IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SOLID FINANCIAL TECHNOLOGIES, INC.,[1] Debtor.	Chapter 11 Subchapter V Case No. 25-10669 (BLS) **Ref. Docket Nos. 172, 188, 197, 206, 208**

MEMORANDUM OF LAW IN SUPPORT OF THE SECOND AMENDED SUBCHAPTER V CHAPTER 11 PLAN OF LIQUIDATION OF SOLID FINANCIAL TECHNOLOGIES, INC.

Solid Financial Technologies, Inc., as debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case" or the "Case"), respectfully represents:

PRELIMINARY STATEMENT[2]

1. The Debtor is a financial technology company that operated a Banking-as-a-Service ("BaaS") business model that enabled its clients (usually fintech and software companies) to embed financial products into their applications or platforms. The main aspects of the Debtor's BaaS business model included: (i) partnerships with regulated sponsor banks ("Bank Partnerships"), which enabled the Debtor to provide a middleware technology and orchestration layer between sponsor banks and fintech clients; (ii) onboarding and integration services for clients—usually fintech companies or platforms—who wanted to embed financial services into their applications or platforms; and (iii) a developer-friendly application programming interface (the "API"), which enabled fintech company clients to launch and scale financial products and

[1] The Debtor in this Chapter 11 Case, its jurisdiction of organization, and the last four digits of its U.S. taxpayer identification number is: Solid Financial Technologies, Inc., c/o Harvard Business Services, Inc., 16192 Coastal Hwy, Lewes, DE 19958.

[2] Capitalized terms used, but not defined, in the preliminary statement are defined later in the brief. If not defined in the brief, they shall have the meaning ascribed to such terms in the Plan.

maintain connectivity with sponsor banks. From June 2021 through the end of 2024, the Debtor had agreements with a total of 142 clients and four (4) Bank Partnerships of various durations.

2. The Debtor historically utilized equity funding to raise capital to fund operations, but since the close of the latest round of funding, on July 26, 2022, the Debtor encountered significant and costly litigation, became the subject of certain government investigations, and experienced a concentration of client attrition which all negatively affected the Debtor's business relationships and depleted funding that was needed to maintain operations.

3. Client attrition occurred periodically, with the most significant concentration of client departures taking place in late 2023 and early 2024. The principal factors contributing to client offboarding included previously supported but subsequently unsupported international use cases,[3] use cases involving cryptocurrency,[4] and certain clients' inability to complete bank partner sponsorship or migrations necessitated by changes in the Debtor's underlying banking relationships.

4. In 2023, an action (the "FTV Litigation"), Case No. 2023-0975 was brought in the Court of Chancery for the State of Delaware against the Debtor, among others, by FTV VII, L.P. ("FTV"), the lead investor in the Debtor's Series B equity funding round. FTV alleged claims for breach of contract, fraud in the inducement, fraudulent concealment, breach of fiduciary duty,

---

[3] International use cases often involve fintech companies founded outside of the U.S. looking to operate within the U.S., focusing on cross-border money movement. By partnering with a U.S. bank, the fintech company addresses these international needs. Typically, the fintech company collaborates with a BaaS provider, such as the Debtor, which provides connectivity to one of its sponsor banks.

[4] Cryptocurrency fintech use cases often involve platforms that offer services, such as crypto products, wallet management, and payment processing. To enable seamless transactions between fiat and cryptocurrency, these companies need a U.S. sponsor bank for regulatory compliance and to handle fiat on-ramps (converting U.S. dollars to crypto) and off-ramps (converting crypto to U.S. dollars). A BaaS provider like the Debtor is essential for providing the infrastructure and connectivity between the fintech and the sponsor bank, ensuring smooth integration for payment processing, regulatory compliance, and secure transfers between crypto and traditional financial systems. This partnership enables the crypto-related fintech to solve for their use cases.

breach of implied covenant of good faith and fair dealing, and unjust enrichment. The Debtor and the other defendants disputed these allegations. On April 9, 2024, the FTV Litigation was dismissed with prejudice under a settlement reached by the parties.

5. After the filing of the FTV Litigation, the Debtor was named as a defendant in a number of lawsuits and became the subject of several government investigations and inquiries. In the fall of 2023, certain of the Debtor's other business relationships began to suffer as a result of reported allegations against the Debtor in the fintech space. Notably, the Debtor's relationship with LCB—one of the Debtor's Bank Partnerships—deteriorated. Beginning in the fall of 2023, LCB required the Debtor to fund a $10 million security reserve and to abide by additional reporting requirements. Ultimately, LCB terminated the Master Services Agreement between the parties on August 29, 2024.

6. In early 2025, the Debtor made the decision to wind-down the Company and evaluate potential restructuring and sale opportunities. On April 7, 2025, the Debtor commenced its Chapter 11 Case by filing a voluntary petition for relief under subchapter V of chapter 11 of the Bankruptcy Code to (i) curtail the legal spend associated with the pending litigation that had grown significantly after the FTV Litigation; and (ii) run a sale process for the Debtor's valuable assets—primarily the API. Unfortunately, despite a robust sale process and extensive marketing, the Debtor was unable to find a buyer for its assets.

7. The Debtor engaged with all stakeholders to formulate a Plan that maximizes distributions to creditors and ensures an expeditious and orderly liquidation.

8. For these reasons, and the additional reasons set forth herein, the Debtor respectfully requests that the Court confirm the Plan.

BACKGROUND

A. The Bankruptcy Case Background

9. On April 7, 2025 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") as a debtor defined in section 1182(1) of the Bankruptcy Code, and the Debtor elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code pursuant to the Small Business Debtor Reorganization Act of 2019 (the "SBRA"), Pub. L. No. 116-54, effective February 19, 2020, as amended. The Debtor continue to operate its business and manage its property as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. On July 7, 2025, the Debtor filed the *Subchapter V Chapter 11 Plan of Liquidation*,[5] and, on September 25, 2025, the Debtor filed the *First Amended Subchapter V* C*hapter 11 Plan of Liquidation*[6] (as may be further modified, amended, or supplemented from time to time, the "Plan"). The first amended Plan was served on the creditor matrix on September 25, 2025.[7] On November 6, 2025, the Debtor filed the *Second Amended Subchapter V* Chapter *11 Plan of Liquidation*,[8] making conforming changes to the Plan. A hearing to consider confirmation of the Plan is scheduled for November 12, 2025 at 10:00 a.m. (ET) (the "Confirmation Hearing").

11. On September 25, 2025, the Debtor filed the *Motion of the Debtor for Entry of an Order (I) Scheduling a Hearing on Plan Confirmation and Deadlines Related Thereto; (II) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto;*

[5] Docket No. 104.

[6] Docket No. 172.

[7] Docket No. 180.

[8] Docket No. 206.

and (III) Granting Related Relief[9] (the "Solicitation Procedures Motion"). On October 10, 2025, the Court approved the Solicitation Procedures Motion.[10] On October 10, 2025, the Debtor filed the *Notice of Hearing to Consider Confirmation of the Plan and the Objection Deadline Related Thereto*[11] (the "Confirmation Hearing Notice"), which provided creditors with the procedure and deadlines for voting and objecting to the Plan. On October 14, 2025, Omni Agent Solutions, Inc. ("Omni") caused the Confirmation Notice to be served.[12] Also on October 14, 2025, Omni served the ballots and notices of non-voting status.[13]

12. On October 22, 2025, the Debtor filed a *Notice of Filing of Plan Supplement*[14] (as amended, the "Plan Supplement").

13. The Debtor proposes the Plan for the resolution of outstanding Claims against, and Interests in, the Debtor.

14. As reflected in the *Declaration of Jeriad R. Paul With Respect to the Tabulation of Votes on the Second Amended Subchapter V Chapter 11 Plan of Liquidation*, filed contemporaneously herewith (the "Voting Declaration"), of the two Classes that were entitled to vote on the Plan—Class 3 has rejected the Plan and Class 4 has accepted the Plan as follows:

Plan Class	**Impaired Class Description**	**VOTES TO ACCEPT**		**VOTES TO REJECT**	
		COUNT	**AMOUNT**	**COUNT**	**AMOUNT**
3	General Unsecured Claims	0	0%	3	100.00% $2,836,342.14
4	Preferred Equity Interests	2	100.00% $32,142.01	0	0%

[9] Docket No. 171.

[10] Docket No. 188.

[11] Docket Nos. 190.

[12] Docket No. 200.

[13] *See id.*

[14] Docket No. 197.

15. Additionally, Holders of Common Equity Interests comprising Class 5 were not projected to receive a recovery under the Plan and, therefore, were deemed to reject the Plan.

16. Pursuant to the SBRA, the Plan may be confirmed non-consensually under section 1191(b) of the Bankruptcy Code. As set forth herein, confirmation is possible in Subchapter V cases even if sections 1129(a)(8) and (10) of the Bankruptcy Code are not satisfied and no impaired class of creditors accepts the plan.

17. As set forth in the pleadings of the Chapter 11 Case and as will be demonstrated at the Confirmation Hearing, the Plan complies with the applicable requirements of section 1129 of the Bankruptcy Code and the requirements of section 1191(b) of the Bankruptcy Code and should be confirmed.

ARGUMENT

18. To confirm the Plan, the Court must find that the Debtor has satisfied the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[15] Because the Debtor has elected to proceed under Subchapter V of the Bankruptcy Code, the SBRA is applicable to confirmation of the Plan. The Debtor submits that the Plan complies with all applicable sections of the Bankruptcy Code, the Bankruptcy Rules, the Local rules, and applicable non-bankruptcy law. In particular, the Plan fully complies with the applicable requirements of sections 1122, 1123, 1129, 1181, and 1191 of the Bankruptcy Code.

19. Absent court order, the Debtor is not required to file or obtain approval of a disclosure statement pursuant to the SBRA. The information normally found in the disclosure

[15] *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 606 n.23 (Bankr. D. Del. 2001); *see also In re Bally Total Fitness of Greater New York, Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.").

statement has been included in the Plan, including a brief history of the Debtor's business and a liquidation analysis.[16]

20. This memorandum addresses each Plan confirmation requirement individually.

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

21. Pursuant to section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]."[17] The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan, respectively.[18] As demonstrated below, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code.

22. The Plan also complies with the other applicable provisions of the Bankruptcy Code. As noted above, the Debtor is a debtor as defined in section 1182(1) of the Bankruptcy Code and elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code. As such, pursuant to section 1181 of the Bankruptcy Code, sections 1129(b), 1129(c), 1129(e), and 1141(d)(5) of Title 11 do not apply to this Subchapter V bankruptcy case. Further, as set forth herein, pursuant to section 1191(b) of the Bankruptcy Code, the requirements of subparagraphs (8), (10), and (15) in section 1129(a) of the Bankruptcy Code are not applicable to confirmation of the Plan.

[16] 11 U.S.C. § 1190(1).

[17] 11 U.S.C. § 1129(a)(1).

[18] *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977); *In re S&W Enter*., 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the legislative history of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was more directly aimed at were sections 1122 and 1123.").

i. Compliance with Section 1122 of the Bankruptcy Code

23. The Plan satisfies the classification requirements of section 1122 of the Bankruptcy Code. Courts in this jurisdiction and others have recognized that under section 1122, plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.[19]

24. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 because the Claims and Interests in each Class differ from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria. Moreover, each of the Claims or Interests in a particular Class is substantially similar to the other Claims or Interests in such Class.

25. Specifically, the Plan provides for the separate classification of Claims and Interests into the following five (5) Classes based upon differences in the legal nature and/or priority of such Claims and Interests:

- <u>Class 1</u> Other Priority Claims
- <u>Class 2</u> Secured Claims
- <u>Class 3</u> General Unsecured Claims
- <u>Class 4</u> Preferred Equity Interests

[19] *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1066 (Bankr. D.N.J. 1986) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *see also Boston Post Rd. L.P. v. FDIC (In re Boston Post Road, L.P.)*, 21 F.3d 477, 483 (2d Cir. 1994) (finding that courts may not prohibit separate classification of substantially similar claims); *Frito-Lay, Inc., v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 10 F.3d 944, 956-57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis; separate classification based on bankruptcy court-approved settlement); *In re 500 Fifth Ave. Assocs*., 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (although discretion is not unlimited, "the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case"); *In re Drexel Burnham Lambert Group, Inc*., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar claims be grouped together . . . ."); *In re Ionosphere Clubs, Inc*., 98 B.R. 174, 177-78 (Bankr. S.D.N.Y. 1989) ("a debtor may place claimants of the same rank in different classes and thereby provide different treatment for each respective class.").

- Class 5 Common Equity Interests

26. Secured Claims are classified separately from Unsecured Claims, and Interests are classified separately from Claims.

27. Claims or Interests assigned to each particular Class described above are substantially similar to the other Claims or Interests in such Class. Accordingly, the Plan satisfies section 1122(a) of the Bankruptcy Code.

ii. Compliance with Section 1123(a) of the Bankruptcy Code

28. Section 1123(a) of the Bankruptcy Code sets forth seven items that every chapter 11 plan must contain.[20] The Plan contains each of these items.

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

29. As discussed above, Section 3 of the Plan properly designates classes of Claims and Interests, and thus, satisfies the requirement of section 1122 of the Bankruptcy Code.

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

30. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan."[21] The Plan meets this requirement by identifying in Section 3 each Class that is not Impaired.

c. Treatment of Impaired Classes (§ 1123(a)(3))

31. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan."[22] The Plan meets this requirement by setting forth the treatment of Impaired Classes in Section 4.

[20] 11 U.S.C. § 1123(a).

[21] 11 U.S.C. § 1123(a)(2).

[22] 11 U.S.C. § 1123(a)(3).

d. Equal Treatment within Classes (§ 1123(a)(4))

32. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[23] The Plan meets this requirement because Holders of Allowed Claims and Interests will receive the same rights and treatment as other Holders of Allowed Claims and Interests within their respective Class, except to the extent that they agree to less favorable treatment.

e. Means for Implementation (§ 1123(a)(5))

33. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation.[24] The Plan satisfies this requirement through Section 6 and various other provisions of the Plan which, together, provide for the means by which the Plan will be implemented. The Plan, as solicited, provided for a minimum recovery to certain Creditors and potentially to Holders of Preferred Equity Interests based on the total anticipated amount of Liquidation Trust Assets subject to distribution.

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

34. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of non-voting equity securities.[25] The Plan does not contemplate the issuance of non-voting equity securities.

g. Officers and Directors (§ 1123(a)(7))

35. Section 1123(a)(7) of the Bankruptcy Code requires that the Plan's provisions with respect to the manner of selection of any director, officer, or trustee, or any other successor thereto,

---

[23] 11 U.S.C. § 1123(a)(4).

[24] 11 U.S.C. § 1123(a)(5).

[25] 11 U.S.C. § 1123(a)(6).

be "consistent with the interests of creditors and equity security holders and with public policy . . . ."[26] Pursuant to Section 11.2 of the Plan, as of the Effective Date, the existing board of directors of the Debtor shall be dissolved without any further action required on the part of the Debtor or the Debtor's officers, directors, or shareholders, and any remaining officers or directors of the Debtor shall be dismissed. As of the Effective Date, the Liquidation Trustee shall act as the sole officer or director of the Debtor with respect to its affairs. The identity of the Liquidation Trustee was disclosed in the Plan and the proposed Liquidation Trust Agreement was disclosed in the Plan Supplement. Thus, the Plan complies with section 1123(a)(7) of the Bankruptcy Code.

36. Based upon the foregoing, the Plan complies fully with each of the requirements of 1123(a) of the Bankruptcy Code.

iii. Compliance with Section 1123(b) of the Bankruptcy Code

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

37. Section 1123(b) of the Bankruptcy Code sets forth various permissive provisions that may be incorporated into a chapter 11 plan.[27] For example, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11.[28]

---

[26] 11 U.S.C. § 1123(a)(7).

[27] *See* 11 U.S.C. § 1123(b).

[28] 11 U.S.C. § 1123(b)(1)-(6).

38. The Plan is consistent with section 1123(b) of the Bankruptcy Code. Specifically, Section 3 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Interests under the Plan. Specifically: (a) Class 1 (Other Priority Claims) and Class 2 (Secured Claims) are Unimpaired by the Plan and are deemed to have accepted the Plan; (b) Class 3 (General Unsecured Claims) and Class 4 (Preferred Equity Interests) are Impaired under the Plan and are entitled to vote on the Plan; (c) Class 5 (Common Equity Interests) is Impaired and shall receive no Distributions under the Plan on account of its Interests and is deemed to have rejected the Plan.

39. In addition, in accordance with section 1123(b)(2) of the Bankruptcy Code, Section 9 of the Plan provides that the Debtor's executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be deemed rejected, as of the Effective Date, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease: (i) previously has been assumed pursuant to Final Order of the Bankruptcy Court, (ii) is specifically designated as an executory contract or unexpired lease to be assumed in this Plan or in any Plan Supplement, or (iii) is the subject of a separate assumption motion under section 365 of the Bankruptcy Code prior to the Effective Date.

b. The Plan Releases are an Appropriate Under Section 1123(b) and Should be Approved.

40. The Plan provides for the releases of certain claims by the Debtor, as well as the releases of claims and interests held by creditors and interest holders of the Debtor that affirmatively opt-in to such releases. The release provisions are integral components of the Plan, are consistent with the Bankruptcy Code, and comply with applicable case law and recent precedent, and, as such, should be approved.

(i) The Debtor Releases Are Appropriate and Should be Approved.

41. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or the estate."[29] Courts in the Third Circuit typically approve a settlement by a debtor if the settlement "exceed[s] the lowest point in the range of reasonableness."[30] Furthermore, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[31]

42. Section 11 of the Plan provides for a customary release of any and all Causes of Action, including direct and derivative claims, of the Debtor, the Liquidation Trustee, and the Estate against each Released Party[32] in connection with, among others, the Debtor, the restructuring efforts and documents, the Chapter 11 Case, the Plan, and the business or contractual arrangements between the Debtor and any Released Party (the "Debtor Releases").[33]

43. The Debtor Releases are a valid exercise of the Debtor's business judgment, and are fair, reasonable, and in the best interests of the Debtor's Estate.

---

[29] *See* 11 U.S.C. § 1123(b)(3)(A); *see also In re Coram Healthcare Corp*., 315 B.R. 321, 334–35 (Bankr. D. Del. 2004) (holding that the standard for approval of a settlement under section 1123 of the Bankruptcy Code is generally the same as under Bankruptcy Rule 9019).

[30] *See e.g., In re Coram Healthcare*, 315 B.R. at 330 (citations omitted); *In re Exaeris, Inc*., 380 B.R. 741, 746-47 (Bankr. D. Del. 2008) (citations omitted); *In re World Health Alts., Inc*., 344 B.R. 291, 296 (Bankr. D. Del. 2006) (stating that the settlement must be "within the reasonable range of litigation possibilities") (internal quotation marks omitted).

[31] *In re Spansion, Inc*., 426 B.R. 114, 143 (Bankr. D. Del. 2010) (citing section 1123(b)(3)(A) of the Bankruptcy Code); *see also In re Wash. Mut., Inc*., 442 B.R. 314, 327 (Bankr. D. Del. 2011) (When assessing whether to approve a settlement "the court must determine whether 'the compromise is fair, reasonable, and in the best interest of the estate.") (internal quotation marks omitted).

[32] "*Released Parties*" means the Debtor and its agents, affiliates, parents, subsidiaries, predecessors, successors, heirs, executors, and assignees, its directors and officers who served during the Chapter 11 Case, and its attorneys and financial advisors, in each case in their capacity as such.

[33] The foregoing description is meant only as a summary of the operative Plan provisions relating to the Debtor Releases. To the extent there is any conflict between the forgoing summary and the Debtor Releases and the definition of "Released Parties," as each is contained in the Plan, the Plan shall control.

44. The Released Parties made valuable contributions to the restructuring process and/or efforts to negotiate and implement the Plan. The Released Parties participated in negotiations with the Debtor that ultimately resulted in a confirmable Plan and are integral for implementation of the Plan.

45. The Debtor Releases are essential to the Plan because they constitute an integral part of the chapter 11 process. Absent the Debtor Releases, it is highly unlikely the Released Parties would have agreed to support the Plan or the Plan transactions contemplated therein and that many of them would have asserted indemnification and other claims that would have increased general unsecured claims against the Debtor and added contingent, unliquidated claims that would complicate the claims resolution process. As described above, each of the Released Parties made contributions to the Chapter 11 Case or will do so as a means to implement the Plan, and did or will do so with the understanding that they would receive releases from the Debtor. Without the Released Parties' support, the Debtor would not be in a position to confirm the Plan.

46. Accordingly, the Debtor Releases are fair and equitable and in the best interests of the Debtor's Estate and should be approved.

(ii) The Consensual Third-Party Releases Are Appropriate and Should be Approved

47. Section 11.9 of the Plan provides for a release of any and all Causes of Action, including all direct and derivative claims, by non-debtor Holders of Claims and Interests, to the extent such Holder opted into granting such release by checking the appropriate box on the Holder's Ballot or opt-in election form (collectively, the "Releasing Parties"),[34] against the Debtor and other Released Parties in connection with, among other things, the Debtor, the restructuring

[34] "*Releasing Parties*" means, collectively, (a) the Debtor, and (b) each Holder of a Claim against or Interest in the Debtor, to the extent such Holder opts-in to being a Releasing Party by checking the appropriate box on the Holder's ballot or opt-in election form, in each case in their capacity as such.

efforts, any Plan Document, the Plan, the Chapter 11 Case, and the business or contractual arrangements between the Debtor and any Released Party (collectively, the "Third-Party Releases").[35]

48. The Third-Party Releases included in the Plan are customary and comply with Third Circuit law and recent precedent in this jurisdiction. In this District, courts "have consistently held that a plan may provide for a release of third party claims against a non-debtor upon consent of the party affected."[36]

49. First, the Third-Party Releases are consensual. Only those parties that affirmatively checked the opt-in box on their Ballot or opt-in election form (for non-voting parties) are Releasing Parties granting the Third-Party Releases. Each Ballot and the Non-Voting Status Notice contained a clear and conspicuous opt-in section that set forth important information (and relevant provisions that could bind Holders of Claims and/or Interests in the respective Classes) regarding the release provisions set forth in the Plan. The Confirmation Notice was also sent to all creditors, and expressly included in underlined typeface the terms of the Third-Party Releases, as set forth in Section 11 in the Plan, as well as the definitions of "Released Parties" and "Releasing Parties." Accordingly, Holders of Claims and/or Interests are only deemed to be Releasing Parties if they affirmatively chose to grant such Third-Party Releases. As a result, there can be no doubt that the Third-Party Releases are consensual.

[35] The foregoing description is meant only as a summary of the operative Plan provisions relating to the Third-Party Releases. To the extent there is any conflict between the forgoing summary and the Third-Party Releases and the definition of "Releasing Parties," as each is contained in the Plan, the Plan shall control.

[36] *In re Indianapolis Downs*, 486 B.R. 286, 305 (Bankr. D. Del. 2013) (*citing In re Zenith*, 241 B.R. at 111) (approving third-party release that applied to deemed accepting class as consensual); *see also In re Spansion, Inc.*, 426 B.R. 114, 144 (Bankr. D. Del. 2010) (same); *Wash. Mut.*, 442 B.R. at 352 (observing that consensual third-party releases are permissible); In re PES Holdings, LLC, No. 18-10122 (KG) (Bankr. D. Del. Apr. 2, 2018) (same).

50. The Third-Party Releases are sufficiently specific as to put the Releasing Parties on notice of the nature of the released Claims and Causes of Action. The Ballot and the Non-Voting Status Notice specifically lay out the Third-Party Releases. Further, the Plan's description of the Third-Party Releases sets forth the nature and type of Causes of Action released and effectively limits the Third-Party Releases to those Causes of Action being released as identified in the Plan.

51. Further, the Third-Party Releases were integral and essential components of the Plan and the Debtor's ability to effectively restructure and implement a plan. The Third-Party Releases facilitated participation by the Debtor's key stakeholders in both the Plan and the chapter 11 process, and were critical in reaching a consensus among these stakeholders to support the Plan. As such, the Third-Party Releases were a core negotiation point and appropriately offer reasonable protections to parties that constructively participated in, or will participate in, the restructuring process.

52. Based on the foregoing, the Third-Party Releases comply with the controlling Third Circuit standard and cases in this jurisdiction and are appropriate and justified under the circumstances, and should therefore be approved.

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

53. The Plan also includes: (a) an exculpation provision; and (b) injunction provisions prohibiting parties from pursuing claims subject to the exculpation under the Plan. As explained below, these provisions are fair and appropriate, under both applicable law and the facts and circumstances of this Case, and are the product of arm's-length negotiations.

(i) The Exculpation Provision

54. Section 11.10 of the Plan exculpates parties critical to the formulation of the Plan including for any acts or omissions in connection with the Chapter 11 Case, the Plan, or any Plan

Document, contract, instrument, release or other agreement or document created or entered into in connection with the Plan, the Chapter 11 Case, or the confirmation, consummation, or administration and implementation of the Plan (the "Exculpation").[37] The Exculpated Parties are defined in the Plan to include the Debtor, the Debtor's directors and officers who served during the Chapter 11 Case; and the Professionals—in each case in its capacity as such.

55. An exculpation provision is not a mandatory release of all liability, but instead, establishes the appropriate standard of liability with respect to the parties exculpated.[38] First, this Court must find, under section 1129(a)(2), that the Debtor has complied with the applicable provisions of the Bankruptcy Code. Additionally, the Court must find, under section 1129(a)(3), that the Plan has been proposed in good faith and not by any means forbidden by law.[39] These findings apply to the Debtor and, by extension, to the Debtor's officers, directors, employees and professionals. Further, these findings evidence that the Plan was negotiated at arm's length and in good faith. Insofar as the Debtor negotiated the myriad of issues during the course of the Chapter 11 Case, as well as the terms of the Plan, with the other Exculpated Parties, the Court's good faith findings with respect to the Debtor's Chapter 11 Case should extend to them.

---

[37] The foregoing description is meant only as a summary of the operative Plan provisions relating to Exculpation. To the extent there is any conflict between the forgoing summary and the Exculpation provisions, the Plan shall control.

[38] *See In re PWS Holding Corp*., 228 F.3d 224, 246 (3d Cir. 2000) (reasoning that the exculpation provision "does not affect the liability of third parties, but rather sets forth the appropriate standard of liability."); *see also In re Enron Corp*., 326 B.R. 497, 501 (S.D.N.Y. 2005) (in finding creditors' appeal of confirmation based on the plan's exculpation provision moot, the court specifically noted that the bankruptcy court addressed the exculpation provision and found it appropriate because it excluded gross negligence and willful misconduct).

[39] 11 U.S.C. § 1129(a)(3).

56. Second, it is well established that Exculpation for parties participating in the plan process is appropriate where plan negotiations could not have occurred without protection from liability.[40]

57. The Debtor asks that the Court exculpate the Exculpated Parties with respect to the Debtor's restructuring efforts, the Chapter 11 Case, formulation and negotiation of the Plan and the Plan Documents, and that they are entitled to protection from lawsuits from disgruntled creditors or any other parties in interest.[41] Negotiation and compromise was crucial to the conduct of the restructuring process, the Chapter 11 Case generally, and the formulation of a feasible Plan and could not have occurred without the protection from liability that the Exculpation provides to the Exculpated Parties. Further, the Exculpation is consistent with the practice in this jurisdiction and others.[42] Therefore, the Court should approve the Exculpation and adopt the appropriate standard of liability for the Exculpated Parties with respect to the Debtor's Chapter 11 Case.

58. The Debtor itself is entitled to the relief embodied in the Exculpation. Having acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code, the Debtor is entitled to the protections afforded by section 1125(e) and Exculpation. Further, granting such relief falls squarely within the "fresh start" principles underlying the Bankruptcy Code. In addition

---

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

[41] *See* Plan, Section 11.10.

[42] *See*, *e.g.*, *In re Sea Containers Ltd.*, No. 06-11156 (KJC) (Bankr. D. Del. Nov. 24, 2008); *In re ACG Holdings*, No. 08-11467 (CSS) (Bankr. D. Del. Aug. 6, 2008); *In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2003) (approving exculpation provision that covered prepetition lenders, DIP lenders, creditor committees and their members, and the respective affiliates of each except in cases of gross negligence, willful misconduct, fraud, or criminal conduct over an objection that was raised but "not pursue[d] at the confirmation hearing" and noting that the language "generally follows the text that has become standard in this district, is sufficiently narrow to be unexceptional"); *see also In re DJK Residential LLC*, No. 08-10375, (Bankr. S.D.N.Y. May 7, 2008) (approving an exculpation provision that excluded gross negligence and willful misconduct without unresolved objections); *In re Bally Total Fitness*, 2007 WL 2779438, at *8 (same).

to the Debtor, the other Exculpated Parties owe duties in favor of the Debtor's Estate. The directors, officers, and advisors who have acted on the Debtor's behalf in the Chapter 11 Case owe similar duties to the Debtor's Estate.

59. Based upon the foregoing, the Exculpation complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code, and thus, satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

(ii) The Injunction Provision

60. The injunction provision in Section 11.5 of the Plan permanently enjoins certain Holders of Claims or Interests from bringing any actions against the Debtor or Liquidation Trust (the "Injunction"). The Injunction provision is necessary to preserve and enforce the Debtor Releases, the Third-Party Release and the Exculpation and is narrowly tailored to achieve that purpose.

61. Without the Injunction, the Plan's release and exculpation provisions would lose their impact and the Plan could fail. Thus, the Court should approve the Injunction.

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

62. The Debtor itself, as the Plan proponent, has satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan comply with the applicable provisions of the Bankruptcy Code.[43] The legislative history to section 1129(a)(2) of the Bankruptcy Code reflects that this provision ordinarily is intended to encompass the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code.[44]

[43] 11 U.S.C. § 1129(a)(2).

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

However, as set forth in section 1181(b) of the Bankruptcy Code, absent a court order, the requirement in section 1125 for a separate disclosure statement is not required in Subchapter V cases.[45] Rather, pursuant to section 1190(1) of the Bankruptcy Code, the plan itself must include certain information normally found in a disclosure statement including a brief history of the business operations of the Debtor and a liquidation analysis. Here, the Debtor, as the Plan proponent, provided adequate information in the Plan, the Ballot, and the Non-Voting Status Notice for Holders of Claims and Interests to make an informed judgment on whether to accept or reject the Plan. Moreover, as set forth below, the Debtor also has complied with section 1126.

i. Compliance with Section 1126 of the Bankruptcy Code

63. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan.[46] Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or interests that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject such plan. Section 1126 of the Bankruptcy Code provides in pertinent part that:

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

including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code"); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

[45] 11 U.S.C. § 1181(b) provides that unless the court for cause orders otherwise, section 1125 does not apply in a case under this subchapter.

[46] 11 U.S.C. § 1126.

> not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.[47]

64. As set forth in the Plan and, in accordance with section 1126 of the Bankruptcy Code, the Debtor solicited acceptances or rejections of the Plan from the Holders of Class 3 General Unsecured Claims and Class 4 Preferred Equity Interests. Classes 1 and 2 are not Impaired under the Plan. As a result, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1 through 2 are conclusively presumed to have accepted the Plan. Class 5 will receive no distribution under the Plan. Thus, pursuant to section 1126(g) of the Bankruptcy Code, Holders of Interests in Class 5 are conclusively presumed to have rejected the Plan. As a result, Holders of Claims or Interests in Classes 1, 2 and 5 were not entitled to vote to accept or reject the Plan.

65. As to the Impaired Classes entitled to vote to accept or reject the Plan, sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for acceptance of a plan by classes of claims and classes of equity interests, respectively:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.
>
> (d) A class of interests has accepted the plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.[48]

66. As noted herein, two Impaired Classes were entitled to vote. Class 4 voted to accept the Plan, but Class 3 voted to reject the Plan. Class 5 is projected to receive nothing under the Plan and therefore, were presumed to reject the Plan. Thus, the Debtor seeks non-consensual

[47] 11 U.S.C. § 1126(a), (f) and (g).

[48] 11 U.S.C. § 1126(c), (d).

confirmation of the Plan under section 1191(b) of the Bankruptcy Code. Based upon the foregoing and the evidence that will be presented at the Confirmation Hearing, the Debtor submits that the Plan satisfies the requirements of section 1126 of the Bankruptcy Code.

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

67. 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."[49] The good faith standard requires that the plan be "proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code."[50]

68. The Plan was indeed proposed with honesty and good intentions and it was done so at arm's length; therefore, it meets the requirements of § 1129(a)(3).

D. The Plan Provides that Payments Made by the Debtor for Professional Fees and Expenses Are Subject to Court Approval (§ 1129(a)(4))

69. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable.[51] Specifically, section 1129(a)(4) requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, 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 approval of, the court as reasonable.[52]

[49] 11 U.S.C. § 1129(a)(3).

[50] *Zenith Elecs*., 241 B.R. at 107 (quoting *In re Sound Radio, Inc*., 93 B.R. 849, 853 (Bankr. D. N.J. 1988), *aff'd in part, remanded in part*, 103 B.R. 521 (D.N.J. 1989), *aff'd*, 908 F.2d 964 (3d Cir. 1990)). *See also In re SGL Carbon Corp*., 200 F.3d 154, 165 (3d Cir. 1999) (finding good faith requires "some relation" between the chapter 11 plan and the "reorganization-related purposes" of chapter 11); *In re Century Glove, Inc.*, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied").

[51] 11 U.S.C. § 1129(a)(4).

[52] *Id*.

Section 1129(a)(4) of the Bankruptcy Code has been construed to require that all payments of professional fees using funds from estate assets be subject to review and approval by the Court as to their reasonableness.[53] In addition, pursuant to sections 503(b)(3) and (4) of the Bankruptcy Code, the Court must review any applications for substantial contribution to ensure compliance with the statutory requirements and that the fees requested are reasonable.[54]

70. Here, all payments to be made in connection with the Effective Date have been disclosed previously or will be disclosed. Thus, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Debtor Has Disclosed All Necessary Information Regarding Directors, Officers, and Insiders (§ 1129(a)(5))

71. Section 1129(a)(5)(A) of the Bankruptcy Code requires that the proponent of a plan disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor.[55] The Bankruptcy Code further provides that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy. Section 1129(a)(5)(B) of the Bankruptcy Code also requires a plan proponent to disclose the identity of an "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the nature of any compensation for such insider.[56]

72. Pursuant to Section 11.2, as of the Effective Date of the Plan, the Debtor has disclosed that the existing board of directors shall be dissolved and, as of the Effective Date, the Liquidation Trustee would act as the sole officer or director of the Debtor. The identity of the

---

[53] *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation.").

[54] 11 U.S.C. § 503(b)(3), (4).

[55] 11 U.S.C. § 1129(a)(5)(A).

[56] *Id*.

Liquidation Trustee was disclosed in the Plan as Rock Creek Advisors LLC. Based upon the foregoing, the Debtor has satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. The Plan is in the Best Interests of All the Debtor's Creditors (§ 1129(a)(7))

73. Section 1129(a)(7) of the Bankruptcy Code — the "best interests test" — provides, in relevant part:

> With respect to each impaired class of claims or interests —
>
> (A) each holder of a claim or interest of such class —
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date….[57]

74. The best interests test applies to individual dissenting holders of claims and interests rather than classes, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan.[58] As section 1129(a)(7) of the Bankruptcy Code makes clear, the best interests test applies only to non-accepting impaired claims or interests. The Plan contemplates potential distributions to two Impaired Classes—Classes 3 and 4. Class 5 is projected to receive no distributions under the Plan. Accordingly, to satisfy the best interests test, the Debtor must demonstrate that each Holder of a Claim in Class 3 or Interest in Class 4 has either accepted the Plan or will receive at least as much under the Plan as that claimant

[57] 11 U.S.C. § 1129(a)(7)(A).

[58] *See Bank of Am.*, 526 U.S. at 441 n.13 ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *see also In re Adelphia Commc'ns. Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (section 1129(a)(7) is satisfied when an impaired holder of claims would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation."); *Century Glove, Inc.*, 1993 WL 239489, at *7.

would receive in a chapter 7 liquidation (the "Liquidation Value"), and that Class 5 would likewise receive no distribution in a chapter 7 liquidation.[59]

75. In a chapter 7 liquidation, as set forth in the Liquidation Analysis attached as Schedule 1 to the Plan [Docket No. 206], Class 5 would receive no distribution. Consequently, the Debtor has satisfied the best interests test with respect to the Holders of Claims and Interests in Classes 3 and 4 (with Class 3 having voted to reject the Plan), as well as with respect to all Interest Holders in Class 5 under the Plan.

76. The Liquidation value would consist of the net proceeds from the disposition/liquidation of the Debtor's assets, augmented by Cash held by the Debtor and reduced by certain increased costs and Claims that arise in a chapter 7 liquidation case that do not arise in a chapter 11 liquidation case (including the fees payable to a chapter 7 trustee and his or her professionals). The Cash to be distributed to Holders of Claims and Interests would be reduced by the chapter 7 trustee's statutory fee, which is calculated on a sliding scale from which the maximum compensation is determined based on the total amount of moneys disbursed or turned over by the chapter 7 trustee.[60] The chapter 7 trustee's professionals, including legal counsel and accountants, would add substantial administrative expenses that would be entitled to be paid ahead of Allowed Claims against and Interests in the Debtor. Moreover, these chapter 7 trustee fees would reduce the assets available for distribution to Holders of Claims and Interests from additional recoveries such as preferential payments, expunged administrative claims, and the proceeds of successful Estate litigation or settlement.

---

[59] *See In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'").

[60] Bankruptcy Code § 326(a) permits a chapter 7 trustee to receive 25% of the first $5,000 distributed to creditors, 10% of additional amounts up to $50,000, 5% of additional distributions up to $1 million, and reasonable compensation up to 3% of distributions in excess of $1 million.

77. It is also anticipated that a chapter 7 liquidation would result in a significant delay in payments being made to creditors. Bankruptcy Rule 3002(c) provides that conversion of chapter 11 cases to chapter 7 will trigger a new bar date for filing claims against the estate, and that the new bar date will be 90 days after the first date set for the meeting of creditors called under section 341 of the Bankruptcy Code. Not only would a chapter 7 liquidation delay distribution to creditors, but it is possible that additional claims that were not asserted in the Chapter 11 Case, or were late-filed, could be filed against the Estate. Reopening the bar date in connection with conversion to chapter 7 would provide these and other claimants an additional opportunity to timely file claims against the Estate.

78. For all of these reasons, liquidation under chapter 7 would likely result in a smaller pool of assets, if any, to satisfy Claims and Interests, and would not result in Holders of Class 3 Claims and Class 4 Interests being treated more favorably than they are under the Plan. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

G. The Plan May Be Confirmed Pursuant to Section 1191(b) as the Requirements of Section 1129(a)(8) and (10) are Inapplicable to a Non-Consensual Plan Under SBRA

79. Section 1129(a)(8) of the Bankruptcy Code ordinarily requires in a chapter 11 case that each class of claims or interests must either accept a plan or be unimpaired under a plan.[61] Moreover, Section 1129(a)(10) of the Bankruptcy Code ordinarily requires in a chapter 11 case that at least one impaired class accept the plan.[62]

80. However, the Debtor is seeking confirmation pursuant to section 1191(b) of the Bankruptcy Code, which renders section 1129(a)(8) and (10) of the Bankruptcy Code

[61] 11 U.S.C. § 1129(a)(8).

[62] 11 U.S.C. § 1129(a)(10).

inapplicable.[63] In a Subchapter V case, the Court may confirm a Plan non-consensually under section 1191(b) of the Bankruptcy Code, even if section 1129(a)(8) is not satisfied. Thus, while this Plan may not satisfy 1129(a)(8) of the Bankruptcy Code due to Class 3 rejecting the Plan and Class 5 being Impaired and deemed to reject, the Plan nevertheless is confirmable.

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

81. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to priority under section 507(a) of the Bankruptcy Code receive specified cash payments under the plan.[64] Here, in accordance with section 1129(a)(9), Section 2 of the Plan provides that each Holder of an Allowed Administrative Expense Claim or Priority Tax Claim shall receive Cash in full.[65] Although Subchapter V debtors are not required to pay in full administrative claims on the Effective Date of the Plan, the Plan provides that such claims will be paid in full. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

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

82. Section 1129(a)(11) of the Bankruptcy Code requires that a plan be feasible as a condition precedent to confirmation. Specifically, the Court must determine that:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.[66]

---

[63] 11 U.S.C. § 1191(b).

[64] 11 U.S.C. §1129(a)(9).

[65] With respect to Priority Tax Claims, Section 2.3 of the Plan specifically provides that such Allowed Priority Tax Claims "shall receive on account of such Claim, in accordance with Bankruptcy Code section 1129(a)(9)(C), regular installment payments in Cash over a period ending not later than two (2) years after the Petition Date of a total value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claim together with interest accrued thereon at the applicable non-bankruptcy rate."

[66] 11 U.S.C. § 1129(a)(11).

83. As will be demonstrated at the Confirmation Hearing, the Plan is feasible within the meaning of this provision. To demonstrate that a plan is feasible, it is not necessary that success be guaranteed.[67] Rather, a bankruptcy court must determine whether a plan is workable and has a reasonable likelihood of success.[68]

84. The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. As noted by the United States Court of Appeals for the Ninth Circuit:

> The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.[69]

85. However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.[70]

86. Importantly, "the feasibility inquiry is peculiarly fact intensive and requires a case by case analysis, using as a backdrop the relatively low parameters articulated in the statute . . . . There is a relatively low threshold of proof necessary to satisfy the feasibility requirement."[71]

---

[67] *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *Internal Revenue Serv. v. Kaplan (In re Kaplan*), 104 F.3d 589, 597 (3d Cir. 1997); *see also In re U.S. Truck Co., Inc.*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), aff'd, 800 F.2d 581 (6th Cir. 1986).

[68] *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); In re Kaplan, 104 F.3d at 597; *see also Mercury Cap. Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) (A "'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting *In re Brotby*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003)).

[69] *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.*), 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.02 at 1129-34 (15th ed. 1984)).

[70] *See In re U.S. Truck Co., Inc.*, 47 B.R. 932, 944 (E.D. Mich. 1985).

[71] *Mercury Cap. Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006), remanded, No. 04-30511, 2008 WL 687266 (Bankr. D. Conn. Mar. 10, 2008), stay denied, No. 04-330511, 2008 WL 2003118 (Bankr. D. Conn. May 7, 2008), *appeal denied*, No. 08-107, 2008 WL 2079126 (D. Conn. May 16, 2008) ("[A] 'relatively low threshold of

Specifically, in assessing feasibility, courts consider a number of probative factors, including the soundness and adequacy of the capital structure and working capital for the business in which the debtor will engage post-confirmation, the prospective availability of credit, whether the reorganized debtor will have the ability to meet its requirements for capital expenditures and economic and market conditions.[72]

87. Here, the Plan is a liquidating plan, whereby the Liquidation Trustee will distribute all Liquidation Trust Assets, less the Plan Expenses, in accordance with the provisions of the Plan to Holders of Allowed Claims and Interests. The Debtor has analyzed the costs required to satisfy its obligations under the Plan and has concluded that it will have sufficient funds to accomplish this goal. Therefore, confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor—because the Debtor is already liquidating—and, thus, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

J. There Will Not be Statutory Fees Owed (§ 1129(a)(12))

88. Section 1129(a)(12) of the Bankruptcy Code ordinarily requires in a chapter 11 case the payment of "[a]ll fees payable under section 1930 [of title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan."[73] Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses.[74] However, as a

---

proof' will satisfy the feasibility requirement.") (quoting *In re Brotby*, 303 B.R. 177, 191–92 (B.A.P. 9th Cir. 2003)); *Berkeley Fed. Bank & Trust v. Sea Garden Motel and Apartments (In re Sea Garden Motel and Apartments)*, 195 B.R. 294, 304–05 (D.N.J. 1996); *In re Eddington Thread*, 181 B.R. at 833 ("[T]he feasibility inquiry is peculiarly fact intensive and requires a case by case analysis, using as a backdrop the relatively broad parameters articulated in the statute.").

[72] *See, e.g., In re Worldcom, Inc*., 2003 WL 23861928, at *58; *Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. (In re U.S. Truck Co.)*, 800 F.2d 581, 589 (6th Cir. 1986); *In re Repurchase Corp*., 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005), *aff'd*, No. 05-7075, 2008 WL 4379035 (N.D. Ill, Mar. 24, 2008).

[73] 11 U.S.C. § 1129(a)(12).

[74] 11 U.S.C. § 507(a)(1).

case proceeding under Subchapter V, there are no fees contemplated in this Case. Accordingly, section 1129(a)(12) of the Bankruptcy Code is inapplicable to this Case.

K. Sections 1129(a)(13) Through Sections 1129(a)(16) Do Not Apply to the Plan

89. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue to be paid post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code.[75] The Debtor does not have any obligations on account of retiree benefits (as such term is used in section 1114 of the Bankruptcy Code);[76] therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to this Case.

90. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations.[77] The Debtor is not subject to any domestic support obligations, and therefore, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply.

91. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code.[78] The Debtor is not an "individual" and, therefore, the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply. Further, section 1129(a)(15) of the Bankruptcy Code is inapplicable to cases filed under Subchapter V.[79]

---

[75] 11 U.S.C. § 1129(a)(13).

[76] Under section 1114 of the Bankruptcy Code "'retiree benefits' means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purpose of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under [chapter 11]." 11 U.S.C. § 1114(a).

[77] 11 U.S.C. § 1129(a)(14).

[78] 11 U.S.C. § 1129(a)(15).

[79] 11 U.S.C. § 1181(a).

L. The Plan Satisfies the "Cram Down" Requirements of Section 1191(a) of the Bankruptcy Code

92. Section 1191(a) of the Bankruptcy Code permits the Court to confirm a plan that does not meet the requirements of subsection 1129(a)(8). As noted above, that subsection ordinarily would require in a chapter 11 case that each class of claims or interests either accept a plan or be unimpaired under a plan. However, in a Subchapter V case, the Court may confirm a plan that has not been accepted by all impaired classes, so long as the plan proponent shows that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[80]

93. Here, Class 3 is comprised of the Debtor's General Unsecured Creditors, all of which are Impaired under the Plan and entitled to vote—which Class ultimately voted to reject the Plan. Class 5 is made up of the Debtor's Common Equity Interests, all of which are Impaired under the Plan and were deemed to reject the Plan. As described below, the Plan is fair and equitable to Classes 3 and 5, and it does not unfairly discriminate with respect to them.

i. The Plan Is Fair and Equitable Pursuant to § 1191(c)

94. Section 1191(c) of the Bankruptcy Code defines "fair and equitable" under a non-consensual plan in a Subchapter V case and lists certain requirements.

95. The first such requirement pertains to secured claims, which here are unimpaired and deemed to accept the Plan, and therefore fall outside the scope of the cram-down regime of section 1191(a) as an accepting class.

96. The second requirement states that, in order for a Subchapter V plan to be fair and equitable, it must provide that as of the effective date, the value of the property to be distributed

[80] 11 U.S.C. § 1191(b).

under the plan is not less than the projected disposable income of the debtor.[81] "Disposable income" is defined as income received by the debtor that is not reasonably necessary to be expended for the maintenance or support of the debtor for the payment of necessary business expenditures.[82] (Thus, a debtor in a Subchapter V case is not required to satisfy the absolute priority rule.)

97. Third, the plan must provide that the debtor will be able to make all plan payments or that there is a reasonable likelihood that the debtor will be able to make the payments.[83] Finally, the plan must provide "appropriate remedies" to protect holders of claims or interests if the payments are not made, including liquidation of nonexempt assets.[84]

98. In this case, all Assets of the Debtor and Estate, other than the (a) Effective Date Cash Payment once made, and (b) any Cause of Action and Claim released pursuant to Sections 11.8, 11.9 and 11.0 of the Plan, are being transferred to the Liquidation Trust to become Liquidation Trust Assets, which will be used to fund distributions under the Plan, in accordance with the Plan. There will be no reorganized debtor and the Liquidation Trust will not have income.

99. Based on the Plan's terms, the Debtor is providing its disposable income to creditors and, as a result, the Liquidation Trust will be able to fund the distributions contemplated under the Plan. Therefore, the Plan may be confirmed notwithstanding the rejection by Class 3 and the deemed rejection by Class 5.

ii. The Plan Does Not Unfairly Discriminate (§ 1191(b))

100. Neither section 1129(b) nor 1191(b) of the Bankruptcy Code set forth a standard

[81] 11 U.S.C § 1191(c)(2).

[82] 11 U.S.C § 1191(d).

[83] 11 U.S.C § 1191(c)(3)(A).

[84] 11 U.S.C § 1191(c)(3)(B).

for determining "unfair discrimination" but courts typically examine the facts and circumstances of the particular case to determine whether "unfair discrimination" exists.[85]

101. Generally, courts have found that a plan unfairly discriminates if similarly situated claims are treated differently *without a reasonable basis for the disparate treatment*.[86] Conversely, no unfair discrimination exists if, taking into account the particular facts and circumstances of the case, there is a reasonable basis for the disparate treatment of similar claims.[87] The "unfair discrimination" analysis involves a comparison of the treatment of different classes, and therefore differs from the equal treatment analysis of section 1123(a)(4) of the Bankruptcy Code, which involves a comparison of the treatment of claims within a particular class.

102. Here, there are no Classes with similarly situated claims that are receiving different treatment under the Plan. The treatment of the Classes that either rejected the Plan or are deemed to reject the Plan is reasonable and consistent with applicable law.

103. Thus, the Plan's treatment of Claims and Interests is proper because all similarly situated Holders of Claims and Interests will receive substantially similar treatment.

---

[85] *See In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances."); *In re Aztec Co.*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (noting that courts "have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination."); *see In re 203 N. LaSalle St. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established").

[86] *See In re Exide Techs.*, 303 B.R. 48, 78 (Bankr. D. Del. 2003) ("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.").

[87] *See id.* (noting that "in order to confirm the Plan, the Debtor must show that (i) there is a reasonable basis for the Debtor's separate classification [of the classes]… and (ii) that the Debtor cannot confirm a plan absent the separate classification of unsecured claims.").

M. The Debtor Has Complied with Section 1129(d) of the Bankruptcy Code

104. The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no governmental unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

RESPONSE TO OBJECTIONS

105. The Debtor received informal comments to the Plan and proposed Confirmation Order by the U.S. Trustee, NRWS, LLC ("NRWS"), Lewis & Clark Bank ("LCB"), and the Texas Comptroller of Public Accounts (the "Texas Comptroller"). With respect to comments received from the U.S. Trustee, the Debtor has made certain revisions to the proposed Confirmation Order and remains in discussion with the U.S. Trustee as to whether any issues remain to be addressed. The informal comments of LCB and the Texas Comptroller were resolved by the addition of certain language in the Confirmation Order.

106. NRWS, by its informal response to the Plan, requested the following be included in the Confirmation Order:

a. A clear waterfall mechanism that ensures *pro rata* distributions to the extent any residual value is available for payments to Class 4 after all members of Class 3 are PIF;

b. Language such as, "*For the avoidance of doubt, under no circumstances should Class 4 members who opt-out of the releases be considered Releasing Parties*."; and

c. The final form of the releases should conform with controlling Third Circuit and District of Delaware authority (including fraud/gross negligence carve-outs and no coercive conditioning of distributions on release).

The Debtor responded to NRWS and explained that, in the Debtor's view, the current form of Plan and Confirmation Order (a) already provides for *pro rata* distributions to all Allowed Class 4 Preferred Equity Interest Holders, to the extent a distribution is ultimately available (*i.e.*, only if

Holders of Class 3 Claims are paid in full); and (b) "Releasing Parties" as defined in the Plan are limited to only those parties that affirmatively opt-in to the Third-Party Releases. Additionally, the Debtor confirmed that NRWS had not submitted an election form or ballot opting into granting the Plan's third-party release, and, therefore, NRWS is not a "Releasing Party" pursuant to the Plan. With respect to NRWS's third point, the Debtor believes, as detailed herein, that the Debtor Release and Third-Party Release conform with Third Circuit and Delaware authority. Based on the Debtor's representations, NRWS confirmed to Debtor's counsel that NRWS's informal responses to the Plan have been resolved.

107. The only formal objection to the Plan was filed by Tolomeo Bank International Corp. and Tolomeo Bank Limited (collectively, "Tolomeo").[88] As the Court will recall, Tolomeo has asserted claims of approximately $2 million, through litigation which the United States District Court for the District of Puerto Rico has already dismissed, noting that the claims appeared to have been "cobbled together."[89] Those claims are now currently pending on appeal before the United States Court of Appeals for the First Circuit.

108. The Tolomeo Plan Objection is addressed in detail below, and, for the following reasons, the Court should confirm the Plan and overrule the Tolomeo Plan Objection in its entirety.

109. Tolomeo asserts the following five objections to the Plan:

a. The Plan fails to comply with sections 1129(a)(1) and (2) of the Bankruptcy Code because the Debtor (i) failed to list Tolomeo's addresses in its creditor matrix and did not schedule Tolomeo's claims; and (ii) has not filed monthly operating reports ("MOR") for August or September 2025;

---

[88] Docket No. 205 (the "Tolomeo Plan Objection").

[89] *See Debtor's Objection to the Motion of Tolomeo Bank International Corp. and Tolomeo Bank Limited for Leave to File Claim Four Days After Bar Date and Supplemental to Response to Debtors Non-Substantive Objection to Claim* (Docket No. 202) (the "Debtor's Motion for Leave Objection"); *Vauban International Bank Corporation et al., v. EZBanc Corp.* et al., Case No. 24-CV01199-ADC (D. P.R.), *Opinion and Order*, Docket No. 96 at 2.

b. The Plan improperly provides that the Debtor will receive a discharge after Plan confirmation in violation of section 1141(d)(3) of the Bankruptcy Code;

c. The Debtor seeks to release the Debtor and its respective third-party affiliates, employees, advisors, officers and directors, or agents from the Tolomeo Claims (as defined in the Tolomeo Plan Objection) and the Plan Ballot was unclear as to how to vote on the Plan and not opt-into the Third-Party Release;

d. The Plan is not feasible under section 1129(a)(11) of the Bankruptcy Code because (i) the July 2025 MOR shows cumulative losses and differs from the Liquidation Analysis numbers; and (ii) the Debtor has failed to submit evidence of feasibility by failing to file the August and September MORs; and

e. The Plan does not satisfy the good faith require for section 1129(a)(3) for all of the reasons set forth in the Plan Objection and Tolomeo's Reply to its pending Motion for Leave.

110. First, as set forth herein, the Plan complies with section 1129(a)(1) and (2). While the Debtor acknowledges that Tolomeo was not listed in the Debtor's schedules with scheduled claims, the Debtor contests Tolomeo's position that Tolomeo was not identified in the creditor matrix. As extensively described in the *Debtor's First Omnibus Objection to Late Filed Claims Pursuant to Section 502 of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure (Non-Substantive Objection)*,[90] the *Debtor's Reply to Bank Creditors' Response to Debtor's First Omnibus Objection to Late Filed Claims Pursuant to Section 502 of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedures (Non-Substantive Objection)*,[91] and the Debtor's Motion for Leave Objection[92]—each incorporated herein by reference—the Debtor listed Tolomeo on its matrix at an address care of its litigation counsel representing Tolomeo in Tolomeo's pre-petition litigation against the Debtor, which address the Debtor thought was appropriate based on such litigation. While the Debtor believes that it has

[90] Docket No. 142.

[91] Docket No. 163.

[92] Docket No. 202 (collectively with Docket Nos. 142 and 163, the "Debtor's Tolomeo-Related Pleadings").

complied with section 521(a) of the Bankruptcy Code to the best of its ability, the result of a debtor's failure to list creditors in its matrix and schedules of assets and liabilities goes to the effective extent of its discharge, if obtained. If the issue of the timeliness of the Tolomeo Claims was not already pending, the result under section 521(a) of the Bankruptcy Code would be whether Tolomeo could be bound by the General Bar Date and Plan terms, including the Plan discharge. At this point, however, the issue of whether Tolomeo can be bound by the General Bar Date or shall be deemed to have timely filed their claims is already before this Court and will be heard at the Confirmation Hearing. With respect to the Debtor's monthly operating reports, the August MOR is being filed contemporaneously herewith, and the Debtor will file its September MOR in advance of the Confirmation Hearing.

111. Second, a discharge is expressly authorized under the Bankruptcy Code when a Subchapter V plan is confirmed pursuant to the cramdown provision of section 1191(b) of the Bankruptcy Code. Here, the Plan has been rejected by Class 3 and deemed rejected by Class 5; therefore, the Debtor is pursuing confirmation under section 1191(b), not section 1191(a), which governs fully consensual Subchapter V plans, as argued by Tolomeo. Section 1192 of the Bankruptcy Code provides:

> *If the plan of the debtor is confirmed under section 1191(b) of this title*, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, *the court shall grant the debtor a discharge of all debts* provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—
>
> (1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or
>
> (2) of the kind specified in section 523(a) of this title.

11 U.S.C. § 1192 (emphasis added). Moreover, section 1181(c) of the Bankruptcy Code expressly provides a "Special Rule for Discharge" that "[i]f a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title." 11 U.S.C. § 1181(c). Because section 1141(d)(3) is the section of the Bankruptcy Code that excepts a right to a discharge for a liquidating debtor, and section 1141 does not apply in a Subchapter V case where a plan is confirmed pursuant to the cramdown provisions of section 1191(b), the Debtor is entitled to a discharge to the extent provided for in section 1192, despite its Plan being a liquidating Plan. The discharge provided for in Section 11.4 of the Plan is appropriately limited to section 1192 because the discharge is only effective upon Case Closing and excepts from the discharge debts as set forth in section 1192 of the Bankruptcy Code.

112. Third, the Plan does not contain a non-consensual Third-Party Release. While Tolomeo asserts that the ballot was unclear as to how Tolomeo could vote on the Plan and also express its non-consent to the Third-Party Release, the Debtor can represent that Tolomeo has not opted into the Third-Party Release and, therefore, is not a Releasing Party under the Plan. While Tolomeo further argues that the proposed Third-Party Release is even more improper because the Plan provides the Debtor with an impermissible discharge—both arguments are incorrect based on the Plan's terms and as set forth herein, *i.e.*, the Third-Party Release is a consensual third-party release only binding on parties that elect to opt-in and the proposed discharge is authorized by and conforms to section 1192 of the Bankruptcy Code.[93]

[93] Tolomeo includes a one sentence footnote about the alleged broadness of the Plan's proposed injunction. *See* Tolomeo Plan Objection, n.5. The proposed injunction in Section 11.5 of the Plan, however, is narrowly tailored as to only the Debtor and Liquidation Trust with one exception, which is that parties are also enjoined from the "indirect pursuit of any Claims against the Debtor by litigation or other claims against employees of the Debtor as of the Petition Date, who were acting in their capacities and scope as employees with respect to the litigation claims made against such former employees[.]" As of the Petition Date, the Debtor only had three employees—its Chief Executive Officer (Arjun Thyagarajan), President (Raghav Lal), and Chief Product Officer (Rajesh Chemmala).

113. Fourth, for all of the reasons already set forth herein and in the Liquidation Analysis, the Plan is feasible under section 1129(a)(11) of the Bankruptcy Code. Pursuant to the Plan, the Liquidation Trust is to liquidate Liquidation Trust Assets and make *pro rata* distributions of all such assets in accordance with the Plan. Here, the proposed liquidation is feasible, and, pursuant to the Liquidation Analysis, creditors and Preferred Equity Interest Holders have a greater likelihood of a higher recovery (or any recovery with respect to Preferred Equity Interest Holders) pursuant to the confirmed Plan than a chapter 7 case. While Tolomeo argues that certain numbers in the Debtor's MORs differ from the Liquidation Analysis, the Liquidation Analysis supports the Plan's feasibility, and the Debtor and its financial advisor will be prepared at the Confirmation Hearing to address any questions on specific numbers and support for the Plan's feasibility that the Court may have. Additionally, with respect to the Debtor's monthly operating reports, the August MOR is being filed contemporaneously herewith, and the Debtor will file its September MOR in advance of the Confirmation Hearing.

114. Lastly, the Debtor has proposed this Plan in good faith and not by any means forbidden by law and, thus, satisfies section 1129(a)(3) of the Bankruptcy Code. Again, the proposed Plan is a liquidating plan where all Liquidation Trust Assets are to be distributed equitably among allowed creditors and, if sufficient Assets exist, to Preferred Equity Interest Holders in accordance with the Plan. Without question, the Debtor is dealing with its creditors in good faith and with fundamental fairness. As set forth in the Debtor's Tolomeo-Related Pleadings, the Debtor has reasonable arguments for why it believes Tolomeo was properly served with the Bar Date Notice and, thus, should be bound by the General Bar Date and have their claims disallowed as late-filed. The Debtor is dealing with the Tolomeo Claims as it would the claims of any other creditor that filed its claim after the General Bar Date, where the Debtor believed such

creditor was properly served with the Bar Date Notice and bound thereby—especially considering that the Tolomeo Claims are the third and fifth largest Claims asserted against the Debtor in this Case. Tolomeo also argues that the Debtor has not proposed the Plan in good faith because the Plan seeks a discharge and includes a Third-Party Release, but, again, the Plan's discharge is expressly authorized under the Bankruptcy Code and the Third-Party Release is a truly consensual release to which Tolomeo is not bound because it has not opted into being a Releasing Party.

115. Therefore, for all the reasons set forth herein, the Court should overrule the Tolomeo Plan Objection and confirm the Debtor's Plan.

GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

116. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the Bankruptcy Court orders otherwise."[94] Bankruptcy Rule 6004(h) provides a similar stay to orders authorizing the use, sale or lease of property (other than cash collateral).[95] Each rule also permits modification of the imposed stay upon court order.

117. The Debtor submits that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020 and 6004 so that the proposed Confirmation Order will be effective immediately upon its entry.[96] As noted above, this Case and the related transactions have been negotiated and implemented in good faith and with a high degree of transparency and dissemination of information. Additionally, each day that the

---

[94] FED. R. BANKR. P. 3020(e).

[95] FED. R. BANKR. P. 6004(h).

[96] *See*, *e.g.*, *In re Peabody Energy Corp.*, Case No. 16-42529 (Bankr. E.D. Mo. Mar. 17, 2017) (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re Dex Media, Inc.*, No. 16-11200 (KG) (Bankr. D. Del. July 15, 2016) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Apr. 18, 2016) (same).

Debtor remains in chapter 11 it incurs administrative and professional costs, and waiting to close on the Plan will expose the Debtor to additional administrative expenses, including but not limited to U.S. Trustee fees and salaries and benefits for the Debtor's directors and officers, whose employment agreements will be rejected upon the Plan Effective Date. For these reasons, the Debtor, its advisors, and other key constituents are working to expedite the matters necessary for the Effective Date of the Plan to occur as soon as possible after the Confirmation Date. Based on the foregoing, the Debtor requests a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

CONCLUSION

118. The Plan complies with and satisfies all of the requirements of section 1129 of the Bankruptcy Code, and therefore, should be confirmed pursuant to section 1191(b) of the Bankruptcy Code.

Dated: November 10, 2025
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Marcy J. McLaughlin Smith

Matthew P. Ward (DE Bar No. 4471)
Todd A. Atkinson (DE Bar No. 4825)
Marcy J. McLaughlin Smith (DE Bar No. 6184)
Michael Barber (DE Bar 7158)
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Email: matthew.ward@wbd-us.com
Email: todd.atkinson@wbd-us.com
Email: marcy.smith@wbd-us.com
Email: michael.barber@wbd-us.com

Counsel to the Debtor