IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WEST MARINE, INC., *et al.*,[1]	)	Case No. 26-10794 (KBO)
Debtors.	)	(Jointly Administered)
	)	**Ref. Docket Nos. 280 & 478**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF AN ORDER (I) APPROVING THE DEBTORS' DISCLOSURE STATEMENT ON A FINAL BASIS AND (II) CONFIRMING THE SECOND AMENDED JOINT PLAN OF REORGANIZATION OF WEST MARINE, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: West Marine, Inc. (5502); Marine One Holdco, LLC (2231); Marine One Parent, Inc. (0402); Rising Tide Holdings Inc. (2628); Rising Tide Parent Inc. (6153); Seascapes, Inc. (3739); W Marine Management Company, Inc. (4151); and West Marine Products, Inc. (4523). For purposes of these chapter 11 cases, the Debtors' service address is West Marine Headquarters, 1 East Broward Blvd., Suite 200, Fort Lauderdale, FL 33301.

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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 (a) final approval of the *Disclosure Statement for the Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the of the Bankruptcy Code* [Docket No. 280] (the "Disclosure Statement"), pursuant to section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and (b) confirmation of the *Second Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 478] (as may be further amended, modified, or supplemented from time to time, the "Plan"),[2] pursuant to sections 1125, 1126, and 1129, respectively, of the Bankruptcy Code.

In support of confirmation of the Plan, the Debtors have also filed the following contemporaneously herewith: (a) the *Declaration of Amir Agam in Support of (I) Approval of the Debtors' Disclosure Statement on a Final Basis and (II) Confirmation of the Second Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Agam Declaration"); (b) the *Declaration of Steven W. Bremer in Support of Confirmation of the Second Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Bremer Declaration"); (c) the *Declaration of Matthew Kahn in Support of Confirmation of the Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter*

[2] A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Paulee Day, Chief Executive Officer of West Marine, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 15] (the "First Day Declaration") and the Disclosure Statement. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan or the Disclosure Statement, as applicable.

11 of the Bankruptcy Code (the "Kahn Declaration"); and (d) the *Declaration of Sydney Reitzel Regarding the Solicitation and Tabulation of Votes on the Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Voting Report," and collectively with the Agam Declaration, Bremer Declaration, and Kahn Declaration, the "Declarations"). In further support of confirmation of the Plan and final approval of the Disclosure Statement, and in response to objections thereto, the Debtors respectfully state as follows:

Preliminary Statement

1. The Bankruptcy Court should confirm the Plan—which represents the Debtors' only option to continue as a going concern and to maximize value for the benefit of all of their stakeholders and is overwhelmingly supported by all the Voting Classes. The Debtors commenced these chapter 11 cases with the support of Eclipse Business Capital LLC ("Eclipse"), the lender under their prepetition ABL Credit Agreement, for the continued use of cash collateral, and the Consenting Stakeholders, comprised of the Consenting FILO Lenders, the Consenting Term Loan Lenders, and the Consenting Equity Holders, on a value-maximizing path toward rightsizing the Debtors' balance sheet and addressing the Debtors' tightening liquidity constraints. To that end, prior to the Petition Date, the Debtors and the Consenting Stakeholders entered into the RSA, which contemplated a dual-track path: (i) the pursuit of the Recapitalization Transaction through (a) the equitization of Term Loan Claims in exchange for 100% of the equity interests in Reorganized West Marine, subject to dilution of the MIP (if any), (b) the payment of the ABL Claims or conversion into loans under the Exit ABL Facility, and (c) the payment of the FILO Claims or conversion into loans under the Exit Term Loan Facility, each pursuant to the Plan, and (ii) the continued pursuit of a marketing process for the sale of all or substantially all of the

Debtors' assets (the "Sale Transaction") to the extent such Sale Transaction provided for greater value for the Debtors and their stakeholders than that provided by the Recapitalization Transaction.

2. On June 10, 2026, the Bankruptcy Court entered an order approving the Bidding Procedures Motion [Docket No. 225] which, among other things, established a Bid Deadline (as defined in the Bidding Procedures Motion) of June 26, 2026 at 5:00 p.m. (prevailing Eastern Time). The Debtors did not receive any Qualified Bids (as defined in the Bidding Procedures Motion) by the Bid Deadline. Accordingly, on June 26, 2026, the Debtors filed the *Notice of Cancellation of Auction and Intent to Proceed with the Recapitalization Transaction* [Docket No. 318], thereby cancelling the auction and providing notice of their intent to proceed with confirmation of the Plan and the Recapitalization Transaction provided therein.

3. In anticipation of the hearing to consider final approval of the Disclosure Statement and confirmation of the Plan (the "Combined Hearing"), the Debtors have engaged in good faith, arm's length negotiations with the Official Committee of Unsecured Creditors (the "Committee"), the United States Trustee for the District of Delaware (the "U.S. Trustee"), various landlords, vendors and contract counterparties, and other key stakeholders, ultimately formulating a Plan designed to maximize value and recoveries for all stakeholders. The Plan incorporates the comprehensive, good-faith settlement reached in connection with the Recapitalization Transaction between the Debtors and the Committee (the "Committee Settlement"), which is supported by the Consenting Stakeholders. The Committee Settlement provides, among other things, for the funding and maintenance of the GUC Trust for the benefit of the GUC Trust Beneficiaries and a GUC Trustee to serve as trustee for the GUC Trust in accordance with the GUC Trust Agreement. Importantly, the Plan provides for a significant deleveraging of the Debtors' consolidated balance sheet, preserves thousands of jobs, maintains hundreds of landlord and vendor relationships,

rationalizes the Debtors' real estate footprint, and positions the Debtors for long-term profitability post-emergence from these chapter 11 cases. The Plan is supported by the Committee, and the U.S. Trustee does not object to Confirmation of the Plan. As the Debtors' creditor body has made clear through nearly unanimous support and overwhelming acceptance by creditors in the Voting Classes, the Plan represents the most value-maximizing path to concluding these chapter 11 cases.

4. As of the filing of this Memorandum, there are no objections to Confirmation of the Plan or final Disclosure Statement approval. The Debtors received informal objections and comments to the Plan from the Committee, the U.S. Trustee, various landlords and contract counterparties, and certain governmental parties, which have been resolved through revisions to the Plan and language in the Confirmation Order.[3] The Debtors also received multiple formal and informal objections and comments to proposed Cure amounts listed on the Assumed Executory Contracts and Unexpired Lease List attached as Exhibit B to the *Notice of Filing of Plan Supplement* filed on July 21, 2026 [Docket No. 442] (as may be amended, modified, or supplemented from time to time, the "Plan Supplement"), substantially all of which have been resolved. The few remaining Cure objections remain preserved to afford the Debtors and applicable counterparty additional time to consensually resolve such objection.[4]

5. Timely Confirmation and Consummation of the Plan will allow the Debtors to bring these chapter 11 cases to an orderly, value-maximizing conclusion. For the reasons stated herein and in light of the evidentiary support to be offered at the Combined Hearing, the Plan and the

[3] As of the filing of this Memorandum, the Debtors, the Committee, and the U.S. Trustee are continuing to discuss certain of the U.S. Trustee's informal comments to the Plan, none of which are substantive objections to final approval of the Disclosure Statement or Confirmation of the Plan.

[4] A summary chart of the filed objections and informal objections and comments and the status of each is attached hereto as **Exhibit A** (the "Objection Summary Chart"). For the avoidance of doubt, the Objection Summary Chart only includes formal and informal Cure objections and formal and informal objections regarding assumption of Executory Contracts and Unexpired Leases.

Disclosure Statement satisfy all applicable provisions of the Bankruptcy Code. Therefore, and as set forth more fully in this Memorandum, any outstanding objections should be overruled, the Plan should be confirmed, and the Disclosure Statement should be approved on a final basis.

Background

I. Procedural History.

6. On May 17, 2026, following good faith, arm's-length negotiations, the Debtors entered into the RSA with the support of the Consenting Stakeholders, carrying overwhelming support from every funded debt constituency to meaningfully deleverage the Company's balance sheet. The RSA contemplates the Debtors' access to Exit Facilities following emergence from these chapter 11 cases, representing a value-maximizing path forward for the Company.

7. Consistent with the RSA, on May 17, 2026 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. During these chapter 11 cases, the Debtors have operated their business and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 18, 2026, the Bankruptcy Court entered an order [Docket No. 43] authorizing the procedural consolidation and the joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. On May 29, 2026, the U.S. Trustee appointed the Committee [Docket No. 103]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

8. As set forth in the First Day Declaration and the Disclosure Statement, the Debtors began soliciting interest in their assets in a targeted marketing process prior to the Petition Date. Following the filing of these chapter 11 cases, with the assistance of Triple P Securities, LLC and as described in further detail in the Bremer Declaration, the Debtors engaged in a post-petition

marketing process which lasted for forty-one days.[5] The Debtors did not receive any actionable going-concern bids despite the Debtors' marketing efforts and, in consultation with their advisors, determined the best path forward was to proceed with the Recapitalization Transaction.[6]

9. On May 18, 2026, the Debtors filed the *Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 46] and the *Disclosure Statement for the Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 47]. After discussions and negotiations with the Debtors' various stakeholders, including the Committee, the Consenting Stakeholders, and the U.S. Trustee, on June 23, 2026, the Debtors filed the (a) *Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 278] and (b) *Disclosure Statement for the Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 280], which resolved certain informal concerns raised by such parties.

10. On June 23, 2026, the Bankruptcy Court entered the order approving the Disclosure Statement on an interim basis and establishing a schedule for Confirmation [Docket No. 284] (the "Conditional Disclosure Statement Order"). The Conditional Disclosure Statement Order also approved, on an interim basis, procedures for (a) the solicitation and tabulation of votes on the Plan and (b) Holders of Claims or Interests not entitled to vote on the Plan (collectively, the "Non-Voting Classes") to opt in to the Plan's Third-Party Release (collectively, the "Solicitation Procedures"). On June 30, 2026, the Debtors commenced

[5] Bremer Decl., ¶ 11.

[6] *See id.*

solicitation of votes on the Plan, and from time to time thereafter, caused the Solicitation Packages to be distributed to all known Holders of Claims in the Voting Classes.[7]

11. On July 21, 2026, the Debtors filed with the Bankruptcy Court the initial Plan Supplement which included the (a) Schedule of Retained Causes of Action, (b) Assumed Executory Contracts and Unexpired Leases List, and (c) Rejected Executory Contracts and Unexpired Leases List.

12. The deadline for all Holders of Claims entitled to vote on the Plan to cast their ballots was July 31, 2026, at 4:00 p.m. (prevailing Eastern Time) (the "Voting Deadline") and the deadline for parties in interest to file an objection to (a) the Plan, (b) final approval of the Disclosure Statement, and (c) the assumption of Executory Contracts and Unexpired Leases listed in the initial Plan Supplement was August 3, 2026, at 4:00 p.m. (prevailing Eastern Time).[8]

13. Contemporaneously herewith, the Debtors filed an (i) amended Plan Supplement [Docket No. 484 (Sealed); 485 (Redacted)], which included (a) the Schedule of Retained Causes of Action, (b) a revised Assumed Executory Contracts and Unexpired Leases List, (c) a revised Rejected Executory Contracts and Unexpired Leases List, (d) the Restructuring Transactions Memorandum, (e) the New Organizational Documents, (f) the identities of the New Board, and (g) the GUC Trust Agreement; and (ii) the *Second Amended Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, which sets forth technical and clarifying modifications, eliminates the Sale Transaction, includes the

[7] *See Certificate of Service* [Docket No. 471] (the "Solicitation Affidavit").

[8] The Debtors extended the objection deadline for certain parties to August 6, 2026 at 4:00 p.m. (prevailing Eastern Time).

Committee Settlement, and addresses certain informal objections to the Plan, including those raised by the U.S. Trustee and landlords.

II. The Investigation.

14. On April 13, 2026, the Company established special committees of the boards of directors (the "Boards") of Marine One Parent, Inc. and each of its subsidiaries (collectively, the "Special Committee") comprised of existing disinterested directors, Matthew Kahn and Hugh Charvat. The scope of the Special Committee's authority included, among other things, the authority to (a) investigate and determine whether a conflict of interest exists or is reasonably likely to exist between the Debtors, on the one hand, any of the Debtors' current or former managers, officers, committee members, direct and indirect equity holders, successors, assigns, subsidiaries, creditors, or affiliates, among others, on the other hand (the "Conflict Matters"), and (b) take any action with respect to any Conflict Matters, including the investigation, release, or settlement of potential claims and causes of action and make any decision regarding all or part of any transaction that constitutes (in whole or in part) a Conflict Matter. Subsequently, the Special Committee initiated an independent investigation (the "Investigation") into the Conflict Matters.

15. The Special Committee, with the assistance and advice of Young Conaway Stargatt & Taylor, LLP ("Young Conaway"), as independent legal counsel, reviewed the factual and legal bases for potential Claims and Causes of Action arising from the Company's transactions to ensure that any releases to be provided under a chapter 11 plan or otherwise in these chapter 11 cases are appropriate in scope and nature.[9] As part of the Investigation, Young Conaway requested and received documents from the Company and also conducted interviews of relevant persons.[10]

[9] *See* Kahn Decl. ¶ 10.

[10] *See id.*

16. At the Special Committee's direction, Young Conaway submitted numerous categories of diligence requests to the Company and other parties, seeking a broad range of documents and information relevant to the Investigation, including board materials and minutes, corporate formation and governance documents, transaction documents, debt documents, and financial information. At the direction of the Special Committee, Young Conaway received and reviewed tens of thousands of pages of relevant documents and interviewed eleven individuals, including members of the Board and upper management and previous advisors to the Company. The Investigation was extensive, and the Special Committee concluded that the Debtors' Estates do not have any viable and valuable claims or causes of action that would warrant the time, expense, and uncertainty associated with the prosecution or maintenance of such claims or causes of action.[11]

III. The Plan Solicitation and Notification Process.

17. The Debtors served the Solicitation Packages on Holders of Claims entitled to vote on the Plan by June 30, 2026, in accordance with the Solicitation Procedures.[12] The Solicitation Packages included: (a) the Conditional Disclosure Statement Order (excluding the exhibits, except for the Solicitation and Voting Procedures); (b) a Ballot, with applicable voting instructions, as determined by the Class of each Holder of Claims being solicited; (c) the Cover Letter containing a QR code providing access to the Plan and Disclosure Statement and instructions to obtain access to the Plan and Disclosure Statement; (d) the Combined Hearing Notice; and (e) a pre-addressed, postage prepaid reply envelope.[13] Each Notice of Non-Voting Status and/or Opt-In Form included,

[11] *See id.* ¶ 13.

[12] *See* Solicitation Affidavit.

[13] *See* Voting Report, ¶ 6 n. 3.

among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement, Plan, and related documents from the Claims and Noticing Agent; (b) an Opt-In Form by which all Holders or potential Holders of Claims or Interests can elect to opt in to the Third-Party Release contained in Article VIII of the Plan; (c) a disclosure regarding the releases and the settlement, release, exculpation, and injunction language set forth in Article VIII of the Plan; (d) notice of the Voting Deadline; and (e) information related thereto. The Debtors also published the Combined Hearing Notice in *The New York Times* (national edition) on July 1, 2026, as evidenced by the *Proof of Publication* [Docket No. 332] (the "Publication Affidavit").

18. The Plan constitutes a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein applies separately to each of the Debtors. For purposes of administrative convenience, the Plan consolidates the process by which distributions will be made under the Plan, but the Plan does not contemplate substantive consolidation.

19. In compliance with the Bankruptcy Code and the Conditional Disclosure Statement Order, only Holders of Claims and Interests in Impaired Classes receiving or retaining property on account of such Claims or Interests were entitled to vote on the Plan.[14] Holders of Claims and Interests were not entitled to vote if their rights are (a) Unimpaired under the Plan (in which case such Holders were conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code) or (b) Impaired and such Holders are not entitled to receive any distribution under the Plan (in which case such Holders were deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code). Accordingly, the following Classes of Claims and Interests were ***not*** entitled to vote on the Plan, and the Debtors did not solicit votes from Holders of such Claims and Interests:

[14] *See* 11 U.S.C. § 1126.

Class	Claim/Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
9	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
10	Interests in West Marine	Impaired	Not Entitled to Vote (Deemed to Reject)

20. The Debtors solicited votes on the Plan only from Holders of Claims in Class 3 (Prepetition ABL Claims), Class 4 (Prepetition FILO Claims), Class 5 (Term Loan Claims), and Class 6 (General Unsecured Claims). The Voting Classes overwhelmingly voted in favor of accepting the Plan. As reflected in the Voting Report, (a) 100% in number and 100% in amount of Holders of Claims in Class 3 voted in favor of confirmation of the Plan, (b) 100% in number and 100% in amount of Holders of Claims in Class 4 voted in favor of confirmation of the Plan, (c) 100% in number and 100% in amount of Holders of Claims in Class 5 voted in favor of confirmation of the Plan, and (d) 81.66% in number and 93.35% in amount of Holders of Claims in Class 6 voted in favor of confirmation of the Plan.[15] Accordingly, the voting requirements of section 1126 of the Bankruptcy Code are satisfied.

21. All Holders of Claims and Interests, regardless of whether they were entitled to vote on the Plan, had the opportunity to "opt in" or "opt out" of the Third-Party Release through their Opt-In Forms or Ballots, as applicable. The Debtors received 56 affirmative opt-ins[16] and 119 affirmative opt-outs.[17]

[15] *See* Voting Report, ¶ 14.

[16] *See* Voting Report, Ex. C.

[17] *See* Voting Report, Ex. D.

22. The Plan represents a significant achievement for the Debtors and is the direct result of extensive, good-faith negotiations with the Debtors' key stakeholders. The Plan will maximize the value of the Estates and maximize recoveries to Holders of Claims, as demonstrated by the Voting Classes' overwhelming acceptance of the Plan. Because the Plan meets the requirements of section 1129(b) as described below, the Bankruptcy Court should confirm the Plan over the Classes that were deemed to reject the Plan.

23. The Combined Hearing is currently scheduled to start on August 11, 2026, at 10:00 a.m. (prevailing Eastern Time). The Debtors filed a proposed Confirmation Order substantially contemporaneously with the filing of this Memorandum.

IV. Confirmation Objections.

24. The Debtors did not receive any formal objections to confirmation of the Plan or final approval of the Disclosure Statement. The Debtors received several informal comments from certain parties, including the Committee, the U.S. Trustee, certain of the Debtors' landlords and contract counterparties, and certain governmental parties. The Debtors believe that all formal and informal objections not listed as unresolved on the Objection Summary Chart have been resolved, either by agreement, or with the inclusion of agreed-upon language in the most recently filed Plan or in the Confirmation Order. As of the filing of this Memorandum, the Debtors, the Committee, and the U.S. Trustee are in discussions regarding the U.S. Trustee's unresolved informal comments, which do not pose substantive objections to confirmation of the Plan or final approval of the Disclosure Statement. The Debtors reserve their rights to address the U.S. Trustee's unresolved objections, if any, at the Combined Hearing. With respect to any unresolved Cure objections, such objections are preserved to afford additional time for the Debtors and applicable

counterparty to discuss a consensual resolution, and the parties' rights to seek Bankruptcy Court intervention should such discussions not result in a consensual resolution are preserved.

V. Objections to Cure Amounts and/or Assumption of Executory Contracts or Unexpired Leases.

25. The Debtors received twenty-five formal objections [Docket Nos. 343, 352, 356, 402, 409, 412, 414-417, 419, 422-425, 427-429, 462-464, 466, 467-468 & 470] and several informal responses from various contract counterparties and landlords regarding cure amounts listed on the Assumed Executory Contracts and Unexpired Lease List and/or to the assumption of Executory Contracts [Docket No. 464] (collectively, the "Cure/Assumption Objections").[18] The Debtors believe that substantially all Cure/Assumption Objections received have been resolved, either by agreement, with the inclusion of agreed-upon language in the Confirmation Order, through the revised Assumed Executory Contracts and Unexpired Lease List filed with the revised Plan Supplement, or are moot through the rejection of the applicable Executory Contract or Unexpired Lease as set forth on the revised Rejected Executory Contracts and Unexpired Lease List filed with the revised Plan Supplement. With respect to Cure/Assumption Objections that remain outstanding, the Debtors intend to continue working with the objecting parties towards consensual resolutions of such objections. For the avoidance of doubt, the Debtors do not intend to go forward with respect to any unresolved Cure/Assumption Objection at the Combined Hearing. All Cure/Assumption Objections that remain outstanding are preserved and any such unresolved disputes shall be scheduled for a hearing upon the request of the affected counterparty or the Debtors or the Reorganized Debtors, as applicable, consistent with Article V.C. of the Plan.

[18] The Debtors treated objections filed to cure amounts listed on the *Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases* [Docket No. 266 (Sealed) and 267 (Redacted)] as Cure/Assumption Objections per agreement with the respective objecting parties.

In accordance with Article V.C. of the Plan, if the Bankruptcy Court determines that the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the Assumed Executory Contracts and Unexpired Lease List, the Debtors or the Reorganized Debtors, as applicable, have the right to reject such Executory Contract or Unexpired Lease.

Argument

26. This Memorandum is organized as follows: ***First***, the Debtors present their case-in-chief for approval of the Disclosure Statement on a final basis. ***Second***, the Debtors present their case-in-chief that the Plan satisfies the applicable requirements of section 1129 of the Bankruptcy Code by a preponderance of the evidence and should therefore be confirmed. ***Finally***, the Debtors assert that good cause exists to waive the stay of the Confirmation Order.

I. The Disclosure Statement Contains "Adequate Information" as Required by Section 1125 and 1126 of the Bankruptcy Code and Satisfies Notice Requirements.

A. The Disclosure Statement Contains Adequate Information.

27. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide "adequate information" regarding that plan to holders of impaired claims and interests entitled to vote on the plan. Specifically, section 1125(a)(1) of the Bankruptcy Code provides, in relevant part, as follows:

> "[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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical

> investor of the relevant class to make an informed judgment about the plan.[19]

28. The primary purpose of a disclosure statement is to provide all 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.[20] Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a chapter 11 plan.[21]

29. "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[22] Courts within the Third Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[23] Accordingly, the determination of whether

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[19] 11 U.S.C. § 1125(a)(1).

[20] *See, e.g.*, *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."); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."); *In re Phx. Petrol.*, *Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) ("The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan.").

[21] *See Century Glove, Inc.*, 860 F.2d at 100 ("The necessity of 'adequate information' was intended to help creditors in their negotiations.").

[22] *See* 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."); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of [section] 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *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); S. Rep. No. 95-989, at 121 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5907 (stating that "the information required will necessarily be governed by the circumstances of the case").

[23] *See, e.g.*, *In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) ("[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *In re Phx. Petrol.*, 278 B.R. at 393 (noting the Bankruptcy Court's discretion in determining adequacy of disclosure statements).

a disclosure statement contains adequate information must be made on a case-by-case basis, focusing on the unique facts and circumstances of each case.[24]

30. In determining whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as: (a) the events that led to the filing of a bankruptcy petition; (b) the relationship of the debtor with its affiliates; (c) a description of the available assets and their value; (d) the debtor's anticipated future performance; (e) the source of information stated in the disclosure statement; (f) the debtor's condition while in chapter 11; (g) claims asserted against the debtor; (h) the estimated return to creditors under a chapter 7 liquidation of the debtor; (i) the future management of the debtor; (j) the chapter 11 plan or summary thereof; (k) financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan; (l) information relevant to the risks posed to creditors under the plan; (m) the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers; (n) litigation likely to arise in a non-bankruptcy context; and (o) tax attributes of the debtor.[25]

31. The Disclosure Statement contains a number of categories of information that courts consider "adequate information," including, without limitation:

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[24] *See In re Phx. Petrol.*, 278 B.R. at 393 (stating that an adequacy determination depends on various case-dependent factors); *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." (citation omitted)); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) (stating that "[t]he information required will necessarily be governed by the circumstances of the case").

[25] *See In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *see also 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 Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *In re U.S. Brass Corp.*, 194 B.R. at 425 ("Disclosure of all factors is not necessary in every case."); *see also In re Phx. Petrol.*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.").

- ***The Debtors' Corporate History, Structure, and Business Overview***. An overview of the Debtors' corporate history, business operations, organizational structure, and capital structure is described in Article V of the Disclosure Statement;
- ***Events Leading to the Chapter 11 Filings***. An overview of the Debtors' out-of-court restructuring efforts in response to liquidity constraints and the events leading to such liquidity constraints are described in Article VI of the Disclosure Statement;
- ***Material Developments and Anticipated Events of the Chapter 11 Cases***. A summary of the course of events in the chapter 11 cases, including the marketing and sale process, is described in Article VII of the Disclosure Statement;
- ***Risk Factors***. Certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement, are described in Article VIII of the Disclosure Statement;
- ***Solicitation and Voting Procedures***. A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan is provided in Article IX of the Disclosure Statement;
- ***Confirmation of the Plan***. Confirmation procedures and statutory requirements for confirmation and consummation of the Plan are described in Article X of the Disclosure Statement;
- ***Certain United States Federal Income Tax Consequences***. A description of certain U.S. federal income tax law consequences of the Plan is provided in Article XII of the Disclosure Statement;
- ***Releases and Retained Causes of Action.*** A description of the Plan's release provisions is contained in Article III.V. of the Disclosure Statement; and
- ***Recommendation***. A recommendation by the Debtors that Holders of Claims in the Voting Classes should vote to accept the Plan is included in Article XIII of the Disclosure Statement.

32. In addition, prior to solicitation, the Disclosure Statement and the Plan were subject to review and comment by various parties, including the Consenting Stakeholders, the Committee, and the U.S. Trustee. Since interim approval of the Disclosure Statement on June 23, 2026, no party in interest has disputed that the Disclosure Statement contains information sufficient for Impaired Holders in Voting Classes to be able to cast an informed vote on the Plan. For the reasons

set forth above, the Disclosure Statement contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code in satisfaction of section 1126(b)(2) and should be approved on a final basis.

B. The Debtors Complied with Applicable Notice Requirements.

33. The Debtors complied with the solicitation and Confirmation-related procedures and timeline approved by the Conditional Disclosure Statement Order, including all applicable notice requirements.

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

34. The Debtors satisfied the notice requirements set forth in the Conditional Disclosure Statement Order, Bankruptcy Rule 3017, and Local Rule 3017-1. ***First***, on or about June 30, 2026, the Debtors distributed the Solicitation Packages to Holders of Claims entitled to vote on the Plan as of the Voting Record Date and distributed applicable Notices of Non-Voting Status and Opt-In Forms to the Non-Voting Classes and counterparties to the Debtors' leases.[26] ***Second***, the Debtors caused the Publication Notice to be published in *The New York Times* on July 1, 2026.[27] ***Third***, the Combined Hearing Notice included instructions on how to obtain the Plan and the Disclosure Statement free of charge through the Debtors' restructuring website or for a fee at the Bankruptcy Court's PACER website.[28]

[26] *See* Solicitation Affidavit.

[27] *See* Publication Affidavit.

[28] *See* Combined Hearing Notice [Docket No. 292].

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

35. The forms of Ballots used comply with the Bankruptcy Rules and were approved on an interim basis by the Bankruptcy Court pursuant to the Conditional Disclosure Statement Order.[29] No party has objected to the sufficiency of the Ballots. Accordingly, the Debtors submit that they complied with the Conditional Disclosure Statement Order and satisfied the requirements of Bankruptcy Rule 3018(c).

3. The Debtors' Solicitation Period Complied with the Conditional Disclosure Statement Order.

36. The Debtors' solicitation period complied with the Conditional Disclosure Statement Order, Bankruptcy Code, Bankruptcy Rules, and Local Rules. ***First***, the Solicitation Packages, including instructions for accessing electronic or hard-copy versions of the Plan and Disclosure Statement, were transmitted to all Holders of Claims entitled to vote on the Plan.[30] ***Second***, the solicitation period, which commenced on June 30, 2026, complied with the Conditional Disclosure Statement Order and was adequate under the facts and circumstances of these chapter 11 cases.[31] Accordingly, the Debtors submit that the solicitation period complied with the Conditional Disclosure Statement Order.

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

37. The Debtors request that the Bankruptcy Court find that the Debtors' tabulation of votes complied with the Conditional Disclosure Statement Order. The Claims and Noticing Agent reviewed all Ballots received in accordance with the Solicitation and Voting Procedures approved

[29] *See* Conditional Disclosure Statement Order, ¶ 8(a).

[30] *See* Solicitation Affidavit.

[31] *See* Conditional Disclosure Statement Order, ¶ 5; Solicitation Affidavit.

pursuant to the Conditional Disclosure Statement Order.[32] Accordingly, the Debtors respectfully submit that the Bankruptcy Court should approve the Debtors' tabulation of votes, confirming that the requisite 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.

38. 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 [title 11] . . . 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."[33] As set forth in the Disclosure Statement and Disclosure Statement Motion, and as demonstrated by the Debtors' compliance with the Conditional Disclosure Statement Order, 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. Therefore, the Debtors respectfully request that the Bankruptcy Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

II. The Plan Satisfies Each Requirement for Confirmation.

39. To confirm the Plan, the Bankruptcy Court must find that the Debtors have satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[34] As set forth herein, the Plan fully complies with all relevant sections of the Bankruptcy Code—

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[32] *See* Voting Report, ¶ 12.

[33] 11 U.S.C. § 1125(e).

[34] *See In re Boy Scouts of Am.*, 137 F.4th 126, 158 n.18 (3d Cir. 2025) ("To confirm a consensual reorganization plan, on the other hand, the debtor must carry its burden of satisfying § 1129(a)'s sixteen statutory requirements by a preponderance of evidence. And those requirements increase when a debtor seeks to "cram down" a plan over the objection of a nonconsenting impaired class." (citing *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006))); *In re Armstrong*, 348 B.R. at 120, n.15 (applying the preponderance of the evidence standard).

including sections 1122, 1123, 1125, 1126, and 1129—as well as the Bankruptcy Rules and applicable non-bankruptcy law.

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

40. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of the Bankruptcy Code. 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 contents of a chapter 11 plan, respectively.[35] As explained below, the Plan complies with the requirements of sections 1122, 1123, and 1129 of the Bankruptcy Code, as well as other applicable provisions.

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

41. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, that "[e]xcept as provided in subsection (b) of this section, 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."[36] For a classification structure to satisfy section 1122 of the Bankruptcy Code, not all substantially similar claims or interests need to be grouped in the same class.[37] Instead, claims or interests designated to a particular class must be substantially

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[35] S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C. C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C. C.A.N. 5963, 6368; *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."); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008).

[36] 11 U.S.C. § 1122(a).

[37] *See In re Nuverra Env't Sols., Inc.*, 590 B.R. 75, 96 (D. Del. 2018) ("Section 1122 of the [Bankruptcy] Code provides that claims that are not 'substantially similar' may not be placed in the same class; it does not expressly prohibit placing 'substantially similar' claims in separate classes." (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 348 (Bankr. D. Del. 2004))).

similar to each other.[38] Courts in this jurisdiction and others have recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.[39]

42. 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 ten separate Classes, with Claims and Interests in each Class differing from the Claims and Interests in each other Class based on legal or factual criteria or other relevant criteria.[40] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:[41]

Class	Claim/Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Prepetition ABL Claims	Impaired	Entitled to Vote
4	Prepetition FILO Claims	Impaired	Entitled to Vote
5	Term Loan Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
9	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)

[38] *Id.*

[39] *Id.* Courts have identified grounds justifying separate classification, including (a) where members of a class possess different legal rights and (b) where there are good business reasons for separate classification. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that, 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); *see also In re Jersey City Med. Ctr.*, 817 F.2d 1055, 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); *accord In re Chateaugay Corp.*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis on account of the bankruptcy court-approved settlement).

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

[41] *Id.*

10	Interests in West Marine	Impaired	Not Entitled to Vote (Deemed to Reject)

43. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in each such Class.[42] In addition, valid 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.[43] Namely, the Plan separately classifies the Claims because each Holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims or Interests in other Classes.[44]

44. Accordingly, the Claims or Interests assigned to each particular Class described above are substantially similar to the other Claims or Interests in each such Class, and the separation of Classes is based on valid factual and legal distinctions. The Debtors submit that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code. No party has asserted otherwise.

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

45. The seven applicable requirements of section 1123(a) of the Bankruptcy Code generally relate to the specification of claims treatment and classification, the equal treatment of claims within classes, and the mechanics of implementing a plan. The Plan satisfies each of these requirements.

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[42] *See* Agam Decl., ¶ 20.

[43] *See id.*

[44] *See id.* ¶¶ 21-22.

(1) Designation of Classes of Claims and Equity Interests (§ 1123(a)(1))

46. Section 1123(a)(1) of the Bankruptcy Code requires that the Plan designate "classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interest."[45] For the reasons set forth above, Article III of the Plan properly designates classes of Claims and Interests and thus satisfies the requirement of section 1122 of the Bankruptcy Code.[46] No party has asserted otherwise.

(2) Specification of Unimpaired Classes (§ 1123(a)(2))

47. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan."[47] The Plan meets this requirement by identifying each Class that is Unimpaired.[48] No party has asserted otherwise.

(1) Treatment of Impaired Classes (§ 1123(a)(3))

48. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan."[49] The Plan meets this requirement by setting forth the treatment of each Class that is Impaired.[50] No party has asserted otherwise.

(2) Equal Treatment within Classes (§ 1123(a)(4))

49. 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

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[45] 11 U.S.C. §1123(a)(1).

[46] *See* Plan, Art. III.A.

[47] 11 U.S.C. §1123(a)(2).

[48] *See* Plan, Art. III.A.

[49] 11 U.S.C. §1123(a)(3).

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

interest agrees to a less favorable treatment of such particular claim or interest."[51] The Plan satisfies this requirement because Holders of Allowed Claims or Interests will receive the same rights and treatment as other Holders of Allowed Claims or Interests within such Holders' respective Class.[52] No party has asserted otherwise.

(3) Means for Implementation (§ 1123(a)(5))

50. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[53] The Plan, together with the documents and forms of agreements included in the Plan Supplement, provides for the means by with the Plan will be implemented.

51. Article IV of the Plan, in particular, sets forth the means for implementation of the Plan, which include, *inter alia*: (a) the terms of the Committee Settlement, including the establishment of the GUC Trust pursuant to the GUC Trust Agreement; (b) the Restructuring Transactions; (c) the sources of consideration for Plan distributions; (d) the vesting of assets in the Reorganized Debtors; and (e) the taking of all necessary and appropriate actions by the Debtors to effectuate the transactions under and in connection with the Plan.[54] Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code. No party has asserted otherwise.

(4) Issuance of Non-Voting Securities (§ 1123(a)(6))

52. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate documents prohibit the issuance of nonvoting equity securities. The New Organizational

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[51] 11 U.S.C. § 1123(a)(4).

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

[53] 11 U.S.C. § 1123(a)(5).

[54] *See* Plan, Art. IV.

Documents filed with the Plan Supplement provide only for the issuance of voting equity securities.[55] Further, the Plan provides that the New Organizational Documents will be deemed to prohibit (and will include a provision prohibiting) the issuance of non-voting equity securities, pursuant to and solely to the extent required under section 1123(a)(6) of the Bankruptcy Code.[56] Because the Debtors are not issuing any new non-voting equity securities under the Plan, section 1123(a)(6) of the Bankruptcy Code does not apply to the Plan.

(5) Directors and Officers (§ 1123(a)(7))

53. Section 1123(a)(7) of the Bankruptcy Code requires that plan provisions with respect to the manner of selection of any director, officer, or trustee, or any other successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy."[57] The Plan satisfies this requirement by providing for the deemed resignation of the Debtors' directors and officers from their duties following the Effective Date, without any further action required.[58] The Plan also provides for the appointment of the New Board and other Governing Bodies in accordance with the New Organizational Documents filed with the Plan Supplement. The identity of the New Board is disclosed in the Plan Supplement and was designated in a manner consistent with the RSA.[59] Accordingly, the Plan satisfies section 1123(a)(7) of the Bankruptcy Code. No party has asserted otherwise.

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55 *See* Plan Supplement, Ex. E.

56 *See* Plan, Art. IV.J.

57 11 U.S.C. §1123(a)(7).

58 *See* Plan, Art. IV.K.

59 *See* Plan, Art. IV.I.

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

54. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires the plan proponent to comply with the applicable provisions of the Bankruptcy Code.[60] The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code.[61] As set forth herein, the Debtors have complied with these provisions, including sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by soliciting votes on the Plan in accordance with the Conditional Disclosure Statement Order.

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

55. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a chapter 11 plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[62] Section 1125 of the Bankruptcy Code ensures that parties in interest are fully informed regarding a debtor's condition so that they may make an informed decision whether to approve or reject the plan.[63]

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60 *See* 11 U.S.C. § 1129(a)(2).

61 *In re Lapworth*, 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)."); *In re Aleris Int'l, Inc.*, 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) ("The legislative history of section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the solicitation and disclosure requirements under sections 1125 and 1126 of the Bankruptcy Code."); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

62 11 U.S.C. § 1125(b).

63 *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) (finding that section 1125 of the Bankruptcy Code obliges a debtor to engage in full and fair disclosure that would enable a hypothetical reasonable investor to make an informed judgment about the plan).

56. Section 1125 is satisfied here. Before the Debtors solicited votes on the Plan, the Bankruptcy Court approved the Disclosure Statement on a conditional basis in accordance with section 1125(a)(1).[64] The Bankruptcy Court also conditionally approved the Solicitation Procedures and related materials.[65] As stated above, the Debtors, through their Claims and Noticing Agent, complied with the requirements of the Conditional Disclosure Statement Order in connection with the solicitation process, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code.[66] The Debtors also satisfied section 1125(c) of the Bankruptcy Code by making the same Disclosure Statement available to all Holders of Claims or Interests.[67]

57. Based on the foregoing, the Debtors submit that they have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Conditional Disclosure Statement Order.

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

58. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and equity 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

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64 *See generally* Conditional Disclosure Statement Order.

65 *See generally id.*

66 *See* Solicitation Affidavit.

67 *See id.*

> 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 any property under the plan on account of such claims or interests.[68]

59. As set forth above, in accordance with section 1125 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from the Holders of Allowed Claims in Class 3 (Prepetition ABL Claims), Class 4 (Prepetition FILO Claims), Class 5 (Term Loan Claims), and Class 6 (General Unsecured Claims).[69] The Debtors did not solicit votes from Holders of Claims in Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) because Holders of Claims in these Classes are Unimpaired and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan.[70] Depending on their ultimate treatment, Holders of Claims and Interests in Class 8 (Intercompany Claims) and Class 9 (Intercompany Interests) will be either conclusively presumed to accept or deemed to reject the Plan, and in either scenario are not entitled to vote on the Plan.[71] Holders of Claims and Interests in Class 7 (Section 510(b) Claims) and Class 10 (Equity Interests in West Marine) will receive no distribution on account of their Claims or Interests and, pursuant to section 1126(g) of the Bankruptcy Code, are deemed to reject the Plan.[72] Thus, pursuant to section 1126(a) of the

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68 11 U.S.C. § 1126(a), (f), (g).

69 *See* Solicitation Affidavit.

70 *See* Plan, Art. III.A-B.

71 *Id.*

72 *Id*.

Bankruptcy Code, only Holders of Claims in Classes 3, 4, 5, and 6 were entitled to vote to accept or reject the Plan.

60. With respect to the Voting Classes, section 1126(c) of the Bankruptcy Code provides that a class accepts a plan where holders of claims holding at least two-thirds in amount and more than one-half in number of allowed claims voting in such class vote to accept such plan. The Voting Report reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code.[73] As set forth in the Voting Report, all Voting Classes overwhelmingly voted to accept the Plan. Based on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.[74] No party has asserted otherwise.

C. The Plan Was Proposed in Good Faith (§ 1129(a)(3)).

61. 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."[75] Where a plan satisfies the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code is satisfied.[76] To determine whether a plan seeks

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[73] *See generally* Voting Report.

[74] *See id.*, Ex. A.

[75] 11 U.S.C. § 1129(a)(3).

[76] *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000) ("[F]or purposes of determining good faith under section 1129(a)(3) ... the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986))); *see also In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002) ("[T]he Plan has been proposed with the legitimate purpose of reorganizing the business affairs of each of the Debtors and maximizing the returns available to creditors of the Debtors. Accordingly, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code."); *accord In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997) ("Where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of § 1129(a)(3) is satisfied." (quoting *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985))).

relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[77]

62. The Debtors negotiated, developed, and proposed the Plan in good faith, and the Plan satisfies section 1129(a)(3) of the Bankruptcy Code. Throughout these chapter 11 cases, the Debtors worked to build consensus among their various stakeholders, as evidenced by, among other things, the Committee Settlement incorporated into the Plan. The Plan and the process leading up to its formulation are the result of extensive, arm's-length negotiations among the Debtors, Eclipse, the Consenting Stakeholders, the Committee, and other parties in interest.[78] Accordingly, the Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code. No party has asserted otherwise.

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

63. 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 of property under the plan, be subject to approval by the Bankruptcy Court as reasonable. Courts have construed this section to require that all payments of professional fees paid out of estate assets be subject to review and approval by the Bankruptcy Court as to their reasonableness.[79]

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[77] *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 a totality of the circumstances surrounding the plan's proposal." (citing *In re Sun Country Dev., Inc.*, 764 F. 2d at 408)); *In re Century Glove, Inc.*, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("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).

[78] *See* Agam Decl., ¶ 8.

[79] *See In re Lisanti Foods, Inc.*, 329 B.R. 491, 503 (D.N.J. 2005) ("Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court."); *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*

64. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code. All payments made or to be made by the Debtors for services or for costs or expenses in connection with these chapter 11 cases prior to the Effective Date, including all Professional Fee Claims, have been approved by, or are subject to approval of, the Bankruptcy Court.[80] Article II.B of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed no later than forty-five days after the Effective Date for determination by the Bankruptcy Court, after notice and a hearing, in accordance with the procedures established by the Bankruptcy Court.[81] Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code. No party has asserted otherwise.

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

65. Section 1129(a)(5)(A)(ii) of the Bankruptcy Code requires the plan proponent to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan and that the appointment or continuation of such officers and directors be consistent with the interests of creditors and equity security holders and public policy.[82]

66. The Plan satisfies section 1129(a)(5). On the Effective Date, the authority, power, and incumbency of the persons acting as directors and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such. At that time, the initial members of the New Board, whose identities were provided in the Plan Supplement, shall serve from and after the

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").

80 *See* Plan, Art. II.

81 Plan, Art. II.B.

82 *See* 11 U.S.C. § 1129(a)(5)(A)(ii).

Effective Date in accordance with the terms of the New Organizational Documents.[83] From and after the Effective Date, the New Board, the Reorganized Debtors, and the GUC Trust are authorized to act on behalf of the Estates.[84] Accordingly, the Plan fully complies with and satisfies all of the requirements of section 1129(a)(5) of the Bankruptcy Code. No party has asserted otherwise.

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

67. Section 1129(a)(6) of the Bankruptcy Code requires that any rate change provided for in a plan be approved by or subject to the approval of all governmental regulatory commissions with jurisdiction, if any. The Plan does not provide for any rate changes, and the Debtors are not subject to any such regulation. Thus, section 1129(a)(6) of the Bankruptcy Code does not apply to the Plan.

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

68. 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 value of not less than the value such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. The best interests test applies to individual dissenting holders of impaired claims or interests rather than classes and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's chapter 11 plan.[85]

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[83] *See* Plan, Art. IV.I.

[84] *See* Plan, Art. IV.L.

[85] *See Bank of Am. Nat. Trust & Savs. 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

69. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test. As set forth in the Disclosure Statement and the Agam Declaration, the Debtors believe that the Plan satisfies the best interests test because, among other things, the recovery to be available to Holders of Allowed Claims or Interests under the Plan—if any—will be not less than the recoveries expected to be available in a chapter 7 liquidation—if any. As set forth in the Agam Declaration, the Debtors with the assistance of their advisors, prepared a liquidation analysis, attached to the Disclosure Statement as Exhibit D (the "Liquidation Analysis").[86] The Liquidation Analysis compares (a) the estimated recoveries to holders of Claims and Interests that would result from the liquidation of the Debtors in a hypothetical conversion to chapter 7 of the Bankruptcy Code with (b) the estimated recoveries to holders of Allowed Claims and Interests under the Plan.[87] As illustrated in the Liquidation Analysis, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code, because—due to higher anticipated costs to the estates in a hypothetical chapter 7 case as compared to under the Plan in these chapter 11 cases—all holders of impaired Claims and Interests will receive property with a value as of the Effective Date that is not less than the value such holders would receive in a liquidation under chapter 7.[88] Moreover, it is notable that the Committee, which represents the interests of the Holder of General Unsecured Claims, supports the Plan. In light of the foregoing, based on the Liquidation Analysis, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code. No party has asserted otherwise.

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the plan."); *see also In re Stone & Webster, Inc.*, 286 B.R. 532, 544–45 (Bankr. D. Del. 2002) ("The application of the best interest test involves a hypothetical application of chapter 7 to a chapter 11 plan. A liquidation and distribution analysis is performed to see whether each holder of a claim or interest in each impaired class, as such classes are defined in the subject plan, receive not less than the holders would receive in a 'hypothetical Chapter 7 distribution' to those classes." (citation omitted)).

86 Agam Decl., ¶ 43.

87 *Id.*

88 *See* Disclosure Statement, Ex. D.

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

70. 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 not, the plan must satisfy the "cram down" requirements of section 1129(b) of the Bankruptcy Code with respect to the claims or interests in that class.[89] Pursuant to section 1126(c) of the Bankruptcy Code, a class of claims accepts a plan if holders of at least two-thirds in amount and more than one-half in number of the allowed claims voting in that class vote to accept the plan.

71. As set forth above, Classes 3, 4, 5, and 6 were each Impaired and each voted to accept the Plan. As such, there is an Impaired consenting Class that affirmatively voted to accept the Plan. Holders of Claims and Interests in Classes 8 and 9 are presumed to accept or deemed to reject the Plan, as applicable. Holders of Claims and Interests in Classes 7 and 10 are Impaired, were not entitled to vote, and are deemed to reject the Plan.[90] Notwithstanding such deemed rejections, the Debtors meet the requirements of section 1129(b) of the Bankruptcy Code to "cram down" these rejecting classes.

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

72. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments. 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

[89] 11 U.S.C. § 1129(b).

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

effective date cash equal to the allowed amount of such claims. 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 effective date of the plan (if such class has not accepted the plan). Finally, section 1129(a)(9)(C) of the Bankruptcy Code 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.

73. 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 payment in an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (a) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such

Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by the Holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.[91]

74. ***Second***, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because no Holders of the types of Allowed Claims specified by 1129(a)(9)(B) are Impaired under the Plan.[92] More specifically, under Article III.B of the Plan, except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, on or as soon as reasonably practicable after the later to occur of (a) the Effective Date and (b) the date such Claim becomes Allowed (or as otherwise set forth in the Plan), each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Allowed Other Priority Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.[93]

75. ***Third***, Article II.C of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides that Holders of Allowed Priority Tax Claims will be treated in accordance with the terms set forth in Section 1129(a)(9)(C), except to the extent a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment. The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.[94] The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code. No party has asserted otherwise.

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91 *See* Plan, Art. II.A.

92 *See id.*

93 *See* Plan, Art. III.B.

94 *See* Plan, Art. II.C.

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

76. 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," as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan. As detailed herein and in the Voting Report, Holders of Claims in the Voting Classes—which are each an Impaired Class under the Plan—voted to accept the Plan, independent of any insiders' votes.[95] Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

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

77. 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."[96] To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success.[97]

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95 *See* Voting Report, Ex. A.

96 11 U.S.C. § 1129(a)(11).

97 *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" (citations omitted) (internal quotation marks omitted)); *In re W.R. Grace & Co.*, 475 B.R. at 115 (same); *accord 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.").

Rather, a debtor must provide only a reasonable assurance of success.[98] There is a relatively low threshold of proof necessary to satisfy the feasibility requirement.[99]

78. The Plan is feasible.[100] It satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code by providing for a clear path to emergence from these chapter 11 cases and the ability of the Debtors to satisfy their obligations under the Plan. The Debtors project that the distributable value of the Estates will be sufficient to satisfy all Priority Tax and Other Priority Claims, Allowed Administrative Claims, Statutory Fees, and may provide further recoveries to the Allowed Claims in Class 3 (Prepetition ABL Claims), Class 4 (Prepetition FILO Claims), Class 5 (Term Loan Claims), and Class 6 (General Unsecured Claims) consistent with the Plan and the Confirmation Order. As explained in the Agam Declaration, the Debtors' Financial Projections demonstrate that the Reorganized Debtors will be well positioned to execute their business plan and maintain sufficient liquidity and capital resources to pay amounts due under the Plan and successfully operate their business.[101] There is a reasonable assurance that the Plan is workable and has a reasonable likelihood of success, satisfying the feasibility standard of section 1129(a)(11) of the Bankruptcy Code. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(11) of the Bankruptcy Code. No party has asserted otherwise.

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98 *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.

99 *See, e.g.*, *In re Tonopah Solar Energy, LLC*, 657 B.R. 393, 410 (D. Del. 2022) ("As Debtor correctly notes, [plan feasibility] is a low threshold."); *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) ("The 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 citation omitted)).

100 *See* Agam Decl., ¶ 53.

101 *See id.* ¶¶ 52-53.

L. The Plan Provides for the Payment of Certain Statutory Fees (§ 1129(a)(12)).

79. 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."[102] 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.[103]

80. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article XII.D of the Plan provides that all Quarterly Fees due and payable pursuant to section 1930 of Title 28 of the Judicial Code before the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, to the extent applicable, any entity making disbursements shall be liable to pay any and all Quarterly Fees when due and payable and shall file with the Bankruptcy Court UST Form 11-PCR reports when they become due.[104] Accordingly, the Plan complies with and satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. No party has asserted otherwise.

M. No Remaining Retiree Benefits Obligations (§ 1129(a)(13)).

81. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code.[105] The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code because Article IV.P of the Plan provides that from and after the Effective Date, all retiree

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[102] 11 U.S.C. § 1129(a)(12).

[103] 11 U.S.C. § 507(a)(2).

[104] *See* Plan, Art. XII.D.

[105] 11 U.S.C. § 1129(a)(13).

benefits, as defined in section 1114 of the Bankruptcy Code, if any, will be paid in accordance with applicable law.[106] The Plan therefore satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. No party has asserted otherwise.

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

82. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. Since the Debtors are not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply. Likewise, 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, each of the Debtors are a moneyed, business, or commercial corporation and, therefore, section 1129(a)(16) of the Bankruptcy Code, which provides that property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust be made in accordance with any applicable provisions of non-bankruptcy law, is not applicable to these chapter 11 cases.

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

83. 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. 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"

[106] *See* Plan, Art. IV.P.

with respect to the non-accepting impaired classes.[107] Notwithstanding the fact that Classes 7 and 10, and, potentially, Classes 8 and 9, are deemed to have rejected the Plan, the Plan is confirmable because it complies with sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

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

84. The Plan does not unfairly discriminate with respect to Classes 7, 8, 9, and 10. 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.[108] In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.[109] A threshold inquiry to assessing whether a proposed chapter 11 plan

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[107] *John Hancock*, 987 F.2d at 157 n.5; *In re Ambanc La Mesa L.P.*, 115 F.3d 650, 653 (9th Cir. 1997) ("[T]he Plan satisfies the 'cramdown' alternative . . . found in 11 U.S.C. § 1129(b), which requires that the Plan 'does not discriminate unfairly' against and 'is fair and equitable' towards each impaired class that has not accepted the Plan.").

[108] *In re Nuverra Env't Sols.*, 590 B.R. at 93, *aff'd on equitable mootness grounds*, 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 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 (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.").

[109] *See In re Coram Healthcare Corp.*, 315 B.R. 321, 349 (Bankr. D. Del. 2004) (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); *accord In re Ambanc La Mesa*, 115 F.3d at 656–57 (same).

unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.[110]

85. Here, the Plan's treatment of the non-accepting Impaired Classes is proper because all similarly situated Holders of Claims and Interests at each applicable Debtor will receive substantially similar treatment, and the Plan's classification scheme rests on a legally acceptable rationale, including in relation to their priority within the Debtors' capital structure, their differing legal nature, and their respective rights against the Debtors. Claims in each of the non-accepting Impaired Classes are not similarly situated to those of any other Classes, given their distinctly different legal character from all other Claims and Interests. Accordingly, the Plan does not discriminate unfairly with respect to Classes 7, 8, 9, or 10, who are deemed or are potentially deemed to reject the Plan, or for whom the Debtors waived their rights to solicit votes on the Plan, and, therefore, satisfies the requirements of section 1129(b).

2. The Plan Is Fair and Equitable (§ 1129(b)(2)).

86. 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.[111] This requires that an impaired rejecting class of claims or interests either be paid in full or that a

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[110] *See In re Aleris Int'l*, No. 09-10478, 2010 WL 3492664, at *31 (Bankr. D. Del. May 13, 2010) ("[S]ection 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." (citation omitted)); *In re Armstrong World Indus.*, 348 B.R. at 122 ("A finding that all classes of the same priority will receive the identical amount under the proposed Plan is not necessary to find that the Plan does not discriminate. . . . [T]he presumption of unfair discrimination only arises if the dissenting class would receive a 'materially lower' percentage recovery or will have a 'materially greater risk' in connection with the distribution." (citation omitted)).

[111] *Bank of Am. Nat. Trust & Savs. Ass'n*, 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, 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[.]' That latter condition is the core of what is known as the 'absolute priority rule.'" (citations omitted)).

class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.[112]

87. Here, the Plan is "fair and equitable" to Holders of Claims and Interests in those Classes that were deemed to reject the Plan because the Plan satisfies the absolute priority rule with respect to each of these non-accepting Impaired Classes. Specifically, no holder of any junior Claim or Interest will receive or retain any property under the Plan on account of such junior Claim or Interest, except to the extent any Holder of a Claim or Interest has agreed to a different treatment or recovery under the terms of the Committee Settlement.[113] With respect to Class 6 (General Unsecured Claims), its recovery from the GUC Trust Assets under the Plan is the result of a negotiated resolution with the Committee and the Classes senior to General Unsecured Creditors have consented to this treatment notwithstanding not receiving a full recovery. Moreover, all Classes senior to Class 6 are Unimpaired or have voted in favor of the Plan.[114] In light of this, the Plan structure is fair and equitable and does not violate the absolute priority rule.

88. In addition, to the extent that Intercompany Interests and Intercompany Claims are Reinstated under the Plan, distributions on account of Intercompany Interests and Intercompany Claims are not being received by Holders of such Intercompany Interests or Intercompany Claims on account of their Intercompany Interests or Intercompany Claims but for the purposes of administrative convenience, for the ultimate benefit of all parties in interest. Any Reinstatement

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[112] *See id*.

[113] *See* Agam Decl. ¶ 55; *see generally* Plan, Art. III.

[114] Recoveries gifted to junior classes by senior classes, such as those provided by the GUC Trust Assets due to a resolution with Holders of Claims in Classes 3, 4, and 5, have long been permitted in this district. *See, e.g.*, *In re Mallinckrodt PLC*, 639 B.R. 837, 903 (Bankr. D. Del. 2022), *abrogated on other grounds by Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) (confirming a plan which provided for gifted recovery to structurally junior creditors); *In re Nuverra*, 590 B.R.at 94 (confirming a plan which provided for gifted recovery where no objecting more senior class was skipped over).

of Intercompany Interests or Intercompany Claims will thus have no economic substance.[115] Accordingly, the Plan is "fair and equitable" with respect to all non-accepting Impaired Classes of Claims and Interests and satisfies section 1129(b) of the Bankruptcy Code.

89. For the foregoing reasons, and further supported by the lack of objections on any grounds related to Section 1129(b)(2), the Plan can be crammed down on the non-consenting Impaired Classes.

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

90. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. ***First***, section 1129(c) of the Bankruptcy Code, which prohibits confirmation of multiple plans, is not implicated because there is only one proposed plan. ***Second***, the purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933.[116] Moreover, no governmental unit or any other party has requested that the Bankruptcy Court decline to confirm the Plan on such grounds. As provided in the Agam Declaration, the Plan was proposed in good faith and not by any means forbidden by law.[117] ***Lastly***, section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases are a "small business case."[118]

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[115] *See In re ION Media Networks, Inc.*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) ("This technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan. The Plan's retention of intercompany equity interests for holding company purposes constitutes a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure.").

[116] *See* 15 U.S.C. § 77e.

[117] *See* Agam Decl., ¶ 39.

[118] *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 $3,424,000 (excluding debt owed to 1 or more affiliates or insiders)." 11 U.S.C. § 101(51D)(B).

Accordingly, the Plan satisfies the requirements of section 1129(c), (d), and (e) of the Bankruptcy Code. No party has asserted otherwise.

III. The Discretionary Contents of the Plan Are Appropriate Under Section 1123(b) of the Bankruptcy Code.

91. 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) modify or leave unaffected the rights of holders of secured or unsecured claims; (c) provide for the settlement or adjustment of claims against or interests in a debtor or its estate or the retention and enforcement by a debtor, trustee, or other representative of claims or interests; (d) provide for the assumption or rejection of executory contracts and unexpired leases; (e) provide for the sale of all or substantially all of the property of the debtor's estates, and the distribution of the proceeds of such sale among holders of claims or interests; or (f) include any other appropriate provision not inconsistent with the Bankruptcy Code.[119]

92. As set forth below, the Plan includes certain of these discretionary provisions, such as releases and general settlement of certain Claims and Interests. The Debtors have determined, as fiduciaries of their Estates and in the exercise of their reasonable business judgment, that each of the discretionary provisions of the Plan is appropriate given the circumstances of these chapter 11 cases.

93. Here, the Plan includes various discretionary provisions that are consistent with the discretionary authority vested under section 1123(b) of the Bankruptcy Code. For example, the Plan impairs certain Classes of Claims and Interests and leaves others Unimpaired, proposes

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

treatment for Executory Contracts and Unexpired Leases, provides a structure for Claim allowance and disallowance, and establishes a distribution process for the satisfaction of Allowed Claims entitled to distributions under the Plan. In addition, the Plan contains provisions implementing certain releases and exculpations, and permanently enjoining certain causes of action.

94. Each of these provisions is appropriate because, among other things, each is the product of arm's-length negotiations and has been critical to obtaining the support of the various constituencies for the Plan. Such provisions are discussed in turn below but, in summary, satisfy the requirements of section 1123(b).[120]

A. The Plan's Release, Exculpation, and Injunction Provisions Satisfy Section 1123(b) of the Bankruptcy Code.

95. The Plan includes certain Debtor and third-party releases, an exculpation provision, and an injunction provision. These discretionary provisions are proper because, among other things, they are the product of extensive good-faith, arm's-length negotiations, are supported by the Debtors and their key creditor constituents (including Class 3 (Prepetition ABL Claims), Class 4 (Prepetition FILO Claims), and Class 5 (Term Loan Claims)), the Committee, and are consistent with applicable precedent. Further, these provisions were fully and conspicuously disclosed to all parties in interest through the Combined Hearing Notice, the Ballots, and the applicable Notice of Non-Voting Status, which excerpted the full text of the releases, exculpation, and injunction provision as set forth in the Plan.

1. The Debtor Release in the Plan Is Appropriate.

96. Article VIII.C of the Plan provides for releases by the Debtors and their Estates of various Claims and Causes of Action, including any derivative claims, that the Debtors or their

[120] *See* Agam Decl., ¶¶ 27-38.

Estates or affiliates could assert against each of the Released Parties (the "Debtor Release").[121] The Debtor Release meets the applicable business judgment standard because it 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.[122] Indeed, the Debtor Release was negotiated as part of the Plan and is an indispensable component to achieve final resolution of potential disputes that would otherwise negatively affect the Debtors' Estates and the recoveries available to creditors under the Plan. Further, the scope of the Debtor Release is consistent with those regularly approved in this district.[123] Importantly, the Debtor Release should be approved because, among other things, the Special Committee concluded, following the extensive Investigation, that the Debtors' estates do not have any viable and valuable Claims against any of the Released Parties.[124]

97. Section 1123(b)(3)(A) of the Bankruptcy Code provides 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."[125] Furthermore, a debtor may release claims under section 1123(b)(3)(A) of the

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[121] Article I.A.139 of the Plan defines "Released Parties" as, collectively, and in each case, solely in their respective capacities as such: (a) each Debtor; (b) each Reorganized Debtor; (c) the Agents; (d) each Consenting Term Loan Lender and Consenting FILO Lender; (e) each ABL Lender; (f) each Releasing Party; (g) the Consenting Equity Holders; (h) the Committee and each of its members, solely in their capacities as members of the Committee; (i) each current and former Affiliate of each Entity in clause (a) through the preceding clause (h); and (j) each Related Party of each Entity in clauses (a) through the preceding clause (i); *provided*, *however*, that, in each case, an Entity shall not be a Released Party if it: (x) was provided with an opportunity to (i) opt out of the releases in this Plan by returning an "opt out" form and affirmatively opts out; or (ii) opt into the releases in this Plan by returning an "opt in" form and does not affirmatively opt in; or (y) timely objects to the releases contained in this Plan and such objection is not resolved before the Confirmation Order is entered.

[122] *See* Agam Decl., ¶¶ 28-31.

[123] *See In re Oldco Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Mar. 28, 2025) (confirming a chapter 11 plan including a similar scope of debtor releases); *In re EXP OldCo Winddown, Inc.*, No. 24-110831 (KBO) (Bankr. D. Del. Dec. 17, 2024) (same); *In re Vyaire Med., Inc.*, No. 24-11217 (BLS) (Bankr. D. Del. Nov. 14, 2024) (same); *In re SunPower Corp.*, No. 24-11649 (CTG) (Bankr. D. Del. Oct. 18, 2024) (same); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del. Oct. 15, 2024) (same).

[124] *See* Kahn Decl., ¶ 13.

[125] *See Coram*, 315 B.R. at 334–35 ("The standards for approval of a settlement under section 1123 [of the Bankruptcy Code] are generally the same as those under [Bankruptcy] Rule 9019."). Generally, courts in the Third Circuit approve a settlement by the debtors if the settlement "exceed[s] the lowest point in the range of

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."[126] In determining whether a debtor release is proper, courts in this jurisdiction 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 debtors' reorganization; (c) whether there is an agreement by a substantial majority of creditors to support the release; (d) whether there is an 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.[127] Not all of the above factors need to be satisfied for a court to approve a debtor release.[128]

98. The Debtor Release satisfies the *Zenith* factors. ***First***, each Released Party has made a substantial contribution to the Debtors' Estates. Delaware bankruptcy courts have recognized that a wide variety of acts may illustrate a substantial contribution to a debtor's estate.[129]

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reasonableness." *Id.* at 334 (internal citations omitted); *e.g.*, *In re Exaeris, Inc.*, 380 B.R. 741, 746 (Bankr. D. Del. 2008); *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that settlement must be "within the reasonable range of litigation possibilities" (internal quotation marks omitted)).

[126] *In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether 'the compromise is fair, reasonable, and in the best interest of the estate.'"); *accord In re WCI Cable, Inc.*, 282 B.R. 457, 469 (Bankr. D. Or. 2002) ("A debtor-in-possession has the burden of proof by a preponderance of the evidence to establish that a proposed settlement is reasonable, adequate, fair and equitable.").

[127] *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, Inc.*, 426 B.R. at 143 n.47 (citing the *Zenith* factors).

[128] *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).

[129] *See In re Indianapolis Downs. LLC*, 486 B.R. 286, 304 (Bankr. D. Del. 2013) (finding that the non-debtor party had substantially contributed by performing services for the debtors post-petition without receiving compensation); *In re Wash. Mut., Inc.*, 442 B.R. at 348 (finding substantial contribution required the contribution of "cash or anything else of a tangible value to the [chapter 11 plan] or to creditors"); *In re Zenith Elecs. Corp.*, 241 B.R. at 111 (finding that directors' and officers' prepetition contribution of work in negotiating a plan constituted adequate consideration for debtor's release).

The Released Parties not only expended significant time and resources analyzing and negotiating the terms of the Cash Collateral Orders, the RSA, the Plan, and the Committee Settlement, but also gave up economic interests to facilitate the Debtors' chapter 11 cases. For example, Eclipse and the Agents provided valuable consideration by consenting to the Debtors' use of cash collateral.[130] Additionally, the Consenting Stakeholders and Eclipse agreed to the Committee Settlement, which provides the General Unsecured Creditors with a recovery that they would not receive outside of the Plan.[131] The Debtors' directors, officers, employees, professionals, and other agents who served in such capacity on or after the Petition Date have been involved in negotiating, formulating, and implementing the Plan. These measures, among others, provided the Debtors with access to the liquidity necessary to commence, and operate during, these chapter 11 cases, enabled the Debtors to pursue a dual-track Recapitalization Transaction and Sale Transaction, and have allowed the Debtors to consummate a value-maximizing Recapitalization Transaction on the terms set forth in the Plan. Indeed, without the Released Parties' contributions, the Debtors would be unable to reorganize and continue operating their business as a going concern post-emergence. The Debtor Release, therefore, is key to the successful implementation of the Plan for the benefit of all stakeholders.

99. ***Second***, the Debtor Release is essential to the success of the Debtors' Plan because it constitutes an integral term of the Plan.[132] Indeed, absent the Debtor Release, the Debtors may not have been able to build the level of consensus with respect to the Plan and the transactions contemplated thereby. Importantly, the Debtor Release is the product of arm's-length and

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130 *See* Agam Decl., ¶ 29.

131 *See id.*

132 *See id.* ¶ 30.

good-faith negotiations between the Debtors and their key stakeholders and is limited in scope.[133] The Debtor Release does not release any entity other than the Released Parties, their respective Affiliates, and each of their Related Parties, as applicable, and does not release the Claims and Causes of Action expressly set forth and preserved by the Plan.[134] In consideration for the Debtor Release, the Debtors and their Estates will receive mutual releases from potential Claims and Causes of Action of each of the Releasing Parties.[135] The Debtors do not believe that they have 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.[136] The Debtors believe the Debtor Release is appropriate in light of the risk, expense, and delay of pursuing any such Causes of Action with respect to the Released Parties as compared to the results and benefits achieved under the Plan.[137] Therefore, the inclusion of the Debtor Release is integral to the Plan's success, is worthwhile, and inures to the benefit of the Debtors' stakeholders.

100. ***Third***, as evidenced by the Voting Report and noted herein, the Debtors' stakeholders overwhelmingly support the Plan, including the Debtor Release, and no stakeholder has objected to the Debtor Release contained in the Plan. The Voting Classes each voted to accept the Plan.[138] This degree of consensus evidences the Debtors' stakeholders' support for the Debtor Release and Plan.

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133 *See id.*

134 *See* Plan, Art. IV.N.

135 *See* Plan, Art. VIII.C.

136 *See* Kahn Decl., ¶ 13.

137 *See id.*

138 *See* Voting Report, Ex. A.

101. ***Fourth***, an identity of interest exists between the Debtors and the Released Parties. Whether there is an identity of interest depends on whether the debtor and non-debtor are sufficiently interlinked such that a lawsuit against the non-debtor would effectively be a lawsuit against the debtor or would deplete the assets of the debtor's estate.[139] Lawsuits against the Released Parties may implicate the Debtors, and each Released Party shares a common goal with the Debtors in seeing the Plan succeed and implementing the transactions contemplated thereunder.[140] Moreover, with respect to certain of the releases—*e.g.*, those relating to the Debtors' current and former directors—there is a clear identity of interest supporting the Debtor Release because the Debtors will assume certain indemnification obligations under the Plan that will be honored by the Reorganized Debtors. Thus, a lawsuit commenced by the Debtor (or derivatively on behalf of the Debtors) against certain individuals would effectively be a lawsuit against the Reorganized Debtors' own interest.

102. ***Fifth***, the Plan maximizes the value of the Debtors' assets and the distribution of available proceeds to creditors. The Plan provides for meaningful recoveries for creditors in exchange for, among other things, the Debtors' Release of potential claims, and the Plan has been carefully crafted to maximize value and provides meaningful recoveries for all stakeholders under the circumstances.

103. For the reasons set forth above, and as supported by the Agam Declaration and the Kahn Declaration, the *Zenith* factors support approval of the Debtor Release, and the Debtors have

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139 *In re Master Mortg*, 168 B.R. at 935 (Bankr. W.D. Mo. 1994).

140 *See In re Mercy Hosp.*, No. 23-00623, 2024 WL 2890139, at *4 (Bankr. N.D. Iowa June 7, 2024) ("Particularly persuasive [to finding that there exists an identity of interest] is the fact that these releases were integral to the consensual nature of the Plan and necessary to avoid the prospect of immense and complex litigation absent the releases."); *see also In re Tribune*, 464 B.R. 126, 187 (Bankr. D. Del. 2011) (finding that the debtors and released parties "share the common goal" of confirming a plan dependent on settlement of complex multi-party litigation resulted in an "identity of interest").

satisfied the business judgment standard in granting the Debtor Release under the Plan. Thus, the Bankruptcy Court should approve the Debtor Release in the Plan.

2. The Consensual Third-Party Release Is Appropriate.

104. The Plan also provides for mutual releases by certain Holders of Claims and Interests. Specifically, Article VIII.D of the Plan provides that each Releasing Party shall release any and all Claims and Causes of Action such parties could assert against the Released Parties (the "Third-Party Release"), with certain limited exceptions. The Releasing Parties include, each of, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) the Agents; (d) each Consenting Term Loan Lender and Consenting FILO Lender; (e) each ABL Lender; (f) the Consenting Equity Holders; (g) the Committee and each of its members, solely in their capacities as members of the Committee; (h) all Holders of Claims that vote to accept this Plan and are provided with the opportunity to opt out of the releases in this Plan and do not affirmatively opt out of the releases provided for in this Plan; (i) all Holders of Claims or Interests who either (x) abstain from voting on this Plan, (y) vote to reject this Plan, or (z) are deemed to accept or reject this Plan and, in the case of either (x), (y), or (z), affirmatively opts in to the releases provided for in this Plan; (j) each current and former Affiliate of each Entity in clause (a) through the preceding clause (i) for which such Entity is legally entitled to bind such Affiliate to the releases contained in this Plan under applicable law; and (k) each Related Party of each Entity in clause (a) through the preceding clause (j) for which such Entity is legally entitled to bind such Related Party to the releases contained in this Plan under applicable law. The Third-Party Release is consensual, consistent with established Third Circuit law, and integral to the Plan. The Third-Party Release should therefore be approved.

105. Courts in this jurisdiction routinely approve such release provisions if, as here, they are consensual and appropriately tailored. Consensual releases are permissible on the basis of

general principles of contract law.[141] Courts have also held that an affirmative agreement from an affected creditor will render a release consensual.[142] The law is clear that a release is consensual where parties have received sufficient notice and have had an opportunity to object to and/or opt in to or out of the releases. In *Emerge*, this Bankruptcy Court recognized that a release by a non-debtor third party is consensual where the releasing party indicates its consent by an affirmative act.[143] Since *Emerge*, this Bankruptcy Court and others have approved numerous third-party releases as consensual where the releasing third parties were required to indicate their consent by returning a form indicating the party's desire to participate in the third-party release.[144]

106. Furthermore, the Supreme Court's decision in *Purdue* is not at odds with the release provisions commonly approved by this Bankruptcy Court, and its holding is generally inapplicable to the release provisions contemplated by the Debtors. In *Purdue*, the Supreme Court made clear the narrow scope of the decision by pointing out that "nothing in [this opinion] should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy

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141 *See In re Smallhold, Inc.*, 665 B.R. 704, 722–23 (Bankr. D. Del. 2024) (following the "contract model" of evaluating third-party releases); *In re Coram Healthcare Corp.*, 315 B.R. at 336 ("[A] [p]lan is a contract that may bind those who vote in favor of it.").

142 *See id*. ("[T]o the extent creditors or shareholders voted in favor of [a plan providing for the release of their claims] they are bound by that [plan]."); *In re W. Coast Video Enters., Inc.*, 174 B.R. 906, 911 (Bankr. E.D. Pa. 1994) ("[E]ach creditor bound by the terms of the [non-debtor] release must individually affirm same, either with a vote in favor of a plan including such a provision, or otherwise.").

143 *Compare In re Emerge Energy Servs. LP*, No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (declining to approve third-party release where holders of claims and interests were presumed to consent to participation in the third-party release if they did not return an opt-out form, regardless of whether such holder returned a ballot); *with*, *e.g.*, *In re AeroCision Parent, LLC*, No. 23-11032 (KBO) (Bankr. D. Del. Mar. 4, 2024) (approving a consensual third-party release that included, among others, all holders of claims who return a ballot voting to accept the plan, with no option to opt out); *In re Virgin Orbit*, No. 23-10405 (KBO) (Bankr. D. Del. July 31, 2023) (same); *In re Lucky Bucks,* No. 23-10758 (KBO) (Bankr. D. Del. July 28, 2023) (same, also including all holders of claims who return a ballot voting to reject plan who do not opt out).

144 *See In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. July 10, 2025) (confirming a chapter 11 plan including opt-in third-party releases); *In re Tupperware Brands Corp.*, No. 24-12156 (BLS) (Bankr. D. Del. May 9, 2025) (same); *In re Oldco Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Mar. 28, 2025) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Mar. 6, 2025) (same); *In re EXP OldCo Winddown, Inc.*, No. 24-110831 (KBO) (Bankr. D. Del. Dec. 17, 2024) (same).

reorganization plan."[145] Therefore, *Purdue*'s applicability is limited to cases where a debtor or debtors seek non-consensual third-party releases.

107. Approval of the Third-Party Release under the circumstances of these chapter 11 cases is appropriate because it is not binding on any non-consenting parties. Here, all parties in interest were provided extensive notice of these chapter 11 cases, the Plan, and the deadline to object to confirmation of the Plan. Moreover, the Disclosure Statement, the Combined Hearing Notice, the Ballots, the Notices of Non-Voting Status, and the Opt-In Forms provided recipients with timely, sufficient, appropriate, and adequate notice of the Third-Party Release. The Debtors required all Holders of Claims or Interests to affirmatively opt in to or out of the Third-Party Release by either checking a box on the Ballot and returning the Ballot, or for Non-Voting Classes, by completing and returning the applicable Opt-In Form, and provided each Holder of a Claim or Interest with ample notice and instructions on how to do so. As of the Voting Deadline, 175 parties have affirmatively opted into or out of the Third-Party Release by completing and returning a Ballot with the applicable box checked, or by completing and returning the applicable Opt-In Form.[146]

108. For all these reasons, the inclusion of Holders of Claims against or Interests in the Debtors who affirmatively opt in to, or submitted a Ballot and did not opt out of, the releases provided by the Plan as "Releasing Parties" under the Plan and with respect to the Third-Party Release is appropriate and should be approved. Importantly, the Combined Hearing Notice, the Opt-In Forms, and the Ballots, as applicable, quoted the entirety of the Third-Party Release in

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[145] *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 226 (2024) (emphasis added).

[146] *See* Voting Report, Ex. C, Ex. D. Certain parties submitted Opt-In Forms after the Voting Deadline that were accepted by the Debtors based on a consensual extension of the applicable deadline for such parties, following consultation with the Committee.

bold, conspicuous font, and clearly provided such Holders with detailed instructions on how to opt-in to or out of the Third-Party Release, as applicable. Thus, affected parties were on notice of the Third-Party Release, including the option to opt in to or out of the Third-Party Release, as applicable. All Holders of Claims and Interests also had the opportunity to object to the Third-Party Release by timely filing an objection to the Plan. The Third-Party Release is therefore consensual as to all creditors and interest holders who affirmatively opted in to the Third-Party Release, or submitted a Ballot and did not check the box to opt out of the Third-Party Release.

109. The Third-Party Release brought key stakeholders to the table for negotiations around the RSA and the Plan, each of which contributed to the Debtors' success in these chapter 11 cases. As noted in the Agam Declaration, the Third-Party Release was necessary to secure support for the Plan.[147] And importantly, the Third-Party Release only applies to parties who have (a) actively participated in the chapter 11 or Plan process, including in the formulation and negotiation of the Third-Party Release or (b) manifested their affirmative consent to the Third-Party Release. Thus, the Third-Party Release is wholly consensual.

110. The Debtors submit that the inclusion of "Affiliates" and "Related Parties" as "Releasing Parties" is also appropriate, even though those parties have not necessarily manifested consent to the Third-Party Release.[148] Courts in this district regularly approve such provisions, so long as the Plan specifies that such entities are "Releasing Parties" solely to the extent they can be bound under principles of applicable agency law by the "Releasing Party" to which they are related, so that a hypothetical future court may intelligibly interpret the Plan to determine if a party

[147] *See* Agam Decl., ¶¶ 32-33.

[148] *See* Plan, Art. I.A.140.

was released or not.[149] Here, the Plan provides that "Affiliates" and "Related Parties" are "Releasing Parties" to the extent that such Entity "is legally entitled to bind such Related Party to the releases contained in th[e] Plan under applicable law."[150] Therefore, the inclusion of "Affiliates" and "Related Parties" in the Third-Party Release should be approved.

111. For the foregoing reasons, the Third-Party Release is consensual, permissible, and an integral and necessary part of the Plan. Accordingly, the Third-Party Release should be approved. No party has asserted otherwise.

3. The Exculpation Provisions Are Appropriate.

112. Exculpation provisions that apply only to estate fiduciaries and are limited to claims not involving actual fraud, willful misconduct, or gross negligence are customary and generally approved in this district under appropriate circumstances.[151] Unlike third-party releases, exculpation provisions do not affect the liability of third parties per se, but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an "Exculpated Party" for claims arising over the course of the chapter 11 cases.[152]

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149 *See In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. July 10, 2025) (confirming a chapter 11 plan including opt-in third-party releases); *In re Tupperware Brands Corp.*, No. 24-12156 (BLS) (Bankr. D. Del. May 9, 2025) (same); *In re Oldco Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Mar. 28, 2025) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Mar. 6, 2025) (same); *In re EXP OldCo Winddown, Inc.*, No. 24-110831 (KBO) (Bankr. D. Del. Dec. 17, 2024) (same).

150 Plan, Art. I.A. 140.

151 *See In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. July 10, 2025) (confirming a chapter 11 plan including an exculpation provision); *In re Tupperware Brands Corp.*, No. 24-12156 (BLS) (Bankr. D. Del. May 9, 2025) (same); *In re Oldco Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Mar. 28, 2025) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Mar. 6, 2025) (same); *In re EXP OldCo Winddown, Inc.*, No. 24-110831 (KBO) (Bankr. D. Del. Dec. 17, 2024) (same).

152 *See In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir 2000) (finding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code"); *see also In re Premier Int'l Holdings, Inc.*, No. 09-12019, 2010 WL 2745964, at *10 (Bankr. D. Del. Apr. 29, 2010) (approving a similar exculpation provision as that provided for under the Plan); *In re Spansion, Inc.*, No. 09-10690, 2010 WL 2905001, at *16 (Bankr. D. Del. Apr. 16, 2010) (same).

113. Article VIII.E of the Plan provides for the exculpation of the Exculpated Parties.[153] The exculpation is fair and appropriate under both applicable law and the facts and circumstances of these chapter 11 cases. The Plan's exculpation provision is the product of good-faith, arm's-length negotiations, is critical to obtaining the support of various constituencies for the Plan, and, as part of the Plan, has received support from the Debtors' major stakeholders. The exculpation provision was important to the development of a feasible, confirmable Plan, and the Exculpated Parties participated in these chapter 11 cases in reliance upon the protections afforded to those constituents by the exculpation.

114. Moreover, the exculpation provision and the liability standard it sets represents a conclusion of law that flows logically from certain findings of fact that the Bankruptcy Court must reach in confirming the Plan as it relates to the Debtors. As discussed above, the Bankruptcy Court must find, under section 1129(a)(2) of the Bankruptcy Code, that the Debtors have complied with the applicable provisions of the Bankruptcy Code. The Bankruptcy Court must also find, under section 1129(a)(3) of the Bankruptcy Code, that the Plan has been proposed in good faith and not by any means forbidden by law. These findings apply to the Debtors and, by extension, to certain of the Debtors' officers, directors, employees, and professionals. Furthermore, these findings imply that the Plan was negotiated at arm's-length and in good faith. Where such findings are made, parties who have been actively involved in such negotiations should be protected from collateral attack.

[153] Article I.A.62 of the Plan defines "Exculpated Parties" as, collectively, (a) each of the Debtors; (b) members of the Special Committees; (c) the Committee and each of its respective members in their capacity as such; and (d) with respect to each of the foregoing entities and persons in clauses (a) through (c), (i) their respective current officers, their current and former directors, and limited liability company managers, who served in such capacity at any time between the Petition Date and the Effective Date, and (ii) each of their attorneys, financial advisors, consultants, and other professionals or advisors whose retentions were approved by the Bankruptcy Court pursuant to an order approving such professional's retention application or the OCP Order, as applicable.

115. Here, the Debtors and their officers, directors, and professionals actively negotiated with Holders of Claims and Interests across the Debtors' capital structure in connection with the Plan and these chapter 11 cases. Such negotiations were extensive, and the resulting agreements and compromises were implemented in good faith with a high degree of transparency.[154] As a result, the Plan is supported by all Voting Classes and the Committee.[155] Accordingly, the Bankruptcy Court's findings of good faith vis-à-vis the chapter 11 cases should also extend to the Exculpated Parties.

116. In addition, the promise of exculpation played a significant role in facilitating Plan negotiations. All of the Exculpated Parties played a key role in negotiating, formulating, and implementing the Recapitalization Transaction, the Disclosure Statement, the Plan, and related documents in furtherance thereof, which paved the way for a remarkable value-maximizing resolution of these chapter 11 cases. The Exculpated Parties may not have been inclined to participate in the plan process without the promise of exculpation. Exculpation for parties participating in the plan process is appropriate where plan negotiations could not have occurred without protection from liability.[156] Accordingly, under the circumstances, it is appropriate for the Bankruptcy Court to approve the exculpation provision and to find that the Exculpated Parties have acted in good faith and in compliance with the law.[157]

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154 *See* Agam Decl., ¶¶ 35-37.

155 *See, e.g.*, Voting Report, Ex. A.

156 *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992); *In re Enron Corp.*, 326 B.R. 497, 503 (S.D.N.Y. 2005) (excising similar exculpation provisions would "tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition").

157 *See In re PWS Holding Corp.*, 228 F.3d at 246–47 (approving plan exculpation provision exception for willful misconduct and gross negligence); *In re Indianapolis Downs*, 486 B.R. at 306 (same).

4. The Injunction Provision Is Appropriate.

117. The injunction provision set forth in Article VIII.F of the Plan (the "Plan Injunction") merely implements the Plan's release and exculpation provisions by permanently enjoining all entities from commencing or maintaining any action against the Debtors, the GUC Trust, the Exculpated Parties, or the Released Parties on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action that are released, discharged, settled, or subject to the exculpation pursuant to the Plan. Thus, the injunction provision is a key provision of the Plan because it enforces the release and exculpation provisions that are centrally important to the Plan. Moreover, the Plan Injunction is narrowly tailored to achieve its purpose and consensual as to any party that did not specifically object to it. As such, to the extent the Bankruptcy Court finds that the exculpation and release provisions are appropriate, the Debtors respectfully submit that the Plan Injunction must also be appropriate. No party has asserted otherwise.

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

118. 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 non-bankruptcy law."[158]

119. The Plan complies with section 1123(d) of the Bankruptcy Code. Article V.C of the Plan provides for the satisfaction of all monetary defaults under each Executory Contract and Unexpired Lease assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code by payment of all undisputed Cure Claims in Cash on or prior to the Effective Date, subject to certain limitations set forth in the Plan, or on such other terms as the

[158] 11 U.S.C. § 1123(d).

parties to such Executory Contracts or Unexpired Leases may otherwise agree.[159] Accordingly, the Debtors submit that the Plan fully complies with section 1123(d) of the Bankruptcy Code. No party has asserted otherwise.

C. Modifications to the Plan.

120. 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. 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 consistently have held that a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated.[160] As courts have recognized, "a plan modification is immaterial unless it will 'so affect a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance.'"[161]

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

[160] *See, e.g.*, *In re Glob. Safety Textiles Holdings LLC*, No. 09-12234, 2009 WL 6825278, at *4 (Bankr. D. Del. Nov. 30, 2009) (finding that nonmaterial modifications to plan do not require additional disclosure or resolicitation); *In re Burns & Roe Enters., Inc.*, No. 08-4191, 2009 WL 438694, at *23 (D.N.J. Feb. 23, 2009) (confirming plan as modified without additional solicitation or disclosure because modifications did "not adversely affect creditors").

[161] *In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. 87, 168 (D. Del 2023) (quoting *In re Am. Solar King*, 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988)).

121. Contemporaneously herewith, the Debtors filed a modified version of the Plan, which makes technical clarifications, eliminates the Sale Transaction, resolves certain informal comments by various parties in interest, and includes the Committee Settlement. The modifications are immaterial or do not adversely affect the way creditors and stakeholders who have previously accepted the Plan are treated and thus comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. For example, the Committee Settlement provides for a greater potential recovery for Holders of Claims in Class 6 (General Unsecured Claims). Because none of the modifications to the Plan are material or adversely affect Holder of Claims, the Debtors submit that no additional solicitation or disclosure is required, and that such modifications should be deemed accepted by all creditors that previously accepted the Plan.

IV. The Resolution of Cure/Assumption Objections After the Effective Date Is Proper.

122. The Debtors did not receive any formal objections to the Plan but did receive informal comments related to Confirmation of the Plan. As of the filing of this Memorandum, the Debtors have resolved substantially all of the informal comments, except for certain Cure/Assumption Objections.[162] As discussed below, the Plan should be confirmed.

123. The Debtors received several formal and informal objections relating to the Debtors' proposed Cure amounts with respect to Executory Contracts and Unexpired Leases to be assumed as identified in the Plan Supplement.[163] Certain objecting parties believe that the proposed Cure amount is incorrect and must be corrected before such contract or lease may be assumed, and/or may further request adequate assurance of future performance under the applicable Executory Contracts and Unexpired Leases. The Debtors have made substantial

[162] The Objection Summary Chart can be found on **Exhibit A**, attached hereto.

[163] Plan Supplement, Ex. B.

progress in resolving a significant number of Cure disputes as of the date hereof and are continuing to engage with various parties to reach a consensual resolution on the remaining Cure disputes. To the extent the Debtors and the contract counterparties are unable to reach a consensual resolution on these Cure-related matters, the Debtors may seek relief from the Bankruptcy Court and all parties' rights are reserved with respect thereto. To the extent that the Debtors are unable to consensually resolve the proposed Cure amount, the Debtors will schedule a hearing to have the matter heard before the Bankruptcy Court. Pursuant to the Plan, the Debtors are not required to resolve Cure disputes prior to Confirmation.[164]

124. Courts in this district and others often resolve cure objections post-confirmation.[165] Accordingly, the Debtors submit that these objections are properly post-Confirmation matters and should not delay Confirmation of the Plan.

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

125. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."[166] Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory

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

[165] *See, e.g., In re Franchise Group, Inc.* No. 24-12480 (LSS), ¶ 60 (Bankr. D. Del. June 2, 2025), ECF No. 1596 (allowing for payment of cure costs "as soon as reasonably practicable" after the effective date or "seven (7) days after the date on which such Cure Dispute has been resolved."); *In re Accuride Corp*., No. 24-12289 (JKS), ¶58 (Bankr. D. Del. Feb. 12, 2025), ECF No. 704 ("[I]f a dispute regarding assumption or Cure Cost is unresolved as of the Effective Date, then payment of the applicable Cure Cost shall occur as soon as reasonably practicable after such dispute is resolved."); *In re SunPower Corp.,* No. 24-11649 (CTG), ¶43 (Bankr. D. Del. Oct. 18, 2024), ECF No. 872 (allowing for payment of cure costs "as soon as reasonably practicable" after the effective date); *In re MVK FarmCo LLC*, No. 23-11721 (LSS), ¶41 (Bankr. D. Del. Mar. 29, 2024), ECF No. 858 (same).

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

contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

126. The Debtors submit that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the proposed Confirmation Order will be effective immediately upon its entry.[167] As noted above, these chapter 11 cases and the related transactions under the Plan are consensual and have been negotiated and implemented in good faith and with a high degree of transparency. Additionally, for each day the Debtors remain in chapter 11, they incur administrative and professional costs, which will be significantly reduced if the Debtors emerge expeditiously.

127. For these reasons, the Debtors, along with their advisors and other key constituents, are working to expedite the Debtors' entry into and consummation of the documents and transactions related to the Plan, ensuring that the Effective Date occurs as soon as possible after the Confirmation Date. Based on the foregoing, the Debtors request a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

Conclusion

128. For all of the reasons set forth herein and in the Declarations, and as will be further shown at the Combined Hearing, the Debtors request that the Bankruptcy Court approve the Disclosure Statement on a final basis and confirm the Plan as fully satisfying all of the applicable

[167] *See, e.g., In re Joann Inc.,* No. 25-10068 (CTG), ¶ 132 (Bankr. D. Del. July 10, 2025) (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re Franchise Group, Inc*., No. 24-12480 (LSS), ¶ 206 (Bankr. D. Del. June 2, 2025) (same); *In re Vyaire Med., Inc*., No. 24-11217 (BLS), ¶ 129 (Bankr. D. Del. Nov. 14, 2024) (same); *In re SunPower Corp.*, No. 24-11649 (CTG), ¶ 131 (Bankr. D. Del. Oct. 18, 2024) [Docket No. 872] (same); *In re MVK FarmCo LLC*, No. 23-11721 (LSS), ¶ 154 (Bankr. D. Del. Mar. 29, 2024) [Docket No. 858] (same).

requirements of the Bankruptcy Code by entering the proposed Confirmation Order, overruling all outstanding Objections, and granting such other and further relief as is just and proper.

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Dated: August 6, 2026
Wilmington, Delaware

/s/ Kristin L. Cardoza

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Exhibit A

Objection Summary Chart

Cure Objections and Responses
***In re West Marine, Inc., et al.*, No. 26-10794 (Bankr. D. Del. May 17, 2026)**

Docket No(s). (as applicable)[1]	Counterparty	Basis for Objection	Status
Resolved/Moot[2]			
Informal	114 Huttleston Ave, LLC	114 Huttleston Ave, LLC informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	337 Lafayette Road, LLC	337 Lafayette Road, LLC informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	AREIT Salt Pond	AREIT Salt Pond informally requested the inclusion of language in the Confirmation Order regarding accrued but unbilled lease obligations.	Resolved through the inclusion of language in the Confirmation Order.
Informal	Chervon North America, Inc.	Chervon North America, Inc. informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Resolved through agreement between the parties.
Informal	Constellation NewEnergy, Inc.; Constellation NewEnergy Gas Divison, LLC	Constellation NewEnergy, Inc. and Constellation NewEnergy Gas Divison, LLC (together, "Constellation") informally inquired regarding the assumption of their contracts (collectively, the "Constellation Agreements") and the related cure amounts.	Resolved through inclusion of Constellation Agreements and agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	Crown Equipment Corporation	Crown Equipment Corporation informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.

[1] To the extent of any inconsistent between the summary description herein and the filed objection, the objection shall govern.

[2] The Debtors believe the objections below have been resolved based on negotiations and agreements with the respective objecting parties, through language in the Confirmation Order, or through amended cure amounts reflected in the revised Assumed Executory Contracts and Unexpired Leases List filed with the Plan Supplement [Docket No. 484 (Sealed) and 485 (Redacted)] (the "Revised Assumed Executory Contracts and Unexpired Leases List").

Informal	Eastern Plaza Shopping Center	Eastern Plaza Shopping Center informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	Element Fleet Corporation	Element Fleet Corporation informally requested the inclusion of language in the Confirmation Order regarding its setoff and recoupment rights under the Element Contracts (as defined in the Confirmation Order).	Resolved through the inclusion of language in the Confirmation Order.
Informal	FNA Group, Inc.	FNA Group, Inc. informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with FNA Group, Inc. Accordingly, the objection is moot.
Informal	Garmin USA, Inc.	Garmin USA, Inc. informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Garmin USA, Inc. Accordingly, the objection is moot.
Informal	Lake Country Manufacturing, Inc.	Lake Country Manufacturing, Inc. informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Resolved by agreement of the parties.
Informal	Marin GRF3 LLC	Marin GRF3 LLC informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	MDC Coast 28, LLC (1320)	MDC Coast 28, LLC (1320) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	MDC Coast 28, LLC (1321)	MDC Coast 28, LLC (1321) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	MGP XII South Shore Center, LLC	MGP XII South Shore Center, LLC informally objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
Informal	Oliveira Plaza SPE LLC	Oliveira Plaza SPE LLC informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.

Informal	Rithum Corporation (f/k/a Commerce Technologies, LLC)	Rithum Corporation informally objected to the proposed cure amount.	Resolved by agreement of the parties.
Informal	Salesforce.Com, Inc.	Salesforce.Com, Inc. informally objected to its proposed cure amount and the descriptions of its contracts (the "Salesforce Contracts").	The Debtors have resolved this objection language in the Confirmation Order and through revisions to the descriptions of the Salesforce Contracts as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	Sherwin Williams	Sherwin Williams informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Sherwin Williams. Accordingly, the objection is moot.
Informal	Texas Taxing Authorities	The Texas Taxing Authorities informally requested the inclusion of language in the Confirmation Order regarding lien retention and the application of various provisions of the Plan to the Texas Tax Claims (as defined in the Confirmation Order).	Resolved through the inclusion of language in the Confirmation Order.
Informal	U.S. Corrosion Technologies Corporation	U.S. Corrosion Technologies Corporation informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Corrosion Technologies Corporation. Accordingly, the objection is moot.
Informal	VEREIT Real Estate, L.P. (st57)	VEREIT Real Estate, L.P. (st1298) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	VEREIT Real Estate, L.P. (str 540)	VEREIT Real Estate, L.P. (str 540) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	VEREIT Real Estate, L.P. (str1292)	VEREIT Real Estate, L.P. (str57) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	VEREIT Real Estate, L.P. (st1298)	VEREIT Real Estate, L.P. (st1292) informally objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
Informal	XPO Logistics Freight, Inc.	XPO Logistics Freight, Inc. informally objected to the proposed cure amount.	Resolved through the inclusion of language in the Confirmation Order.

Informal	Yeti Coolers	Yeti Coolers informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Yeti Coolers. Accordingly, the objection is moot.
Informal	Zhik USA LLC	Zhik USA LLC informally objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Resolved through the inclusion of language in the Confirmation Order.
343	Harken Incorporated	Harken Incorporated objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Resolved by agreement of the parties.
352	Real Sub, LLC	Real Sub, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
356	Milwaukee Electric Tool Corporation	Milwaukee Electric Tool Corporation objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Milwaukee Electric Tool Corporation. Accordingly, the objection is moot.
402	Sullivan Family Trust	Sullivan Family Trust objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
409	Easton Investments Redux, LLC	Easton Investments Redux, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
412	Seaflo Marine & RV North America LLC	Seaflo Marine & RV North America LLC objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Seaflo Marine & RV North America LLC.
414	Rec-Com Outdoors Operating US, Inc. dba Rec-Com Outdoors	Rec-Com Outdoors Operating US, Inc. dba Rec-Com Outdoors objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Rec-Com Outdoors Operating US, Inc. dba Rec-Com Outdoors. Accordingly, the objection is moot.

415	PK II Olympia West Center LLC (contract counterparty B10 Mountain A WA LLC)	PK II Olympia West Center LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
	The Harry & Jeanette Weinberg Foundation, Inc.	The Harry & Jeanette Weinberg Foundation, Inc. objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
416	Google LLC	Google LLC objected to the proposed cure amount.	Resolved by agreement of the parties.
417	The Libman Company	The Libman Company objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with The Libman Company. Accordingly, the objection is moot.
419	Gator Daytona Partners, Ltd.	Gator Daytona objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
422	Pan Jack Industrial Co. Ltd	Pan Jack Industrial Co. Ltd. objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Resolved through the inclusion of language in the Confirmation Order.
423	Power Probe Group Inc.	Power Probe Group Inc. objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Power Probe Group Inc. Accordingly, the objection is moot.
424	Bell-East Business Park I, LLC	Bell-East Business Park I, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.

425	Gas Lite, LLC	Gas Lite, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
427	Gates of Fernandina, LLC	Gates of Fernandina, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
	Gates of St. Johns Plaza, LLC (Str#0547)	Gates of St. Johns Plaza, LLC objected to the proposed cure amount.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
428, 467	Egis Group LLC (dba Egis Mobile Elecric); G.G. Schmitt & Sons, Inc.; Marine Accessories Corporation d/b/a Gibco Flex-Mold; Monster Marine Products Inc. d/b/a Fishmaster and Turboswing; Patrick Industries, Inc.; Taco Metals, LLC; Rockford Corporation; Sea-Dog Line, a division of Patrick Industries; Wet Sounds, Inc.; Marine Accessories Corporation d/b/a Westland Industries	Egis Group LLC (dba Egis Mobile Elecric), G.G. Schmitt & Sons, Inc., Marine Accessories Corporation d/b/a Gibco Flex-Mold, Monster Marine Products Inc. d/b/a Fishmaster and Turboswing, Patrick Industries, Inc., Taco Metals, LLC, Rockford Corporation, Sea-Dog Line, a division of Patrick Industries, Wet Sounds, Inc., and Marine Accessories Corporation d/b/a Westland Industries (collectively, "Patrick Industries") objected to the proposed cure amounts, asserting, among other things, that such amounts did not include amounts owed under various prepetition purchase orders, which they argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Patrick Industries. Accordingly, the objections are moot.
429	Jantzen Beach Center 1767, LLC	Jantzen Beach Center 1767, LLC objected to the proposed cure amount.	The Debtors have decided to reject this lease. Accordingly, this objection is moot.
462	Brixmor Naples SC LLC; BRE Mariner Marco Town Center, LLC; Rivercrest Realty	Brixmor Naples SC LLC, BRE Mariner Marco Town Center, LLC, and Rivercrest Realty Associates, LLC objected to the proposed cure amounts.	Resolved through agreement on a cure amount as set forth in the Revised Assumed Executory Contracts and Unexpired Leases List.
463	Teledyne FLIR Marine US, Inc. d/b/a Raymarine	Teledyne FLIR Marine US, Inc. d/b/a Raymarine objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Teledyne FLIR Marine US, Inc. d/b/a Raymarine. Accordingly, the objection is moot.

464	Oracle America, Inc.	Oracle America, Inc., asserts that certain IP licenses are unassignable; that the cure notice did not identify its contracts; that there could be no unauthorized simultaneous use of Oracle licenses by the Debtor and a purchaser; and that Oracle had not been provided adequate assurance of future performance; and reserves its right to be heard on all issues contained in its objection.	Resolved through the inclusion of language in the Confirmation Order.
466	Virtual Supply, Inc.	Virtual Supply, Inc. objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Virtual Supply, Inc. Accordingly, the objection is moot.
468	On Demand Technologies, Inc. dba OneRail	OneRail objected to the proposed cure amount.	Resolved by agreement of the parties.
470	Ronstan International, Inc. d/b/a/ Wichard Groupe North America	Ronstan International, Inc. d/b/a/ Wichard Groupe North America objected to the proposed cure amount, asserting that it did not include amounts owed under various prepetition purchase orders, which it argued comprised one integrated agreement.	Through agreement between the parties, the Debtors have decided to reject the agreements with Ronstan International, Inc. d/b/a/ Wichard Groupe North America. Accordingly, the objection is moot.
Unresolved[3]			
Informal	Enterprise Fleet Management, Inc.	Enterprise Fleet Management, Inc. informally objects to the proposed cure amount.	The Debtors and Enterprise Fleet Management, Inc. are in discussions regarding a consensual resolution and have agreed to language in the Confirmation Order preserving Enterprise Fleet Management, Inc.'s informal cure objection. The parties may seek to have this objection heard, if necessary, at a date and time to be determined.
Informal	GG Reif I Sea Turtle, LLC	GG Reif I Sea Turtle, LLC informally objects to the proposed cure amount.	The Debtors and GG Reif I Sea Turtle, LLC are in discussions regarding a consensual resolution and have agreed to language in the Confirmation Order preserving GC Reif I Sea Turtle, LLC's informal cure objection. The parties may seek to have this objection heard, if necessary, at a date and time to be determined.
Informal	Marina Waterside, LLC	Marina Waterside, LLC informally objects to the proposed cure amount.	The Debtors and Marina Waterside, LLC are in discussions regarding a consensual resolution and have agreed to language in the Confirmation Order preserving Marine Waterside, LLC's informal cure objection. The parties may seek to have this objection heard, if necessary, at a date and time to be determined.

[3] All unresolved objections remain preserved notwithstanding anything in the Plan or Confirmation Order to the contrary.

415	CL Roosevelt Plaza FL LLC	CL Roosevelt Plaza FL LLC objects to the proposed cure amount.	The Debtors and CL Roosevelt Plaza FL LLC are in discussions regarding a consensual resolution and have agreed to language in the Confirmation Order preserving CL Roosevelt Plaza FL LLC's objection. The parties may seek to have this objection heard, if necessary, at a date and time to be determined.
429	St. Andrews Center 254, LLC	St. Andrews Center 254, LLC objects to the proposed cure amount.	The Debtors and St. Andrews Center 254, LLC are in discussions regarding a consensual resolution and have agreed that St. Andrews Center 254 LLC's objection is preserved. The parties may seek to have this objection heard, if necessary, at a date and time to be determined.