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

In re:	Chapter 11
PLENTY UNLIMITED TEXAS LLC *et al.*,[1]	Case No. 25-90105 (CML)
Debtors.	(Jointly Administered)

MEMORANDUM OF LAW IN SUPPORT OF (I) FINAL APPROVAL OF THE DISCLOSURE STATEMENT, AND (II) CONFIRMATION OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION OF PLENTY UNLIMITED TEXAS LLC AND ITS DEBTOR AFFILIATES

[1] The Debtors in these chapter 11 cases, together with the last four digits of each of the Debtors' federal tax identification numbers, are: Plenty Unlimited Texas LLC (3500); Plenty Unlimited Inc. (0916); MJNN LLC (N/A); White Farms LLC (N/A); Blue Gardens LLC (8487); Bright Agrotech, Inc. (4106); and P F2 VA LLC (9633). The Debtors' service address is 1461 Commerce Drive, Laramie, WY 82070.

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Plenty Unlimited Texas LLC and its debtor affiliates in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), as debtors and debtors in possession (the "Debtors"), submit this memorandum of law (the "Memorandum") in support of their request for entry of an order (i) approving, on a final basis, the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* [Docket No. 27] (the "Disclosure Statement") and (ii) confirming the *Second Amended Joint Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* [Docket No. 339] (as modified, amended, or supplemented from time to time hereafter, the "Plan"),[2] including all agreements and other documents set forth in certain supplements to the Plan (as modified, amended, or supplemented from time to time, the "Plan Supplement").

PRELIMINARY STATEMENT

1. The Debtors commenced these Chapter 11 Cases to implement the terms of the recapitalization transaction contemplated by the Plan, providing for a new capital infusion to support go-forward operations at the Debtors' Virginia Farm and Wyoming R&D Facility, or alternatively, the sale or disposition of some or all of the Debtors' assets or equity interests, to the extent the Debtors determine that such sale would better maximize value.

2. After two months of arm's-length, good faith negotiations with stakeholders and a fulsome postpetition marketing process, the Debtors now seek to confirm the Plan, which has the overwhelming support of each of the four Voting Classes and represents the most value-maximizing transaction available to the Debtors. The Restructuring Transactions embodied in the Plan provide for a necessary capital raise for the Reorganized Debtors through an equity rights

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Proposed Confirmation Order (as defined below), as applicable.

offering and the issuance of new private placement shares. In addition, the Plan embodies the terms of a global resolution of the Virginia Mechanic's Lien Claims reached with the holders of Virginia Mechanic's Lien Claims and other stakeholders, which also (i) ensures the future work necessary from WT and Holders of Virginia Mechanic's Lien Claims with respect to the Virginia Facility and (ii) settles certain related disputes between and among the key stakeholders. Moreover, the Plan embodies the terms of a settlement reached with the Committee, which improves distributions to general unsecured creditors in Class 5, including through increased cash recovery and warrants to be issued to eligible holders of Allowed General Unsecured Claims.

3. In short, the Plan resolves what would be costly and value-destructive litigation between and among the parties, maximizes value for the estates and for all stakeholders, and positions the Reorganized Debtors for success upon their emergence from chapter 11. The broad consensus for the Plan attests to its fairness and value to the Debtors' Estates and stakeholders. Indeed, apart from one cure and assumption-related objection, the only other objection to confirmation of the Plan is from the United States Trustee (the "U.S. Trustee").

4. As discussed in detail below, the Plan satisfies each of the Bankruptcy Code's confirmation requirements. Substantially contemporaneously herewith, the Debtors will file a proposed confirmation order (the "Proposed Confirmation Order"). For the reasons set forth herein and in the Supporting Declarations (as defined below), the Court should approve the Disclosure Statement on a final basis and enter the Proposed Confirmation Order.

BACKGROUND

I. SUPPORTING DECLARATIONS

5. Prior to, or substantially contemporaneously with the filing of this Memorandum, the Debtors have filed or will file the following documents in support of confirmation of the Plan and final approval of the Disclosure Statement:

- *Declaration of Angela Tsai of Stretto, Inc. Regarding the Solicitation and Tabulation of Ballots Cast on the Second Amended Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtors Affiliates* (the "Tabulation Declaration");

- *Affidavit of Publication of the Notice of (I) Hearing on the Disclosure Statement and Confirmation of the Joint Plan of Reorganization, (II) Deadline to Cast Votes to Accept or Reject the Plan, and (III) Notice of Objection and Opt Out Rights*, filed on April 15, 2025 [Docket No. 193] (the "Publication Affidavit");

- *Certificate of Service re: Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and Its Debtor Affiliates (Docket No. 26), Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and Its Debtor Affiliates (Docket No. 27), Plan Solicitation and Voting Procedures (substantially in the form of Exhibit 1 of Docket No. 123), Notice of (I) Hearing on the Disclosure Statement and Confirmation of the Joint Plan of Reorganization, (II) Deadline to Cast Votes to Accept or Reject the Plan, and (III) Notice of Objection and Opt Out Rights (substantially in the form of Exhibit 2 of Docket No. 123), and [Customized] Ballot for Voting to Accept or Reject the Joint Plan of Reorganization for Plenty Unlimited Texas LLC and Its Debtor Affiliates (substantially in the form of Exhibit 3 of Docket No. 123)*, filed on April 14, 2025 [Docket No. 181] (the "Initial Solicitation Affidavit")[3];

- *Declaration of Colin M. Adams in Support of (I) Final Approval of the Disclosure Statement and (II) Confirmation of the Second Amended Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* (the "Adams Declaration");

- *Declaration of Philip Engel in Support of (I) Final Approval of the Disclosure Statement and (II) Confirmation of the Second Amended Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* (the "Engel Declaration"); and

- *Declaration of Ann Livermore in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* (the "Livermore Declaration," and, collectively with the above declarations, the "Supporting Declarations").

[3] Subsequent Solicitation Packages were served on account of previously unknown voting parties who timely filed proofs of claim against the Debtors after the initial solicitation mailing. A detailed description of these supplemental services is set forth in supplemental certificates of service [Docket Nos. 278, 282, 295, 304, 307, 314 and 332] (together with the Initial Solicitation Affidavit, the "Solicitation Affidavits").

6. The Supporting Declarations and any testimony and other declarations that may be adduced or submitted at, or in connection with, the Confirmation Hearing are incorporated in full herein.

II. BACKGROUND OF CHAPTER 11 CASES AND PLAN

A. The Chapter 11 Filing

7. On March 23, 2025, (the "Petition Date"), the Debtors each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the Southern District of Texas (the "Court"). The pertinent facts relating to the commencement of the Chapter 11 Cases and the key events preceding the Chapter 11 Cases are set forth in the Disclosure Statement.

III. PLAN SOLICITATION AND TABULATION

8. On the Petition Date, the Debtors filed the Plan, the Disclosure Statement, and the Solicitation Procedures Motion,[4] pursuant to which the Debtors sought, among other things, a combined hearing on the final approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing"). On March 24, 2025, the Court entered an order approving the Solicitation Procedures Motion, which was subsequently amended on April 1, 2025.[5] The Solicitation Procedures Order, among other things, (i) scheduled the Confirmation Hearing for

[4] The "Solicitation Procedures Motion" means the *Debtors' Emergency Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures; (IV) Approving the Solicitation Procedures; (V) Approving the Combined Notice; (VI) Establishing Procedures for the Assumption and Rejection of Executory Contracts and Unexpired Leases; (VII) Approving the Rights Offering Procedures and Related Materials; and [(VIII)] Granting Related Relief* [Docket No. 30].

[5] *See Revised Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures; (IV) Approving the Solicitation Procedures; (V) Approving the Combined Notice; (VI) Establishing Procedures for the Assumption and Rejection of Executory Contracts and Unexpired Leases; (VII) Approving the Rights Offering Procedures and Related Materials; and [(VIII)] Granting Related Relief* [Docket No. 123] (the "Solicitation Procedures Order").

May 14, 2025 at 1:00 p.m. (prevailing Central Time), (ii) established May 6, 2025 at 4:00 p.m. (prevailing Central Time) as the deadline to object to the adequacy of the Disclosure Statement or confirmation of the Plan (the "Objection Deadline"), (iii) approved the solicitation, balloting, tabulation, noticing, and related activities undertaken by the Debtors in connection with the Plan (collectively, the "Solicitation Procedures") and the forms of Ballots, (iv) approved the form of notice of the Confirmation Hearing (the "Combined Hearing Notice"), and (v) conditionally approved the Disclosure Statement. *See* Solicitation Procedures Order ¶¶ 1, 2, 6–10, 19, and 20.

9. The Disclosure Statement and Ballots directed the Holders of Claims and Interests in Class 3 (Bridge Facility Claims), Class 4 (Virginia Mechanic's Lien Claims), Class 5 (General Unsecured Claims), and Class 7 (Existing Preferred Equity Interests) (collectively, the "Voting Classes") to cast their votes to accept or reject the Plan by following the instructions contained in the Ballots so as to be received by Claims and Balloting Agent no later than 4:00 p.m. (prevailing Central Time) on May 6, 2025 (the "Voting Deadline"). Each Ballot also contained detailed instructions on how to complete it and how to make any applicable elections contained therein, including to opt out of the Third-Party Release (as defined below).

10. The Debtors did not provide Solicitation Packages to the Holders of Claims or Interests in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 6 (Intercompany Claims), Class 8 (Intercompany Interests), or Class 9 (Existing Common Equity Interests) (collectively, the "Non-Voting Classes"). Holders of Claims in Classes 1 and 2 are Unimpaired under, and conclusively presumed to accept, the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Claims and Interests in Classes 6 and 8 are either Impaired or Unimpaired under the Plan and, pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code, will be deemed either to accept or reject the Plan and, accordingly, are not entitled to vote on the

Plan. Holders of Interests in Class 9 are Impaired and deemed to reject the Plan under section 1126(g) of the Bankruptcy Code.

11. In accordance with the Solicitation Procedures Order, in lieu of furnishing Holders of Claims and Interests in the Non-Voting Classes with a copy of the Plan and the Disclosure Statement, by the Solicitation Deadline, the Debtors served such Holders with the Combined Hearing Notice, which sets forth (i) the date, time, and place of the Confirmation Hearing, (ii) a summary of the Plan and the treatment of such Non-Voting Classes, (iii) the procedures and deadline for submitting an objection to approval of the Disclosure Statement or confirmation of the Plan, and (iv) the manner in which a copy of the Plan and Disclosure Statement may be obtained. *See* Tabulation Declaration ¶ 8; Initial Solicitation Affidavit. The Combined Hearing Notice, conformed to publication format (the "Publication Notice"), was also published in the national edition of the *New York Times* on March 29, 2025 and in the *Richmond Times-Dispatch* on April 2, 2025, in accordance with the Solicitation Procedures Order. *See* Publication Affidavit. The Plan and Disclosure Statement were also made available at no cost on the Claims and Balloting Agent's website at https://cases.stretto.com/PlentyUnlimited.

12. In addition to the Combined Hearing Notice, by the Solicitation Deadline, the Debtors also served Holders of Claims and Interests in the Non-Voting Classes (other than Classes 6 and 8) with (i) a notice of non-voting status (the "Notice of Non-Voting Status") and (ii) an opt-out form that allowed for the Holders of Claims and Interests to opt out of the third-party releases (the "Release Opt-Out Form"), which form contained the full text of the settlement, release, exculpation, and injunction provisions set forth in Article VIII of the Plan, provided instructions for completing the Release Opt-Out Form, and advised such Holders that they would be deemed to have consented to the third-party release provision in Article VIII.D of the Plan

unless they timely and properly opted out of such release. *See* Tabulation Declaration ¶ 8, Initial Solicitation Affidavit. The Notice of Non-Voting Status and Release Opt-Out Form meet the requirements of paragraph 40 of the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Rules").

13. In accordance with the Solicitation Procedures Order, the Debtors filed the Plan Supplement on May 1, 2025 [Docket No. 283], which contained, subject to modification pursuant to the terms set forth in the Plan, (i) the term sheet describing key terms of the New Organizational Documents for the Reorganized Parent, (ii) to the extent known, the identity and compensation of the members of the New Board, (iii) the Schedule of Retained Causes of Action, (iv) the Schedule of Rejected Executory Contracts and Unexpired Leases, (v) the Schedule of Non-Released Parties, (vi) the Liquidation Analysis, (vii) the Financial Projections, (viii) the Schedule of Class 4 Allowed Virginia Mechanic's Lien Claims, and (ix) the Assumption Schedule. The Claims and Balloting Agent served the Plan Supplement on the master service list maintained by the Claims and Balloting Agent, and affected contract counterparties, as evidenced by the certificate of service filed with the Court on May 7, 2025 [Docket No. 306].

14. Subsequently, on May 2, 2025, the Debtors filed an amendment to the Plan Supplement [Docket No. 291] (the "Amended Plan Supplement"), which contained, subject to modification pursuant to the terms set forth in the Plan, the Class 4 Opt-Out Form. The Claims and Balloting Agent has served the Amended Plan Supplement on the master service list maintained by the Claims and Balloting Agent, and Holder of Class 4 Claims, as evidenced by the amended certificate of service filed with the Court on May 7, 2025 [Docket No. 307].

A. Tabulation

15. After the Voting Deadline, and following a complete review by the Claims and Balloting Agent of all Ballots received, the Claims and Balloting Agent finalized the tabulation of

the votes. Tabulation Declaration ¶¶ 16–19. Each of the Voting Classes voted to accept the Plan pursuant to the requirements of section 1126 of the Bankruptcy Code. The below chart summarizes the voting results:

Class 3 (Bridge Facility Claims)		**Result**
Accept	100.0 % in number of votes accepting the Plan 100.0 % in dollar amount accepting the Plan ($8,675,000.00)	**Accept**
Reject	0.0 % in number of votes rejecting the Plan 0.0 % in dollar amount rejecting the Plan ($0.00)	
Class 4 (Virginia Mechanic's Lien Claims)		
Accept	100.0 % in number of votes accepting the Plan 100.0 % in dollar amount accepting the Plan ($26,455,570.65)	**Accept**
Reject	0.0 % in number of votes rejecting the Plan 0.0 % in dollar amount rejecting the Plan ($0.00)	
Class 5 (General Unsecured Claims)		
Accept	95.7 % in number of votes accepting the Plan 99.8 % in dollar amount accepting the Plan ($30,772,768.54)	**Accept**
Reject	4.3 % in number of votes rejecting the Plan 0.2 % in dollar amount rejecting the Plan ($52,943.25)	
Class 7 (Existing Preferred Equity Interests)		
Accept	80.0 % in number of votes accepting the Plan 99.5 % in dollar amount accepting the Plan ($175,827,379.13)	**Accept**
Reject	20.0 % in number of votes rejecting the Plan 0.5 % in dollar amount rejecting the Plan ($826,935.66)	

B. Class 4 Opt-Out Forms

16. On or around May 2, 2025, the Claims and Balloting Agent served the Class 4 Opt-Out Forms to Holders of Virginia Mechanic's Lien Claims in Class 4, consistent with the Class 4 Opt-Out Procedures.[6] *See* Tabulation Declaration ¶¶ 14, 25. As of the Opt-Out Deadline of May

[6] As further discussed herein, after the Debtors reached the terms of the Virginia Mechanic's Lien Settlement with certain stakeholders, the Debtors filed the *First Amended Joint Chapter 11 Plan of Reorganization of Plenty Unlimited Texas LLC and its Debtor Affiliates* [Docket No. 289], which contained certain procedures for each Holder of an Allowed Virginia Mechanic's Lien Claim in Class 4 to opt out of granting Class 4 Releases (the "Class 4 Opt-Out Procedures"). *See* Article IV.A(j) of the Plan. Pursuant to such Class 4 Opt-Out Procedures, on May 2, 2025, the

9, 2025, no Class 4 Opt-Out Forms opting-out of the Class 4 Releases were submitted.[7] *See* Tabulation Declaration ¶ 26.

IV. OBJECTIONS TO THE PLAN

17. Only the U.S. Trustee filed an objection with respect to confirmation of the Plan (the "U.S. Trustee Objection"), and one contract counterparty filed an objection with respect to the Debtors' proposed cure amount with respect to its proposed assumed contract (the "Cure Objection", and together with the U.S. Trustee Objection, the "Objections"). The Debtors are in the process of resolving the Cure Objection. The U.S. Trustee Objection is unresolved.[8]

ARGUMENT

18. This Memorandum is divided into three sections. Section I demonstrates the satisfaction of each of the requirements for final approval of the Disclosure Statement and seeks a finding that the Debtors complied with the Solicitation Procedures Order. Section II demonstrates the satisfaction of each of the requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code, including the Debtors' response to the U.S. Trustee Objection. Section III

Debtors provided each Holder of a Virginia Mechanic's Lien Claim in Class 4 with an Class 4 Opt-Out Form—a form of which was attached as Exhibit J to the Plan Supplement—which specifies how a Holder of a Virginia Mechanic's Lien Claim in Class 4 may opt out of providing Class 4 Releases. The Class 4 Opt-Out Form specifies that Holders of Virginia Mechanic's Lien Claims in Class 4 are deemed to grant the Class 4 Releases set forth in Article VIII.D.1 of the Plan, unless a Holder (a) affirmatively opts out of the Class 4 Releases by completing and returning the Class 4 Opt-Out Form in accordance with these Class 4 Opt-Out Procedures that is actually received by the Claims and Balloting Agent by May 9, 2025 at 11:59 p.m. prevailing Central Time (or such other time ordered by the Court) or (b) files an objection to the Class 4 Releases on or before May 6, 2025 at 4 p.m. prevailing Central Time that is not resolved before confirmation of the Plan.

[7] One Class 4 Opt-Out form was submitted, ***not*** opting out of the Class 4 Releases.

[8] As discussed with the U.S. Trustee, the Debtors have agreed to include language in the Proposed Confirmation Order that addresses the U.S. Trustee's concerns regarding the claims of governmental entities and the exercise of governmental police and regulatory powers.

addresses the Debtors' request for a waiver of the 14-day stay imposed by operation of sections 3020(e) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

I. THE DISCLOSURE STATEMENT SHOULD BE APPROVED ON FINAL BASIS

A. Parties in Interest Received Sufficient Notice of the Confirmation Hearing and Objection Deadline

19. Under Bankruptcy Rule 3017(a), a hearing on the adequacy of a disclosure statement requires 28 days' notice. *See* Fed. R. Bankr. P. 3017(a). Bankruptcy Rule 2002(b) further provides that parties in interest should receive 28 days' notice of the objection deadline for, and hearing to consider approval of, the disclosure statement and confirmation of a chapter 11 plan. *See* Fed. R. Bankr. P. 2002(b). Section 105(d)(2)(B)(vi) of the Bankruptcy Code provides that the Court may combine the hearing on approval of a disclosure statement with the hearing on confirmation of the plan. *See* 11 U.S.C. § 105(d)(2)(B)(vi).

20. The U.S. Court of Appeals for the Fifth Circuit has adopted the general rule that "[d]ue process requires that notice be 'reasonably calculated, under all the circumstances, to inform interested parties of the pendency' of a proceeding." *In re Placid Oil Co.*, 753 F.3d 151, 154 (5th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). When evaluating the sufficiency of notice, courts in this Circuit consider whether "(1) the notice apprised the claimant of the pendency of the action, and (2) [whether] it was sufficiently timely to permit the claimant to present his objections." *In re Christopher*, 28 F.3d 512, 518 (5th Cir. 1994); *In re Tex. Tamale Co.*, 219 B.R. 732, 739–40 (Bankr. S.D. Tex. 1998). Indeed, "[w]hether a particular method of notice is reasonably calculated to reach interested parties depends upon the particular circumstances of each case." *In re Hunt*, 146 B.R. 178, 182 (Bankr. N.D. Tex. 1992).

21. On April 2, 2025, thirty-five (35) days before the Objection Deadline, the Debtors caused their Claims and Balloting Agent to commence service of the Solicitation Package on the

Voting Classes. Moreover, as noted, the Debtors (i) published the Publication Notice in the national edition of the *New York Times* on March 29, 2025 and in the *Richmond Times-Dispatch* on April 2, 2025, in accordance with the Solicitation Procedures Order, and (ii) served the Combined Hearing Notice to all known creditors and equity holders by the Solicitation Deadline of April 7, 2025. *See* Tabulation Declaration ¶¶ 7, 12; Publication Affidavit; Initial Solicitation Affidavit. In addition, all Voting Classes were provided a copy of the Solicitation Package, and all Non-Voting Classes were provided a copy of the Non-Voting Status Package, respectively, twenty-nine (29) days prior to the Objection Deadline, Voting Deadline, and Release Opt-Out Deadline of May 6, 2025. *See* Tabulation Declaration ¶¶ 7–8. As such, the Debtors have complied with the time periods required by the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules for the Southern District of Texas (the "Local Rules"). All parties in interest had sufficient notice of the Objection Deadline and the Confirmation Hearing, and no party has been prejudiced by this schedule.

B. The Disclosure Statement Contains Adequate Information and Should be Approved

22. The primary purpose of a disclosure statement is to provide material information, or "adequate information," that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan. *See, e.g., In re J.D. Mfg., Inc.*, No. 07-36751, 2008 WL 4533690, at *2 (Bankr. S.D. Tex. Oct. 2, 2008). Under section 1125(a) of the Bankruptcy Code, a plan proponent must provide holders of claims and interests entitled to vote with "adequate information" regarding a debtor's proposed plan of reorganization. "Adequate information" is defined as:

> [I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the

> plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a).

23. "Adequate information" is a flexible standard that adapts to the facts and circumstances of a particular case. See *In re J.D. Mfg., Inc.*, at *2 ("'Adequacy' of information is a determination that is relative both to the entity . . . and to the sophistication of the creditors to whom the disclosure statement is addressed."). In examining the adequacy of the information contained in a disclosure statement, the Court has broad discretion. *See In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and . . . is largely within the discretion of the bankruptcy court.").

24. Courts consider various factors when evaluating the adequacy of the disclosures in a proposed disclosure statement, including (i) the events that led to the filing of a bankruptcy petition, (ii) a description of a debtor's available assets and their value, (iii) the anticipated future of the company, (iv) the claims asserted against a debtor, (v) the present condition of a debtor while in chapter 11, (vi) the estimated return to creditors under a chapter 7 liquidation, (vii) the chapter 11 plan or a summary thereof, (viii) the financial information, valuations, and projections relevant to the claimants' decisions to accept or reject the plan, (ix) the information relevant to the risks posed to claimants under the plan, (x) the tax attributes of a debtor; (xi) the relationship of a debtor with its affiliates, (xii) the source of information stated in the disclosure statement, (xiii) the future management of a debtor, (xiv) the actual or projected realizable value from recovery of any causes of action or avoidance actions; and (xv) the litigation likely to arise in a nonbankruptcy context. *See In re U.S. Brass Corp.*, 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a

disclosure statement); *In re Westland Dev. Corp. v. MCorp Mgmt. Sols., Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (same).

25. The Disclosure Statement is extensive and comprehensive. Specifically, the Disclosure Statement describes, among other disclosures:

- The key terms of the Plan, including the Rights Offering and other means for implementation (*see* Disclosure Statement, at Article II);
- The Debtors' history and business operations (*see id.*, at Article III.A and III.B);
- The Debtors' prepetition capital structure (*see id.*, at Article III.C);
- The Debtors' prepetition efforts to negotiate a strategic resolution (*see id.* at Article III.E);
- Certain events and relevant negotiations preceding the commencement of these Chapter 11 Cases (*see id.*);
- Risk factors affecting consummation of the Plan (*see id.*, at Article XV); and
- Federal tax law consequences of the Plan (*see id.*, at Article XVI).

26. For the reasons set forth above, the Disclosure Statement, which was conditionally approved by the Court, satisfies the requirements of section 1125(a) of the Bankruptcy Code and should be approved on a final basis.

C. Solicitation of Votes Complied with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order

27. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

> Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk, as the court orders, shall mail to all creditors and equity security holders, and in

> a chapter 11 reorganization case shall transmit to the United States trustee,
>
> > (1) the plan or a court-approved summary of the plan;
> >
> > (2) the disclosure statement approved by the court;
> >
> > (3) notice of the time within which acceptances and rejections of the plan may be filed; and
> >
> > (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.
>
> In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed R. Bankr. P. 3017(d). Bankruptcy Rule 3017(d) also provides, in relevant part, as follows:

> If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Id.

28. As set forth herein and as approved in the Solicitation Procedures Order, the Solicitation Packages and Solicitation Procedures comply with the Bankruptcy Code and Bankruptcy Rules. *See* Solicitation Procedures Order ¶ 9.

i. ***The Ballots Used to Solicit Holders of Claims and Interests Entitled to Vote on Plan Complied with Bankruptcy Rules***

29. Bankruptcy Rule 3017(d) requires debtors to distribute a ballot that conforms substantially to Official Form No. 314 only to "creditors and equity security holders entitled to vote on the plan." Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(c) provides that "[a]n

acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form." Fed. R. Bankr. P. 3018(c). Only Holders of Claims or Interests in the Voting Classes were sent Ballots. The Ballots conformed to Official Form No. 314, as modified to address the facts of these cases and to be appropriate for each Voting Class. The Ballots were approved by the Court in the Solicitation Procedures Order. Accordingly, the Debtors have satisfied Bankruptcy Rules 3017(d) and 3018(c).

ii. ***The Voting Record Date Complied with Bankruptcy Rules***

30. Pursuant to Bankruptcy Rule 3018(b), "[a]n equity security holder or creditor whose claim is based on a security of record . . . shall not be deemed to have accepted or rejected the plan . . . unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation." Fed. R. Bankr. P. 3018(b). The Disclosure Statement and the Solicitation Packages identified March 23, 2025 as the Voting Record Date for determining which Holders of Claims and Interests in the Voting Classes were entitled to vote on the Plan. Accordingly, the Debtors have satisfied Bankruptcy Rule 3018(b).

iii. ***The Debtors' Vote Tabulation was Appropriate***

31. As set forth in the Tabulation Declaration, the Claims and Balloting Agent followed the Solicitation Procedures in tabulating the votes received from the Voting Parties. The Claims and Balloting Agent carefully reviewed all Ballots received by the Voting Deadline (as extended by the Debtors, in their discretion, with the consent of the Plan Sponsors) in accordance with the procedures described in the Solicitation Procedures Order. *See* Tabulation Declaration ¶¶ 16–19. The Court should approve the Debtors' tabulation of votes confirming that, with respect

to the Voting Classes, the requisite majorities in amount and number of voting Claims and Interests voted to accept the Plan pursuant to sections 1126(c) and 1126(d) of the Bankruptcy Code.

iv. ***Solicitation Complied with Bankruptcy Code and Was in Good Faith***

32. Pursuant to section 1125(e) of the Bankruptcy Code, "[a] person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan. 11 U.S.C. § 1125(e).

33. The Debtors at all times engaged in arm's-length, good-faith negotiations with their stakeholders, and all parties—including the Exculpated Parties—took appropriate actions in connection with the solicitation of the Plan and in the offer and issuance of any securities under the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Court should grant these parties the protections provided under section 1125(e) of the Bankruptcy Code.

II. THE PLAN SATISFIES THE BANKRUPTCY CODE'S REQUIREMENTS FOR CONFIRMATION AND SHOULD BE APPROVED

34. To obtain confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence. *See In re Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."). The Plan satisfies all provisions of section 1129 and complies with all other applicable sections of the Bankruptcy Code, Bankruptcy Rules, Local Rules, and applicable nonbankruptcy law.

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

35. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively. *See* H.R. Rep. No. 95-595, at 412, reprinted in 1978 U.S.C. C.A.N. 5963, 6368 (1977); S. Rep. No. 95-989, at 126, reprinted in 1978 U.S.C. C.A.N. 5787, 5912 (1978). As explained below, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as other applicable provisions.

1. <u>Section 1122: The Plan's Classification Structure is Proper.</u>

36. Section 1122(a) of the Bankruptcy Code provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). The Plan has nine Classes of Claims and Interests: (i) Class 1 (Other Secured Claims); (ii) Class 2 (Other Priority Claims); (iii) Class 3 (Bridge Facility Claims); (iv) Class 4 (Virginia Mechanic's Lien Claims); (v) Class 5 (General Unsecured Claims); (vi) Class 6 (Intercompany Claims); (vii) Class 7 (Existing Preferred Equity Interests); (viii) Class 8 (Intercompany Interests); and (ix) Class 9 (Existing Common Equity Interests).

37. A plan proponent is afforded significant flexibility in classifying claims and interests into different classes, provided that there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar. *See In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009).

38. The classification structure of the Plan is rational and complies with the Bankruptcy Code. The Claims or Interests in each Class are substantially similar to the other Claims or Interests in each such Class, as all Claims and Interests within a Class have the same or similar rights against the Debtors. The distinctions among Classes are based on valid business, factual, and legal reasons warranting separate classification of the particular Claims or Interests into the Classes created under the Plan. For example, debt and equity are separately classified and secured (or purportedly secured) debt is separately classified from unsecured debt. No unfair discrimination exists between or among Holders of Claims and Interests. In general, the Plan's classification scheme follows the Debtors' capital structure. *See* Adams Declaration ¶ 20.

39. Additionally, separate classification of Class 7 (Existing Preferred Equity Interests) and Class 9 (Existing Common Equity Interests) is justified. Courts have held separate classification of common and preferred equity holders is permissible under § 1122 where such classes possess unique rights and attributes under their respective certificates of designation. *See In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 714, 716 (Bankr. S.D.N.Y. Mar. 4, 1992). Here, Holders of Interests in Class 7 and Class 9, respectively, entitle each respective holder to different rights regarding dividends, redemption, voting, and liquidation. *See* Adams Declaration ¶ 20.

40. Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code.

2. <u>Section 1123(a): The Plan's Content is Appropriate.</u>

41. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that a plan must satisfy. *See* 11 U.S.C. § 1123(a). The Plan satisfies each such applicable requirement:

- <u>Section 1123(a)(1)</u>. The Plan designates Classes of Claims and Interests as required by section 1123(a)(1). *See* Plan, at Article III.A.

- Section 1123(a)(2). The Plan specifies whether each Class of Claims or Interests is Impaired or Unimpaired under the Plan as required by section 1123(a)(2). *See* Plan, at Article III.A.

- Section 1123(a)(3). The Plan specifies the treatment of any Class of Claims or Interests that is Impaired as required by section 1123(a)(3). *See* Plan, at Article III.B.

- Section 1123(a)(4). Except as otherwise agreed to by a Holder of a particular Claim or Interest, the opportunity for recovery for Holders of each Claim or Interest in each Class is the same as the opportunity for recovery for all Holders in such Class, as required by section 1123(a)(4). *See* Plan at Article III.B. Section 1123(a)(4) permits variations in the ultimate form of the recovery received by holders of interests in the same class, where the plan offers each such holder the same treatment options.[9] Indeed, a plan "does not require precise equality, only approximate equality."[10] This standard therefore allows for deviations in procedural recovery for Holders of Claims or Interests in the same class, where such deviations are based on legitimate reasoning.[11] Each of the Classes meet this standard. Specifically, each Holder of Allowed Bridge Facility Claims will receive the right to participate *Pro Rata* in the Rights Offering. Each Holder of Allowed Virginia Mechanic's Lien Claims will receive (i)(a) Plenty's Settlement Amount *plus* (b) its share of the Additional Settlement Amount; and (ii) the right to participate *Pro Rata* in the Rights Offering in accordance with Article IV.I of the Plan.[12] Each Holder of Allowed General Unsecured Claims will receive its *Pro Rata* share of (i) the Liquidation Trust Interests, which interests shall entitle such Holder to its *Pro Rata* share of (a) to the extent that such Holder has not otherwise elected to participate *Pro Rata* in the Rights Offering, the GUC Cash Pool, (b) the Liquidation Trust Proceeds, if any, and (c) the remainder, if any, of the Plan Administration Amount following the payment of all Plan Administration Expenses and post-Effective Date fees and expenses of the Committee Professionals, if any, and (ii) the GUC

[9] *See In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) ("[C]ourts have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the same opportunity' for recovery."); *In re Dana Corp.*, 412 B.R. 53, 62 (S.D.N.Y. 2008) ("The key inquiry under § 1123(a)(4) is not whether all of the claimants in a class obtain the same thing, but whether they have the same opportunity.").

[10] *In re W.R. Grace & Co.*, 729 F.3d at 327 (quoting *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007)); *see also In re Multiut Corp.*, 449 B.R. 323, 334 (Bankr. N.D. Ill. 2011) (same).

[11] The "differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant's opportunity to recover." *In re W.R. Grace & Co.*, 729 F.3d at 327.

[12] While WT Subcontractors in Class 4 are receiving additional recovery from WT (*i.e.*, the WT Settlement Amount) pursuant to the Virginia Mechanic's Lien Settlement, the proposed treatment to all Holders in Class 4 is the same, as required by section 1123(a)(4).

Warrants, subject to the terms and conditions set forth in the GUC Warrant Documents. Each Holder of an Allowed Existing Preferred Equity Interests shall receive the right to participate *Pro Rata* in any Remaining Amounts.

- Section 1123(a)(5). The Plan provides adequate means for its implementation as required by section 1123(a)(5) through, among other things, the provisions governing (i) the general settlement of Claims and Interests (*see* Plan, at Article IV.A), including the Virginia Mechanic's Lien Settlement; (ii) consummation of the Restructuring Transactions (*see* Plan, at Article IV.B); (iii) the corporate governance of the Reorganized Debtors (*see* Plan, at Article IV.C); (iv) the Debtors' continued corporate existence (*see* Plan, at Article IV.D); (v) the vesting of assets in the Reorganized Debtors (*see* Plan, at Article IV.E); (vi) the cancellation of existing securities, agreements, and certain existing security interests (*see* Plan, at Article IV.F–IV.G); (vii) sources of consideration for Plan distributions (*see* Plan, at Article IV.H); (viii) the consummation of the Rights Offering (*see* Plan, at Article IV.I); (ix) the consummation of the New Money Private Placement (*see* Plan, at Article IV.J); (x) the issuance of the New Equity Interests (*see* Plan, at Article IV.L); (xi) the issuance of the GUC Warrants (*see* Plan, at Article IV.M); (xii) the adoption of the New Organizational Documents (*see* Plan, at Article IV.O); (xiii) the preservation of Causes of Action (*see* Plan, at Article IV.P), (xiv) the enforcement of indemnification obligations (*see* Plan, at Article IV.R); and (xv) the creation and governance of the Liquidation Trust (*see* Plan, at Article IV.S).

- Section 1123(a)(6). The governing corporate documents of each Debtor have been or will be amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities, in accordance with section 1123(a)(6). *See* Plan, at Article IV.O.

- Section 1123(a)(7). The Plan provisions governing the manner of selection of any officer, director, or manager under the Plan are consistent with applicable state law, the Bankruptcy Code, and the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7). *See* Plan, at Article IV.O.1. In accordance with these provisions of the Plan and section 1129(a)(5) of the Bankruptcy Code, to the extent known, the Debtors will disclose in the Plan Supplement the members of the New Board.

42. The Plan satisfies section 1123(a) of the Bankruptcy Code.

3. Section 1123(b): The Plan's Content is Permitted.

i. ***Permissive Provisions***

43. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a Plan. Specifically,

- Section 1123(b)(1). Article III of the Plan classifies and describes the treatment of each Impaired and Unimpaired Class. All Impaired and Unimpaired Classes are receiving appropriate treatment under the Plan.

- Section 1123(b)(2). The Plan provides for the assumption of all Executory Contracts and Unexpired Leases upon the Effective Date, other than those that: (a) have been assumed or rejected previously by the Debtors; (b) have previously expired or terminated pursuant to its own terms; (c) are the subject of a motion to reject Filed on or before the Effective Date; or (d) are identified on the Rejected Executory Contracts and Unexpired Leases Schedule. *See* Plan, at Article V.A. In accordance with the Solicitation Procedures Order, the Debtors filed and served, as Exhibit D to the Plan Supplement, the Rejected Executory Contracts and Unexpired Leases Schedule. *See Amended Certificate of Service* [Docket No. 307]. In addition, the Debtors also filed and served, as Exhibit I to the Plan Supplement, the Assumption Schedule. *See id*.

- Section 1123(b)(3)(A) The settlements and compromises contemplated by Article IV.A of the Plan represent a good faith compromise of Claims, issues, and controversies. *See* Plan, at Article IV.A. Additionally, Article VIII.C of the Plan provides for a release of certain Claims and Causes of Action owned by the Debtors. *See* Plan, at Article VIII.C.

- Section 1123(b)(3)(B). Article IV.P of the Plan preserves for the Liquidation Trust or Reorganized Debtors, as applicable, all rights to commence and pursue, as appropriate, any and all Liquidation Trust Causes of Action, and Reorganized Debtor Causes of Action, respectively, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Liquidation Trust or Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII and Article IV(A) thereof, which shall be deemed released and waived by the Debtors and the Reorganized Debtors as of the Effective Date; *provided* that the Liquidation Trustee must receive consent from the Plan Sponsors, in their sole discretion, before pursuing any Liquidation Trust Cause of Action. *See* Plan, Article IV.P; Plan Supplement, at Exhibit C.

- Section 1123(b)(6). Articles VIII.C., VIII.D and VIII.E of the Plan contain certain release and exculpation provisions, respectively, that are essential to the reorganization and consistent with the applicable provisions of the Bankruptcy Code and Fifth Circuit law. *See* Plan, at Articles VIII.C, VIII.D, and VIII.E. In addition, Article IV.K of the Plan provides that the issuance and distribution of the New Equity Interests, and all other Securities entered into and/or issued under the Plan will be exempt from registration, pursuant to section 1145 of the Bankruptcy Code and section 4(a)(2) of the Securities Act or Regulation D or Regulation S under the Securities Act. *See* Plan, at Article IV.K. Article II.E of the Plan provides for payment of Transaction Expenses. *See* Plan, at Article II.E.

44. Each of the foregoing permissive provisions is consistent with section 1123(b) of the Bankruptcy Code.

ii. ***The Settlements and Compromises Embodied in the Plan (including the Virginia Mechanic's Lien Settlement and the Committee Settlement) are Integral Components of the Plan and Should be Approved***

45. Article VIII.A of the Plan provides that pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, or otherwise resolved pursuant to the Plan, whether under any provision of chapter 5 of the Bankruptcy Code, on any equitable theory (including equitable subordination, equitable disallowance, or unjust enrichment) or otherwise. Without limitation, the Plan constitutes a settlement with respect to any Virginia Mechanic's Liens or Virginia Mechanic's Liens Claims and any related Executory Contract between the Holder of a Virginia Mechanic's Lien Claim and the Debtors, pursuant to which the Holders of such Claims and Liens and counterparties to such Executory Contracts agree or are

deemed to agree to the treatment provided by the Plan. Here, the settlements and compromises embodied in the Plan should be approved because they are fair and equitable and in the best interest of the Debtors' estates.

(a) *The Virginia Mechanic's Lien Settlement is Fair and Equitable and Warranted under Bankruptcy Rule 9019*

46. Pursuant to Bankruptcy Rule 9019(a) and section 1123(b)(3)(A) of the Bankruptcy Code, a bankruptcy court may approve a compromise or settlement within a chapter 11 plan so long as the proposed settlement is fair, reasonable, and in the best interests of the estate. *See Off. Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015); 11 U.S.C. §1123(b)(3)(A) (a plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate"). Ultimately, approval of a compromise is within the discretion of the bankruptcy court. *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act). Settlements are considered a "normal part of the process of reorganization" and a "desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated, and costly." *Rivercity*, 624 F.2d at 602–03 (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968)).

47. "In determining whether a settlement is fair and equitable, [courts] apply [a] three-part test . . . with a focus on comparing 'the terms of the compromise with the likely rewards of litigation.'" *Official Comm. Of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (quoting *Jackson Brewing Co.*, 624 F.2d at 602) (internal quotation marks omitted)). Specifically,

> [a] bankruptcy court must evaluate: (1) the probability of success in litigating the claim subject to settlement, with due consideration for

> the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. These "other" factors—the so-called Foster Mortgage factors—include: (i) "the best interests of the creditors, 'with proper deference to their reasonable views'"; and (ii) "'the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.'"

Id. at 541 (citing *Jackson Brewing*, 599 F.2d at 602 and quoting *Cajun Elec. Power Coop.*, 119 F.3d at 356; *In re Foster Mortg. Corp.*, 68 F.3d 914, 917-18 (5th Cir. 1995). "[I]t is unnecessary to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement." *Cajun Elec. Power Coop.*, 119 F.3d at 356. In meeting its burden of establishing that the balance of the settlement factors weighs in favor of approving a settlement, the Debtors "need only show that [their] decision falls within the 'range of reasonable litigation alternatives.'" *In re Allied Properties, LLC*, 2007 WL 1849017, at *4 (citing *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); *see also Cook v. Waldron*, 2006 WL 1007489 at *4 (S.D. Tex. Apr. 18, 2006).

48. As described in the Disclosure Statement and the Malech Declaration,[13] due to restricted access to the capital markets and other macroeconomic factors, the Debtors were forced to pause the build-out of their Virginia Facility and certain vendors were not paid for work done prior to the pause, leading to the assertion of claims and liens by various vendors, including by the Holders of the Virginia Mechanic's Lien Claims. As of the Petition Date, Plenty estimates that approximately $45 million of purported Virginia Mechanic's Liens have been asserted with respect to the Virginia Farm (although this number includes significant duplication—the Debtors estimate that the figure is approximately $28 million excluding duplication). *See* Disclosure Statement Article II.F.8.b; Malech Declaration ¶ 28. Although the Debtors believe that the Virginia

[13] On March 23, 2025, the Debtors filed the *Declaration of Daniel Malech in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 24] (the "Malech Declaration").

Mechanic's Liens are subject to various challenges under applicable Virginia law and bankruptcy law, the Debtors recognize that the best and only path forward would be for a negotiated resolution that results in a reduction of liabilities, a reasonable completion cost for the Virginia Farm, and a sustainable cost structure for the Debtors. Malech Declaration ¶ 29. Alternatively, the Debtors would be forced to shut down the Virginia Farm, to the detriment of all stakeholders. *Id.*

49. As such, the Debtors have engaged both prepetition and postpetition in extensive, detailed, good faith and arm's-length negotiations with the Plan Sponsors, the Virginia Property Landlord, WT, certain of the WT Subcontractors, and certain other Holders of Virginia Mechanic's Lien Claims[14] towards a global resolution of the Virginia Mechanic's Liens Claims, as well as the future work necessary from such parties with respect to the Virginia Facility, and certain related disputes between the Parties. These efforts have culminated in the Virginia Mechanic's Lien Settlement, the terms of which are described in Article IV.A of the Plan. For the reasons enumerated herein under each of the *Jackson Brewing* factors, the Debtors believe that the Virginia Mechanic's Lien Settlement is fair, reasonable, and in the best interests of the estate.

1. *The Virginia Mechanic's Lien Settlement is Favorable to the Debtors under the Circumstances of these Chapter 11 Cases*

50. The first *Jackson Brewing* factor evaluates the probability of success of litigation giving due consideration to the uncertainty in both fact and law. *See Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010); *In re Age Ref., Inc.*, 801 F.3d at 540 (finding that the first *Jackson Brewing* factor is satisfied because of the Court's prediction that "the success of the Committee's position would [ultimately] rest on an appeal"); *In re Palacios*, No. 14-70076, 2016 WL 361569, at *13 (Bankr. S.D. Tex. Jan. 27, 2016) (finding the first *Jackson Brewing* factor

[14] Each Holder of an Allowed Virginia Mechanic's Lien Claims is identified in Exhibit H to the Second Amended Plan Supplement.

satisfied because the success of litigation was "risky" and the settlement agreement appropriately considered the interests of the class at large); *In re Derosa-Grund*, 567 B.R. 773, 787 (Bankr. S.D. Tex. 2017) ("the probability of the Trustee ultimately prevailing . . . is less than fifty percent").

51. While the Debtors believe the Virginia Mechanic's Liens are subject to challenge under applicable Virginia law and bankruptcy law, the likelihood of success of litigation of the issues is inherently uncertain.[15] Specifically, there are a number of legal and factual issues that would need to be resolved if the parties were to litigate, including (i) the value of the Virginia Mechanic's Liens, including whether such liens are limited to the leasehold interest of the Debtors, and how value, if any, would be shared given the number of subcontractors and vendors/suppliers who asserted Virginia Mechanic's Liens; (ii) whether the governing contracts would limit the recovery for many subcontractors and vendors/suppliers, including whether "pay if paid" clauses are enforceable under Virginia law; (iii) whether any Virginia Mechanic's Liens would be capped under Virginia law; and (iv) whether any particular Virginia Mechanic's Lien would be validly enforceable under applicable Virginia law. What is not uncertain, however, is that the litigation would likely require the expenditure of significant funds and mire the Debtors and the Virginia Mechanic's Lien Claimants in months, if not years, of litigation, instead of the parties working together towards the desired goal of finishing construction at the Virginia Facility.

[15] The litigation resolved by the Virginia Mechanic's Lien Settlement includes: (i) *The Whiting-Turner Contracting Co. v. Plenty Unlimited, Inc.*, Case No. 24-cv-00855-DJN, which was filed on November 25, 2024 in the Eastern District of Virginia; (ii) *Electrical Controls & Maintenance vs. The Whiting-Turner Contracting Co.; Realty Income Properties 9 LLC; P F2 VA, LLC; Plenty Unlimited Inc.; Trane U.S., Inc.; and Industrial Turnaround Corp.*, Case No. CL 25000363-00, which was filed January 10, 2025 in the Chesterfield County Circuit Court, Virginia's 12th Judicial Circuit; (iii) *Century Construction Company, Inc. v. Realty Income Properties 9, LLC et al.* (Case No. CL25002313-00), which was filed on March 6, 2025 in the Chesterfield County Circuit Court, Virginia's 12th Judicial Circuit; and (iv) *The Whiting Turner Contracting Company v. Realty Income Properties 9 LLC, et al.* (Case No. CL25002699-00), which was filed on March 18, 2025 in the Chesterfield County Circuit Court, Virginia's 12th Judicial Circuit.

2. ***<u>The Virginia Mechanic's Lien Settlement is Favorable to the Debtors Given the Complexity and Likely Duration of the Litigation</u>***

52. The second *Jackson Brewing* factor evaluates the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay. *Compare Official Comm. Of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (approving bankruptcy decision finding in favor of settlement where trial and potential for appeal "would be costly, and would seriously delay the resolution of [the] case.") with *Lack's Valley Stores, Ltd. v. Smith (In re Smith)*, 541 B.R. 629, 638 (Bankr. S.D. Tex. 2015) ("The litigation would consequently not be expected to last for a lengthy period of time, given the low complexity of the case and given the parties' previously demonstrated willingness to compromise. A compromise would therefore not be expected to save the estate from great expense and inconvenience."); *see also In re Palacios*, 2016 WL 361569, at *13 (holding the second *Jackson Brewing* factor was satisfied in part because litigation had been ongoing for a period of years before entering bankruptcy).

53. As noted above, the litigation resolved by the Virginia Mechanic's Lien Settlement involves complex legal and factual issues involving numerous parties. Certain of these legal issues also have a lack of settled applicable law—such as the question of whether the Virginia Mechanic's Lien Claims would be limited to the Debtors' leasehold interests—which would necessarily increase the time and expense of litigating any such issues. Further, given that suits were only filed shortly prior to the Petition Date, and that suits could continue to be brought absent a resolution, it is conceivable that any litigation could potentially take years to resolve, costing the Debtors time and money that they simply do not have.

3. *Other Factors Bearing on the Wisdom of the Compromise Support Approving the Settlement*

54. The third factor under *Jackson Brewing* asks the court to evaluate "[a]ll other factors bearing on the wisdom of the compromise." *In re Jackson Brewing*, 624 F.2d at 602 (citations omitted); *In re Allied Props., LLC,* No. 06-33754, 2007 WL 1849017, at *4 (Bankr. S.D. Tex. June 25, 2007). These "other" factors—the so-called *Foster Mortgage* factors—include: (i) "the best interests of the creditors, 'with proper deference to their reasonable views'"; and (ii) "'the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.'" *Cajun Elec. Power Coop.*, 119 F.3d at 356; *In re Wright*, 545 B.R. 541, 563 (Bankr. S.D. Tex. 2016).

55. The Virginia Mechanic's Lien Settlement is in the best interests of the creditors because it provides not only a resolution to potentially costly and value-destructive litigation, but also provides a negotiated global resolution that results in (i) a reduction of liabilities, (ii) a discharge of asserted mechanic's liens, and (iii) agreements with necessary vendors and suppliers with respect to the cost and timeline for completion of the Virginia Farm. Upon emergence, the Reorganized Debtors will have the support of the requisite Holders of the Virginia Mechanic's Lien Claims to perform go-forward work necessary to complete the Virginia Farm, which will enable the Debtors to fulfill their business plan and eventually reach profitability.

56. Moreover, the Virginia Mechanic's Lien Settlement is truly the product of arm's-length bargaining and good faith negotiations, as the Debtors have been in continued and direct dialogue with each Holder of a Virginia Mechanic's Lien Claim, and other parties, regarding the terms of the Virginia Mechanic's Lien Settlement.

4. *The Debtors' Key Creditor Constituencies Support the Virginia Mechanic's Lien Settlement*

57. Courts also recognize "the paramount interest of creditors and a proper deference to their respective views." *In re Moore*, 608 F.3d at 263; *In re Foster Mortg. Corp.*, 68 F.3d 914 at 917 ("While the desires of the creditors are not binding, a court 'should carefully consider the wishes of the majority of the creditors.'") (quoting *In re Transcon. Energy Corp.*, 764 F.2d 1296 (9th Cir. 1985)). All key stakeholders—including the Holders of the Virginia Mechanic's Lien Claims, the Plan Sponsors, and the Committee—support the Plan, including the Virginia Mechanic's Lien Settlement embodied therein. Notably, each of the Voting Classes voted in favor of the Plan.

5. *Notice to the Class 4 Claimants of the Virginia Mechanic's Lien Settlement is Appropriate Under the Facts and Circumstances*

58. In furtherance of the Virginia Mechanic's Lien Settlement, on May 2, 2025, the Debtors provided each Holder of a Virginia Mechanic's Lien Claim in Class 4 with a Class 4 Opt-Out Form, which specified how a Holder of a Virginia Mechanic's Lien Claim in Class 4 may opt out of providing Class 4 Releases pursuant to the Class 4 Opt-Out Procedures. *See* Plan, Article IV.A(j). Holders of Allowed Virginia Mechanic's Lien Claims in Class 4 shall be deemed to grant the Class 4 Releases set forth in Article VIII.D.1 of the Plan,[16] unless a Holder (a) affirmatively opts out of the Class 4 Releases by completing and returning the Class 4 Opt-Out Form in accordance with the Class 4 Opt-Out Procedures such that the Class 4 Opt-Out Form is actually received by the Claims and Balloting Agent by May 9, 2025 at 11:59 p.m. (prevailing Central Time) (or such other time ordered by the Court) or (b) files an objection to the Class 4 Releases

[16] The appropriateness of the Class 4 Releases is discussed herein in Section II.A.3(iii)(b)(4).

on or before May 6, 2025 at 4 p.m. (prevailing Central Time) that is not resolved before confirmation of the Plan. *Id.*

59. Because the Debtors have been in continued and direct dialogue with each Holder of an Allowed Virginia Mechanic's Lien Claim regarding the terms and conditions of the Virginia Mechanic's Lien Settlement, the Debtors assert that the notice and timing of the Class 4 Opt-Out Procedures is fair, reasonable, and appropriate under the facts and circumstances of these Chapter 11 Cases.

iii. ***The Plan Releases Should be Approved***

60. Article VIII of the Plan provides for releases of Claims by the Debtors and their Estates as well as consensual releases of Claims held by third parties. The release provisions are integral components of the Plan, are consistent with the Bankruptcy Code and the Local Rules, and comply with applicable case law. As such, the Debtors assert that such release provisions should be approved.

(a) *The Debtor Release is Appropriate and Should be Approved*

61. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, the Debtors may release estate causes of action as consideration for concessions made by their various stakeholders pursuant to the Plan. *See, e.g., In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (finding that a plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan"). In considering the appropriateness of such releases, courts consider whether the release is (i) "fair and equitable" and (ii) "in the best interest of the estate." *See In re Jackson Brewing Co.*, 624 F.2d at 602 (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968)).

62. The "fair and equitable" prong is generally interpreted to require compliance with the Bankruptcy Code's absolute priority rule. *See Cajun Elec. Power Coop., Inc.*, 119 F.3d at 355-56 ("The words 'fair and equitable' are terms of art—they mean that senior interests are entitled to full priority over junior ones") (citations omitted). Additionally, courts generally determine whether a release is "in the best interests of the estate" by reference to the following factors:

- the probability of success of litigation, with due consideration for the uncertainty in fact and law;
- the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection;
- the paramount interest of the creditors and a proper deference to their respective views;
- the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and
- all other factors bearing on the wisdom of the compromise.

See In re Moore, 608 F.3d 253, 263.

63. As noted above, in determining whether a settlement is appropriate and should be approved, "a bankruptcy court need not 'conduct a mini-trial' [but] [r]ather . . . must 'apprise [itself] of the relevant facts and law so that [it] can make an informed and intelligent decision.'" *In re Age Refining, Inc.*, 801 F.3d 530, 541 (5th Cir. 2015) (citations omitted). Further, the court "need only determine that the settlement does not 'fall beneath the lowest point in the range of reasonableness.'" *In re Idearc Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009), *subsequently aff'd sub nom. Spencer Ad Hoc Equity v. Idearc, Inc. (In re Idearc, Inc.)*, 662 F.3d 315 (5th Cir. 2011) (citations omitted); *In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008) ("The Trustee need only show that his decision falls within the 'range of reasonable litigation

alternatives.'"). Ultimately, courts afford debtors some discretion in determining for themselves the appropriateness of granting plan releases of estate causes of action. *See In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("The court concludes that such a release is within the discretion of the Debtor.").

64. Article VIII.C of the Plan provides for the releases of any and all claims and Causes of Action, and liabilities whatsoever (including any derivative claims, asserted by or assertable on behalf of any of the Debtors, their Estates, or the Reorganized Debtors, as applicable) against the Released Parties[17] based on or relating to, or in any manner arising from, in whole or in part, the Company-Related Matters (the "Debtor Release").[18]

65. The Debtor Release meets the controlling standard. The Plan is fair and equitable because it complies with the Bankruptcy Code's absolute priority rule as described in more detail in Section II.N.2 herein, *infra*. In addition, the Debtor Release also is in the best interest of the estates, as discussed below.

66. *First*, the Debtors do not believe there are any colorable claims being released that might reasonably be expected to yield material value for their Estates. In particular, the Special Committee of Plenty Unlimited Inc. (the "Special Committee"),[19] with the assistance of Howley

[17] "Released Party" means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) the Plan Sponsors; (d) the Bridge Facility Lenders and Bridge Facility Collateral Agent; (e) the DIP Lenders and the DIP Agent; (f) New Money Investment providers; (g) each Releasing Party; (h) each current and former Affiliate of each Entity in clause (a) through the following clause (i); and (i) each Related Party of each Entity in clause (a) through this clause (i); provided that, notwithstanding the foregoing, such Persons listed on the Non-Released Parties Schedule shall not be a Released Party.

[18] The foregoing description is meant as a summary of the Debtor Release only. To the extent there is any conflict between the foregoing summary and the Debtor Release and associated definitions, the Plan shall control.

[19] The Special Committee is comprised of Ann Livermore and Kirk Belsby. The Board delegated the Special Committee full authority to, among other things, evaluate, consider, review, negotiate, and approve any strategic alternative available to the Debtors, and to take any actions with respect to any such alternative as the Special Committee may deem necessary, appropriate, desirable, useful, helpful, or convenient in connection therewith. *See* Livermore Declaration ¶ 7.

Law PLLC ("Howley Law"), as counsel to the Special Committee, conducted an investigation (the "Investigation") into the potential Causes of Action held by the Debtors against any Released Party, including (i) current and former directors and officers of the Debtors and (ii) the Plan Sponsors, in connection with the proposed Plan. *See* Livermore Declaration ¶ 8. Specifically, the Investigation analyzed whether any colorable claims or Causes of Action, including breach of fiduciary duty, fraudulent transfer, or preference, may exist against the Released Parties. *Id.* ¶ 11. After evaluating general board governance and specific decisions made by the Board and its members with the assistance of Howley Law, the Special Committee concluded that there are no colorable claims by the Debtors worth pursuing. *Id.* ¶¶ 13–14. This conclusion weighs heavily on the first factor, which focuses on the probability of success and risks of litigation vis-à-vis settlement.

67. *Second*, given the lack of colorable claims worth pursuing, the benefits that the Released Parties are providing the Debtors far outweigh any potential recoveries that the Debtors might receive from pursuing potential Claims against the Released Parties. The drain on estate resources based on unsubstantiated claims would significantly outweigh any potential recovery.

68. *Third*, the Debtors' stakeholders have overwhelmingly voted in favor of (or otherwise support) the unanimously consensual Plan, including the Debtor Release. The Committee Settlement includes the Committee's support of the Debtor Release, which also evidences the reasonableness of the Debtor Release.

69. *Fourth*, the Plan, including the Debtor Release, was heavily negotiated by sophisticated entities that were represented by able counsel and financial advisors. *See* Adams Declaration ¶ 62. Each of the Released Parties has provided significant consideration. *See id.* The Debtor Release constitutes an integral aspect of the Debtors' negotiations with their key creditor

constituencies that resulted in the Plan. *Id*. In reaching this result, the Released Parties have and will continue to contribute significantly in negotiating, formulating, and ultimately effectuating the Plan. *Id*. Absent the Debtor Release, many of the Released Parties would have been unwilling to financially contribute to or otherwise participate in the Plan process, which would have negatively impacted the Debtors' restructuring. *Id*. The result is a compromise that reflects the give-and-take of a true arm's-length negotiation process. *Id.* To that end, the Plan provides the various Released Parties the global closure that they negotiated in exchange for, among other things, the various concessions and benefits provided to the Debtors' Estates under the Plan. *Id*.

70. Accordingly, the Debtor Release is fair, equitable, and in the best interest of the Estates, is justified under the controlling Fifth Circuit standard, and should be approved.

(b) *The Third-Party Release and Class 4 Releases are Consensual, Appropriate, Complies with Applicable Law, and Should be Approved*

1. *<u>Courts in the Fifth Circuit Are Authorized to Approve Consensual Third-Party Releases, Even in Light of Purdue.</u>*

71. In *Purdue*, the Supreme Court held that non-consensual third-party releases were impermissible under the Bankruptcy Code, reasoning that the Bankruptcy Code does not "authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 227 (2024). The Supreme Court in *Purdue* stated expressly that "[n]othing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan." *Id*. at 226. The Supreme Court also refused to decide what qualifies as a consensual release under a plan. *Id*. ("Nor do we have occasion today to express a view on what qualifies as a

consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.").

72. The Supreme Court's holding in *Purdue* is consistent with and provides no reason to reexamine longstanding Fifth Circuit law. The Fifth Circuit has never permitted non-consensual releases, and, as stated by this Court in *In re Robertshaw*, "*Purdue* did not change the law in this Circuit[.]" *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024). As such, third party releases are justified and in conformity with both *Purdue* and Fifth Circuit precedent where, as here, the releases are consensual. *See In re Bigler LP*, 442 B.R. 537, 543–44 (Bankr. S.D. Tex. 2010) ("The recognition that Pacific Lumber does not restrict the availability of settlements of claim under § 1123(b)(3)(A) thus provides an avenue for a Chapter 11 plan to provide for releases of liability for non-debtors. But, such releases . . . would require consent and consideration . . . .").

73. While the Fifth Circuit has not directly addressed what constitutes a consensual third-party release, the Fifth Circuit has found that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization." *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987). *Republic Supply* and its progeny ultimately stand for the proposition that "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of settlement, and given for consideration do not violate" the Bankruptcy Code. *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007) (citing *Republic Supply*, 815 F.2d at 1050). At the core of the analysis is whether the third-party release is consensual.

74. Bankruptcy courts in this district have applied this standard when approving third-party releases similar to the Third-Party Release and the Class 4 Releases. In doing so, these

courts have focused on process—*i.e.*, whether "notice has gone out, parties have actually gotten it, they've had the opportunity to look it over, [and] the disclosure is adequate so that they can actually understand what they're being asked to do and the options that they're being given." *Robertshaw*, 662 B.R. 322-25; *In re CJ Holding Co*., 597 B.R. 597, 608-09 (S.D. Tex. 2019); *see also* Conf. Hr'g Tr. at 47, *In re Energy & Expl. Partners, Inc.*, No. 15-44931 (RFN) (Bankr. N.D. Tex. Apr. 21, 2016) [Docket No. 730] (approving third-party releases as consensual, over the objection of the United States trustee because of sufficient notice and opportunity to object).

75. This District—and this Court in particular—has routinely held that third-party releases with opt-out mechanisms manifest valid consent. *See Robertshaw*, 662 B.R. at 322-323 ("[t]he Trustee wants to use the *Purdue* [*Pharma*] holding as an opportunity to advance its long-held position that consensual third-party releases in a plan should require an opt-in feature, rather than an opt out" but "[t]here is nothing improper with an opt-out feature for consensual third party releases in a chapter 11 plan"); *see also In re CJ Holding Co.*, 597 B.R. at 609 ("Allowing the bankruptcy court to approve the Plan releases, including construing [a claimant's] silence as consent, serves the bankruptcy law's purpose of quick and efficient resolution of claims to permit a debtor's business to continue.").

2. *The Third-Party Release is Consensual, Appropriate, Complies with Applicable Law, and Should be Approved.*

76. Article VIII.D of the Plan provides for a release by the Releasing Parties of the Released Parties from any and all Claims, Causes of Action, and liabilities whatsoever, that each Releasing Party[20] would have been legally entitled to assert in its own right (whether individually

[20] "Releasing Party" means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) the Plan Sponsors; (d) the Bridge Facility Lenders and Bridge Facility Collateral Agent; (e) the DIP Lenders and DIP Agent; (f) New Money Investment providers; (g) all Holders of Claims or Interests that vote to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (h) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided in the Plan by checking the box on the applicable notice of non-voting status indicating that they opt not to grant the releases provided in the

or collectively) or otherwise based on or relating to, or in any manner arising from, in whole or in part, the Company-Related Matters (the "Third-Party Release").[21]

77. The Third-Party Release satisfies the standard set forth in *Republic Supply* and its progeny, notwithstanding the Supreme Court's decision in *Purdue*. *First and foremost*, the Third-Party Release is **fully consensual**. As set forth above, parties in interest were provided extensive notice of these cases, the Plan, and the deadline to object to confirmation of the Plan, and opt out of the Third Party Release. The Combined Hearing Notice, the Notice of Non-Voting Status, and the Ballots, as applicable, expressly included in bold font the terms of the Third-Party Release, as set forth in Article VIII.D in the Plan. In addition, the Notice of Non-Voting Status, Release Opt Out-Form, and Ballots set forth the procedures for opting out of such Third-Party Release, including by directing recipients to the E-Ballot Portal and attaching the appropriate form in compliance with paragraph 40 of the Complex Rules.[22] The Combined Hearing Notice, the Notice of Non-Voting Status, the Release Opt-Out Form, and the Ballots all advised careful review and consideration of the terms of the Third-Party Release, along with the other release, exculpation, and injunction provisions. The release, exculpation, and injunction provisions, including the Third-Party Release, were also emphasized with bold font in the Plan and the Disclosure

Plan; (i) all Holders of Claims or Interests that vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (j) all Holders of Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not affirmatively opt out of the releases provided in the Plan; (k) each current and former Affiliate of each Entity in clause (a) through the following clause (l); and (l) each Related Party of each Entity in clause (a) through this clause (l) solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (a) through clause (l); provided that, in each case, an Entity shall not be a Releasing Party if it (x) elects to opt out of the Third-Party Release or (y) timely objects to the Third-Party Release through a formal objection Filed on the docket of the Chapter 11 Cases that is not resolved before Confirmation.

[21] The foregoing description is meant as a summary of the Third-Party Release only. To the extent there is any conflict between the foregoing summary and the Third-Party Release and associated definitions contained in the Plan, the Plan shall control.

[22] Specifically, the Notice of Non-Voting Status, Opt-Out Form, and Ballots included a box to check to indicate opt out of the Third-Party Release in accordance with paragraph 40 of the Complex Rules.

Statement. By the Opt-Out Deadline, thirty-four (34) Third-Party Release Opt-Out Forms were submitted, as set forth in the Tabulation Declaration.[23] *See* Tabulation Declaration ¶ 24.

78. *Second*, the Third-Party Release is sufficiently specific to put the Releasing Parties on notice of the claims being released. The Third-Party Release describes the nature and type of claims being released, including with respect to the Restructuring Transactions, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Plan Documents and related agreements, instruments, and other documents, and the negotiation, formulation, preparation, or implementation thereof, the solicitation of votes with respect to the Plan, or any other act or omission.

79. *Third*, the Third-Party Release is an integral part of the Debtors' restructuring efforts, was heavily negotiated, and was a key inducement to bring stakeholder groups to the bargaining table. *See* Adams Declaration ¶ 63. The key stakeholders engaged with the Debtors in good faith and spent significant time and effort negotiating the terms of the Plan, including the Third-Party Release. *Id* ¶ 62. Holders of Claims or Interests that elected not to opt-out of the Third-Party Release consented to the release of all Claims and Causes of Action against the Released Parties.

80. *Fourth*, the Third-Party Release is given for fair consideration. The Restructuring Transactions contemplated by the Plan are value-maximizing and would not be possible absent the support of the Released Parties. *See* Adams Declaration ¶ 65. The Third-Party Release benefits not only the non-Debtor Released Parties, but also the Debtors' post-emergence enterprise as a

[23] *See Robertshaw*, 662 B.R. at 323-24 (explaining that the fact that a significant number of parties in interest opted-out of the third-party releases showed that the releasing parties were put on notice and that the opt-out worked.); *see also In re iHeartMedia, Inc.*, Case No. 18-31274 (MI) (Bankr. S.D. Tex. Jan. 22, 2019) [Docket 2536], Hr'g. Tr. at 125:24–126:6 ("It gave [the court] some comfort that [the] opt-out provisions were clear enough that [450] people could opt-out (sic.) which in some perverse way . . . strengthen[s] the opt-ins.").

whole. The Debtors' stakeholders benefit from the Restructuring Transactions contemplated by the Plan, including (i) the capital infusion through the Rights Offering and issuance of the Private Placement New Equity Interests, (ii) the global resolution of Virginia Mechanic's Lien Claims, and (iii) the Committee Settlement, which enables increased recovery to Holders in Class 5. In exchange for the substantial contributions, concessions, and support offered by the Released Parties under the Plan, they are afforded the Third-Party Release. *Id.* ¶ 71.

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

3. *The U.S. Trustee's Objection to the Third-Party Release Should be Overruled.*

82. The U.S. Trustee nevertheless objects to the Third-Party Release as being non-consensual, arguing that the "opt out" mechanism cannot manifest affirmative consent to the Third-Party Release and rendering them impermissible under *Purdue*. *See* U.S. Trustee Objection ¶¶ 1.i-ii; 28. The U.S. Trustee argues that the ruling in *Purdue* warrants revisiting and redefining what the Fifth Circuit has long-understood to constitute consent. *See* U.S. Trustee Objection ¶ 33. Specifically, the U.S. Trustee argues that state contract law governs the effectiveness of a third-party release and under state contract law, silence cannot manifest consent.[24] *See* U.S. Trustee Objection ¶¶ 31–35; 37–41.

83. Nothing in *Purdue* supports, much less mandates, revisiting the established practice of allowing opt-outs to determine consent. Since *Purdue*, the U.S. Trustee in this District has advanced the argument that opt-out mechanisms are not sufficient to manifest consent. Each time,

[24] The U.S. Trustee also notes that "[e]ven if federal law applied, however, it would not lead to a different result. That is because 'federal contract law is largely indistinguishable from general contract principles under state common law.'" *See* U.S. Trustee Objection ¶ 36.

this Court has rejected that argument and confirmed plans that contained third-party releases with opt-out structures, consistently reaffirming the position taken in *Robertshaw*.[25] The Third-Party Release and related opt-out mechanism are nearly identical to those at issue in these cases.

84. This Court also recently rejected the U.S. Trustee's argument that state contract law governs the effectiveness of a third-party release and under state contract law, silence cannot manifest consent argument. *See* Conf. Hr'g Tr., *In re Wesco Aircraft Holdings, Inc.*, Case No. 23-90611 (MI) (Bankr. S.D. Tex. Dec. 16, 2024) [Docket No. 2550] at 2:31:45–2:35:59 (emphasizing that "there is no requirement to comply with state law" when determining whether creditors consented to a third-party release). The Court noted that, contrary to state law's prohibition on silence as consent, "federal law can allow for consequences as a result of default [and not responding]." *Id*. at 2:33:29–2:33:38. The *Wesco* ruling is consistent with holdings from other courts determining that consent to a third-party release is a matter of notice under the Bankruptcy

[25] *See, e.g.*, *In re Jervois Texas, LLC*, No. 25-90002 (CML) (Bankr. S.D. Tex. Mar. 6, 2025) [Docket No. 169]; *In re Zachry Holdings, Inc.*, No. 24-90377 (MI) (Bankr. S.D. Tex. Feb. 27, 2025) [Docket No. 2341]; *In re The Container Store Group, Inc.*, No. 24-90627 (ARP) (Bankr. S.D. Tex. Jan. 24, 2025) [Docket No. 181]; *In re Independence Contract Drilling, Inc*., No. 24-90612 (ARP) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 127]; *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex. Aug. 16, 2024) [Docket No. 959] ("[T]he consensual third-party releases in the Plan are appropriate, afforded affected parties constitutional due process, and a meaningful opportunity to opt out. There is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan. . . . And, again, *Purdue* did not change the law in this Circuit."); *see also* Conf. Hr'g Tr. 20:20–23, *In re Vroom, Inc.*, No. 24-90571 (CML) (Bankr. S.D. Tex. Jan. 8, 2025) [Docket No. 128] ("I'm comfortable that [the third-party release] runs afoul of no law and that these should be approved and that they… don't run afoul of *Purdue*.").

Code rather than state contract law, and that parties may suffer legal consequences if they fail to respond to materials.[26]

85. As described in Section II.b.1 herein, *supra*, the Debtors have provided extensive and adequate notice to all parties in interest in the Chapter 11 Cases. The Combined Hearing Notice, Non-Voting Status Notice, Opt-Out Form, and Ballots contained clear, bolded, and conspicuous information regarding the Third-Party Release and instructions for opting out of the Third-Party Release. The Debtors' solicitation process ensured that all parties in interest in the Chapter 11 Cases received the appropriate notice of the Third-Party Release, as described in the Tabulation Declaration and the Solicitation Affidavits.

4. *The Class 4 Releases are Consensual, Appropriate, Comply with Applicable Law, and Should be Approved, and the U.S. Trustee's Objection with Respect Thereto Should be Overruled.*

86. As with the Third-Party Release, the U.S. Trustee takes issue with the Class 4 Releases. The U.S. Trustee argues: "The Plan also forces the granting of the Class 4 Releases by the Class 4 claim holders without their affirmative consent if such claim holders fail to affirmatively opt out." *See* U.S. Trustee Objection ¶ 43.

87. As noted in Section II(A)(3)(ii)(a)(5) herein, *supra*, in furtherance of the Virginia Mechanic's Lien Settlement, on May 2, 2025, the Debtors provided each Holder of a Virginia Mechanic's Lien Claim in Class 4 with a Class 4 Opt-Out Form, which specified how a Holder of a Mechanic's Lien Claim in Class 4 may opt out of providing Class 4 Releases pursuant to the

[26] *See In re Mallinckrodt PLC*, 639 B.R. 837, 879 (Bankr. D. Del 2022) ("The notion that an individual or entity is in some instances deemed to consent to something by their failure to act is one that is utilized throughout the judicial system . . . There is no reason why this principle should not be applied in the same manner to properly noticed releases within a plan of reorganization."); *see also* Conf. Hr'g Tr. at 80–81, *In re Extraction Oil & Gas Inc*., No. 20-11548-CSS (Bankr. D. Del. Dec. 22, 2020) [Docket No. 1534] ("I have repeatedly ruled that you can imply consent by failing opt out or respond to a plan, either through a ballot or on the docket, that calls for a release. I don't believe is necessarily a contractual point . . . as much as it is a point of notice under the Bankruptcy Code and the Bankruptcy Rules[.]"

Class 4 Opt-Out Procedures. *See* Plan, Article IV.A(j). The Class 4 Releases set forth in Article VIII.D.1 of the Plan provides that (i) each Holder of a Virginia Mechanic's Lien Claims in Class 4 shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Virginia Property Landlord and (ii) each WT Subcontractor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged WT from any and all Claims, Causes of Action, and liabilities whatsoever that such Holder of a Virginia Mechanic's Lien Claim would have been legally entitled to assert in its own right (whether individually or collectively) or otherwise based on or relating to, or in any manner arising from, in whole or in part, its Virginia Mechanic's Lien Claim, including against the Virginia Farm.[27]

88. Like with the Ballots and Opt-Out Forms for the Third-Party Release, the Class 4 Opt-Out Forms sent to each Holder of a Virginia Mechanic's Lien Claims in Class 4 contained clear, bolded, and conspicuous information regarding the Class 4 Releases and instructions for opting out of the Class 4 Releases. Specifically, the Class 4 Opt-Out Forms provided (i) the relevant Class 4 Releases language (and relevant definitions) and (ii) a box for such claimant to check to indicate assent or opposition to such consent releases, together with a method for returning the notice, consistent with the paragraph 40 of the Complex Case Procedures. *See* Amended Plan Supplement, Exhibit J. The Class 4 Opt-Out Forms clearly state that the recipient may elect to not grant the Class 4 Releases and state in clear, bolded, and conspicuous language the consequences of opting out of providing such releases.

[27] The foregoing description is meant as a summary of the Class 4 Releases only. To the extent there is any conflict between the foregoing summary and the Class 4 Releases and associated definitions contained in the Plan, the Plan shall control.

89. In addition, a Holder of a Virginia Mechanic's Lien Claim in Class 4 could also opt out by objecting to the Plan by the objection deadline.

90. It bears repeating that the Debtors and WT have been in direct and constructive engagement throughout these Chapter 11 Cases with each Holder of an Allowed Virginia Mechanic's Lien Claim that provided the Class 4 Releases, many of whom are represented by counsel. *See* Adams Declaration ¶ 69. As such, the Debtors assert that such Class 4 Releases are consensual because the Holders in Class 4 were sufficiently put on notice and provided a reasonable opportunity to opt out. Each such Holder received notice of the Class 4 Releases, including through e-mail and overnight mail. *See* Tabulation Declaration ¶ 14, *Amended Certificate of Service* [Docket No. 307]. Each Holder had an opportunity to review the Class 4 Releases, and the disclosure in the Class 4 Opt-Out Form was adequate such that the Holders could actually understand what they were being asked to do and the options that they were being given. In addition, the Class 4 Opt-Out Forms featured an opt-out mechanism that manifests valid consent.

iv. ***The Plan Exculpation Provision Should be Approved***

91. Article VIII.E of the Plan contains an exculpation for certain Exculpated Parties[28] from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of the negotiation, solicitation, confirmation, execution, or implementation (to the extent on or prior to the Effective Date) of, as applicable, the Company-Related Matters (the "Exculpation Provision"). The

[28] "Exculpated Parties" means collectively, and in each case in its capacity as such: (a) the Debtors; (b) each independent director of the Debtors; and (c) any statutory committee appointed in the Chapter 11 Cases and its members.

Exculpation Provision carves out acts or omissions that are determined to have constituted bad faith, fraud, willful misconduct, or gross negligence as determined by a Final Order.[29]

92. Unlike the Third-Party Release, the Exculpation Provision does not affect the liability of third parties per se, but rather sets a standard of care in hypothetical future litigation against the Exculpated Parties for acts arising out of the Chapter 11 Cases or Restructuring Transactions. *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the [Bankruptcy] Code"). An exculpation provision represents a legal determination that flows from several findings a court must reach in confirming a plan, as well as the exculpation in section 1125(e) of the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(L) (providing that core proceedings include confirmation of plans); 11 U.S.C. § 1125(e). Once the court makes a good faith finding, it is appropriate to set the standard of care for the parties involved in the formulation of that plan. *See In re PWS Holding Corp.*, 228 F.3d at 246–47 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties"). As such, exculpation provisions prevent future collateral attacks against estate fiduciaries and others that participate actively in a debtor's restructuring.

93. The Fifth Circuit has held that the only parties that may receive an exculpation are "the debtor, the creditors' committee and its members for conduct within the scope of their duties . . . , and the trustees within the scope of their duties . . . ." *Nexpoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (Matter of Highland Capital Mgmt., L.P.)(Highland I)*, 48 F.4th 419, 437 (5th

[29] The foregoing description is meant as a summary of the Exculpation Provision only. To the extent there is any conflict between the foregoing summary and the Exculpation Provision and definition of "Exculpated Parties" contained in the Plan, the Plan shall control.

Cir. 2022). Case law in this circuit and others is clear that where a bankruptcy trustee is not appointed, a debtor in possession's directors are considered fiduciaries both to the debtor in possession and to the creditors, just as a trustee would be if one were appointed. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985) ("[I]f a debtor remains in possession—that is, if a trustee is not appointed—the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession."); *see also In re Houston Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) ("[T]he willingness of courts to leave debtors in possession 'is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee.'") (quoting *Commodity Futures Trading*, 471 U.S. at 355); *In re Schepps Food Stores, Inc.*, 160 B.R. 792, 797 (Bankr. S.D. Tex. 1993) ("Section 1107(a) of the [Bankruptcy] Code enables a debtor to take the place of the trustee, with few exceptions, as a [d]ebtor-in-[p]ossession . . . . Recognizing that corporations are in reality legal fictions, in such instances it is the debtor's management which takes on the heightened fiduciary obligations of the trustee."); *In re Performance Nutrition*, 289 B.R. 93, 111 (Bankr. N.D. Tex. 1999) ("The officers and directors of a debtor in possession owe the same fiduciary duties as a trustee in bankruptcy."). Here, the Exculpation Provision is appropriate as it provides protection to the Exculpated Parties that have participated in, as well as initiated, the Debtors' restructuring in good faith, and the Exculpation Provision applies only to the Debtors, its independent directors, and the Committee.

94. The Debtors have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code, as discussed above. Further, granting such relief falls within the "fresh start" principles underlying the Bankruptcy Code. *See In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). As noted above, the Fifth Circuit has permitted exculpatory relief for the debtor,

the creditors' committee, the bankruptcy trustee, and the foregoing parties' respective members. *See Highland I*, 48 F.4th at 437. Accordingly, the Exculpated Parties, including the Debtors, independent directors of the Debtors, and the Committee and its members are eligible for exculpatory relief under current Fifth Circuit case law. *See id.*; *see also In re Pilgrim's Pride Corp.*, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) ("Debtors, serving through their management and professionals as debtors in possession, acted in the capacity of trustees for the benefit of their creditors . . . [t]o the extent Debtors acted in the Chapter 11 Cases, other than in bad faith, pursuant to the authority granted by the Code or as directed by court order, Debtors' management and professionals presumptively should not be subject to liability."); *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) (same). These parties should be "entitled to all the rights and powers of a trustee," including the benefits of the Exculpation Provision. *See Highland I*, 48 F.4th at 437; *see also In re Performance Nutrition, Inc.*, 289 B.R. at 111 (noting that directors and officers of a debtor in possession have the same fiduciary capacity as a bankruptcy trustee).

95. In sum, the Exculpation Provision represents a critical component of the Plan, is narrowly tailored to protect the Exculpated Parties from inappropriate litigation based on the Chapter 11 Cases and Restructuring Transactions, and does not release any claim based on any act or omission that constitutes bad faith, fraud, willful misconduct, or gross negligence as determined by a Final Order. The Exculpation Provision is consistent with applicable Fifth Circuit case law. There are no outstanding objections to the Exculpation Provisions. Accordingly, the Exculpation Provision is appropriate and should be approved.

v. ***The Injunction Provision and Gatekeeping Provision Should be Approved***

1. *The Plan's Injunction Provision and Gatekeeping Provision are essential and necessary to the Plan and appropriately tailored.*

96. The injunction provision set forth in Article VIII.F of the Plan (the "Injunction Provision") implements the Plan's discharge, release, and exculpation provisions by permanently enjoining all Entities, from and after the Effective Date, from commencing or maintaining any action against the Debtors, the Exculpated Parties, the Released Parties, or the Virginia Farm on account of or with respect to any such claims or interests discharged, released, exculpated, or settled under the Plan, including against the Virginia Farm. *See* Plan, Article VIII.F. In addition, the Plan includes a "gatekeeping" provision (the "Gatekeeping Provision"),[30] which requires that, for any Person or Entity to commence or pursue a Claim or Cause of Action of any kind that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action, as applicable, subject to the Debtor Release, Third Party Release, Class 4 Release, Exculpation Provision, and Injunction Provision, the Court must (a) first determine, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim of any kind and (b) specifically authorize a Person or Entity to bring such Claim or Cause of Action Covered Claim against any such Debtor, Reorganized Debtor, Exculpated Party, Released Party or the Virginia Farm, as applicable.[31] *Id.*

[30] As the Fifth Circuit noted in *Matter of Highland Capital Management* (*Highland II*), the gatekeeper clause *is* an injunction—a pre-filing injunction. 132 F.4th 353, 356 n.2 (5th Cir. 2025) (citing *IntegraNet Physician Res., Inc. v. Tex. Indep. Providers, LLC*, 945 F.3d 232, 237 (5th Cir. 2019) ("[T]he . . . court's order prevents a party from filing future lawsuits without that judge's permission—meaning it's a pre-filing injunction.").

[31] The foregoing description of the Injunction Provision and the Gatekeeping Provision is meant as a summary of such provisions only. To the extent there is any conflict between the foregoing summary and the provisions in the Plan, the Plan shall control.

97. While applicable Fifth Circuit law broadly forecloses nonconsensual non-debtor releases and permanent injunctions, bankruptcy courts in the Fifth Circuit have allowed permanent injunctions where non-debtor releases are consensual. *See In re Pac. Lumber Co.*, 584 F.3d at 252 (5th Cir. 2009) (Fifth Circuit case law "seem[s] broadly to foreclose non-consensual non-debtor releases and permanent injunctions."); *but see* Conf. Hr'g Tr. 32:3-4, *In re Independence Contract Drilling, Inc.* ("Case law in the Fifth Circuit allows the use of injunctions in consensual third party releases."); *In re Camp Arrowhead*, 451 B.R. at 701-02 ("[T]he Fifth Circuit does allow permanent injunctions so long as there is consent. Without an objection, this court was entitled to rely on . . . silence to infer consent at the confirmation hearing.") (*citing In re Pacific Lumber*, 584 F.3d at 253).

98. In *Highland I*,[32] the Fifth Circuit approved a gatekeeping provision related to claims that were exculpated under the plan, and in *Highland II*,[33] clarified that the scope of such gatekeeping provision may be no broader than the underlying claims that were exculpated. Importantly, *Highland I* and *II* involved only exculpation provisions, which are inherently non-consensual—and, as such, the decisions do not stand for the proposition that consensual releases cannot be enforced through a gatekeeping provision. *See In re The Container Store Grp., Inc.*, No. 24-90627 (ARP) (Bankr. S.D. Tex. April 7, 2025) [Docket No. 280] ("[w]hile *Highland I* and *II* involve exculpation provisions, which are inherently non-consensual, this case involves a consensual release. Therefore, the *Highland Capital II* holding that the injunction be narrowed to

[32] 48 F.4th at 439 ("In sum, the Plan violates § 524(e) but only insofar as it exculpates and enjoins certain non-debtors…We otherwise affirm the inclusion of the injunction and the gatekeeper provisions in the Plan.").

[33] 132 F.4th 353 at 362 ("a proper reading of *Highland I* requires that the definition of 'Protected Parties' used in the Plan's Gatekeeper Clause be narrowed coextensively with the definition of 'Exculpated Parties' used in the Exculpation Provision.").

include the same parties as the exculpation clause, should not have an impact on this case, where the parties entered a consensual release.”).

99. Bankruptcy courts in this district have granted injunction provisions when such provisions are (i) essential to the Plan and (ii) are necessary to implement the Plan and to preserve and enforce the discharge, release, and exculpation provisions of the Plan, and such injunction provisions are appropriately tailored to achieve those purposes. *See, e.g., In re Core Scientific, Inc.*, No. 22-90341 (CML) (Bankr. S.D. Tex. Jan. 16, 2024) [Docket No. 1749]. Even post-*Highland II*, courts in this district have granted injunction provisions to enforce consensual releases. *See, e.g., In re Cutera*, 25-90088 (ARP) (Bankr. S.D. Tex. Apr. 16, 2025) [Docket No. 237] (confirming a plan that included injunction and gatekeeper provisions that covered third parties).

100. Here, the Plan’s Injunction Provision and Gatekeeping Provision are essential and necessary to the Plan to protect the beneficiaries of such provisions from post-Effective Date litigation relating to consensually released and settled claims and causes of action. The Plan’s Injunction Provision and Gatekeeping Provision are appropriately tailored because they preserve and enforce only the Debtor Release, the Third Party Release, and the Class 4 Releases—each of which were consensually provided—and the appropriately narrow Exculpation Provision. In particular, a key component of the Debtors’ Plan is the Virginia Mechanic’s Lien Settlement, pursuant to Bankruptcy Rule 9019, which would result, on the Effective Date, in the consensual release of any Virginia Mechanic’s Liens by Holders of Class 4 Claims against the Virginia Property Landlord and the Virginia Farm. Such release is essential and necessary to the reorganization efforts, including due to the Debtors’ indemnification obligations under the Unexpired Lease with the Virginia Property Landlord. *See* Adams Declaration ¶ 68. Any claims

against the Virginia Property Landlord would result in claims directly against the Reorganized Debtors, thereby defeating the purpose of these Chapter 11 Cases and the Virginia Mechanic's Lien Settlement, if such claims are not released and enjoined. *Id*. Moreover, WT would not agree to fund the WT Settlement Amount—a key component of the Virginia Mechanic's Lien Settlement—absent the Class 4 Releases. *Id*. As such, if such Injunction Provision and Gatekeeping Provision were disallowed, it would critically undermine the reorganization efforts of the Debtors and jeopardize the carefully-agreed upon settlements and agreements embodied in the Plan.

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

2. *The U.S. Trustee's Objection to the Injunction Provision and Gatekeeping Provision Should Be Overruled.*

102. The U.S. Trustee argues that the Court may not approve the Injunction Provision and Gatekeeper Provision in Article VII.F of the Plan that "(i) enjoin interference with the Plan; (ii) enforce the non-debtor releases nor (iii) seek to direct all released claims to the bankruptcy court." U.S. Trustee Objection ¶ 58. The U.S. Trustee makes several arguments to support the objection, which can be summarized as follows:

- (i) *Highland II* requires the Debtors to strike the Injunction Provision and Gatekeeper Provision or limit such provisions to the Debtors as the only Exculpated Party (*see* U.S. Trustee Objection ¶ 59–61);
- (ii) the Injunction Provision may not be used to enforce releases of non-Debtors because they are nonconsensual (*see* U.S. Trustee Objection ¶ 62–63); and
- (iii) the Court does not have constitutional and statutory authority to enter an injunction, even if the third-party release was consensual, because:
    - (a) bankruptcy courts lack jurisdiction to enter a permanent injunction barring claims between non-debtors because such enjoined claims between non-debtors do not "relate to" Debtors' chapter 11 cases under 28 U.S.C. § 1334(b) and "the claims between non-debtors are not property of the Debtors or the estate, will not impact the estate, and do not bear on the execution of the Debtors' plan", and (b) the Debtors lack standing to seek it

because they have made no showing of injury or threat of injury (*see* U.S. Trustee Objection ¶ 64–68);

- (b) there is no authority in the Bankruptcy Code and the Debtors cannot rely on section 105(a) for this authority under *Purdue* (*see* U.S. Trustee Objection ¶ 69); and
- (c) such injunction is not warranted by the traditional factors that support injunctive relief (*see* U.S. Trustee Objection ¶ 70).

103. *First*, the U.S. Trustee's mischaracterizes the holding in *Highland II* to limit the injunction provision and gatekeeper provision to only the Debtors as exculpated parties. In *Highland II*, the Fifth Circuit stated that a proper reading of its ruling in *Highland I* requires that the bankruptcy court narrow the definition of the "Protected Parties" in the plan's gatekeeper provision to match the definition of "Exculpated Parties" in the plan's exculpation provision. 132 F.4th 353 at 362. However, *Highland II* does not categorically limit a bankruptcy court's ability to enforce a gatekeeper provision to the four parties identified as exculpated parties in *Highland I*.[34] In *Highland II*, the Fifth Circuit merely stated that "a proper reading of *Highland I* requires that the definition of 'Protected Parties' used in the Plan's Gatekeeper Clause be narrowed coextensively with the definition of 'Exculpated Parties' used in the Exculpation Provision. *Id*. at 362. Even if *Highland II* were applicable (which it is not, as set forth below), it only supports the legal proposition that a plan's gatekeeping provision must be coextensive with the claims being exculpated or released, which is the case here.

104. *Second*, the U.S. Trustee's reliance on *Highland II* is not applicable here because *Highland II* applies to ***nonconsensual*** releases. *Highland II* does not support the conclusion that injunction provisions or "gatekeeping" provisions cannot apply to ***consensual*** third-party releases. As discussed at length above, *supra* ¶¶ 76–79 and 87–90, the Third-Party Release and the Class 4

[34] 132 F.4th 353 at 360 (identifying the four exculpated parties as "(i) the Debtor; (ii) the Independent Directors, for conduct within the scope of their duties; (iii) the Committee; and (iv) the members of the Committee in their official capacities, for conduct within the scope of their duties").

Releases are consensual releases obtained through opt out mechanisms, which this court has said is sufficient to manifest consent.

105. *Third*, the Court does have constitutional and statutory authority to enter an injunction, and *Purdue* is inapplicable. The Fifth Circuit has held that bankruptcy courts have jurisdiction to enter injunctions under 28 U.S.C. § 1334. *See, e.g., In re Idearc Inc*., 423 B.R. 138, 157 (Bankr. N.D. Tex. 2009), *subsequently aff'd sub nom. In re Idearc, Inc*., 662 F.3d 315 (5th Cir. 2011) ("The releases, exculpations and injunctions provided for by the Plan are within the proper jurisdiction and purview of the Bankruptcy Court under 28 U.S.C. § 1334"). Here, the claims between non-Debtors, if not enjoined, would directly impact the Debtors' Estates and the Reorganized Debtors, and directly bear on the execution of the Debtors' Plan. The releases were specifically bargained for and were key to the negotiations and development of the Plan. Moreover, the Virginia Mechanic's Lien Settlement is predicated on the release and enjoining of claims against the Virginia Property, as that would directly create liability for the Reorganized Debtors. *See* ¶ 100 herein, *supra*. This Court has specifically noted that the Fifth Circuit also supports the use of injunctions in consensual third-party releases. *See* Conf. Hr'g Tr. 32:3–4, *In re Independence Contract Drilling, Inc.*, No. 24-90612 (ARP).

106. In sum, the U.S. Trustee's objection should be overruled in full, and the Court should enter the Proposed Confirmation Order, effectuating the Debtor Release, Third Party Release, Class 4 Releases, Exculpation Provision, Injunction Provision, and Gatekeeping Provision.

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

107. Section 1129(a)(2) of the Bankruptcy Code requires that plan proponents comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) indicates that this provision is intended to encompass the disclosure

and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, at 412 (1977) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 262 (Bankr. S.D. Tex. 2015) ("Courts interpret [section 1129(a)(2)] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code sections 1125 and 1126). As set forth above, the Debtors have complied with sections 1125 and 1126 of the Bankruptcy Code and, therefore, have satisfied the requirement of section 1129(a)(2) of the Bankruptcy Code.

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

108. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Good faith is determined through consideration of whether the plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success." *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985). The good faith standard is "viewed in light of the totality of circumstances surrounding establishment of a Chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code to give debtors a reasonable opportunity to make a fresh start." *Id.*; *In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) ("Good faith should be evaluated 'in light of the totality of the circumstances' . . . mindful of the purposes underlying the Bankruptcy Code.") (citing *In re Cajun Elec. Power Coop.*, 150 F.3d 503, 519 (5th Cir. 1998)).

109. The Debtors have proposed the Plan in good faith and solely for the legitimate and beneficial purposes of implementing the value-maximizing Restructuring Transactions that will enable the Debtors to right-size and refocus the Debtors' business around their purpose built ultra-premium strawberry producing facility in Richmond, Virginia. The Debtors engaged in

months of extensive, arm's-length negotiations with the Plan Sponsors, each of which was represented by experienced and sophisticated counsel and financial advisors. *See* Adams Declaration ¶ 62. The Debtors also engaged in extensive, detailed, good faith, and arm's length negotiations with various parties regarding the Virginia Mechanic's Lien Settlement and the Committee Settlement. *See* Adams Declaration ¶¶ 8, 36, . The acceptance of the Plan by the Holders of Claims and Interests in the Voting Classes reflects the Plan's inherent fairness and good faith efforts to achieve the objectives of chapter 11. Furthermore, the Plan is not by any means forbidden by law, and indeed, is in full compliance with the Bankruptcy Code and applicable nonbankruptcy law. *See In re Couture Hotel Corp.*, 536 B.R. 712, 735 (Bankr. N.D. Tex. 2015) (finding that plan that is "the result of arms' length discussions and negotiations among the Debtor [and other relevant parties and stakeholders] . . . clearly promotes the objectives and purposes of the Bankruptcy Code and is being proposed in good faith."). Accordingly, the Debtors have proposed the Plan in good faith in compliance with section 1129(a)(3) of the Bankruptcy Code.

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

110. Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees made from estate assets be subject to review and approval as to their reasonableness by the court. *See In re Cajun Elec. Power*, 150 F.3d at 513 ("Section 1129(a)(4) by its terms requires court approval of '[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case.'") (internal citations omitted). This is a "relatively open-ended standard" involving a case-

by-case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged. *See Id.* at 517 (finding with respect to routine legal fees and expenses that have been approved, "the court will ordinarily have little reason to inquire further with respect to the amount charged").

111. All payments for services provided to the Debtors during these cases prior to entry of the Confirmation Order must be approved by the Court as reasonable in accordance with section 1129(a)(4) of the Bankruptcy Code. Moreover, Article II.C.1 of the Plan provides that all fees of retained professionals must be approved by the Court pursuant to final fee applications, to be filed no later than forty-five (45) days after the Effective Date, thereby providing an adequate period of time for interested parties to review such Professional Fee Claims. Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

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

112. Section 1129(a)(5) of the Bankruptcy Code requires that (i) the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors, (ii) the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and (iii) to the extent that these directors and officers are insiders, there be disclosure of the identity and nature of any compensation of any such insiders. *See* 11 U.S.C. § 1129(a)(5). Courts have held that these provisions are meant to ensure that the post-confirmation governance of a reorganized debtor is in "good hands." *See In re Landing Assocs*., Ltd., 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993) ("[T]o lodge a valid objection under § 1129(a)(5), a creditor must show that a debtor's management is unfit or that the continuance of this management post-confirmation will prejudice the creditors.").

113. The Debtors have satisfied the foregoing requirements through disclosure in the Plan and the Plan Supplement. As indicated in Article IV.O of the Plan, and pursuant to section 1129(a)(5) of the Bankruptcy Code, to the extent known, the identity and affiliation of any Person proposed to serve on the New Board will be disclosed in the Plan Supplement or prior to the Effective Date, as well as those Persons that will serve as officers of the Reorganized Debtors.

114. If, at the time of the Effective Date, the Debtors are unable to identify these individuals by name, the Debtors still satisfy this requirement so long as directors will be appointed consistent with the Debtors' organizational documents and applicable state and federal law. *See In re Charter Commc'ns*, 419 B.R. 221, 260 n.30 (Bankr. S.D.N.Y. 2009) ("Although section 1129(a)(5) requires the plan to identify all directors of the reorganized entity, that provision is satisfied by the Debtors' disclosure at this time of the identities of the *known* directors."); *In re Am. Solar King Corp.*, 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988) ("The subsection does not (and cannot) compel the debtor to do the impossible, however. If there is no proposed slate of directors as yet, there is simply nothing further for the debtor to disclose under subsection (a)(5)(A)(i).").

115. Accordingly, the Plan satisfies the requirements under section 1129(a)(5) of the Bankruptcy Code.

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

116. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of "any rate change provided for in the plan." *See* 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable to these cases, as the Plan does not provide for any rate changes.

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

117. Section 1129(a)(7) of the Bankruptcy Code requires that each individual holder of an impaired claim or interest has either accepted the plan or will receive or retain property having, as of the effective date of the plan, a present value of not less than what such holder would receive

if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time— commonly referred to as the "best interests" test. *See* 11 U.S.C. § 1129(a)(7). The best interests test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor's plan of reorganization. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *In re Tex. Extrusion Corp.*, 844 F.2d at 1159 n.23 (5th Cir. 1988) (noting that a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation).

118. The best interests test is satisfied with respect to the Holders of Impaired Claims or Interests under the Plan. The Debtors' financial advisor, Uzzi & Lall, with input from the Debtors' management, performed a liquidation analysis that was attached as Exhibit F to the Plan Supplement (the "Liquidation Analysis"). The Liquidation Analysis represents an estimate of recovery values and percentages based upon a hypothetical liquidation if the Debtors' Chapter 11 Cases were converted by the Court to a proceeding under chapter 7 of the Bankruptcy Code and the chapter 7 trustee proceeded to convert the Debtors' assets into cash. *See* Adams Declaration ¶ 43.

119. The Liquidation Analysis is sound, reasonable, and incorporates justified assumptions and estimates regarding the liquidation of the Debtors' assets and Claims. The methodology used to prepare the Liquidation Analysis is reasonable and reliable, and the assumptions and conclusions set forth therein are reasonable and reliable under the circumstances. *See* Adams Declaration ¶ 43. Based on the foregoing, the Plan satisfies the requirements of the

best interests test under section 1129(a)(7) of the Bankruptcy Code. *See* Adams Declaration ¶¶ 40–43; Plan Supplement at Exhibit F.

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

120. 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. 11 U.S.C. § 1129(a)(8).

121. As set forth above, Class 3 (Bridge Facility Claims), Class 4 (Virginia Mechanic's Lien Claims), Class 5 (General Unsecured Claims), and Class 7 (Existing Preferred Equity Interests) voted to accept the Plan. Holders of Claims in Classes 1 (Other Secured Claims) and 2 (Other Priority Claims) are Unimpaired and, therefore, conclusively presumed to accept the Plan. Holders of Claims or Interests, as applicable, in Classes 6 (Intercompany Claims) and 8 (Intercompany Interests) will either be unimpaired or impaired under the Plan and are deemed to either accept or reject the Plan, pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code.

122. Holders of Interests Class 9 (Existing Common Equity Interests) are Impaired and thus deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. While the Plan does not satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code, as discussed more fully below, the Debtors have satisfied the "cram down" requirements under section 1129(b) of the Bankruptcy Code and may obtain confirmation of the Plan notwithstanding the deemed rejection by Class 9.

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

123. Section 1129(a)(9) of the Bankruptcy Code requires that claims entitled to priority under section 507(a) of the Bankruptcy Code be paid in full in cash unless the holders thereof agree to a different treatment with respect to such claims. See 11 U.S.C. § 1129(a)(9). The Plan

complies with section 1129(a)(9). Article II provides that Allowed Administrative Claims shall be paid in accordance with the terms of the Plan, and Allowed Priority Tax Claims will be paid in accordance with section 1129(a)(9)(C), each consistent with sections 1129(a)(9)(A)-(C) of the Bankruptcy Code. On the Effective Date, in full and final satisfaction of all Allowed DIP Claims, such Claims shall be repaid in full.

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

124. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one class of impaired claims, "determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). As set forth above, the Voting Classes are Impaired and have voted to accept the Plan, even excluding acceptances by any insiders in such Classes. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

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

125. Section 1129(a)(11) of the Bankruptcy Code requires the court to determine that a plan is feasible as a condition precedent to confirmation. 11 U.S.C. § 1129(a)(11). Section 1129(a)(11) does not require a guarantee of a plan's success to demonstrate a plan's feasibility. *See In re Briscoe Enters., Ltd., II*, 994 F.2d at 1165–66 ("[T]he [bankruptcy] court need not require a guarantee of success . . . [o]nly a reasonable assurance of commercial viability is required."). Rather, courts will find that a plan is feasible if a debtor offers a reasonable assurance that consummation of the plan is not likely to be followed by a further need for financial reorganization. *See In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) ("To obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'") (citing 11 U.S.C. § 1129(a)(11)). Specifically,

"[w]here the projections are credible, based upon the balancing of all testimony, evidence, and documentation, even if the projections are aggressive, the court may find the plan feasible." *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997).

126. In assessing feasibility, courts have identified, among others, the following factors: (i) the adequacy of the capital structure; (ii) the earning power of the business; (iii) the economic conditions; (iv) the ability of management; (v) the probability of the continuation of the same management; and (vi) any other matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. *See, e.g., In re M&S Assocs., Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992).

127. For purposes of determining the feasibility of the Plan, the Debtors, with assistance from their advisors, prepared projections of the Debtors' financial performance for the period from May 2025 through 2030, which is annexed to the Plan Supplement as Exhibit G (the "Financial Projections"). The Financial Projections forecast that additional capital will be needed following emergence before the Debtors reach "break even." The Debtors believe that the Plan is feasible.

128. *First*, the Debtors and their advisors have analyzed the Debtors' ability to meet their respective obligations under the Plan, and the Debtors expect to be able to fulfill those obligations with the expected capital raise contemplated by the Plan. *See* Adams Declaration ¶ 48. Specifically, pursuant to the Restructuring Transactions set forth in the Plan, including among other things, the issuance of the New Equity Interests through the Rights Offering and issuance of the Private Placement Equity Interests, the Debtors are expected to raise sufficient capital on the Effective Date to fund or pay all their obligations required to be funded or paid under the Plan. *Id.*

129. *Second,* the Debtors believe they will have the ability to secure the necessary funding after emergence. *See* Adams Declaration ¶ 48; Engel Declaration ¶ 14 (citing Adams

Declaration). The Debtors believe they have the support of the Plan Sponsors, who are sophisticated investors with capable counsel. *Id*.; *see also In re DBSD N. Am., Inc.*, 419 B.R. 179, 195 (Bankr. S.D.N.Y. 2009), *aff'd* 2010 WL 1223109 (S.D.N.Y. 2010), *partially rev'd on other grounds*, 634 F.3d 79 (2d Cir. 2011) ("Because of the presence of capital to fund the company today, there is likely to be presence of capital to fund the company in the future."). Indeed, other bankruptcy cases involving technology companies have acknowledged that it is not uncommon for late-stage technology startups to go through multiple rounds of financing. *See* Conf. Hr'g Tr. at 32–33, *In re Rockley Photonics Holding Ltd.*, Case No. 23-10081 (LGB) (Bankr. S.D.N.Y. Mar. 10, 2023) [Docket No. 163] (finding persuasive the debtor's CEO's testimony that "it is not uncommon for there to be multiple rounds of financing in a late-stage tech startup like the Rockley Group"); *see also In re DBSD N. Am., Inc.*, 419 B.R. 179 (confirming the debtors' plan despite financial projections showing that the debtors were a pre-revenue startup who would need to raise additional funds post-confirmation).

130. *Third*, the Debtors have an experienced management team that is knowledgeable of the Debtors' business and industry. Adams Declaration ¶ 48.

131. Accordingly, the Debtors submit that the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

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

132. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with these sections, Article XII.C of the Plan provides that on the Effective Date, the cases of the Debtors other than Plenty Unlimited

Texas, LLC shall be closed (and the Confirmation Order shall serve as the final decree for such cases) without the need for further motion or order. Following the Effective Date, all fees payable pursuant to section 1930(a) of the Judicial Code shall be paid in accordance with the Plan for each quarter (including any fraction thereof) until the earlier of entry of a final decree closing the Chapter 11 Case for Plenty Unlimited Texas, LLC or an order of dismissal or conversion, whichever comes first. The Proposed Confirmation Order also provides for the payment of all such statutory fees. *See* Proposed Confirmation Order ¶ 104. The Plan therefore complies with section 1129(a)(12) of the Bankruptcy Code.

M. Sections 1129(a)(13), (a)(14), (a)(15), and (a)(16): Inapplicable Provisions

133. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide "for the continuation after its effective date of payment of all retiree benefits." 11 U.S.C. § 1129(a)(13). The Debtors do not have any obligation to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code); therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtors are not subject to any domestic support obligations and, as such, section 1129(a)(14) does not apply. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). The Debtors are not "individuals" and, accordingly, section 1129(a)(15) is inapplicable. Section 1129(a)(16) of the Bankruptcy Code applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. The Debtors are each a moneyed, business, or commercial corporation and, accordingly, section 1129(a)(16) is inapplicable. To the extent there are any transfers of property made pursuant to the Plan, such transfers will be made in accordance with applicable nonbankruptcy law.

N. The Plan Satisfies "Cram Down" Requirements under Bankruptcy Code Section 1129(b) for Non-Accepting Classes

134. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes. Under section 1129(b), the court may "cram down" a plan over the dissenting vote of an impaired class of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

135. As each of the Voting Classes voted to accept the Plan, the only Class to which cram down is relevant is Class 9 (Existing Common Equity Interests), which has been deemed to reject the Plan.[35] As described below, the Plan satisfies both cram down requirements with respect to such classes.

1. <u>The Plan Does Not Discriminate Unfairly.</u>

136. Section 1129(b)(1) of the Bankruptcy Code prohibits unfair discrimination. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly-situated classes are treated differently without a reasonable basis for the disparate treatment. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) (noting that the "hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination.") (citing *In re Lernout & Hauspie Speech Prod., N.V.*, 301 B.R. 651, 660 (Bankr. D. Del. 2003), *aff'd*, 308 B.R. 672 (D. Del. 2004)). As between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g.*,

[35] Additionally, Class 6 (Intercompany Claims) and Class 8 (Intercompany Interests) are deemed to accept or reject the Plan depending on their treatment in connection therewith at the option of the Debtors. To the extent such classes are deemed to reject the Plan, cram down would also be relevant to such classes.

Matter of Johns-Manville Corp., 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd sub nom. In re Johns-Manville Corp.*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom*. *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988), or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *See, e.g.*, *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992).

137. The Plan's treatment of Class 9 is proper because all similarly-situated Holders of Interests in Class 9 will receive the same treatment, and the Plan's classification scheme rests on a legally acceptable rationale. Holders of Claims in Class 9 are not similarly situated—legally or otherwise—to Holders of Claims in any other Class. Accordingly, the Plan does not discriminate unfairly, and section 1129(b)(1) is therefore satisfied.

2. **The Plan Is Fair and Equitable.**

138. Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if, under the plan, no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest.

139. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the rule of absolute priority. With respect to the Class that is deemed to reject the Plan—Class 9 (Existing Common Equity Interests)—no Claims or Interests junior to such Class will receive a recovery under the Plan on account of such Claims or

Interests.[36] Accordingly, the Plan is "fair and equitable" and, therefore, consistent with the requirements of section 1129(b) of the Bankruptcy Code.

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

140. The Plan is the only plan currently on file in these cases and, accordingly, section 1129(c) of the Bankruptcy Code does not apply.

P. Section 1129(d): The Principal Purpose of the Plan Is Not Avoidance of Taxes

141. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

Q. Section 1129(e): Inapplicable Provisions

142. The provisions of section 1129(e) of the Bankruptcy Code apply only to "small business cases" as defined therein. The Chapter 11 Cases are not "small business cases." Accordingly, section 1129(e) of the Bankruptcy Code is inapplicable in these cases.

III. CAUSE EXISTS TO WAIVE ANY STAY OF PROPOSED CONFIRMATION ORDER

143. The Debtors request that the Court direct that the Proposed Confirmation Order be effective immediately upon its entry, notwithstanding the 14-day stay imposed by operation of Bankruptcy Rules 3020(e) and 6004(h), as set forth in Article XII.A of the Plan. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after

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[36] Class 6 (Intercompany Claims) and Class 8 (Intercompany Interests) may be, at the option of the applicable Debtor (with the consent of the Plan Sponsors), either: (i) Reinstated; (ii) canceled, released, and extinguished, and will be of no further force or effect; or (iii) otherwise addressed at the option of each applicable Debtor such that Holders of Intercompany Claims or Interests will not receive any distribution on account of such Intercompany Interest. To the extent Intercompany Claim or Interests are Reinstated under the Plan, such reinstatement or any distribution made on account of such reinstatement shall not be deemed to be a distribution to the Holders of such Intercompany Interests on account of such Intercompany Interests, but, rather, shall be for the purposes of administrative convenience and due to the importance of maintaining the prepetition corporate structure for the ultimate benefit of the holders of New Equity Interests and in consideration for the Debtors' (or Reorganized Debtors', as applicable) agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e). As such, and as the Advisory Committee notes to Bankruptcy Rule 3020(e) state, "the court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately." Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend. Similarly, Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use . . . of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Advisory Committee Notes to Bankruptcy Rule 6004(h) (when it was codified as subsection (g)) similarly state that "[t]he court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used . . . immediately." Fed. R. Bankr. P. 6004(h), Adv. Comm. Notes, 1999 Amend.

144. Under the circumstances, good cause exists for waiving the stays. It is appropriate for the Court to exercise its discretion to order that Bankruptcy Rules 3020(e) and 6004(h) are waived, to permit the Debtors to consummate the Plan and commence their implementation without delay after the entry of the Confirmation Order. *See, e.g.*, *In re Energy Partners, Ltd.*, No. 09-32957, 2009 WL 2898876, at *16 (Bankr. S.D. Tex. Aug. 3, 2009) (waiving stay of confirmation order). Under the Debtors' DIP milestones, which were heavily negotiated with the Debtors' limited liquidity in mind, the Debtors are required to effectuate the Plan within five (5) calendar days of the entry of the Confirmation Order. Each day that the Debtors remain in chapter 11 incurs significant administrative and professional costs for the Debtors, and waiting until the expiration of 14 days after entry of the Confirmation Order would otherwise provide no purpose, particularly given the consensual nature of these Chapter 11 Cases. Moreover, parties need the necessary comfort that once the Plan has gone effective, there is finality on the issues. For instance, the Holders of Virginia Mechanic's Lien Claims are releasing their liens as of the Effective Date

of the Plan (which is expected to be prior to 14 days after the entry of the Confirmation Order), and such Holders would require finality as of the Effective Date in order to proceed.

145. As such, contrary to the U.S. Trustee's Objection, waiving the stay period is in the best interests of the Debtors' estates and creditors and will not prejudice any parties in interest. *See* U.S. Trustee Objection ¶ 76.

CONCLUSION

146. The Disclosure Statement and the Plan comply with all of the requirements of the Bankruptcy Code, and the Debtors request that the Court (i) enter the Proposed Confirmation Order to approve the Disclosure Statement on a final basis and confirm the Plan, (ii) grant related relief requested herein, and (iii) grant such other and further relief as the Court may deem just and appropriate.

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Dated: May 12, 2025
Houston, Texas

/s/ Duston K. McFaul

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Certificate of Service

I certify that on May 12, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Duston K. McFaul
Duston K. McFaul