

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

In re: DRF LOGISTICS, LLC, <i>et al.</i>, Debtors.¹	§ § § § § § §	Chapter 11 Case No. 24-90447 (CML) (Jointly Administered)
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**DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION
OF DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION**

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DRF Logistics, LLC (6861) and DRF, LLC (7236). The Debtors' mailing address is 3001 Summer Street, Stamford, CT 06926.

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DRF Logistics, LLC and DRF, LLC, as debtors and debtors in possession in the above-captioned chapter 11 cases (together, the “**Debtors**”), submit this memorandum of law and reply in support of their request for entry of an order confirming the *Debtors’ Second Amended Joint Plan of Liquidation*, dated November 18, 2024 (Docket No. 483) (as amended, supplemented, or otherwise modified from time to time, the “**Plan**”),² including the agreements and other documents set forth in that certain supplement to the Plan, dated November 1, 2024 (Docket No. 431) (as amended, supplemented, or otherwise modified from time to time, the “**Plan Supplement**”), and respectfully represent as follows.

PRELIMINARY STATEMENT

1. The Debtors are pleased to be before the Court seeking confirmation of the Plan, which has the support of all their major stakeholders, including the Creditors’ Committee.
2. After multiple years of declining EBIT and incurred operating losses and several unsuccessful attempts to preserve their going concern business through a sale or other transactions, the Debtors commenced these chapter 11 cases to implement an orderly wind down. The Plan provides a comprehensive framework to accomplish this objective and provides a path for the Debtors to liquidate any of their remaining assets and make distributions to holders of Allowed Claims in an orderly manner.
3. Prior to the commencement of these chapter 11 cases, the Debtors engaged in negotiations with Pitney Bowes and Oaktree to pave a path for the wind down, taking into account the interests of the Debtors’ stakeholders and seeking to maximize value for their benefit. Such negotiations ultimately led to (i) the Debtors’ and Pitney Bowes’ agreement on the terms of a global resolution of Claims, Causes of Action, and disputes between the Debtors

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

and Pitney Bowes through that certain *Settlement and Release Agreement*, dated August 8, 2024 (the “**Settlement and Release Agreement**”) and (ii) the Debtors’, Pitney Bowes International Holdings, Inc.’s (“**PBIH**”), Pitney Bowes, Inc.’s (“**PBI**”), and certain funds’ and Affiliates’ of Oaktree Capital Management, L.P. (“**Oaktree**” and, collectively with PBIH, PBI, and the Debtors, the “**Consenting Parties**”) entry into that certain Restructuring Support Agreement (as may be amended, supplemented, or otherwise modified from time to time and including all exhibits thereto, the “**RSA**”). Under the RSA, each of PBI, PBIH, and Oaktree agreed, subject to the terms and conditions of the RSA, to vote in favor of and support the Plan.

4. As discussed further below, the Debtors received numerous benefits under the Settlement and Release Agreement in exchange for the releases to be provided to Pitney Bowes. Such benefits included Pitney Bowes’s commitment to (i) provide the Debtors with DIP Loans to fund these chapter 11 cases, which Pitney Bowes agreed to fund with an expectation that such DIP Loans would not be repaid in full, (ii) fund guaranteed distributions to holders of Allowed General Unsecured Claims (other than Pitney Bowes), which distributions were subsequently increased based on negotiations with the Creditors’ Committee, (iii) consent to the treatment of Pitney Bowes’s prepetition unsecured Claims under the Plan, and (iv) enter into the Secured Debt Amendments (as defined below), which imposed costs on, and required other significant concessions from, Pitney Bowes in exchange for its lenders’ release of the Debtors from funded debt obligations totaling approximately \$1.713 billion.

5. In the weeks leading up to the deadline for objections to confirmation of the Plan, the Debtors, Pitney Bowes, and the Creditors’ Committee engaged in settlement discussions regarding the terms of a further amended version of the Plan to resolve the Creditors’ Committee’s potential confirmation objections. Following such negotiations, the parties reached

an agreement (the “**Creditors’ Committee Settlement**”), which is reflected in the terms of the amended Plan that is now supported by the Creditors’ Committee and the Debtors seek to confirm. The agreement resulted in Pitney Bowes’ providing additional value to be distributed to holders of Allowed General Unsecured Claims.

6. Among the thousands of creditors and stakeholders in these chapter 11 cases, the Debtors received a mere five objections to the confirmation of the Plan (collectively, the “**Objections**”). The Debtors have worked constructively with the parties that filed Objections and various parties that contacted the Debtors with informal comments to the Plan to narrow issues and, where possible, reach consensual resolutions, including through the addition of provisions in the Proposed Confirmation Order (as defined herein). The Objections, resolutions, and the Debtors’ responses are summarized in the chart annexed hereto as **Exhibit A** (the “**Response Chart**”). At this time, the only Objection that remains outstanding is the *Objection of the United States Trustee to Debtors’ Amended Joint Plan of Liquidation* (Docket No. 445) (the “**U.S. Trustee Objection**”).

7. For the reasons set forth herein and in the Confirmation Declarations (as defined below), the Plan satisfies the requirements for confirmation under section 1129 of the Bankruptcy Code and achieves the objectives of chapter 11. Accordingly, the Plan should be confirmed. A proposed order confirming the Plan has been filed contemporaneously herewith (the “**Proposed Confirmation Order**”).

BACKGROUND

I. Chapter 11 Cases

8. On August 8, 2024 (the “**Petition Date**”), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in

possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. On August 26, 2024, the U.S. Trustee appointed the Creditors' Committee (Docket No. 155). On November 12, 2024, the U.S. Trustee filed a notice reconstituting the Creditors' Committee (Docket No. 460).

9. The Debtors' chapter 11 cases are being jointly administered for procedural purposes pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Local Rules**").

10. The pertinent facts relating to the commencement of these chapter 11 cases and the key events during the cases are more fully set forth in the *Disclosure Statement for Debtors' Joint Plan of Liquidation*, filed on September 24, 2024 (Docket No. 278) (the "**Disclosure Statement**").

II. **Declarations in Support of Confirmation**

11. In support of confirmation, the Debtors filed the following declarations and affidavits (collectively, the "**Confirmation Declarations**"):

- *Certificate of Service*, filed on September 30, 2024 (Docket No. 301) (the "**Original Solicitation Certificate**");
- Each *Certificate of Service (Supplemental)*, filed on October 7, 2024, October 11, 2024, October 18, 2024, October 21, 2024, October 24, 2024, or November 8, 2024, as applicable (Docket Nos. 337, 352, 353, 372, 378, 402, and 451) (the "**Supplemental Solicitation Certificates**" and, together with the Original Solicitation Certificate, the "**Solicitation Certificates**");
- *Certificate of Publication for the Notice of (I) Approval of (A) Disclosure Statement, (B) Solicitation and Voting Procedures, and (C) Procedures for Assumption or Rejection of Executory Contracts and Unexpired Leases, (II) Confirmation Hearing, and (III) Establishment of Notice and Objection Procedures for Confirmation of Proposed Plan in the New York Times*, filed on October 4, 2024 (Docket No. 329) ("**New York Times Publication Certificate**");

- *Certificate of Publication for the Notice of (I) Approval of (A) Disclosure Statement, (B) Solicitation and Voting Procedures, and (C) Procedures for Assumption or Rejection of Executory Contracts and Unexpired Leases, (II) Confirmation Hearing, and (III) Establishment of Notice and Objection Procedures for Confirmation of Proposed Plan in the Houston Chronicle*, filed on October 4, 2024 (Docket No. 330) (“**Houston Chronicle Publication Certificate**” and, together with the New York Times Publication Certificate, the “**Publication Certificates**”);
- *Declaration of James Sean McGuire Regarding the Solicitation and Tabulation of Votes Cast on Debtors’ Amended Joint Plan of Liquidation*, filed on November 12, 2024 (Docket No. 464) (the “**Tabulation Declaration**”);
- *Declaration of Alan Carr in Support of Confirmation of Debtors’ Second Amended Joint Plan of Liquidation* (the “**Carr Declaration**”), filed contemporaneously herewith, which addresses the release contemplated by the Plan;
- *Declaration of Robin Chiu in Support of Confirmation of Debtors’ Second Amended Joint Plan of Liquidation* (the “**Chiu Declaration**”), filed contemporaneously herewith, which addresses the Liquidation Analysis (as defined below); and
- *Declaration of Eric Kaup in Support of Confirmation of Debtors’ Second Amended Joint Plan of Liquidation* (the “**Kaup Declaration**”), filed contemporaneously herewith, which addresses the satisfaction of certain elements under section 1129 of the Bankruptcy Code.

12. The Confirmation Declarations and any testimony and other declarations that may be adduced or submitted at, or in connection with, the Confirmation Hearing (as defined below) are herein incorporated in full.

III. Plan Summary

13. The Plan provides for the ongoing liquidation and wind-down of the Debtors. Specifically, the Plan provides for, among other things:

- the approval of the Settlement and Release Agreement;
- the following treatment of Claims against, and Interests in, the Debtors:
 - holders of Allowed Other Priority Claims and Allowed Other Secured Claims will be Unimpaired under the Plan;

- each holder of an Oaktree Secured Claim will receive such holder's Pro Rata share of the (i) Oaktree Initial Payment and (ii) Oaktree Additional Recovery Amount;
- each holder of an Allowed General Unsecured Claim will receive such holder's (a) Pro Rata share of (i) the Unsecured Claims Initial Distribution and the Unsecured Claims Subsequent Distribution and (ii) the Unsecured Claims Additional Distribution solely if such holder is a Qualifying GUC Claimant, and (b) Category 2 GUC Distribution solely if such holder has an Allowed Category 2 GUC Claim, in each case subject to the Plan, *provided* that PB Unsecured Claims will not participate in or receive any recovery from the Unsecured Claims Initial Distribution and the Unsecured Claims Additional Distribution;
- holders of Allowed Interdebtor Claims will not receive distributions under the Plan and their claims will be adjusted, Reinstated, or discharged as reasonably determined by the Debtors or the Liquidating Agent, as applicable;
- holders of Allowed Existing DRF Logistics Equity Interests, as of the Effective Date, will be entitled to receive any remaining Cash from DRF Logistics, LLC's Estate or Wind Down Estate (as applicable) following the satisfaction in full in accordance with the Bankruptcy Code and the Plan of all (i) Allowed General Unsecured Claims, (ii) Allowed Oaktree Secured Claims, and (iii) Allowed DIP Claims against DRF Logistics, LLC;
- holders of Interdebtor Interests will be unaffected by the Plan;
- holders of Allowed DIP Claims will receive such holder's (i) Pro Rata distribution of Cash from the DIP Claims Recovery Pool in an amount not to exceed the amount of such holder's Allowed DIP Claim, plus (ii) after the recovery in full by all holders of Allowed General Unsecured Claims in Class 4, an amount equal to any Allowed DIP Claims not paid on the Effective Date;
- the funding of the Wind Down Reserve on the Effective Date in accordance with the Wind Down Budget; and
- the appointment of Eric Kaup, Hilco Commercial Industrial, LLC as Liquidating Agent to administer the Wind Down Estates, carry out and implement all provisions of the Plan after the Effective Date, liquidate the remaining Assets of the Debtors, make distributions in accordance with the Plan, and wind down the Debtors' estates.

IV. DRF Logistics LLC’s Independent Board of Managers

14. On June 27, 2024, DRF Logistics, LLC (“**DRF Logistics**”) appointed two independent and disinterested managers, Alan J. Carr and Dhiren Fonseca (together, the “**Independent Managers**”), to serve on the DRF Logistics’s Board of Managers (the “**Board of Managers**”). Since that time, the Independent Managers have been the only members of the Board of Managers and have overseen the Debtors’ chapter 11 cases, including through approval of the Debtors’ filing of these chapter 11 cases, entry into the RSA with the Consenting Parties, the investigation of Claims and Causes of Action against Pitney Bowes, the filing of the Plan and the Disclosure Statement, and the negotiation and approval of the Creditors’ Committee Settlement.

V. Prepetition Negotiations and Plan Settlements

15. Prior to and during these chapter 11 cases, the Debtors engaged in continuous, constructive, and meaningful discussions with each of their key stakeholders to build support for the Plan and resolve disputes, eventually resulting in settlements involving several of the Debtors’ key stakeholders, including the Creditors’ Committee (collectively, the “**Plan Settlements**”).

A. *Prepetition Negotiations*

16. Prior to the Hilco Transaction (as defined below), the Debtors were wholly owned indirect subsidiaries of PBI. In 2023, after funding the Debtors’ operating losses for several years, Pitney Bowes determined that it could no longer fund the Debtors’ losses indefinitely and undertook a strategic review of the Debtors’ business. As part of that strategic review, Pitney Bowes ran a comprehensive marketing process to sell the Debtors’ business as a going-concern. After receiving little market interest, PBI and the Debtors determined that a liquidation and wind down provided the most efficient way to maximize creditor recoveries.

17. At that time, however, the Debtors' commencement of chapter 11 cases would have resulted in events of default under certain funded debt obligations of PBI and the Debtors, which would have negatively affected the broader Pitney Bowes enterprise, an otherwise healthy company, and caused the Debtors to be obligated on \$1.713 of defaulted debt. Accordingly, the Debtors and Pitney Bowes undertook a series of transactions that would release the Debtors as guarantors under Pitney Bowes's and the Debtors' funded debt obligations, providing the Debtors with a viable path to wind down in chapter 11.

18. PBI, the Debtors, and their advisors worked closely with holders of PBI's secured debt to obtain amendments to PBI's secured debt arrangements that would release the Debtors from their obligations on almost \$1 billion of secured debt ("**Secured Debt Amendments**") and enable the commencement of these chapter 11 cases. In connection with the Secured Debt Amendments, and as a condition to the release of the Debtors as guarantors under the PBI Secured Notes (as defined in the Disclosure Statement), the Debtors issued that certain Secured Senior Takeback Note to Oaktree, pursuant to which the Debtors promised to pay Oaktree the principal aggregate amount of \$3.3 million plus interest at a rate of 10% per annum.

19. Likewise, on August 8, 2024, HCI DRF, LLC ("**Hilco**"), an affiliate of Hilco Global, subscribed for 81% of the voting interests in DRF Logistics for *de minimis* consideration, leaving a subsidiary of PBI retaining 19% of the voting interests and 100% of the economic interests in DRF Logistics. That divestment of a majority of the voting control in DRF Logistics (the "**Hilco Transaction**"), coupled with the Secured Debt Amendments, automatically released the Debtors as guarantors and significant subsidiaries, as applicable, under PBI's unsecured notes.

B. *Restructuring Support Agreement*

20. While the Secured Debt Amendments and the Hilco Transaction were in process, the Debtors engaged in extensive, arm's-length negotiations with Pitney Bowes and Oaktree on the terms of a chapter 11 plan and other key issues in the Debtors' chapter 11 cases. The Debtors reached an agreement with Pitney Bowes and Oaktree, which is memorialized in the RSA.

21. Pursuant to the RSA, Pitney Bowes and Oaktree agreed to vote to accept the Plan. Furthermore, Pitney Bowes agreed to (i) provide DIP Loans to the Debtors, (ii) waive its DIP Claims to the extent necessary to ensure the Plan can be confirmed, (iii) provide necessary services to the Debtors pursuant to the Shared Services Agreement, and (iv) grant and not opt-out of the releases contemplated by the Plan. In addition, the RSA recognizes a global settlement between Pitney Bowes and the Debtors through its incorporation of the Settlement and Release Agreement.

C. *Settlement and Release Agreement*

22. The Settlement and Release Agreement provides for the full, final, integrated, complete, and good-faith compromise, settlement, release, and resolution of, among other things, disputes and potential litigation between the Debtors and Pitney Bowes. The Debtors received numerous benefits in exchange for the full and final releases, including Pitney Bowes's agreement to enter into the Secured Debt Amendments.

23. The Settlement and Release Agreement was preceded by a comprehensive investigation undertaken by DRF Logistics at the direction of the Independent Managers into potential claims and causes of action against Pitney Bowes (the "**Investigation**"). The Debtors, with the guidance of the Independent Managers, determined that the benefits of the Settlement and Release Agreement, including the smooth wind-down it facilitates and the guaranteed

distributions to holders of Allowed General Unsecured Claims, outweigh the benefits of potential litigation, which would be complex, protracted, and expensive and the outcome of which would be uncertain.

D. Creditors' Committee Settlement

24. Following voluminous documents requests and depositions of representatives of the Debtors and Pitney Bowes, on November 9, 2024, the Debtors, Pitney Bowes, and the Creditors' Committee reached an agreement in principle with respect to the terms of an amended Plan, which resolved the Creditors' Committee's potential objections to the Plan, including so-called "contractual privity" issues related to holders of Claims against both the Debtors and Pitney Bowes.

25. Pursuant to the Creditors' Committee Settlement, the Plan was revised to, among other things:

- increase recoveries to all holders of Allowed General Unsecured Claims that provide Pitney Bowes with releases, consistent with the releases set forth in Section 11.6(b) of the Plan, by an aggregate \$4.4 million if the Plan is confirmed by November 25, 2024, *provided* that in the event the Confirmation Hearing is adjourned or delayed for any reason other than an action or inaction of the Creditors' Committee, the deadline for the Confirmation Date as referenced for purposes of the distributions shall be extended by an equivalent number of days;
- establish a framework for designating holders of General Unsecured Claims arising from contracts that potentially give rise to liability of both the Debtors and Pitney Bowes (or "**Category 2 GUC Claims**");
- provide for further increased recoveries for holders of Category 2 GUC Claims that agree to certain conditions (including the provision of a consensual release of Pitney Bowes consistent with the releases set forth in Section 11.6(b) of the Plan);
- provide for an Opt-In Letter to be mailed to all holders of General Unsecured Claims by which each holder of a General Unsecured Claim can affirmatively provide Pitney Bowes with consensual releases consistent with the releases set forth in Section 11.6(b) of the Plan to

receive the Unsecured Claims Additional Distribution or Category 2 GUC Distribution, as applicable;³

- establish a GUC Oversight Board appointed by the Creditors' Committee to participate in the claims reconciliation process;
- waive Avoidance Actions against holders of Category 2 GUC Claims that obtain a waiver and release of Avoidance Actions pursuant to the terms of the Plan and Category 1 Claimants; and
- clarify the rights of Non-Creditors under the Plan.

See Plan §§ 4.4, 5.13, 5.14, 7.7(b), 11.12, 11.13.

26. Pursuant to the Creditors' Committee Settlement, the Creditors' Committee has agreed to support the Plan, as amended to reflect the settlement, including the Third-Party Releases (as defined below). The Creditors' Committee Settlement results in improved recoveries to holders of Allowed General Unsecured Creditors and establishes a framework to address the unique issues presented by the Debtors' chapter 11 cases, including matters related to joint liability of the Debtors and Pitney Bowes.

VI. Plan Solicitation

27. On September 24, 2024, the Court entered the *Order (I) Approving Disclosure Statement, (II) Establishing Solicitation, Voting, and Related Procedures, (III) Scheduling Confirmation Hearing, (IV) Approving Notice Procedures for Assumption or Rejection of Executory Contracts and Unexpired Leases, (V) Establishing Notice and Objection Procedures for Confirmation of Plan, and (VI) Granting Related Relief* (Docket No. 276) (the "**Disclosure Statement Order**").

28. Pursuant to the Disclosure Statement Order, the Court, among other things, (i) approved the Disclosure Statement as containing adequate information pursuant to

³ General Unsecured Creditors that did not opt out of the Third Party Releases granted pursuant to Section 11.6(b) of the Plan do not have to submit an Opt-In Letter to receive the Unsecured Claims Additional Distribution.

section 1125 of the Bankruptcy Code, (ii) scheduled the hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”), (iii) established November 8, 2024 at 4:00 p.m. (prevailing Central Time) as the deadline to (a) vote to accept or reject the Plan (the “**Voting Deadline**”) and (b) object to confirmation of the Plan (the “**Plan Objection Deadline**”),⁴ (iv) approved the proposed procedures for (a) soliciting, receiving, and tabulating votes to accept or reject the Plan, (b) voting to accept or reject the Plan, and (c) filing objections to the Plan (the “**Solicitation and Voting Procedures**”), (v) approved the form of ballots with voting instructions (the “**Ballots**”) and certain other notices, (vi) approved the form and manner of notice of the Confirmation Hearing (the “**Confirmation Hearing Notice**”), and (vii) approved the procedures for assumption, assumption and assignment, or rejection of the Debtors’ executory contracts and unexpired leases.

29. On September 25, 2024, the Debtors filed the Confirmation Hearing Notice (Docket No. 282). On September 26, 2024, the Debtors commenced the solicitation of votes on the *Debtors’ Amended Joint Plan of Liquidation*, dated September 24, 2024 (Docket No. 277) (the “**September 24 Plan**”) in accordance with the Disclosure Statement Order by causing Stretto, Inc. (“**Stretto**”), the Debtors’ solicitation agent, to distribute copies of the September 24 Plan, the Disclosure Statement Order (without exhibits except as otherwise provided in the solicitation package materials), the Disclosure Statement (with all exhibits, including the Plan), a copy of the Solicitation and Voting Procedures, a statement from the Creditors’ Committee, the Confirmation Hearing Notice, and the applicable Ballot (collectively, the “**Solicitation**

⁴ On November 8, 2024, the Court entered the *Stipulation and Agreed Order Extending Objection and Reply Deadlines With Respect to Confirmation of Debtors’ Amended Joint Plan of Liquidation* (Docket No. 448), which extended the (i) Plan Objection Deadline to November 12, 2024 at 4:00 p.m. (prevailing Central Time) and (ii) Plan Reply Deadline to November 15, 2024 at 11:59 p.m. (prevailing Central Time).

Package”) to each creditor entitled to vote on the September 24 Plan. See Solicitation Certificates.

30. If holders of Claims and Interests were not entitled to vote on the September 24 Plan, beginning on September 26, 2024, Stretto served such holders with (i) the Confirmation Hearing Notice and (ii) a notice informing them of their non-voting status (the “**Notice of Non-Voting Status**”), which contained the full text of the release, exculpation, and injunction provisions set forth in Article XI of the Plan and advised such holders that they would be deemed to be bound by the Third-Party Releases unless they timely and properly opted out of such release contained in the opt-out form attached to the Notice of Non-Voting Status (the “**Release Opt-Out Form**”), in accordance with Rule 40 of the *Procedures for Complex Cases in the Southern District of Texas* (the “**Complex Case Rules**”) and consistent with the Disclosure Statement Order. See Solicitation Certificates; see generally Tabulation Decl. The Confirmation Hearing Notice was also published in the *New York Times* and the *Houston Chronicle* on Monday, September 30, 2024. See Publication Certificates. The materials included in the Solicitation Package were also made available at no cost on Stretto’s website at <https://cases.stretto.com/drfllogistics/>.

VII. Plan Supplement

31. On November 1, 2024, the Debtors timely filed the Plan Supplement (Docket No. 431). The Plan Supplement included the following draft documents and information: (i) Schedule of Retained Causes of Action, (ii) Schedule of Assumed Contracts, (iii) Wind Down Budget, (iv) Debtor Distribution Ratio, and (v) certain information required to be disclosed pursuant to section 1129(a)(5) of the Bankruptcy Code. See Plan Supp., Exs. A–E.

VIII. Tabulation

32. After the Voting Deadline, and following a complete review by Stretto of all Ballots received, Stretto tabulated the Ballots. See Tabulation Decl., ¶¶ 10–12. Exhibit A to the Tabulation Declaration also describes in detail the voting results for each Debtor. As reflected in the Tabulation Declaration, the chart below summarizes the voting results on an aggregate basis:

Class	Accept		Reject		Result
	Amount (% of Amount Voted)	Number (% of Number Voted)	Amount (% of Amount Voted)	Number (% of Number Voted)	
Class 3 (Oaktree Secured Claims)	\$3,300,000 (100%)	2 (100%)	\$0 (0%)	0 (0%)	Accepts
Class 4A (General Unsecured Claims—DRF Logistics, LLC)	\$14,225,690.28 (44%)	5 (21.7%)	\$18,069,465.98 (56%)	18 (78.3%)	Rejects
Class 4B (General Unsecured Claims—DRF, LLC)	\$117,353,232.98 (56.7%)	6 (25%)	\$91,679,725.76 (43.9%)	18 (75%)	Rejects
Class 6A (Existing DRF Logistics Equity Interests)	19 (100%)	1 (100%)	\$0 (0%)	\$0 (0%)	Accepts

ARGUMENT

33. This argument is divided into three parts. *Part I* addresses satisfaction of the applicable requirements for settlements, releases, Exculpation Provision, and Injunction Provisions contained in a chapter 11 plan pursuant to Bankruptcy Rule 9019, section 1123 of the Bankruptcy Code, and applicable Fifth Circuit law. *Part II* demonstrates the satisfaction of each of the requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code. *Part III* responds to certain objections raised to the confirmation of the Plan.

I. Plan Settlements, Releases, Exculpation Provision, and Injunction Provisions Are Appropriate and Should Be Approved

A. *Plan Settlements Are Reasonable and Satisfy Bankruptcy Rule 9019*

34. The Plan embodies a good-faith compromise of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any such Allowed Claim or Allowed Interest or any distribution to be made on account thereof.

35. In the Fifth Circuit, “[t]he standard for evaluating the validity of a settlement contained in a Chapter 11 plan is the same as the standard for evaluating a settlement between a debtor and another party outside the context of a plan Stated differently, settlement provisions in a Chapter 11 plan must satisfy the standards used to evaluate compromises under [Bankruptcy] Rule 9019.” *In re Bigler LP*, 442 B.R. 537, 543 n.6 (Bankr. S.D. Tex. 2010) (citing *In re MCorp Fin., Inc.*, 160 B.R. 941, 951 (S.D. Tex. 1993)). Accordingly, approval should be given “if the settlement is ‘fair and equitable and in the best interest of the estate.’” *Off. Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 355 (5th Cir. 1997) (quoting *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995) (additional citations omitted)).

36. To determine whether a settlement is fair and equitable, courts “apply [a] three-part test . . . with a focus on comparing ‘the terms of the compromise with the likely rewards of litigation.’” *Off. Comm. of Unsecured Creditors v. Moeller (In re Age Refin., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (quoting *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980)). Specifically, a bankruptcy court evaluates (i) “the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law,” (ii) “the complexity and likely duration of litigation and any

attendant expense, inconvenience, and delay,” and (iii) “all other factors bearing on the wisdom of the compromise,” including (a) “the best interests of the creditors, with proper deference to their reasonable views,” and (b) “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* (first citing *Jackson Brewing*, 624 F.2d at 602; then quoting *Cajun Elec. Power*, 119 F.3d at 356; and then quoting *Foster Mortg.*, 68 F.3d at 917–18) (internal quotation marks omitted).

37. Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, “the [debtor’s] burden is not high.” *See In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008). The court need only determine that the settlement does not “fall beneath the lowest point in the range of reasonableness.” *See In re Idearc Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009), *subsequently aff’d*, 662 F.3d 315 (5th Cir. 2011) (citation omitted); *Roqumore*, 393 B.R. at 480 (“The Trustee need only show that his decision falls within the ‘range of reasonable litigation alternatives.’” (citations omitted)).

38. As set forth in greater detail above (*see supra* ¶¶ 14–26), the Plan Settlements, including the Settlement and Release Agreement and the Creditors’ Committee Settlement, are the result of good-faith, arm’s-length negotiations among and embody a number of compromises made by the Debtors and their key stakeholders, including Pitney Bowes and the Creditors’ Committee. The Plan Settlements include:

- Pitney Bowes’s agreement to provide \$18.5 million to fund the Oaktree Initial Payment and the Unsecured Claims Initial Distribution and \$4.4 million to fund the Unsecured Claims Additional Distribution;
- the DIP Lender’s consent to the subordination of the DIP Claim to (i) Allowed Administrative Expense Claims, (ii) Allowed Priority Tax Claims, (iii) Wind Down Expenses; (iv) to the Unsecured Claims Initial Distribution and the Unsecured Claims Additional Distribution, and (v) other than the DIP Claims Recovery Pool, the payment in full of

holders of Allowed General Unsecured Claims in Class 4 against each Debtor;

- the Consenting Parties' commitment to support and vote in favor of the Plan, creating a viable path to confirmation;
- significantly improved recoveries to holders of Class 4 (General Unsecured Claims) as compared to their potential recoveries in a chapter 7 liquidation, where such holders would receive nothing (Chiu Decl., ¶ 14);
- a global resolution of all Claims, Causes of Action, and disputes between the Debtors and Pitney Bowes without the need for expensive and protracted litigation (Carr Decl., ¶ 18); and
- resolution of the Creditors' Committee's objections to confirmation of the Plan, which mitigates the costs to the Estates associated with litigating potential confirmation challenges.

39. The Debtors, the Creditors' Committee, and the Consenting Parties are all represented by experienced and competent counsel who vigorously negotiated the Plan Settlements and such parties unanimously agree that approval of the Plan Settlements is a significantly better outcome than the alternatives. Accordingly, the Plan Settlements, taken together, represent a reasonable resolution of the issues raised in these chapter 11 cases, result in a Plan that is fair and equitable and in the best interest of the Debtors' estates, and should therefore be confirmed.

B. *Plan Releases, as Encompassed in Plan Settlements, Are Appropriate and Should Be Approved*

40. The Plan provides for the release and discharge of all Claims and Causes of Action by (i) the Debtors and their Estates as set forth in Section 11.6(a) of the Plan (the "**Debtor Releases**") and (ii) certain non-Debtor third parties as set forth in Section 11.6(b) of the Plan

(the “**Third-Party Releases**”), in favor of the Released Parties.⁵ The Debtor Releases and Third-Party Releases are integral components of the Plan, were negotiated in as part of the Plan Settlements, are appropriate and necessary under the circumstances, are consistent with the Bankruptcy Code, and comply with applicable case law and precedent in the Fifth Circuit, and, for the reasons set forth below, should be approved.

1. Debtor Releases

41. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate.” 11 U.S.C. § 1123(b)(3)(A). Accordingly, a debtor may release causes of action as consideration for concessions made by its stakeholders pursuant to a chapter 11 plan. *See, e.g., Bigler*, 442 B.R. at 547 (finding that plan release provision “constitutes an acceptable settlement under § 1123(b)(3) because the [d]ebtors and the [e]state are releasing claims that are property of the [e]state in consideration for funding of the Plan”); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 308 (Bankr. N.D. Tex. 2007) (“[T]he plain language of § 1123(b)(3) provides for the inclusion in a plan of a settlement of claims belonging to the debtor or to the estate”) (emphasis omitted); *In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) (“To the extent that . . . the plan purports to release any causes of action against the [creditor] which the [d]ebtor could assert, such provision is authorized by § 1123(b)(3)(A)”). In considering the appropriateness of a release of claims by a debtor, courts consider whether the release is (i) “fair and equitable” and (ii) “in the best interest of the estate.” *See Jackson Brewing*, 624

⁵ “**Released Parties**” means each of the following in their capacity as such: (i) the Debtors; (ii) the Liquidating Agent; (iii) Pitney Bowes; (iv) the DIP Lender; (v) Oaktree; (vi) Hilco; (vii) members of the Creditors’ Committee solely in their capacity as such, (viii) the Wind Down Estates; (ix) holders of Claims and Interests who vote to accept this Plan and do not opt out of granting the releases set forth herein; and (x) with respect to each of the foregoing Entities in clauses (i) through (viii), such Entity’s Related Parties. Notwithstanding the foregoing, any Entity that opts out of the releases set forth in this Plan will not be a Released Party.

F.2d at 602 (citing *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)); see *Bigler*, 442 B.R. at 543 n.6; see *In re Derosa-Grund*, 567 B.R. 773, 784–85 (Bankr. S.D. Tex. 2017); see also *In re Mirant Corp.*, 348 B.R. 725, 738 (Bankr. N.D. Tex. 2006), *aff'd sub nom. Objecting Class 3 Claimholders v. New Mirant Entities*, No. 4:06-CV-744-A, 2006 WL 3780884 (N.D. Tex. Dec. 26, 2006); *Heritage*, 375 B.R. at 259.

42. Courts generally determine whether a release is “fair and equitable” and “in the best interests of the estate” by reference to the following so-called “*Foster Mortgage*” factors:

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

Cadle Co. v. Mims (In re Moore), 608 F.3d 253, 263 (5th Cir. 2010) (citing *Foster Mortg.*, 68 F.3d at 917–18); see also *Derosa-Grund*, 567 B.R. at 784–85; *Roquomore*, 393 B.R. at 479–80.

43. The Debtor Releases meet the foregoing standard. *First*, with respect to the Debtor Releases contained in the Settlement and Release Agreement and the Plan, no colorable claims that could have resulted in a net positive value for the Debtors’ estates were identified. Specifically, through the Investigation, the Independent Managers identified only one claim against Pitney Bowes that could potentially be pursued. Based upon the information available to them, the Independent Managers approved the release of Pitney Bowes based on their

determination that pursuing this potential claim (or any other claim) against Pitney Bowes would ultimately result in negative value for the Debtors' estates. *See Carr Decl.*, ¶ 10.

44. *Second*, the Debtor Releases were a material inducement for the Consenting Parties to support the Plan and reflect a reasonable balance of the risk and expense of litigation, on the one hand, against the benefits received from resolving these disputes and issues, on the other hand. The Plan, including the Debtor Releases, reflects an integrated compromise, which averts the needs for costly and protracted litigation that would otherwise pose a substantial impediment to the efficient wind-down of the Debtors' estates. *See Carr Decl.*, ¶ 10.

45. *Third*, the Debtor Releases constitute an integral aspect of the Debtors' arm's-length negotiations with their key stakeholders that resulted in the Plan and are being granted in exchange for the benefits provided to the Debtors leading up to and throughout these chapter 11 cases. As explained above, pursuant to the Settlement and Release Agreement, Pitney Bowes (i) entered into the Secured Debt Amendments, releasing the Debtors as guarantors under funded debt obligations totaling approximately \$1.713 billion, (ii) provided the Debtors with much-needed liquidity in the form of debtor-in-possession financing (which is not expected to be repaid in full under the Plan), (iii) provided crucial services to the Debtors through a shared services agreement, ensuring the Debtors' smooth transition into chapter 11, and (iv) agreed to fund the Oaktree Initial Payment, the Unsecured Claims Initial Distribution, and the Unsecured Claims Additional Distribution in the amount of \$21.5 million as well as the Category 2 GUC Distribution up to an aggregate amount of \$16 million. *See Carr Decl.*, ¶ 12.

46. *Fourth*, in consideration of the Debtor Releases, certain Released Parties have provided, and continue to provide, other integral support to the Debtors during these chapter 11 cases. In particular, the Debtors' officers, managers, and management team

(i) guided the Debtors throughout these chapter 11 cases, (ii) were instrumental in negotiating the RSA and the Plan, including the Plan Settlements, and (iii) preserved the value of the Debtors' estates for the benefit of all stakeholders through their efficient management of the Debtors' wind down process.

47. Accordingly, the Debtor Releases are fair, equitable, and in the best interest of the estates, are consistent with prevailing Fifth Circuit law, and should be approved by the Court.

2. Third-Party Releases

48. In addition to the Debtor Releases, Section 11.6(b) of the Plan provides for certain consensual Third-Party Releases. Section 1123(b)(6) of the Bankruptcy Code provides that a chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). Under Fifth Circuit law, a plan may include a releases of third parties if such releases are being provided by parties that consented to such releases and received consideration in exchange therefor. *See Bigler*, 442 B.R. at 549; *see Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987) (acknowledging that Bankruptcy Code does not prohibit a non-debtor release "when it has been accepted and confirmed as an integral part of a plan of reorganization"); *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775 (Bankr. N.D. Tex. 2007) ("Most courts allow consensual nondebtor releases to be included in a plan." (citations omitted)). If these requirements are satisfied, a release should be approved when it is "an essential means of implementing [a] [p]lan pursuant to Section 1123(a)(5) of the Bankruptcy Code[.]" *In re Moody Nat'l SHS Hous. H, LLC*, No. 10-30172 (MI), 2010 WL 5116872, at *5 (Bankr. S.D. Tex. June 30, 2010) (approving consensual nondebtor release).

49. Employing that standard, Fifth Circuit courts routinely allow third-party releases in chapter 11 plans when the third-party releases are (i) consensual, (ii) specific in language, (iii) integral to the plan, (iv) a condition of a settlement, and (v) given for consideration, so long as such releases do not otherwise violate provisions of the Bankruptcy Code. *See, e.g., Wool Growers*, 371 B.R. at 776 (“Consensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate section 524(e).” (citations omitted)); *see also FOM P.R. S.E. v. Dr. Barnes Eyecenter Inc.*, 255 F. App’x 909, 912 (5th Cir. 2007) (enforcing a non-debtor release where “the release of claims was an integral part of the bankruptcy order [and] was not simply boilerplate language that was inserted into the [reorganization plan], but rather a necessary part of the [reorganization plan] itself”); *Applewood Chair Co. v. Three Rivers Plan. & Dev. Dist. (In re Applewood Chair Co.)*, 203 F.3d 914, 920 (5th Cir. 2000) (declining to uphold a general release that did not contain a specific discharge of indebtedness of a third-party); *Shoaf*, 815 F.2d at 1050 (upholding a third-party release that was specifically provided for in confirmed plan); *Hinojosa Eng’g, Inc. v. Lopez (In re Treyson Dev., Inc.)*, No. 14-70256, 2016 WL 1604347, at *15–17 (Bankr. S.D. Tex. Apr. 19, 2016) (noting that “[t]he Fifth Circuit require[s] that the language in the plan must be specific as to the parties involved and the claim(s) released in order to be sufficient.” (citations omitted)).

50. In determining whether a third-party release is consensual, courts in the Fifth Circuit have focused on two things—notice and an opportunity to object—*i.e.*, whether “notice has gone out, parties have actually gotten it, they’ve had the opportunity to look over it, [and] the disclosure is adequate so that they can actually understand what they’re being asked to do and the options that they’re being given.” Conf. Hr’g Tr. at 47, *In re Energy & Expl. Partners*,

Inc., No. 15-44931 (RFN) (Bankr. N.D. Tex. April 21, 2016) (Docket No. 730) (approving third-party releases as consensual, over objection, in light of sufficient notice and opportunity to object); *see also In re GenOn Energy, Inc.*, No. 17-33695 (DRJ) (Bankr. S.D. Tex. Dec. 12, 2017) (Docket No. 1250) (approving third-party releases as consensual over objections from parties in interest, including U.S. Trustee); *In re Ameriforge Grp., Inc.*, No. 17-32660 (DRJ) (Bankr. S.D. Tex. May 22, 2017) (Docket No. 142) (confirming chapter 11 plan over objection because certain impaired creditors were deemed to have consented to third-party release provisions unless they opted out).

51. Moreover, as the Court recently confirmed, nothing in the Supreme Court's recent decision in *Purdue* has modified the law in this jurisdiction that opt-out features are an appropriate mechanism to obtain consensual third-party releases. *See In re Robertshaw US Holding Corp*, 662 B.R. 300, 323 (Bankr S.D. Tex. 2024) (holding that the use of opt-out mechanisms in plans of reorganization are an appropriate method to obtain consensual third-party releases and explaining that “[h]undreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out. And, again, *Purdue* did not change the law in this Circuit.”); *see also In re Diamond Sports Group, LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Nov. 14, 2024) (Docket No. 2671) (confirming chapter 11 plan with consensual third-party releases obtained via an opt-out feature).

52. Furthermore, the Complex Case Rules permit consensual third-party releases with an opt-out. Specifically, the Complex Case Rules provide:

If a proposed plan seeks consensual pre- or post-petition releases with respect to claims that creditors may hold against non-debtor parties, then a ballot must be sent to creditors entitled to vote on the proposed plan and notices must be sent to non-voting creditors and parties-in-interest. The ballot and the notice must inform the creditors of such releases and provide a box to check to indicate

assent or opposition to such consensual releases together with a method for returning the ballot or notice.

Complex Case Rules ¶ 40.

53. Here, the Third-Party Releases satisfy the Fifth Circuit's standard for approval of third-party releases under the Bankruptcy Code and the Complex Case Rules and should be approved.

54. *First*, as set forth above, and in compliance with the Disclosure Statement Order, parties in interest were provided extensive notice of these chapter 11 cases, the Plan, the proposed Third-Party Releases, and the Objection Deadline. *See* Tabulation Decl., ¶¶ 7–9. The Confirmation Hearing Notice, the Notice of Non-Voting Status, and the Ballots expressly included, in bold font, the terms of the Third-Party Releases, as set forth in Section 11.6(b) in the Plan. *See* Confirmation Hearing Notice; Solicitation Certificates. The Confirmation Hearing Notice, the Notice of Non-Voting Status, and the Ballots advised careful review and consideration of the terms of the Third-Party Releases. *Id.* The language of the Third-Party Releases was also emphasized using bold font in the Plan and was included in the Disclosure Statement. *See* Plan, §§ 11.5–11.8; Disclosure Statement, Ex. D.

55. In addition, the Notice of Non-Voting Status, the Release Opt-Out Form, and the Ballots each set forth the procedures for opting out of such Third-Party Releases, and the Ballots and Release Opt-Out Form each included the appropriate form for parties to opt out of the Third-Party Releases in compliance with Rule 40 of the Complex Case Rules. *See* Disclosure Statement Ord., ¶¶ 8, 10, 16–27, Scheds. 3A–4. The Ballots provided a checkbox to opt out of the consensual Third-Party Releases, and the Notice of Non-Voting Status included the Release Opt-Out Form that also provided a checkbox to opt out of the consensual Third-Party Releases. *See* Disclosure Statement Ord., Scheds. 3A–4. Ultimately, as of the Voting

Deadline, approximately 44 holders of Claims (including holders in Non-Voting Classes) completed and returned forms opting out of the Third-Party Releases. See Tabulation Decl., ¶ 15.

56. *Second*, the Third-Party Releases are sufficiently specific to put the Releasing Parties on notice of the claims being released. The Third-Party Releases describe the nature and type of claims being released, including claims with respect to:

[T]he Debtors (including the governance, management, direct or indirect ownership, transactions with, or operation thereof) or their Estates; the Wind Down Estates; the Liquidating Agent; the Chapter 11 Cases (including the filing and administration thereof); the Wind Down; the RSA; the Disclosure Statement; the DIP Orders, the Settlement and Release Agreement; the Note Purchase Agreement (other than with respect to Pitney Bowes and any guarantor, whose obligations under the Note Purchase Agreement or the Note Purchase Documents shall continue as legal, valid, binding and non-avoidable obligations and the security interests securing those obligations shall remain valid, binding, enforceable, non-avoidable and properly perfected); the Secured Senior Takeback Note; the negotiation, formulation, preparation, dissemination, or consummation of the Definitive Documents or any other contract, instrument, release, or document created or entered into in connection with this Plan (including the Plan Supplement) or any of the other Definitive Documents; any other debt or Security of the Debtors and the ownership thereof; the purchase, sale, or rescission of the purchase or sale of any debt or Security of the Debtors; the subject matter of, or the transactions or events giving rise to any Claim or Interest that is treated in this Plan; the business or contractual or other arrangements or other interactions between any Releasing Party and any Released Party in connection with the Debtors; the restructuring of any Claim or Interest before or during the Chapter 11 Cases; any other in-or-out-of-court restructuring efforts of the Debtors; any intercompany obligations, transactions, or transfers; the formulation, preparation, negotiation, dissemination, solicitation, filing, confirmation, and consummation of this Plan (including the Plan Supplement); the funding of this Plan; the administration and implementation of this Plan or the Confirmation Order, including the distribution of property under this Plan; or any other agreement, act or omission, transaction,

transfer, event, or other occurrence related to the foregoing and taking place on or before the Effective Date.

Plan § 11.6(b).

57. *Third*, the Third-Party Releases are an integral part of the Plan and a condition of the RSA. The Debtors engaged in good-faith, arm's-length negotiations with the Consenting Parties regarding the terms of the RSA, as reflected in the Plan. *See Carr Decl.*, ¶ 17. The Third-Party Releases were heavily negotiated by sophisticated parties, represented by competent counsel, and the Third-Party Releases were a material inducement for the parties to enter into a comprehensive settlement and provide their support for the Plan and the settlements embodied therein.

58. *Fourth*, as described above, each of the Released Parties has provided and continues to provide integral support to the Debtors throughout these chapter 11 cases and has contributed meaningfully to the Plan and eventual wind down. The Debtors have obtained significant contributions to Plan from the Released Parties, including through the guaranteed distributions available for holders of Allowed General Unsecured Claims. *See Carr Decl.*, ¶¶ 12–14.

59. *Fifth*, the Creditors' Committee's support for the Plan, including the Third-Party Releases, also demonstrates that the Third-Party Releases benefit the Debtors' stakeholders and are appropriate.

60. Notwithstanding the foregoing and the Court's clear guidance in *Robertshaw* that "[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan," the U.S. Trustee raises the same arguments in its Objection that this Court rejected in *Robertshaw* less than three months ago. *See Robertshaw*, 662 B.R. at 322–24. Specifically, the U.S. Trustee asserts that the Plan's opt-out feature, which complies with

the Complex Case Rules and case law in this District, is insufficient to render the Third-Party Releases consensual in light of the Supreme Court’s decision in *Purdue*. See U.S. Trustee Obj., ¶ 30; see also *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071, 2082–88 (2024). The U.S. Trustee, however, adopts an overly expansive view of *Purdue*, which was about non-consensual third-party releases and did not “express a view on what qualifies as a consensual release.” *Id.* at 2087–88. As this Court recognized, “*Purdue* did not change the law in this Circuit.” *Robertshaw*, 662 B.R. at 323.

61. As discussed in more detail below, the Court should reject the U.S. Trustee’s objection and approve the Third-Party Releases in the Plan as they comply with the Bankruptcy Code, the Complex Case Rules, and controlling Fifth Circuit standards and are appropriate and justified under the circumstances.

C. Exculpation Provision Is Appropriate, Consistent with Fifth Circuit Precedent, and Should Be Approved

62. The Plan provides for the exculpation of certain parties as set forth in Section 11.7 of the Plan (the “**Exculpation Provision**”). The Exculpation Provision protects the Exculpated Parties⁶ from, among other things, Claims and Causes of Action arising out of or relating to the Debtors’ chapter 11 cases and the negotiations and agreements made in connection therewith. Unlike the Third-Party Releases, the Exculpation Provision does not affect the liability of third parties *per se*, but rather sets a standard of care in hypothetical future litigation against an exculpated party for acts arising out of these chapter 11 cases, with a carve out for actual fraud, willful misconduct, and gross negligence. As such, the Exculpation Provision

⁶ “**Exculpated Parties**” means each of the following in their capacity as such and, in each case, to the maximum extent permitted by law: (i) the Debtors; (ii) the Independent Managers; and (iii) the Creditors’ Committee.

prevents future collateral attacks against estate fiduciaries that have exercised their fiduciary duties to maximize value for the Debtors and the Estates.

63. Courts in this circuit permit exculpation of debtors for actions short of gross negligence committed during the course of bankruptcy and, although more carefully scrutinized, permit exculpation of non-debtor parties where a separate statutory basis for exculpation exists. *See NexPoint Advisors, L.P. v. Highland Cap. Mgmt. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 437–38 (5th Cir. 2022), *pet. for cert. denied*, No. 22-631 (U.S. Jul. 2, 2024) (“[Section] 524(e) does not permit absolving the non-debtor from any negligent conduct that occurred during the course of the bankruptcy absent another source of authority.”) (citation omitted) (internal quotation marks omitted). In this vein, section 1103(c) of the Bankruptcy Code is widely recognized as a separate statutory basis for exculpation for creditors’ committees. *See Bank of N.Y. Tr. Co. v. Off. Unsecured Creditors’ Comm. (In re Pac. Lumber Co.)*, 584 F.3d at 229, 253 (5th Cir. 2009) (approving the exculpation of a creditors’ committee and its members because section 1103(c) of the Bankruptcy Code implies “qualified immunity for [committee members’] actions within the scope of their duties”).

64. Most recently, in *Highland Capital* the Fifth Circuit expressly adopted and applied precedent providing qualified immunity to bankruptcy trustees⁷ to exculpate certain non-debtors acting within the scope of duties of a trustee. *Highland Cap.*, 48 F.4th at 436–37. Based on the facts and circumstances before it, the court in *Highland Capital* determined that in such

⁷ *See, e.g., Hilal v. Williams (In re Hilal)*, 534 F.3d 498, 501 (5th Cir. 2008) (“In this circuit, trustees cannot be subjected to personal liability for damages to the bankruptcy estate unless they are found to have acted with gross negligence.” (citation omitted)); *Dodson v. Huff (In re Smyth)*, 207 F.3d 758, 762 (5th Cir. 2000) (“[W]e conclude that trustees should not be subjected to personal liability unless they are found to have acted with gross negligence.” (citation omitted)); *Baron v. Sherman (In re Ondova Ltd.)*, 914 F.3d 990, 993 (5th Cir. 2019) (“We thus hold that bankruptcy trustees in the Fifth Circuit are entitled to qualified immunity for personal harms caused by actions that, while not pursuant to a court order, fall within the scope of their official duties.”).

capacity, (i) each of the three independent directors appointed as fiduciaries were properly exculpated by the Plan and (ii) certain other non-debtor parties that were not acting in such a capacity could not be exculpated. *Id.* Citing section 1107(a) of the Bankruptcy Code, the court reasoned that “[l]ike a debtor-in-possession, the Independent Directors are entitled to all the rights and powers of a trustee” and were therefore entitled to exculpation. *Id.*

65. Here, each of the Exculpated Parties participated in the Debtors’ chapter 11 cases in good faith. The Exculpation Provision will provide such parties with appropriate protections supported by express sources of authority within the Bankruptcy Code, including sections 524(e), 1103(c), and 1107(a) of the Bankruptcy Code. Furthermore, the Exculpation Provision in the Plan is narrowly tailored to protect the Exculpated Parties from inappropriate litigation based on these chapter 11 cases and does not release any claim based on any act or omission that constitutes gross negligence, willful misconduct, or actual fraud as determined by a final order. The Exculpation Provision is further limited such that it is “only applicable to the maximum extent permitted by law” and only covers actions from the Petition Date through the Effective Date. Moreover, each of the Exculpated Parties—including the Independent Managers—acted as estate fiduciaries during the pendency of the Debtors’ chapter 11 cases.

66. Notwithstanding the foregoing, the U.S. Trustee objects to the inclusion of the Debtors’ two Independent Managers as “Exculpated Parties.” Specifically, the U.S. Trustee argues that, under *Highland Capital*, managers may be exculpated only when the bankruptcy court enters an order allowing such managers to act as a bankruptcy trustee, or where a unique governance structure otherwise exists that warrants exculpation. See U.S. Trustee Obj., ¶¶ 88–

90. The U.S. Trustee, however, ignores post-*Highland Capital* cases in this district that have approved exculpation of independent directors.⁸

67. As discussed in more detail below, the Court should reject the U.S. Trustee's objection and approve the Exculpation Provision as it is appropriate, consistent with *Highland Capital* and Fifth Circuit precedent.

D. Injunction Provisions Are Appropriate and Should Be Approved

68. The Plan also provides for the injunction of certain actions as set forth in Section 11.5 of the Plan (the "**Injunction Provisions**"). The Injunction Provisions are appropriate because they comply with the Bankruptcy Code and are necessary to implement and enforce the Plan.

69. The Injunction Provisions are integral to the Plan because, among other things, they (i) provide certainty to the Debtors and Wind Down Estates that the Plan will be enforceable in accordance with its terms and (ii) enforce the Debtor Releases, the Third-Party Releases, and the Exculpation Provision. Importantly, the Injunction Provisions implement the Plan by permanently enjoining any Entity from commencing or continuing in any manner any claim that was released or exculpated pursuant to such provisions. The Injunction Provisions include a "gatekeeper provision," which provides that, before any Claim or Cause of Action is brought against a Released Party or Exculpated Party (each as defined in the Plan), the Court must (i) determine, after notice and a hearing, that such Claim or Cause of Action is colorable

⁸ *In re Pipeline Health Sys., LLC*, No. 22-90291 (MI) (Bankr. S.D. Tex. Jan. 13, 2023) (Docket No. 1041) at 24 (approving the exculpation of independent directors where "such parties were integral to the restructuring, owed fiduciary duties to the Debtors and the Debtors' Estates, and fulfilled their fiduciary duties at all times throughout these Chapter 11 Cases"); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. Dec. 20, 2022) (Docket No. 1760) (approving the exculpation of the debtors, two independent managers, and the creditors' committee and its members); *In re Altera Infrastructure L.P.*, No. 22-90130 (MI) (Bankr. S.D. Tex. Nov. 4, 2022) (Docket No. 533) (approving exculpation of the debtors, the creditors' committee and its members, and each independent director of any debtor entity).

and (ii) specifically authorize such person or entity to bring such Claim or Cause of Action (the “**Gatekeeper Provision**”). The Gatekeeper Provision is consistent with the one authorized by the Fifth Circuit in *Highland Capital* and, more recently, by this district in *Mobileum*. See *Highland Cap.*, 48 F.4th at 439 (“Courts have long recognized bankruptcy courts can perform a gatekeeping function. . . . [W]e affirm the inclusion of the injunction and the gatekeeper provisions in the Plan.”); see also *In re Diamond Sports Group, LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. Nov. 14, 2024) (Docket No. 2671) (confirming chapter 11 plan that included an injunction and gatekeeper provisions); *In re Mobileum, Inc.*, No. 24-90414 (CML) (Bankr. S.D. Tex. Sep. 11, 2024) (Docket No. 194) (same); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. Dec. 20, 2022) (Docket No. 1760) (same).

70. The Injunction Provisions are an integral component of the Plan, appropriate and necessary under the circumstances, consistent with the Bankruptcy Code, narrowly tailored, and compliant with the applicable case law and precedent in the Fifth Circuit, and, for the reasons set forth above, should be approved.

II. Plan Satisfies Bankruptcy Code’s Requirements and Should Be Confirmed

71. To achieve confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence. See *Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters., Ltd. (In re Briscoe Enters., Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) (“[P]reponderance of the evidence is the debtor’s appropriate standard of proof both under § 1129(a) and in a cramdown.”); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009); *In re J T Thorpe Co.*, 308 B.R. 782, 785 (Bankr. S.D. Tex. 2003). The Plan satisfies all applicable requirements of section 1129 of the Bankruptcy Code and complies with all other applicable sections of the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules, and applicable nonbankruptcy law.

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

72. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively. *See* H.R. Rep. No. 95-595, First Session at 412 (1977); S. Rep. No. 95-989, at 126 (1978).

1. Section 1122: Plan’s Classification Structure is Proper

73. Section 1122(a) of the Bankruptcy Code provides that “a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.” 11 U.S.C. § 1122(a). The Plan has six Classes of Claims against and Interests in each Debtor as follows: (i) Class 1 (Other Priority Claims); (ii) Class 2 (Other Secured Claims); (iii) Class 3 (Oaktree Secured Claims); (iv) Class 4 (General Unsecured Claims); (v) Class 5 (Interdebtor Claims); (vi) Class 6A (Existing DRF Logistics Equity Interests); and (vii) Class 6B (Interdebtor Interests).

74. A plan proponent is afforded significant flexibility in classifying claims and interests into different classes, provided that there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar. *See In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *8 (Bankr. S.D. Tex. Dec. 21, 2009); *In re Sentry Op. Co. of Tex.*, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) (noting that “[section] 1122 is permissive of any classification scheme that is not proscribed, and that substantially similar claims may be separately classified”) (emphasis omitted); *In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 596 (Bankr. S.D. Tex. 1991) (“A classification scheme satisfies section 1122(a) of the

Bankruptcy Code when a reasonable basis exists for the choices made and all claims within a particular class are substantially similar.”); *see also In re Vitro Asset Corp.*, No. 11-32600-hdh, 2013 WL 6044453, at *5 (Bankr. N.D. Tex. Nov. 14, 2013) (“[A] plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or interests.”); *In re Mirant Corp.*, No. 03-46590 (DML), 2005 WL 6443614, at *19 (Bankr. N.D. Tex. Dec. 9, 2005).

75. The classification structure of the Plan is rational and complies with the Bankruptcy Code. Kaup Decl., ¶ 18. All Claims and Interests within a Class have the same or similar rights against the Debtors. The Plan provides for the separate classification of Claims against and Interests in each Debtor based upon the differences in legal nature and priority of such Claims and Interests. Kaup Decl., ¶ 16. Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code.

2. Section 1123(a): Plan’s Content is Appropriate

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

- Section 1123(a)(1). The Plan designates Classes of Claims and Interests as required by section 1123(a)(1). *See* Plan, § 3.2.
- Section 1123(a)(2). The Plan specifies whether each Class of Claims or Interests is Impaired or Unimpaired under the Plan as required by section 1123(a)(2). *See id.*, § 3.2.
- Section 1123(a)(3). The Plan specifies the treatment of any Class of Claims or Interests that is Impaired as required by section 1123(a)(3). *See id.*, Art. IV.
- Section 1123(a)(4). Except as otherwise agreed to by a holder of a particular Claim or Interest, the opportunity for recovery to each holder of a Claim or Interest in each Class is the same as the opportunity for

recovery to all holders in such Class, as required by section 1123(a)(4). *See id.*, Art. IV.

- Section 1123(a)(5). The Plan provides adequate means for its implementation through, among other things, the (i) appointment of the Liquidating Agent to administer the Plan and ongoing wind down of the Debtors, *see id.*, § 5.2; (ii) the establishment of the Wind Down Estates and transfer of the Debtors' remaining assets to the Wind Down Estates, *see id.*, § 5.3; (iii) the establishment and funding of the Fee Escrow Account, *see id.*, § 5.3; (iv) the funding of the Wind Down Reserve, the Unsecured Claims Initial Distribution, the Unsecured Claims Additional Distributions, the Category 2 GUC Distribution, and the Senior Claims Recovery Pool, , *see id.*, § 5.3; (v) preservation of certain Claims and Causes of Action, *see id.*, § 11.10; (vi) the provision of certain releases by the Debtors and by holders of Claims and Interests, *see id.*, § 11.6; (vii) establishment of the GUC Oversight Board to participate in the claims reconciliation process, *see id.*, § 5.14; and (viii) the exculpation of the Exculpated Parties, *see id.*, § 11.7.
- Section 1123(a)(6). The governing corporate documents of each Debtor have been or will be amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities in accordance with section 1123(a)(6).
- Section 1123(a)(7). The Plan provisions governing the manner of selection of any officer or manager under the Plan are consistent with the interests of creditors and equity security holders and with public policy. *See id.*, § 6.1.

77. Accordingly, the Plan satisfies section 1123(a) of the Bankruptcy Code.

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

78. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a plan. Here, the relevant provisions of the Plan are permissible under section 1123(b),⁹ as set forth in more detail below.

- Section 1123(b)(1). Pursuant to Articles III and IV of the Plan, Class 3 (Oaktree Secured Claims), Class 4 (General Unsecured Claims), and Class 6A (Existing DRF Logistics Equity Interests) are Impaired.

⁹ Section 1123(b)(4), which authorizes the sale of substantially all of a debtor's property pursuant to a plan, is inapplicable here.

- Section 1123(b)(2). The Plan provides for the rejection of the executory contracts and unexpired leases of the Debtors as of the Effective Date, unless such executory contract or unexpired lease (i) is specifically designated as a contract or lease to be assumed by the Debtors pursuant to the Plan, including as a set forth in the Plan Supplement, (ii) was previously assumed or rejected by the Debtors pursuant to a Final Order of the Bankruptcy Court or assumed and assigned pursuant to the 365 Schedule, (iii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto, (iv) is the subject of a separate assumption or rejection motion filed by the Debtors on or before the Confirmation Date, or (v) is the subject of a pending Cure Dispute. *See Plan*, § 9.1.
- Section 1123(b)(3)(B). The Plan preserves and retains certain rights, claims, and Causes of Action to be pursued by the Liquidating Agent on behalf of the Debtors or Wind Down Estates (as applicable). *See Plan* § 11.10.
- Section 1123(b)(5). Article IV of the Plan modifies the right of holders of Oaktree Secured Claims (Class 3), General Unsecured Claims (Class 4), Interdebtor Claims (Class 5) (only in the event that Interdebtor Claims are not reinstated), and Existing DRF Logistics Equity Interests (Class 6A), and leaves unimpaired the rights of holders of Other Priority Claims (Class 1), Other Secured Claims (Class 2), Interdebtor Claims (Class 5) (only in the event that Interdebtor Claims are reinstated), and Interdebtor Interests (Class 6B). *See Plan*, Art. IV.
- Section 1123(b)(6). Sections 11.5, 11.6, and 11.7 of the Plan contain certain release, exculpation, and injunction provisions. These provisions are essential to the Plan. *See id.*, at §§ 11.5–11.7.

79. Accordingly, each of the foregoing permissive provisions are consistent with section 1123(b) of the Bankruptcy Code. In addition, as discussed in more detail above, the Debtor Releases, Third-Party Releases, Exculpation Provision, and Injunction Provisions are permitted pursuant to sections 105, 1103, 1107, 1123(b)(3)(A), 1125(e), and 1141 of the Bankruptcy Code and applicable law. *See supra* ¶¶ 40–70.

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

B. Section 1129(a)(2): Debtors have Complied with Bankruptcy Code

81. Under section 1129(a)(2) of the Bankruptcy Code, “[t]he proponent of the plan [must] compl[y] with the applicable provisions of this title.” 11 U.S.C. § 1129(a)(2). The “applicable provisions” of the Bankruptcy Code have been interpreted to include, principally, sections 1125 and 1126 of the Bankruptcy Code. *See, e.g., Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 512 n.3 (5th Cir. 1998) (noting that section 1129(a)(2) includes requirement of compliance with section 1125); *In re Star Ambulance Serv. LLC*, 540 B.R. 251, 262 (Bankr. N.D. Tex. 2015) (“Courts interpret this language to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code §§ 1125 and 1126.”) (citation omitted). Often, courts have also considered whether the debtor “is a proper debtor under [s]ection 109 of the Bankruptcy Code and a proper proponent of [a plan] under [s]ection 1121(a) of the Bankruptcy Code.” *J T Thorpe*, 308 B.R. at 786 (holding that debtor’s compliance with sections 109, 1125, and 1126 satisfied requirements of section 1129(a)(2)); *see also Moody Nat’l*, 2010 WL 5116872, at *4 (same); *In re Harborwalk, LP*, Nos. 10-80043, 10-80044, 10-80045, 2010 WL 5116620, at *4 (Bankr. S.D. Tex. Oct. 25, 2010) (same).

1. Debtors Are Proper Debtors and Plan Proponents

82. Under section 109(a) of the Bankruptcy Code, “a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor . . .” 11 U.S.C. § 109(a). Further, “a person that may be a debtor under chapter 7 of [the Bankruptcy Code, with exceptions not applicable here] . . . may be a debtor under chapter 11 . . .” 11 U.S.C. § 109(d). Each Debtor has a domicile, a place of business, and property in the United States and is eligible for relief under chapter 7 of the Bankruptcy Code. *See Kaup Decl.*, ¶ 8 n.3. Therefore, each Debtor is a proper chapter 11 debtor.

2. Debtors Have Complied with Sections 1125 and 1127

83. Under section 1125(b) of the Bankruptcy Code:

An acceptance or rejection of a plan may not be solicited after the commencement of the case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, 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.

11 U.S.C. § 1125(b).

84. On September 24, 2024, the Bankruptcy Court entered the Disclosure Statement Order, which approved the Disclosure Statement as containing “adequate information” in accordance with section 1125(b) of the Bankruptcy Code and approved the Solicitation Package. As detailed in the Tabulation Declaration, the Debtors solicited votes from holders of Claims in the Voting Classes. See Tabulation Decl., ¶¶ 7–9. In accordance with section 1125(b), the Debtors did not solicit votes on the Plan until after the Disclosure Statement Order was entered.

85. Section 1127(a) of the Bankruptcy Code provides that “[t]he proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title.” 11 U.S.C. § 1127(a). Section 1127(c) further provides that the proponent of a modification to a plan must comply with section 1125 with respect to the plan as modified. 11 U.S.C. § 1127(c). Bankruptcy Rule 3019 provides that a plan that is modified after it has been accepted “shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan” to the extent the “the proposed modification does not adversely change the treatment” Fed. R. Bankr. P. 3019(a).

86. On November 18, 2024, the Debtors filed the *Debtors' Second Amended Joint Plan of Liquidation* (Docket No. 483), reflecting the terms agreed as part of the Creditors' Committee Settlement. See Kaup Decl., ¶ 1, 11. The modifications benefit the holders of General Unsecured Claims and do not adversely change the treatment of any claimants that have already voted on the Plan. Accordingly, the Debtors submit that these modifications to the Plan satisfy section 1127(c) of the Bankruptcy Code and Bankruptcy Rule 3019.

87. In addition, the Debtors may make certain additional immaterial changes to the Plan prior to or during the Confirmation Hearing pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. In accordance with Bankruptcy Rule 3019, these modifications will not require additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of votes under section 1126 of the Bankruptcy Code. Further, these modifications to the Plan will be consistent with section 1129 of the Bankruptcy Code.

88. Based on the foregoing, the Debtors have satisfied the requirements of sections 1125 and 1127 of the Bankruptcy Code.

3. Debtors Have Complied with Section 1126

89. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a chapter 11 plan and determining acceptance thereof. Pursuant to section 1126 of the Bankruptcy Code, only holders of Allowed Claims or Interests that are Impaired and will receive or retain property under the Plan on account of such Claims or Interests may vote to accept or reject the Plan. See 11 U.S.C. § 1126.

90. As provided in the Tabulation Declaration, the Debtors solicited acceptances of the Plan from the Voting Classes, which included the holders of Class 3 (Oaktree Secured Claims), Class 4 (General Unsecured Claims), and Class 6A (Existing DRF Logistics Equity Interests). In accordance with sections 1126(f) and 1126(g) of the Bankruptcy Code, the

Debtors did not solicit acceptances of the Plan from holders of Claims and Interests, as applicable, in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 5 (Interdebtor Claims), and Class 6B (Interdebtor Interests), because holders of such Claims and Interests are either Unimpaired and conclusively presumed to have accepted the Plan or are Impaired and deemed to reject the Plan.

91. Section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of claims entitled to vote to accept or reject the plan:

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

11 U.S.C. § 1126(c).

92. Similarly, Section 1126(d) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of interests entitled to vote to accept or reject the plan:

A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(d).

93. As set forth in the Tabulation Declaration, with respect to each of the Debtors, the Plan has been accepted by at least two-thirds in amount and more than one-half in number of Claims in Class 3 (Oaktree Secured Claims) at each Debtor entity and in Class 6A

(Existing DRF Logistics Equity Interests) at DRF Logistics, LLC. *See* Tabulation Decl., Ex. A. Class 4 (General Unsecured Claims) voted to reject the Plan. *See* Tabulation Decl., Ex. A.

94. Based on the foregoing, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

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

95. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be “proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). Good faith is determined through consideration of whether the plan was proposed with “the legitimate and honest purpose to reorganize and has a reasonable hope of success.” *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985). The plan must also achieve a result consistent with the Bankruptcy Code. *See In re Block Shim Dev. Co.-Irving*, 939 F.2d 289, 292 (5th Cir. 1991). The good faith standard is “viewed in light of the totality of circumstances surrounding establishment of a Chapter 11 plan, keeping in mind the purpose of the Bankruptcy Code to give debtors a reasonable opportunity to make a fresh start.” *In re Sun Country Dev.*, 764 F.2d at 408; *In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) (“Good faith should be evaluated ‘in light of the totality of the circumstances’ . . . mindful of the purposes underlying the Bankruptcy Code.”) (citing *In re Cajun Elec. Power*, 150 F.3d at 519); *In re T-H New Orleans Ltd. P’ship*, 116 F.3d 790, 802 (5th Cir. 1997); *see also In re Couture Hotel Corp.*, 536 B.R. 712, 735 (Bankr. N.D. Tex. 2015) (finding that plan that is “the result of arm’s-length discussions and negotiations among the Debtor [and other relevant parties and stakeholders] . . . clearly promotes the objectives and purposes of the Bankruptcy Code and is being proposed in good faith.”).

96. Here, the Plan has been proposed in good faith and for the legitimate purpose of winding down and liquidating the Estates and distributing any remaining proceeds in accordance with the Plan. The Debtors engaged in extensive, arm's-length negotiations over the Plan with Pitney Bowes, Oaktree, and the Creditors' Committee, each of which is represented by experienced and sophisticated legal and other advisors. *See* Kaup Decl., ¶ 29. Such negotiations culminated in the terms of the Plan. *See* Kaup Decl., ¶ 29. Furthermore, the Plan is not by any means forbidden by law, and indeed, is in full compliance with the Bankruptcy Code and applicable nonbankruptcy law.

97. Accordingly, the Debtors have proposed the Plan in good faith in compliance with section 1129(a)(3) of the Bankruptcy Code.

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

98. Section 1129(a)(4) requires that “[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.” 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees made from estate assets be subject to review and approval as to their reasonableness by the court. *See In re Cajun Elec. Power*, 150 F.3d at 513-14; *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting “there must be a provision [in the plan] for review by the Court of any professional compensation”). This is a “relatively open-ended standard” involving a case-by-case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged. *See In re Cajun Elec. Power*, 150 F.3d at 517 (finding with respect

to routine legal fees and expenses that have been approved, “the court will ordinarily have little reason to inquire further with respect to the amount charged”).

99. All payments for professional services provided to the Debtors during these cases that require Court approval will continue to be subject to such requirement through the Effective Date in accordance with section 1129(a)(4) of the Bankruptcy Code. Specifically, Section 2.2 of the Plan provides that all fees of retained professionals must be approved by the Court pursuant to fee applications and according to the order approving procedures for the submission and approval of fee applications by professionals retained by the Debtors and Creditors’ Committee in these chapter 11 cases (Docket No. 347). Further, Section 12.1 of the Plan provides that the Court shall retain jurisdiction to “hear and determine all Fee Claims.” Plan, § 12.1(i). Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

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

100. Section 1129(a)(5) of the Bankruptcy Code requires the plan proponent disclose the identity and affiliations of the proposed officers and directors of the debtors post-confirmation, 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, and, to the extent that there are any insiders that will be retained or employed by the debtors post-confirmation, that there be disclosure of the identity and nature of any compensation of any such insiders. 11 U.S.C. § 1129(a)(5).

101. The Debtors have satisfied the requirements under section 1129(a)(5) of the Bankruptcy Code through their disclosure that Eric Kaup will serve as Liquidating Agent under the Plan. See Plan Suppl. (Docket No. 431), Ex. E; see also Plan, § 5.2. Mr. Kaup is competent,

is familiar with the Debtors and their Estates, and is well-equipped to assist with the Wind Down. Additionally, the Independent Managers will continue to serve on the board of managers of DRF Logistics, LLC following confirmation of the Plan. Accordingly, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

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

102. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of “any rate change provided for in the plan.” See 11 U.S.C. § 1129(a)(6). The Plan does not provide for rate changes by the Debtors. See Kaup Decl., ¶ 34. Accordingly, section 1129(a)(6) does not apply to the Plan.

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

103. Section 1129(a)(7) of the Bankruptcy Code requires that each holder of an impaired claim or interest has either accepted the plan or will receive or retain property having, as of the effective date of the plan, a present value of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time—commonly referred to as the “best interests” test. See 11 U.S.C. § 1129(a)(7). The best interests test is satisfied where the estimated recoveries for a debtor’s stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor’s plan of reorganization. *Bank of Am. Nat’l Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 441 n.13 (1999) (“The ‘best interests’ test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.”); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1159 n.23 (5th Cir. 1988) (noting that a bankruptcy court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation). A party’s speculation that it would fare better in a

hypothetical chapter 7 liquidation is insufficient to challenge a plan proponent's liquidation analysis. *Block Shim*, 939 F.2d at 292.

104. Here, the relative recoveries of holders of Impaired Claims or Interests under the Plan and in a hypothetical chapter 7 liquidation are set forth in Exhibit C to the Disclosure Statement (the “**Liquidation Analysis**”) and more fully described in the Chiu Declaration. See Chiu Decl., ¶ 14. Specifically, the Debtors determined that, subject to the assumptions and limitations described in the Liquidation Analysis, the net Liquidation Proceeds¹⁰ available for distribution to the holders of DIP Claims would be approximately \$3.9 million, with \$0 available for holders of all other Claims and Interests. See Chiu Decl., ¶ 13. The Liquidation Analysis demonstrates that each holder of an Impaired Claim or Interest would receive or retain on account of such Claim or Interest under the Plan property with a value equal to or higher than the value of the property such holder would receive or retain if these chapter 11 cases were converted to cases under chapter 7 of the Bankruptcy Code, as summarized in the table below:

Class and Designation	Plan Recoveries		Chapter 7 Liquidation	
	DRF, LLC	DRF Logistics, LLC	DRF, LLC	DRF Logistics, LLC
1 (Other Priority Claims)	100%	100%	0%	0%
2 (Other Secured Claims)	100%	100%	0%	0%
3 (Oaktree Secured Claims)	91%	91%	0%	0%

¹⁰ “**Liquidation Proceeds**” means the cash proceeds a chapter 7 trustee would generate if each Debtor's chapter 11 case was converted to a case under chapter 7 and the assets of such Debtor's estate were liquidated.

Class and Designation	Plan Recoveries		Chapter 7 Liquidation	
	DRF, LLC	DRF Logistics, LLC	DRF, LLC	DRF Logistics, LLC
4 (General Unsecured Claims)	3–10%	3–10%	0%	0%
5 (Interdebtor Claims)	N/A	N/A	0%	0%
6A (Existing DRF Logistics Equity Interests)	N/A	N/A	0%	0%
6B (Interdebtor Interests)	N/A	N/A	0%	0%

See Chiu Decl., ¶ 14.

105. The Liquidation Analysis provides a fair and reasonable assessment of the effects that a conversion of the Debtors' chapter 11 cases to cases under chapter 7 would have on the proceeds available for distribution to holders of Claims and Interests. See Chiu Decl., ¶ 20. Furthermore, the assumptions and methodology used to prepare the Liquidation Analysis are consistent with Ms. Chiu's experience as a restructuring advisor to the Debtors. See Chiu Decl., ¶ 20. As this Bankruptcy Court has explained:

[A] chapter 7 liquidation would increase the administrative costs of the Bankruptcy Cases and adversely affect the ultimate proceeds available for distribution to all holders of Allowed Claims in the Bankruptcy Cases and the Debtors' [post-effective] date operations. Moreover, the increased costs associated with a liquidation under chapter 7 would further reduce the proceeds available for distribution. These costs would include, among other things, administrative fees and costs payable to a trustee in bankruptcy and professional advisors to such trustee.

. . . The Bankruptcy Court here considers, *inter alia*: (1) the problems associated with the quick sale of assets as contemplated in chapter 7; (2) the limitations of section 721 of the Bankruptcy Code; and (3) loss of value through passage of time.

Pisces Energy, 2009 WL 7227880, at *12 & n.7 (holding that plan satisfied best interests test); accord *In re Adelpia Commc'ns Corp.*, 368 B.R. 140, 252–58 (Bankr. S.D.N.Y. 2007) (considering, among other things, costs of regulatory compliance, administrative costs of one or more chapter 7 trustees and their professionals; a trustee's lack of familiarity with debtors' business; potential for delays in claim and interest holders' receipt of distributions; and likelihood that chapter 7 trustees would adopt settlements embodied in plan), *appeal dismissed*, 371 B.R. 660 (S.D.N.Y. 2007), *aff'd*, 544 F.3d 420 (2d Cir. 2008).

106. Accordingly, the Debtors' assumptions and estimates used in the Liquidation Analysis are appropriate. Because each holder of a Claim or an Interest in an impaired Class will receive a distribution under the Plan greater than or equal to what such holder would receive in a hypothetical chapter 7 liquidation, the Plan complies with section 1129(a)(7) of the Bankruptcy Code. See Chiu Decl., ¶ 20.

H. Section 1129(a)(8): Plan Has Been Accepted by Impaired Voting Class

107. Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accept the plan. 11 U.S.C. § 1129(a)(8). Section 1126(c) of the Bankruptcy Code provides that a plan is accepted by an impaired class of claims if the accepting class members hold at least two-thirds in amount and more than one-half in number of the claims voted in their respective class. 11 U.S.C. § 1126(c).

108. As set forth above, Class 3 (Oaktree Secured Claims) and Class 6A (Existing DRF Logistics Equity Interests) voted to accept the Plan. Holders of Claims or Interests, as applicable, in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 5 (Interdebtor Claims) (only in the event that Interdebtor Claims are reinstated), and Class 6B (Interdebtor Interests) are Unimpaired and, therefore, are conclusively presumed to accept the Plan. Holders of Claims in Class 4 (General Unsecured Claims) voted to reject the

Plan. Holders of Claims in Class 5 (Interdebtor Claims) (only in the event that Interdebtor Claims are not reinstated) will not receive or retain any property on account of their Claims and, as such, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

109. As discussed more fully below, the Debtors have satisfied the “cram down” requirements under section 1129(b) of the Bankruptcy Code and may obtain confirmation of the Plan notwithstanding the rejection by Class 4 (General Unsecured Claims) and Class 5 (Interdebtor Claims) (only in the event that Interdebtor Claims are not reinstated).

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

110. Section 1129(a)(9) of the Bankruptcy Code requires that claims entitled to priority under section 507(a) of the Bankruptcy Code be paid in full in cash unless the holders thereof agree to a different treatment with respect to such claims. See 11 U.S.C. § 1129(a)(9). The Plan complies with section 1129(a)(9). Article II and Section 4.1(a), as applicable, provides that Allowed Other Priority Claims, Allowed Administrative Expense Claims, and Allowed Priority Tax Claims will be paid in full in Cash on or as soon as reasonably practicable after the Effective Date, all consistent with sections 1129(a)(9)(A)–(C) of the Bankruptcy Code.

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

111. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one class of impaired claims, “determined without including any acceptance of the plan by any insider.” 11 U.S.C. § 1129(a)(10). As set forth above, at both Debtors, Class 3 (Oaktree Secured Claims) is Impaired and has voted to accept the Plan. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11): Plan is Feasible

112. Section 1129(a)(11) of the Bankruptcy Code requires the Court to determine that a plan is feasible as a condition precedent to confirmation. 11 U.S.C. § 1129(a)(11). Specifically, the Court must determine that confirmation is not likely to be followed by liquidation, or the need for further financial reorganization, of the debtor (or any successor thereto), unless such liquidation or reorganization is proposed in the plan. Even if a plan proposes liquidation (rather than reorganization), the feasibility test set forth in section 1129(a)(11) focuses on whether a plan may be implemented and has a reasonable likelihood of success. *See United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *In re T-H New Orleans Ltd. P'Ship*, 116 F.3d at 801; *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988).

113. The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. *See Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.02[11] at 1129–34 (15th ed. 1984)); *see also In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (holding that feasibility “contemplates whether the debtor can realistically carry out its plan . . . and whether the plan offers a reasonable prospect of success and is workable”) (citations omitted). “To establish the feasibility of a plan, [a] debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan” and “[s]uch projections cannot be speculative, conjectural or unrealistic.” *In re Idearc Inc.*, 423 B.R. at 167.

114. The feasibility standard is greatly simplified when a liquidating chapter 11 plan is tested against section 1129(a)(11) of the Bankruptcy Code. In the context of a liquidating chapter 11 plan, feasibility is established by demonstrating that a debtor is able to satisfy the

conditions precedent to the effective date and otherwise has sufficient funds to make the payments required under such plan and to meet its post-effective date obligations to pay for the costs of administering and fully consummating the plan and closing the chapter 11 case. *See, e.g., In re J. Reg. Co.*, 407 B.R. 520, 539 (Bankr. S.D.N.Y. 2009) (explaining that the feasibility test is “whether the things which are to be done after confirmation can be done as a practical matter under the facts”); *In re Finlay Enters., Inc.*, No. 09-14873 (JMP), 2010 WL 6580629, at *2–6 (Bankr. S.D.N.Y. May 18, 2010).

115. As set forth in the Kaup Declaration, the Debtors will be able to satisfy the conditions precedent to the Effective Date and will have sufficient funds to meet their post-Effective Date obligations, including the costs of administering and consummating the Plan. *See* Kaup Decl., ¶ 35. The Plan is straightforward and provides for (i) the payment in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Other Secured Claims, (ii) distributions on account of DIP Claims, Oaktree Secured Claims, and General Unsecured Claims, and (iii) the disposition of the Debtors’ remaining assets, if any. *See* Kaup Decl., ¶ 35.

116. In addition, the Debtors have filed the Wind Down Budget, which specifies the estimated costs and expenses of administering and consummating the Plan. *See* Plan Supp., Ex. C. Based on the Wind Down Budget, the Debtors believe they have sufficient funding to make all payments required to implement the Plan. Accordingly, the Plan has more than a reasonable likelihood of success and satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

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

117. Section 1129(a)(12) of the Bankruptcy Code requires the payment of “[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on

confirmation of the plan.” 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that “any fees and charges assessed against the estate under [section 1930] of title 28” are afforded priority as administrative expenses. *Id.* § 507(a)(2). In accordance with these provisions, Section 13.1 of the Plan provides that (i) all Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtors or the Liquidating Agent in full on the Effective Date, and (ii) after the Effective Date, the Debtors or Liquidating Agent, as applicable, shall remain obligated to pay Statutory Fees until these chapter 11 cases are closed, dismissed, converted to a case under chapter 7 of the Bankruptcy Code. *See* Plan, § 13.1. The Plan therefore complies with section 1129(a)(12) of the Bankruptcy Code.

M. Sections 1129(a)(13)–(16) and 1129(e): Inapplicable Provisions

118. Section 1129(a)(13) of the Bankruptcy Code is applicable only to debtors that maintain “retiree benefits,” as that term is defined in section 1114 of the Bankruptcy Code. The Debtors will not maintain any such retiree benefits and, as such, section 1129(a)(13) does not apply. *See* Kaup Decl., ¶ 37.

119. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtors are not subject to any domestic support obligations and, as such, section 1129(a)(14) does not apply. *See* Kaup Decl., ¶ 37.

120. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an “individual” (as that term is defined in the Bankruptcy Code). The Debtors are not “individuals” and, accordingly, section 1129(a)(15) does not apply. *See* Kaup Decl., ¶ 37.

121. Section 1129(a)(16) of the Bankruptcy Code applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Each Debtor is a moneyed, business, or commercial corporation, and, accordingly, section 1129(a)(16) does not apply. *See* Kaup Decl., ¶ 37.

122. The provisions of section 1129(e) of the Bankruptcy Code apply only to “small business case[s]” as defined by that section. These chapter 11 cases are not “small business cases” and, accordingly, section 1129(e) of the Bankruptcy Code does not apply.

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

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

124. As noted above, Class 3 (Oaktree Secured Claims) and Class 6A (Existing DRF Logistics Equity Interests) voted to accept the Plan pursuant to the requirements of section 1126 of the Bankruptcy Code at each Debtor. *See supra* ¶ 32; Tabulation Decl., Ex. A. Class 5 (Interdebtor Claims) (only in the event the Interdebtor Claims are reinstated) and Class 6B (Interdebtor Interests) were conclusively presumed to accept the Plan because those Classes were Unimpaired under the Plan. Class 5 (Interdebtor Claims) (only in the event the Interdebtor Claims are not Reinstated) were deemed to reject the Plan because those Classes will not receive any distribution on account of their Claims or Interests. Class 4 (General Unsecured Claims) voted to reject the Plan at each Debtor entity. *Id.* Therefore, cramdown is relevant with respect to Class 4 (General Unsecured Claims) and Class 5 (Interdebtor Claims) (only in the event the Interdebtor Claims are not Reinstated).

1. Plan Does Not Discriminate Unfairly

125. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly-situated classes are treated differently without a reasonable basis for the disparate treatment. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) (noting that the “hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination.”) (citing *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 660 (Bankr. D. Del. 2003), *aff’d*, 308 B.R. 672 (D. Del. 2004)). As between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g., In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff’d*, 78 B.R. 407 (S.D.N.Y. 1987), *aff’d sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988), or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *See, e.g., In re Drexel Burnham Lambert Grp.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992).

126. The Plan does not discriminate unfairly with respect to any Class of Claims. Specifically, Class 3 (Oaktree Secured Claims) contains Secured Claims only, Class 4 (General Unsecured Claims) contains unsecured Claims held by third parties, and Class 5 (Interdebtor Claims) contains Claims held by a Debtor against another Debtor. Accordingly, the Debtors have a reasonable basis for the differing classification and treatment of such Classes as they are not similarly situated. Therefore, there is no unfair discrimination in the Plan in accordance with section 1129(b) of the Bankruptcy Code. *See* Kaup Decl., ¶ 40.

2. Plan Is Fair and Equitable.

127. To be “fair and equitable” as to holders of unsecured claims, section 1129(b)(2)(B) of the Bankruptcy Code requires a plan to provide a holder of a claim or interest

that is junior to the claims of the nonaccepting class will not receive or retain any property under the plan. See 11 U.S.C. § 1129(b)(2)(B). Here, the “fair and equitable” rule is satisfied because distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code. See Kaup Decl., ¶ 42. With respect to each Class that has voted or is deemed to reject the Plan—Class 4 (General Unsecured Claims and Class 5 (Interdebtor Claims) (only in the event that Interdebtor Claims are not Reinstated)—no holder of a junior Claim or Interest at that Debtor will receive or retain property under the Plan, subject to one exception. See Kaup Decl., ¶ 42; Plan, § 7.4. While Interests in Class 6A (Existing DRF Logistics Equity Interests) will continue in place after the Effective Date and Class 6B (Interdebtor Interests) will be Reinstated under the Plan, and Class 4 (General Unsecured Claims) voted to reject the Plan and Class 5 (Interdebtor Claims) may be deemed to reject the Plan, there is a reasonable basis for such difference in treatment. Reinstating Class 6A (Existing DRF Logistics Equity Interests) and Class 6B (Interdebtor Interests) preserves the legal structure of the Debtors and allows the implementation of the Wind Down as set forth in the Plan, has no economic consequence, and is not structured to unfairly prejudice holders of Claims in Class 4 (General Unsecured Claims) or Class 5 (Interdebtor Claims) as no holder of an Interest will receive a distribution until Allowed General Unsecured Claims are paid in full in accordance in the Plan.

O. Section 1129(c): Plan is Only Plan on File

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

P. Section 1129(d): Principal Purpose of Plan is Not Avoidance of Taxes

129. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act, and no party has objected on any such grounds. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

R. Request for Waiver of Bankruptcy Rule 3020(e)

130. The Debtors respectfully request that the Court direct that the Proposed Confirmation Order be effective immediately upon its entry, notwithstanding the 14-day stay imposed by operation of Fed. R. Bankr. P. 3020(e) and 6004(h), as set forth in Section 10.3(c) of the Plan. Fed. R. Bankr. P. 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.” Fed. R. Bankr. P. 3020(e). As such, and as the Advisory Committee notes to Fed. R. Bankr. P. 3020(e) state, “the court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately.” Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend. Similarly, Fed. R. Bankr. P. 6004(h) provides that “[a]n order authorizing the use . . . of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) (when it was codified as subsection (g)) similarly state that “[t]he court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used . . . immediately.” Fed. R. Bankr. P. 6004(h), Adv. Comm. Notes, 1999 Amend.

131. Under the circumstances, good cause exists for waiving the stay. It is appropriate for the Bankruptcy Court to exercise its discretion to order that Fed. R. Bankr. P. 3020(e) and 6004(h) are not applicable and to permit the Debtors to consummate the Plan and commence their implementation without delay after the entry of the Confirmation Order. *See, e.g., In re Energy Partners, Ltd.*, No. 09-32957, 2009 WL 2898876, at *19 (Bankr. S.D. Tex. Aug. 3, 2009) (waiving stay of confirmation order); *In re Idearc*, 423 B.R. at 158 (stay of confirmation order waived since debtors needed to consummate their chapter 11 plan prior to December 31, 2009). Each day the Debtors remain in chapter 11, they incur significant

administrative and professional costs—expenses that are unnecessary in light of the ongoing wind down of the Debtors’ Estates. Furthermore, the Debtors risk an Event of Default under the DIP Note if the Effective Date does not occur on or prior to November 29, 2024, which would result in unnecessary disruption and distraction from implementation of the Plan. Accordingly, the requested waiver of the stays will allow the Debtors to commence the Wind Down and is therefore in the best interests of the Debtors’ estates and creditors and will not prejudice any parties in interest.

III. Bankruptcy Court Should Overrule Unresolved Objections and Confirm Plan

132. As set forth herein and in the Response Chart, the Debtors have resolved the majority of the Objections to confirmation of the Plan. The only Objection that remains outstanding in connection with confirmation of the Plan is from the U.S. Trustee. The Debtors have summarized the resolutions reached with each objecting party in the Response Chart and respond to the Objection of the U.S. Trustee herein and in the Response Chart.

133. The U.S. Trustee objects to confirmation of the Plan on the basis that (i) the Plan contains non-consensual third-party releases that are impermissible under *Purdue* (See U.S. Trustee Obj., ¶¶ 28–87), (ii) the exculpation provision in the Plan is overly broad because it includes the Independent Managers (See U.S. Trustee Obj., ¶¶ 88–91), (iii) the application of the injunction provision and the exculpation provision to enforce the Plan’s Third-Party Releases violates *Purdue* (See U.S. Trustee Obj., ¶¶ 92–96), (iv) the Plan provides a discharge to the Debtors in violation of section 1141(d)(3) of the Bankruptcy Code (See U.S. Trustee Obj., ¶¶ 97–100), and (v) sufficient cause does not exist to waive the stay under Bankruptcy Rule 3020 Trustee Obj., ¶ 103). Each of the U.S. Trustee’s objections should be overruled for the set forth herein.

A. Third-Party Releases in the Plan are Consensual

134. The Third-Party Releases, including the opt-out feature, are consensual and consistent with precedent in this jurisdiction, including the Courts’ decision in *Robertshaw*. See *In re Robertshaw US Holding Corp*, 662 B.R. 300, 323 (Bankr S.D. Tex. 2024). The U.S. Trustee, however, asserts that the Plan’s opt-out feature, which complies with the Complex Case Rules and the case law in this jurisdiction, is insufficient to render the Third-Party Releases consensual in light of the Supreme Court’s decision in *Purdue*. See U.S. Trustee Obj., ¶¶ 47–75; see also *Purdue*, 144 S.Ct. at 2082–88. In doing so, the U.S. Trustee reads words into the *Purdue* opinion that are not there. In *Purdue*, the Supreme Court held that **non-consensual** third-party releases are impermissible. It did not, however, call into question the validity of consensual third party releases or express on what qualifies as consent:

As important as the question we decide today are ones we do not. ***Nothing in what we have said should be construed to call into question consensual third-party releases*** offered in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. ***Nor do we*** have occasion today to ***express a view on what qualifies as a consensual release*** or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.

Purdue, 144 S.Ct. at 2087–88 (emphasis added).

135. As the Court has recognized, *Purdue* did not change the law in the Fifth Circuit because (i) non-consensual third-party releases were already prohibited under Fifth Circuit precedent and (ii) *Purdue* did not address what constitutes a “consensual” release. *Robertshaw*, 662 B.R. at 323; see also *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995). In the Southern District of Texas (as well as other jurisdictions across the country), a process by which third parties have the opportunity to opt out of granting third-party releases is sufficient to render such release consensual and has been for some time, as “[h]undreds of

chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out.” *Id.* That is because, as the Court found in *Robertshaw*, “[t]here is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan,” when parties giving such releases receive a “meaningful opportunity to opt out.” *Id.* The Court is not alone, as other Fifth Circuit courts follow the same approach. *See In re CiCi’s Holdings, Inc.*, 21-30146 (SGJ), 2021 WL 819330, at *9–10 (Bankr. N.D. Tex. Mar. 3, 2021) (construing silence or lack of timely objection as consent in light of party receiving appropriate notice of proceeding, plan, and objection deadline, having opportunity to be heard, and emphasis of release language with conspicuous typeface); *In re Sandridge Energy, Inc.*, No. 16-32488, 2016 Bankr. LEXIS 4622, at *47 (Bankr. S.D. Tex. Sep. 20, 2016) (finding adequately noticed, conspicuous opportunity for opt out is consent for third-party release); *In re Vista Proppants & Logistics, LLC*, No. 20-42002-ELM-11, 2020 WL 6325526, at *7 (Bankr. N.D. Tex. Oct. 28, 2020).

136. The U.S. Trustee’s argument that opt-outs are insufficient to establish consent to the Third-Party Releases because silence cannot manifest consent to a contract under state law is also unavailing. *See* U.S. Trustee Obj., ¶¶ 31–46. Whether a party has consented to a third-party release in a chapter 11 plan is a question of notice, rather than a question of contract. *See In re Mallinckrodt PLC*, 639 B.R. 827, 879 (Bankr. D. Del 2022); *see also In re Extraction Oil & Gas Inc.*, No. 20-11548-CSS (Bankr. D. Del. Dec. 22, 2020) (Docket No. 1534), Confirmation Hr’g Tr. at 80-81 (“I have repeatedly ruled that you can imply consent by failing opt out or respond to a plan, either through a ballot or on the docket, that calls for release. I don’t believe is necessarily a contractual point . . . as much as it is a point of notice under the Bankruptcy Code and the Bankruptcy Rules . . .”). In the context of third-party releases, “[t]he word ‘consensual,’ . . . does not necessarily mean that every creditor who will be bound by the

release has affirmatively agreed to it.” *In re Arsenal Intermediate Holdings, L.L.C.*, No 23-10097 (CTG), 2023 WL 2655592, at *6–8 (Bankr. D. Del. Mar. 27, 2023). Rather, the term “consensual” means that the affected creditor did not avail itself of its procedural right to raise an objection after the chapter 11 plan and disclosure statement were validly served on the creditor in accordance with the requirements of due process. *Id.*¹¹ The principal that consent can be deemed from a party’s failure to act when affected parties receive proper notice is recognized throughout the judicial system, such as in the context of default judgments for failure to respond to a complaint or motion. *See Mallinckrodt PLC*, 639 B.R. at 879. Consequently, many courts have recognized that an affected claimant’s failure to respond to properly noticed releases within a chapter 11 plan is sufficient to establish consent. *See Cole v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.)*, 597 B.R. 597, 608-09 (S.D. Tex. 2019); *In re Boy Scouts of Am. And Delaware BSA LLC*, 642 B.R. 502, 675 (Bankr. D. Del 2022); *Mallinckrodt PLC*, 639 B.R. at 879; *In re Insys Therapeutics Inc.*, No 19-11292 (KG) (Bankr. D. Del. 2020).

137. Here, the Plan, Disclosure Statement, Ballots, Notice of Non-Voting Status, and Confirmation Hearing Notice provide a similar “meaningful opportunity” in compliance with the long-standing practice in this district and the Complex Case Procedures. Exhibit D of the Disclosure Statement clearly sets forth the releases contained in the Plan and adequately describes both the entities and claims being released. The Ballots, Notice of Non-Voting Status, and Confirmation Hearing Notice each conspicuously disclosed (in bolded text) the proposed

¹¹ Even if the Court were to apply state law contract principles, consent may still be inferred from the failure to opt out. Texas courts have recognized that “[p]rolonged silence or inaction in not asserting a known right is conduct that may amount to waiver.” *Union Carbide Corp. v. Jones*, Case No. 14-00574-CV, 2016 WL 1237825, at *6 (Tex. App. Mar. 29, 2016) (emphasis omitted) (quoting Restatement (Second) of Contracts § 69(1)(b) (Am. L. Inst. 1981); *Hooks v. Samson Lone Star, Ltd. P’ship*, 457 S.W.3d 52, 66 (Tex. 2015) (quoting *Ohr v. Union Gas Corp.*, 398 S.W.3d 315, 329 (Tex. App. 2012); *see also Safeco Ins. Co. of Am. v. Clear Vision Windshield Repair, LLC*, 564 S.W.3d 913, 920 (Tex. App. 2018) (“A party’s silence or inaction for a period of time long enough show an intention to yield the known right is also enough to establish waiver.”))

releases in the Plan, the procedures for opting out, and the consequences of failing to do so. The Debtors also prepared an abbreviated version of the Confirmation Hearing Notice that includes the full text of the release provisions and was published in national newspapers, ensuring parties yet another “meaningful opportunity” to review the release provisions and, if so determined, to opt out of the releases. These provided ample notice and information regarding the releases, what the Releasing Parties were being asked to do, and benefits they would forego should they choose to opt out. Only holders of Claims and Interests who do not opt out of the release will be deemed to have released the Released Parties pursuant to the Plan.

138. Accordingly, the U.S. Trustee’s objection to the Third-Party Releases should be overruled because the opt-out mechanism is sufficient to establish consent as such releases were properly noticed to all affected claimants in compliance with precedent in this jurisdiction.

B. *Exculpation of Independent Managers Pursuant to Section 1107 of Bankruptcy Code is Consistent with Highland Capital and Other Fifth Circuit Precedent*

139. The inclusion of the Debtors’ two Independent Managers as “Exculpated Parties” is consistent with Fifth Circuit precedent, including the Fifth Circuit’s recent holding in *Highland Capital*, because the Independent Managers acted as estate fiduciaries throughout the Debtors’ chapter 11 cases. The U.S. Trustee, however, objects to the inclusion of the Debtors’ two Independent Managers as “Exculpated Parties” under the Plan, arguing that, under *Highland Capital*, managers and directors may be exculpated only when the bankruptcy court enters an order allowing such managers or directors to act as a bankruptcy trustee, or where a unique governance structure otherwise exists that warrants exculpation. See U.S. Trustee Obj., ¶¶ 88-90 (citing *NexPoint Advisors, L.P. v. Highland Cap. Mgmt. (In re Highland Cap. Mgmt., L.P.)*),

48 F.4th 419 (5th Cir. 2022), *pet. for cert. denied*, No. 22-631 (U.S. Jul. 2, 2024)).¹² For the reasons set forth below, the Court should reject this overly limited view of *Highland Capital* and find that the Exculpation Provision is appropriate and consistent with applicable Fifth Circuit law, notwithstanding the inclusion of Independent Managers as “Exculpated Parties.”

140. In *Highland Capital*, the court found (i) each of the three independent directors appointed as fiduciaries were properly exculpated by the Plan and (ii) certain other non-debtor parties that were not acting in such a capacity could not be exculpated. *Highland Cap.*, 48 F.4th at 437–38. Citing section 1107(a) of the Bankruptcy Code, the court reasoned that “[l]ike a debtor-in-possession, the Independent Directors are entitled to all the rights and powers of a trustee” and were therefore entitled to exculpation. *Id.* The Fifth Circuit summarized its holdings broadly, noting “[i]n sum, our precedent and § 524(e) require any exculpation in a Chapter 11 reorganization plan be limited to the debtor, the creditors’ committee and its members for conduct within the scope of their duties, 11 U.S.C. § 1103(c), and **the trustees within the scope of their duties.**” *Id.* (emphasis added).

141. Case law in this Circuit and others is also clear that the individuals serving as directors, managers, and officers of a corporation are empowered with the corporation’s authority and therefore, are themselves, acting as the debtor in possession within the scope of duties under section 1107 of the Bankruptcy Code. Where a trustee is not appointed pursuant to section 1104 of the Bankruptcy Code and the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors. *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985); *see*

¹² The U.S. Trustee also objects to the inclusion of the Liquidating Agent as an Exculpated Party under the Plan. For the avoidance of doubt, the Liquidating Agent is not included in the definition of Exculpated Party.

also *In re Hous. Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) (“[T]he willingness of courts to leave debtors in possession ‘is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee.’” (quoting *Commodity Futures Trading*, 471 U.S. at 355)); *In re Pilgrim’s Pride Corp.*, No. 08-45664-DML-11, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) (“Debtors, serving through their management and professionals as debtors in possession, acted in the capacity of trustees for the benefit of their creditors . . . [t]o the extent Debtors acted in the chapter 11 cases, other than in bad faith, pursuant to the authority granted by the Code or as directed by court order, Debtors’ management and professionals presumptively should not be subject to liability.”). Indeed, “[s]ection 1107(a) of the Code enables a debtor to take the place of the trustee, with a few exceptions, as a Debtor-in-Possession . . . [and because] corporations are in reality legal fictions, in such instances it is the debtor’s management which takes on the heightened fiduciary obligations of the trustee.” *In re Schepps Food Stores, Inc.*, 160 B.R. 792, 797–98 (Bankr. S.D. Tex. 1993) (citation omitted); see also *In re Performance Nutrition, Inc.*, 239 B.R. 93, 111 (Bankr. N.D. Tex. 1999) (“[O]fficers and directors of a debtor in possession owe the same fiduciary duties as a trustee in bankruptcy.”) (relying on *Schepps Food Stores*, 160 B.R. at 797–98).

142. Here, the Exculpated Parties include the Independent Managers, each of whom has acted on the Debtors’ behalf throughout these chapter 11 cases in a fiduciary capacity, with the same rights and powers as a bankruptcy trustee pursuant to section 1107(a) of the Bankruptcy Code. See Kaup Decl., ¶ 30. In particular:

- the Independent Managers were properly appointed by the Board of Managers and, since June 27, 2024, the Independent Managers were the only members of the Board of Managers;

- the Independent Managers consistently exercised oversight of the Debtors' business and restructuring process, providing updates and recommendations to the Board throughout the preparation for, filing of, and prosecution of these chapter 11 cases, including when reviewing and approving the Plan (including the release and exculpation provisions), the Disclosure Statement, the RSA, and the Plan Settlements;
- the Independent Managers conducted themselves diligently in their respective roles and acted in the best interests of the Debtors and the Debtors' estates; and
- in all stages of these chapter 11 cases, the Independent Managers believed that they owed fiduciary duties to the Debtors' estates and were guided by such duties by seeking to maximize the value of the Debtors' estates.

See Kaup Decl., ¶ 30.

143. The rationale for granting exculpation to the directors acting for the *Highland Capital* debtors applies equally to the Independent Managers. Each of the Independent Managers of the Debtors should be exculpated under the Plan because each Independent Manager (i) performed the duties of a debtor in possession under section 1107(a) of the Bankruptcy Code and (ii) acted within the scope of his duties as an estate fiduciary during these chapter 11 cases. See Kaup Decl., ¶ 30. In addition, neither the U.S. Trustee nor any other party has argued that the Independent Managers did not exercise their duties, to the extent applicable, in the best interests of the Estates and all parties in interest.

144. Accordingly, the Court should overrule the U.S. Trustee's objection and approve the Exculpation Provision as it is consistent with *Highland Capital* and other applicable Fifth Circuit precedent.

C. U.S. Trustee's Remaining Objections Should Be Overruled.

145. The U.S. Trustee's objection to the Injunction Provision in the Plan should be overruled because it is (incorrectly) premised on the position that the Injunction Provisions enforce (i) non-consensual third-party releases in violation of *Purdue* and (ii) an exculpation

provision that violates *Highland Capital*. See U.S. Trustee Obj., ¶¶ 92–96. For the reasons set forth above, these premises are false as the Plan does not contain non-consensual third-party releases and the Exculpation Provision is consistent with Fifth Circuit law. See *supra* ¶¶ 134–144. Moreover, as described in greater detail above, the Injunction Provisions are an integral component of the Plan, providing certainty to all parties-in-interest that the Debtor Releases, the Third-Party Releases, and the Exculpation Provision will be enforceable in accordance with their terms. See *supra* ¶¶ 68–70.

146. For the reasons set forth above, the U.S. Trustee’s objection to the waiver of the 14-day stay imposed by Bankruptcy 3020 should be overruled because good cause exists to waive such stay. See *supra* ¶¶ 130–131. The requested waiver of the stay is in the best interests of the Debtors’ estates and other parties in interest because it will mitigate unnecessary administrative and professional costs and allow the Debtors’ to comply with their milestones under the DIP Note.

147. Accordingly, the Court should overrule the U.S. Trustee’s objection.

CONCLUSION

148. Based on the foregoing, the Plan complies with all of the requirements of the Bankruptcy Code and the Bankruptcy Rules. Accordingly, the Debtors respectfully request that the Court enter the Proposed Confirmation Order and grant such other and further relief as is just and appropriate.

Dated: November 18, 2024
Houston, Texas

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Certificate of Service

I hereby certify that on November 18, 2024, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Clifford W. Carlson

Clifford W. Carlson

Exhibit A

Response Chart

IN RE DRF LOGISTICS, LLC
CH. 11 CASE NO. 24-90447 (CML)

SUMMARY CHART OF CONFIRMATION OBJECTIONS¹

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
1.	444	Federal Insurance Company ("FIC")	FIC filed a limited Objection to preserve its rights, claims, remedies, and defenses against Pitney Bowes with respect to the Indemnity Agreement (as defined in FIC's Objection) with Pitney Bowes in favor of FIC and related to certain surety bonds issued by FIC on behalf and/or at the request of Debtor DRF, LLC.	Resolved. The Debtors have resolved this Objection through inclusion of the following language in the Proposed Confirmation Order: Nothing in this Order, the Plan, or any of the Plan Documents shall be deemed to alter, limit, enjoin, or modify Federal Insurance Company's ("Federal") respective rights under any bond issued by Federal, related bonded contract, or indemnity agreement executed in favor of Federal in connection with any bond (collectively, the "Surety Agreements") and/or in any collateral in respect of the Surety Agreements. For the avoidance of doubt, Federal's indemnity rights against Pitney Bowes, Inc. pursuant to the General Agreement of Indemnity dated March 11, 2013 (the "Indemnity Agreement") are expressly preserved and nothing in this Order, the Plan, the Plan Supplement, or any Plan Documents shall be deemed to alter, limit, enjoin, or modify Federal's respective rights thereunder. Federal shall have no obligation to issue any new surety bonds on behalf of the Debtors, or the Liquidating Agent, and nothing herein shall limit Federal's rights to cancel and/or decline renewal of any existing surety bond to the extent not inconsistent with the terms of such existing surety bond. Additionally, nothing in the Plan, this Order, or the Plan Documents, including, without limitation, any of the provisions contained in <u>Article XI</u> of the Plan, shall bar, alter, limit, impair,

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Memorandum of Law In Support of Confirmation of Debtors' Second Amended Joint Plan of Liquidation* (the "**Confirmation Brief**"), the applicable Objection, the Plan, or the Disclosure Statement, as applicable. This chart summarizes certain key issues raised in the Objections. To the extent an Objection or a specific point raised in an Objection is not addressed herein, the Debtors reserve the right to respond to such Objection up to and at the Confirmation Hearing.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
				release, modify, or enjoin any rights of Federal, or any claims, defenses, and rights, including without limitation, subrogation rights, with respect to any claim to which Federal may be subrogated, and any claims against non-Debtors. For the avoidance of doubt, Federal is hereby deemed to opt out of the releases and related injunctions set forth in <u>Article XI</u> of the Plan, and Federal is not and shall not be deemed a Releasing Party under the Plan. Confirmation Order ¶ 36(a). FIC has withdrawn its Objection. See Docket No. 476.
2.	445	Kevin M. Epstein, United States Trustee for Region 7 (the “ U.S. Trustee ”)	The U.S. Trustee objects to confirmation of the Plan on the grounds that the: a) Third-Party Releases in the Plan are not consensual. The U.S. Trustee specifically argues that (i) silence does not confer consent, (ii) the opt-out mechanism for the Third-Party Releases does not render them “consensual,” and (iii) the Debtors have not provided notice to all affected parties to procure consent to the Third-Party Releases;	Unresolved. The Third-Party Releases included in the Plan are consistent with precedent in this jurisdiction, including the Court’s recent decision in <i>In re Robertshaw US Holding Corp</i>, 662 B.R. 300 (Bankr. S.D. Tex. 2024), and with the Supreme Court’s decision in <i>Harrington v. Purdue Pharma, L.P.</i>, 144 S. Ct. 2071 (2024). The Third-Party Releases are appropriate and permissible for the reasons provided in the Confirmation Brief, including that: i. the Third-Party Releases meet the requirements for such releases in this jurisdiction because they are (i) consensual, (ii) specific in language, (iii) integral to the Plan, (iv) a condition of a settlement, and (v) given for consideration; ii. the Debtors provided all parties affected by the Third-Party Releases sufficient notice of, and opportunity to object to, the Third-Party Releases; and iii. the law in this jurisdiction permits the use of an opt-out feature to obtain consensual third-party releases in a chapter 11 plan. See Confirmation Brief ¶¶ 48–61, 134–38.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
			b) definition of “Exculpated Parties” in the Plan, including the Independent Managers,² violates applicable Fifth Circuit law because it improperly provides broad exculpation to parties that may not have acted as estate fiduciaries;	Unresolved. The Exculpation Provision in the Plan is consistent with Fifth Circuit precedent, including <i>In re Highland Cap. Mgmt., L.P.</i>, 48 F.4th 419 (5th Cir. 2022), and the terms of chapter 11 plans subsequently confirmed in this district. The Independent Managers performed the duties of a debtor in possession and acted within the scope of duties as estate fiduciaries under section 1107 of the Bankruptcy Code. They are, therefore, entitled to exculpation. Additionally, the Exculpation Provision in the Plan is narrowly tailored to protect the Exculpated Parties from inappropriate litigation based on these chapter 11 cases and do not release any claim based on any act or omission that constitutes gross negligence, willful misconduct, or actual fraud. See Confirmation Brief ¶¶ 62–68, 132–33.
			c) injunction enforcing the Third-Party Releases and Exculpation Provision in the Plan is impermissible and such injunctive provision, if approved, would enforce (i) non-consensual third-party releases that violate <i>Purdue</i> and (ii) an exculpation provision that violates <i>Highland Capital</i>;	Unresolved. The Plan’s Injunction Provisions do not violate the Bankruptcy Code or <i>Purdue Pharma</i> because, as stated above and explained in the Confirmation Brief, the Third-Party Releases are consensual. The Injunction Provisions are appropriate and consistent with the applicable case law and precedent in the Fifth Circuit. See Confirmation Brief ¶¶ 69–70.
			d) Debtors are not entitled to receive a discharge of claims under a plan of liquidation; and	Resolved. The Debtors have resolved this Objection through the removal of the “discharge” language from the provisions in the Plan regarding the treatment of Claims. See Plan, Arts. II.1, II.3-II.4, IV.1-IV.5, VII.10-VII.11, VII.18, and VIII.1.
			e) Plan must clarify that that no party will be released from any causes of action or proceedings brought by any governmental entity in accordance with its regulatory functions.	Resolved. The Debtors have resolved this Objection through inclusion of the following language in the Confirmation Order: Nothing in this Order or the Plan discharges, releases, or enjoins: (i) any liability to any Governmental Unit that is not a Claim; (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any liability to a Governmental Unit under police and regulatory law

² The U.S. Trustee also objects to the inclusion of the Liquidating Agent as an Exculpated Party under the Plan. For the avoidance of doubt, the Liquidating Agent is not included in the definition of “Exculpated Party.”

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
				that any Entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any non-Debtor Entity. Nor shall anything in this Order or the Plan enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Confirmation Order ¶ 36(c).
3.	450	Harbor Capital Leasing, Inc. (“ Harbor ”)	Harbor filed a limited Objection to preserve its rights, claims, remedies, and defenses against Pitney Bowes with respect to the Master Lease Agreement between Harbor and Pitney Bowes.	Resolved. The Debtors have resolved this Objection through inclusion of the following language in the Plan: For the avoidance of doubt and notwithstanding anything in the Plan, the Confirmation Order, the Plan Supplement, or the Plan Documents (as defined in the Confirmation Order), to the contrary, no Non-Creditor shall be deemed to be a Releasing Party and no Non-Creditor’s rights will be impacted or otherwise modified by this Plan, including such Non-Creditor’s rights to pursue any claims (if any) against Pitney Bowes and any other Released Party. The injunction and release provisions contained in <u>ARTICLE XI</u> of this Plan shall not apply to the Non-Creditors. Nothing contained in the Plan impacts or otherwise affects any liability (if any) of Pitney Bowes or any other party to such Non-Creditors. For the avoidance of doubt, any ballot submitted by a Non-Creditor, including any opt-in to the releases contained in ARTICLE XI of this Plan reflected in such ballot, shall be void <i>ab initio</i>. Plan, Art. XI.13.

No.	Docket No.	Objecting Party	Summary of Objection	Debtors' Response
4.	459	ACE American Insurance Company, Indemnity Insurance Company of North America, ACE Fire Underwriters Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, Federal Insurance Company, Chubb Custom Indemnity Company, and each of their U.S.-based affiliates and successors (collectively, the “Chubb Companies”)	The Chubb Companies object to confirmation of the Plan on the grounds that the Plan must provide that the: a) entirety of each of the Insurance Programs should be assumed by the Debtors' successors, and the Debtors' successors will remain liable for all of the obligations arising under the Insurance Programs;	Resolved. The Debtors have resolved this Objection through inclusion of certain language in the Plan addressing this issue. <i>See</i> Plan, Arts. 9.1, 9.5.
			b) release of liens, vesting of assets in the Debtors' successors free and clear of liens, Third-Party Releases, Exculpation Provision, and Injunction Provisions should not modify, alter, or impair the Insurance Programs; and	Resolved. The Debtors have resolved this Objection through inclusion of certain language in the Plan addressing this issue. <i>See</i> Plan, Art. 11.5.
			c) workers' compensation and direct action claims should continue in the ordinary course because such claims are subject to state law and regulation, and the Chubb Companies must be able to apply the collateral securing the Debtors' obligations related to the workers' compensation and direct action claims in the administration of such claims.	Resolved. The Debtors have resolved this Objection through inclusion of certain language in the Plan addressing this issue. <i>See</i> Plan, Art. 9.5. The Chubb Companies have withdrawn their Objection. <i>See</i> Docket No. 478.
5.	462	BedaBox, LLC d/b/a ShipMonk (“ShipMonk”)	ShipMonk filed a limited Objection and reservation of rights with respect to the Plan's treatment of Class 2 Other Secured Claims, which includes ShipMonk's secured claim on account of a setoff.	Resolved. The Debtors and ShipMonk have resolved this Objection, and the Debtors will read a statement into the record at the Confirmation Hearing confirming ShipMonk is both a Released Party and Releasing Party under the Plan.