

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

In re:

FLUID MARKET, INC., et al.,

Debtors.¹

Chapter 11

Case No. 24-12363 (___)

(Joint Administration Requested)

**DECLARATION OF T. SCOTT AVILA IN SUPPORT OF THE
DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

I, T. Scott Avila, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am a founding partner of Paladin Management Group, LLC ("Paladin"). I have more than twenty-five years of experience in providing turnaround services to companies in a variety of industries, and have frequently been appointed as interim chief executive officer, interim chief financial officer and chief restructuring officer of these businesses.

2. I am the interim chief executive officer ("Interim CEO") of the above-captioned debtors and debtors in possession (the "Debtors"). I became the Debtors' Interim CEO on or about July 12, 2024. Since that time, and in such capacity, I have become familiar with their business, financial affairs, and day-to-day operations.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Fluid Market Inc. (1365) and Fluid Fleet Services, LLC (5994). The location of the Debtors' service address is: 3827 Lafayette St., Suite #149, Denver, CO 80205.

3. I am authorized to submit this declaration on behalf of the Debtors. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, and information I have received from other members of the Debtors' management or the Debtors' advisors. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

4. On the date hereof (the "Petition Date"), the Debtors each commenced a case (together, the "Chapter 11 Cases") by filing a petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

5. I submit this declaration to provide an overview of the Debtors' business, the events leading to the commencement of these Chapter 11 Cases and in support of the relief requested in the Debtors' "first day" applications and motions (collectively, the "First Day Pleadings").

PRELIMINARY STATEMENT

6. Faced with severely constrained liquidity, and after efforts to raise additional capital or debt financing failed, the Debtors, in an exercise of their business judgment, made the difficult decision to commence these Chapter 11 Cases. The Debtors intend to promptly pursue a sale of substantially all of their assets as they believe that is the only viable path available to maintain their business as a going concern and maximize value for their creditors and other stakeholders. The Debtors have been working with their advisors, lenders and other significant stakeholders to negotiate

the terms of an asset purchase agreement (“APA”) with Kingbee Rentals, LLC (“Kingbee”). The Debtors hope to file an APA, along with a motion to approve bidding procedures, in the immediate near term. The APA would be subject to a postpetition auction process to be approved by the Court. The Debtors are also engaged in an ongoing marketing process to identify other prospective buyers.

7. To provide sufficient liquidity to administer these Chapter 11 Cases pending such sale, the Debtors obtained a commitment from the Bridge Loan Lenders (defined below)(in such capacity, the “DIP Lenders”) to provide a debtor in possession financing facility subject to certain conditions (the “DIP Facility”) and to consent to the Debtors’ use of their cash collateral. Because the availability of the DIP Facility is conditioned upon the Debtors entering into an APA with Kingbee, it is imperative that the Debtors finalize their negotiations with Kingbee expeditiously. To that end, the Debtors have agreed to the Milestones and protections set forth in the motion to approve postpetition financing, one of the Debtors’ First Day Pleadings.

8. To familiarize the Court with the Debtors and the relief they seek in the First Day Pleadings, this declaration is organized in three sections. The first section provides background information with respect to the Debtors’ business and corporate history, as well as their prepetition capital structure. The second section describes the circumstances surrounding the commencement of these Chapter 11 Cases. The last section identifies each of the First Day Pleadings.

I. THE DEBTORS' BUSINESS

A. Overview

9. The Debtors operate a technology-based, peer-to-peer truck-sharing platform in 400 cities in 32 states across the United States for the rental of trucks, cargo vans and box trucks owned by their nondebtor affiliates or third-party owners who have elected to put their vehicles on the Debtors' platform, <https://www.fluidtruck.com/>. Vehicles are available for rent 24/7, 365 days a year at the tap of a button; customers have quick and easy access to the right vehicle whenever they need it via the Debtors' mobile app and website (the "Platform"). Trucks may be rented for as little as a few hours or as long as several months.

10. The Debtors' tech-driven Platform also solves many of the industry's key inefficiencies. The Debtors' model reduces rental booking, pick-up and return from hours to minutes. The Debtors also differentiate themselves by offering complementary services not offered by their competitors like handling vehicle registrations, handling insurance claims, minor repairs and advanced telematics (technology that combines communications and information technology to collect and analyze data from vehicles.)

B. History

11. Debtor Fluid Market, Inc. ("Fluid Market") was founded in 2016 by James Eberhard ("Eberhard") and Jenifer Snyder ("Snyder"). Fluid Market was originally an online marketplace where one could rent virtually anything from others--tools, lawnmowers, bounce houses, etc.--for a short period of time as opposed to buying these items. People kept coming back to the Platform to rent trucks; that was Fluid Market's "light bulb" moment. Fluid Market shifted its focus

to truck rentals with the goal of becoming the Uber of truck rentals (without the driver). Debtor Fluid Fleet Services, LLC (“Fleet Services”) was founded in 2019.

12. The advent of the Covid-19 pandemic afforded the Debtors an unanticipated opportunity to generate additional revenue and grow. Home deliveries exploded as consumers, stuck sheltering in place, ordered meals, groceries, and school supplies, along with anything else they needed, for home delivery.

13. The Debtors commenced an aggressive growth plan in an effort to become the largest and premier provider in the truck sharing space. This plan included, but was not limited to: (a) expanding quickly into markets across the country, (b) developing propriety technology and advanced telematics, (c) pursuing short-term and long-term rental markets, (d) providing exceptional service, including onsite maintenance, oil, tires, windshield, mirrors and minor repairs, and (e) dramatically expanding vehicle count.

C. Operations

14. Facilities. The Debtors are headquartered in Denver, Colorado with additional offices in Portland, Salt Lake City, Seattle and Buenos Aires. In addition to their office space, the Debtors lease parking lots in over 60 major cities across the United States. Vehicles are stored and rented to customers from the parking lots. The Debtors also rent certain units in which they store their telematics inventory. The Debtors do not own any real property.

15. Vehicle Fleet. The Debtors operate and manage a fleet of approximately 5,500 vehicles (the “Vehicles”), comprised primarily of cargo vans and small trucks. Roughly 2,000 of the

Vehicles are owned by the Debtors' nondebtor affiliates (the "Company Owned Vehicles"). The majority of the Company Owned Vehicles (the "Carbon Fleet Vehicles") are owned by nondebtor Carbon Fleet, LLC, a special purpose entity created to purchase, hold and lease vehicles ("Carbon Fleet"). Carbon Fleet finances its purchase of the Carbon Fleet Vehicles through a credit facility dated as of December 22, 2021 (the "Carbon Fleet Credit Facility") between Carbon Fleet, the lenders thereto (the "Carbon Fleet Lenders") and Goldman Sachs USA ("Goldman Sachs") as Agent.

16. Through a series of agreements executed in connection with the Carbon Fleet Credit Facility (the "Carbon Fleet Facility Documents"), Fluid Market and Fleet Services were appointed to administer, maintain, operate and rent to customers the Company Owned Vehicles. Fluid Market also operates, maintains and updates the Platform.

17. Company Owned Vehicles also include 31 electric vehicles (the "Edison Coil Vehicles") owned by nondebtors Edison Coil Fund I, LLC and Edison Coil Fund II, LLC (collectively, "Edison Coil") Edison Coil is party to an agreement (the "IKEA Agreement") with IKEA Distribution Services, Inc. ("Ikea Distribution"), a division of IKEA. IKEA Distribution contracts with third-party delivery companies ("IKEA Contractors") to deliver merchandise purchased at IKEA stores to IKEA's customers. Pursuant to the IKEA Agreement, the IKEA Contractors' drivers rent the Edison Coil Vehicles from the Debtors on the terms set forth in the IKEA Agreement.

18. Edison Coil financed the purchase of the Edison Coil Vehicles through either Jefferson Bank of Missouri ("Jefferson Bank") or Union Leasing Trust ("Union Leasing"). As with

the Carbon Fleet Vehicles, the Debtors were appointed to administer, maintain, operate and rent the Edison Coil Vehicles through the Platform.

19. The remaining 3,500 vehicles are owned by independent third-parties. The Debtors have a Fluid Vehicle Investor Program (the “FVIP Program”). The FVIP Program allows individuals or entities (each, an “FVIP”) to purchase vehicles and place them on the Debtors’ Platform for rental to customers. The Debtors have approximately 300 active FVIPs. The number of trucks owned by any one FVIP ranges from 1 to over 200.

20. Each FVIP is party to a Vehicle Management Agreement (the “VMA”) with Fleet Services. Pursuant to the VMA, FVIPs engage Fleet Services to supervise, manage, rent, operate and maintain their vehicles.

21. The Debtors’ business focuses on “last mile” deliveries. The ‘last mile’ refers to the final step in the process of transporting goods from a distribution center or warehouse to their final destination; typically the consumer’s home address. The last mile is a critical part of the e-commerce supply chain and is important for customer satisfaction. The last mile is typically the least efficient part of the logistics cycle and accounts for a substantial percentage of the total cost of delivery. The IKEA Agreement is a key component of the Debtors’ focus on last mile deliveries.

22. Telematics. The Debtors’ proprietary “Fluid Connect” hardware and software delivers real-time vehicle data, enabling automated remote access, intelligent fleet management, and a cutting-edge user experience. Fluid Connect features enhanced connectivity options and custom plug-and-play wire harnesses thus ensuring seamless integration across diverse vehicle types. The

real time data available through Fluid Connect includes vehicle location, fuel level, mileage, tire pressure, oil level, battery level and much more.

23. Employees. As of the Petition Date, the Debtors employ approximately 127 full-time employees (the “Employees”). In addition to the Employees, the Debtors also use the personal services of individuals who are not Employees but who are engaged by the Debtors as independent contractors, temporary workers, and consultants (collectively, the “Contractors”). The Contractors include certain support personnel located both in the United States and Argentina, each of whom the Debtors engage on a temporary or as-needed basis. As a result, the number of Contractors the Debtors use fluctuates. As of the Petition Date, the Debtors have approximately 88 Contractors. None of the Employees or Contractors are represented by a labor union or covered by a collective bargaining agreement.

24. Revenue. For their services, the Debtors receive administrative fees based on a revenue split of the gross rental fees for each booking. For Company Owned Vehicles, the Debtors generally receive a 20% share. For FVIP vehicles, the Debtors’ share is 35%. Over the last nine months, the Debtors received an average of \$1.8 million per month under the revenue split percentages. The monthly amount has ranged from \$1.4 million to \$2.7 million depending on the time of the year.

25. All vehicle owners may also pay the Debtors other fees under the VMAs. Such fees may include booking fees, Platform fees, monthly maintenance program fees and fees related to the decommissioning and disposition of a vehicle.

26. Upon the sale of a vehicle, the Debtors are entitled to a fee of 20% of the surplus between the sale value and the black book value of a vehicle. During and after the Covid-19 pandemic, when supply chain problems made acquiring a new car supremely challenging, used car prices skyrocketed. As a result, for a number of years thereafter, the Debtors received substantial income under the VMAs from the sale of vehicles coming off the Platform. The decrease in used truck values in 2024 has resulted in no surplus fees being paid.

27. Organizational Structure. Fluid Market is a Delaware corporation. Fleet Services is a Colorado limited liability company. A corporate organizational chart depicting the Debtors' legal entity structure is attached hereto as Exhibit A.

28. Capital Structure. The Debtors' primary secured and unsecured debt is described below:

A. Secured Debt

i. Bridge Loan

29. On October 2, 2024, the Debtors entered into that certain Senior Secured Multi-Drawing Loan Agreement (the "Bridge Loan Agreement") with the lenders party thereto and Bison Capital Partners V, L.P. ("Bison") as Collateral Agent. The lenders under the Bridge Loan Agreement are: (i) Bison, (ii) Bison Capital Partners V-A, L.P., (iii) Ingka Investments Ventures US BV ("Ingka"), (iv) Carbon Fleet, and (v) Kingbee (collectively, the "Bridge Loan Lenders"). Bison and Ingka hold equity interests in Fluid Market as described below.

30. As of the Petition Date, the aggregate principal amount outstanding under the Bridge Loan Agreement is approximately \$1,269,000 (the “Bridge Loan Obligations”). The Bridge Loan Obligations are secured by an all assets lien in favor the Collateral Agent for the benefit of the Bridge Loan Lenders.

31. In connection with the Bridge Loan, the Debtors and the Carbon Fleet Lenders entered into a Forbearance Agreement dated as of October 1, 2024 (the “Forbearance Agreement”). Pursuant to the terms of the Forbearance Agreement, and without waiving the specific defaults identified therein, the Carbon Fleet Lenders have agreed, on the specific terms set forth therein, to forbear from foreclosing on the Carbon Fleet Vehicles through September 30, 2026.

ii. IKEA Agreement Secured Debt

32. As noted above, nondebtor affiliate Edison Coil’s purchase of the Edison Coil Vehicles used pursuant to the IKEA Agreement were financed by either Jefferson Bank or Union Leasing. Union Leasing filed a UCC-1 financing statement against Fluid Market asserting a lien on Fluid Market’s right to certain payments under the IKEA Agreement. As of the Petition Date, Edison Coil, but not Fluid Market, owes approximately \$3 million to Union Leasing.

B. Unsecured Debt

33. Guaranty of Carbon Fleet Credit Agreement. Fluid Market executed a Limited Guaranty and Indemnity Agreement (the “Limited Guaranty”) pursuant to which Fluid Market guaranteed repayment of the Carbon Fleet Credit Facility upon the occurrence of certain subject actions, including, *inter alia*, a bankruptcy filing by or against Carbon Fleet. While Fluid Market

does not believe that it owes any amounts under the Limited Guaranty, the Carbon Fleet Lenders have notified Fluid Market of the existence of “Subject Actions” that the Carbon Fleet Lenders assert give rise to liability under the Limited Guarantee and have reserved all rights. Pursuant to the Forbearance Agreement, the Carbon Fleet Lenders have not taken further action to pursue claims under the Limited Guarantee.

34. Trade Debt. As of the Petition Date, the Debtors estimate they owe their trade vendors approximately \$26 million.

35. FVIP Obligations. As of the Petition Date, the Debtors estimate they owe FVIPs approximately \$12 million.

C. Litigation

36. The Debtors are party to numerous actions in a variety of state and federal courts. Such litigation primarily relates to motor vehicle accidents, related insurance disputes or vendor disputes. The Debtors estimate that the claims asserted that are not covered by insurance approximate \$1.2 million in the aggregate.

37. On October, 10, 2024, Urban Interests LLC filed a class action complaint against the Debtors and other in the United States District Court for the District of Colorado asserting, in the main, improprieties with respect to proceeds from vehicle sales and insurance claims. The Debtors, at the direction of the Independent Director (defined below), will be reviewing the claims asserted.

D. Equity

38. Fluid Market owns 100% of the membership interests of Fleet Services. Fluid Market's equity interests are privately held by over 350 individuals and entities. Significant shareholders include (i) HHK Investments, a vehicle related to Eberhard, (ii) the Jenifer Snyder Trust, (iii) Bison and (iv) Ingka.

II. EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASES

39. The Debtors' ambitious growth strategy came with financial and operational complexities and risks that the Debtors were unable to manage. For the 2022 and 2023 fiscal years it is estimated that the Debtors suffered cash losses of approximately \$18.7 million and \$20.6 million, respectively.

40. The Debtors' liquidity problems were exacerbated in the spring of 2024 as the Company significantly underperformed its budget due to weaker than expected demand and an inability to control expenses adequately to offset the revenue shortfall. The situation was further exacerbated when two national rental companies realigned their fleets, causing an influx of thousands of used vehicles into the auction market and a dramatic decline in the black book value of the fleet vehicles. The decreased black book values essentially eliminated the Debtors' ability to capture any gain on the sale of Carbon Fleet vehicles. In fact, the decline in value resulted in Carbon Fleet being in an over advance position with the Carbon Fleet Lenders. In addition, Carbon Fleet had reported as assets under the Carbon Fleet Credit Facility additional vehicles they intended to, but ultimately could not, purchase. The vehicles were returned to the seller which resulted in a further increase in the over advance position with the Carbon Fleet Lenders. The market decline in vehicle values also

was a factor in the Debtors losing a \$15 million financing commitment they had obtained to help alleviate their liquidity shortages.

41. On July 12, 2024, after sustaining mounting losses and the disclosure of significant liabilities to trade vendors, FVIPs and other parties, Fluid Market's board of directors (the "Board") voted to adopt several actions in response to its liquidity situation, including: (i) the termination of Eberhard's and Snyder's employment as chief executive officer and chief legal officer, respectively, and their removal as directors of Fluid Market's subsidiaries, (ii) appointment of me as chief restructuring officer (my title would eventually change to Interim CEO for reasons related to access to the Debtors' bank accounts), and (iii) creating a Restructuring Committee to explore financing, sale, reorganization, dissolution, recapitalization, strategic transactions and other similar opportunities (collectively, the "July 12th Actions"). In connection with my appointment as chief restructuring officer, the Debtors executed an engagement letter with Paladin. On July 25, 2024, the Restructuring Committee appointed me Interim CEO.

42. On July 29, 2024, Eberhard and Snyder, as the majority common stockholders, executed a written consent removing Peter Mannetti and Gary Jacobs from the Board and appointing Willam Monroe ("Monroe") and Monisha Merchant ("Merchant") as common designees to the Board.

43. At a meeting on July 30, 2024, majority of the newly reconstituted Board, consisting of Eberhard, Snyder, Monroe and Merchant, voided the July 12th Actions. The Board also passed resolutions to, among other things (i) separate Eberhard and Snyder from employment with

the Debtors effective as of July 16, 2024, (ii) appoint me as chief restructuring officer, (iii) appoint Eberhard as the Debtors' primary agent responsible for exploring financing, sale, recapitalization, strategic transactions and other similar opportunities, and (iv) dissolve the Restructuring Committee. Following this meeting, the Debtors retained Asterisk Capital, LLC, acting through Odeon Capital Group LLC ("Asterisk") to assist Eberhard with the capital raise efforts.

44. During this period, Paladin had commenced and continued its review of the Company's books and records in order to assess the Debtors' liquidity situation and cash position. It became clear to me and Paladin that the Debtors' aggressive growth had outpaced the Debtors' internal systems, procedures and controls. When coupled with inadequate attention to the underlying financial performance of the business, the Debtors were left in a severe liquidity situation with limited available options.

45. On August 7, 2024, Monroe and Merchant resigned from the Board.

46. At the same meeting on August 7, 2024, I informed the Board that unless the Debtors collected a large amount owed by a specific customer, by the end of August, the Debtors would not be able to meet their critical obligations. Even with such receipt, the Debtors would face a similar outcome by the end of September. As a result, the Debtors needed to quickly raise capital. I also reported on significant financial and operational problems identified, including, but not limited to: (i) significant past due payables owed to FVIPs; (ii) significant past due amounts owed to vendors which had resulted in vendors holding vehicles for repair and/or payment, (iii) issues with the Debtors' sales and use tax procedures, and (iv) insurance issues.

47. On August 14, 2024, by unanimous written consent, the Board took the following actions, *inter alia*: (i) reappointed me Interim CEO and provided that I could not be removed unless approved by the Board, including the Debtors' preferred directors, (ii) removed Eberhard and Snyder as signatories to the Debtors' and their affiliates' bank accounts and appointed me as an account signatory, and (iii) established a Restructuring Committee, consisting of Andreas Hildebrand, Cees Aanhaanen, Eberhard and Snyder to explore financing, sale reorganization, dissolution, recapitalization, strategic transactions and other similar opportunities. At this point, the Debtors' efforts with respect to a capital raise or asset sale were running in parallel.

48. Asterisk reached out to 40 prospective parties as part of its capital raise efforts. Eight entities gained access to the Debtors' data room after executing NDAs. Ultimately, however, Asterisk's capital raise efforts were unsuccessful when no party determined to proceed with a transaction. At a meeting on August 15, 2024, I advised the Board that after analysis of winddown options, a chapter 7 filing seemed the only feasible alternative and advised that the Debtors should consider preparing for such a filing. The Board authorized the Debtors to explore that option. Since the customer amount had been collected, the Restructuring Committee continued to explore possible financing or sale opportunities.

49. At a meeting on August 22, 2024, I reported to the Board that liquidity would run out the week of October 5th. By this time, Kingbee had been identified as a potential purchaser of the Debtors' assets. Kingbee is a third party operating in the vehicle fulfillment space and not otherwise affiliated with the Debtors. While an acquisition of substantially all of the Debtors' assets

is strategic for Kingbee, such an acquisition would require Kingbee to obtain additional financial support to execute under the circumstances. The liquidity constraints of the Debtors and the short runway to effectuate a closing meant that Kingbee would not be able to consummate a transaction on its own. With support and encouragement of the Debtors, Bison, Ingka, and Carbon Fleet agreed to provide financial support for Kingbee in exchange for equity interests in Kingbee following the closing of the proposed sale, if approved.

50. To resolve potential conflicts of interest among the existing Board members, which includes Eberhard, Snyder and a representative from each of Bison and Ingka, on September 7, 2024, the Board appointed Stephen Gray as a mutually agreed independent director (the “Independent Director”). The Independent Director serves as the sole member of the newly formed Special Committee, which is tasked with managing any issues or matters with respect to the proposed sale to Kingbee and the DIP Facility proposed to be provided by the Bridge Loan Lenders.

51. On September 20, 2024, the Debtors engaged SSG Advisors, LLC (“SSG”) as investment banker to assist the Debtors in identifying other interested prospective purchasers. SSG will be actively marketing the Debtors’ assets and the Debtors will seek approval of SSG’s retention so that they may continue to do so postpetition.

52. By mid-September, I advised the Board that funding would be required to support the Debtors’ business through September and to bridge to a bankruptcy filing. The Debtors were unable to obtain such funding notwithstanding months of prior efforts. As a result, and with no other viable option available, the Debtors entered into the Bridge Loan described above. To fund

these cases through the sale of the Debtors' assets, the DIP Lenders have agreed to provide the DIP Facility (conditioned on entry into the APA with Kingbee).and the Bridge Loan Lenders have consented to the use of their cash collateral as described in the DIP Financing Motion.

53. As noted above, the Debtors intend to promptly pursue a sale of substantially all of their assets. The Debtors do not believe any other viable path exists to maintain their business as a going concern. The Debtors anticipate completing negotiations with Kingbee and filing the KingBee APA and a bid procedures motion in the very near term.

54. Prior to the commencement of these Chapter 11 Cases, the Debtors and entities associated with the buyer began reaching out to FVIPs regarding a potential support agreement whereby, among other things, FVIPs would agree to forbear from exercising their rights and remedies under the VMAs, amend the VMAs and support the sale and the business by keeping vehicles on the Debtors' Platform. Pursuant to the terms of the potential support agreements, the Debtors are obligated to use commercially reasonable efforts to seek this Court's approval of the Debtors' performance under the support agreements. The Debtors anticipate they would file such a motion in the near term.

55. The Debtors have also filed a number of critical First Day Pleadings which are listed below. The relief requested in the First Day Pleadings is critical to stabilize the Debtors' business operations and the ultimate success of these Chapter 11 Cases.

III. FIRST DAY PLEADINGS

56. Contemporaneously herewith, the Debtors have filed a number of First Day Pleadings seeking orders that grant various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these Chapter 11 Cases, and expedite a swift and smooth sale process. On the Petition Date, the Debtors filed the following First Day Pleadings:

- **Joint Administration Motion.** *Debtors' Motion for Order Directing Joint Administration of Related Chapter 11 Cases for Procedural Purposes Only*
- **Section 156(c) Retention Application.** *Debtors' Application for Entry of an Order (I) Approving the Retention and Appointment of Epiq Corporate Restructuring, LLC as the Claims and Noticing Agent to the Debtors, Effective as of the Petition Date, and (II) Granting Related Relief*
- **Consolidated Matrix Motion.** *Debtors' Motion for Entry Interim and Final Orders: (I) Authorizing the Debtors to (A) File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, (B) File a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors, and (C) Redact Certain Personally Identifiable Information of Individual; (II) Approving the Form and Manner of Service of the Notice of Commencement; and (III) Granting Related Relief*
- **Cash Management Motion.** *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief*
- **Employee Wage and Benefits Motion.** *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief*
- **Utility Motion.** *Debtors' Motion for Entry of Interim and Final Orders: (I) Approving the Debtors' Proposed Form of Adequate Assurance of Payment to Utility Companies; (II) Establishing Procedures for Resolving Objections to Adequate Assurance by Utility Companies; (III) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service; and (IV) Granting Related Relief*
- **Tax Motion.** *Debtors' Motion for Entry of Interim and Final Orders: (I) Authorizing, But Not Directing, the Payment of Certain Taxes and Fees; and (II) Granting Related Relief*

- **Insurance Motion.** *Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to (A) Maintain Existing Insurance Policies and Pay all Insurance Obligations Arising Thereunder, and (B) Renew, Supplement, Modify or Purchase Insurance Coverage*
- **NOL Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of Common Stock and (II) Granting Related Relief*
- **DIP Financing Motion.** *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing and Use Cash Collateral, (II) Granting Liens and Providing Superpriority, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*

57. The First Day Pleadings request authority to pay certain prepetition claims. I understand that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first twenty-one days following the filing of a chapter 11 petition, “except to the extent relief is necessary to avoid immediate and irreparable harm.” In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay only those prepetition claims where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

58. I am familiar with the factual information set forth, and the relief requested, in each First Day Pleading and believe that the relief sought in each such motion (a) is necessary to enable the Debtors to undertake certain postpetition activities in connection with their sale efforts, (b) constitutes a critical element for the Debtors to successfully implement the foregoing chapter 11 objectives, and (c) best serves the Debtors' estates and creditors' interests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: October 16, 2024

/s/ T. Scott Avila

T. Scott Avila
Chief Restructuring Officer

Exhibit A

Organizational Chart

