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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

STG LOGISTICS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 26-10258 (MEH)

(Jointly Administered)

**DEBTORS' MEMORANDUM OF LAW IN
SUPPORT OF (I) FINAL APPROVAL OF THE DEBTORS' DISCLOSURE
STATEMENT, AND (II) CONFIRMATION OF THE SECOND AMENDED
JOINT PLAN OF REORGANIZATION OF STG LOGISTICS, INC. AND ITS
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

¹ The last four digits of Debtor STG Logistics, Inc.'s tax identification number are 8624. A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' Claims and Noticing Agent at <https://dm.epiq11.com/STGLogistics>. The location of the Debtors' service address in these chapter 11 cases is: 5165 Emerald Parkway, Dublin, Ohio 43017.

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this memorandum of law (this “Memorandum”) in support of (i) final approval of the Disclosure Statement, and (ii) Confirmation of the *Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 804] (as modified, amended, or supplemented from time to time, the “Plan”) pursuant to sections 1125, 1126, and 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).² In support of final approval of the Disclosure Statement and Confirmation of the Plan, and in response to the Objections to Confirmation, the Debtors respectfully state as follows:

Preliminary Statement

1. The Debtors’ Disclosure Statement and Plan are the culmination of a broadly supported restructuring process negotiated at arm’s length and in good faith with a number of sophisticated parties, and should be approved. Reflecting this broad consensus, the Plan has drawn five limited objections—one from the U.S. Trustee, one from the New Jersey Department of Labor and Workforce Development (“NJDOL”), one from the Chubb Companies,³ one joint objection

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan, the Plan Supplement, the Disclosure Statement, or the Disclosure Statement Order, as applicable.

On January 12, 2026 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On January 14, 2026, the Court entered an order [Docket No. 95] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On January 28, 2026, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 198], as amended on March 12, 2026 [Docket No. 394].

³ The “Chubb Companies” means, collectively, and solely in their capacities as insurers of one or more of the Debtors, ACE American Insurance Company, ACE Fire Underwriters Insurance Company, ACE Property & Casualty Insurance Company, Insurance Company of North America, Illinois Union Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, Indemnity Insurance Company of North America, Federal Insurance Company, Executive Risk Indemnity Inc., Great Northern Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of New Jersey, and each of their respective U.S.-based affiliates, predecessors, and successors.

from Central Avenue Industrial Park LLC and Greenleaf Industrial (together, the “Landlords”), which has been resolved, and one from Adeline Montoya (the “PI Claimant”). For the reasons described herein, the Court should deny each of those objections in full and confirm the Plan. As a legal matter, every applicable standard under the Bankruptcy Code has been met. And, as a practical and operational matter, the Plan substantially deleverages the Debtors, provides for necessary liquidity to fund Plan distributions and the Debtors’ go-forward business, and preserves hundreds of jobs. The Restructuring Transactions are also market-tested. For a period of approximately one hundred days from Petition Date to April 24, 2026, the Debtors conducted an in-depth market check to solicit higher and better proposals. This fact, coupled with the broad support and significant economic concessions from the Ad Hoc Group, leaves no question that the Plan is the best and only value-maximizing path forward.

2. The foundation of the Plan remains the Restructuring Support Agreement⁴ that was negotiated prepetition by the Debtors and Consenting Lenders that is currently supported by lenders holding approximately 100 percent, 99 percent, 95 percent, and 84 percent of the STG Distribution RCF, FLFO Term Loans, FLSO Term Loans, and FLTO Term Loans, respectively, of the Debtors’ funded debt, and the Debtors’ prepetition sponsors. During the pendency of these chapter 11 cases, the Debtors built upon this foundation to garner further support: the Plan now includes two significant settlements that have paved the way for an efficient, largely-consensual resolution to these chapter 11 cases: (i) it incorporates the terms of a global settlement with the Committee that fully resolves any Committee objections to Confirmation, and (ii) it includes the settlement among the Debtors, the Non-Participating Holders, Antares Capital, LP and its affiliates (collectively, “Antares”), the Ad Hoc Group, and others, whereby the Debtors propose to pay

⁴ See Docket No. 33, Ex A.

\$12 million to the Non-Participating Holders in exchange for a fulsome release of all claims among those parties, including the Claims asserted in the Adversary Proceeding.

3. Reaching this point was no small feat, and it is a testament to the hard work of the Debtors' management team and stakeholders over the course of the last year. The Debtors have maintained a viable business trajectory which will be bolstered by the deleveraging Restructuring Transactions and the resolution of distracting and expensive litigation.

4. Only four (4) narrow objections remain: one filed by the U.S. Trustee [Docket No. 784] (the "U.S. Trustee Objection"), one filed by NJDOL [Docket No. 746] (the "NJDOL Objection"), one filed by the PI Claimant [Docket No. 798] (the "PI Claimant Objection"), and one filed by the Chubb Companies [Docket No. 799] (the "Chubb Objection" and together with the U.S. Trustee Objection, the NJDOL Objection, and the PI Claimant Objection, , the "Objections").⁵ As discussed in detail in Part II below, the Court should overrule both Objections and confirm the Plan.

5. This Memorandum is divided into two parts. Part I provides background, with the procedural history of the Plan, the Debtors' solicitation efforts and voting results, the marketing process, the mediation process, and a summary of the Objections filed with respect to the Plan. Part II is the legal argument in support of confirmation and responses to the remaining Objections. In further support of final approval of the Disclosure Statement and Confirmation of the Plan, the Debtors have already submitted, or intend to submit, the following declarations into evidence at the Confirmation Hearing:

⁵ The Landlords filed an objection (the "Landlord Objection"), which the Debtors submit is moot because of agreed-upon language that will be included in the Confirmation Order.

- the *Declaration of Thomas Higbie in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 809] (the "Higbie Declaration");
- the *Declaration of Jason Keyes in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 808] (the "Keyes Declaration");
- the *Declaration of David Barse in Support of the Debtors' Disclosure Statement for, and Confirmation of, the Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 807] (the "Barse Declaration" and together with the Higbie Declaration and the Keyes Declaration, the "Declarations"); and
- the *Declaration of Emily Young of Epiq Corporate Restructuring, LLC with Respect to the Tabulation of Votes on the Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 806] (the "Voting Report").

6. For the reasons stated herein, the Debtors respectfully request that the Court find that the Debtors have satisfied all relevant burdens and enter the Confirmation Order approving the Plan.

Part I: Background

I. Procedural History.

7. On January 12, 2026, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "Court"). On January 28, 2026, the U.S. Trustee appointed the Committee [Docket No. 198], which was reconstituted on March 12, 2026 [Docket No. 394].

8. On January 20, 2026, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim,*

(IV) Approving Notice Thereof, and (V) Granting Related Relief [Docket No. 134].

On February 10, 2026, the Court entered the *Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, (IV) Approving Notice Thereof, and (V) Granting Related Relief* [Docket No. 235] and on February 11, 2026, the Court entered the *Amended Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, (IV) Approving Notice Thereof, and (V) Granting Related Relief* [Docket No. 254], which established March 12, 2026, as the General Claims Bar Date and July 13, 2026, as the Governmental Bar Date (each as defined therein) and provided that any Holder of a Claim that fails to timely submit a Proof of Claim by the applicable bar date shall not be treated as a creditor with respect to such Claim for the purposes of either (a) voting on any plan of reorganization filed in these chapter 11 cases, (b) participating in any distribution in the Debtors' chapter 11 cases on account of such Claim, or (c) receiving further notices regarding such Claim.

9. On March 13, 2026, the Debtors filed (a) the *Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 402], (b) the *Disclosure Statement Relating to the Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 403], and (c) the *Debtors' Motion for Entry of an Order Conditionally Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation Procedures, (III) the Forms of*

Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto [Docket No. 405].

10. On April 5, 2026, the Debtors filed the *Notice of Filing Liquidation Analysis and Financial Projections as Exhibits to the Disclosure Statement* [Docket No. 528].

11. On April 14, 2026, the Debtors filed the *First Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 617] and the *First Amended Disclosure Statement Relating to the Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 618] (the “Disclosure Statement”).

12. On April 15, 2026, the Court entered an order [Docket No. 620] (the “Conditional Disclosure Statement Order”) conditionally approving (i) the adequacy of the Disclosure Statement, (ii) the Solicitation Procedures, (iii) the forms of Ballots and notices in connection therewith, and (iv) certain dates with respect thereto.

13. Commencing on April 17, 2026, the Debtors caused the Claims and Noticing Agent to serve the Solicitation Packages in accordance with the terms of the Disclosure Statement Order.⁶ On April 28, 2026, the Claims and Noticing Agent served Ballots to certain Holders of Claims in Class 3C (Reception Purchaser First Lien Claims) that did not receive such Ballots in connection with the above.⁷ On April 15, 2026, the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines* was posted to the website maintained by the Claims and Noticing Agent in these chapter 11 cases. The Debtors also published the Publication Notice (as defined in the Conditional Disclosure Statement Order)

⁶ See *Certificate of Service of Solicitation Documents* [Docket No. 714] (the “First Affidavit of Solicitation”).

⁷ See *Certificate of Service of Solicitation Documents* [Docket No. 771] (the “Supplemental Affidavit of Solicitation”) and, together with the First Affidavit of Solicitation, the “Affidavit of Solicitation”).

in *The New York Times* (National Edition) and the *Columbus Dispatch* on April 17, 2026, and April 20, 2026, respectively, as evidenced by each *Affidavit of Publication*.⁸

14. On April 24, 2026, the Debtors filed the *Notice of Pursuit of Recapitalization Transaction* [Docket No. 713], which provided that the Debtors would proceed with and seek confirmation of the recapitalization transaction (the “Recapitalization Transaction”).

15. On April 27, 2026, the Debtors informed the Court that they had reached an agreement in principle on the Reception Purchaser Settlement, and the Court authorized the Debtors to reset the Confirmation Hearing Date (as defined in the Conditional Disclosure Statement Order) to May 18, 2026, at 2:00 p.m. (prevailing Eastern Time), as set forth in the *Notice of Reset of Confirmation Hearing* [Docket No. 721] (the “Confirmation Reset Notice”). On April 28, 2026, the Debtors caused the Claims and Noticing Agent to serve the Confirmation Reset Notice to all parties who received service of the Confirmation Hearing Notice.⁹

16. On May 1, 2026, the Debtors filed the *Plan Supplement for the Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 740] and on May 9, 2026, the Debtors filed the *First Amended Plan Supplement for the Second Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 770] (as may be further modified, amended, or supplemented from time to time, the “Plan Supplement”).

17. On May 9, 2026, the Debtors filed the *Notice of Filing of Plan Value* [Docket No. 772].

⁸ See *Affidavits of Publication* [Docket Nos. 710 and 711, respectively].

⁹ See *Affidavit of Epiq Corporate Restructuring, LLC* [Docket No. 743].

18. On May 16, 2026, the Debtors filed the Plan (as may be modified, amended, or supplemented from time to time and including all exhibits, schedules, and other supplements thereto, the “Plan”), which incorporates the Reception Purchaser Settlement and resolves certain informal objections to the Plan. The deadline (a) to file objections to the Plan, and (b) for all Holders of Claims entitled to vote on the Plan to cast their ballots was May 15, 2026, at 5:00 p.m., prevailing Eastern Time. The Confirmation Hearing is scheduled for May 18, 2026, at 2:00 p.m., prevailing Eastern Time. Concurrently with this Memorandum, the Debtors have submitted the proposed *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement on a Final Basis, and (II) Confirming the Amended Joint Plan of Reorganization of STG Logistics, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, which contemplates, among other things, final approval of the Disclosure Statement and Confirmation of the Plan.

II. The Plan Solicitation and Notification Process.

19. In compliance with the Bankruptcy Code, only Holders of Claims in Impaired Classes receiving or retaining property on account of such Claims were entitled to vote on the Plan.¹⁰ Holders of Claims, Intercompany Interests, and Equity Interests were not entitled to vote if their rights are Unimpaired or if they are not receiving or retaining any property under the Plan. The following Classes of Claims, Intercompany Interests, and Equity Interests were **not** entitled to vote on the Plan (collectively, the “Non-Voting Classes”), and the Debtors did not solicit votes from Holders of such Claims, Intercompany Interests, and Equity Interests:

<u>Class</u>	<u>Claim, Intercompany Interest or Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)

¹⁰ See 11 U.S.C. § 1126.

<u>Class</u>	<u>Claim, Intercompany Interest or Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
5	FLTO Term Loan Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7A	General Unsecured Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)
9	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)
10	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
11	Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

20. The Debtors solicited votes on the Plan from Holders of Claims in Classes 3A, 3B, 3C, 4, and 7B, which were entitled to vote to accept or reject the Plan (collectively, the “Voting Classes”). Class 6 (Auto Liability Claims), although solicited because of the possibility of a sale transaction, is Unimpaired under the Restructuring Transactions set forth in the Plan. Accordingly, that Class is an Unimpaired accepting Class. The Ballots also contained a Convenience Claim Election, whereby Holders of Claims in Class 7A (General Unsecured Claims) were given the option to irrevocably elect to have their Claim treated as a Class 7B Claim (Convenience Claim). The voting results, as established in the Voting Report, are summarized as follows:

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 3A – FLFO RCF Claims	100.00%	100.00%	0.00%	0.00%
Class 3B – FLFO Term Loan Claims	100.00%	100.00%	0.00%	0.00%
Class 3C – Reception Purchaser First Lien Claims	100.00%	100.00%	0.00%	0.00%

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 4 – FLSO Term Loan Claims	100.00%	100.00%	0.00%	0.00%
Class 7B – Convenience Claims	98.00%	99.9999%	2.00%	0.0001%

21. Stakeholders in the Voting Classes had notice and the opportunity to “opt out” of the Third-Party Release (as defined herein) by checking the appropriate box on the Ballots.¹¹ The Non-Voting Classes were also given the opportunity to “opt out” of the Third-Party Release and received notice and instructions for doing so in their applicable Notice of Non-Voting Status.¹² The Non-Voting Classes could opt out of the Third-Party Release by checking the appropriate box on the notice of Non-Voting Status or objecting on or before the Voting and Opt-Out Deadline. In total, 38 parties made the opt-out election (the “Opt-Out Election”) by or on the Voting and Opt-Out Deadline, reflecting the effectiveness of the solicitation process.

22. The Debtors now seek to implement the Restructuring Transactions through Confirmation of the Plan. The Plan, among other things:

- contemplates payment in full of Administrative Claims, Priority Tax Claims, DIP Claims, and Other Priority Claims, as well as the payment in full, the collateral securing, or Reinstatement of Other Secured Claims (if any);
- provides for the conversion and equitization of the DIP Facility into the Takeback Term Loan Facility and 11.5% of Reorganized Equity (increasing up to 19.2% if the Incremental New Money DIP Loans are funded);
- provides for the conversion of the FLFO RCF Claims into the Exit RCF Facility;

¹¹ As specified in the Art. I.A of the Plan, “Releasing Parties” does not include any stakeholders that elect to opt out of, or object to, the Third Party Release.

¹² As set forth in the Disclosure Statement, Holders in Class 8 (Intercompany Claims) and Class 9 (Intercompany Interests) did not receive a Notice of Non-Voting Status or any other type of notice in connection with the solicitation because all Intercompany Claims and Intercompany Interests are held by Debtors or their affiliates.

- provides for a comprehensive deleveraging through the Debtors' chapter 11 plan that will equitize the FLFO Term Loan Claims and the FLSO Term Loan Claims in full;
- provides for the full and final satisfaction of the Reception Purchaser Settlement Released Claims through the Reception Purchaser Settlement;
- cancels, releases, discharges, and extinguishes all FLTO Term Loan Claims;
- cancels, releases, discharges, and extinguishes all General Unsecured Claims; *provided* that Holders of Allowed General Unsecured Claims that make the Convenience Claim Election will receive such Holder's Pro Rata share of the Convenience Claims Cash Pool;
- cancels Equity Interests;
- provides for releases between the Debtors, the Committee, each of the parties to the Restructuring Support Agreement, and the Non-Participating Holders, among others; and
- provides for Intercompany Claims and Intercompany Interests to be either Reinstated or canceled or released without any distribution on account of such Claim or Intercompany Interest.

23. The Debtors strongly believe that the Plan is in the best interests of the Debtors, their Estates, and other parties in interest. As shown above, Holders of Claims in the Voting Classes overwhelmingly agree and all Voting Classes voted to accept the Plan.

III. The Debtors' Marketing Process.

24. As set forth in the Higbie Declaration, on the Petition Date, the Debtors, with the assistance of PJT, commenced a marketing and sale process (the "Marketing Process") to enable interested third parties to evaluate a potential acquisition of some or all of the Debtors' assets.¹³ PJT continued the Marketing Process until the Court-established bid deadline.¹⁴

25. Based on discussions with the parties in interest and the consultation parties, on April 22, 2026, the Debtors elected to forego an auction and pursue consummation of the

¹³ See Higbie Decl. ¶ 9.

¹⁴ See *id.*

Recapitalization Transaction.¹⁵ In total, the Marketing Process lasted one hundred days, and no participants have objected to the Plan on the basis of needing additional time to complete their due diligence.¹⁶

IV. Mediation, the Committee Settlement, and the Reception Purchaser Settlement.

26. On March 25, 2026, the Court entered the *Stipulation and Agreed Order (I) Appointing Hon. Robert D. Drain (Ret.) as Mediator to Mediate the Mediation Topics, (II) Referring Such Matters to Mediation, (III) Directing the Mediation Parties to Participate in the Mediation, and (IV) Granting Related Relief* [Adv. Pro. No. 26-01032, Docket No. 97] pursuant to which the Debtors, the Non-Participating Holders, Antares, the Ad Hoc Group, and the Committee (the “Mediation Parties”) agreed to appoint the Honorable Judge Robert D. Drain (ret.) to act as a consensual mediator with respect to the issues subject to the mediation (the “Mediation”).

27. On April 6, 2026, the Mediation commenced.¹⁷ The Mediation Parties engaged in extensive, arm’s-length negotiations in person on April 6, with engagements continuing over the course of the following four days. While the Mediation did not result in a settlement at that time with the Non-Participating Holders, the Debtors, the Ad Hoc Group, and the Committee were able to reach a global settlement of all Committee issues in these chapter 11 cases (the “Committee Settlement”).¹⁸ The Committee Settlement is reflected in the Plan and the Disclosure Statement and provides for, among other things, (i) payment in full of all critical vendors and go-forward

¹⁵ See *id.* ¶ 14.

¹⁶ See *id.*

¹⁷ See *Stipulation and Agreed Order (I) Appointing Hon. Robert D. Drain (Ret.) as Mediator to Mediate the Mediation Topics, (II) Referring Such Matters to Mediation, (III) Directing the Mediation Parties to Participate in the Mediation, and (IV) Granting Related Relief* [Adv. Pro. No. 26-01032, Docket No. 97]; *Mediator’s Report* [Adv. Pro. No. 26-01032, Docket No. 111] (the “Mediation Report”).

¹⁸ See *Mediation Report*, ¶ 4.

landlords, (ii) establishment of Class 7B (Convenience Claims), and (iii) a release by the Debtors of preference claims against unsecured creditors under section 547(b) of the Bankruptcy Code. The Committee is supportive of the Plan and has recommended that Holders of Class 7A General Unsecured Claims make the Convenience Claims Election and that Class 7B Convenience Claims vote in favor of the Plan. Accordingly, approximately 98 percent in number of Convenience Claims who voted and approximately 99.99 percent in amount of Convenience Claims who voted accepted the Plan. Class 7A (General Unsecured Claims) was deemed to reject the Plan and thus was not entitled to vote.

28. Building off of the Mediation and after additional weeks of hard-fought negotiations, the Debtors, the Non-Participating Holders, the Ad Hoc Group, and the applicable Agent (the “Reception Purchaser Settlement Parties”) reached a settlement (the “Reception Purchaser Settlement”) regarding all matters related to the Non-Participating Holder Litigation (including the Adversary Proceeding), the Plan, and Disclosure Statement, and any other related issues. As described more fully in the Plan, the Reception Purchaser Settlement provides for, among other things: (i) payment of \$12 million to the Non-Participating Holders in full and final satisfaction of all Claims, Causes of Action, and controversies among the Reception Purchaser Settlement Parties, (ii) withdrawal with prejudice of all Claims and Causes of Action asserted in the Non-Participating Holder Litigation and these chapter 11 cases and a standstill of all related discovery and scheduling disputes until such withdrawal becomes effective, (iii) dismissal with prejudice of, and agreement not to re-file or reinstate, the Illinois Action, (iv) dismissal with prejudice or otherwise permanent termination of the New York Action; (v) payment of certain fees by the Debtors on the Effective Date, (vi) the agreement by the Non-Participating Holders not to

object to the Plan or “opt out” of the third party releases set forth therein; and (vii) broad mutual releases among the Reception Purchaser Settlement Parties.

Part II: Argument

I. Approval of the Disclosure Statement Is Warranted.

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

29. The primary purpose of a disclosure statement is to provide “adequate information” that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.¹⁹ “Adequate information” is a flexible standard, based on the facts and circumstances of each case.²⁰ Determining what constitutes “adequate information” for

¹⁹ See, e.g., *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321–22 (3d Cir. 2003) (providing that a disclosure statement must contain “adequate information to enable a creditor to make an informed judgment about the Plan” (internal quotations omitted)); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re A. H. Robins Co., Inc.*, 880 F.2d 694, 696 (4th Cir. 1989) (stating that the disclosure statement must provide “information of a kind, and in sufficient detail . . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.”); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) (“The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.”); *In re Phoenix Petrol., Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) (“[T]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) (“The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan.”). Congress intended that such informed judgments are necessary to both negotiate the terms of, and vote on, a chapter 11 plan. See *Century Glove*, 860 F.2d at 100.

²⁰ 11 U.S.C. § 1125(a)(1) (“[A]dequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records. . . .”); see *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D.N.J. 2005) *aff’d*, 241 F. App’x 1 (3d Cir. 2007) (“The information required will necessarily be governed by the circumstances of the case.”); *In re Phx. Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“The determination of what is adequate information is subjective[,] made on a case-by-case basis[,] . . . [and] is largely within the discretion of the bankruptcy court.”); *In re River Vill. Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.A.N. 5787, 5907 (“The information required will necessarily be governed by the circumstances of the case.”)

the purpose of satisfying section 1125 of the Bankruptcy Code is within the broad discretion of the Court.²¹ “Adequate information” means information that is “of a kind, and in sufficient detail” to permit an “informed judgment” by creditors and interest holders eligible to vote on a plan of reorganization.²² On the other hand, “overburdening a proponent’s disclosure statement with information significant and meaningful to lawyers alone may result ultimately in reducing the disclosure statement to an overlong, incomprehensible, ineffective collection of words to those whose interests are to be served by disclosure.”²³ No party in interest has objected to Confirmation on the basis of the Disclosure Statement, notice, or solicitation.

30. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts look for disclosures on a range of topics such as:

- (i) the events which led to the filing of a bankruptcy petition;
- (ii) the relationship of a debtor with the affiliates;
- (iii) a description of the available assets and their value;

²¹ See *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”) (internal citations omitted); *In re River Vill. Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (same); *In re Phx. Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); see also *Cadle Co. II, Inc., v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes adequate information in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”) (internal citations omitted); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) (“Section 1125 affords the Bankruptcy Court substantial discretion in considering the adequacy of a disclosure statement.”), *aff’d*, 241 F. App’x 1 (3d Cir. 2007).

²² See *In re Lower Buck Hosp.*, 571 F. Appx. 139, 142 (3d Cir. 2014).

²³ *In re Stanley Hotel, Inc.*, 13 B.R. 926, 933 (Bankr. D. Colo. 1981); see *id.* at 933–34 (“Thus, compounding a disclosure statement for the sake of a lawyer’s notion of completeness, or because some additional information might enhance one’s understanding, may not always be necessary or desirable, and the length of a document should not be the test of its effectiveness.”); see also *In re Applegate Prop., Ltd.*, 133 B.R. 827, 829–30 (Bankr. W.D. Tex. 1991) (“[A] disclosure statement need not meet the extensive disclosure requirements of the securities laws for registration statements and the like.”); *In re Waterville Timeshare Grp.*, 67 B.R. 412, 413 (Bankr. D.N.H. 1986) (“[O]verly technical and extremely numerous additions to a disclosure statement suggested by an objecting party may themselves be self-defeating in terms of the resulting clarity and understandability of the document to the average investor.”).

- (iv) the anticipated future of the company;
- (v) the source of information stated in the disclosure statement;
- (vi) the present condition of a debtor while in chapter 11;
- (vii) the claims asserted against a debtor;
- (viii) the estimated return to creditors under a chapter 7 liquidation;
- (ix) the future management of a debtor;
- (x) the chapter 11 plan or a summary thereof;
- (xi) the financial information, valuations, and projections relevant to the claimants' decision to accept or reject the chapter 11 claim;
- (xii) the information relevant to the risks posed to claimants under the plan;
- (xiii) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;
- (xiv) the litigation likely to arise in a nonbankruptcy context; and
- (xv) the tax attributes of a debtor.²⁴

31. Here, the Disclosure Statement contains adequate information and was previously approved on a conditional basis on April 15, 2026.²⁵ The Disclosure Statement contains descriptions and summaries of, among other things:

- ***The Debtors' Corporate History, Structure and Business Overview.*** An overview of the Debtors' corporate history, business operations, organizational structure, and prepetition capital structure, which are described in detail in Article IV of the Disclosure Statement;

²⁴ *In re U.S. Brass Corp.*, 194 B.R. 420 at 424–25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *Westland Oil Dev. Corp. v. MCorp Mgmt. Sols., Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (same); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics “is not necessary in every case.” *In re U.S. Brass Corp.*, 194 B.R. at 425; *see also In re Phx. Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“[C]ertain categories of information which may be necessary in one case may be omitted in another . . .”).

²⁵ *See* Docket No. 620.

- ***Events Preceding the Chapter 11 Cases.*** An overview of the events leading to the commencement of the Debtors' chapter 11 cases, which are described in detail in Article V of the Disclosure Statement;
- ***Material Developments and Anticipated Events of the Chapter 11 Cases.*** An overview of key events in the Debtors' chapter 11 cases, which are described in detail in Article VI of the Disclosure Statement;
- ***Notice of the Injunction, Exculpation, and Release Provisions of the Plan.*** A description of the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing, including bolded language related to the Debtor Release, Third-Party Release, Exculpation, and Injunction Provisions, which are described in Article VII of the Disclosure Statement;
- ***Risk Factors.*** Certain risks associated with the Debtors' businesses, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement, which are described in Article IX of the Disclosure Statement;
- ***Solicitation and Voting Procedures.*** A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan, which are described in Article X of the Disclosure Statement;
- ***Liquidation Analysis.*** An analysis of the liquidation value of the Debtors, which is attached as Exhibit D to the Disclosure Statement;
- ***Confirmation of the Plan.*** Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, which are described in Article XI of the Disclosure Statement;
- ***Certain Securities Law Matters.*** A description of certain securities laws matters, which are described in Article XII of the Plan.
- ***Certain United States Federal Income Tax Consequences of the Plan.*** A description of certain U.S. federal income tax law consequences of the Plan, which are described in Article XIII of the Disclosure Statement; and
- ***Recommendation of the Debtors.*** A recommendation by the Debtors that Holders of Claims in the Voting Classes should vote to accept the Plan, stated in Article XIV of the Disclosure Statement.

32. As discussed above, section 1125(a) of the Bankruptcy Code requires only "adequate information" sufficient for parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan. Accordingly, the Disclosure

Statement contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code and should be approved.

B. The Debtors Complied with the Applicable Notice Requirements.

33. In addition to conditionally approving the adequacy of the Disclosure Statement, the Conditional Disclosure Statement Order granted final approval of, among other things: (a) the Solicitation Procedures; (b) the Confirmation Hearing Notice, the Notice of Non-Voting Status, and the Publication Notice; (c) the Solicitation Packages; and (d) certain dates and deadlines with respect to the Plan and Disclosure Statement. The Debtors complied with the procedures and timeline approved by the Conditional Disclosure Statement Order, as amended by the Confirmation Reset Notice.

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

34. Section 1125(e) of the Bankruptcy Code provides that “a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable” on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.²⁶ As demonstrated by the Debtors’ compliance with the Conditional Disclosure Statement Order, the Debtors at all times conducted the solicitation process in good faith and in compliance with section 1125 of the Bankruptcy Code and the Court-approved Solicitation Procedures. Therefore, the Debtors request that the Court grant the protections provided under section 1125(e) of the Bankruptcy Code.

²⁶ 11 U.S.C. § 1125(e).

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

35. To confirm the Plan, the Court must find that the Debtors have satisfied the requirements of section 1129 of the Bankruptcy Code.²⁷ As described in detail below, the Plan complies with all relevant provisions of the Bankruptcy Code and all other applicable law.

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

36. Under section 1129(a)(1) of the Bankruptcy Code, a plan must “compl[y] with the applicable provisions of [the Bankruptcy Code].”²⁸ The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses and incorporates the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan of reorganization, respectively.²⁹ As explained below, the Plan complies with the requirements of sections 1122 and 1123 in all respects.

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

37. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, that “[e]xcept as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the

²⁷ See *In re Premier Int’l Holdings, Inc.*, 2010 WL 2745964, at *4 (Bankr. D. Del. Apr. 29, 2010) (holding that the plan proponent must prove each element of section 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 148 (Bankr. D.N.J. 2010) (“The plan proponent bears the burden to show by a preponderance of the evidence that the proposed Chapter 11 ‘plan has a reasonable probability of success,’ and is more than a visionary scheme [.]”) (citing *Wiersma v. Bank of the West (In re Wiersma)*, 227 F. App’x 603, 606 (9th Cir. 2007)) (internal quotation marks omitted).

²⁸ 11 U.S.C. § 1129(a)(1).

²⁹ S. Rep. No. 95-989, at 126, *reprinted in* 1978 U.S.C. C.A.N. 5787, 5912 (1978); H.R. Rep. No. 95-595, at 412, *reprinted in* 1978 U.S.C. C.A.N. 5963, 6368 (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 most directly aimed at were [s]ections 1122 and 1123.”); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008) (“As confirmed by legislative history, 11 U.S.C. § 1129(a)(1), which provides that the plan must ‘compl[y] with the applicable provisions of this title,’ requires that a plan comply with 11 U.S.C. §§ 1122 and 1123.”).

other claims or interests of such class.”³⁰ For a classification structure to satisfy section 1122 of the Bankruptcy Code, substantially similar claims or interests need not be grouped in the same class.³¹ Instead, claims or interests placed in a particular class must be substantially similar to each other.³²

38. Courts in this jurisdiction and others have recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.³³ Moreover, the requirement of substantial similarity does not mean that claims or interests within a particular class must be identical or that all similarly situated claims must receive the same treatment under a plan.³⁴

³⁰ 11 U.S.C. § 1122(a).

³¹ See, e.g., *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 159 (Bankr. D. Del. 2006).

³² *Id.*

³³ Courts have identified grounds justifying separate classification, including where members of a class possess different legal rights or there are good business reasons for separate classification. See, e.g., *In re Rochem, Ltd.*, 58 B.R. 641, 642 (Bankr. D.N.J. 1985) (“Although Section 1122(a) of the Code requires that claims be substantially similar within a particular class, there is no requirement within Section 1122 or elsewhere in the Code that all substantially similar claims be included within a particular class.”). Courts have identified grounds justifying separate classification, including: (a) where members of a class possess different legal rights, and (b) where there are good business reasons for separate classification. See *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs. (In re Route 37 Bus. Park Assocs.)*, 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that, as long as each class represents a voting interest that is “sufficiently distinct and weighty to merit separate voice in the decision whether the proposed reorganization should proceed,” the classification is proper); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); see also *Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis related to the bankruptcy court-approved settlement); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) (explaining that “the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan”); *In re 500 Fifth Ave. Assocs.*, 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (holding that, 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”) (internal quotations omitted), *aff’d*, No. 93 CIV. 844 (LJF), 1993 WL 316183 (S.D.N.Y. May 21, 1993); *In re Drexel Burnham Lambert Grp. 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 classes be grouped together.”).

³⁴ See, e.g., *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 224 (Bankr. D.N.J. 2000) (“Separate classification of similar claims has been found to be permissible where the classification is offered in good faith, does not foster an abuse of the classification system, and promotes the rehabilitative goals of Chapter 11.”); *In re Nickels Midway Pier, LLC*, No. 03-49462 (GMB), 2010 WL 2034542, at *7 (Bankr. D.N.J. May 21, 2010) (proffering just one rule regarding classification of separate classification of similar classes under section 1122, which is that “thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan”).

39. The Plan's classification of Claims, Intercompany Interests, and Equity Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims, Intercompany Interests, and Equity Interests into fourteen separate Classes, with Claims, Intercompany Interests, and Equity Interests in each Class differing from the Claims, Intercompany Interests, and Equity Interests in each other Class in a legal or factual way or based on other relevant criteria.³⁵ Specifically, the Plan provides for the separate classification of Claims, Intercompany Interests, and Equity Interests into the following Classes:

<u>Class 1</u>	Other Secured Claims
<u>Class 2</u>	Other Priority Claims
<u>Class 3A</u>	FLFO RCF Claims
<u>Class 3B</u>	FLFO Term Loan Claims
<u>Class 3C</u>	Reception Purchaser First Lien Claims
<u>Class 4</u>	FLSO Term Loan Claims
<u>Class 5</u>	FLTO Term Loan Claims
<u>Class 6</u>	Auto Liability Claims
<u>Class 7A</u>	General Unsecured Claims
<u>Class 7B</u>	Convenience Claims
<u>Class 8</u>	Intercompany Claims
<u>Class 9</u>	Intercompany Interests
<u>Class 10</u>	Section 510(b) Claims
<u>Class 11</u>	Equity Interests

40. Here, each of the Claims, Intercompany Interests, and Equity Interests in each particular Class is substantially similar to the other Claims, Intercompany Interests, and Equity Interests in such Class.³⁶ The Plan's classification scheme generally corresponds to the Debtors' corporate and capital structure, thereby taking into account the relative priority among Claims, Intercompany Interests, and Equity Interests, including the relative priority between secured and unsecured Claims. Other aspects of the classification scheme are related to the different legal or

³⁵ See Plan Art. III.

³⁶ See Keyes Decl. ¶ 21.

factual circumstances of the Claims, Intercompany Interests, or Equity Interests within each Class.³⁷

41. Namely, the Plan separately classifies the Claims and Interests because each Holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims, Intercompany Interests, or Equity Interests in other Classes.³⁸ Additionally, Claims (rights to payment) are classified separately from Intercompany Interests and Equity Interests (representing ownership in the business). Secured Claims are classified separately from unsecured Claims because the Debtors' obligations with respect to the former are secured by collateral. Specifically, Other Priority Claims (Class 2) are classified separately from other unsecured Claims because of their relative priority and because the Bankruptcy Code requires such Claims to be paid in full.³⁹ The Plan classifies Equity Interests (Class 11) separately from Intercompany Interests (Class 9) because the Debtors' ownership structure is dependent upon maintaining certain of the Intercompany Interests and, therefore, the Intercompany Interests may be preserved under the Plan for the administrative convenience of ensuring the preservation of the Debtors' corporate structure after the Effective Date.⁴⁰ FLFO RCF Claims (Class 3A), FLFO Term Loan Claims (Class 3B), Reception Purchaser First Lien Claims (Class 3C), FLSO Term Loan Claims (Class 4) and FLTO Term Loan Claims (Class 5) are classified separately because of the different priorities and instruments underlying the Claims in each Class.⁴¹ Auto Liability Claims (Class 6) are separately classified based on the nature of the Claims.⁴² As more fully described below, such Claims are

³⁷ *Id.*

³⁸ *See id.* ¶ 21–22.

³⁹ *See id.* ¶ 23.

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² *See id.*

unique because they are supported by the automobile liability coverage (the “Auto Liability Insurance Program”) provided by the Debtors’ wholly-owned subsidiary insurance provider, Ascalon Risk Retention Group, Inc. (the “RRG”).⁴³ Finally, General Unsecured Claims (Class 7A) are separately classified because they have different legal rights than the Debtors’ funded debt creditors and Convenience Claims (Class 7B) are classified separately from General Unsecured Claims to effectuate the Committee Settlement, generate cost savings for the Estates, and as expressly permitted under section 1122(b) of the Bankruptcy Code.⁴⁴

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

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

43. Section 1123(a) of the Bankruptcy Code sets forth seven criteria that every chapter 11 plan must satisfy.⁴⁵ The Plan satisfies each of these requirements.⁴⁶

⁴³ See Keyes Decl. ¶ 23. The Debtors’ automobile liability coverage and their relationship with the RRG are described more fully in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage and Letters of Credit Entered Into Prepetition and Pay Related Prepetition Obligations, (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage and Letters of Credit, (C) Honor the Terms of Their Premium Financing Agreement, and (D) Continue to Pay Broker Fees and (II) Granting Related Relief* [Docket No. 9].

⁴⁴ See 11 U.S.C. § 1122(b); Keyes Decl. ¶ 23.

⁴⁵ 11 U.S.C. § 1123(a)(1)–(7).

⁴⁶ See 11 U.S.C. § 1123(a)(1)–(8). Section 1123(a)(8) of the Bankruptcy Code is only applicable to individual debtors.

i. ***Designation of Classes of Claims and Equity Interests, Specification of Unimpaired Classes, and Treatment of Impaired Classes (§ 1123(a)(1)).***

44. The first three requirements of section 1123(a) of the Bankruptcy Code are that a plan specify (a) the classification of claims and interests, (b) whether such claims and interests are impaired or unimpaired, and (c) the treatment of any impaired class under the plan.⁴⁷ Article III of the Plan sets forth these specifications in detail, in satisfaction of these three requirements.⁴⁸ No party has asserted otherwise.

ii. ***Equal Treatment within Classes (§ 1123(a)(4)).***

45. 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.”⁴⁹ The Plan meets this requirement because Holders of Allowed Claims, Intercompany Interests, or Equity Interests will receive the same rights and treatment as other Holders of Allowed Claims, Intercompany Interests, or Equity Interests within such Holders’ respective Class. The Reception Purchaser Settlement takes into account asserted Claims and challenges to the Debtors’ prepetition capital structure and the consensual terms contemplated by the Reception Purchaser Settlement resolve such dispute. As part of such settlement, the Non-Participating Holders are foregoing the recovery provided to Class 3C (Reception Purchaser First Lien Claims). Accordingly, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code, and no party has asserted otherwise.

⁴⁷ 11 U.S.C. § 1123(a)(1)–(3).

⁴⁸ Plan, Art. III.A–B.

⁴⁹ 11 U.S.C. § 1123(a)(4).

iii. *Means for Implementation (§ 1123(a)(5)).*

46. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide “adequate means” for its implementation.⁵⁰ The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provide for the means by which the Plan will be implemented.⁵¹ Among other things, Article IV of the Plan:

- constitutes a good faith compromise and settlement of Claims, Intercompany Interests, and Equity Interests;⁵²
- authorizes the Debtors to effectuate the Reception Purchaser Settlement;⁵³
- authorizes the Debtors to make distributions under the Plan to certain Holders of Allowed Claims;⁵⁴
- authorizes the Debtors and the Post-Effective Date Debtors, as applicable, to take all actions necessary or appropriate to effectuate the Plan and the Restructuring Transactions contemplated thereby;⁵⁵
- preserves coverage under the D&O Liability Insurance Policies;⁵⁶
- preserves all Assumed Plans and provides that the Post-Effective Date Debtors shall continue to honor their obligations under such Assumed Plans;⁵⁷
- provides for the cancellation of existing agreements, Interests, and Intercompany Interests, except as otherwise provided in the Plan and Confirmation Order;⁵⁸
- provides for the exemption of certain securities law matters;⁵⁹

⁵⁰ 11 U.S.C. § 1123(a)(5).

⁵¹ See Keyes Decl. ¶ 24.

⁵² See Plan Art. IV.A.

⁵³ See Plan Art. IV.B

⁵⁴ See Plan Art. IV.E.

⁵⁵ See Plan Art. IV.C.

⁵⁶ See Plan Art. IV.O.

⁵⁷ See Plan Art. IV.P.

⁵⁸ See Plan Art. IV.Q.

⁵⁹ See Plan Art. IV.R.

- authorizes Post-Effective Date STG to issue the Reorganized Equity;⁶⁰
- authorizes Post-Effective Date STG to issue the Takeback Term Loans and enter into the Exit RCF Facility;⁶¹
- authorizes the Post-Effective Date Debtors to enter into the Takeback Equipment Financing Agreements;⁶²
- preserves the Post-Effective Date Debtors' corporate existence following the Effective Date (except as otherwise provided in the Plan);⁶³
- provides for the vesting of Estate assets in the Post-Effective Date Debtors;⁶⁴
- authorizes the Post-Effective Date Debtors to adopt the New Governance Documents;⁶⁵
- authorizes the Post-Effective Date Debtors to implement the Management Incentive Plan;⁶⁶
- provides for the preservation and vesting of certain claims and Causes of Action in the Post-Effective Date Debtors;⁶⁷
- authorizes the Debtors to establish and fund the Convenience Claim Reserve with Cash equal to the Convenience Claims Reserve;⁶⁸
- permits the Post-Effective Date Debtors to close the chapter 11 cases following the occurrence of the Effective Date upon the Filing of an appropriate motion.⁶⁹

⁶⁰ See Plan Art. IV.E.1.

⁶¹ See Plan Art. IV.E.2.

⁶² See Plan Art. IV.E.3.

⁶³ See Plan Art. IV.F.

⁶⁴ See Plan Art. IV.G.

⁶⁵ See Plan Art. IV.I.

⁶⁶ See Plan Art. IV.M.

⁶⁷ See Plan Art. IV.N.

⁶⁸ See Plan Art. IV.A.

⁶⁹ See *id.* Art. IV.S.

47. The precise terms governing the execution of these transactions are set forth in greater detail in the Plan and the Plan Supplement,⁷⁰ as applicable. Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

48. NJDOL objected to Confirmation of the Plan on the grounds that it fails to satisfy section 1123(a)(5) of the Bankruptcy Code. The Debtors respond to the NJDOL in section III hereof.

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

49. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of non-voting equity securities.⁷¹ Article IV.I of the Plan provides that the New Governance Documents shall contain a provision prohibiting the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code.⁷² In accordance with Article IV.I of the Plan, on or as soon as reasonably practicable after the Effective Date, the New Governance Documents shall be automatically adopted by the applicable Post-Effective Date Debtors and will prohibit the issuance of non-voting equity securities pursuant to the Plan. Accordingly, the Plan satisfies section 1123(a)(6) of the Bankruptcy Code, and no party has asserted otherwise.

v. ***Directors and Officers (§ 1123(a)(7)).***

50. Section 1123(a)(7) requires that the Plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan."⁷³ The Plan satisfies this requirement by providing for the expiration of the term of the current members of the

⁷⁰ See Plan Supplement.

⁷¹ 11 U.S.C. § 1123(a)(6).

⁷² Plan, Art. IV.I.

⁷³ 11 U.S.C. § 1123(a)(7).

Governing Body, including any special committee formed by the current Governing Body and the appointment of the directors of the New Board.⁷⁴ The Plan Supplement will identify the directors of the New Board in compliance with section 1123(a)(7) of the Bankruptcy Code. Accordingly, the Plan satisfies section 1123(a)(7) of the Bankruptcy Code, and no party has asserted otherwise.

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

51. Section 1123(b) of the Bankruptcy Code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, section 1123(b) of the Bankruptcy Code provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of claims against or interests in a debtor or its estate or the retention and enforcement by a debtor, trustee, or other representative of claims or interests; (d) provide for the sale of all or substantially all of the property of the Debtors' Estates, and the distribution of the proceeds of such sale among holders of claims or interests; or (e) "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."⁷⁵

52. The Plan is consistent with section 1123(b) of the Bankruptcy Code. Specifically, under Article III of the Plan, Class 1 and Class 2 are Unimpaired because the Plan leaves unaltered the legal, equitable, and contractual rights of the Holders of Claims within such Classes.⁷⁶ On the other hand, Classes 3A, 3B, 3C, 4, 5, 6, 7A, 7B 10, and 11 are Impaired since the Plan modifies the rights of the Holders of Claims and Interests within such Classes as contemplated in section

⁷⁴ See Plan Art. IV.J.

⁷⁵ See 11 U.S.C. § 1123(b)(1)–(6).

⁷⁶ See Plan, Art. III.B.

1123(b)(1) of the Bankruptcy Code.⁷⁷ Class 8 and Class 9 may be Impaired or Unimpaired under the Plan.⁷⁸

53. In addition, and consistent with section 1123(b)(2) of the Bankruptcy Code, Article V.A of the Plan provides that, on the Effective Date, all Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected shall be, pursuant to sections 365 and 1123 of the Bankruptcy Code, except to the extent set forth in the Plan, deemed assumed.⁷⁹

54. The Plan provides for the compromise and settlement of certain Claims and Equity Interests between and among the Debtors and each of the Released Parties, including the Consenting Stakeholders, who affirmatively entered into the Restructuring Support Agreement to settle their Claims against and Equity Interests in the Debtors pursuant to the Restructuring Transactions, to the extent consistent with the Bankruptcy Code. These provisions are substantially consistent with those approved by courts in this district in other chapter 11 plans.⁸⁰ The standards for approval of a settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019.⁸¹ The Third Circuit has provided the following four criteria that a bankruptcy court should consider when approving a settlement pursuant to Bankruptcy Rule 9019:

⁷⁷ See *id.*

⁷⁸ See Plan, Art. III.B.

⁷⁹ See Plan, Art. V.A.

⁸⁰ See, e.g., *In re Thrasio*, No. 24-11840 (CMG) (Bankr. D.N.J. June 13, 2024) (confirming chapter 11 plan with third-party and debtor releases substantially consistent with those in the Plan); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 30, 2024) (same); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. May 31, 2024) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (confirming liquidating chapter 11 plan with third-party and debtor releases substantially consistent with those in the Plan); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Nov. 17, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023) (same).

⁸¹ See *In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004).

- (i) the probability of success in litigation;
- (ii) the likely difficulties in collection;
- (iii) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (iv) the paramount interest of creditors.⁸²

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

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

57. Accordingly, the Plan's discretionary general settlement provisions, including the Committee Settlement and the Reception Purchaser Settlement, satisfy the requirements of

⁸² See *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986)).

section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and no party has asserted otherwise.

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

58. Section 1123(d) of the Bankruptcy Code provides that “if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and nonbankruptcy law.”⁸³

59. The Plan complies with section 1123(d) of the Bankruptcy Code. The Plan provides for the satisfaction of monetary defaults under each Executory Contract and Unexpired Lease to be assumed under the Plan by payment of the default amount, if any, on the Effective Date, subject to the limitations described in Article V.D of the Plan or the Confirmation Order.⁸⁴ In accordance with Article V.D of the Plan and section 365 of the Bankruptcy Code, the Debtors provided notice of the amount and timing of payment of any cure payments to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. The Plan also sets forth procedures for counterparties to assumed Executory Contracts or Unexpired Leases to follow in the event they object to the proposed cure amounts provided by the Debtors.

60. Accordingly, the Plan satisfies the requirements of section 1123(d) of the Bankruptcy Code, and no party has asserted otherwise.

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

61. The principal purpose of section 1129(a)(2) is to ensure that a plan proponent has complied with the requirements of the Bankruptcy Code regarding solicitation of acceptances of a

⁸³ 11 U.S.C. § 1123(d).

⁸⁴ See Plan Art. V.D.

plan.⁸⁵ The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code.⁸⁶ As set forth below, the Debtors have complied with these provisions, including sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan through their Claims and Noticing Agent in accordance with the Conditional Disclosure Statement Order.⁸⁷

1. The Debtors Have Complied with the Disclosure and Solicitation Requirements of Section 1125.

62. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization “unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.”⁸⁸ Section 1125 ensures that parties in interest are fully informed regarding the debtor’s condition so that they may make an informed decision whether to approve or reject the plan.⁸⁹

63. Section 1125 is satisfied here. Before the Debtors solicited votes on the Plan, the Court conditionally approved the Disclosure Statement.⁹⁰ The Court also approved the

⁸⁵ See *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 170 (Bankr. D.N.J. 2010) (“Section 1129(a)(2) requires that ‘[t]he proponent of the plan compl[y] with the applicable provisions of this title.’”) (citing 11 U.S.C. § 1129(a)(2)); *In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) (“§ 1129(a)(2) requires that the plan proponent comply with the adequate disclosure requirements of § 1125”).

⁸⁶ See *In re TCI 2 Holdings*, 428 B.R. at 170; H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5936; S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 (collectively, the legislative history refers to section 1125, regarding disclosure, as an example of one of those “applicable provisions”).

⁸⁷ See Voting Report ¶¶ 7–8.

⁸⁸ 11 U.S.C. § 1125(b).

⁸⁹ See *In re Union Cnty. Wholesale Tobacco & Candy Co.*, 8 B.R. 442, 443 (Bankr. D.N.J. 1981) (holding that the standards of section 1125 “essentially require information sufficient to enable a hypothetical reasonable investor to make an informed judgment re acceptance or rejection of the plan”).

⁹⁰ See Disclosure Statement Order.

Solicitation Packages provided to Holders of Claims entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, including the Notice of Non-Voting Status, and the relevant dates for voting and objecting to the Plan.⁹¹ As established in the Voting Report, the Debtors, through the Claims and Noticing Agent, complied with the content and delivery requirements of the Disclosure Statement Order, satisfying sections 1125(a) and (b) of the Bankruptcy Code.⁹² The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular Class. Here, the Debtors caused the same Disclosure Statement to be transmitted to all parties entitled to vote on the Plan and caused the Notice of Non-Voting Status to be transmitted to all parties deemed to accept or reject the Plan (except Class 8 and 9).⁹³

64. Based on the foregoing, the Debtors submit that they have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order, and no party has asserted otherwise.

2. The Debtors Have Satisfied the Plan Acceptance Requirements of Section 1126.

65. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.⁹⁴ As noted above, the Debtors did not solicit votes on the Plan from the following Classes:

⁹¹ See generally Disclosure Statement Order.

⁹² See Voting Report ¶¶ 7–8; see also Affidavit of Solicitation. As noted previously, Holders in Class 9 (Intercompany Claims) and Class 10 (intercompany Interests) did not receive a Notice of Non-Voting Status or any other type of notice in connection with the solicitation because all Intercompany Claims and Intercompany Interests are held by Debtors or their affiliates.

⁹³ See Voting Report ¶¶ 7–8; see also generally Affidavit of Solicitation.

⁹⁴ See 11 U.S.C. § 1126.

- Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims), which are Unimpaired under the Plan (collectively, the “Unimpaired Classes”).⁹⁵ Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in the Unimpaired Classes are conclusively presumed to have accepted the Plan and, therefore, were not entitled to vote on the Plan.
- Class 5 (FLTO Term Loan Claims), Class 7A (General Unsecured Claims), Class 10 (Section 510(b) Claims), and Class 11 (Equity Interests), which are Impaired and receiving no recovery under the Plan (the “Deemed Rejecting Classes”).⁹⁶ Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan and, therefore, were not entitled to vote on the Plan.
- Class 8 (Intercompany Claims) and Class 9 (Intercompany Interests) may be Impaired or Unimpaired under the Plan. Pursuant to section 1126(f) or 1126(g) of the Bankruptcy Code, as applicable, Holders of Claims and Intercompany Interests in Classes 7 and 8 are conclusively presumed to have accepted the Plan or deemed to have rejected the Plan, as applicable, and, therefore, were not entitled to vote on the Plan.

66. Accordingly, the Debtors solicited votes only from Holders of Allowed Claims in the Voting Classes—Classes 3A, 3B, 3C, 4, and 7B—because each of these Classes is Impaired and entitled to receive a distribution under the Plan.⁹⁷ With respect to the Voting Classes of Claims, section 1126(c) of the Bankruptcy Code provides that:

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 [section 1126], 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 [section 1126], that have accepted or rejected such plan.⁹⁸

67. The Voting Report, summarized above, demonstrates that the Plan has been accepted by the Holders of Claims in Classes 3A, 3B, 3C, 4, and 7B in accordance with section 1126 of the Bankruptcy Code.⁹⁹ Acceptance of these Impaired Classes is all that is necessary.

⁹⁵ See Plan, Art. III.B.

⁹⁶ See *id.*

⁹⁷ Plan, Art. III.B; see generally Affidavit of Solicitation.

⁹⁸ 11 U.S.C. § 1126(c).

⁹⁹ See generally Voting Report, Ex. A.

Based on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2), and no party has asserted otherwise.

C. The Debtors Proposed the Plan in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3)).

68. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be “proposed in good faith and not by any means forbidden by law.”¹⁰⁰ Where a plan satisfies the purposes of the Bankruptcy Code and has a reasonable likelihood of succeeding, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code is satisfied.¹⁰¹ To determine whether a plan seeks relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the Plan.¹⁰²

69. The Debtors negotiated, developed, and proposed the Plan in good faith, and the Plan satisfies section 1129(a)(3) of the Bankruptcy Code. The Plan was negotiated with, and is supported by, the Consenting Stakeholders, the Committee, the Non-Participating Holders, and other key constituents.¹⁰³ These parties only came to consensus after several months of intense, arm’s-length negotiations. As provided in the Higbie Declaration and the Keyes Declaration, the Plan delivers significant value to creditors, and preserves the Post-Effective Date Debtors as a going concern.¹⁰⁴ Additionally, the Plan has been accepted by each of Classes 3A, 3B, 3C, 4, and

¹⁰⁰ 11 U.S.C. § 1129(a)(3); *see also In re Diocese of Camden, New Jersey*, No. 20-21257 (JNP), 2023 WL 5605156, at *25 (Bankr. D.N.J. Aug. 29, 2023) (citing *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000)); *In re TCI 2 Holdings*, 428 B.R. at 134.

¹⁰¹ *See, e.g., In re PWS Holding*, 228 F.3d at 242 (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986)); *In re Century Glove, Inc.*, No. Civ. A. 90-400, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993); *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002).

¹⁰² *See, e.g., Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P’Ship (In re T-H New Orleans Ltd. P’ship)*, 116 F.3d 790, 802 (5th Cir. 1997); *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012), *aff’d*, 729 F.3d 311 (3d Cir. 2013); *In re Century Glove*, 1993 WL 239489, at *4.

¹⁰³ *See* Keyes Decl. ¶ 19.

¹⁰⁴ *See* Higbie Decl. ¶ 18; Keyes Decl. ¶¶ 14, 36.

7B by a wide margin.¹⁰⁵ The Plan was proposed in good faith and not by any means forbidden by law, has a high likelihood of success, and will achieve a result consistent with the objectives of the Bankruptcy Code.

70. The fundamental purpose of chapter 11 is to enable a distressed business to reorganize its affairs to prevent job losses and the adverse economic effects associated with disposing of assets at liquidation value.¹⁰⁶ Here, the Plan will enable the Debtors to deleverage their balance sheet, leave operational obligations to critical vendors and go-forward landlords Unimpaired, and position the Post-Effective Date Debtors for long-term success.¹⁰⁷ The support of the Plan by the overwhelming majority of voting creditors in Classes 3A, 3B, 3C, 4, and 7B is strong evidence that the Plan is likely to succeed. Finally, throughout the negotiation of the Plan and these chapter 11 cases, the Debtors have upheld their fiduciary duties to stakeholders and protected the interests of all constituents. Accordingly, the Plan and the Debtors' conduct satisfy section 1129(a)(3) of the Bankruptcy Code, and no party has asserted otherwise.

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

71. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable.¹⁰⁸ Courts in this district and elsewhere

¹⁰⁵ See Voting Report, Ex. A.

¹⁰⁶ See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *B.D. Int'l Disc. Corp. v. Chase Manhattan Bank, N.A. (In re B.D. Int'l Disc. Corp.)*, 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) (stating that "the two major purposes of bankruptcy [are] achieving equality among creditors and giving the debtor a fresh start") (internal citations omitted).

¹⁰⁷ See Keyes Decl. ¶ 15.

¹⁰⁸ 11 U.S.C. § 1129(a)(4).

have construed this section to require that all payments of professional fees paid out of estate assets be subject to review and approval by the Court as to their reasonableness.¹⁰⁹

72. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code.¹¹⁰ All payments made or to be made by the Debtors for services or for costs or expenses in connection with these chapter 11 cases prior to the Confirmation Date, including all Professional Fee Claims, have been approved by, or are subject to approval of, the Court.¹¹¹ Article II.D.1 of the Plan provides that all final requests for payment of Professional Fee Claims must be filed no later than forty-five (45) days after the Effective Date for determination by the Court, after notice and a hearing, in accordance with the procedures established by the Court.¹¹² Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code, and no party has asserted otherwise.

E. The Plan Does Not Require Additional Disclosures Regarding Directors, Officers, and Insiders (§ 1129(a)(5)).

73. Section 1129(a)(5) of the Bankruptcy Code requires the plan proponent to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.¹¹³ In addition, the Bankruptcy Code provides that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.¹¹⁴ The “public policy requirement

¹⁰⁹ *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 503 (Bankr. D.N.J. 2005) (“Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court.”), *aff’d*, 241 F. App’x 1 (3d Cir. 2007); *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, “there must be a provision for review by the Court of any professional compensation”).

¹¹⁰ See Keyes Decl. ¶ 25.

¹¹¹ See Plan, Art. II.

¹¹² See *id.*

¹¹³ 11 U.S.C. § 1129(a)(5)(A)(i).

¹¹⁴ 11 U.S.C. § 1129(a)(5)(A)(ii).

would enable [the court] to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed management.”¹¹⁵ Section 1129(a)(5) of the Bankruptcy Code further requires that the plan proponent disclose the identity of insiders to be retained by the reorganized debtor.¹¹⁶ These provisions ensure that the post-confirmation governance of a reorganized debtors is in “good hands.”

74. The Plan satisfies section 1129(a)(5)(A)(i) of the Bankruptcy Code because the Debtors will disclose the identities and affiliations of all persons proposed to serve on the New Board prior to the Effective Date, as set forth in Article IV.J of the Plan.¹¹⁷ Corporate governance for the Post-Effective Date Debtors, including charters, bylaws, operating agreements, or other organization documents, as applicable, shall be consistent with section 1123(a)(6) of the Bankruptcy Code. Furthermore, the Post-Effective Date Debtors’ proposed officers have significant knowledge and solid business and industry experience, are competent, and will provide the Post-Effective Date Debtors with continuity in running the business.¹¹⁸ Accordingly, it is reasonable to continue such officers’ employment post-emergence. Therefore, the requirements under section 1129(a)(5) of the Bankruptcy Code are satisfied, and no party has asserted otherwise.

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

75. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. The Plan does not provide for any rate changes

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

¹¹⁶ 11 U.S.C. § 1129(a)(5)(B).

¹¹⁷ See Keyes Decl. ¶ 26; Plan, Art. IV.J.

¹¹⁸ See Keyes Decl. ¶ 26.

and the Debtors are not subject to any such regulation. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to these chapter 11 cases, and no party has asserted otherwise.

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

76. Section 1129(a)(7) of the Bankruptcy Code, commonly known as the “best interests test,” requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value of not less than that which such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.¹¹⁹ The best interests test applies to individual dissenting holders of impaired claims and interests rather than classes,¹²⁰ 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 of reorganization.¹²¹

77. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code and the best interests test. As set forth in the Disclosure Statement¹²² and the Keyes Declaration, the Debtors, with the assistance of their financial advisors, prepared a liquidation analysis (the “Liquidation Analysis”) that estimates recoveries for members of each Class under the Plan.¹²³ As set forth in the Keyes

¹¹⁹ See 11 U.S.C. § 1129(a)(7)(A)(ii).

¹²⁰ See *Bank of Am. Nat. Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 442 n.13 (1999) (“The ‘best interests’ test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.”); *In re Adelpia Commc’ns Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (stating that section 1129(a)(7) is satisfied when an impaired holder of claims would receive “no less than such holder would receive in a hypothetical chapter 7 liquidation”).

¹²¹ See *In re Neff*, 60 B.R. 448, 452 (Bankr. N.D. Tex. 1985) (stating that “best interests” of creditors means “creditors must receive distributions under the Chapter 11 plan with a present value at least equal to what they would have received in a Chapter 7 liquidation of the Debtor as of the effective date of the plan”), *aff’d*, 785 F.2d 1033 (5th Cir. 1986); *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) (“Section 1129(a)(7)(A) requires a determination whether a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.”) (internal citation and quotation marks omitted).

¹²² See Disclosure Statement, Exhibit D.

¹²³ See Keyes Decl. ¶¶ 29–36.

Declaration, projected recoveries for each Class under the Plan are not less than the recoveries estimated in a hypothetical chapter 7 liquidation.¹²⁴

Class	Claims and Interests	Estimated Plan Recovery	Estimated Liquidation Recovery
Superpriority	DIP Claims	100%	46.0% to 69.0%
Class 1	Other Secured Claims	100%	25.3% to 75.4%
Class 2	Other Priority Claims	100%	0%
Class 3A	FLFO RCF Claims	100%	100%
Class 3B	FLFO Term Loan Claims	96.1%	0%
Class 3C	Reception Purchaser First Lien Claims	20.1%	0%
Class 4	FLSO Term Loan Claims	1.0%	0%
Class 5	FLTO Term Loan Claims	0%	0%
Class 6	Auto Liability Claims	100%	0%
Class 7A	General Unsecured Claims	0%	0%
Class 7B	Convenience Claims	Greater than 0%	0%
Class 8	Intercompany Claims	N/A	N/A
Class 9	Intercompany Interests	N/A	N/A
Class 10	Section 510(b)	N/A	N/A

¹²⁴ See *id.*

Class	Claims and Interests	Estimated Plan Recovery	Estimated Liquidation Recovery
Class 11	Equity Interests	0%	0%

78. Based on the Liquidation Analysis, Holders of Claims or Interests in certain Impaired Classes would receive a lower recovery in a hypothetical chapter 7 liquidation than they would under the Plan. Further, no Holder of a Claim or Interest would receive or retain property under the Plan of a value that is less than such Holder would receive in a chapter 7 liquidation.¹²⁵ Accordingly, the Debtors submit that the Plan complies with and satisfies all of the requirements of section 1129(a)(7) of the Bankruptcy Code, and no party has asserted otherwise.

H. The Plan Satisfies the Bankruptcy Code’s Voting Requirements of Section 1129(a)(8) of the Bankruptcy Code.

79. 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.¹²⁶ If any class of claims or interests rejects the plan, the plan must satisfy the “cramdown” requirements with respect to the claims or interests in that class.¹²⁷ Of the Impaired classes of Claims, Intercompany Interests, and Equity Interests under the Plan, Classes 3A, 3B, 3C ,4, and 7B voted overwhelmingly to accept the Plan. Class 6 (Auto Liability Claims), although solicited because of the possibility of a sale transaction, is Unimpaired under the Restructuring Transactions set forth in the Plan. Accordingly, that Class is an Unimpaired accepting Class. Holders of Claims and Equity Interests in Classes 5, 7A, 10, and 11 are deemed to have rejected the Plan and thus were not entitled to vote. Although the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to the Impaired

¹²⁵ *Id.* at ¶ 38.

¹²⁶ 11 U.S.C. § 1129(a)(8).

¹²⁷ 11 U.S.C. § 1129(b).

Classes that were deemed to reject the Plan, the Plan is nonetheless confirmable. Specifically (and as discussed in greater detail below) it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code, because five Impaired Voting Classes have voted to accept the Plan, and the Plan does not discriminate unfairly and is fair and equitable with respect to the Classes that are deemed to reject the Plan.¹²⁸

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

80. Section 1129(a)(9) of the Bankruptcy Code requires that certain Allowed priority claims be paid in full on the effective date of a plan or receive certain other specified treatment as agreed by the claim holder in satisfaction of the claim and that the holders of certain other priority claims receive deferred cash payments.¹²⁹ In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.¹³⁰ Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan) or cash of a value equal to the allowed amount of such claim on the effective date of the plan (if such class has not accepted the plan).¹³¹ Finally, section 1129(a)(9)(C) provides that the holder of an Allowed claim of a kind specified in section 507(a)(8) of the

¹²⁸ See Keyes Decl. ¶ 51–53.

¹²⁹ See 11 U.S.C. § 1129(a)(9).

¹³⁰ 11 U.S.C. § 1129(a)(9)(A).

¹³¹ 11 U.S.C. § 1129(a)(9)(B).

Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the Petition Date, the present value of which equals the allowed amount of the claim.¹³²

81. The Plan satisfies section 1129(a)(9) of the Bankruptcy Code. ***First***, Article II.A of the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code because it provides that each holder of an Allowed Administrative Claim allowed on or prior to the Effective Date will receive payment in full in Cash on or prior to the Effective Date or as soon as reasonably practicable thereafter.¹³³ ***Second***, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code because no holders of the types of Claims specified by 1129(a)(9)(B) are Impaired under the Plan and such Claims have been paid in the ordinary course.¹³⁴ ***Third***, Article II.C of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code because it provides that holders of Allowed Priority Tax Claims will be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.¹³⁵ The Plan thus satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.

82. NJDOL objected to Confirmation of the Plan on the grounds that it fails to satisfy section 1129(a)(9) of the Bankruptcy Code. The Debtors respond to the NJDOL in section III hereof.

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

83. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, “without

¹³² 11 U.S.C. § 1129(a)(9)(C).

¹³³ See Keyes Decl. ¶ 37.

¹³⁴ See 11 U.S.C. § 1129(a)(9)(A); see also Keyes Decl. ¶ 37.

¹³⁵ See Keyes Decl. ¶ 37.

including any acceptance of the plan by any insider.”¹³⁶ Here, Holders of Claims in all of the Voting Classes voted to accept the Plan independent of any insiders’ votes.¹³⁷ Thus, the Debtors respectfully submit that the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code, and no party has asserted otherwise.

K. The Plan Is Feasible and Is Not Likely to Be Followed by the Need for Further Financial Reorganization (Section 1129(a)(11)).

84. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that a plan is feasible as a condition precedent to confirmation. Specifically, the Bankruptcy Court must determine that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.”¹³⁸ To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success.¹³⁹ Rather, a debtor must provide only a reasonable assurance of success.¹⁴⁰ There is a low threshold of proof necessary to satisfy the feasibility requirement.¹⁴¹ As demonstrated below, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code

¹³⁶ 11 U.S.C. § 1129(a)(10).

¹³⁷ See Voting Report, Ex. A.

¹³⁸ 11 U.S.C. § 1129(a)(11).

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

¹⁴⁰ *Kane*, 843 F.2d at 649; *In re Flintkote Co.*, 486 B.R. at 139; *In re W.R. Grace & Co.*, 475 B.R. at 115; see also *Pizza of Haw., Inc. v. Shakey’s, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (holding that “[t]he purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation”) (internal quotation marks omitted) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] (15th ed. 1984)); *In re Capmark Fin. Grp. Inc.*, No. 09-13684 (CSS), 2011 WL 6013718, at *61 (Bankr. D. Del. Oct. 5, 2011) (same).

¹⁴¹ See, e.g., *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting approvingly that “[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility”) (internal quotation marks and

85. In determining standards of feasibility, the following factors are probative:

- the adequacy of the capital structure;
- the earning power of the business;
- the economic conditions;
- the ability of management;
- the probability of the continuation of the same management; and
- any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.¹⁴²

86. The Plan is feasible. As set forth in the Keyes Declaration, the Debtors and their advisors have thoroughly analyzed the Post-Effective Date Debtors' ability to meet their post-confirmation obligations under the Plan and continue as a going concern without the need for further financial restructuring.¹⁴³ Additionally, as detailed in the Plan, the Debtors negotiated and secured commitments for exit financing in the form of the Exit RCF Facility and the \$25 million of Incremental New Money DIP Loans. All told, the Post-Effective Date Debtors will emerge from chapter 11 with a substantially deleveraged balance sheet and sufficient liquidity to fund Plan distributions, manage post-emergence liquidity, and meet their obligations in the ordinary course.¹⁴⁴ The Debtors' management team and their advisors have made significant progress in designing and implementing a business plan that will enable the Post-Effective Date Debtors to succeed in their go-forward operations.

citations omitted); *Berkley Fed. Bank & Trust v. Sea Garden Mot. & Apt. (In re Sea Garden Mot. & Apts.)*, 195 B.R. 294, 305 (D. N.J. 1996); *In re Tribune Co.*, 464 B.R. 126, 185 (Bankr. D. Del. 2011), *on reconsideration*, 464 B.R. 208 (Bankr. D. Del. 2011).

¹⁴² See *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *28 (Bankr. D. Del. May 13, 2010) (internal citations omitted).

¹⁴³ See Keyes Decl. ¶¶ 40–47.

¹⁴⁴ *Id.* at ¶ 20.

87. Moreover, as set forth in the Disclosure Statement, the Debtors prepared projections (the “Financial Projections”) of the Debtors’ financial performance for fiscal years 2026 through 2030 (the “Projection Period”).¹⁴⁵ These Financial Projections reflect a series of realistic assumptions regarding the Debtors and their industries and demonstrate the Debtors’ liquidity and ability to meet their obligations in the ordinary course. The Financial Projections demonstrate the Post-Effective Date Debtors’ ability to generate sufficient cash to meet ongoing financial obligations of the business and otherwise meet their obligations under the Plan. In sum, the assets and Financial Projections of the Post-Effective Date Debtors demonstrate a reasonable assurance that the Post-Effective Date Debtors will have and maintain sufficient liquidity and assets to pay amounts due under the Plan, including post-confirmation obligations, and fund their operations during the Projection Period without the need for further financial restructuring.¹⁴⁶ Accordingly, on the basis of the Financial Projections, which were prepared by the Debtors with the assistance of their advisors, the Debtors’ financial future, taking into account the provisions of the Plan, is not likely to be followed by a liquidation or further financial reorganization.¹⁴⁷

88. In addition, upon the Effective Date, the Debtors expect to have sufficient funds to make all payments contemplated by the Plan as a result of the enhanced liquidity provided by, among other things, the Exit RCF Facility and the \$25 million of Incremental New Money DIP Loans. The Debtors, along with their professionals, have closely evaluated their cash flows to ensure that they will be able to make all Plan payments required on the Effective Date and in the months to come.¹⁴⁸ The Debtors therefore submit that the Plan is feasible and Confirmation is not

¹⁴⁵ See Disclosure Statement, Exhibit E.

¹⁴⁶ See Keyes Decl. ¶ 47.

¹⁴⁷ See Keyes Decl. ¶ 47.

¹⁴⁸ See Keyes Decl. ¶ 45.

likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors under the Plan.¹⁴⁹ Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code, and no party has asserted otherwise.

L. The Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12)).

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

90. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article XII.C of the Plan provides that all fees due and payable pursuant to section 1930(a) of Title 28 of the United States Code shall be paid by each of the Debtors or the Post-Effective Date Debtors, as applicable, (or funded by the Post-Effective Date Debtors and disbursed by the Disbursing Agent on behalf of each of the Post-Effective Date Debtors) on the Effective Date, and following the Effective Date, the Post-Effective Date Debtors (or funded by the Post-Effective Date Debtors and disbursed by the Disbursing Agent on behalf of each of the Post-Effective Date Debtors) shall pay such fees as they are assessed and come due for each quarter (including any fraction thereof) until such Post-Effective Date Debtor’s Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.¹⁵⁰

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

¹⁴⁹ See Keyes Decl. ¶ 47.

¹⁵⁰ See Plan Art. XII.C.

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

92. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code.¹⁵¹

93. The Debtors do not have any retiree benefits that fall within the scope of section 1129(a)(13) of the Bankruptcy Code. Nevertheless, as applicable, the Debtors will continue to pay retiree benefits, if any, in the ordinary course of business. The Plan therefore satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code, and no party has asserted otherwise.¹⁵²

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

94. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. Because the Debtors are not subject to any domestic support obligations, the requirements of section 1129(a)(14) of the Bankruptcy Code do not apply.¹⁵³ Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an “individual” as defined in the Bankruptcy Code. Because none of the Debtors is an “individual,” the requirements of section 1129(a)(15) of the Bankruptcy Code do not apply.¹⁵⁴ Finally, none of the Debtors is a nonprofit corporation or trust, and, therefore, section 1129(a)(16) of the Bankruptcy Code, which relates only to nonprofit corporations or trusts, is not applicable in these chapter 11 cases.¹⁵⁵

¹⁵¹ 11 U.S.C. § 1129(a)(13).

¹⁵² See Keyes Decl. ¶ 48.

¹⁵³ See Keyes Decl. ¶ 49.

¹⁵⁴ See Keyes Decl. ¶ 49.

¹⁵⁵ See Keyes Decl. ¶ 49.

O. The Plan Satisfies the Cramdown Requirements (Section 1129(b)).

95. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting impaired classes.¹⁵⁶

96. The Plan satisfies section 1129(b) of the Bankruptcy Code. All Impaired Classes entitled to vote on the Plan (Classes 3A, 3B, 3C, 4, and 7B) voted to accept the Plan. Classes 5, 7A, 10, and 11 will receive no recovery and are deemed to reject the Plan. Classes 8 and 9 may be deemed to reject the Plan based on the Debtors’ ultimate determination on whether to Reinstate or cancel Intercompany Claims and Intercompany Interests. With respect to Classes 5, 7A, 8, 9, 10, and 11, the Plan is fair and equitable and does not discriminate unfairly.

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

97. A plan is “fair and equitable” with respect to an impaired class of unsecured claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the “absolute priority” rule.¹⁵⁷ This requires that an impaired rejecting class of claims or interests either be paid in full or

¹⁵⁶ *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 157 n.5 (3d Cir. 1993); *In re S B Bldg. Assocs. Ltd. P’ship*, 621 B.R. 330, 375 (Bankr. D.N.J. 2020) (holding that a plan must be fair and equitable’ and may not unfairly discriminate under the requirements of section 1129(b)).

¹⁵⁷ *Bank of Am. Nat. Trust & Sav. Ass’n*, 526 U.S. at 441–42 (“As to a dissenting class of impaired unsecured creditors, such a plan may be found to be ‘fair and equitable’ only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if ‘the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,’ § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the ‘absolute priority rule.’”).

that a class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.¹⁵⁸

98. The Plan satisfies section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Deemed Rejecting Classes are deemed to have rejected the Plan, the Plan is confirmable. The Plan satisfies the absolute priority rule (and is fair and equitable) as to the Deemed Rejecting Classes, because, as to such applicable Deemed Rejecting Classes, other than as described below, no Class that is junior to such Classes will receive or retain any property on account of the Claims, Intercompany Interests, or Equity Interests in such Class.

99. Further, the Plan satisfies the corollary to the absolute priority rule because no Class is receiving greater than a 100% recovery.¹⁵⁹ Therefore, the Plan satisfies the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code, and no party has asserted otherwise.

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

100. Unlike the concept of “fair and equitable,” the Bankruptcy Code does not provide a standard for determining when “unfair discrimination” exists.¹⁶⁰ Courts typically examine the facts and circumstances of the particular case to make the determination.¹⁶¹ In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only

¹⁵⁸ 11 U.S.C. § 1129(b)(2)(B)(ii).

¹⁵⁹ See Keyes Decl. ¶ 53; see also *In re Granite Broad. Corp.*, 369 B.R. 120, 140 (Bankr.S.D.N.Y.2007) (“There is no dispute that a class of creditors cannot receive more than full consideration for its claim, and that excess value must be allocated to junior classes of debt or equity, as the case may be.”); *In re Trans Max Techs., Inc.*, 349 B.R. 80, 89 (Bankr.D.Nev.2006) (“One component of the fair and equitable treatment is that a plan may not pay a premium to a senior class.”).

¹⁶⁰ See 11 U.S.C. 1129(b) (listing out the requirements for a plan to be “fair and equitable” but not for “unfair discrimination”).

¹⁶¹ See *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 158 (Bankr. D.N.J. 2010) (neglecting to apply a set standard or test to ascertain whether a plan unfairly discriminates, instead opting to consider “various standards” for a general analysis of unfair discrimination including whether the discrimination is “supported by a reasonable basis” and is “proposed in good faith”); *S B Bldg. Assocs.*, 621 B.R. at 375 (considering the unique factual circumstances to determine whether the requirements of section 1129(b) are satisfied).

if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.¹⁶² A threshold inquiry to assessing whether a proposed chapter 11 plan unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.¹⁶³

101. Here, the Plan's treatment of the non-accepting Impaired Classes (*i.e.*, the Deemed Rejecting Classes) is proper because the Plan's classification scheme rests on a legally acceptable rationale.¹⁶⁴ Claims in the Deemed Rejecting Classes are not similarly situated to any other Classes accepting the Plan given their distinctly different legal character from such Classes¹⁶⁵ Furthermore, where the Plan provides differing treatment for certain Classes of Claims, Intercompany Interests, or Equity Interests, the Debtors have a rational basis for doing so.

102. In particular, Holders of Class 6 (Auto Liability Claims) are uniquely dissimilar from other unsecured creditors because such Claims are supported by the Auto Liability Insurance Program provided by the RRG.¹⁶⁶ If the Holders of Auto Liability Claims do not receive the recovery provided for in the Plan, the Debtors would be required to replace the Auto Liability Insurance Program with a new insurance provider, which would ultimately be more costly than the recovery afforded by the Debtors to Class 6 (Auto Liability Claims) as set forth in the Plan.¹⁶⁷ Accordingly, the treatment of Class 6 (Auto Liability Claims) is justified based on the facts and circumstances of these chapter 11 cases and maximizes value for the Debtors' Estates. Moreover,

¹⁶² See *In re Ocean View Motel, LLC*, No. 20-21165-ABA, 2022 WL 243213, at *1 (Bankr. D.N.J. Jan. 25, 2022) (stating that "[u]nder 1129(b)(1), a plan unfairly discriminates when it treats similarly situated classes differently without a reasonable basis for the disparate treatment") (internal citations omitted).

¹⁶³ See *Aleris Int'l*, 2010 WL 3492664, at *31 (citing *In re Armstrong World Indus.*, 348 B.R. 111, 121 (Bankr. D. Del. 2006)).

¹⁶⁴ See Keyes Decl. ¶ 52.

¹⁶⁵ See Keyes Decl. ¶ 53.

¹⁶⁶ See Keyes Decl. ¶ 53.

¹⁶⁷ See Keyes Decl. ¶ 53.

Holders of General Unsecured Claims may also receive a recovery by making the Convenience Claim Election.¹⁶⁸ With respect to Class 7B (Convenience Claims), Holders of Convenience Claims, either by amount or election, will be entitled to a one-time payment of no greater than \$100,000 of their Allowed General Unsecured Claim to effectuate the Committee Settlement.¹⁶⁹

103. With respect to Class 5 (FLTO Term Loan Claims), in accordance with the *Notice of Plan Value* [Docket No. 772], such Claims are wholly undersecured. Importantly, although Classes *pari passu* to Class 5 (FLTO Term Loan Claims) are receiving a recovery under the Plan (*i.e.*, Class 6 (Auto Liability Claims) and Class 7B (Convenience Claims)), Class 5 (FLTO Term Loan Claims) has overwhelmingly supported the Plan as exhibited by such Holders' execution of the Restructuring Support Agreement.¹⁷⁰ Additionally, even were the FLTO Term Loan Claims entitled to any recovery on account of their wholly undersecured Claims, such recoveries are required to hold such proceeds in trust for other Holders of the FLFO Term Loans and FLSO Term Loans and promptly transfer such proceeds to the STG Distribution Credit Agreement Agent for distribution in accordance with the priorities set out in the STG Distribution Credit Agreement.¹⁷¹ Because the Holders of FLFO Term Loan Claims and FLSO Term Loan Claims are not recovering in full,¹⁷² any recovery by Holders of FLTO Term Loan Claims would then have to be distributed to such Holders. Additionally, those unsecured Claims are wholly dissimilar from Class 6 (Auto Liability Claims) for the reasons described in the previous paragraph. Additionally,

¹⁶⁸ See Keyes Decl. ¶ 53.

¹⁶⁹ See Keyes Decl. ¶ 53.

¹⁷⁰ As of the date hereof, 84% of FLTO Term Loan Claims have executed the Restructuring Support Agreement, or joinders thereto.

¹⁷¹ See Intercompany Credit Agreement, § 2.3 [Docket No. 33, Ex. D].

¹⁷² See Keyes Dec. ¶ 35.

notwithstanding the recovery of General Unsecured Claims through Class 7B, the Bankruptcy Code explicitly contemplates and permits a convenience claims class.¹⁷³

104. With respect to Class 8 (Intercompany Claims) and Class 9 (Intercompany Interests), the relevant Claims and Interests may be Unimpaired. These Intercompany Claims and Intercompany Interests, which exist to support the Debtors' corporate structure, may be Reinstated because Reinstatement of Intercompany Claims and Intercompany Interests advances an efficient reorganization by avoiding the need to unwind and recreate the corporate structure and relationships of the Post-Effective Date Debtors.¹⁷⁴ This Reinstatement does not affect the economic substance of the Plan for the Debtors' stakeholders.¹⁷⁵

105. With respect to Class 10 (Section 510(b) Claims), the Debtors do not believe any Section 510(b) Claims exist.¹⁷⁶ Out of an abundance of caution, the Debtors formed Class 10 to include Holders of Claims that may be subordinated pursuant to section 510(b) of the Bankruptcy Code.¹⁷⁷

106. With respect to Class 11 (Equity Interests), the Debtors formed Class 11 to include Holders of Equity Interests.¹⁷⁸ Equity Interests are classified separately from Intercompany Interests because, in part, they reflect the economic entitlements of the shareholders that own the Equity Interests in the Debtors' enterprise. Holders of Equity Interests in Class 11 are not receiving

¹⁷³ See 11 U.S.C. § 1122(b) ("A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.").

¹⁷⁴ See Keyes Decl. ¶ 53.

¹⁷⁵ See Keyes Decl. ¶ 53.

¹⁷⁶ See Keyes Decl. ¶ 53.

¹⁷⁷ See Keyes Decl. ¶ 53.

¹⁷⁸ See Keyes Decl. ¶ 53.

or retaining any property pursuant to the Plan, and there are no Classes which are junior to Class 11.¹⁷⁹

107. For the reasons set forth above, the Plan does not discriminate unfairly in contravention of section 1129(b)(1) of the Bankruptcy Code, and no party has asserted otherwise.

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

108. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. Section 1129(c), prohibiting confirmation of multiple plans, is not implicated because there is only one proposed plan of reorganization.¹⁸⁰

109. Section 1129(d) of the Bankruptcy Code provides that “on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.”¹⁸¹ The principal purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act.¹⁸² The Debtors filed the Plan to accomplish their objective of maximizing value for all of their stakeholders.¹⁸³ Moreover, no governmental unit or any other party has asserted otherwise. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

¹⁷⁹ See Keyes Decl. ¶ 53.

¹⁸⁰ See 11 U.S.C. § 1129(c).

¹⁸¹ 11 U.S.C. § 1129(d).

¹⁸² See Keyes Decl. ¶ 50.

¹⁸³ See *id.*

110. Lastly, section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases is a "small business case."¹⁸⁴ Thus, the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements.

Q. The Plan Appropriately Incorporates Settlements of Claims and Interests.

111. The Bankruptcy Code states that a plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."¹⁸⁵ The Plan provides for a general settlement of all Claims, Intercompany Interests, and Equity Interests to the extent provided for by the Bankruptcy Code.

112. The standards for approval of a settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019.¹⁸⁶ Generally, courts in the Third Circuit will approve a settlement by the debtors if the settlement "exceed[s] the lowest point in the range of reasonableness."¹⁸⁷ The Third Circuit has provided the following four criteria that a bankruptcy court should consider when approving a settlement pursuant to Bankruptcy Rule 9019: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of creditors.¹⁸⁸ In addition, the court must

¹⁸⁴ See 11 U.S.C. § 1129(e). A "small business debtor" cannot be a member "of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$2,725,625[] (excluding debt owed to 1 or more affiliates or insiders)." 11 U.S.C. § 101(51D)(B).

¹⁸⁵ 11 U.S.C. § 1123(b)(3)(A).

¹⁸⁶ See *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. 330, 380 (Bankr. D.N.J. 2020) ("The standards for approving a settlement are the same under both Bankruptcy Rule 9019 and section 1123(b)(3).").

¹⁸⁷ *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 136 (Bankr. D.N.J. 2010) (citation omitted); *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) ("Settlements are favored, but the unique nature of the bankruptcy process means that judges must carefully examine settlements before approving them.").

¹⁸⁸ See *In re WebSci Technologies, Inc.*, 234 Fed. Appx. 26, 29 (3d Cir. 2007) (quoting *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996)).

determine whether the proposed settlement is fair and equitable, and in the best interests of the estate.¹⁸⁹

113. The settlements embodied in the Plan satisfies the above factors. The Plan and Confirmation Order embody settlements of Claims, Intercompany Interests, and Equity Interests between the Debtors and certain other parties in interest, including the Debtors, the Committee, the Ad Hoc Group, the Consenting Sponsors, the Non-Participating Holders, and the Equipment Financing Lenders and are fair and equitable and consistent with the Bankruptcy Code. The Plan and Confirmation Order resolve a host of alleged Claims, Intercompany Interests, and Equity Interests, which were thoroughly analyzed by the Debtors and the Special Committee and separately investigated by the Committee.

114. With respect to the Committee Settlement and the Reception Purchaser Settlement, the Debtors worked collaboratively with the Committee and the Reception Purchaser Settlement Parties, as applicable, to maximize recoveries for the Debtors' stakeholders, including the unsecured creditors, and ensure timely, cost-effective Confirmation and emergence from these chapter 11 cases.¹⁹⁰ The Committee Settlement and the Reception Purchaser Settlement are the product of rigorous and productive negotiations among the Debtors and their stakeholders and resolve all disputes between the Debtors, the Committee, and the Reception Purchaser Settlement Parties, as applicable, relating to these chapter 11 cases.¹⁹¹ The terms of the Committee Settlement and the Reception Purchaser Settlement benefit all stakeholders and parties in interest.¹⁹² Further, the Committee Settlement and the Reception Purchaser Settlement provide consensus and finality

¹⁸⁹ See *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“Under the ‘fair and equitable’ standard, we look to the fairness of the settlement to other persons, *i.e.*, the parties who did not settle.”).

¹⁹⁰ See Keyes Decl. ¶ 75.

¹⁹¹ See *id.*

¹⁹² See *id.*

between significant economic stakeholders in these chapter 11 cases and avoid costly and protracted litigation, the cost of which would significantly diminish returns to all stakeholders.¹⁹³ With respect to the Reception Purchaser Settlement in particular, if the Debtors were forced to litigate the issues necessary to resolve the Claims related to the Reception Purchaser Settlement, including through the Adversary Proceeding, such litigation would be costly, protracted, inherently uncertain, and would leave the Debtors and all stakeholders in a substantially worse-off position.¹⁹⁴

115. Additionally, Article IV.B of the Plan provides for a release in connection with the Reception Purchaser Settlement (the “Reception Purchaser Release”). The Reception Purchaser Release was negotiated in connection with the broader settlement and is an indispensable component to achieve final resolution of potential disputes that would otherwise negatively affect these chapter 11 cases and the available recoveries under the Plan.¹⁹⁵ The Reception Purchaser Release is also similar in scope to the Debtor Release and/or customary releases provided in similar out-of-court contexts and should be approved for the reasons set forth below regarding the Debtor Release, as applicable.¹⁹⁶

116. The Debtors and their advisors have worked diligently to ensure the Debtors’ creditors are receiving the greatest value possible on their Claims through the Plan. As reflected by the overwhelming support of creditors for the Plan, this settlement is in the best interests of creditors and all parties in interest. Accordingly, the Plan’s discretionary general settlement provisions satisfy the requirements of section 1123 of the Bankruptcy Code and no party is asserting otherwise.

¹⁹³ *See id.*

¹⁹⁴ *See id.*

¹⁹⁵ *See id.* ¶ 76.

¹⁹⁶ *See id.*

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

117. The Plan includes certain Debtor and third-party releases, an exculpation provision, and an injunction provision. These discretionary provisions are proper because, among other things, they are the product of extensive good-faith, arm's-length negotiations, comply with the Bankruptcy Code and prevailing Third Circuit law, were a material inducement for parties to enter into the Restructuring Support Agreement, are supported by the Debtors and their key stakeholders, and are consistent with applicable precedent.¹⁹⁷ Further, these provisions were fully and conspicuously disclosed to all parties in interest through the Ballots and the Notice of Non-Voting Status, which excerpted the full text of the releases, exculpation, and injunction provision as set forth in the Plan.¹⁹⁸

118. The settlement embodied in the Plan contemplates, among other things, the materiality of the releases, exculpations, and injunction provisions with respect to the parties' support of the Plan, the value of potential litigation claims, and the expenses of litigating such claims. Thus, and as set forth more fully below, the releases, exculpations, and injunction provisions, are reasonable under the circumstances, appropriate, and in the best interests of the Debtors, their Estates, and all of the Debtors' stakeholders.

1. The Third-Party Release Is Wholly Consensual and Is Appropriate.

119. The Plan provides for the Releasing Parties' release of the Released Parties to the extent set forth in the Plan (the "Third-Party Release").¹⁹⁹ Courts in the Third Circuit routinely

¹⁹⁷ See Keyes Decl. ¶¶ 64–74.

¹⁹⁸ See *id.*

¹⁹⁹ See Plan, Art. VIII.D.

approve such release provisions if, as here, they are consensual and appropriately tailored.²⁰⁰ The determination as to whether a third-party release is consensual depends on the particular circumstances at issue in a particular case.²⁰¹ Affirmative consent to a third-party release is not required for such release to be “consensual.”²⁰² Rather, a third-party release is consensual against non-debtor parties where the releasing parties have the opportunity to opt out of the release but fail to do so.²⁰³ Courts recognize that “shareholders and creditors have an obligation to read their mail.”²⁰⁴

120. Here, all parties in interest had ample opportunity to evaluate and opt out of the Third-Party Release. For example, stakeholders in the Voting Classes had notice and opportunity to “opt out” of the Third-Party Release by checking the appropriate box on the Ballots, and an overwhelming percentage of stakeholders voted in favor of the Plan. As described above, the Claims and Noticing Agent served the Solicitation Packages as instructed,²⁰⁵ the Publication

²⁰⁰ See, e.g., *In re Indianapolis Downs*, 486 B.R. 286, 304–05 (Bankr. D. Del. 2013) (approving third-party release that applied to unimpaired holders of claims deemed to accept the plan as consensual); *U.S. Bank Nat’l Ass’n v. Wilmington Trust Co. (In re Spansion, Inc.)*, 426 B.R. 114, 144 (Bankr. D. Del. 2010) (same); *In re Wash. Mut.*, 442 B.R. 314, 352 (Bankr. D. Del. 2011) (observing that consensual third-party releases are permissible); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 105, 111 (Bankr. D. Del. 1999) (approving non-debtor releases for creditors that voted in favor of the plan); *In re Mallinckrodt PLC*, 639 B.R. 837, 877 (Bankr. D. Del. 2022) (approving third-party release that applied to shareholders deemed to reject the plan and unsecured creditors who were unimpaired or who did not return a ballot with the opt out box checked or otherwise submit an opt out form as consensual).

²⁰¹ See *In re Indianapolis Downs*, 486 B.R. at 305.

²⁰² See *id.*; *U.S. Bank*, 426 B.R. at 144.

²⁰³ See *In re Indianapolis Downs*, 486 B.R. at 305–06; *U.S. Bank*, 426 B.R. at 144.

²⁰⁴ *In re Mallinckrodt*, 639 B.R. at 880 (quoting *In re EV Energy Partners*, No. 18-10814, Hr’g Tr. at 214 (Bankr. D. Del. May 16, 2018) (“[S]hareholders and creditors have to read legal notices; that’s just the way it is. And if you don’t know that, then you’re proceeding at your own risk when you invest in stocks and credit and bonds.”)); see also *In re Arsenal Intermediate Holdings, LLC*, No. 23-10097 (CTG), 2023 WL 2655592, at *7 (Bankr. D. Del. Mar. 27, 2023) (“[T]he creditor who throws away the plan unopened is barred from arguing that the third-party release failed to meet the *Continental* standard.”).

²⁰⁵ See *Affidavit of Solicitation* [Docket No. 714].

Notice was published in *The New York Times* and the *Columbus Times*,²⁰⁶ and the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines* was posted to the website maintained by the Claims and Noticing Agent in these chapter 11 cases.

121. Furthermore, all voting stakeholders have certified that they read and understood the election they were making in the Ballot.²⁰⁷ All non-voting stakeholders were given the opportunity to opt out of the Third-Party Release and received notice and instructions for doing so in their applicable Notice of Non-Voting Status. Such stakeholders could opt out by checking the appropriate box on the Notice of Non-Voting Status or objecting on or before the Voting and Opt-Out Deadline. Thus far, 38 parties have exercised their right to opt out of the Third-Party Release

122. For these reasons, and as courts in New Jersey, the Third Circuit, and across the country have held,²⁰⁸ the Third-Party Release is consensual as to all creditors and interest holders who did not opt out or object, including those deemed to reject the Plan.

2. The Debtor Release Is Appropriate.

123. Article VIII.C of the Plan also provides for releases by the Debtors, their Estates, and the Post-Effective Date Debtors of claims and Causes of Action against each Released Party (the “Debtor Release”). The Debtors filed, concurrently with this Memorandum, the Keyes

²⁰⁶ See Publication Affidavits [Docket Nos. 710 and 711].

²⁰⁷ See Voting Report, Ex. C.

²⁰⁸ See, e.g., *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. Oct. 22, 2020) (confirming a plan stating that all holders of claims or interests (whether or not they were entitled to vote), were deemed to consent to the releases unless they affirmatively opted out or objected to the releases); *In re SiO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. July 19, 2023) (same); *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 8, 2023) (same); *In re Carestream Health, Inc.*, No. 23-10778 (JKS) (Bankr. D. Del. Sept. 28, 2022) (same); *In re Mallinckrodt PLC*, No. 20-12522 (JTD) (Bankr. D. Del. Mar. 2, 2022) (same); *In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Dec. 4, 2021) (same); *In re Alex & Ani, LLC*, No. 21-10918 (CTG) (Bankr. D. Del. Sept. 9, 2021) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Dec. 23, 2020) (same); *In re Ctr. For Autism & Related Disorders, LLC*, No. 23-90709 (DRJ) (Bankr. S.D. Tex. July 28, 2023) (same); *In re Cineworld Group PLC*, No. 22-90168 (MI) (Bankr. S.D. Tex. June 28, 2023) (same).

Declaration and the Barse Declaration, each of which support the need for the Debtor Release.²⁰⁹

The Debtor Release is a vital component of the Plan, a sound exercise of the Debtors' business judgment, and it should be approved.

124. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."²¹⁰ A debtor may release claims under section 1123(b)(3)(A) "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."²¹¹

125. Courts in this jurisdiction and elsewhere generally analyze five factors when determining the propriety of a debtor release, commonly known as the *Zenith* or *Master Mortgage* factors.²¹² The analysis includes an inquiry into whether there is: (1) identity of interest between the debtor and non-debtor; (2) contribution to the plan by the non-debtor; (3) the necessity of the

²⁰⁹ See Barse Decl. ¶ 21; Keyes Decl. ¶¶ 57–63.

²¹⁰ See *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. 330, 380 (Bankr. D.N.J. 2020) ("The standards for approving a settlement are the same under both Bankruptcy Rule 9019 and section 1123(b)(3)."). Generally, courts in the Third Circuit will approve a settlement by the debtors if the settlement "exceed[s] the lowest point in the range of reasonableness." *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 136 (Bankr. D.N.J. 2010) (citation omitted); *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) ("Settlements are favored, but the unique nature of the bankruptcy process means that judges must carefully examine settlements before approving them."). Additionally, the Third Circuit has held that, to approve a settlement pursuant to Rule 9019, the court must balance: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *In re WebSci Technologies, Inc.*, 234 Fed. Appx. 26, 29 (3d Cir. 2007) (quoting *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996)). In addition, the court must determine whether the proposed settlement is fair and equitable, and in the best interests of the estate. See, e.g., *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); see also *Nutraquest, Inc.*, 434 F.3d at 644 ("Under the 'fair and equitable' standard, we look to the fairness of the settlement to other persons, i.e., the parties who did not settle.").

²¹¹ *U.S. Bank*, 426 B.R. at 143; see also *In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether the compromise is fair, reasonable, and in the best interest of the estate.") (internal citations omitted).

²¹² See *In re Indianapolis Down*, 486 B.R. at 303 (citing *In re Zenith Elecs. Corp.*, 241 B.R. 92, 105 (Bankr. D. Del. 1999)); *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). The *Master Mortgage* factors have been adopted by the Third Circuit, including application by the Bankruptcy Court of the District of New Jersey as "neither exclusive nor conjunctive requirements, but . . . guidance in the Court's determination of fairness." See *In re 710 Long Ridge Rd. Operating Co., II, LLC*, No. 13-13653 (DHS), 2014 WL 886433, at *14 (Bankr. D.N.J. Mar. 5, 2014) (citing *In re Wash. Mut.*, 442 B.R. at 346).

release to the plan; (4) overwhelming acceptance of the plan and release by creditors and interest holders; and (5) payment of all or substantially all of the claims of the creditors and interest holders.²¹³ These factors are “neither exclusive nor conjunctive requirements” but rather serve as guidance to courts in determining fairness of a debtor’s releases.²¹⁴ The Debtor Release easily meets the applicable standard and should be approved.

126. **First**, an identity of interest exists between the Debtors and the parties to be released. Each of the Released Parties, as a stakeholder and critical participant in the Plan process, shares a common goal with the Debtors in seeing the Plan succeed and would have been highly unlikely to participate in the negotiations and compromises that led to the ultimate formation of the Plan (or to participate in the ultimate implementation of it) without the Debtor Release. Moreover, with respect to certain of the releases—*e.g.*, those releasing certain of the Debtors’ current and former directors and officers—there is a clear identity of interest supporting the releases because the Debtors will assume certain Indemnification Obligations under the Plan that will be honored by the Post-Effective Date Debtors.²¹⁵ The Debtor Release provides finality to those parties who were critical to negotiating and carrying out the Restructuring Transactions. It also underpins the settlement and compromise of issues achieved by the Plan, maximizes value for creditors, and actually permits the Estates to consummate the Plan. Moreover, any party that provides a release (*i.e.* is a “Releasing Party”) also receives a release (*i.e.*, is a “Released Party”).

127. **Second**, the substantial contributions are clear. As courts in this jurisdiction have recognized, a wide variety of acts may illustrate a substantial contribution to a debtor’s

²¹³ See *In re Wash. Mut.*, 442 B.R. at 346 (citing *In re Zenith Elecs. Corp.*, 241 B.R. at 110; *In re Master Mortg.*, 168 B.R. at 937).

²¹⁴ *Id.* at 346 (citing *In re Master Mortg.*, 168 B.R. at 935).

²¹⁵ See *In re Indianapolis Downs*, 486 B.R. at 303 (“An identity of interest exists when, among other things, the debtor has a duty to indemnify the nondebtor receiving the release.”).

reorganization.²¹⁶ For example, without the Debtor Release, it is highly unlikely that the DIP Lenders would have been willing to provide the DIP Facility, who will have injected \$150 million of new money to fund the Debtors' operations during these chapter 11 cases and on a post-Effective Date basis upon conversion of the DIP Facility into the Takeback Term Loans.²¹⁷ Additionally, the Consenting Sponsors and the Debtors' directors, officers, professionals, and other agents have been instrumental in negotiating, formulating, and implementing both the Restructuring Support Agreement and the restructuring transactions contemplated by the Plan.²¹⁸ In the absence of these parties' contributions, for which the Debtor Release was a material inducement, the Debtors would not have the substantial support of voting creditors, and the transactions contemplated by the Plan would not be possible. The Debtor Release, therefore, is essential to the Debtors' restructuring.

²¹⁶ See, e.g., *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (finding non-debtor parties had substantially contributed where (a) officers and directors made substantial contributions by designing and implementing the operational restructuring and negotiating the financial restructuring, (b) plan sponsor funded the plan and agreed to compromise its claim, and (c) a committee negotiated the plan and assisted in the solicitation of its constituents); *In re Tribune Co.*, 464 B.R. 126, 189 (Bankr. D. Del. 2011) (finding non-debtor party had substantially contributed where non-debtor parties entered into a settlement where non-debtor parties agreed to reduce their claim); *In re Long Ridge Road*, 2014 WL 886433, at *14 (finding that the non-debtor party had substantially contributed by providing financial support, without which the plan would not be feasible).

²¹⁷ See *In re Midway Gold US, Inc.*, 575 B.R. 475, 510 (Bankr. D. Colo. 2017) (finding that without the contributions of the third parties being granted releases by the debtors, which include the provision of financing for the chapter 11 cases and consent to the use of their cash collateral by the debtors, the chapter 11 cases would not likely have reached confirmation); *In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *10 (Bankr. D. Del. Apr. 29, 2010) (“[T]he releases are an integral part of the agreement with the [non-debtor parties] to finance the chapter 11 cases and to fund the [p]lan.”).

²¹⁸ See *Su v. Offshore Grp. Inv. Ltd. (In re Vantage Drilling Int'l)*, 603 B.R. 538, 548 n.5 (D. Del. 2019) (“[A] person receiving a release generally must have provided something of value in return, such as by . . . facilitating the debtor’s reorganization.”); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (finding non-debtor parties had substantially contributed where (a) officers and directors made substantial contributions by designing and implementing the operational restructuring and negotiating the financial restructuring and (b) plan sponsor funded the plan and agreed to compromise its claim); *In re Hercules Offshore, Inc.*, 565 B.R. 732, 757–58 (Bankr. D. Del. 2016) (holding that a release of the debtors’ officers, directors, and professionals was appropriate where the record reflected an “intensive and thoughtful effort by management and the special committee,” with the advice and assistance of its hired professionals, “to respond to the market challenges” and who “chose the option that they believed would conserve the value of the [e]states and maximize recovery for all stakeholders, including equity holders”).

128. **Third**, the Debtor Release is essential to the success of the Debtors' Plan. The Debtor Release was a material inducement for the Consenting Stakeholders, each of which has been instrumental in negotiating, formulating and implementing the Restructuring Transactions contemplated by the Plan, to support the Debtors' restructuring, as set forth in the Restructuring Support Agreement, and the Debtors likely would not have been able to build the level of consensus with respect to the Plan without the Debtor Release.²¹⁹ As described above, each Released Party contributed substantial value to these chapter 11 cases and did so with the understanding that they would receive releases from the Debtors subject to the Special Committee's Investigation. In the absence of the Released Parties' support, the Debtors would not be in a position to confirm the Plan, implement the Plan, and maximize value for creditors. The Debtor Release, therefore, is essential to the Debtors' Restructuring Transactions.

129. **Fourth**, as evidenced by the Voting Report and discussed herein, the Debtors' stakeholders overwhelmingly support the Plan. Holders of Claims in all of the Voting Classes voted to accept the plan. Approximately 100 percent of Holders of FLFO RCF Claims who voted and approximately 100 percent in amount of FLFO RCF Claims who voted accepted the Plan. Approximately 100 percent of Holders of FLFO Term Loan Claims who voted and approximately 100 percent in amount of FLFO Term Loan Claims who voted accepted the Plan. Approximately 100 percent of Holders of Reception Purchaser First Lien Claims who voted and approximately 100 percent in amount of Reception Purchaser First Lien Claims who voted accepted the Plan. Approximately 100 percent of Holders of FLSO Term Loan Claims who voted and approximately 100 percent in amount of FLSO Term Loan Claims who voted accepted the Plan. Approximately 98 percent of Holders of Convenience Claims who voted and approximately 99.99 percent in

²¹⁹ See Keyes Decl. ¶ 60.

amount of Convenience Claims who voted accepted the Plan.²²⁰ Given the critical nature of the Debtor Release, this overwhelming degree of consensus evidences the Debtors' stakeholders' support of the Debtor Release and Plan.

130. *Fifth*, the Plan provides for meaningful recoveries for creditors in exchange for, among other things, the Debtors giving up potential claims that the Debtors do not believe are of meaningful value. As demonstrated by the Liquidation Analysis, the ranges of recoveries for Holders of Claims, Intercompany Interests, and Equity Interests are materially higher under the Plan than they would have been in a chapter 7 liquidation scenario.²²¹ The Plan has been carefully crafted to maximize value and provides meaningful recoveries for all stakeholders under the circumstances.

131. *Sixth*, the Debtors, through the Special Committee, conducted an independent investigation with respect to the merits and value of any potential claims and causes of action belonging to the estate (the "Investigation").²²² In furtherance of the Investigation, the Special Committee, with the assistance of its advisors, undertook substantial factual discovery and legal analysis, including, among other things: (a) requesting and reviewing more than 116,396 documents and communications produced by the Debtors, Antares, the Ad Hoc Group, and the Consenting Sponsors, including corporate organizational documents, financial statements, budget forecasts, email correspondence, transaction and debt documents, historical board and special committee minutes and materials, advisor and lender presentations, and director and officer liability insurance policies; and (b) conducting interviews of multiple pertinent individuals.²²³

²²⁰ See Voting Report, Ex. A.

²²¹ See Keyes Decl. at ¶ 35–36.

²²² See Barse Decl. ¶ 5.

²²³ See Barse Decl. ¶ 14.

132. The Committee also conducted its own parallel investigation of potential claims and Causes of Action held by the Debtors' Estates and engaged in formal discovery with the Debtors and the Special Committee. The Special Committee concluded that the Debtors do not possess viable estate claims of significant net value—after considering the merits, defenses, litigation risk, cost, delay and collectability—that should be excluded from the Release Provisions in order to be pursued separately rather than compromised under the Plan, and that the release provisions in the Plan, including the Debtor Release, represent a fair and reasonable exercise of the Debtors' business judgment and are in the best interests of the Debtors and their estates and stakeholders.²²⁴ No objector presents any argument to the contrary. Moreover, the fact that the Committee spent significant time and resources conducting its own investigation into potential estate claims and also fully supports the Plan and the release provisions further demonstrates that the Debtor Release is proper and appropriate.

133. For the reasons set forth above, and as supported by the Barse Declaration, Keyes Declaration, and the Voting Report, the *Zenith* factors support approval of the Debtor Release. The Debtors have easily satisfied the business judgment standard in granting the Debtor Release under the Plan. The Debtor Release is fair, reasonable, overwhelmingly supported by creditors, and in the best interests of the Debtors' Estates. For these reasons, the Debtors' agreement to provide the Debtor Release is in the best interests of creditors and all stakeholders and is an integral part of the Plan. The Debtor Release should be approved.

3. The Exculpation Provision Is Appropriate.

134. Article VIII.E of the Plan provides that each Exculpated Party shall be released and exculpated from any causes of action arising out of acts or omissions in connection with these

²²⁴ See Barse Decl. ¶ 21.

chapter 11 cases and certain related transactions, except for acts or omissions that are found to have been the product of actual fraud, willful misconduct, or gross negligence (the “Exculpation”). The Exculpation is intended to prevent collateral attacks against Estate fiduciaries that have acted in good faith to help facilitate the Debtors’ restructuring. The Exculpation is an integral part of the Plan and otherwise satisfies the governing standards in the Third Circuit. This provision provides necessary and customary protections to Estate fiduciaries whose efforts were and continue to be vital to implementing the Plan.

135. Courts evaluate the appropriateness of exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations.²²⁵ Exculpation provisions that are limited to claims not involving a criminal act, actual fraud, willful misconduct, or gross negligence, are customary and generally approved in this district under appropriate circumstances.²²⁶ Unlike third-party releases, exculpation provisions do not affect the liability of third parties *per se* but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an “Exculpated Party” for acts arising out of the

²²⁵ See *In re Congoleum Corp.*, 362 B.R. 167, 195–97 (Bankr. D.N.J. 2007) (evaluating the appropriateness of the plan’s exculpation provisions based on whether the parties played a significant role in the negotiations that led to the plan and whether the exculpation is necessary to the plan).

²²⁶ See *In re Wash. Mut., Inc.*, 442 B.R. 314, 350–51 (Bankr. D. Del. 2011) (holding that an exculpation clause that encompassed “the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the [c]ommittees and their members, and the [d]ebtors’ directors and officers” was appropriate); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (confirming plan where exculpation provision covered the debtors and wind down debtors, the creditors’ committee, and related parties, including current and former control persons and professionals); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023) (same).

Debtors' restructuring.²²⁷ Exculpation for parties participating in the Plan process is appropriate where Plan negotiations could not have occurred without protection from liability.²²⁸

136. The Exculpated Parties have participated in good faith in formulating and negotiating the Plan as it relates to the Debtors, and they should be entitled to protection from exposure to any lawsuits related to this chapter 11 process filed by unsatisfied parties.²²⁹ Moreover, the Exculpation and the liability standard it sets represent a conclusion of law that flows logically from certain findings of fact that the Court must reach in confirming the Plan as it relates to the Debtors. As discussed above, this Court must find, under section 1129(a)(2), that the Debtors have complied with the applicable provisions of the Bankruptcy Code. Additionally, this 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. These findings apply to the Debtors and, by extension, to the Debtors' officers, directors, employees, and professionals. Further, these findings imply that the Plan was negotiated at arm's-length and in good faith.

137. Here, the Debtors and their officers, directors, and professionals actively negotiated the Plan with the Committee, the Ad Hoc Group, the Consenting Sponsors, the Non-Participating Holders, the Equipment Financing Lenders, and others.²³⁰ Such negotiations were extensive, and the resulting Committee Settlement and Reception Purchaser Settlement, embodied in the Plan,

²²⁷ See *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (finding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code"); see also *In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *10 (Bankr. D. Del. Apr. 29, 2010) (approving a similar exculpation provision as that provided for under the Plan); *In re Spansion, Inc.*, No. 09-10690 (KJC), 2010 WL 2905001, at *16 (Bankr. D. Del. 2010) (same).

²²⁸ *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019) ("I believe that an appropriate exculpation provision should say that it bars claims against the exculpated parties based on the negotiation, execution, and implementation of agreements and transactions that were approved by the Court.").

²²⁹ See Keyes Decl. ¶ 70–72.

²³⁰ See *id.*

will maximize value for all stakeholders, and enable the Debtors to emerge swiftly from chapter 11 while giving finality to all stakeholders. Furthermore, the Exculpation is limited to acts during these chapter 11 cases and does not extend beyond such time period. Accordingly, the Court's findings of good faith vis-à-vis the Debtors' chapter 11 cases should also extend to the Exculpated Parties.

138. Under the circumstances, it is appropriate for the Court to approve the Exculpation and find that the Exculpated Parties have acted in good faith and in compliance with the law.²³¹

4. The Injunction Provision is Appropriate.

139. 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 Persons and Entities from commencing or pursuing any Cause of Action against the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties that relates to or is reasonably likely to relate to any act or omission in connection with, or arising out of a Claim or Cause of Action discharged, released, exculpated, or settled under the Plan. Thus, the Injunction Provision is a necessary part of the Plan precisely because it enforces the discharge, release, and exculpation provisions that are centrally important to the Plan.²³² Further, the injunction provided for in the Plan is narrowly tailored to achieve its purpose.

140. The Debtors submit that the discretionary provisions of the Plan are consistent with and permissible under section 1123(b) of the Bankruptcy Code. In light of the foregoing, because the Plan fully complies with sections 1122 and 1123 of the Bankruptcy Code, the Debtors submit

²³¹ See *In re PWS Holding Corp.*, 228 F.3d at 246–47 (approving plan exculpation provision exception for willful misconduct and gross negligence); *In re Indianapolis Downs*, 486 B.R. at 306 (same).

²³² See *SEC v. Drexel Burnham Lambert Grp. (In re Drexel Burnham Lambert Grp.)*, 960 F.2d 285, 293 (2d Cir. 1992) (holding that a court may approve an injunction provision where such provision "plays an important part in the debtor's reorganization plan").

that the Plan fully complies with and satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

S. Modifications to the Plan Do Not Require Resolicitation.

141. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code.²³³ Further, when the proponent of a plan files the plan with modifications with the court, the plan as modified becomes the plan. Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who have previously accepted the plan if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or the interest of any equity security holder. Interpreting Bankruptcy Rule 3019, courts have held that a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated.²³⁴ Bankruptcy Rule 3019 allows a creditor that is negatively impacted by a change to accept the change in writing.

142. The Debtors made certain modifications reflected in the amended Plan (the “Modifications”). The Modifications are: (a) immaterial or technical clarifications; (b) material but implemented with the consent of the applicable Holders of Claims; or (c) modifications that resolve informal comments or objections to the Plan. In particular, the Debtors modified the Plan to incorporate the terms of the Reception Purchaser Settlement, which,

²³³ See 11 U.S.C. § 1127(a).

²³⁴ See, e.g., *In re Am. Solar King Corp.*, 90 B.R. 808, 823 (Bankr. W.D. Tex. 1988); see also *In re Gen. Wireless Operations Inc.*, 2017 WL 5461361, at *4 (Bankr. D. Del. Oct. 26, 2017) (finding that additional disclosure was not required where modifications did not “materially and adversely change the treatment of any [c]laims or [i]nterests”); *In re Nat’l Truck Funding LLC*, 588 B.R. 175, 178 (Bankr. S.D. Miss. 2018) (“The disclosure requirements under § 1125 apply to a modified plan only if the modification is material.”).

among other things, altered the recovery for the Non-Participating Holders with their consent. The Debtors also modified the Plan to reflect the pursuit of the Recapitalization Transaction following the conclusion of the Marketing Process, which was also contemplated by the Plan prior to solicitation. Importantly, all Holders of Claims in Voting Classes are receiving the same or better recovery as contemplated under the solicitation version of the Plan [Docket No. 617] unless they have voluntarily elected otherwise. Thus, the Modifications comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Accordingly, no additional solicitation or disclosure is required on account of the Modifications, and such Modifications should be deemed accepted by all creditors that previously accepted the Plan.

III. The Remaining Objections Should Be Overruled.

143. The Debtors received five (5) formal Objections and other informal objections to, and comments related to, final approval of the Disclosure Statement and Confirmation of the Plan. As of the filing of this Memorandum, the Debtors have resolved the Landlord Objection and nearly all of the informal objections and comments, and continue to work diligently with all objecting parties to resolve their remaining Objections before the Confirmation Hearing. As discussed below, each of the remaining Objections, to the extent such Objection remain outstanding, should be overruled and the Disclosure Statement should be finally approved and the Plan should be confirmed.

A. The U.S. Trustee Objection Should be Overruled.

144. The Debtors worked diligently with the U.S. Trustee to narrow the U.S. Trustee's issues prior to Confirmation and only a few issues remain. The U.S. Trustee Objection asserts that (a) the Third-Party Release set forth in Article VIII.D of the Plan is impermissible and nonconsensual with respect to proposed Releasing Parties that (i) are not entitled to vote on the Plan or vote to reject Plan and (ii) have not opted out of the Third-Party Release; (b) the Injunction

Provision is overbroad and impermissible; and (c) the Gatekeeping Provision is improper.²³⁵ Contrary to the U.S. Trustee Objection, extensive case law in this district—unchanged by the Supreme Court’s ruling in *Purdue*—is clear that third-party releases with an opt-out mechanism similar to the one contemplated in the Plan and related documents are appropriate and consensual and the Injunction Provisions and Gatekeeping Provisions represent valid exercise of the bankruptcy court’s power to enforce the release and injunction provided by the Plan. For the reasons set forth below, the U.S. Trustee Objection should be overruled.

1. The Third Party Release is Appropriate and Consensual and Should Be Approved.

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

145. By requiring parties in interest to affirmatively indicate their consent to the Third-Party Release,²³⁶ the U.S. Trustee is seeking to impose a requirement for third-party releases that is not required by the Supreme Court’s decision in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). Claiming that the opt-out mechanism is not sufficient to indicate consent, the U.S. Trustee Objection restates pre-*Purdue* arguments that did not pass muster then and have been repeatedly overruled by courts in this district since. Nothing in *Purdue* holds that third-party releases with an opportunity to opt out are non-consensual or *per se* improper. Indeed, the Supreme Court was clear in its opinion that it does “not express a view on what qualifies as a consensual release” and that “[n]othing in the opinion should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan.”²³⁷

²³⁵ See U.S. Trustee Obj., ¶ 1–2.

²³⁶ See U.S. Trustee Obj. ¶ 29.

²³⁷ *Purdue Pharma*, 144 S. Ct. at 2074; see also U.S. Trustee Obj. ¶ 27.

146. To that end, in the time since *Purdue* was decided, courts in this district have repeatedly and consistently held that third-party releases with opt-out mechanisms similar to the one proposed by the Plan are consensual and appropriate, and the *Purdue* decision does not alter the consensual nature of third-party releases where a creditor is given—but chooses not to exercise—its right to object to or opt out of such releases.²³⁸ Indeed, in a string of post-*Purdue* decisions, courts in this district have declined to mandate opt-ins, held that adequate notice and an opportunity to object or otherwise opt out is sufficient to bind creditors to the terms of a third-party release, and confirmed plans containing similar opt-out third-party releases as proposed by the Debtors' Plan here.²³⁹

147. For example, in the past few months in *Multi-Color Corp.*, *Pretium Packaging L.L.C.* and *CCA Construction*, other bankruptcy judges in this District overruled similar objections from the U.S. Trustee and confirmed chapter 11 plans with a substantially similar opt-out third-party release.²⁴⁰ Likewise, in *New Rite Aid*, Judge Kaplan overruled the U.S. Trustee on the

²³⁸ See *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Nov. 4, 2025 Hr'g Tr. at 58:1–4 (Bankr. D.N.J. Nov. 4, 2025) (“Indeed, in the District of New Jersey our court—our courts have been rather uniform in recognizing opt out provisions as fundamentally fair and consistent with due process and applicable bankruptcy law.”).

²³⁹ See, e.g., *In re Multi-Color Corp.*, No. 26-10910 (MBK) (Bankr. D.N.J. Apr. 16, 2026); *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026); *In re CCA Construction, Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Feb. 11, 2026); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025); *In re Bowflex Inc.*, No. 24-12364 (ABA) (Bankr. D.N.J. Aug. 19, 2024); *In re Sam Ash Music Corp.*, No. 24-14727 (SLM) (Bankr. D.N.J. Aug. 15, 2024); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024).

²⁴⁰ See *In re Multi-Color Corp.*, No. 26-10910 (MBK) (Bankr. D.N.J. Apr. 16, 2026); see also *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG), Hr'g Tr. 14: 9–11 (Bankr. D.N.J. Feb. 23, 2026) (COURT: “... I find that the opt-out provision used here supports my finding that the planned third-party releases are consensual.”); see also Confirmation Order, Ex. A, Art. I.A.1.176 (defining “Releasing Parties”); *In re CCA Construction, Inc.*, No. 24-22548 (CMG), Hr'g Tr. 24:19–20 (Bankr. D.N.J. Feb. 11, 2026) (COURT: “... I’m 100 percent behind the opt-out releases here”); see also Confirmation Order, Ex. A, Art.I.A.1.46 (defining “Releasing Parties” to include “(ii) all holders of Claims or Interests that vote to accept the Plan, (iii) all holders of Claims or Interests that are entitled to vote on the Plan who either (a) abstain from voting or (b) vote to reject the Plan and, in each case, do not opt out of the third party releases provided for in Article 10.4(b) by not checking the box on the applicable ballot or form indicating that they elect to opt out of granting such releases in the Plan submitted on or before the Voting Deadline, (iv) all holders of Claims or Interests that are deemed to accept or deemed to reject the Plan and do not opt out of the third party releases provided for in Article 10.4(b) by not checking the box on the applicable form indicating that they elect to opt out of granting such releases in the Plan submitted on or before the Voting Deadline”).

same issue, emphasizing that “[t]o be clear, this Court’s [pre-*Purdue*] position has not changed and joins other courts in this district, the circuit and the 93 other districts which approve the use of informed opt out procedures to reflect consent, to propose consensual releases under the Chapter 11 plan.”²⁴¹ Similarly, in *Sam Ash Music*, yet another judge in this District held that *Purdue* does not change pre-existing practice regarding the appropriateness of third-party releases, stating that “we don’t have a Supreme Court decision that addresses this issue as to what is consent. I mean, you all are trying to bind me to *Purdue*, and I will be the first to say I am bound by the Supreme Court, except *Purdue* doesn’t bind me to the definition of consent because it’s not there.”²⁴²

148. In the face of these clear statements, the U.S. Trustee continues its policy of challenging all opt-out third-party releases as inappropriate, arguing that because silence generally does not indicate consent under state contract law, an opt-out mechanism does not indicate consent either under federal bankruptcy law.²⁴³

149. The U.S. Trustee is mistaken. As other courts in this district indicated, the power granted to Congress to enact uniform bankruptcy laws displaces state law where “state law interferes with uniformity or federal law directly governs the matter.”²⁴⁴ In *New Rite Aid*, the court explained that consent under federal bankruptcy law, including with respect to the third-party releases under plan, is one such matter that is not controlled by state contract law:

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

²⁴¹ *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr’g Tr. 57:21–25 (Bankr. D.N.J. Nov. 4, 2025).

²⁴² *In re Sam Ash*, No. 24-14727 (SLM), Hr’g Tr. 53:23–54:3 (Bankr. D.N.J. Aug. 15, 2024).

²⁴³ *See* U.S. Trustee Obj. ¶¶ 36-40.

²⁴⁴ *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr’g Tr. 58:12–14 (Bankr. D.N.J. Nov. 4, 2025).

effect of federal voting and solicitation process, and applying state law would defeat national uniformity. A Chapter 11 plan is a federal judgment, not a contract . . . *Courts have repeatedly emphasized that a Chapter 11 plan is a Federal Court order, not merely a private contract with state law consent requirements.* Courts evaluating releases [] apply federal bankruptcy standards, such as good faith, fairness, adequacy of notice and not necessarily state assent doctrines. *Bankruptcy laws routinely treat[] silence as consent.* Bankruptcy law often recognized deemed consent in various contexts . . . *Thus, federal law already treats notice and no objection as consent in appropriate situations. State contract law, which often requires affirmative consent, conflicts with this fundamental bankruptcy structure.* (emphasis added).²⁴⁵

And yet another court in this District agreed in *CCA Construction*: “as far as this goes, the voting, the plan confirmation, in the circumstance, it makes complete sense to me that federal law has to apply.”²⁴⁶ And again in *Pretium Packaging*: “The state law holdings that silence generally does not indicate consent doesn’t apply here, as far as I’m concerned anyway. It does not apply here. The bankruptcy code standards and requirements for plan confirmation constitute federal law, not state law.”²⁴⁷ Indeed, under the alternative, opt-in mechanism, creditors who ignore the plan process may “miss out” on the benefits provided under the plan, and “[t]he very constituency that the U.S. Trustee wishes to protect may fare worse in an opt in process, all in the name of providing them with an opportunity to bring lawsuits, which in reality [they] are highly unlikely to pursue.”²⁴⁸

²⁴⁵ *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr’g Tr. 58:15–59:19 (Bankr. D.N.J. Nov. 4, 2025) (emphasis added); see also *In re Extraction Oil and Gas*, No. 20-11548 (CSS) (Bankr. D. Del. 2020) (holding that “I don’t believe [the opt out mechanism] is necessarily a contractual point . . . as much as it is a point of notice under the Bankruptcy Code and the Bankruptcy Rules, because it’s the plan that serves as the mechanism to have the release take effect and, thus, *it’s really the rules, the Federal Rules of Bankruptcy Procedure that figure out whether someone has achieved proper notice and has, by not responding, given their implied consent.*” Importantly, the Supreme Court recently, in the context of whether someone is consenting to the Article III jurisdiction of an Article I court, specifically held that you could imply consent by failure to preserve the right to argue that I don’t have Article III powers. This is no different. This is a court who set up a mechanism to confirm a plan that contains releases and has provided a noticing mechanism under which, if it’s complied with, consent can be implied.”) (emphasis added).

²⁴⁶ *In re CCA Construction, Inc.*, No. 24-22548 (CMG), Hr’g Tr. 24:4–6 (Bankr. D.N.J. Feb 11, 2026).

²⁴⁷ *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG), Hr’g Tr. 14: 19–23 (Bankr. D.N.J. Feb. 23, 2026).

²⁴⁸ *In re New Rite Aid, LLC*, No. 25-14861 (MBK), Hr’g Tr. 60:8–13 (Bankr. D.N.J. Nov. 4, 2025). Courts recognize that shareholders and creditors have an obligation to read their mail. See *In re Mallinckrodt PLC*, 639 B.R. at 880 (quoting *In re EV Energy Partners*, No. 18-10814 (CSS), Hr’g Tr. at 214 (Bankr. D. Del. May 16, 2018)).

150. Accordingly, under this district’s pre- and post-*Purdue* case law, a third-party release is consensual with respect to non-debtor parties if the releasing parties have received appropriate notice of a plan’s release provisions and have had the opportunity to object or otherwise opt out of the release but fail to do so, whether by not returning the ballot or the opt-out form or not checking the opt-out box on the ballot, and no other form of affirmative consent is necessary.²⁴⁹

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

151. The Bankruptcy Code provides that a chapter 11 plan may include “any other appropriate provision not inconsistent with the applicable provisions of this title.”²⁵⁰ Courts in this jurisdiction regularly approve release provisions similar to the Third-Party Release if, as here, they are consensual and appropriately tailored.²⁵¹ The determination as to whether a third-party release is consensual depends on the particular circumstances at issue in a particular case.²⁵² The proposed Third-Party Release is appropriate under the facts and circumstances, is consistent with similar third-party releases previously approved by courts in this district, and should be approved.

152. The Third-Party Release is an integral and essential provision of the Plan, provides finality for the Released Parties regarding such parties’ respective obligations under the Plan, is in

(“[S]hareholders and creditors have to read legal notices; that’s just the way it is. And if you don’t know that, then you’re proceeding at your own risk when you invest in stocks and credit and bonds.”)); *see also In re Arsenal Inter. Holdings, LLC*, No. 23-10097 (CTG), 2023 WL 2655592, at *7 (Bankr. D. Del. Mar. 27, 2023) (“[T]he creditor who throws away the plan unopened is barred from arguing that the third-party release failed to meet the *Continental* standard.”).

²⁴⁹ *See, e.g., In re CCA Construction, Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Jan. 7, 2026) (confirming a chapter 11 plan with opt-out third-party releases); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025) (same); *In re Sam Ash Music Corp.*, No. 24-14727 (SLM) (Bankr. D.N.J. Aug. 15, 2024) (same); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (same); *In re Bowflex Inc.*, No. 24-12364 (ABA) (Bankr. D.N.J. Aug. 19, 2024) (same).

²⁵⁰ 11 U.S.C. § 1123(b)(6).

²⁵¹ *See supra*, note 200.

²⁵² *See In re Indianapolis Downs*, 486 B.R. at 305

exchange for good and valuable consideration (*i.e.*, the material concessions, benefits, and commitments) provided by the Released Parties, is in the best interests of the Debtors, the Estates, and all Holders of Claims, Intercompany Interests, and Equity Interests, is fair, equitable, and reasonable, and is given and made after due notice and opportunity to be heard. The Third-Party Release certainly does not provide blanket immunity but is tailored to claims or Causes of Actions related to the Debtors and their restructuring, capital initiatives, and related efforts.²⁵³

153. Generally, whether a third-party release is consensual depends on a fact-specific inquiry that takes into account the form of the notice sent, the process for sending such notice, whether the parties solicited were given a full and fair opportunity to respond, and the identity of the parties, including their relationship to the bankruptcy case.²⁵⁴ In particular, courts in this district have emphasized the importance of providing adequate, clear, and conspicuous notice to parties that may opt out of the third-party releases.²⁵⁵ Based on these factors, as discussed further below, the proposed Third-Party Release is appropriate and should be approved.

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

154. All creditors received clear and conspicuous notice of the Third-Party Release through Bankruptcy Court approved Ballots and Opt-Out Forms, Publication Notices, and the Confirmation Hearing Notice. As described above, commencing on April 17, 2026 the Claims

²⁵³ See Plan, Art. IX.D (providing that the Third-Party Release does not release “any Cause of Action related to any act or omission that is determined by a Final Order of a court of competent jurisdiction to have constituted actual fraud or willful misconduct”).

²⁵⁴ See *In re Tricida, Inc.*, No. 23-10024 (JTD), Hr’g Tr. 144:9–20 (Bankr. D. Del. May 19, 2023); see also *In re Indianapolis Downs*, 486 B.R. at 305.

²⁵⁵ See, e.g., *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK), Hr’g Tr. 38–40 (Bankr. D.N.J. Sept. 12, 2023) (“What is essential, though, is that the parties be given notice of that obligation. That is critical. And here there can be no question that there was adequate clear and conspicuous notice. The obligation to affirmatively opt out appears in the plan, in the disclosure statement, in the ballots. It should come as no surprise . . . Again, [the notices have] been conspicuous. They’ve been clear. There’s transparency and I don’t view it as burdensome in order to protect their interests. The ability to opt out and pursue claims exists. It takes the simple task of reading a document, either digitally or in paper, and exercising opt out.”).

and Noticing Agent served the Solicitation Packages as instructed to creditors in the Voting Classes and the Notice of Non-Voting Status and Opt-Out Form to creditors in the Non-Voting Classes.²⁵⁶ The Claims and Noticing Agent also served additional Ballots on April 28, 2026. In addition to the Notices of Non-Voting Status and Opt-Out Form, the Debtors caused the publication of the Publication Notice in *The New York Times (National Edition)* and *Columbus Dispatch*,²⁵⁷ and the Confirmation Hearing Notice was also posted on the Debtors' case website maintained by the Claims and Noticing Agent. The Claims and Noticing Agent also served the Confirmation Hearing Notice on the parties-in-interest listed on the Debtors' creditor matrix.²⁵⁸ The Ballots and the Opt-Out Forms contained the full text of the Third-Party Release and the related defined terms;²⁵⁹ the Ballots and the Opt-Out Form clearly and conspicuously informed creditors of the consequences of failing to opt out of or object to the Third-Party Releases;²⁶⁰ and the Publication Notice advised all stakeholders to "review and consider the Plan carefully because your rights might be affected thereunder" and informed them how they may obtain copies of the Plan, the Disclosure Statement, and other documents filed in these chapter 11 cases free of charge.²⁶¹ In addition, as in many cases in this district, each Ballot in these chapter 11 cases informed creditors that a vote in favor of a plan includes an agreement to be bound by the third-party releases contained therein.²⁶² Thus, all creditors and stakeholders had notice of the Third-Party Release and its terms.

²⁵⁶ See Voting Report ¶ 7.

²⁵⁷ See Publication Affidavits [Docket Nos. 710 and 711].

²⁵⁸ See Affidavit of Service [Docket No. 726].

²⁵⁹ See Conditional Disclosure Statement Order, Exs. 3A–3F, 4.

²⁶⁰ See *id.*

²⁶¹ See Publication Affidavits [Docket Nos. 710 and 711].

²⁶² See, e.g., *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Apr. 29, 2024) (order conditionally approving the adequacy of the disclosure statement, whose ballots provided that "if you voted to accept the plan . . . you may not opt out of the third-party release."); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J.

155. Courts have been clear: creditors have a responsibility to read and respond to legal notices as appropriate, and “simply checking a box to preserve [one’s] right is not onerous, is not an obstacle, and is not a hindrance as long as [one is] on notice of the need to do so.”²⁶³ Courts in this district have only recently reinforced that responsibility: “[t]he debtor has chosen to file bankruptcy, and you need to pay attention . . . you have to be aware that you very well may be affected, negatively or positively, by the reorganization plan that the debtor’s proposing.”²⁶⁴

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

156. All parties that could have been bound by the Third-Party Release had sufficient opportunity to evaluate the Third-Party Release and, to the extent they were not already bound by the Restructuring Support Agreement to consent to such release, either opt out of that release or file an objection to the Third-Party Release. Specifically, Holders of Claims in the Voting Classes had 30 days to review the Plan and submit their Ballot and Holders of Claims and Interests in the Non-Voting Classes had 30 days to return their Opt Out Form. As of the Confirmation Objection Deadline and Voting and Opt-Out Deadline, 38 parties have exercised their right to opt out of the Third-Party Release.²⁶⁵ These noticing measures were calculated to provide the most effective and expansive notice to all parties entitled to opt out of the Third-Party Release and have achieved their purpose.

Apr. 18, 2024) (order approving the adequacy of the disclosure statement, whose ballots provided that “if you vote to accept the plan . . . you will be deemed to consent to the releases set forth in . . . the plan.”).

²⁶³ *In re BlockFi Inc.* No. 22-19361 (MBK) Hr’g Tr. at 111 (Bankr. D.N.J. Sept. 26, 2023); *see also In re Lannett Co.*, No. 23-10559 (JKS), Hr’g Tr. 36:2–8 (Bankr. D. Del. June 8, 2023) (“As I and others on this Cour[t] have previously ruled, when a disclosure is prominent and conspicuous an[] opt-out mechanism is a valid means of obtaining consent. It is incumbent on effected parties who have been properly served to protect their own rights. Parties that fail to act in response to a judicial process are routinely bound by the results of the process.”).

²⁶⁴ *In re CCA Construction, Inc.*, No. 24-22548 (CMG), Hr’g Tr. 24:12–18 (Bankr. D.N.J. Feb. 11, 2026).

²⁶⁵ *See* Voting Report ¶ 16.

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

157. Under the Plan, the “Releasing Parties” include (a) all Holders of Claims or Equity Interests that vote to accept the Plan; (b) all Holders of Claims or Equity Interests that are deemed to accept or reject the Plan and who do not affirmatively opt out of the releases provided by this Plan; and (c) all Holders of Claims or Equity Interests who abstain from voting on or vote to reject the Plan and who do not affirmatively opt out of the releases provided by this Plan.²⁶⁶ The U.S. Trustee objects to the Third-Party Release as applied to Holders of Claims or Equity Interests that (x) (i) are deemed to accept the Plan, (ii) are deemed to reject the Plan, (iii) abstain from voting, (iv) vote to accept the Plan, or (iii) vote to reject the Plan, and (y) do not affirmatively opt out of the releases.²⁶⁷ The U.S. Trustee’s Objection should be overruled.

158. Two classes of Claims—the Class 1 Other Secured Claims and the Class 2 Other Priority Claims—are Unimpaired and deemed to accept the Plan, and four classes of Claims, Intercompany Interests, or Equity Interests—the Class 5 FLTO Term Loan Claims, the Class 7A General Unsecured Claims, the Class 10 Section 510(b) Claims, and the Class 11 Equity Interests—will not receive any distribution and are deemed to reject the Plan.²⁶⁸

159. As to Unimpaired creditors, courts have held that Holders of Claims that are paid in full and thus deemed to have accepted the Plan may generally, and consensually, be bound by third-party release provisions.²⁶⁹ Under the Plan, such creditors are receiving payment in full of

²⁶⁶ See Plan, Art. I.A.178. The Releasing Parties also include the Releasing Parties’ Related Parties. *See id.*

²⁶⁷ See U.S. Trustee Obj. ¶¶ 46, 51.

²⁶⁸ Class 10 Section 510(b) Claims are also deemed to reject the Plan, but the Debtors do not anticipate that any such Claims exist. *See* Disclosure Statement, Art. III.E.

²⁶⁹ *See, e.g., In re Indianapolis Downs*, 486 B.R. at 306 (“In this case, the third-party releases in question bind certain unimpaired creditors who are deemed to accept the Plan: these creditors are being paid in full and have therefore received consideration for the releases.”); *In re Spansion, Inc.*, 426 B.R. at 144 (“I note that no creditor or interest holder whose rights are affected by the ‘deemed’ acceptance language has objected to the Plan. While I recognize—and fully appreciate—the importance of the UST’s supervision of the administration of bankruptcy cases . . . the silence of the unimpaired classes on this issue is persuasive. This aspect of the Third-Party Release

any Claims asserted against the Debtors in exchange for a release of claims and Causes of Action against the Released Parties arising from or relating to, among other things, the Debtors' pre- and postpetition restructuring and capital efforts, including the formulation and solicitation of the Plan—*i.e.* the Plan that provides for and allows such creditors to recover in full in the first instance.²⁷⁰

160. As to the Deemed Rejecting Classes—the Class 5 FLTO Term Loan Claims, the Class 7A General Unsecured Claims, the Class 10 Section 510(b) Claims, and the Class 11 Equity Interests—the Third-Party Release is also appropriate. Such parties received the Notice of Non-Voting Status and the Opt-Out Form, and are on notice and have the opportunity to opt out of the Third-Party Release. Courts in this district have consistently approved third-party releases with a similar opt-out mechanism as applied to deemed rejecting classes of claims and interests.²⁷¹

161. Importantly, to the extent Holders of Claims and Equity Interests in the deemed accepting classes and Deemed Rejecting Classes do not opt out of the Third-Party Release, they will also receive the benefits of the Third-Party Release as “Released Parties.”²⁷² For Holders in the Deemed Rejecting Classes, the benefit and finality of a conclusive and permanent release of claims and Causes of Action may be particularly meaningful and allows them to turn the page or otherwise conclude their relationship with the Debtors with finality.

is not over-reaching. The unimpaired classes are being paid in full and have received adequate consideration for the release.”). *In re Specialty Equip. Cos., Inc.*, 3 F.3d 1043, 1045–47 (7th Cir. 1993) (upholding third-party releases where “the Plan provides that all creditors voting in favor of the Plan are deemed to give” such releases).

²⁷⁰ See Plan, Art. III.B.

²⁷¹ See, e.g., *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (confirming the plan and approving its opt-out releases where “Equity Interests” were a deemed rejecting class); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Jun. 13, 2024) (confirming the plan and approving its opt-out releases where multiple classes of interests were deemed rejecting classes); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 30, 2024) (confirming the plan and approving its opt-out releases where “Parent Interests” were a deemed rejecting class).

²⁷² See Plan, Art I.A.164 (defining the “Released Parties” to include all Releasing Parties and their Related Parties).

162. Additionally, courts have recognized that Unimpaired creditors—who are being paid in full—consent to third-party releases when they have not objected to the Plan, as their silence can constitute consent.²⁷³ Courts have also held that the failure to opt out of a release by checking a box on the ballot—“a minimal task to preserve one’s rights when faced with the need to protect one’s interests”—constitutes consent.²⁷⁴ Further, the Ballot and Opt-Out Form are similar to a “click wrap” agreement, which are commonly upheld by courts when coupled with clear and conspicuous notice of any associated terms.²⁷⁵ Accordingly, the Third-Party Release is reasonable and appropriate under the circumstances, is in the best interests of the Debtors and their Estates, is consistent with the precedents of this district, and should be approved

²⁷³ See *In re Spansion*, 426 B.R. at 144 (overruling an objection to a release that bound unimpaired creditors, noting that “no creditor or interest holder whose rights are affected by the ‘deemed’ acceptance language has objected to the Plan” and the “silence of the unimpaired classes on this issue is persuasive”).

²⁷⁴ *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK), Hr’g Tr. at 38–40 (Bankr. D.N.J. Sept. 12, 2023); see also *In re Lannett Co.*, No. 23-10559 (JKS), Hr’g Tr. 36:2-8 (Bankr. D. Del. Jun. 8, 2023) (“As I and others on this Court have previously ruled, when a disclosure is prominent and conspicuous an opt-out mechanism is a valid means of obtaining consent. It is incumbent on effected parties who have been properly served to protect their own rights. Parties that fail to act in response to a judicial process are routinely bound by the result of the process.”); *In re RCS Cap. Corp.*, No. 16-10223 (MFW), Hr’g Tr. 59:21–60:2 (Bankr. D. Del. Mar. 21, 2016) (“[T]here’s enough affirmative action required to allow the mechanism the debtor is suggesting because it’s clear in the ballot that, if they vote yes on the plan, they are granting a release. If a creditor doesn’t want to grant a release, they can vote no and opt out, or just not vote. So I think affirmatively voting on the plan is enough action to be an acceptance of third-party releases”); *In re Indianapolis Downs*, 486 B.R. at 306 (“As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the Third-Party Release may be properly characterized as consensual and will be approved.”).

²⁷⁵ See, e.g., *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 78–79 (2d Cir. 2017) (upholding a “click wrap” agreement where the offeror notified the offeree they would be bound by its terms of service and privacy policy, provided hyperlinks to such policies, and provided such notice on a clear, uncluttered screen); *Newell Rubbermaid Inc. v. Storm*, No. 9398-VCN, 2014 WL 1266827, at *7 (Del. Ch. Mar. 27, 2014) (citing *Van Tassell v. United Mktg. Grp., LLC*, 795 F.Supp.2d 770, 790 (N.D.Ill.2011)) (upholding a “click wrap” agreement where offeree “was presented with a fair opportunity to [read the applicable agreement], opened up the appropriate pop-up from which she could do so, and even indicated through the checkbox that she did so”); *Doe v. Massage Envy Franchising, LLC*, No. S20C-05-005RFS, 2020 WL 7624620, at *3 (Del. Super. Ct. Dec. 21, 2020) (“As soon as Plaintiff is presented with the Agreement, Plaintiff is put on notice that she would be altering her legal rights. The arbitration provision itself is conspicuous within the Agreement. It is in bold capitalized text, instructing Plaintiff to read the section carefully.”)

2. The Injunction Provision Is Appropriate and Integral to the Plan and Should Be Approved.

163. The U.S. Trustee also objected to the injunction provisions set forth in Article VIII.F of the Plan as being “overbroad and impermissible.”²⁷⁶ This objection should be overruled.

164. Chapter 11 plans in complex cases routinely contain an injunction permanently preventing parties from asserting released claims against released parties.²⁷⁷ As previously discussed, the Third-Party Release is a consensual release. Likewise, it is appropriate for the Court to approve the Exculpation in Article VIII.E of the Plan, which no party, including the U.S. Trustee, has objected to, and find that the Exculpated Parties have acted in good faith and in compliance with the law. Against this backdrop, the Injunction Provisions are a necessary part of the Plan because they enforce the discharge, release, and exculpation provisions that are central to the Plan.²⁷⁸ Absent the Injunction Provisions, parties in interest would face the specter of frivolous lawsuits and other legal action related to matters that have been released or exculpated under the Plan, which would, in turn, require such parties to expend resources unnecessarily and undermine a primary purpose of chapter 11—to bring certainty and finality to parties in interest. In this way, the Third-Party Release, the Exculpation, and the Injunction Provisions are linked and apply only to claims that this Bankruptcy Court has the power to enjoin because they have been released on a

²⁷⁶ U.S. Trustee Obj. ¶ 65.

²⁷⁷ See, e.g., *Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026) (approving a similar injunction provision); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025) (same); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Jun. 13, 2024) (same); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 31, 2024) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Nov. 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Sept. 14, 2023) (same).

²⁷⁸ See *SEC v. Drexel Burnham Lambert Grp. (In re Drexel Burnham Lambert Grp.)*, 960 F.2d 285, 293 (2d Cir. 1992) (holding that a court may approve an injunction provision where such provision “plays an important part in the debtor’s reorganization plan”).

consensual basis. Thus, to the extent the Bankruptcy Court finds that the Plan's exculpation and release provisions are appropriate, the Bankruptcy Court should approve the Injunction Provisions.

165. The Debtors, in an effort to resolve the U.S. Trustee Objection with respect to the injunction in Article VIII.F, revised the Plan as follows (in bold):

To the fullest extent permissible under applicable law, except as otherwise specifically provided in this Plan or for obligations issued or required to be paid pursuant to this Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Causes of Action, Equity Interests, or Intercompany Interests that have been released, discharged, or settled, or are subject to exculpation under this Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Causes of Action, Claims, Equity Interests, or Intercompany Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Causes of Action, Claims, Equity Interests, or Intercompany Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Causes of Action, Claims, Equity Interests, or Intercompany Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities, in each case, on account of or in connection with or with respect to any such Causes of Action, Claims, Equity Interests, or Intercompany Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Causes of Action, Claims, Equity Interests, or Intercompany Interests released or settled pursuant to this Plan.²⁷⁹

166. Accordingly, the injunction provisions are appropriate and should be approved, and the U.S. Trustee Objection should be overruled.

²⁷⁹ See Plan, Art. VIII.F

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

167. The U.S. Trustee also objected to the so-called “gatekeeping” provision (the “Gatekeeping Provision”).²⁸⁰ This objection should be overruled.

168. The Gatekeeping Provision is a legitimate exercise of this Bankruptcy Court’s power under sections 105, 1123(b)(6), and 1141(a), (b), and (c) of the Bankruptcy Code. The purpose of the Gatekeeping Provision is to ensure that the Debtors or other Released Parties do not become bogged down in vexatious, meritless litigation of claims that have been released under the Plan in courts that are unfamiliar with these chapter 11 proceedings and the releases and exculpation provisions contained in the Plan approved by this Bankruptcy Court. Gatekeeping Provisions have been utilized by many courts to provide a threshold level of review following confirmation of a chapter 11 plan. Under this construct, which has been routinely approved in numerous jurisdictions including this district,²⁸¹ the court interprets its own order in the first instance and determines whether a litigant has a colorable claim that remains assertable following confirmation of the plan.

169. To be clear, the Gatekeeping Provision does not contemplate that the Bankruptcy Court will rule on the underlying merits of the action apart from whether or not they are colorable.

²⁸⁰ See Plan, Art. VIII.D, VIII.F; U.S. Trustee Obj. ¶¶ 66–73.

²⁸¹ See, e.g., *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026) (approving a similar gatekeeping provision); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025) (same); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Jun. 13, 2024) (same); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 31, 2024) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Nov. 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Sept. 14, 2023) (same); *In re Nat’l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. Aug. 10, 2023) (providing that the Bankruptcy Court maintained exclusive jurisdiction to adjudicate matters related to the chapter 11 case on a post-effective date basis); *In re Princeton Alt. Income Fund, LP*, No. 18-14603 (MBK) (Bankr. D.N.J. Mar. 13, 2020) (explicitly applying the Barton Doctrine to post-confirmation suits); *In re Cineworld Grp. plc*, No. 22-90168 (MI) (Bankr. S.D. Tex. Jun. 28, 2023) (approving a similar gatekeeping provision); *In re Avaya Inc.*, No. 23-90088 (DRJ) (Bankr. S.D. Tex. Mar. 21, 2023) (same).

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

170. In addition, the Gatekeeping Provision is an outgrowth of the long-standing “Barton Doctrine” established by the Supreme Court in *Barton v. Barbour*.²⁸² The Barton Doctrine provides that, as a general rule, before a suit may be brought against a trustee, leave of the appointing court must be obtained.²⁸³ While the Barton Doctrine originated as a protection for federal receivers, courts have applied the concept to various participants in chapter 11 cases, including debtors in possession,²⁸⁴ trustees appointed to administer post-confirmation liquidation of the bankruptcy estate,²⁸⁵ officers and directors of a debtor,²⁸⁶ and professionals retained by the debtors.²⁸⁷ By requiring claimants to seek leave of the Bankruptcy Court before pursuing actions against the Debtors and their successors in interest, the Gatekeeping Provision is within the spirit of the protections afforded to fiduciaries and their agents under the Barton Doctrine.

²⁸² 104 U.S. 126 (1881).

²⁸³ *Baron v. Sherman (In re Ondova Ltd. Co.)*, 2017 Bankr. LEXIS 325, at *29 (Bankr. N.D. Tex. Feb. 1, 2017).

²⁸⁴ *Helmer v. Pogue*, 2012 WL 5231153, at *2–*3 (N.D. Ala. Oct. 22, 2012) (applying Barton Doctrine to a debtor in possession).

²⁸⁵ *In re Swan Transp. Co.*, 596 B.R. 127, 137 (Bankr. D. Del. 2018) (citing *Richardson v. Monaco (In re Summit Metals, Inc.)*, 477 B.R. 484, 489-98 (Bankr. D. Del. 2012)).

²⁸⁶ See *Carter v. Rodgers*, 220 F.3d 1249, 1252 and n.4 (11th Cir. 2000) (holding that a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer for acts done in the actor’s official capacity, and finding no distinction between a “bankruptcy-court-appointed officer” and officers who are “approved” by the court.); *Hallock v. Key Fed. Sav. Bank (In re Silver Oak Homes)*, 167 B.R. 389, 394–395 (Bankr. D. Md. 1994) (applying Barton Doctrine to president of the debtor).

²⁸⁷ *Lowenbraun v. Canary (In re Lowenbraun)*, 453 F.3d 314, 321 (6th Cir. 2006) (applying Barton Doctrine to trustees’ counsel).

171. The gatekeeping role is one played by bankruptcy courts in numerous contexts. In the *Madoff* cases, the court served as a gatekeeper to determine whether claims against certain Madoff funds were direct or derivative claims.²⁸⁸ In *Motors Liquidation Co.*, the court served as a gatekeeper to determine whether claims may properly be asserted against the pre- or post-reorganization General Motors entity.²⁸⁹ Under this construct, the court effectively serves the same role as it does when it determines whether a statutory committee should be granted standing to file litigation on behalf of a debtor; that is, the court is asked to make a determination as to whether the claim at issue is colorable.

172. Furthermore, contrary to the assertions of the U.S. Trustee, the Gatekeeping Provision does not impose any greater burden or administrative hurdle on claimholders than the Plan would impose without the Gatekeeping Provision.²⁹⁰ Nearly all chapter 11 plans in complex cases, including the Plan, contain an injunction permanently preventing parties from asserting released claims against released parties. If a claimant seeks to assert a claim following the Effective Date of the Plan but is unsure whether that claim constitutes a colorable claim that has not been released, the claimant will need a judicial determination that the claim was not released under the Plan; otherwise, the claim could not be properly asserted. The Gatekeeping Provision ensures that the Bankruptcy Court—the court most familiar with the facts and circumstances of these chapter 11 cases, and the court best-positioned to determine as to whether the claim may be asserted in the first place—is the court making that determination. This inures to the benefit of all parties, including potential claimants.

²⁸⁸ See *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff)*, 546 B.R. 284, 306 (Bankr. S.D.N.Y. 2016) (discussing the bankruptcy court's gatekeeper role).

²⁸⁹ See *In re Motors Liquidation Co.*, 541 B.R. 104, 113 (Bankr. S.D.N.Y. 2015), *vacated and remanded on other grounds*, 590 B.R. 39 (S.D.N.Y. 2018) (discussing bankruptcy court's gatekeeper role).

²⁹⁰ U.S. Trustee Obj. ¶¶ 67, 71

173. Courts in this district have consistently approved gatekeeping provisions similar to the one proposed in the Plan.²⁹¹ For example, the gatekeeping provision in *New Rite Aid* provided that:

No Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors (or their Affiliates), the Reorganized Debtors (or their Affiliates) (if applicable), the Wind-Down Debtors (or their Affiliates), the Exculpated Parties, or the Released Parties, as applicable, that relates to or arises out of a Claim or Cause of Action subject to Article X.C, Article X.D, or Article X.E of the Plan, without the Bankruptcy Court (a) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim of any kind, (b) determining that such Person or Entity is not barred from commencing or pursuing such Claim or Cause of Action pursuant to Article X.F of the Plan, and (c) specifically authorizing such Person or Entity to bring such claim or Cause of Action against any such party. For the avoidance of doubt, any party that obtains such determination and authorization and then subsequently wishes to amend the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending.²⁹²

174. Similarly, in *Bed Bath*, the court overruled the U.S. Trustee’s objection to a similar gatekeeping provision, recognizing that, absent a gatekeeping function, courts across the country are likely to “construe and interpret the language of a plan and a confirmation order in inconsistent fashion.”²⁹³ The *Bed Bath* court also recognized the minimal burden imposed on the court in

²⁹¹ See, e.g., *In re Multi-Color Corp.*, No. 26-10910 (MBK) (Bankr. D.N.J. Apr. 16, 2026); *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026); *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025); *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Aug. 2, 2024); *In re Thrasio Holdings, Inc.*, No. 24-11840 (Bankr. D.N.J. June 13, 2024); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. May 30, 2024); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. May 30, 2024); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Nov. 17, 2023); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023).

²⁹² *In re New Rite Aid, LLC*, No. 25-14861 (MBK) (Bankr. D.N.J. Nov. 26, 2025).

²⁹³ *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP), Hr’g Tr. 41:17–42:1 (Bankr. D.N.J. Sept. 12, 2023) (“Absent a gatekeeping function, there is a risk that you’re going to have courts across this country construe and interpret the language of a plan and a confirmation order in inconsistent fashion. That’s disservice to those plaintiffs. It’s a disservice to those who were under the impression they were benefitting by making a contribution to the reorganization and getting certain protections.”).

acting as a gatekeeper because “in all likelihood in all of these situations it’s coming back before the bankruptcy court anyway.”²⁹⁴

175. Similarly, the *In re BlockFi Inc.* gatekeeping provision stated that:

From and after the Effective Date, any Entity (i) that opted out of the releases contained in this Article VIII.B or (ii) was deemed to reject the Plan may not assert any claim or other Cause of Action against any Released Party for which it is asserted or implied that such claim or Cause of Action is not subject to the releases contained in Article VIII.A of the Plan without first obtaining a Final Order from the Bankruptcy Court (a) determining, after notice and a hearing, that such claim or Cause of Action is not subject to the releases contained in Article VIII.A of the Plan and (b) specifically authorizing such Person or Entity to bring such claim or Cause of Action against any such Released Party. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or Cause of Action constitutes a direct or derivative claim, is colorable and, only to the extent legally permissible and as provided for in Article XI of the Plan, the Bankruptcy Court shall have jurisdiction to adjudicate the underlying claim or Cause of Action.²⁹⁵

176. In overruling the U.S. Trustee’s objection, the *BlockFi* court expanded on the court’s reasoning in *Bed Bath*, observing that the gatekeeping provision is not an assertion of jurisdiction the court does not have, and is instead limited to what the Bankruptcy Code and the judicial code already allows the court to decide.²⁹⁶ The court reasoned that the gatekeeper function preserves both judicial economy and the centrality of the bankruptcy court as an appropriate forum to decide the meaning of the plan and confirmation order, and how potential claims fall within such documents.²⁹⁷ “It makes no sense to urge parties to make contributions to a Chapter 11 case

²⁹⁴ *Id.* at 42:2–9 (“The ability of a single court to take on a limited burden, and let’s be clear -- it’s minimal. Let’s be clear, in all likelihood in all of these situations it’s coming back before the bankruptcy court anyway. It’s either the defendant is going to come back before the court to ask for clarity and enforcement of a confirmation order, enforcement of a discharge or one of the other parties to the litigation. And that’s the way it should be because the courts will have a familiarity.”).

²⁹⁵ *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023).

²⁹⁶ *Id.*, Hr’g Tr. at 111:23–25 (Bankr. D.N.J. Sept. 26, 2023).

²⁹⁷ *Id.* at 111:25–112:6.

and in return secure releases or secure certain rights that will be undercut by then having to defend their position all across the country in front of separate courts in separate forums, with inconsistent results.”²⁹⁸

177. Similarly, in *In re Pretium Packaging*, the gatekeeping provision stated that:

No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article VIII.C, Article VIII.D, and Article VIII.E without first (a) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor, Reorganized Debtor, Exculpated Party, or Released Party and is not a Claim that the Debtors released under this Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (b) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action constitutes a direct or derivative claim, is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

178. In *In re Multi-Color Corp*, the court resoundingly overruled the U.S. Trustee’s objection to a similar gatekeeping provision, stating that “it is, in effect, a procedural mechanism, not a substantive expansion of rights”,²⁹⁹ and that “[t]he provision serves legitimate and important

²⁹⁸ *Id.* at 112:15–20.

²⁹⁹ *See, In re Multi-Color Corp.*, No. 26-10910 (MBK) Hr’g Tr. 16:17–18 (Bankr. D.N.J. Apr. 16, 2026).

purposes. It protects estate fiduciaries and release parties. It prevents duplicative or collateral litigation. It ensures consistent interpretation of a plan and it avoids the waste of resources on claims that are barred. And, importantly, it benefits not only the release parties, but also potential claimants by preventing them from expending resources on claims that lack viability.”³⁰⁰ Put more bluntly, “[t]he gatekeeping function is not novel. It is fundamental.”³⁰¹

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

[A]s I said in other hearings, we end up in the same place anywhere. When these actions are brought, somebody is bringing it back to the bankruptcy court to determine whether or not it’s a discharge injunction, it’s a plan injunction It comes back to this court anyway. So we’re just putting in place in language what it is the practice. I have no issue with the scope or the provisions of the gatekeeping function.³⁰²

³⁰⁰ See *id.* at 16–17:20–25, 1–2.

³⁰¹ See *id.* at 15:25.

³⁰² *In re BlockFi, Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Sept. 26, 2023) Hr’g Tr. 113:5–16.

180. The Gatekeeping Provision represents a permissible exercise of the Bankruptcy Court's jurisdiction, and will inure to the benefit of the Debtors, their successors-in-interest, and potential claimants. Accordingly, the Bankruptcy Court should overrule the U.S. Trustee Objection and approve the Gatekeeping Provision because it "serves the interests of those who bargained for certain rights in making contributions and it serves the interest of even the plaintiffs in not spending time and money on a claim that will have no traction."³⁰³ Further, as observed by courts in this district, this Bankruptcy Court, which is "the court with close[] hands-on [] understanding of the plan and the terms of the confirmation order,"³⁰⁴ is the appropriate forum to decide the meaning of the Plan and Confirmation Order.

181. Accordingly, the U.S. Trustee Objection should be overruled.

B. The NJDOL Objection Should Be Overruled.

182. The NJDOL argues that the Court should deny Confirmation of the Plan for the following five reasons: (i) the Plan does not propose to pay the full amounts of NJDOL's priority and administrative debts; (ii) the Plan does not propose to repay the priority debt over a period ending five years after the petition date; (iii) the Plan does include the statutory rate of post-confirmation interest; (iv) the Plan does not propose a monthly payment interval; and (v) the Plan does not provide default remedies for tax claimants.³⁰⁵ Each of these reasons, however, misunderstands what is required under the Bankruptcy Code and provided in the Plan.

³⁰³ *Id.* at 113:1–4.

³⁰⁴ *Id.* at 112:21–25.

³⁰⁵ As a threshold matter, the Debtors dispute the validity of the NJDOL's Claims. While the Debtors' objection to the NJDOL's proof of claim is forthcoming, the Debtors believe that NJDOL's Claims should be disallowed, or, at the least, reduced, as it materially misstates the amounts the Debtors owe to the NJDOL. The reduction or elimination of such amounts would ease the Debtors' or Post-Effective Date Debtors' payment obligations on or around the Effective Date and further lessen the risk, if any, of a default.

183. As a threshold matter, the Debtors dispute the validity of the NJDOL’s Claims. The reduction or elimination of such amounts would ease the Debtors’ or Post-Effective Date Debtors’ payment obligations on or around the Effective Date and further lessen the risk, if any, of a default

184. **First**, the NJDOL is simply wrong when it asserts that the Plan does not propose to pay the full amount of priority and administrative claims. In fact, the Plan explicitly states that the Priority Tax Claims and Administrative Claims that are the subject of the NJDOL Objection will receive treatment in accordance with section 1129(a)(9). Article II.C of the Plan, for example, states that “each Holder of such Allowed Priority Tax Claim shall receive Cash equal to the full amount of its Claim or such other treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.”³⁰⁶ Similarly, Article II.A of the Plan provides that “each Holder of an Allowed Administrative Class . . . will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim . . . on or as soon as reasonably practicable thereafter” if “Allowed and due on or prior to the Effective Date.”³⁰⁷

185. The NJDOL attacks these Plan provisions for their purported use of “boiler-plate language.”³⁰⁸ But there is nothing “boiler-plate” about Plan language that requires compliance with the Code—which is all that is required. Moreover, this language is consistent with other plan provisions that have been routinely approved by courts in this district.³⁰⁹ If the Debtors do not comply with the Plan and section 1129(a)(9)(C) by failing to provide for payment of the Priority

³⁰⁶ Plan, Art. II.C.

³⁰⁷ Plan, Art. II.A.

³⁰⁸ See NJDOL Obj. ¶8.

³⁰⁹ See, e.g., *In re Multi-Color Corp.*, No. 26-10910 (MBK) (Bankr. D.N.J. Apr. 15, 2026); *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 23, 2026); *In re Invitae Corp.*, No. 24-11362 (Bankr. D.N.J. Aug. 2, 2024); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. June 13, 2024); *In re Careismatic Brands, LLC*, No. 24-10561 (Bankr. D.N.J. May 31, 2024).

Tax Claims and Administrative Claims, NJDOL may bring that matter before this Court as this Court will have retained jurisdiction with respect to the “resolution of any request for payment of any Administrative Claims and . . . priority . . . of Claims.”³¹⁰

186. **Second**, the Plan explicitly provides for the treatment of Allowed Priority Tax Claims in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. And that section provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, Priority Tax Claims—must receive cash payments in regular installments over a period not to exceed five years from the Petition Date, the present value of which equals the allowed amount of the claim.³¹¹ Thus, contrary to the assertions of the NJDOL, the Plan does, in fact, propose to repay priority claims within five years after the Petition Date.

187. **Third**, the NJDOL’s assertion that the Plan must include a requirement to pay post-confirmation interest at the statutory rate is moot. The Debtors anticipate paying any owed Priority Tax Claims on or as reasonably practicable after the Effective Date. If this does not occur and the NJDOL’s alleged Priority Tax Claims are instead paid over time after allowance of such Claims, which the Debtors dispute, then the Plan nevertheless requires that the Debtors comply with section 1129(a)(9)(C)(i) of the Bankruptcy and the NJDOL’s statutory rights are not altered by the Plan.³¹²

188. **Fourth**, there is no requirement, as the NJDOL claims, that payments must be made on a monthly interval.³¹³ In support of this request, the NJDOL cites three out-of-circuit cases from thirty-nine years ago that interpret a prior version of section 1129(a)(9)(C) that required

³¹⁰ Plan, Art. XI.1.

³¹¹ 11 U.S.C. § 1129(a)(9)(C).

³¹² See, e.g., *In re rue21, inc.*, 575 B.R. 90, 125 (Bank. W.D. Pa. 2017) (providing that priority tax claims would be paid on the effective date, or paid over time in accordance with section 1129(a)(9)(C)(i)).

³¹³ See NJDOL Obj. ¶14.

“deferred cash payments”³¹⁴ instead of current language of “regular installment payments in cash.”³¹⁵ There is nothing in section 1129(a)(9)(C) that dictates monthly payment of priority claims, and courts in this district have held as much. For example, in *Diocese of Camden, New Jersey*, the court confirmed a plan that provided for quarterly payments of priority tax claims under section 1129(a)(9)(C).³¹⁶ Nevertheless, the Debtors anticipate paying any owed Priority Tax Claims to the extent Allowed on or as soon as reasonably practicable after the Effective Date and, to the extent that does not occur, the Debtors or Post-Effective Date Debtors will make payments in accordance with section 1129(a)(9)(C) as set forth in Article II.C of the Plan.

189. **Fifth**, contrary to the NJDOL’s assertions, section 1123(a)(5)(G) does not mean the Plan is **required** to include default remedies for tax claimants. Instead, section 1123(a)(5) of the Bankruptcy Code provides that “a plan shall provide adequate means for the plan’s implementation,” and then lists ten examples of provisions that **could** be included in a plan for purposes of its implementation. And though the “curing or waiving of any default” is listed as one of the examples for a plan’s implementation, courts have routinely interpreted section 1123(a)(5) as disjunctive and held that plans *may* include provisions “curing or waiving any defaults.”³¹⁷ As a result, just as it was not necessary to include all ten examples in the Plan, it was not necessary to include a provision regarding the “curing or waiving of any default.”

³¹⁴ See *In re Mason & Dixon Lines, Inc.*, 71 B.R. 300, 302 (Bankr. M.D.N.C. 1987); see also *In re Jerath Hospitality, LLC*, 484 B.R. 245 (Bankr. S.D. Ga. 2012) (holding that pre-2005 cases interpreting the “old language of § 1129(a)(9)” are not controlling on the issue of whether balloon payments were permitted).

³¹⁵ 11 U.S.C. § 1129(a)(9)(C).

³¹⁶ See *In re Diocese of Camden, New Jersey*, 2024 WL 3508487, at *23 (Bankr. D.N.J. Mar. 15, 2024).

³¹⁷ See, e.g., *In re DSBC Investments, L.L.C.*, 2009 WL 2998940, at *2 (Bankr. D. Ariz. Sept. 11, 2009) (“Section 1123(a)(5)(G) provides that a confirmed plan, which is adequately implemented, **can** cure or waive ‘any default.’”) (emphasis added); *In re Ctr. Ct. Apts., Ltd.*, 85 B.R. 651, 656 (Bankr. N.D. Ga. 1988) (“Chapter 11 **authorizes** the cure of a default in § 1123(a)(5)(G).”) (emphasis added).

190. Section 1123(a)(5)(G) is intended to address the cure or waiver of agreements on account of prepetition amounts owing.³¹⁸ The NJDOL Objection focuses on a hypothetical, prospective default and cites no agreement capable of being cured. In short, the inclusion of default provisions in the Plan as demanded in the NJDOL Objection is neither required nor necessary.

191. Moreover, Article IV of the Plan, as well as other provisions thereof, provide for the means by which the Plan will be implemented.³¹⁹

192. Accordingly, the NJDOL Objection should be overruled.

C. The PI Claimant Objection Should Be Overruled.

193. The PI Claimant filed a “limited protective” and “reservation of rights” objection to the Plan on the grounds that (i) the PI Claimant should be able to assert that her Claims are Class 6 (Auto Liability Claims) and not Class 7A (General Unsecured Claims or Class 7B (Convenience Claims); (ii) the assumption of any insurance policy should not generally adversely affect her rights; and (iii) she opts out of the Third Party Release and any other provision of the Plan that would discharge or release claims against any of the Debtors’ current or former employees. To the extent any of these assertions are considered objections to Confirmation, they should be overruled.

194. ***First***, to the extent the PI Claimant objects to Confirmation to reserve her rights to assert, in connection with the Claims reconciliation process, that her Claim should receive the treatment provided for Class 6 (Auto Liability Claims) under the Plan, or that certain insurance or bonding programs may apply, such rights are preserved; *provided* that the Debtors’ and Post-Effective Date Debtors’ rights and defenses with respect thereto are fully reserved.

³¹⁸ See, e.g., *In re DePietto*, 2021 WL 3287416, at *8 (Bankr. S.D.N.Y. Aug. 2, 2021); *In re Moshe*, 567 B.R. 438, 444 (Bankr. E.D.N.Y. 2017).

³¹⁹ See Keyes Decl. ¶ 24.

195. **Second**, nothing in the Plan bars the PI Claimant’s ability to seek relief from the automatic stay, discharge, or plan injunction; *provided* that the Debtors’ and Post-Effective Date Debtors’ rights and defenses with respect thereto are fully reserved.

196. **Third**, the PI Claimant has effectively opted out of the Third Party Release.³²⁰ To the extent that the PI Claimant attempts to challenge the Third-Party Release on behalf of all creditors in the Debtors’ nationwide enterprise, she lacks standing to do so.³²¹

197. Accordingly, the PI Claimant Objection should be overruled.

D. The Chubb Objection Should Be Overruled.

198. The Chubb Companies filed the Chubb Objection to (i) preserve their rights to the extent the Confirmation Order does not include the Chubb Language (as defined in the Chubb Objection), and (ii) opt-out of the Third Party Release and, seemingly, object to the Third Party Release in general. As set forth below, the Chubb Objection is moot and legally improper.

199. **First**, the Chubb Language is included in the proposed Confirmation Order, as the Debtors previously agreed to in the *Order (I) Authorizing Assumption of the Existing Insurance Program, (II) Authorizing the Debtors to Continue the Insurance Program, and (III) Granting Related Relief* [Docket No. 776] and via email with counsel to the Chubb Companies on multiple occasions.³²²

200. **Second**, the Chubb Companies have effectively opted out of the Third Party Release, as set forth in the Voting Report and confirmed with counsel via email on multiple occasions in connection with the Chubb Language.³²³ Notwithstanding this, the Chubb

³²⁰ See Voting Report, Ex. C.

³²¹ See, e.g., *In re Mercy Hosp.*, 2024 WL 2890139, at *3 (Bankr. N.D. Iowa June 7, 2024) (“To the extent MercyOne is objecting to the negotiated, consensual non-debtor Third-Party Releases of other parties—which did not optout—MercyOne has no standing”).

³²² See Confirmation Order [Docket No. 810], ¶ 176.

³²³ See Voting Report, Ex. C.

Companies object to the Third Party Release on behalf of all creditors in the Debtors' nationwide enterprise.³²⁴ They lack standing to do so.³²⁵ Moreover, the Third Party Release is proper for all the reasons set forth above.

201. Accordingly, the Chubb Objection should be overruled.

Modification of the Stay Under Bankruptcy Rule 3020(e)

202. Bankruptcy Rule 3020(e) provides that “[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the Court orders otherwise.”³²⁶ Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

203. To implement the Plan, the Debtors request that the 14-day stay under Bankruptcy Rule 3020(e) be modified to provide that the stay shall expire at 5:00 p.m. (prevailing Eastern Time) four (4) Business Days after entry of the Confirmation Order. Given the complexity of the Plan and the various transactions implicated by the Plan, the Debtors may take certain steps to effectuate the Plan in anticipation of and to facilitate the occurrence of the Effective Date so that the Effective Date can occur promptly. The U.S. Trustee is also not opposed to this modification to the stay under Bankruptcy Rule 3020(e). Therefore, good cause exists to waive any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

³²⁴ See Chubb Obj. ¶¶ 14–17.

³²⁵ See, e.g., *In re Mercy Hosp.*, 2024 WL 2890139, at *3 (Bankr. N.D. Iowa June 7, 2024) (“To the extent MercyOne is objecting to the negotiated, consensual non-debtor Third-Party Releases of other parties—which did not optout—MercyOne has no standing”).

³²⁶ See Bankruptcy Rule 3020(e).

Conclusion

204. For the reasons set forth herein, the Debtors respectfully request that the Court overrule the outstanding Objections and enter the Confirmation Order.

Dated: May 17, 2026

/s/ Michael D. Sirota

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