also In re Lannett Co.*, No. 23-10559 (JKS), Hr'g Tr. 36:2–8 (Bankr. D. Del. June 8, 2023) ("As I and others on this Cour[t] have previously ruled, when a disclosure is prominent and conspicuous an[] opt-out mechanism is a valid means of obtaining consent. It is incumbent on effected parties who have been properly served to protect their own rights. Parties that fail to act in response to a judicial process are routinely bound by the results of the process.").

[196] *In re United Site Services, Inc.*, No. 25-23630 (MBK), Feb. 25, 2026, Hr'g Tr. at 35:15–39:14 (Bankr. D.N.J. Feb. 25, 2026).

an objection to Confirmation. Specifically, Holders of Claims in the Voting Classes had 36 days to review the Plan and submit their Ballot and Holders of Claims and Interests in the Non-Voting Classes had 30 days to return their Opt Out Form. As of the Objection Deadline and Opt-Out Deadline, approximately 623 parties exercised their right to opt out of the Third-Party Release, and only the U.S. Trustee filed an objection to the Third-Party Release. These noticing measures were calculated to provide the most effective and expansive notice to all parties entitled to opt out of the Third-Party Release and have achieved their purpose.[197]

c. *Applying Third-Party Releases to the Releasing Parties Is Appropriate.*

129. Under the Plan, the "Releasing Parties" include (a) all Holders of Claims or Interests that vote to accept or reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (b) all Holders of Claims or Interests that abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (c) all Holders of Claims or Interests who are deemed to accept or deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan.[198] The U.S. Trustee objects to the Third-Party Release as applied to all Holders of Claims or Interests other than those that signed the Restructuring Support Agreement.[199] The U.S. Trustee's objection should be overruled.

130. Four classes of Claims—the Class 1 Other Secured Claims, the Class 2 Other Priority Claims, the Class 3 ABL Facility Claims, and the Class 6 General Unsecured Claims—

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[197] *See* Voting Report, ¶ 19.

[198] *See* Plan, Art. I.A.200. The Releasing Parties also include the Releasing Parties' Related Parties. *See id*. To ensure that certain Releasing Parties do not unknowingly give up their rights to bring legitimate suits against Released Parties, the Debtors have amended the Plan to provide that the Releasing Parties shall only include the Related Parties of a Releasing Party that such a Releasing Party is legally entitled to bind under applicable non-bankruptcy law.

[199] *See* UST Obj. ¶¶ 52–58.

are Unimpaired and deemed to accept the Plan, and one class of Interests—the Class 10 Existing Interests—will not receive any distribution and is deemed to reject the Plan.[200]

131. The Debtors provided an opportunity to opt out of the Third-Party Release to Unimpaired creditors, including Holders of General Unsecured Claims.[201] Regardless, as to Unimpaired Creditors, holders of claims that are Unimpaired and thus deemed to have accepted the Plan may generally, and consensually, be bound by third-party release provisions.[202] Under the Plan, such creditors are Unimpaired in exchange for a release of claims and Causes of Action against the Released Parties arising from or relating to, among other things, the Debtors' pre- and postpetition restructuring and capital efforts, including the formulation and solicitation of the Plan—*i.e.* the Plan that provides for and allows such creditors to recover in full in the first instance.[203]

132. Specifically, with respect to the ABL Facility Claims, the ABL Lenders support the Restructuring Transactions by providing the New ABL Facility that will refinance the prepetition ABL Facility Claims. As an integral part of their support for the Restructuring Transactions, the ABL Lenders are both a Releasing Party and a Released Party. With respect to the General

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[200] Class 10 Section 510(b) Claims are also deemed to reject the Plan, but the Debtors do not anticipate that any such Claims exist. *See* Disclosure Statement, Art. III.E.

[201] *See* Plan, Art. I.B.200 (providing that Holders of Claims deemed to accept the Plan and do not affirmatively opt out of the Third-Party Release are Releasing Parties).

[202] *See, e.g., In re Indianapolis Downs*, 486 B.R. at 306 ("In this case, the third-party releases in question bind certain unimpaired creditors who are deemed to accept the Plan: these creditors are being paid in full and have therefore received consideration for the releases."); *In re Spansion, Inc.*, 426 B.R. at 144 ("I note that no creditor or interest holder whose rights are affected by the 'deemed' acceptance language has objected to the Plan. While I recognize—and fully appreciate—the importance of the UST's supervision of the administration of bankruptcy cases . . . the silence of the unimpaired classes on this issue is persuasive. This aspect of the Third-Party Release is not over-reaching. The unimpaired classes are being paid in full and have received adequate consideration for the release."). *In re Specialty Equip. Cos., Inc.*, 3 F.3d 1043, 1045–47 (upholding third-party releases where "the Plan provides that all creditors voting in favor of the Plan are deemed to give" such releases).

[203] *See* Plan, Art. III.B.

Unsecured Claims, general unsecured creditors are Unimpaired under the Plan. All Unimpaired creditors will receive significant benefits from these value-maximizing Restructuring Transactions as consideration for providing the Third-Party Release, especially given that higher priority secured creditors are Impaired under the Plan and that in a hypothetical liquidation under chapter 7 of the Bankruptcy Code, General Unsecured Claims will receive no recovery.[204] In addition, all Unimpaired creditors received the Notice of Non-Voting Status and the Opt-Out Form and thus are on notice and have ample opportunity to opt out of the Third-Party Release.

133. As to the only deemed rejecting Class, the Class 10 Existing Interests, the Third-Party Release is also appropriate. The Debtors are privately held. Other than the Sponsor, who is party to the Restructuring Support Agreement, the only other Holders of Existing Interests consists of a former acquisition counterparty and participants in the Debtors' equity incentive compensation program.[205] Such parties are highly familiar with the Debtors, received the Notice of Non-Voting Status and the Opt-Out Form, and are on notice and have the opportunity to opt out of the Third-Party Release. Courts in this district have consistently approved third-party releases with a similar opt-out mechanism as applied to deemed rejecting classes of claims and interest.[206]

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[204] *See* Disclosure Statement, Ex. C, Liquidation Analysis.

[205] *See Voluntary Petition of Labels Buyer, LLC*, Case No. 26-10928 (Bankr. D.N.J. Jan. 29, 2026) [Docket No. 1] at 6–9.

[206] *See, e.g.*, *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (confirming the plan and approving its opt-out releases where "Equity Interests" were a deemed rejecting class); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Jun. 13, 2024) (confirming the plan and approving its opt-out releases where multiple classes of interests were deemed rejecting classes); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 30, 2024) (confirming the plan and approving its opt-out releases where "Parent Interests" were a deemed rejecting class).

134. Importantly, the deemed accepting classes received the significant benefit of payment in full in cash or Reinstatement, which are unlikely to be available absent the value-maximizing Restructuring Transaction.

135. Additionally, courts have recognized that unimpaired creditors—who are being paid in full—consent to third-party releases when they have not objected to the Plan, as their silence can constitute consent.[207] Courts have also held that failure to opt out of a release by checking a box on the ballot—"a minimal task to preserve one's rights when faced with the need to protect one's interests"—constitutes consent.[208] Further, the Ballot and Opt-Out Form are similar to a "click wrap" agreement, which are commonly upheld by courts when coupled with clear and conspicuous notice of any associated terms.[209] Accordingly, the Third-Party Release is

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[207] *See In re Spansion*, 426 B.R. at 144 (overruling an objection to a release that bound unimpaired creditors, noting that "no creditor or interest holder whose rights are affected by the 'deemed' acceptance language has objected to the Plan" and the "silence of the unimpaired classes on this issue is persuasive").

[208] *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK), Hr'g Tr. at 38–40 (Bankr. D.N.J. Sept. 12, 2023); *see also In re Lannett Co.*, No. 23-10559 (JKS), Hr'g Tr. 36:2-8 (Bankr. D. Del. Jun. 8, 2023) ("As I and others on this Court have previously ruled, when a disclosure is prominent and conspicuous an opt-out mechanism is a valid means of obtaining consent. It is incumbent on effected parties who have been properly served to protect their own rights. Parties that fail to act in response to a judicial process are routinely bound by the result of the process."); *In re RCS Cap. Corp.*, No. 16-10223 (MFW), Hr'g Tr. 59:21–60:2 (Bankr. D. Del. Mar. 21, 2016) ("[T]here's enough affirmative action required to allow the mechanism the debtor is suggesting because it's clear in the ballot that, if they vote yes on the plan, they are granting a release. If a creditor doesn't want to grant a release, they can vote no and opt out, or just not vote. So I think affirmatively voting on the plan is enough action to be an acceptance of third-party releases"); *In re Indianapolis Downs*, 486 B.R. at 306 ("As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the Third-Party Release may be properly characterized as consensual and will be approved.").

[209] *See, e.g.*, *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 78–79 (2d Cir. 2017) (upholding a "click wrap" agreement where the offeror provided notified the offeree they would be bound by its terms of service and privacy policy, provided hyperlinks to such policies, and provided such notice on a clear, uncluttered screen); *Newell Rubbermaid Inc. v. Storm*, No. 9398, 2013 WL 12668327, at *7 (Del. Ch. Mar. 27, 2014) (citing *Van Tassell v. United Mktg. Grp., LLC*, 795 F.Supp.2d 770, 790 (N.D.Ill.2011)) (upholding a "click wrap" agreement where offeree "was presented with a fair opportunity to [read the applicable agreement], opened up the appropriate pop-up from which she could do so, and even indicated through the checkbox that she did so"); *Doe v. Massage Envy Franchising, LLC*, No. S20C-05-005RFS, 2020 WL 7624620, at *3 (Del. Ch. Dec. 21, 2020) ("As soon as Plaintiff is presented with the Agreement, Plaintiff is put on notice that she would be altering her legal rights. The arbitration provision itself is conspicuous within the Agreement. It is in bold capitalized text, instructing Plaintiff to read the section carefully.")

reasonable and appropriate under the circumstances, is in the best interest of the Debtors and their Estates, is consistent with the precedents of this district, and should be approved.

B. The Debtor Release Is Appropriate

136. Article VIII.C of the Plan also provides for releases by the Debtors, their Estates, the and the Reorganized Debtors of Claims and Causes of Action against each Released Party (the "Debtor Release").[210] The Debtors filed, concurrently with this Memorandum the Meltzer Declaration and the Gabel Declaration, both of which support the need for the Debtor Release.[211] The Debtor Release meets the applicable standard because it is a valid exercise of the Debtors' business judgement, is fair, reasonable, and in the best interests of the Debtors' Estates, the product of extensive arm's-length negotiations, and was critical to obtaining support for the Plan. Indeed, the Debtor Release was negotiated in connection with the other terms of the Restructuring Support Agreement and Plan and is an indispensable component to achieve final resolution of potential disputes that would otherwise negatively affect these chapter 11 cases and the available recoveries under the Plan. The U.S. Trustee objects to the Debtor Release and asserts that the Debtors have not satisfied such factors, because it is unclear (i) what, if any, contribution the Released Parties have made to the Debtors' reorganization, (ii) that the Debtor Release is an essential element of the Debtors' Plan, or (iii) if there is any identity of interest between the Debtors and the Released Parties. The Debtors strongly disagree.

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[210] Article I.A.199 of the Plan defines "Released Parties" as, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Consenting Stakeholder; (d) each Holder of an ABL Facility Claim; (e) each Company Party; (f) the Plan Sponsor; (g) the Sponsor; (h) each Holder of a DIP Claim; (i) each Agent/Trustee; (j) each DIP Backstop Party; (k) each New Preferred Equity Investment Backstop Party; (l) each New Term Loan Facility Lender; (m) each New Noteholder; (n) each New ABL Facility Lender; (o) each current and former Affiliate of each Entity in clause (a) through the following clause (p); and (p) each Related Party of each Entity in clause (a) through this clause (p); provided that, in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases described in Article VIII.D hereof; or (y) timely objects to the releases contained in Article VIII.D hereof and such objection is not resolved prior to Confirmation.

[211] *See* Meltzer Decl. ¶¶ 48–58; Gabel Decl. ¶¶ 35–41.

137. The Bankruptcy Code supports the inclusion of debtor releases in a chapter 11 plan. Section 1123(b)(3)(A) of the Bankruptcy Code states that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[212] Further, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[213] In determining whether a debtor release is proper, courts in Delaware and elsewhere generally may consider the following five factors:

a. whether the non-debtor has made a substantial contribution to the debtor's reorganization;

b. whether the release is essential to the debtor's reorganization;

c. agreement by a substantial majority of creditors to support the release;

d. identity of interest between the debtor and the third party; and

e. whether a plan provides for payment of all or substantially all of the claims in the class or classes affected by the release.[214]

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[212] *See In re Coram Healthcare Corp.*, 315 B.R. at 334–35. Generally, courts in the Third Circuit approve a settlement by the debtors if the settlement "is above the lowest point in the range of reasonableness." *Id.* at 330 (internal citation omitted); *see also In re Exaeris, Inc.*, 380 B.R. 741, 746–47 (Bankr. D. Del. 2008) (internal citation omitted); *see Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (examining whether settlement "fall[s] below the lowest point in the range of reasonableness") (alteration in original) (internal citation omitted); *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that settlement must be within reasonable range of litigation possibilities) (internal citation omitted).

[213] *In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) (internal citation omitted); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether the compromise is fair, reasonable, and in the best interest of the estate.") (internal citation omitted).

[214] *See, e.g.*, *In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing *In re Master Mortg. Inv. Fund, Inc.,* 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)); *In re Spansion*, 426 B.R. at 143 n.47 (citing the *Zenith* factors).

Not all of the above factors need to be satisfied for a court to approve a debtor release.[215]

138. ***First***, the Released Parties have made substantial contributions to the Debtors' Estates.[216] The Released Parties played an integral role in the formulation of the Plan and contributed to the Plan not only by expending significant time and resources analyzing and negotiating the terms thereof, but also in giving up material economic interests to ensure the success of these chapter 11 cases.[217]

139. In particular, in exchange for the Debtor Release, Released Parties in the Voting Classes, as applicable, contributed direct value in the form of their agreement to (i) commit new capital to fund both the chapter 11 cases and the go-forward business and (ii) consent to the Debtors' use of Cash Collateral, and have otherwise agreed to be Impaired while providing for the Reinstatement or payment in full of General Unsecured Claims.[218] Absent the foregoing consideration and concessions, the Debtors would not be able to eliminate approximately $3.9 billion of net funded debt from their balance sheet while minimizing costs through the expedited court process contemplated by the prepackaged Plan.[219] In addition, the Debtor Release was a material inducement for the Consenting Stakeholders to support the Debtors' restructuring, as set forth in the Restructuring Support Agreement.[220] Finally, the Debtors' directors, officers,

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215 *See, e.g.*, *In re Wash. Mut.*, 442 B.R. at 346 ("These factors are neither exclusive nor conjunctive requirements, but simply provide guidance in the [c]ourt's determination of fairness.") (internal citation omitted); *In re Exide Techs.*, 303 B.R. 48, 72 (Bankr. D. Del. 2003) (finding that *Zenith* factors are not exclusive or conjunctive requirements).

216 Gabel Decl. ¶ 36.

217 *Id.*

218 *Id.* ¶ 37.

219 *Id.*

220 *Id.*

professionals, and other agents have been instrumental in negotiating, formulating, and implementing the Restructuring Transactions contemplated by the Plan.[221]

140. ***Second***, the Debtor Release is essential to the Debtors' reorganization because it constitutes an integral term of the Plan.[222] Indeed, absent the Debtor Release, it is highly unlikely the Debtors would have been able to build the extraordinary level of consensus with respect to the Plan and the transactions contemplated thereby because it was a critical term to the Company's stakeholders in connection with negotiating the Restructuring Support Agreement and the Plan.[223] The Debtors' DIP Lenders and the Consenting Stakeholders required releases from the Debtors in order to implement these chapter 11 proceedings as expedited, prepackaged cases and to commit to fund $889 million in new money to support the Company's go-forward operations.[224] Importantly, the Debtor Release is the product of arm's-length negotiations between the Debtors and their key stakeholders, is limited in scope, and is an express condition of the Restructuring Transactions memorialized by the Restructuring Support Agreement and the Plan, which remains the only actionable option that preserves the Debtors' business as a going concern.[225]

141. In consideration for the Debtor Release, the Debtors and their Estates will receive: (i) releases from potential claims and Causes of Action of each of the Releasing Parties in addition to the significant benefits provided to the Debtors through this prepackaged chapter 11 process; (ii) new money in the form of the New Preferred Equity Investment, the Plan Sponsor Equity

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221 *Id.*

222 *Id.* ¶ 38.

223 *Id.*

224 *Id.*

225 *Id.*

Investment, the New Debt facilities, comprised of the New Term Loan Facility and New Notes, and the New ABL Facility, to fund Plan Distributions and go-forward operations; (iii) a New Board and Company ownership dedicated to preserving existing jobs for the Debtors' existing employees and maximizing the value of the go-forward business enterprise; (iv) ongoing trade partnerships with the Debtors' existing vendor community; and (v) Reinstatement or payment in full of General Unsecured Claims.[226] The Debtors do not believe that they have material Causes of Action against any of the Released Parties that would justify the risk, expense, and delay of pursuing any such Causes of Action as compared to the results and benefits achieved under the Plan.[227] Importantly, the Debtor Release provides finality and avoids significant delay in consummating the Plan, and, therefore, the inclusion of the Debtor Release is worthwhile and inures to the benefit of all the Debtors' stakeholders.[228]

142. ***Third,*** based on the Debtors' analysis, the Debtor Release greatly benefits the Debtors' Estates, and the probability of success in litigation with respect to claims the Debtors may have against each of the Released Parties is uncertain and would take significant time and effort.[229] Consistent with the investigation conducted by the Debtors' Special Committee, as set forth in the Meltzer Declaration, the Debtor Release expressly excludes a release of any Causes of Action identified on the Schedule of Retained Causes of Action.[230] In addition, the Holders of Class 4 and Class 5 Claims have overwhelmingly voted in favor of the Plan, which includes the

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226 *Id.*

227 For additional details regarding the Debtor Release and the claims and Causes of Action released thereby, see the Meltzer Declaration.

228 *Id.*

229 *Id.* ¶ 39.

230 *See* Meltzer Decl. ¶¶ 48–58.

Debtor Release.[231] Finally, the Plan, including the Debtor Release, was heavily negotiated by sophisticated entities that were represented by able counsel and financial advisors.[232] The Debtor Release is a compromise that reflects the give-and-take of a true good faith, arm's-length negotiation process.[233]

143. ***Fourth***, the Plan provides for meaningful recoveries for substantially all of the Claims in Classes affected by the Debtor Release.[234] No economic stakeholder has objected to the Debtor Release contained in the Plan. All of the creditors in the Voting Classes that cast ballots voted to accept the Plan (including the Debtor Release).

144. ***Fifth***, an identity of interest exists between the Debtors and the parties to be released. The Released Parties are stakeholders and critical participants in the Plan process or related parties thereto and share a common goal with the Debtors in seeing the Plan succeed and having the Debtors' businesses reorganized. Like the Debtors, these parties seek to confirm the Plan and implement the transactions contemplated thereunder. Moreover, with respect to certain of the releases—*e.g.*, those releasing the Debtors' current and former directors, officers, and principals—there is a clear identity of interest supporting the releases because the Debtors will assume certain indemnification obligations under the Plan that will be honored by the Reorganized Debtors (and such Claims would "ride through" these chapter 11 cases and would be paid in full similarly to all other General Unsecured Claims, even assuming that the indemnification

231 *See* Voting Report, Ex. A.

232 Gabel Decl. ¶ 39.

233 *Id.*

234 *Id.* ¶ 40.

obligations were not being assumed).[235] Thus, a lawsuit commenced by the Debtors (or derivatively on behalf of the Debtors) against such individuals would effectively be a lawsuit against the Reorganized Debtors themselves.

145. ***Finally***, the Plan provides for meaningful recoveries for substantially all Classes affected by the Debtor Release. As demonstrated by the Liquidation Analysis,[236] the ranges of recoveries for Holders of Claims are materially higher under the Plan than they would have been in a chapter 7 liquidation scenario. Specifically, under a hypothetical chapter 7 liquidation scenario, only the DIP Claims, the ABL Facility Claims, and certain Administrative Claims would receive any recovery while all other Holders of Claims and Interests would receive nothing. Here, as a result of the commitments of the Plan Sponsor and the Secured Ad Hoc Group, Holders of General Unsecured Claims are Unimpaired. These concessions would not have been possible absent the Debtor Release.

146. Furthermore, the Debtors, through the Special Committee, conducted an independent investigation (the "Independent Investigation") of potential claims and causes of action of the Debtors.[237] In furtherance of the Independent Investigation, the Special Committee issued document and information requests to the Debtors and the Plan Sponsor seeking, among other things, documents related to transactions involving the Plan Sponsor, the Debtors' M&A acquisitions, material funding transactions post-acquisition by the Plan Sponsor, quarterly redemptions of the Debtors common stock, payments to an affiliate that holds class B common

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[235] *See In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013) ("An identity of interest exists when, among other things, the debtor has a duty to indemnify the nondebtor receiving the release.").

[236] *See* Disclosure Statement, Ex. E.

[237] *See* Meltzer Decl. ¶ 15.

shares, and material payments to insiders.[238] At the direction of the Special Committee, counsel to the Special Committee reviewed approximately 2,200 documents.[239] Counsel to the Special Committee also interviewed certain members of the Company's management, as well as representatives of the Plan Sponsor.[240] Based on the factual findings of the Independent Investigation, the Special Committee did not identify any claims the Debtors' should bring against the Plan Sponsor.[241]

147. As set forth in the Meltzer Declaration, the Special Committee believes that the Debtors' release of the Released Claims was warranted and a reasonable exercise of the Debtors' business judgment particularly in the context of the value-maximizing Plan made possible by material contributions from the Released Parties and is overwhelmingly supported by the Debtors' stakeholders.[242]

148. The U.S. Trustee argues that because certain of the Released Parties are also covered by the Plan's exculpation provision and that they do not meet the *Zenith* factors.[243] As discussed above, each Released Party, including those that are also Exculpated Parties, meets the *Zenith* factors and is properly a Released Party.

149. For these reasons, the Debtor Release is justified, is a sound exercise of the Debtors' business judgement, is in the best interests of creditors and all stakeholders, is an integral part of

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238 *See id.*

239 *See id*. ¶ 16.

240 *See id.* ¶ 17.

241 *Id.* ¶ 57 ("Accordingly, the Special Committee concludes in the exercise of its business judgment that there are no claims the Company should bring against CD&R.").

242 *See id.* ¶ 48.

243 UST Obj. ¶ 80.

the Plan, and satisfies key factors considered by courts in determining whether a debtor release is proper.

C. The Injunction Provision Is Appropriate and Complies with the Bankruptcy Code.

150. The injunction provision set forth in Article VIII.F of the Plan (the "Injunction Provision") implements the Plan's release, general settlement, and exculpation provisions by permanently enjoining all Entities from commencing or pursuing any action against the Debtors, the Wind-Down Debtors, the Related Parties, or the Released Parties that relates to or is reasonably likely to relate to any act or omission in connection with, or arising out of Claims or Interests released, compromised, or settled pursuant to the Plan. Thus, the Injunction Provision is a necessary part of the Plan precisely because it enforces the discharge, release, and exculpation provisions that are centrally important to the Plan.[244]

151. To the extent the Court finds that the Plan's exculpation and release provisions are appropriate, the Court should approve the Injunction Provision. The discretionary provisions of the Plan are consistent with and permissible under section 1123(b) of the Bankruptcy Code. In light of the foregoing, because the Plan fully complies with sections 1122 and 1123 of the Bankruptcy Code, the Plan fully complies with and satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

[244] *See In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 293 (2d Cir. 1992) (holding that a court may approve an injunction provision where such provision "plays an important part in the debtor's reorganization plan").

D. The Gatekeeping Provision is Appropriate and Integral to the Plan and Should be Approved.

152. The U.S. Trustee also objected to the so-called "gatekeeping" provision (the "Gatekeeping Provision").[245] This objection should be overruled.

153. The Gatekeeping Provision is a legitimate exercise of this Bankruptcy Court's power under sections 105, 1123(b)(6), and 1141(a), (b), and (c) of the Bankruptcy Code. The purpose of the Gatekeeping Provision is to ensure that the Debtors and other Released Parties do not become bogged down in vexatious, meritless litigation of claims that have been released under the Plan, in courts that are unfamiliar with these chapter 11 proceedings and the releases and exculpation provisions contained in the Plan approved by this Bankruptcy Court. Gatekeeping Provisions have been utilized by many courts to provide a threshold level of review following confirmation of a chapter 11 plan. Under this construct, which has been routinely approved in numerous jurisdictions, including in this district,[246] the court interprets its own order in the first instance and determines whether a litigant has a colorable claim that remains assertable following confirmation of the plan.

154. To be clear, the Gatekeeping Provision does not contemplate that the Bankruptcy Court will rule on the underlying merits of the action. Rather, the Bankruptcy Court will make an

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[245] *See* Plan, Art. VIII.F; UST Obj. ¶¶ 71–80.

[246] *See, e.g.*, *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025) (approving a similar gatekeeping provision); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Jun. 13, 2024) (same); *In re WeWork Inc.*, No, 23-19865 (JKS) (Bankr. D.N.J. May 31, 2024) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Nov. 17, 2023) (same); In *re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Sept. 14, 2023) (same); *In re Nat'l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. Aug. 10, 2023) (providing that the Bankruptcy Court maintained exclusive jurisdiction to adjudicate matters related to the chapter 11 case on a post-effective date basis); *In re Princeton Alt. Income Fund, LP*, No. 18-14603 (MBK) (Bankr. D.N.J. Mar. 13, 2020) (explicitly applying the Barton Doctrine to post-confirmation suits); *In re Cineworld Grp. plc*, No. 22-90168 (MI) (Bankr. S.D. Tex. Jun. 28, 2023) (approving a similar gatekeeping provision); *In re Avaya Inc.*, No. 23-90088 (DRJ) (Bankr S.D. Tex. Mar. 21, 2023) (same).

initial threshold inquiry into whether the proposed action could be brought or whether it has been released as part of the Plan or Confirmation Order by construing the terms of the Plan and interpreting those terms in conjunction with the Confirmation Order. Undoubtedly, the Bankruptcy Court is the best forum to accurately interpret the language of the Plan that it confirmed and the Confirmation Order that it entered.

155. In addition, the Gatekeeping Provision is an outgrowth of the long-standing "Barton Doctrine" established by the Supreme Court in *Barton v. Barbour.*[247] The Barton Doctrine provides that, as a general rule, before a suit may be brought against a trustee, leave of the appointing court must be obtained.[248] While the Barton Doctrine originated as a protection for federal receivers, courts have applied the concept to various participants in chapter 11 cases, including debtors in possession,[249] trustees appointed to administer post-confirmation liquidation of the bankruptcy estate,[250] officers and directors of a debtor,[251] and professionals retained by the debtors.[252] By requiring claimants to seek leave of the Bankruptcy Court before pursuing actions

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247 104 U.S. 126 (1881).

248 *Baron v. Sherman (In re Ondova Co.*), 2017 Bankr. LEXIS 325, at *29 (Bankr. N.D. Tex. Feb. 1, 2017).

249 *Helmer v. Pogue*, 2012 U.S. Dist. LEXIS 151262 (N.D. Ala. Oct. 22, 2012) (applying Barton Doctrine to a debtor in possession).

250 *In re Swan Transp. Co.*, 596 B.R. 127, 137 (Bankr. D. Del. 2018) (citing *Richardson v. Monaco (In re Summit Metals, Inc.)*, 477 B.R. 484, 489-98 (Bankr. D. Del. 2012)).

251 *See Carter v. Rodgers*, 220 F.3d 1249, 1252 and n.4 (11th Cir. 2000) (holding that a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer for acts done in the actor's official capacity, and finding no distinction between a "bankruptcy-court-appointed officer" and officers who are "approved" by the court.); *Hallock v. Key Fed. Sav. Bank (In re Silver Oak Homes)*, 167 B.R. 389 (Bankr. D. Md. 1994) (applying Barton Doctrine to president of the debtor).

252 *Lowenbraun v. Canary* (*In re Lowenbraun*), 453 F.3d 314, 321 (6th Cir. 2006) (applying Barton Doctrine to trustees' counsel).

against the Debtors and their successors in interest, the Gatekeeping Provision is within the spirit of the protections afforded to fiduciaries and their agents under the Barton Doctrine.

156. The gatekeeping role is one played by bankruptcy courts in numerous contexts. In the *Madoff* cases, the court served as a gatekeeper to determine whether claims against certain Madoff funds were direct or derivative claims.[253] In *Motors Liquidation Co.*, the court served as a gatekeeper to determine whether claims may properly be asserted against the pre- or post-reorganization General Motors entity.[254] Under this construct, the court effectively serves the same role as it does when it determines whether a statutory committee should be granted standing to file litigation on behalf of a debtor; that is, the court is asked to make a determination as to whether the claim at issue is colorable.

157. Furthermore, contrary to the assertions of the U.S. Trustee, the Gatekeeping Provision does not impose any greater burden or administrative hurdle on claimholders than the Plan would impose without the Gatekeeping Provision.[255] Nearly all chapter 11 plans in complex cases, including the Plan, contain an injunction permanently preventing parties from asserting released claims against released parties. If a claimant seeks to assert a claim following the Effective Date of the Plan but is unsure whether that claim constitutes a colorable claim that has not been released, the claimant will need a judicial determination that the claim was not released under the Plan; otherwise, the claim could not be properly asserted. The Gatekeeping Provision ensures that the Bankruptcy Court—the court most familiar with the

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[253] *See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff),* 546 B.R. 284 (Bankr. S.D.N.Y. 2016) (discussing the bankruptcy court's gatekeeper role).

[254] *See In re Motors Liquidation Co.*, 541 B.R. 104, 113 (Bankr. S.D.N.Y. 2015), *vacated and remanded on other grounds*, 590 B.R. 39 (S.D.N.Y. 2018) (discussing bankruptcy court's gatekeeper role).

[255] UST Obj. ¶ 78.

facts and circumstances of these chapter 11 cases, and the court best-positioned to determine as to whether the claim may be asserted in the first place—is the court making that determination. This inures to the benefit of all parties, including potential claimants.

158. Courts in this district have consistently approved gatekeeping provisions similar to the one proposed in the Plan.[256] In *Bed Bath*, the court overruled the U.S. Trustee's objection to a similar gatekeeping provision, recognizing that, absent a gatekeeping function, courts across the country are likely to "construe and interpret the language of a plan and a confirmation order in inconsistent fashion."[257] The *Bed Bath* court also recognized the minimal burden imposed on the court in acting as a gatekeeper because "in all likelihood in all of these situations it's coming back before the bankruptcy court anyway."[258]

159. Similarly, in overruling the U.S. Trustee's objection, the *BlockFi* court expanded on the court's reasoning in *Bed Bath*, observing that the gatekeeping provision is not an assertion of jurisdiction the court does not have, and is instead limited to what the Bankruptcy Code and the judicial code already allows the court to decide.[259] The court reasoned that the gatekeeper function

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[256] *See, e.g., In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024); *In re Thrasio Holdings, Inc.*, No. 24-11840 (Bankr. D.N.J. June 13, 2024); *In re WeWork Inc.*, No, 23-19865 (JKS) (Bankr. D.N.J. May 30, 2024); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. May 30, 2024); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr D.N.J. Nov. 17, 2023); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023).

[257] *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP), Hr'g Tr. 41:17–42:1 (Bankr. D.N.J. Sept. 12, 2023) ("Absent a gatekeeping function, there is a risk that you're going to have courts across this country construe and interpret the language of a plan and a confirmation order in inconsistent fashion. That's disservice to those plaintiffs. It's a disservice to those who were under the impression they were benefitting by making a contribution to the reorganization and getting certain protections.").

[258] *Id.* at 42:2–9 ("The ability of a single court to take on a limited burden, and let's be clear -- it's minimal. Let's be clear, in all likelihood in all of these situations it's coming back before the bankruptcy court anyway. It's either the defendant is going to come back before the court to ask for clarity and enforcement of a confirmation order, enforcement of a discharge or one of the other parties to the litigation. And that's the way it should be because the courts will have a familiarity.").

[259] *Id.,* Hr'g Tr. at 111:23–25 (Bankr. D.N.J. Sept. 26, 2023).

preserves both judicial economy and the centrality of the bankruptcy court as an appropriate forum to decide the meaning of the plan and confirmation order, and how potential claims fall within such documents.[260] "It makes no sense to urge parties to make contributions to a Chapter 11 case and in return secure releases or secure certain rights that will be undercut by then having to defend their position all across the country in front of separate courts in separate forums, with inconsistent results."[261]

160. Consistent with the prior decisions in *New Rite Aid, Bed Bath & Beyond*, and *BlockFi*, the Court should approve the Gatekeeping Provision. Rather than seeking to shift the burden of proof to claimants or provide a further release of claims or causes of action under the Plan, the Gatekeeping Provision simply provides a threshold level of review necessary to ensure the effectiveness of the Plan. In the absence of the Gatekeeping Provision, it is entirely possible that parties subject to the Plan's release and exculpation provisions will seek to assert frivolous claims, or claims barred by the Plan's injunction provisions, hindering the effectiveness of the Debtors' Plan. Critically, the absence of the Gatekeeper Provision would not hinder creditors from bringing actions related to claim disputes in front of this Bankruptcy Court. Section 502(a) of the Bankruptcy Code preserves the ability for any party to object to a claim, even post confirmation. As the court noted in its ruling on the gatekeeping provision in *In re BlockFi*:

> As I said in other hearings, we end up in the same place anywhere. When these actions are brought, somebody is bringing it back to the bankruptcy court to determine whether or not it's a discharge injunction, it's a plan injunction . . . . It comes back to this court anyway. So we're just putting in place in language what it is the

[260] *Id.* at 111:25–112:6.

[261] *Id.* at 112:15–20.

> practice. I have no issue with the scope or the provisions of the gatekeeping function.[262]

161. The Gatekeeping Provision represents a permissible exercise of the Bankruptcy Court's jurisdiction and will benefit the Debtors, their successors-in-interest, and potential claimants. Accordingly, the Bankruptcy Court should overrule the U.S. Trustee Objection and approve the Gatekeeping Provision which "serves the interests of those who bargained for certain rights in making contributions and it serves the interest of even the plaintiffs in not spending time and money on a claim that will have no traction."[263] Further, as observed by courts in this district, this Bankruptcy Court, "the court with close[] hands-on [] understanding of the plan and the terms of the confirmation order,"[264] is the appropriate forum to decide the meaning of the Plan and Confirmation Order.

E. The General Settlement Provision in the Plan is Appropriate.

162. The U.S. Trustee alleges that "the Plan cannot be confirmed as long as it contains any language suggesting that any Plan provision, or the Plan itself, is a "settlement" for purposes of section 1123(b)(3)(A) and Rule 9019."[265] Not so.

163. ***First***, contrary to the U.S. Trustee's allegation,[266] section 1123 of the Bankruptcy Code does not *prohibit* settlement of Claims against the Debtors.[267] Rather, "courts [in the Third

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[262] *In re BlockFi, Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Sept. 26, 2023) Hr'g Tr. 113:5–16.

[263] *Id.* at 113:1–4.

[264] *Id.* at 112:21–25.

[265] UST Obj. ¶ 57.

[266] *Id.* ¶ 50 ("Thus, section 1123(b)(3) only allows a debtor to settle claims it has against others; it does not allow a debtor to settle claims other parties may have against it.").

[267] *See* 11 U.S.C. § 1123(b)(6) ("[A] plan may . . . include any other appropriate provision not inconsistent with the applicable provisions of this title.").

Circuit] have construed section 1123(b)(3)(A) also to apply to the settlement of claims against the estate."[268] Moreover, "[a] chapter 11 plan may 'provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estate' and 'include ***any other appropriate provision*** not inconsistent with the applicable provisions of [the Bankruptcy Code].'"[269] As explained in greater detail above, the standards for approval of a settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019,[270] and the Debtors have established a record that the settlement embodied in the Plan is fair and equitable and in the best interest of all stakeholders. The U.S. Trustee has provided no support that a settlement of claims against the Debtors is expressly disallowed under the applicable law.[271]

164. ***Second***, Article IV.A of the Plan is not a "blanket provision allowing general 'settlements' to be unilaterally imposed upon broad swaths of claimants that have no formal

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[268] *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *14-15 (Bankr. D. Del. 2010) (emphasis added) (citing *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 832 (Bankr. D. Del. 2008); *In re New Century TRS Holdings, Inc.*, 390 B.R. 140, 167 (Bankr. D. Del. 2008); *In re G–1 Holdings Inc.*, 420 B.R. 216, 256 (Bankr. D.N.J. 2009); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 2010 WL 1540115, at *7 (Bankr. D.N.J. April 12, 2010)).

[269] *In re NII Holdings, Inc.*, 536 B.R. 61, 98 (Bankr. S.D.N.Y. 2015) (citing 11 U.S.C. § 1123(b)(3) and (b)(6)); *In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 256 (Bankr. S.D.N.Y. 2016) (same); *see also In re ADPT DFW Holdings LLC*, 577 B.R. 232, 237 ("Specifically, the Plan represents a consensual and immediate resolution of numerous, complex disputes among the parties to the 9019 Settlement, and affords significant value to the Debtors' estates. Each component of the 9019 Settlement underlying the Plan, and the treatment of creditors as provided under the Plan, is an integral, integrated, and inextricably linked part of the Plan that is not severable from the entirety of the 9019 Settlement and the Plan."); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 308 (Bankr.N.D.Tex.2007) ("The Court therefore concludes that § 1123(b)(3) is not the sole source of a bankruptcy court's power to confirm a plan of reorganization that contains a settlement. Rather, the Court concludes that a settlement that satisfies the standards for approval under Federal Rule of Bankruptcy Procedure 9019(a) is a settlement that is "not inconsistent with the applicable provisions" of title 11, and its terms may therefore be included in a plan under § 1123(b)(6).").

[270] *See In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004).

[271] The U.S. Trustee relied on *In re Dynamic Brokers, Inc.*, 293 B.R. 489, 496 (B.A.P. 9th Cir. 2003) for their allegation that section 1123 prohibits settlement of claims against the Debtors. However, *Dynamic Brokers* does not even discuss the appropriateness of a settlement provision in a chapter 11 plan. Rather, it referenced section 1123(b)(6) to reach the conclusion that the debtors could not "utilize a plan confirmation proceeding as a method of *objecting to a claim*" in lieu of filing a claim objection under Bankruptcy Rule 3007. *Id.* at 497 (emphasis added).

agreement with any party to 'settle' their claims."[272] On the contrary, the Debtors explicitly limited the general settlement "***to the greatest extent permissible under the Bankruptcy Code***."[273] The Plan reflects the compromise and settlement between the Debtors, on the one hand, and the Consenting Stakeholders, on the other hand, as parties to the Restructuring Support Agreement, regarding their Claims, Equity Interests, Causes of Actions, and controversies. Put differently, the Plan simply documents the settlement reached between contract counterparties to the RSA. The Debtors do not seek to bind any parties in interest who are not allowed to be bound by the settlement pursuant to the Bankruptcy Code or other applicable law.

165. Accordingly, the U.S. Trustee's objection to the settlement provision in the Plan is without merit and should be overruled.

IV. The Stay Under Bankruptcy Rule 3020(e) Should be Waived.

166. Bankruptcy Rule 3020(e) provides that "[u]nless the court orders otherwise, a confirmation order is stayed for 14 days after its entry."[274] "[T]he goal of section 3020(e) is to 'provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 11 of the Code before the plan is implemented and an appeal becomes moot.'"[275] The stay under 3020(e) is automatic, but parties are able to move for a stay pending appeal under Bankruptcy Rule 8007(a).[276]

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[272] UST Obj. ¶ 93.

[273] Plan Art. IV.A.

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

[275] *In re Pac. Gas & Elec. Co.*, 2002 WL 32071634, at *1 (Bankr. N.D. Cal. Nov. 14, 2002).

[276] Fed. R. Bankr. P. 8007(a); *see also In re Revel AC, Inc.*, 802 F.3d 558, 567–68 (3d Cir. 2015) (explaining that a party can move for a stay pending appeal under Rule 8007 and that the court will grant the stay if the balance of four factors—(1) whether the movant has shown a likelihood of success on the merits, (2) whether the movant will be irreparably harmed, (3) whether issuance of the stay will substantially injury other parties in interest, and (4) the public interest—favor granting the stay) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

167. Each day the Debtors remain in these chapter 11 cases they incur administrative and professional costs. Each day also imposes reputational harm to the Debtors. The value of the Debtors' estates is therefore maximized if they are able to quickly consummate the documents and transactions related to the Restructuring Transactions so that the Effective Date may occur as soon as possible after the Confirmation Date.

168. Additionally, a key milestone under the Restructuring Support Agreement is that the effective date of the Plan shall have occurred 90 days after the Petition Date.[277] In order to be able to meet that milestone, and ensure that the Plan can become effective,[278] the Debtors need to be able to begin implementing the confirmed plan immediately.[279]

169. Because of the Plan Settlement, prompt consummation of the Plan is supported by each of the Debtors' economic stakeholders and the Debtors need to move quickly following confirmation to implement the value maximizing transactions embodied in the Plan. Accordingly, the Bankruptcy Court should waive the stay under Rule 3020(e). Parties that wish to appeal will not be harmed by this waiver as they remain able to move for a stay pending appeal.[280] By contrast, the Debtors are harmed by an automatic stay of the confirmation order because of the risk they will not meet the milestone under the Restructuring Support Agreement, giving rise to termination event,[281] and preventing the Debtors from being able to consummate the value-maximizing

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[277] *See* Restructuring Support Agreement § 4(f).

[278] A condition precedent to the effective date of the Plan is the Restructuring Support Agreement being in full force and effect and not terminated. *See* Plan Art.IX.A.1.

[279] Contrary to the objection of the U.S. Trustee, the Debtors are not using the waiver as "a sword to evade appellate review." UST Obj. ¶ 103. Instead, the Debtors are seeking the waiver to maximize the value of their estates for the benefit of all creditors.

[280] *See* Fed. R. Bankr. P. 8007(a); *In re Revel AC, Inc.*, 802 F.3d at 567–68.

[281] *See* Restructuring Support Agreement § 12.01(b).

Restructuring Transactions. Given the harm the Debtors' face if the confirmation order is stayed pending appeal, it is appropriate to require parties to make a motion to impose a stay pending appeal and prove that they have a likelihood of success on the merits, and that granting the stay outweighs the harm to the Debtor.[282] Accordingly, the Bankruptcy Court should waive the 14-day stay of the Confirmation Order under Rule 3020(e).

CONCLUSION

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

[*Remainder of page intentionally left blank.*]

[282] *See In re Revel AC, Inc.*, 802 F.3d at 567–68 (explaining that courts should balance the likelihood of the movant's success on the merits and whether the stay would substantially injure other parties in interest); *see also* 11 U.S.C. § 1109(b) ("A party in interest, including the debtor . . . .").

Dated: April 15, 2026

/s/ Michael D. Sirota

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

Co-Counsel to the Debtors and Debtors in Possession

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Steven N. Serajeddini, P.C. (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: steven.serajeddini@kirkland.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Rachael M. Bentley (admitted *pro hac vice*)
Peter A. Candel (admitted *pro hac vice*)
Lindsey J. Blumenthal (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: rachael.bentley@kirkland.com
peter.candel@kirkland.com
lindsey.blum@kirkland.com

Co-Counsel to the Debtors and Debtors in Possession