

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MY JOB MATCHER, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-11280 (KBO)

(Jointly Administered)

**DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF AN ORDER (I) APPROVING
DISCLOSURE STATEMENT ON A FINAL BASIS; AND (II) CONFIRMING
COMBINED DISCLOSURE STATEMENT AND PLAN OF LIQUIDATION DATED
DECEMBER 12, 2025**

Dated: January 19, 2026

MORRIS JAMES LLP

Carl N. Kunz, III (DE Bar No. 3201)

Jeffrey R. Waxman (DE Bar No. 4159)

Christopher M. Donnelly (DE Bar No. 7149)

Samantha L. Rodriguez (DE Bar No. 7524)

3205 Avenue North Blvd., Suite 100

Wilmington, DE 19803

Telephone: (302) 888-6800

Facsimile: (302) 571-1750

E-mail: ckunz@morrisjames.com

jwaxman@morrisjames.com

cdonnelly@morrisjames.com

srodriguez@morrisjames.com

Counsel for Debtors and Debtors-in-Possession

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: My Job Matcher, Inc. (9880); Job.com-HV, Inc. (DE) (5873); Job.com-HV, Inc. (FL) (5873); Job.com-Fortus, Inc. (6145); Job.com-Endevis, Inc. (1956); Job.com-QCI, Inc. (4364); Princeton One-Job.com, Inc. (4752); and Princeton Search L.L.C. (6163). For purposes of these chapter 11 cases, the Debtors' service address is 1743 Sidewinder Drive, 1st Floor, Park City, Utah 84060.

TABLE OF CONTENTS

INTRODUCTION	1
PRELIMINARY STATEMENT.....	2
BACKGROUND OF CHAPTER 11 CASES.....	2
I. COMMENCEMENT OF THE CHAPTER 11 CASES.....	2
II. GLOBAL SETTLEMENT.....	6
III. POSTPETITION NEGOTIATIONS AND DEVELOPMENT OF THE PLAN	10
IV. THE SOLICITATION PROCESS.....	11
ARGUMENT.....	13
I. THE DISCLOSURE STATEMENT SHOULD BE APPROVED ON A FINAL BASIS.....	13
II. THE PLAN COMPLIES WITH APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE SECTIONS 1122 and 1123	18
A. Compliance with Section 1122	18
B. Compliance with Section 1123(a).....	21
1. Designation of Classes of Claims and Interests (Section 1123(a)(1))	21
2. Specification of Unimpaired Classes (Section 1123(a)(2))	21
3. Treatment of Impaired Classes (Section 1123(a)(3)).....	21
4. Treatment Within Classes (Section 1123(a)(4))	22
5. Means for Implementation (Section 1123(a)(5))	22
6. Issuance of Non-Voting Securities (Section 1123(a)(6)).....	23
7. Officers and Directors (Section 1123(a)(7))	23
8. Case Where Debtor is an Individual; Not Applicable (Section 1123(a)(8)).....	24

C.	Compliance with Section 1123(b)	24
1.	Overview of Plan’s Compliance with Section 1123(b)	24
2.	The Plan’s Exculpation, Debtor Releases, and Injunction Provisions Satisfy Section 1123(b)	27
a.	The Exculpation Provision.....	27
b.	The Proposed Releases	31
c.	The Injunction Provision.....	34
D.	Compliance with Section 1123(d)	35
E.	Compliance with Section 1126	35
F.	The Plan Proponent Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(1))	38
G.	The Plan Proponent Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))	39
H.	The Plan was Proposed in Good Faith (Section 1129(a)(3))	39
I.	The Plan Provides that Payments Made by the Debtors for Professional Fees and Expenses are Subject to Court Approval (Section 1129(a)(4)).....	41
J.	The Plan Proponent Has Disclosed All Necessary Information Regarding Directors, Officers and Insiders (Section 1129(a)(5)).....	42
K.	No Rate Changes (11 U.S.C. § 1129(a)(6))	44
L.	The Plan is in the Best Interests of All the Debtors’ Creditors (Section 1129(a)(7)).....	44
M.	Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).....	47
N.	The Plan Satisfied Section 1129(a)(9) of the Bankruptcy Code.....	48
O.	Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)).....	51
P.	The Plan Is Feasible (Section 1129(a)(11))	51
Q.	All Statutory Fees Have Been or Will Be Paid (Section 1129(a)(12))	52

R. Sections 1129(a)(13) through 1129(a)(16) Do Not Apply to the Plan 53

S. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)).....54

T. Only One Plan (11 U.S.C. § 1129(c)).....57

U. The Plan Proponent Has Complied with Section 1129(d) 57

GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER 57

CONCLUSION.....58

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re 203 N. LaSalle St. Ltd. P'ship</i> , 190 B.R. 567 (Bankr. N.D. Ill. 1995), <i>rev'd on other grounds</i> , <i>Bank of Am.</i> <i>Nat. Trust and Sav. Ass'n</i> , 526 U.S. 434 (1999).....	54
<i>In re 500 Fifth Ave. Assocs.</i> , 148 B.R. 1010 (Bankr. S.D.N.Y. 1993).....	19
<i>In re Accuride Corp.</i> , No. 09-13449 (BLS), 2010 WL 5093173 (Bankr. D. Del Feb. 18, 2010).....	37
<i>In re Adelphia Commc'ns. Corp.</i> , 368 B.R. 140 (Bankr. S.D.N.Y. 2007).....	38, 45, 48
<i>In re AIO US, Inc., et al</i> , Case No. 24-11836 (CTG), Docket No. 1442	38, 48
<i>In re Ambanc La Mesa Ltd. P'ship</i> , 115 F.3d 650 (9th Cir. 1997)	55
<i>In re American Capital Equipment, LLC</i> , 688 F.3d 145 (3d Cir. 2012).....	52
<i>In re Applied Safety, Inc.</i> , 200 B.R. 576 (Bankr.E.D.Pa.1996)	52
<i>In re Armstrong World Indus., Inc.</i> , 348 B.R. 111 (Bankr. D. Del. 2006)	13, 40
<i>In re Aztec Co.</i> , 107 B.R. 585 (Bankr. M.D. Tenn. 1989)	55
<i>In re Bally Total Fitness of Greater N.Y., Inc.</i> , 2007 WL 2779438 (Bankr. S.D.N.Y. Sept. 17, 2007).....	13
<i>Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. Lasalle St. P'ship</i> , 526 U.S. 434 (1999).....	45, 55
<i>In re Bowles</i> , 48 B.R. 502 (Bankr. E.D. Va. 1985).....	54
<i>Cadle Co. II, Inc. v. PC Liquidation Corp. (In re PC Liquidation Corp.)</i> , 383 B.R. 856 (E.D.N.Y. 2008)	15

<i>In re Cellular Info. Sys., Inc.</i> , 171 B.R. 926 (Bankr. S.D.N.Y. 1994).....	51
<i>Century Glove, Inc. v. First Am. Bank of N.Y.</i> , 860 F.2d 94 (3d Cir. 1988).....	14
<i>In re Chapel Gate Apartments, Ltd.</i> , 64 B.R. 569 (Bankr. N.D. Tex. 1986).....	41
<i>In re Coastal Broad. Sys., Inc.</i> , 570 F. App'x 188 (3d Cir. 2014)	19
<i>In re Combustion Eng'g, Inc.</i> , 391 F.3d 190 (3d Cir. 2004).....	40
<i>In re Drexel Burnham Lambert Group, Inc.</i> , 960 F.2d 285 (2d Cir. 1992).....	29
<i>In re Enron Corp.</i> , 326 B.R. 497 (S.D.N.Y. 2005).....	28, 29
<i>In re Exide Techs.</i> , 303 B.R. 48 (Bankr. D. Del. 2003)	56
<i>Frito-Lay, Inc., v. LTV Steel Co., Inc. (In re Chateaugay Corp.)</i> , 10 F.3d 944 (2d Cir. 1993).....	19
<i>In re Future Energy Corp.</i> , 83 B.R. 470 (Bankr. S.D. Ohio 1988).....	41
<i>In re Greate Bay Hotel & Casino, Inc.</i> , 251 B.R. 213 (Bankr. D.N.J. 2000)	19
<i>In re Jersey City Med. Ctr.</i> , 817 F.2d 1055 (3d Cir. 1987).....	19
<i>John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.</i> , 987 F.2d 154 (3d Cir. 1993).....	19
<i>In re Johns-Manville Corp.</i> , 68 B.R. 618 (Bankr. S.D.N.Y. 1986).....	55
<i>Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)</i> , 843 F.2d 636 (2d Cir. 1988).....	51
<i>In re Lapworth</i> , No. 97-34529, 1998 WL 767456 (Bankr. E.D. Pa. Nov. 2, 1998)	39

<i>In re Lason, Inc.</i> , 300 B.R. 227 (Bankr. D. Del. 2003)	45
<i>In re Monnier Bros.</i> , 755 F.2d 1336 (8th Cir. 1985)	14
<i>Norwest Bank Worthington v. Ahlers</i> , 485 U.S. 197 (1988).....	55
<i>In re Oneida Ltd.</i> , 351 B.R. 79 (Bankr. S.D.N.Y. 2006).....	29
<i>Oneida Motor Freight, Inc. v. United Jersey Bank</i> , 848 F.2d 414 (3d Cir. 1988).....	14
<i>In re Phoenix Petroleum Co.</i> , 278 B.R. 385 (Bankr. E.D. Pa. 2001)	15
<i>In re Physiotherapy Holdings, Inc.</i> , No. 13-12965 (KG) (Bankr. D. Del. Dec. 23, 2013), Docket No. 197	57
<i>In re PWS Holding Corp.</i> , 228 F.3d 224 (3d Cir. 2000).....	28, 29, 40
<i>In re River Village Assoc.</i> , 181 B.R. 795 (E.D. Pa. 1995)	14
<i>In re Ruti-Sweetwater</i> , 836 F.2d 1263 (10th Cir. 1988)	37, 48
<i>In re S & W Enter.</i> , 37 B.R. 153 (Bankr. N.D. Ill. 1984)	38
<i>In re Sagewood Manor Assocs. Ltd. P'ship</i> , 223 B.R. 756 (Bankr. D. Nev. 1998)	52
<i>In re SGL Carbon Corp.</i> , 200 F.3d 154 (3d Cir. 1999).....	40
<i>In re Sound Radio, Inc.</i> , 93 B.R. 849 (Bankr. D. N.J. 1988), aff'd in part, remanded in part, 103 B.R. 521 (D.N.J. 1989), aff'd, 908 F.2d 964 (3d Cir. 1990).....	40
<i>In re Szostek</i> , 886 F.2d 1405 (3rd Cir. 1989)	37
<i>In re Tribune Co.</i> , 464 B.R. 126 (Bankr. D. Del. 2011)	37, 48

<i>In re Tribune Co.</i> , 476 B.R. 843 (Bankr. D. Del. 2012)	19, 38
<i>U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co. (In re Spansion, Inc.)</i> , 426 B.R. 114 (Bankr. D. Del. 2010)	31, 32
<i>In re U.S. Brass Corp.</i> , 194 B.R. 420 (Bankr. E.D. Tex. 1996)	15
<i>In re Washington Mut. Inc.</i> , 442 B.R. 314 (Bankr. D. Del. 2011)	29
<i>In re Zenith Elecs. Corp.</i> , 241 B.R. 92 (Bankr. D. Del. 1999)	32, 34, 35, 40

Statutes

11 U.S.C. § 503(b)(3) and (4)	41
11 U.S.C. § 507(a)(1)	52
11 U.S.C. § 507(a)(4)	20
11 U.S.C. § 1114(a)	53
11 U.S.C. § 1123(a)	21, 24
11 U.S.C. § 1123(a)(2)	21
11 U.S.C. § 1123(a)(3)	21
11 U.S.C. § 1123(a)(4)	22
11 U.S.C. § 1123(a)(5)	22, 23
11 U.S.C. § 1123(a)(6)	23
11 U.S.C. § 1123(a)(7)	23
11 U.S.C. § 1123(b)	24, 27, 34
11 U.S.C. § 1123(b)(1)-(6)	24
11 U.S.C. § 1123(d)	35
11 U.S.C. § 1124	17
11 U.S.C. § 1125(a)(1)	14

11 U.S.C. § 1126.....	35, 36, 38
11 U.S.C. § 1126(a), (f) and (g).....	36
11 U.S.C. § 1126(c)	36, 38, 47
11 U.S.C. § 1129(a)(1).....	31, 38, 39
11 U.S.C. § 1129(a)(2).....	28, 39
11 U.S.C. § 1129(a)(3).....	29, 39, 40, 41
11 U.S.C. § 1129(a)(4).....	41, 42
11 U.S.C. § 1129(a)(5)(A)	42
11 U.S.C. § 1129(a)(6).....	44
11 U.S.C. § 1129(a)(7)(A)	44, 45
11 U.S.C. § 1129(a)(8).....	47, 48, 54
11 U.S.C. § 1129(a)(10).....	51
11 U.S.C. § 1129(a)(11).....	51, 52
11 U.S.C. § 1129(a)(12).....	52, 53
11 U.S.C. § 1129(a)(13).....	53
11 U.S.C. § 1129(a)(14).....	53
11 U.S.C. § 1129(b)	54, 56
11 U.S.C. §§ 1129(b)(2)(A) and 506	56
11 U.S.C. § 1129(b)(2)(B)(ii) and (C)(ii)	55
11 U.S.C. § 1129(c)	57
28 U.S.C. § 1930.....	52, 53
United States Code title 28	52
Bankruptcy Code Chapter 7	<i>passim</i>
Bankruptcy Code section 365	25
Bankruptcy Code Section 547	18, 30

Bankruptcy Code Sections 1107(a) and 1108.....	3
BANKRUPTCY CODE SECTIONS 1122 and 1123.....	18, 31, 38, 39
Bankruptcy Code Sections 1122, 1123, 1125, and 1129	13, 58
Bankruptcy Code Section 1123(a)(8)	24
Bankruptcy Code Section 1123(b)(3)(A).....	31
Bankruptcy Code section 1123(b)(6).....	26
Bankruptcy Code Section 1125	<i>passim</i>
Bankruptcy Code section 1125(e).....	27
Bankruptcy Code Section 1129	1, 13
Bankruptcy Code Section 1129(a)(5)(A)(i)	43
Bankruptcy Code Section 1129(a)(5)(A)(ii)	43
Bankruptcy Code Section 1129(a)(9)	48, 49, 50, 51
Bankruptcy Code Sections 1129(a) and (b)	13
Bankruptcy Code Section 1129(b)(1)	48, 54
Bankruptcy Code Section 1129(b) and 506	56
Bankruptcy Code Section 1145	23
Securities Act of 1933 Section 5.....	23, 57
UCC	18
Other Authorities	
Bankruptcy Rule 3002(c).....	46
Bankruptcy Rule 3020(e).....	57
Bankruptcy Rules 3020 and 6004	57
Bankruptcy Rules 6004(h)	57
Federal Rules of Bankruptcy Procedure Rule 2004.....	44
H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977)	38

H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977)	39
S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978)	38
S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)	39

INTRODUCTION

1. The above captioned debtors, as debtors and debtors in possession in the above-captioned Chapter 11 cases (the “Debtors” or “Plan Proponent”) submit this memorandum of law (this “Memorandum”) in support of the Plan Proponent’s request for entry of an order, substantially in the form filed concurrently herewith, (a) granting final approval of the adequacy of disclosure under Section 1125 of the Bankruptcy Code, and (b) confirming and approving the *Combined Disclosure Statement and Plan of Liquidation Dated December 12, 2025* [Docket No. 412] (the “Combined Disclosure Statement and Plan or the “Plan”). This Memorandum is the legal support for confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code and a response to the informal objection received from Lily Grace Investments Pty Ltd. (“Lily Grace”), and the objection filed by Lauren Brodock (“Ms. Brodock”) [Docket No. 435] (the “Objecting Parties”).

2. The Plan Proponent also submit the *Declaration of Robert J. Corliss in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 13] (the “First Day Declaration”); (ii) *Declaration of Robert J. Corliss in Support of Confirmation of the Combined Disclosure Statement and Chapter 11 Plan of Liquidation Dated December 12, 2025* [Docket No. 489] (the “Corliss Confirmation Declaration”), (iii) and the *Declaration of Adam J. Fialkowski of Stretto, Inc. Regarding Voting and Tabulation of Ballots Cast on the Combined Disclosure Statement and Joint Chapter 11 Plan of My Job Matcher, Inc. and Its Affiliated Debtors* [Docket No. 437] (the “Voting Declaration,” and together with the First Day Declaration and the Corliss Confirmation Declaration, the “Confirmation Declarations”).

3. For the reasons set forth herein and in the Confirmation Declarations, the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code Section 1129.

PRELIMINARY STATEMENT

4. The Plan maximizes the value of the Debtors' estates for the benefit of their creditors. The Plan is the result of extensive analysis by the Debtors, as Plan Proponent², of viable options to maximize the value of the Debtors' estates and to avoid the potential negative consequences of prolonging the Chapter 11 cases, and the Plan is also product of the Debtors' business judgment as to the best way forward. The Plan has been vetted by each of the voting classes and, to the extent applicable, their advisors, all of whom have their own independent and differing constituencies. The Plan is confirmable for the reasons discussed herein.

BACKGROUND OF CHAPTER 11 CASES

I. COMMENCEMENT OF THE CHAPTER 11 CASES

5. On July 6, 2025, the Debtors each filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the "Court"). Certain factual background regarding the Debtors, including their business operations, capital structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in the First Day Declaration, which is expressly incorporated as if fully set forth herein.

6. On the Petition Date, the Debtors filed a Motion for Entry of Interim And Final Orders (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors' Limited Use of Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [Docket No. 12] (the "DIP Financing Motion"). By and through the DIP Financing Motion, the Debtors sought authorization, first on an interim, and then a final basis, to obtain senior secured

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan or Plan Supplement [Docket No. 430-1], as applicable.

postpetition financing (the “DIP Financing”) and use Cash Collateral on an interim and final basis pursuant to the terms and conditions of that certain DIP Note, by and among the Debtors (each a “Borrower” and, collectively, the “Borrowers”), Serengeti and Ghost Tree LLC (collectively, the “DIP Lenders”), and Ankura Trust Company, LLC (the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”) which provides for a senior secured superpriority priming debtor-in-possession delayed draw term facility in an aggregate principal amount up to \$9,900,000 million (the “DIP Facility,” and loans made pursuant to the DIP Facility, the “DIP Loans,” and the commitments to make DIP Loans thereunder, the “DIP Commitments”). After a hearing, the Court entered an interim approving the DIP Financing Motion (the “Interim DIP Order”) [Docket No. 43], which, among other things, authorized the Debtors use of cash collateral and to borrow up to \$2,000,000 on an interim basis in accordance with the DIP Budget as an exhibit to the Interim DIP Order. As more fully detailed in the Interim DIP Order, the Court also authorized the Debtors to grant security interests, liens, and superpriority claims to the DIP Agent, on behalf of itself and the other DIP Secured Parties, on the DIP Collateral (as defined in the Interim DIP Order) to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the “DIP Obligations”).

7. The Debtors are managing and operating their businesses as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

8. On the Petition Date, the Debtors filed an application to retain Stretto, Inc. (“Stretto”) as the Debtors’ claims and noticing agent [Docket No. 3] (the “Stretto Application”), and on July 8, 2025, the Court entered an Order approving the Stretto Application [Docket No. 34].

9. On August 5, 2025, the Debtors filed an Application to extend Stretto’s retention

to include serving as the Debtors' Administrative Advisor Effective as of the Petition Date, by and through which Stretto would, among other things, (a) assist with solicitation, balloting, and tabulation of votes; prepare any related reports, as required in support of confirmation of a chapter 11 plan; (b) prepare an official ballot certification and, if necessary, testify in support of the ballot tabulation results; and (c) provide such other solicitation, balloting and other administrative services as may be requested from time to time by the Debtors, the Court or the Office of the Clerk of the Court [Docket No. 128] ("Supplemental Stretto Application"). On September 5, 2025, the Court entered an order approving the Supplemental Stretto Application [Docket No. 183].

10. On July 8, 2025, the Debtors filed a Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets Free and Clear of all Encumbrances other than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of all Encumbrances other than Assumed Liabilities and Permitted Encumbrances, and (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 24] (the "Sale Motion").

11. Among other things, the Sale Motion sought approval of certain procedures designed to maximize the value of the Debtors' assets, which included authority to enter into that the Stalking Horse APA with Jobs Acquisition, through a credit bid of \$35,000,000.00, free and clear of claims, liens, and encumbrances (the "Stalking Horse Bid").

12. Subsequent to the entry of the Bidding Procedures Motion and prior to the hearing thereon, the Debtors received the following two (2) objections: (i) Omnibus Objection of Venture Debt, LLC and SOJA Ventures, LLC to Debtors' (I) Motion for Entry of a Final Order Approving Debtor-in-Possession Financing and (II) Motion for Entry of an Order Approving Bidding Procedures and Stalking Horse Agreement [Docket No. 67]; and (ii) Objection to Bid Procedures, filed by Lily Grace Investments Pty Ltd. [Docket No. 75, as amended by Docket No. 80].

13. On July 23, 2025, the U.S. Trustee appointed AHS Staffing, LLC and Core Cloud LLC to serve on the Official Committee of Unsecured Creditors pursuant to Section 1102(a)(1) (the "Committee") [Docket No. 78].

14. On July 28, 2025, the Court entered an Order overruling any objection and approving the bidding procedures sought by the Sale Motion [Docket No. 110] (as subsequently amended, the "Bidding Procedures Order"), pursuant to which the Court, among other things, set a bid deadline of September 17, 2025 (the "Bid Deadline"), set a deadline to object to the sale of September 19, 2025, scheduled an auction (if necessary) of September 23, 2025, and scheduled a sale hearing for September 29, 2025 (the "Sale Hearing").

15. On July 29, 2025, after a hearing, the Court entered an order approving the Final DIP Order [Docket No. 112]. Among other things, the Final DIP Order: (I) approved a "roll up" on a dollar-for-dollar basis of \$3,685,148.79 that was borrowed and incurred by the Debtors, and was due and owing, as a result of the bridge financing from and after April 25, 2025 under the Prepetition Credit Agreement; (II) increased the size of the DIP Commitment to \$10,000,000; and (III) made certain modifications to the DIP Note at the request of the Committee.

16. Prior to the Bid Deadline, the Debtors did not receive any bids for their assets, other than the Stalking Horse Bid. As a result, on September 18, 2025, the Debtors filed a Notice of

Cancellation of the Auction And Designation of Stalking Horse Bidder as the Purchaser [Docket No. 222].

II. GLOBAL SETTLEMENT

17. Before the Sale Hearing, the Debtors, the Committee, and the DIP Secured Parties conducted extensive good faith settlement negotiations to resolve the Committee's objection to the Sale Motion [Docket No. 233], as well as other case issues that would provide funds for unsecured creditors as well as finalize any releases for the DIP Secured Parties. The settlement discussions between the Debtors, the Committee, and the DIP Secured Parties were protracted and often contentious, and after considering alternative transactions and paths, the Committee, the Debtors and Serengeti/Ghost Tree and the Agent, reached a settlement (the "Global Settlement Agreement"), the most significant terms of which are as follows:

- a. Upon the Funding Date (defined below), the Debtors' estates shall release the DIP Secured Parties (in their capacities as pre-petition lenders, DIP lenders and asset purchasers), their predecessors, successors, assigns, subsidiaries, affiliates, managed accounts or funds, including the managed accounts or funds of subsidiaries and affiliates, current or former officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and such persons' or entities' respective heirs, dependents, executors, estates, nominees and legal representatives of every kind (the "DIP Secured Parties Released Parties"), from any and all claims, causes of action, challenges to their liens, or demands solely with respect to the Prepetition Credit Agreement, the DIP Financing, and the DIP Secured Parties credit bid for the Debtors' assets and raise no objection to the DIP Secured Parties' right to credit bid or to any plan or order seeking approval of the sale of assets to the DIP Secured Parties. This release shall be binding upon any Liquidating Trust or any Chapter 7 Trustee.
- b. The Debtors and the Committee shall file a combined joint plan of liquidation and disclosure statement (the "Plan"), and the Debtors and the Committee shall seek to have the Plan submitted for voting by creditors and solicited by the Plan proponents and considered by the Court as soon as reasonably practicable. The terms of the Plan shall include the creation of a liquidating trust (the "Liquidating Trust"), with the liquidating trustee to be selected by the Committee and reasonably acceptable by the Debtors. The Plan shall provide for the transfer to the Liquidating Trust free

and clear of any interest claim or right of the DIP Secured Parties or the DIP Secured Parties Released Parties, all of the estates' rights in any and all remaining claims and causes of action, including, without limitation, all claims against former members of the Debtors' boards of directors, officers and management (which specifically exclude the Debtors' current officers and independent director, which will receive releases under the Plan subject to carve-outs for gross, negligence, fraud and willful misconduct) and claims under 547 and 548 (other than claims against the Debtors' current officers and independent director and professionals, and the DIP Secured Parties, their agents and professionals), provided however, that the claims and causes of action disclosed by the DIP Secured Parties to the Committee on September 24, 2025 shall be the only claims and causes of action acquired by the DIP Secured Parties under the APA and thus will not be transferred to the Liquidating Trust. The DIP Secured Parties will support confirmation of the Plan and the Committee will not object to the sale under the Stalking Horse APA. This settlement shall be incorporated into the terms of any Plan and shall be supported by all Parties hereto.

- c. The DIP Secured Parties shall provide additional DIP financing to the Debtors and their estates through a budget providing up to an additional \$380,000 to finance the estates through the effective date of the Plan.
- d. On the closing (the "Closing", and the date of such Closing, the "Closing Date") of the sale under the Stalking Horse APA, the DIP Secured Parties shall transfer \$500,000 into escrow with Debtors' counsel for the benefit of the unsecured creditors. The funds shall then be transferred to (i) the Liquidating Trust upon the Effective Date of the Plan or (ii) the Chapter 7 Trustee in the event these Chapter 11 Cases are converted to cases under Chapter 7 of the Bankruptcy Code. Upon the release of these funds to the Liquidating Trust or the Chapter 7 Trustee (the "Funding Date"), the DIP Secured Parties' release shall become effective. On the Closing Date, the Debtors shall pay the reasonable documented fees and expenses of the Agent and the DIP Secured Parties' and Agent's professionals.
- e. On the Closing Date, the DIP Secured Parties shall provide the Debtors with all funds necessary to fund the Professional Fee Account to the extent not previously funded and all funds (to be held in escrow) necessary to meet the Debtors' obligations through the closing date in accordance with the 13-week budget approved under the Final DIP Order, as modified hereby or as may be modified in writing by the Debtors, DIP Secured Parties, and Committee, in accordance with the total line items, subject to the variances permitted under the Final DIP Order [Docket No 112], however, the DIP Secured Parties shall not be required to fund amounts (a) due under the budget for matters that the Debtors determine in good faith with certitude will not be spent, in whole or in part; or (b) in excess of the amount of the DIP Commitments (as defined in the Final DIP Order) plus \$380,000 (as provided herein). All amounts funded to the Debtors pursuant to this paragraph shall be deemed to be DIP Obligations (as defined in the Final DIP Order). The DIP Obligations, including for the avoidance of doubt the amounts funded pursuant to

this paragraph, shall be tendered as payment for the Purchased Assets which, effective upon the Closing, shall result in a payoff and complete settlement and satisfaction of the DIP Obligations. From and after the Closing the Debtors or their successors shall, upon reasonable request, provide the DIP Secured Parties and the Committee, a reconciliation of amounts spent and confirming such amounts were spent in accordance with the 13-week budget approved under the Final DIP Order (subject to permitted variances), and all unutilized amounts shall be returned to the DIP Secured Parties at an appropriate or opportune time.

- f. After the conclusion of the sale of substantially all of the Debtors' assets, the DIP Secured Parties shall have an allowed pre-petition secured claim in the amount of \$40,833,011.30 and maintain any deficiency claim for voting purposes on the Plan, but shall waive any right to receive payment or any other recovery on account of such deficiency claim under the Plan or otherwise, including without limitation, any Lender Litigation Share, as set forth in the Final DIP Order.
- g. If within twelve (12) months after the closing of the Sale, the DIP Secured Parties sell all or substantially all of the acquired assets or the equity of the business that DIP Secured Parties the assets, and the net proceeds of such sale exceed (i) the total amount of the DIP Secured Parties' pre-petition debt plus accrued interest at the non-default rate provided under the Prepetition Credit Agreement through the closing of the chapter 11 sale of the Debtors' assets; and (ii) the total capital contributed to the acquisition vehicle, by more than 5%, then the remaining proceeds shall be immediately turned over to the Liquidating Trust for the benefit of unsecured creditors.

Docket No. 302 at Section I ¶1-7.

18. Between the filing of the Sale Motion and the Sale Hearing, the Debtors received a number of formal and informal objections, including: (i) Letter Filed by Robert King Regarding Clarification of Ownership of Key Asset [Docket No. 147]; (ii) Letter Filed by Paul Olynik Disputing Declaration of Corliss Regarding Ownership of Team A.I. Corp [Docket No. 161]; (iii) Letter Filed by Raffaele Cotroneo, MJM Technology Shareholder Disputing Declaration of Robert Corliss Regarding Ownership of Team.ai [Docket No. 174]; (iv) Letter Filed by Tim Graveney, MJM Technology Shareholder Disputing Declaration of Robert Corliss Regarding Ownership of Team.ai as an asset of debtor [Docket No. 185]; (v) Oracle's Limited Objection To, and Reservation of Rights Regarding Debtors' Sale Motion and Related Notice of Possible Assumption and

Assignment and Cure Amounts with Respect to Executory Contracts and Unexpired Leases of the Debtors [Docket No. 201] (vi) Limited Objection of Erin Wilson, in His Capacity as Seller Representative for Team AI Corp. to The Proposed Sale of Assets [Docket No. 220]; (vii) Limited Objection to Bid Procedures Filed by Lily Grace Investments Pty Ltd [Docket No. 223]; (viii) Objection to Sale Filed by Lily Grace Investments Pty Ltd [Filed Docket No. 224]; (ix) Limited Objection to the Motion for Sale, Motion to Extend Time and Request to Amend Creditor Matrix Filed by Shankar Ramalingam [Docket No. 227]; (x) Limited Objection to the Motion for Sale, Motion to Extend Time and Request to Amend Creditor Matrix Filed by Mohamed Pazhoor [Docket No. 229]; (xi) Limited Objection to the Motion for Sale, Motion to Extend Time and Request to Amend Creditor Matrix Filed by Dan Austin [Docket No. 230]; (xii) Limited Objection to the Motion for Sale, Motion to Extend Time and Request to Amend Creditor Matrix Filed by Vinay Kumar [Docket No. 231]; (xiii) Limited Objection to the Motion for Sale, Motion to Extend Time and Request to Amend Creditor Matrix Filed by William Inman IV [Docket No. 232], and (xiv) Objection of the Committee to the Debtors' Sale Motion and the Proposed Sale of Assets [Docket No. 233] (collectively, the “Sale Objections”). Some of the Sale Objections were resolved prior to the hearing, including the cure objection asserted by Oracle and the objection of Committee on the terms set forth in the Global Settlement Agreement.

19. At the September 29, 2025 Sale Hearing, the Court conducted an evidentiary hearing and oral argument to consider the Sale Motion and the Sale Objections that were not resolved. At the conclusion of the hearing, the Court approved the Sale.

20. On October 6, 2025, the Court entered an order approving the Sale [Docket No. 302] (the “Sale Order”), and on October 7, 2025, the Sale closed. No appeal was filed, and the Sale Order is now final.

III. POSTPETITION NEGOTIATIONS AND DEVELOPMENT OF THE PLAN

20. The Debtors negotiated with the Committee and the DIP Secured Parties regarding a plan of liquidation consistent with the Global Settlement Agreement. On November 18, 2025, the Debtors filed a *Combined Disclosure Statement and Plan of Liquidation Dated November 18, 2025* [Docket No. 360] (the “Original Plan”). Substantially contemporaneous therewith, the Debtors also filed their *Motion for an Order (I) Approving on an Interim Basis the Adequacy of Disclosures in the Combined Plan and Disclosure Statement and Plan of Liquidation, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and Disclosure Statement, (IV) Approving the Form of Ballot and Solicitation Package, and (V) Approving the Notice Provisions* [Docket No. 361] (the “Solicitation Procedures Motion”).

21. On December 10, 2025, the Debtors filed the *Combined Disclosure Statement and Plan of Liquidation Dated December 10, 2025* [Docket No. 400] and *Notice of Filing of Blackline of Combined Disclosure Statement and Plan of Liquidation Dated December 10, 2025* [Docket No. 401] and *Notice of Filing of Revised Proposed Solicitation Order and Ballots* [Docket No. 402].

22. On December 11, 2025, the Debtors filed the *Combined Disclosure Statement and Plan of Liquidation Dated December 11, 2025* [Docket No. 406] and *Notice of Filing of Blackline of Combined Disclosure Statement and Plan of Liquidation Dated December 11, 2025* [Docket No. 407].

23. On December 12, 2025, the Court held a hearing to consider the approval, on an interim basis, of the adequacy of the disclosures in the Combined Disclosure Statement and Plan, and approval of the solicitation procedures and dates and deadlines requested in the Solicitation Procedures Motion, as modified. On December 12, 2025, the Debtors filed the *Combined*

Disclosure Statement and Plan of Liquidation Dated December 12, 2025 [Docket No. 412] and *Notice of Filing of Blackline of Combined Disclosure Statement and Plan of Liquidation Dated December 12, 2025* [Docket No. 413].

IV. THE SOLICITATION PROCESS

24. After the conclusion of the December 12, 2025, hearing, the Court entered an *Order* approving the Solicitation Procedures Motion [Docket No. 411] (the “Solicitation Procedures Order”).

25. Specifically, among other things, the Court set December 12, 2025, as the Voting Record Date and set January 14, 2026 at 4:00 p.m. (prevailing Eastern Time) as the deadline by which all Ballots to accept or reject the Plan must be submitted to the Voting Agent. In addition, under the Solicitation Procedures Order, January 14, 2026 at 4:00 p.m. (prevailing Eastern Time) was set as the deadline to file objections to the adequacy of disclosures or confirmation of the Plan, Further, the Court scheduled the hearing to consider final approval of the Plan for January 22, 2026 at 1:00 p.m. (prevailing Eastern Time) (the “Confirmation Hearing”).

26. The Solicitation Procedures Order also approved, among other things, the notice of the Combined Hearing (the “Confirmation Hearing Notice”), the Ballots provided to Holders of Claims in the Voting Classes, and certain notices to the Holders of Claims and Interests in the Non-Voting Classes (the “Notice of Unimpaired Non-Voting Status” and “the Notice of Impaired Non-Voting Status,” together, the “Notice of Non-Voting Status”).

27. On or about December 16, 2025, the Debtors caused copies of the following documents to be served (i) the Confirmation Hearing Notice on the creditor matrix and all other parties required to receive such notice pursuant to the Solicitation Procedures Order, (ii) Confirmation Hearing Notice, Solicitation Procedures Order, and Unimpaired Non-Voting Status Notice, (iii) Solicitation Packages consisting of the Plan, the Solicitation Procedures Order,

customized copy of the Ballot, a notice of hearing to consider approval of the Plan, a cover letter to all Holders of Claims or Interests entitled to vote on the Plan, and a pre-addressed postage prepaid return envelope on all known Holders of Claims in Class 1 (Priority Non-Tax Claims), Class 2 (Priority Tax Claims), Class 4 (Serengeti/Ghost Tree Claim) and Class 5 (General Unsecured Claims), (iv) the Non-Voting Status Notice in lieu of a Solicitation Package on all known Holders of Unimpaired Claims in Class 3 (Secured Claims), and (v) the Confirmation Hearing Notice, Solicitation Procedures Order, and Impaired Non-Voting Status Notice in lieu of a Solicitation Package on all known Holders of Impaired Claims in Class 6 (Interests).

28. The Debtors' noticing agent, Stretto, Inc., filed multiple Certificates of Service evidencing the service of the foregoing with the Court [the additional filings made by the Debtors in support of the Plan, including the affidavits of service for the Plan, the ballots and other solicitation materials, the Solicitation Procedures Order, and the Plan Supplement [Docket Nos. 415, 419, 420, 423, 428, 431, 433, and 434] (the "Service Affidavits")].

29. Prior to January 7, 2026, the Debtors conferred with the Committee with respect to a liquidating trustee and a liquidating trust agreement. On January 7, 2026, the Debtors filed their *Notice of Filing of Plan Supplement for Combined Disclosure Statement and Plan of Liquidation Dated December 12, 2025* [Docket No. 430] (the "Plan Supplement") which contained a proposed liquidating trust agreement (as amended, the "Liquidating Trust Agreement"). By and through the Liquidating Trust Agreement, the Debtors, after consultation with the Committee, seek the appointment of SC&H Group Inc. as Liquidating Trustee, subject to the terms outlined in the Liquidating Trust Agreement.

30. All procedures used to tabulate the Ballots were fair and conducted in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local

Rules, and all other applicable rules, laws, and regulations. As evidenced by the Voting Declaration, the only classes eligible to vote whether to accept or reject the Plan, voted to accept the Plan as follows: Specifically, (i) 92.9% of the Class 1 Ballots received by the Voting Agent (52 of 56 votes), representing 95.4% of the amount of Class 1 claims (\$356,099.75 of \$373,133.46) voted to accept the Plan; (ii) no holders of any Class 2 Ballots voted to accept or reject the Plan; (iii) the only Class 4 Ballot received by the Voting Agent voted to accept the Plan; and (iv) 82.1% of the Class 5 Ballots received by the Voting Agent (23 of 28 votes), representing 63.8% of the amount of Class 5 claims (\$1,529,318.30 of \$2,397,168.04) voted to accept the Plan.

ARGUMENT

31. To confirm the Plan, the Court must find that the Plan Proponent has satisfied the applicable provisions of Section 1129 by a preponderance of the evidence. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (Bankr. D. Del. 2006); *see also In re Bally Total Fitness of Greater N.Y., Inc.*, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) (“The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.”).

32. The Debtors respectfully submit that the Plan complies with all applicable Sections of the Bankruptcy Code, the Bankruptcy Rules and applicable non-bankruptcy law. In particular, the Plan fully complies with the applicable requirements of Sections 1122, 1123, 1125, and 1129.

33. This memorandum addresses each requirement individually and responds to each of the objections filed in opposition to confirmation.

I. THE DISCLOSURE STATEMENT SHOULD BE APPROVED ON A FINAL BASIS

34. Pursuant to Section 1125, the proponent of a proposed Chapter 11 plan must provide “adequate information” regarding that plan to holders of impaired claims and interests

entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, Section 1125(a)(1) states, in relevant part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a)(1).

35. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) (“The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan”). “Adequate information” is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“‘[A]dequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records”); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”).

36. Courts in the Third Circuit and elsewhere acknowledge that determining what constitutes “adequate information” for the purpose of satisfying Section 1125 resides within the broad discretion of the court. *See, e.g., In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa.

1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); *Cadle Co. II, Inc. v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate information’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”) (internal citations omitted).

37. When examining whether a disclosure statement contains adequate information pursuant to Section 1125, courts typically look for disclosures related to topics such as:

(1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the [collectability] of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with the affiliates.

See, e.g., In re U.S. Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement).

38. Furthermore, it is not necessary for a disclosure statement to address all topics in every case. *See id.*; *see also Phoenix Petroleum Co.*, 278 B.R. at 393 (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of

categories will apply in every case.”).

39. Here, the Disclosure Statement provides “adequate information” to allow Holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including, among other things: (i) the circumstances that gave rise to the filing of the Debtors’ bankruptcy petitions; (ii) the Debtors’ actions and conditions during the Chapter 11 Cases, including the marketing and sale process; (iv) an estimate of the estates’ liabilities; (v) the proposed treatment of Claims and Interests under the Plan and likely distributions to be received on account of each class of Claims and Interests under the Plan; (vi) an analysis as to the distributions creditors would receive from the Debtors’ estates were they liquidated under Chapter 7; (vii) a summary of what assets remain to be liquidated by the Trust after the Effective Date; (viii) a disclaimer stating that no statements or information regarding the Debtors or their assets are authorized, other than those included in the Plan; (ix) the relevant sources of information contained in the Plan; (x) information regarding the Trust and the Liquidating Trustee; (xi) financial information necessary to allow a creditor to decide whether to approve or reject the Plan; (xii) information regarding the risks being taken by the Holders of Claims and Interests prior to voting; (xiii) a description of potential Causes of Action; (xiv) the right and ability of the Liquidating Trustee to assert, compromise or dispose of the Causes of Action without any further order of the Court; (xv) conspicuous language containing exculpation and the injunction to be entered by and in connection with the Plan; and (xvi) such other and further information that informs Holders of Claims and Interests of their rights arising from and relating to the Plan.

40. Through its limited objection, Lily Grace alleges the Plan contains insufficient disclosure to secured creditors pursuant to Section 1125 of the Bankruptcy Code. Specifically, Lily Grace contends that the Plan does not provide adequate information regarding: (i) the nature and value of collateral securing its claim; (ii) the treatment of liens alleged by Class 3 Claims; (iii) potential consideration provided for lien releases; and (iv) rights of secured creditors to enforce liens after the Effective Date.

41. Despite the assertions made by Lily Grace, the Debtors believe the Plan adequately addresses the disclosure requirements. First, Section 4.03(c) of the Plan specifically provides that secured claims such as Lily Grace's claim are unimpaired by the Plan. This section states, in relevant part:

Each Holder of an Allowed Secured Claim against the Debtors shall receive on the Effective Date, on account of and final satisfaction and release and in exchange for, such Allowed Secured Claim, in the sole discretion of the Liquidating Trustee (i) either (a) return of the collateral securing such Allowed Secured Claim or (b) Cash equal to the full unpaid amount of such Allowed Secured Claim, or (ii) such other treatment as the Plan Proponent or Liquidating Trustee, as applicable, and the Holder of such Allowed Secured Claim shall have agreed. If the Holder of an Allowed Secured Claim is to receive a Distribution in Cash, such Distribution shall be made from the Initial Distribution Fund or the Liquidating Trust on or as soon after the Effective Date or date such Claim becomes Allowed as is reasonably practicable. For the purpose of clarification: the Initial Distribution Fund shall not be used for payment on account of Class 3 Secured Claims. Class 3 Claims are therefore Unimpaired and not entitled to vote.

Plan Section 4.03(c).

42. As a matter of bankruptcy law, "unimpaired" means that a claim's legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest is not changed. *See* 11 U.S.C. § 1124. Accordingly, the Plan clearly delineates the treatment of Class 3 claims, which includes Lily Grace's claim, and provides that the legal, equitable, and contractual rights of Lily Grace's claim have not changed. Notwithstanding the foregoing, such

Class 3 Claims, such as Lily Grace's Claim, still remain subject to objection and avoidance by the Debtors and/or the Liquidating Trustee.³

43. More than that, in the Plan, the Debtors specifically identified the filed Schedules and Statements of Financial Affairs and, although the Debtors stated that they have not reviewed any of the underlying proofs of claim, they stated that copies of all claims filed in the Chapter 11 Cases and all Schedules and Copies of all claims filed in the Chapter 11 Cases and all Schedules and Statements of Financial Affairs are available at no charge on the Debtors' claims agent's website. Plan, p. 23-24, n. 5. Even beyond that, the Debtors disclosed "with respect to the proofs of claims (or scheduled claims) asserting a Secured Claim, the Debtors believe that many of those allegedly Secured Claims are unsecured deficiency claims because the property that was subject to the security interests was sold free and clear of all claims, liens and encumbrances. The likely exception is the claim of Breakout, who has a security interest in prepetition accounts receivable which are still being collected." Plan, p. 23, n. 4.

44. Accordingly, the Plan Proponent respectfully submits that Plan contains "adequate information," satisfies Section 1125 of the Bankruptcy Code, and the Disclosure Statement should be approved on a final basis, and the objection of Lily Grace to final approval of the disclosures in the Disclosure Statement should be overruled.

II. THE PLAN COMPLIES WITH APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE SECTIONS 1122 and 1123

A. Compliance with Section 1122

45. The Plan satisfies the classification requirements of Section 1122. The Third Circuit "permits the grouping of similar claims in different classes" as long as those classifications are

³ In Lily Grace's case, in particular, Lily's Grace's filed its UCC Financing Statement on April 15, 2025, less than 90 days immediately prior to the Debtors' July 6, 2025 bankruptcy filing. Accordingly, Lily Grace's security interest is subject to avoidance as a preferential transfer pursuant to Section 547 of the Bankruptcy Code.

reasonable. *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987); *see also In re Tribune Co.*, 476 B.R. 843, 854–55 (Bankr. D. Del. 2012). The Third Circuit has stated that the only requirement for classification is that it be “reasonable.” *In re Coastal Broad. Sys., Inc.*, 570 F. App’x 188, 193 (3d Cir. 2014) (“Although not explicit in § 1122, a corollary to that rule is that the ‘grouping of similar claims in different classes’ is permitted so long as the classification is ‘reasonable.’”) (citation omitted). Separate classes of similar claims are reasonable when each class represents “a voting interest that is sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed.” *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 159 (3d Cir. 1993).

46. Courts in this jurisdiction and others have recognized that under Section 1122, plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so. *See id.*; *see also, In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 224 (Bankr. D.N.J. 2000); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (Bankr. D.N.J. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *Frito-Lay, Inc., v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 10 F.3d 944, 956-57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis); *In re 500 Fifth Ave. Assocs.*, 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (although discretion is not unlimited, “the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case”)(internal citations omitted).

47. Ms. Brodock objects to the Plan’s treatment of employee creditors, alleging that the Plan erroneously divides employee creditors between Class 1 (Priority Non-Tax Claims) and Class 5 (General Unsecured Claims) even though such former employee creditors are similarly situated.

48. Despite Ms. Brodock's concerns, the Debtors believe the Plan's classification of Claims and Interests not only satisfies the requirements of Section 1122 because the Claims and Interests in each Class differ from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria, but, based upon the statutory priority scheme in the Bankruptcy Code, employee claims must be separately characterized depending upon the timing and amounts of claims. *See* 11 U.S.C. § 507(a)(4) limiting priority treatment to employee claims which were earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business and was less than \$17,150. The Plan has two classes in which employee claims may be included, depending on the timing and amount of claims, so former employees may have claims that fall in either one, or two classes under the Plan.⁴ All claims, including those of former employees, are based upon each creditors proof of claim, and remain subject to review and objection by the Liquidating Trustee, including the amount and priority of such claims. Moreover, each of the Claims or Interests in a particular Class is substantially similar to the other Claims or Interests in such Class. Specifically, the Plan provides for the separate classification of Claims and Interests into the following six (6) Classes based upon differences in legal or factual nature and/or priority of such Claims and Interests:

- Class 1: Priority Non-Tax Claims
- Class 2: Priority Tax Claims
- Class 3: Secured Claims
- Class 4: Serengeti/Ghost Tree Claim
- Class 5: General Unsecured Claims

⁴ For the avoidance of doubt, employees fall under either Class 1 (Priority Non-Tax Claims) or Class 5 (General Unsecured Claims).

- Class 6: Interests

49. Secured Claims are classified separately from Unsecured Claims and Interests are classified separately from Claims.

50. Claims or Interests assigned to each particular Class described above are substantially similar to the other Claims or Interests in such Class and the classification of the various Classes are reasonable given the legal and factual nature of the Claims or Interests in each Class. Accordingly, the Plan satisfies Section 1122(a).

51. Therefore, the Debtors believe that the Plan satisfies the requirements of 1122.

B. Compliance with Section 1123(a)

52. Section 1123(a) sets forth seven items that every Chapter 11 plan must contain. 11 U.S.C. § 1123(a). The Plan contains each of these items.

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

53. As discussed above, Article IV of the Plan properly designates classes of Claims and Interests and thus, satisfies the requirement of Section 1122.

2. Specification of Unimpaired Classes (Section 1123(a)(2))

54. Section 1123(a)(2) requires that the Plan “specify any class of claims or interests that is not impaired under the plan.” 11 U.S.C. § 1123(a)(2). The Plan meets this requirement by identifying in Article IV each Class that is unimpaired – namely, Class 3. Class 3 is unimpaired and is deemed to accept the Plan.

3. Treatment of Impaired Classes (Section 1123(a)(3))

55. Section 1123(a)(3) requires that the Plan “specify the treatment of any class of claims or interests that is impaired under the plan.” 11 U.S.C. § 1123(a)(3). The Plan meets this requirement by setting forth the proposed treatment in Article IV of the impaired Classes - namely, Class 1 (Priority Non-Tax Claims), Class 2 (Priority Tax Claims), Class 4 (Serengeti/Ghost Tree

Claim), Class 5 (General Unsecured Claims), and Class 6 (Interests). Article IV of the Plan properly identifies and describes that Class 6 is impaired under the Plan and is deemed to reject the Plan and not entitled to vote. Article IV of the Plan also properly identifies and describes that Classes 1, 2, 4, and 5 are impaired under the Plan and are entitled to vote.

4. Treatment Within Classes (Section 1123(a)(4))

56. Section 1123(a)(4) requires that the Plan “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” 11 U.S.C. § 1123(a)(4). The Plan meets this requirement because holders of Allowed Claims will receive the same rights and treatment as other holders of Allowed Claims within their respective Class.

5. Means for Implementation (Section 1123(a)(5))

57. Section 1123(a)(5) requires that the Plan provide “adequate means” for its implementation. 11 U.S.C. § 1123(a)(5). The Plan satisfies this requirement through Article VI and various other provisions of the Plan which, together, provide for the means by which the Plan will be implemented. Specifically, the Plan will be funded by the Cash held by (i) funds from the Global Settlement Agreement, (ii) the Unsecured Claim Distribution Fund, (iii) Initial Distribution Fund, and (iii) Causes of Action and the proceeds thereof and any Interest of the Estates in the cash collateral. In addition, Article VI of the Plan provides for, among other things: (1) deemed substantive consolidation of the Debtors; (2) the transfer of all of the Debtors’ remaining assets to the Liquidating Trust; (3) appointment of the Liquidating Trustee; (4) establishment of the Liquidating Trust; (5) authority and responsibilities of the Liquidating Trustee; and (6) preservation of certain causes of action. The rights and responsibilities of the Liquidating Trustee are also set forth in the Liquidating Trust Agreement filed in the Plan Supplement.

58. Additionally, pursuant to Section 6.01 of the Plan, on the Effective Date and

periodically thereafter if additional Assets become available, all property of the Debtors' Estates that constitute Liquidating Trust Assets, shall vest in the Liquidating Trust, free and clear of all Claims, liens, charges, or other interests. On and after the Effective Date, the Liquidating Trustee, may collect, market for sale, liquidate, compromise or dispose of Liquidating Trust Assets without Court approval, subject to the terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

59. The Plan thus meets the requirements of Section 1123(a)(5).

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

60. Section 1123(a)(6) requires that a debtor's corporate constituent documents prohibit the issuance of non-voting equity securities. 11 U.S.C. § 1123(a)(6). The undertakings and obligations of the Debtors will not require the issuance of new securities, and therefore there are no issues with respect to Section 1145 of the Bankruptcy Code, from Section 5 of the Securities Act of 1933 and from any and all federal, state, or local laws requiring the registration of the offer, sale or other distribution of such securities by the Debtors.

61. Therefore, Section 1123(a)(6) is not applicable.

7. Officers and Directors (Section 1123(a)(7))

62. Section 1123(a)(7) requires that the Plan's provisions with respect to the manner of selection of any director, officer or trustee, or any other successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy" 11 U.S.C. § 1123(a)(7). Article VI of the Plan provides for the appointment of SC&H Group Inc. as the Liquidating Trustee pursuant to the Liquidating Trust Agreement. The Liquidating Trustee shall be the representative of the Debtors' Estates appointed pursuant to Section 1123(b)(3) regarding all Trust Assets.

63. Section 6.01 of the Plan provides for the creation of the Liquidating Trust, the

appointment of the Liquidating Trustee to serve with respect to the Liquidating Trust, including with the authority set forth therein and in the Liquidating Trust Agreement. Consistent with Section 6.01 of the Plan, the Debtors conferred with the Committee with respect to selecting the Liquidating Trustee, whose name and compensation was identified in the Liquidating Trust Agreement. The Debtors believe that the selection, disclosure and replacement mechanisms are consistent with the interests of Holders of Claims and Interests and with public policy.

8. Case Where Debtor is an Individual; Not Applicable (Section 1123(a)(8))

64. For the avoidance of doubt, Section 1123(a)(8) of the Bankruptcy Code is not applicable in the Chapter 11 Cases because the Debtors are not an “individual.”

65. Based upon the foregoing, the Plan complies fully with the requirements of Section 1123(a).

C. Compliance with Section 1123(b)

1. Overview of Plan’s Compliance with Section 1123(b)

66. Section 1123(b) sets forth various permissive provisions that may be incorporated into a Chapter 11 plan. *See* 11 U.S.C. § 1123(b). For example, Section 1123(b) provides that a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts and unexpired leases; (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (d) include any other appropriate provision not inconsistent with the applicable provisions of Chapter 11. 11 U.S.C. § 1123(b)(1)-(6).

67. The Plan is consistent with Section 1123(b). Specifically, Article IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Interests under the Plan. Specifically: (a) Class 1 (Priority Non-tax Claims) is impaired by the Plan and is entitled to vote

on the Plan; (b) Class 2 (Priority Tax Claims Claims) is impaired under the Plan and is entitled to vote on the Plan; and (c) Class 3 (Secured Claims) is unimpaired by the Plan and is deemed to have accepted the Plan; (d) Class 4 (Serengeti/Ghost Tree Claims) are impaired under the Plan and is entitled to vote on the Plan; (e) Class 5 (General Unsecured Claims) are impaired and also entitled to vote under the Plan; and (f) Class 6 (Interests) are impaired under the Plan, but as they will not receive any distribution under the Plan on account of their interests, Holders of Equity Interest are deemed to reject the Plan.

68. With respect to Executory Contracts or Unexpired Leases, Article VII of the Plan provides that except for any Executory Contracts or Unexpired Leases of the Debtors: (i) that were rejected by an Order of the Court, pursuant to section 365 of the Bankruptcy Code; (ii) that were assumed and assigned or assumed, assigned and sold; (iii) as to which a motion for approval of the assumption or rejection of such Executory Contract or Unexpired Leases has been Filed and served prior to, and remains pending on the Effective Date, or (iv) any insurance policies subject to paragraph 7.02 of the Plan, all Executory Contracts or Unexpired Leases shall be deemed rejected as of the Effective Date.

69. Significantly, the Plan also provides that the Debtors are to be deemed “substantively consolidated” for purposes of the Plan. Accordingly, the Plan treats the Debtors as compromising a single estate solely for purposes of confirmation of the Plan, voting on the Plan, and distributions in respect of Claims and Interests under the Plan. Such treatment shall not affect any Debtor’s status as a separate legal entity, change the organizational structure of the Debtors’ business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets of any of the Debtors or their Estates. All Debtors shall continue to exist as separate legal entities. The above treatment

serves only as a mechanism to affect a fair distribution of value to the Debtors' constituencies, while minimizing the administrative expenses that would be otherwise necessary. Further, certain causes of action, including avoidance actions, are preserved for the benefit of the Estates. Accordingly, the Plan contemplates and is predicated upon substantive consolidation of the Estates solely for voting, confirmation, and Distribution purposes.

70. Finally, pursuant to and consistent with Section 1123(b)(3), Article VIII provides that the Liquidating Trustee will have the authority, but not the obligation, to do any of the following with respect to any Claims or Interests: (1) file, withdraw, and/or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to, action, order or approval by the Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to, action, order or approval by the Court. The Liquidating Trustee shall succeed to any pending objections to Claims filed by the Debtors prior to the Effective Date, and shall have and retain any and all rights and defenses the Debtors had immediately prior to the Effective Date with respect to any Disputed Claim. A more fulsome description of the Liquidating Trustee's duties is set forth in the Plan Supplement [Docket No. 430].

71. Consistent with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are consistent with applicable provisions of the Bankruptcy Code, including, without limitation, (a) Section 8.01 establishing procedures for resolving Disputed Claims and Section 8.02 establishes procedures governing distributions on account of Allowed Claims; (b) Section 6.01, providing for the preservation of certain causes of action, the settlement of certain claims and controversies and related releases and injunctions against certain actions; and (c) Article XII, providing for the retention of jurisdiction by the Court over certain

matters after the Effective Date.

2. The Plan's Exculpation, Debtor Releases, and Injunction Provisions Satisfy Section 1123(b)

72. The Plan also includes: (a) an exculpation and limitation of liability provision; and (b) an injunction provision. Plan Sections 9.03 and 9.04. As explained below, these provisions are fair and appropriate under both applicable law and the facts and circumstances of these cases and are the product of arms' length negotiations. Significantly, the Plan does not seek approval of any third-party releases.

a. The Exculpation Provision⁵

73. Under the Plan, the following parties, each in its capacity as such, are deemed exculpated parties: (i) the Debtors, (ii) the Committee, (iii) members of the Committee, solely in their capacity as such, (iv) the Debtors' managers, members, officers and directors who served or were employed by the Debtors during the Chapter 11 Cases, (v) any professional retained by the foregoing entities, and (vi) with respect to each of the foregoing, such Entities' successors and assigns provided, however, that with respect to any Person identified herein, such Person shall be considered an Exculpated Party solely to the extent that such Person participated in actions to which section 1125(e) of the Bankruptcy Code applies, and such Person shall be exculpated solely for actions taken during the Exculpation Period (the "Exculpated Parties"). Further, the Exculpated Parties shall not be exculpated for any action or inaction related to the commencement of the Chapter 11 Cases, including the filing of the bankruptcy petitions or any decision not to dismiss

⁵ The Released Parties and Indemnified Parties shall not include Paul Sloyan, Arran Stewart, Ralph Henderson, Graeme Bell, Curt Smith, Thomas Harvey, James Bradley, Carry Levine, Mir Ali, Erin Wilson, and Michael Boes. Further, and solely for purposes of clarification: Mark Guest shall be an Indemnified Party but he shall not be a Released Party for actions or inactions arising prior to the Petition Date, but he shall be a Released Party for actions taken after the Petition Date.

the Chapter 11 Cases. *See* Plan Section 1.44.

74. Article IX of the Plan exculpates the Exculpation Parties from:

[A]ny liability, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively in law or equity, to any Holder of a Claim or an Interest, or any other party-in-interest, or any of their respective members, directors, officers, managers, trustees, employees, advisors, attorneys, professionals, agents, partners, stockholders or Affiliates, or any of their respective successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the formulation, negotiation, or implementation of the Combined Disclosure Statement and Plan, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence, or willful misconduct (in each case as determined by a Final Order entered by a court of competent jurisdiction)), and such parties in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Combined Disclosure Statement and Plan. For the avoidance of doubt, nothing contained in this paragraph shall exculpate acts or omissions prior to the Petition Date or post-Effective Date.

Plan Section 9.03 (the “Exculpation”).

75. An exculpation provision is not a mandatory release of all liability but instead, establishes the appropriate standard of liability with respect to the parties exculpated. *See In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d Cir. 2000) (reasoning that the exculpation provision “does not affect the liability of third parties, but rather sets forth the appropriate standard of liability...”); *see also In re Enron Corp.*, 326 B.R. 497, 501 (S.D.N.Y. 2005) (in finding creditors’ appeal of confirmation based on the plan’s exculpation provision moot, the court specifically noted that the bankruptcy court addressed the exculpation provision and found it appropriate because it excluded gross negligence and willful misconduct). First, this Court must find, under Section 1129(a)(2), that the Debtors complied with the applicable provisions of the Bankruptcy Code. Additionally, this Court must find, under Section 1129(a)(3), that the Plan has been proposed in

good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). These findings apply to the Debtors and, by extension, to the Debtors' officers, directors, and professionals.

76. Second, it is well established that exculpation for parties participating in the plan process is appropriate where plan negotiations could not have occurred without protection from liability. *See In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992); *Enron Corp.*, 326 B.R. at 503 (excising similar exculpation provisions would “tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition.”). Furthermore, the exculpation provision, including its carve out for gross negligence, willful misconduct or intentional fraud, is consistent with established practice in this jurisdiction and others and should be approved. *See, e.g. In re PWS Holding Corp.*, 228 F.3d at 235, 245 (approving plan provision that released claims except as to willful misconduct or gross negligence, and characterizing such a provision as “commonplace . . . in Chapter 11 plans”); *In re Washington Mut. Inc.*, 442 B.R. 314, 350 (Bankr. D. Del. 2011) (noting that the “Third Circuit has held that a creditors’ committee, its members, and estate professionals may be exculpated under a plan for their actions in the bankruptcy case except for willful misconduct or gross negligence”); *In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (approving exculpation provision that covered prepetition lenders, debtors, creditors’ committees and their members, and the respective affiliates of each, except in cases of gross negligence, willful misconduct, fraud or criminal conduct).

77. The Plan Proponent asks that the Court find that the Exculpated Parties have participated in good faith with respect to the Debtors’ restructuring efforts, the Chapter 11 Cases, and formulating and negotiating the Plan and that they are entitled to protection from lawsuits from disgruntled creditors or any other parties in interest. Negotiation and compromise were crucial to

the conduct of the restructuring process, the Chapter 11 Cases generally and the formulation of the Plan and could not have occurred without the protection from liability that the Exculpation provides to the Exculpated Parties. Therefore, the Court should approve the Exculpation provisions and adopt the appropriate standard of liability for the Exculpated Parties with respect to the Chapter 11 Cases.

78. Through its limited objection, Lily Grace objects to, among other things, the application of the injunction and exculpation provisions to the extent they: (i) impair enforcement of surviving liens; (ii) limit post-Effective Date remedies to collateral; and (iii) are beyond what is necessary to implement the Plan. Lily Grace Objection ¶12. It states that Lily Grace should not be compelled to relinquish enforcement rights without clear statutory authority and adequate consideration. *Id.* at ¶13.

79. The Debtors disagree with Lily Grace's depiction of the Plan and believe that the proposed exculpation is limited both in terms of scope of personnel to be exculpated, limits exculpation temporally to only those actions taken (or not taken) between the Petition Date and the Plan's Effective Date, and excludes exculpation for bad acts, including fraud, gross negligence, or willful misconduct. Therefore, such Exculpation provisions are limited in scope.

80. More than that, the proposed exculpation has no effect on Lily Grace's (or any other party's) liens and have no effect on any remedies with respect to collateral.⁶ The Debtors further do not believe that such provisions impair the rights of the respective parties to enforce their liens nor prejudice secured creditors rights to Collateral after the Effective Date.

81. Based upon the foregoing, the proposed exculpation complies with the

⁶ Again, Lily Grace's security interests were perfected within 90 days prior to the Petition Date, and accordingly, may be avoided under Section 547 of the Bankruptcy Code.

requirements of Sections 1122 and 1123 and thus, satisfies the requirements of Section 1129(a)(1).

b. The Proposed Releases

82. Section 9.02 of the Plan provides for the releases of the Released Parties⁷ as set forth in full detail in the Plan, these provisions comply with the Bankruptcy Code and applicable non-bankruptcy law and are necessary integral components of the Plan. The releases in the Plan are in exchange for, and are supported by, fair, sufficient, and adequate consideration provided by the parties receiving such releases and are a good faith compromise of the potential claims released.

83. These provisions are proper because, among other things, they are reasonable, in the best interests of the Debtors and their Estates and critical to obtaining the support of various constituencies for the Plan. *See* Bankruptcy Code Section 1123(b)(3)(A)(stating that a plan may provide for “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate”); *see also U.S. Bank Nat’l Ass’n v. Wilmington Tr. Co. (In re Spansion, Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) (“[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor’s business judgment, is fair, reasonable, and in the best interests of the estates.”). Significantly, the proposed releases, in accordance with other customary plans, do not extend to claims arising out of or relating to any

⁷ “Released Party” as defined in Section 1.89 of the Plan, means each of the following in their respective capacity as such: (i) the Debtors, their officers, directors, managers, and members, each only to the extent of their status as of the Petition Date, and Professionals (ii) the Committee, its Professionals and its members (only in their capacity as such), (iii) the DIP Lenders and their officers, directors, managers, and members and professionals (only in their capacity as such); and (iv) the DIP Agent and Prepetition Agent and their professionals. In the proposed Order, the Debtors have specifically clarified that certain former directors, officers and employees will not receive releases and exculpation as follows: the Released Parties shall not include Paul Sloyan, Arran Stewart, Ralph Henderson, Graeme Bell, Curt Smith, Thomas Harvey, James Bradley, Carry Levine, Mir Ali, Erin Wilson, and Michael Boes. Further, and solely for purposes of clarification: Mark Guest shall not be a Released Party for actions or inactions arising prior to the Petition Date, and he shall be a Released Party receiving releases as set forth in Section 9.02 of the Plan and be exculpated as set forth in Section 9.03 of the Plan for actions taken after the Petition Date.

act or omission of a Released Party that constitute willful misconduct, actual fraud or gross negligence.

84. In addition to analyzing debtor releases under the business judgment standard, some courts within the Third Circuit assess the propriety of a “debtor release” in light of five “Zenith factors” in the context of a chapter 11 plan:

- a) whether the non-debtor has made a substantial contribution to the debtor’s reorganization;
- b) whether the release is critical to the debtor’s reorganization;
- c) agreement by a substantial majority of creditors to support the release;
- d) identity of interest between the debtor and the third party; and
- e) whether a plan provides for payment of all or substantially all of the classes of claims in the class or classes affected by the release.

See, e.g., In re Zenith Elecs. Corp., 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)); *In re Spansion, Inc.*, 426 B.R. 114, 143 n.47 (Bankr. D. Del. 2010) (citing the *Zenith* factors). Courts have routinely held that no one factor is determinative.

85. The Debtors submit that the Releases contemplated under the Plan are based upon the substantial contributions of each of the Released Parties. The Released Parties are Persons or Entities (i) who are integral to the operation of the Debtors’ business (i.e., officers and directors), (ii) whose cooperation was absolutely necessary to allow the Debtors to reorganize through the granting of consensual use of cash collateral and support for the Plan, and (iii) who have provided, or have committed to provide, much-needed financing for the Debtors without which Confirmation would not be possible (i.e., the DIP Lenders and the DIP Agent).

86. Furthermore, the Releases are appropriately tailored to exclude certain parties, including but not limited to, former members of the Debtors' boards of directors, officers and management. The Releases also exclude the release of Claims or Causes of Action arising out of, or related to, acts or omissions which are the result of fraud, gross negligence, or willful misconduct (in each case as determined by a Final Order entered by a court of competent jurisdiction). Plan Section 9.03. Furthermore, certain Claims and Causes of Action were transferred to JOB.COM ACQUISITION CO., LLC pursuant to the Sale Order, further limiting those potential Claims that are affected by the Releases.

87. As for the second factor, the Releases are critical to the Debtors' reorganization because pursuant to the terms of the Global Settlement the Debtors are required to provide releases to the Committee and the DIP Release Parties in exchange for, among other things, funds (in addition to the DIP Commitments) to sustain the Debtors and their estates through the Effective Date of the Plan.

88. Regarding the third factor, the Plan, including the Exculpation and Injunction provisions, are the product of discussions and negotiations between the Debtors and Committee. Furthermore, pursuant to the Global Settlement agreement, as approved by the Court the Committee, Debtors, and Serengeti/Ghost Tree and the DIP Agent agreed to such terms. Additionally, a majority the Debtors' creditors did not oppose such Releases. Only two creditors, the Objecting Parties, raised concerns regarding the Releases.

89. As for the fourth factor, the Released Parties also share an identity of interest with the Debtors because they have all collaborated toward and share the common goal of confirming the Plan and realizing the relief and agreements contemplated thereunder. Therefore, given the identities of interest between the Debtors and the Released Parties, approval of the Releases is

appropriate.

90. Finally, the Plan also provides for meaningful payments to Holders of Claims in the two classes in which the two Objecting Parties have claims: Lily Grace's claim is unimpaired under the Plan, and Ms. Brodock's claim, if Allowed, is expected to receive between 40%-100%.

91. Ms. Brodock's objections to the Releases and Exculpation provisions the Plan are overly broad and alleges that "employee creditors receive no meaningful consideration or protection in exchange." Brodock Objection p. 3. Nonetheless, the Voting Declaration demonstrates that employees overwhelmingly voted in favor of the Plan, despite Ms. Brodock's allegations, as set forth in the Voting Declaration, 92.9% of the Class 1 Ballots received by the Voting Agent (52 of 56 votes), representing 95.4% of the amount of Class 1 claims (\$356,099.75 of \$373,133.46) voted in favor of confirmation. Furthermore, as discussed above, the Debtors took care to limit the scope of the Released and Exculpated Parties, including not extending such rights former members of the Debtors' boards of directors, officers and management, as further discussed in the Plan, and further clarified in the proposed confirmation order the identification of certain individuals who will not to receive releases.

92. Again, the Plan does not seek approval of any third-party releases.

93. Accordingly, for the reasons set forth herein, the Releases represent a valid exercise of the Debtors' business judgment, satisfy the *Zenith* Factors, and should be approved.

c. The Injunction Provision

94. The injunction provision in Article IX of the Plan enjoins all Entities that held, hold or may hold claims or interests from commencing or continuing such actions against the Exculpation Parties (the "Injunction"). The Injunction provision is necessary to preserve and enforce the terms of the Plan and is narrowly tailored to achieve that purpose. Thus, the Court should approve the Injunction. Based on all of the above, the Plan Complies with Section 1123(b).

95. Through its limited objection, Lily Grace asserts a general objection to the injunction and release provisions being applied to all creditors and seeks to limit the application of such provisions of the Plan as applied to non-voting secured creditors.

96. For the reasons discussed above, the Debtors believe that the Injunction and Release provisions contemplated under the Plan satisfy the requirements of the Bankruptcy Code and meet the *Zenith* factors, thereby supporting the Court's confirmation of the Plan.

D. Compliance with Section 1123(d)

97. Section 1123(d) states that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and nonbankruptcy law." *See* 11 U.S.C. § 1123(d).

98. The proposed Findings of Fact and Conclusions of Law provide that, "Notwithstanding anything in the Plan to the contrary, unless otherwise, (i) previously assumed and assigned or assumed, assigned and sold; or (ii) for which a motion for approval of the assumption of an Executory Contract or Unexpired Leases has been Filed and served prior to, and remains pending on the Effective Date, all Executory Contracts or Unexpired Leases shall be rejected as of the Effective Date, other than all insurance policies, which pursuant to Section 7.02 of the Plan, shall be deemed to be Executory Contracts and shall be deemed assumed by the Debtors and/or Liquidating Trust on the Effective Date as set forth therein." The Debtors are unaware of any defaults under any executory contracts or leases to be cured.

E. Compliance with Section 1126

99. Section 1126 specifies the requirements for acceptance of a plan. 11 U.S.C. § 1126. Specifically, under Section 1126, only holders of allowed claims and Holders of impaired classes of claims or interests that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject such plan. Section 1126 provides in pertinent part that:

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

11 U.S.C. § 1126(a), (f) and (g).

100. As set forth in the Plan, and in accordance with Section 1126 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from Holders of Class 1 (Priority Non-Tax Claims), Class 2 (Priority Tax Claims), Class 4 (Serengeti/Ghost Tree Claim), and Class 5 (General Unsecured Claims). Claims in Class 3 (Secured Claims) are unimpaired and are conclusively presumed to accept the Plan pursuant to Section 1126(f). Class 6 (Interests) is impaired under the Plan and will not receive a distribution under the Plan and thus, are not entitled to vote and are conclusively presumed to reject the plan pursuant to Section 1126(g).

101. As to the impaired Classes entitled to vote to accept or reject the Plan, Section 1126(c) specifies the requirements for acceptance of a plan by classes of claims:

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

102. All procedures used to tabulate the Ballots were fair and conducted in accordance

with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations. As evidenced by the Voting Declaration, the only classes eligible to vote whether to accept or reject the Plan, voted to accept the Plan as follows: Specifically, (i) 92.9% of the Class 1 Ballots received by the Voting Agent (52 of 56 votes), representing 95.4% of the amount of Class 1 claims (\$356,099.75 of \$373,133.46) voted to accept the Plan; (ii) no holders of any Class 2 Ballots voted to accept or reject the Plan; (iii) the only Class 4 Ballot received by the Voting Agent voted to accept the Plan; and (iv) 82.1% of the Class 5 Ballots received by the Voting Agent (23 of 28 votes), representing 63.8% of the amount of Class 5 claims (\$1,529,318.30 of \$2,397,168.04) voted to accept the Plan. According to the Solicitation Procedures Order, the Plan is deemed accepted by the Holders of such Claims in Classes 1 and 4.

103. Because Holders of Claims in Class 2 failed to vote or file an objection to the Plan, such Class is deemed to accept the Plan. *See Solicitation Procedures Order* ¶17 m. (stating “If no Holders of Claims eligible to vote in the Voting Classes vote to accept or reject the Plan, the Plan [sic] will be deemed accepted by the Holders of such Claims in such Class.”); *see e.g. In re Tribune Co.*, 464 B.R. 126, 183-84 (Bankr. D. Del. 2011) (finding that a non-voting impaired class that does not object to a Plan may be deemed to accept the plan); *see also In re Ruti-Sweetwater*, 836 F.2d 1263, 1266 (10th Cir. 1988) (holding that nonvoting and nonobjecting creditors inaction constituted an acceptance of the plan); *In re Szostek*, 886 F.2d 1405, 1413 (3rd Cir. 1989) (stating “The general rule is that the acceptance of the plan by a secured creditor can be inferred by the absence of an objection.”); *In re Accuride Corp.*, No. 09-13449 (BLS), 2010 WL 5093173, at *6 (Bankr. D. Del Feb. 18, 2010). Furthermore, the treatment of nonvoting creditors was clearly noticed in the Plan and solicitation procedures, as approved by the Court through the Solicitation

Procedures Order. Therefore, the treatment of Class 2 Claims is not only permissible but also consistent with this Court’s prior holdings. *See e.g. In re AIO US, Inc., et al*, Case No. 24-11836 (CTG), Docket No. 1442 pp. 78 (stating “the Court generally agrees with the basic analysis of [*Adelphia* and *Tribune*]. In this Court’s view, the critical point is not that the principle was announced by the debtor and ‘well advertised’ to the creditors. Rather, the point is that the rule was approved by the court itself after notice to the creditors.”).

104. Class 5 did not vote to accept the Plan. Although more than 80% of the Holders of Class 5 Claims voted to accept the Plan, slightly less than two-thirds in amount of Class 5 Claims voted to accept the Plan. Accordingly, pursuant to 11 U.S.C. § 1126(c), Class 5 is deemed to reject the Plan.

105. Accordingly, three of the four voting classes voted to accept the Plan, and one class by default is deemed to accept the Plan. In sum, four (4) of the six (6) classes are deemed to accept the Plan.

106. Based upon the foregoing and the evidence that will be presented prior to and at the Confirmation Hearing, the Plan Proponent submits that the Plan satisfies the requirements of Section 1126.

F. The Plan Proponent Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(1))

107. Pursuant to Section 1129(a)(1), a plan must “compl[y] 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, which govern the classification of claims and the contents of a plan, respectively. *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977); *In re S & W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) (“An examination of the legislative

history of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was more directly aimed at were sections 1122 and 1123.”). Therefore, to determine whether a Plan complies with Section 1129(a)(1) requires an analysis of Sections 1122 and 1123. As further explained above, the Debtors respectfully represent that the Plan fully complies with the requirements of Sections 1122 and 1123 of the Bankruptcy Code and should be confirmed.

G. The Plan Proponent Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

108. The Plan Proponent has satisfied Section 1129(a)(2), which requires that the proponent of a plan comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to Section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in Sections 1125 and 1126. *See In re Lapworth*, No. 97-34529, 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) (“The legislative history of §1129(a)(2) specifically identifies compliance with the disclosure requirements of §1125 as a requirement of § 1129(a)(2).”); S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

109. Among other things: (a) the Debtors are proper debtors under Section 109(d); (b) the Plan Proponent has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by order of the Court; and (c) the Plan Proponent has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Procedures Order in (i) transmitting the Disclosure Statement, the Plan and related documents and notices and (ii) soliciting and tabulating votes on the Plan [*See* Docket No. 415, 419, 420, 423, 428, 430, 433, and 434] (the “Service Affidavits”).

H. The Plan was Proposed in Good Faith (Section 1129(a)(3))

110. Section 1129(a)(3) requires that a plan be “proposed in good faith and not by any

means forbidden by law.” 11 U.S.C. § 1129(a)(3). The good faith standard requires that the plan be “proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code.” *In re Zenith Elecs. Corp.*, 241 B.R. at 107 (quoting *In re Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D. N.J. 1988), *aff’d in part, remanded in part*, 103 B.R. 521 (D.N.J. 1989), *aff’d*, 908 F.2d 964 (3d Cir. 1990)); *see also In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999) (citing *Connell v. Coastal Cable T.V., Inc. (In re Coastal Cable T.V., Inc.)*, 709 F.2d 762, 764 (1st Cir.1983)) (finding good faith requires “some relation” between the chapter 11 plan and the “reorganization-related purposes” of chapter 11).

111. The Bankruptcy Code does not define “good faith” as that term is used in Section 1129(a)(3). “[F]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code in light of the particular facts and circumstances of the case.” *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 247 (3d Cir. 2004); *In re Armstrong World Indus., Inc.*, 348 B.R. at 164; *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000) (quoting *In re Madison Hotel Associates*, 749 F.2d 410, 424-25 (7th Cir. 1984)).

112. The Plan Proponent’s good faith is evident from the proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of making distributions and maximizing their value for the benefit of their creditors. Further, the Plan satisfies these objectives in the most efficient and timely manner presently imaginable and is in no way an attempt to abuse judicial process or delay or frustrate the legitimate efforts of creditors to enforce their rights. *See In re Sound Radio, Inc.*, 93 B.R. at 853.

113. The Plan is the product of effort by the Plan Proponent to inform all creditors, interest holders, and other parties in interest of all developments with the Debtors and the Chapter 11 Cases, and to create a means to maximize the value of the remaining assets of the Estates in order to make a distribution on account of claims consistent with the priority scheme of the Bankruptcy Code. The Plan was proposed with honesty and good intentions, and at arm's length; therefore, it meets the requirements of Section 1129(a)(3).

I. The Plan Provides that Payments Made by the Debtors for Professional Fees and Expenses are Subject to Court Approval (Section 1129(a)(4))

114. Section 1129(a)(4) requires that certain professional fees and expenses paid by the plan proponent, by the debtor or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable. 11 U.S.C. § 1129(a)(4). Specifically, Section 1129(a)(4) requires that:

Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.

115. Section 1129(a)(4) has been construed to require that all payments of professional fees using funds from estate assets be subject to review and approval by the Court as to their reasonableness. *See In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (before a plan may be confirmed, “there must be a provision for review by the Court of any professional compensation.”).

116. In addition, pursuant to Sections 503(b)(3) and (4), the Court must review any applications for substantial contribution to ensure compliance with the statutory requirements and that the fees requested are reasonable. 11 U.S.C. § 503(b)(3) and (4). Further, all payments to be

made in connection with the Effective Date have been disclosed previously or will be disclosed.

117. Section 4.02(a)(iii) of the Plan requires that all requests for Administrative Expenses must be filed with the Court by no later than thirty (30) days after the Effective Date for review and approval by the Court.

118. Each Professional shall file an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases, for the period through the Effective Date, no later than forty-five (45) days after the Effective Date.

119. Furthermore, no payment for services or costs and expenses in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be made, other than payments that have been authorized by an order of the Court, including without limitation by the confirmation of the Plan by this Confirmation Order.

120. Based upon the foregoing, the Plan complies with the requirements of Section 1129(a)(4).

J. The Plan Proponent Has Disclosed All Necessary Information Regarding Directors, Officers and Insiders (Section 1129(a)(5))

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

122. The Debtors believe that they have satisfied the requirements of Section 1129(a)(5).

123. The identity and affiliations and compensation of the Person that will serve as Liquidating Trustee has been disclosed in the Plan Supplement, in satisfaction of Section 1129(a)(5)(A)(i) of the Bankruptcy Code. Further, in accordance with Section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment of the Liquidating Trustee is consistent with the interests of creditors and with public policy since no objection to the proposed Liquidating Trustee was received.

124. In accordance with Section 1129(a)(5)(B), the Plan Supplement disclosed that SC&G Group Inc., will be the Trustee, and the Plan Supplement disclosed SC&G Group Inc.'s compensation as Liquidating Trustee. Furthermore, the nature of the compensation of the Liquidating Trustee will as follows: (i) the Liquidating Trustee will receive its standard hourly fees, less any applicable discounts and (ii) reimbursement of reasonable fees and expenses.

125. Sections 6.1 and 6.3 of the Plan and the Liquidating Trust Agreement each provide that the powers, rights and responsibilities of the Trustee, as specified in the Liquidating Trust Agreement, including but not limited to the following: (a) hold legal title to the Liquidating Trust Assets and to all rights of the Debtors and the Beneficiaries in or arising from the Liquidating Trust Assets; (b) receive, manage, invest, supervise, protect, and where appropriate, cause the Trust to abandon the Liquidating Trust Assets, including causing the Trust to invest any moneys held as Liquidating Trust Assets in accordance with the terms of Section 3.7 hereof; (c) open and maintain bank accounts on behalf of or in the name of the Trust; (d) establish and maintain the Liquidating Trust Expense Fund (as defined herein); (e) cause the Trust to enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order, or the Liquidating Trust Agreement, and to perform all obligations thereunder; (f) investigate any Liquidating Trust Assets, including potential Retained Causes of Action, and cause the Trust to

seek the examination of any Person pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or other applicable rules; (g) cause the Trust to pay all its lawful expenses, debts, charges, taxes, and other liabilities, including all fees and expenses of professionals retained by the Trustee or the Trust, and make all other payments relating to the Liquidating Trust Assets; and (h) consistent with the Plan, cause the Trust, as appropriate, to review, investigate, settle, resolve, reconcile, or object to any and all Claims. Furthermore, the appointment of the Liquidating Trustee will permit the Debtors to wind down their estates in an orderly fashion and make distributions.

126. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(5).

K. No Rate Changes (11 U.S.C. § 1129(a)(6))

127. Section 1129(a)(6) permits confirmation only if any regulatory commission that will have jurisdiction over the debtor post-confirmation has approved any rate change provided for the Plan. This provision is not applicable as the Plan does not provide for any changes in any regulated rates. Accordingly, the Plan satisfies Section 1129(a)(6).

L. The Plan is in the Best Interests of All the Debtors' Creditors (Section 1129(a)(7))

128. Section 1129(a)(7) — the “best interests test” — provides, in relevant part:

With respect to each impaired class of claims or interests —

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

11 U.S.C. § 1129(a)(7)(A).

129. The best interests test applies to individual dissenting holders of claims and interests rather than classes, and is generally satisfied through a comparison of the estimated

recoveries for a debtor's stakeholders in a hypothetical Chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan. *See Bank of Am. Nat'l Trust & 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 Adelpia Commc'ns. Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (Section 1129(a)(7) is satisfied when an impaired holder of claims would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation."). As Section 1129(a)(7) makes clear, the best interests test applies only to non-accepting impaired claims or interests. The Plan here contemplates distributions to potentially 4 classes. Accordingly, to satisfy the best interests test, the Debtors must demonstrate that each creditor holding a Claim in Classes 1, 2, 3, and 5 has either accepted the Plan or will receive at least as much under the Plan as that claimant would receive in a chapter 7 liquidation. *See In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'").

130. With respect to the impaired Classes, each Holder of a Claim against the Debtors has either accepted the Plan or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, an amount that is not less than the amount that such holder would have received or retained had the Debtors been liquidated under Chapter 7 of the Bankruptcy Code (the "Liquidation Value").

131. There are five impaired classes under the Plan: Class 1 (Priority Non-Tax Claims), Class 2 (Priority Tax Claims), Class 4 (Serengeti/Ghost Tree Claim), Class 5 (General Unsecured Claims), and Class 6 (Interests). Class 6, however, is not entitled to vote and is deemed to reject the Plan. Classes 1 and 4 voted to accept the Plan, and Class 2 is deemed to accept the Plan, as

further discussed herein. However, because the votes were not unanimous, the best interests test is implicated. Therefore, the Debtors must show that the Plan provides that creditors that did not vote to accept the Plan will not receive less favorable treatment than they would have received had the Debtors liquidated through a Chapter 7.

132. In a Chapter 7 liquidation, as set forth in the Liquidation Analysis attached as Exhibit A to the Plan, those Class 5 creditors that voted to reject the Plan would either receive the same distribution or less in Chapter 7.

133. As set forth in the Liquidation Analysis, the Liquidation Value would consist of Cash held by the Debtors and potentially other funds of an unknown amount, and such funds would be reduced by certain increased costs and Claims that arise in a chapter 7 liquidation case that do not arise in a Chapter 11 case.

134. There are added costs and expenses of a Chapter 7 liquidation, including the fees payable to a Chapter 7 trustee and his or her professionals. Although the Debtors have already incurred many of the expenses associated with generating the proceeds, the Cash to be distributed to Creditors would be reduced by the Chapter 7 trustee's statutory fee, which is calculated on a sliding scale from which the maximum compensation is determined based on the total amount of monies disbursed or turned over by the Chapter 7 trustee.⁸ The Chapter 7 trustee's professionals, including legal counsel and accountants, would add additional administrative expenses that would be entitled to be paid ahead of Allowed Claims against the Debtors.

135. It is also anticipated that a Chapter 7 liquidation would result in a significant delay in payments being made to creditors and possibly additional claims to be filed. Bankruptcy Rule

⁸ Section 326(a) permits a chapter 7 trustee to receive 25% of the first \$5,000 distributed to creditors, 10% of additional amounts up to \$50,000, 5% of additional distributions up to \$1 million and reasonable compensation up to 3% of distributions in excess of \$1 million.

3002(c) provides that conversion of Chapter 11 cases to Chapter 7 will trigger a new bar date for filing claims against the Estates, and that the new bar date will be 90 days after the first date set for the meeting of creditors called under Section 341. Thus, not only would a Chapter 7 liquidation delay distribution to creditors, but it is possible that additional claims that were not asserted in the Chapter 11 Cases, or were late- filed, could be filed against the Estates. Reopening the bar date in connection with conversion to Chapter 7 would provide these and other claimants with an additional opportunity to timely file claims against the Estates. Additional claims would mean a lower pro rata distribution to similarly situated creditors.

136. In summary, if the Chapter 11 Cases were to convert to Chapter 7 cases, there may be a smaller distribution available for creditors in Classes 5. Therefore, the impaired creditors that did not accept the Plan may receive a larger distribution through the Plan than they would in a liquidation under Chapter 7. Accordingly, the Plan satisfies the best interests test.

137. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(7).

M. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8))

138. Section 1129(a)(8) requires that each class of claims or interests either accept the plan or not be impaired under the plan. As set forth above, there are five (5) impaired classes of claims and interests. Pursuant to Bankruptcy Code Section 1126(c), a class of claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the allowed claims in that class vote to accept the plan. 11 U.S.C. § 1126(c).

139. Four (4) of the six (6) Classes under the Plan have either voted to accept the Plan, are deemed to have accepted the Plan, or are unimpaired under the Plan. Classes 1, and 4 voted to accept the Plan in accordance with Section 1126(c). Class 6 is not entitled to receive or retain any property under the Plan and, therefore, is deemed to have rejected the Plan pursuant to Section 1126(g). Class 5 narrowly voted to reject the Plan, and no creditor in Class 2 voted either to accept

or reject the Plan. Nonetheless, with respect to Class 2, such Class is deemed to accept the Plan by default for the reasons outlined below.

140. Class 2 consists of Priority Tax Claims, and no Holder of such a Claim submitted a vote on the Plan. Furthermore, pursuant to the Plan and Solicitation Procedures Order, Class 2 is deemed to accept the Plan by such class members failure to vote on the Plan. *See* Plan Article IV, Section 4.08; Solicitation Procedures Order ¶17 m.

141. Prior case law supports this practice given that the Plan includes a “well-advertised” presumption that if no Holders of Claims that is entitled to vote in a particular class votes to accept or reject the Plan, the Plan will be deemed accepted by such Holders of such Claims in that Class, and that such presumed acceptance is permissible. *See In re Tribune Co.*, 464 B.R. 126, 183-84 (Bankr. D. Del. 2011); *see also In re Ruti Sweetwater, Inc.*, 836 F.2d at 1267 (finding that classes of claims in which no claimholder voted either to accept or reject the plan deemed to accept for purposes of Bankruptcy Code Section 1129(a)(8)); *In re Adelphia Commc’ns Corp.*, 368 B.R. at 261-62 (same); *see also In re AIO US, Inc., et al*, Case No. 24-11836 (CTG), Docket No. 1442 pp. 74-76 (finding that a theory of presumed acceptance of plan for impaired class that fails to vote on the plan is included in the solicitation procedures approved by the Court and all parties in interest received notice, that the court can enforce such rule).

142. Additionally, although Section 1129(a)(8) has not been satisfied with respect to Classes 5 and 6, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to Class 5 and 6, thereby satisfies Section 1129(b)(1) of the Bankruptcy Code.

N. The Plan Satisfied Section 1129(a)(9) of the Bankruptcy Code

143. Section 1129(a)(9) requires that persons holding claims entitled to priority under Section 507(a) receive specified cash payments under the plan. 11 U.S.C. § 1129(a)(9). Unless

the holder of a particular claim agrees to a different treatment with respect to such claim, Section 1129(a)(9) requires a plan to provide as follows:

- (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
- (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of this title, each holder of a claim of such class will receive —
 - (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
 - (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
- (C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash---
 - (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
 - (ii) Over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
 - (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under 1122(b)...

11 U.S.C. § 1129(a)(9).

144. As required by Section 1129(a)(9), Article IV of the Plan provides, for each Holder of an Allowed Administrative Expense, that such Holder shall receive in full and final satisfaction and release of and in exchange for such Allowed Administrative Expense: (a) Cash equal to the

amount of such Allowed Administrative Expense; or (b) such other treatment as to which the Plan Proponent or the Liquidating Trustee, as applicable, and the Holder of such Allowed Administrative Expense shall have agreed upon in writing.

145. Bankruptcy Code Section 1129(a)(9) generally requires that a plan satisfy administrative and priority tax claims in full and in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim. The Plan provides treatment for Allowed Administrative Claims and Allowed Priority Tax Claims that is consistent with the requirements of Section 1129(a)(9) of the Bankruptcy Code. Unless otherwise agreed to, the Holder of each Allowed Administrative Claim will receive full payment in Cash on account of such Claim within the prompt timeframe specified in the Plan with respect to such Claim.

146. Further, while the Plan does not specifically provide for the payment in full of Allowed Priority Tax Claims on the Effective Date, the Plan provides that all Allowed Priority Tax Claims must be paid in full, including interest as required under the Bankruptcy Code, prior to any distribution on account of a lower priority Claim. Further, the Plan provides that nothing in the Plan shall affect or impair any Governmental Entity from seeking payment on account of its Claim(s) from any third party who may have liability.

147. All Holders of Priority Tax Claims received solicitation packages and ballots, and none of the Holders of Priority Tax Claims filed an objection to confirmation, and there were no votes in support or opposition to confirmation of the Plan by Holders of Priority Tax Claims. Accordingly, this Court should conclude that Holders of Priority Tax Claims, having received notice of the proposed treatment, and having failed to object to the proposed treatment of their Claims or vote in opposition to the Plan, consented to the proposed treatment of Class 2 Claims, as set forth in the Plan.

148. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(9).

O. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10))

149. Section 1129(a)(10) requires that, if there is an impaired class of claims under the plan, at least one impaired class has accepted the plan, exclusive of insider votes. The Voting Declaration sets forth the tabulation of votes and demonstrates that such tabulation was conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order. Classes 1, 2, and 4 are impaired classes and voted (or are deemed) to accept the Plan. Accordingly, the Plan satisfies the requirements of Section 1129(a)(10).

P. The Plan Is Feasible (Section 1129(a)(11))

150. Section 1129(a)(11) requires that the bankruptcy court find that a plan is feasible as a condition precedent to confirmation. Specifically, the Court must determine that:

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

11 U.S.C. § 1129(a)(11).

151. To demonstrate that a plan is feasible, it is not necessary that success be guaranteed. *See Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988) (“[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.”) (citations omitted); *In re Cellular Info. Sys., Inc.*, 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) (“[T]he plan proponent need only demonstrate that there exists the reasonable probability that the provisions of the Plan can be performed.”) (internal quotations and citation omitted). Rather, a bankruptcy court must determine whether a plan “is workable and has a reasonable likelihood of success.” *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 762 (Bankr. S.D.N.Y. 1992). The key element of feasibility is whether there exists a reasonable

probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. *See In re American Capital Equipment, LLC*, 688 F.3d 145, 156 (3d Cir. 2012)(“Although § 1129(a)(11) does not require a plan’s success to be guaranteed, *see In re Applied Safety, Inc.*, 200 B.R. 576, 584 (Bankr.E.D.Pa.1996), the plan must nevertheless propose ‘a realistic and workable framework[.]’”) (citations omitted).

152. Feasibility requires proof that the Debtors will be able to make payments due on the Effective Date and will be able to make payments due under the life of the plan. “The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan of reorganization can be performed.” *In re Sagewood Manor Assocs. Ltd. P’ship*, 223 B.R. 756, 762 (Bankr. D. Nev. 1998) (citing *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 762).

153. The Plan Proponent has analyzed their ability to meet their Plan obligations post-confirmation. All of the Debtors’ and the Liquidating Trustee’s post-Effective Date obligations under the Plan will be funded by Cash on hand, Avoidance Actions and other Causes of Action and potential awards from Causes of Action, and potentially other assets. The Plan itself calls for liquidation of the Debtors; therefore, confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors.

154. Therefore, the Plan Satisfies Section 1129(a)(11).

Q. All Statutory Fees Have Been or Will Be Paid (Section 1129(a)(12))

155. Section 1129(a)(12) requires the payment of “[a]ll fees payable under section 1930 [of title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan.” 11 U.S.C. § 1129(a)(12).” Section 507 provides that “any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28” are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(1).

156. In accordance with Sections 507 and 1129(a)(12), Section 13.14 of the Plan provides that all fees due and payable pursuant to 28 U.S.C. § 1930 to be paid by the Debtors on the Effective Date shall be paid by the Debtors. On or after the Effective Date, to the extent applicable, the Debtors and the Post-Effective Date Debtors or Liquidating Trustee shall pay any and all such fees when due and payable until the Chapter 11 Cases are closed, converted or dismissed and final decreed. Thus, the Plan satisfies the requirements of Section 1129(a)(12).

R. Sections 1129(a)(13) through 1129(a)(16) Do Not Apply to the Plan

157. Section 1129(a)(13) requires that all retiree benefits continue to be paid post-confirmation at any levels established in accordance with Section 1114. 11 U.S.C. § 1129(a)(13). The Plan does not modify retiree benefits (as such term is used in Section 1114), if any;⁹ therefore, Section 1129(a)(13) is inapplicable to the Chapter 11 Cases.

158. Section 1129(a)(14) relates to the payment of domestic support obligations. 11 U.S.C. § 1129(a)(14). The Debtors are not subject to any domestic support obligations, and therefore, the requirements of Section 1129(a)(14) do not apply.

159. Section 1129(a)(15) applies only in cases in which the debtor is an “individual” (as that term is defined in the Bankruptcy Code). Section 1129(a)(15) does not apply in these Chapter 11 Cases because none of the Debtors is an individual.

160. Section 1129(a)(16) does not apply in these Chapter 11 Cases because each of the Debtors is a moneyed, business or commercial corporation.

⁹ Under Section 1114, “‘retiree benefits’ means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purpose of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under [chapter 11].” 11 U.S.C. § 1114(a).

S. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b))

161. Section 1129(b) provides that if all applicable requirements of Section 1129(a) are met, notwithstanding a failure to comply with Section 1129(a)(8), a plan may be confirmed so long as it does not discriminate unfairly and is fair and equitable with respect to each class of claims and interests that is impaired and has not accepted the plan. This mechanism is known colloquially as a “cram down.”

162. Here, four (4) of the six (6) Classes under the Plan Classes under the Plan have either voted to accept the Plan, are deemed to have accepted the Plan, or are unimpaired under the Plan. Holders of Claims in Class 3 are unimpaired and deemed to accept, the sole Holder of a Claim in Class 4 voted to accept the Plan, and Holders of Claims in Class 1 voted to accept the Plan. Finally, Holders of Claims in Class 2 are deemed to have accepted the Plan pursuant to Plan Section 4.08; Solicitation Procedures Order ¶17 m., as further discussed herein. Holders of Claims in Class 6 are deemed to reject the Plan and Holders of Claims in Class 5 narrowly voted to reject the Plan. Nevertheless, with respect to Classes 5 and 6, the Plan is confirmable because it satisfies Section 1129(b)(1) of the Bankruptcy Code with respect to such non-accepting Classes.

163. The Plan does not unfairly discriminate against either Class 5 or Class 6, which are the only Impaired Classes under the Plan that have not accepted the Plan. The Bankruptcy Code does not provide a standard for determining when “unfair discrimination” exists. *See In re 203 N. LaSalle St. Ltd. P’ship.*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev’d on other grounds*, *Bank of Am. Nat. Trust and Sav. Ass’n*, 526 U.S. 434 (1999) (noting “the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan” and that “the limits of fairness in this context have not been established.”). Rather, courts typically examine the facts and circumstances of each particular case to determine whether unfair discrimination exists. *See In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) (“[W]hether or

not a particular plan does so [unfairly] discriminate is to be determined on a case-by-case basis.”). At a minimum, however, the unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan without sufficient justifications for doing so. *See, e.g., In re Ambanc La Mesa Ltd. P’ship*, 115 F.3d 650, 655-57 (9th Cir. 1997); *In re Aztec Co.*, 107 B.R. 585, 589-91 (Bankr. M.D. Tenn. 1989); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986).

164. A threshold inquiry to assess whether a proposed plan unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment. Here, Class 5 and 6 are not equally situated to any other class allegedly receiving more favorable treatment. As such, the Plan does not unfairly discriminate.

165. The Plan is also fair and equitable. Section 1129(b)(2) provides that a plan is fair and equitable with respect to a particular class of unsecured claims or impaired interests if it provides that the holder of any claim or interest in a class junior to the claims or interests of that particular class will not receive or retain under the plan on account of such junior claim or interest in property. *See* 11 U.S.C. § 1129(b)(2)(B)(ii) and (C)(ii). This central tenet of bankruptcy law—the “absolute priority rule”—requires that, if the holders of claims or interests in a particular class that votes to reject a plan receive less than full value for their claims or interests, no holder of claims or interests in a junior class may receive or retain any property under the plan.¹⁰ Another

¹⁰ *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) (the absolute priority rule, “provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan”) (citations omitted); *Bank of Am. Nat. Trust and Sav. Ass’n v. 203 North LaSalle St. P’ship*, 526 U.S. 434, 441-42 (1999) (“As to a dissenting class of impaired unsecured creditors, such a plan may be found to be ‘fair and equitable’ only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if ‘the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,’ § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the ‘absolute priority rule.’”).

condition under the absolute priority rule is that senior classes cannot receive more than a 100% recovery for their claims. *See In re Exide Techs.*, 303 B.R. 48, 61 (Bankr. D. Del. 2003).

166. Through its limited objection, Lily Grace states “to the extent the Plan contemplates the release or extinguishment of Lily Grace’s lien without full satisfaction of its secured claim or without clear preservation language, such treatment is inconsistent with 11 U.S.C. §§ 1129(b)(2)(A) and 506.” Lily Grace Limited Objection at ¶9.

167. As stated above, Lily Grace’s claim is classified as a Class 3 Claim, which is unimpaired. Furthermore, Lily Grace’s alleged lien interest is not affected by the Plan and pursuant to the liquidating analysis and Plan, Secured Claims, like Lily Grace, are projected to receive the full value of each such Holder’s claim.¹¹ Therefore, the Plan complies with both Section 1129(b) and 506 of the Bankruptcy Code.

168. Additionally, no Holder of Claims or Interests junior to the interests in Classes 5 or 6 will receive or retain any property under the Plan on account of such junior Claim or Interest, and no class of claims senior to Classes 5 or 6 will receive more than full payment on account of the claims in such class. Accordingly, the Plan is fair and equitable with respect to Classes 5 and 6.

169. Therefore, the Plan complies with Section 1129(b) and may be confirmed notwithstanding the presumed rejection of the Plan by Class 6 and the actual rejection of the Plan by Class 5.

¹¹ For the avoidance of doubt, the Debtors reserves all rights, including the right to object to any Claim, including Lily Grace’s claim.

T. Only One Plan (11 U.S.C. § 1129(c))

170. Section 1129(c) provides that, with a limited exception, a bankruptcy court may only confirm one plan. The Plan is the only Chapter 11 plan filed in these Chapter 11 Cases. Accordingly, Section 1129(c) is inapplicable.

U. The Plan Proponent Has Complied with Section 1129(d)

171. No party in interest, including but not limited to any governmental unit, has requested that the Court deny confirmation of the Plan on grounds that the principal purpose of the Plan is “the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933,” and the principal purpose of the Plan is not to avoid taxes or the application of Section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of Section 1129(d).

GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

172. Bankruptcy Rule 3020(e) provides that “[u]nless the court orders otherwise, a confirmation order is stayed for 14 days after its entry.” Bankruptcy Rules 6004(h) provides a similar stay of 14 days pursuant to the terms outlined therein regarding and orders authorizing a debtor to assign an executory contract. Each rule also permits modification of the imposed stay upon court order.

173. The Plan Proponent submits that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020 and 6004 so that the proposed Confirmation Order will be effective immediately upon its entry. *See, e.g., In re Physiotherapy Holdings, Inc.*, No. 13-12965 (KG) (Bankr. D. Del. Dec. 23, 2013), Docket No. 197 (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court). As noted above, these Chapter 11 Cases and the related transactions have been negotiated and implemented in good faith and with a high degree of transparency and

dissemination of information. Based on the foregoing, the Plan Proponent requests a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

CONCLUSION

174. The Plan complies with and satisfies all of the requirements of Section 1125 of the Bankruptcy Code, and therefore the Debtors respectfully submit that the Plan contains adequate disclosures. Further, Debtors respectfully submit that the Plan satisfies Sections 1122, 1123, 1125, and 1129 of the Bankruptcy Code, and the Debtors respectfully request the Court enter the proposed findings of fact and conclusions of law confirming the Plan.

Dated: January 19, 2026
Wilmington, Delaware

MORRIS JAMES LLP

/s/ Jeffrey R. Waxman

Carl N. Kunz, III (DE Bar No. 3201)
Jeffrey R. Waxman (DE Bar No. 4159)
Christopher M. Donnelly (DE Bar No. 7149)
Samantha L. Rodriguez (DE Bar No. 7524)
3205 Avenue North Blvd., Suite 100
Wilmington, DE 19803
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
E-mail: ckunz@morrisjames.com
jwaxman@morrisjames.com
cdonnelly@morrisjames.com
srodriguez@morrisjames.com

Counsel for Debtors and Debtors-in-Possession