IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GRACEWAY PHARMACEUTICALS, LLC, *et al.*,[1]	Case No. 11-13036 (PJW)
	Jointly Administered
Debtors.	

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE DEBTORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION OF GRACEWAY PHARMACEUTICALS, LLC, *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175), Case No. 11-13037 (PJW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (PJW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (PJW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (PJW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (PJW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (PJW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (PJW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 400, Bristol, TN 37620 (Attn: John Bellamy). On October 4, 2011, Graceway Canada Company filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

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I. PRELIMINARY STATEMENT

This Memorandum of Law (this "**Memorandum**")[1] in support of confirmation of the Debtors' *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 551] (as may be amended from time to time, the "**Plan**") filed by the above-captioned debtors and debtors-in-possession in these chapter 11 cases (collectively, the "**Debtors**"), by and through their undersigned attorneys, presents an analysis of the issues regarding confirmation of the Plan pursuant to Section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

As provided in detail below and in the *Declaration of Thomas E. Hill in Support of Confirmation of the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (the "**Hill Declaration**"),[2] the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code and is overwhelmingly supported by the Debtors' Creditor constituencies. Only 6 objections have been filed to date in connection with confirmation of the Plan. The Debtors' responses to those objections are set forth in the *Debtors' Omnibus Reply to Objections to Confirmation of the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (the "**Omnibus Reply**"), filed contemporaneously herewith. As set forth in detail in the Omnibus Reply, the Debtors believe all of the objections, except for those of the United States Trustee, TRC Valley Creek

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1 Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

2 The Hill Declaration is attached hereto as Exhibit A.

Associates-C, LP, Cardinal Health, and McKesson Corporation, have been consensually resolved by the modifications to the Plan set forth in the Confirmation Order or otherwise withdrawn.[3]

Accordingly, the Debtors submit that the Plan should be confirmed.

II. BACKGROUND

On September 29, 2011 (the "**Petition Date**"), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The events leading up to the Petition Date are set forth in the First Day Declaration of Gregory C. Jones [Docket No. 3] (the "**Jones Declaration**"), also filed on September 29, 2011.

On September 30, 2011, the Court entered an order consolidating the Debtors' Chapter 11 Cases for procedural purposes only [Docket No. 42]. On October 11, 2011, the Office of the United States Trustee appointed an official committee of unsecured Creditors pursuant to Section 1102 of the Bankruptcy Code (the "**Creditors' Committee**") [Docket No. 90].

By order entered on October 17, 2011 [Docket No. 119] (the "**Bid Procedures Order**"), this Court approved the bidding procedures for a sale of all or a portion of the Debtors' assets. In accordance with the Bid Procedures Order, a hearing to approve the Debtors' proposed sale of their assets was held on November 22, 2011. At the conclusion of that hearing, this Court approved the sale of substantially all of the Debtors' assets to Medicis Pharmaceutical Corporation ("**Medicis**") in the *Order Authorizing (A) the Sale of Certain Assets of the Debtors Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) the Debtors to Enter into and Perform Their Obligations under the Asset Purchase Agreement; (C) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief* [Docket No. 306] (the "**Sale Order**"). The Debtors consummated

3 A summary of the objections to the Plan and the Debtors' responses thereto is attached hereto as Exhibit B.

the transactions authorized by the Sale Order on December 2, 2011 (the "**Closing Date**"). See *Notice of Closing of Sale of Substantially All of Debtors' Assets to Medicis Pharmaceutical Corporation* [Docket No. 335].

On February 28, 2012, the Debtors filed the Plan. On March 1, 2012, the Debtors filed the *Disclosure Statement for the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 566] (the "**Disclosure Statement**"). By Order dated March 1, 2012 [Docket No. 572], the Court approved the Disclosure Statement and certain solicitation procedures (the "**Solicitation Procedures**").

III. ACCEPTANCE OF THE PLAN BY THE VOTING CLASSES

On April 6, 2012, the Debtors' notice, claims and voting agent, BMC Group, Inc. (the "**Voting and Claims Agent**"), filed a report detailing the results of the Plan voting process.[4] As set forth more fully in the Voting Report, the Plan has been accepted by all classes that voted—Classes 2, 3 and 5. Creditors in Classes 1 and 4 are Unimpaired and deemed to have accepted the Plan. Therefore, Classes 1 and 4 are not entitled to vote to accept or reject the Plan.

Creditors and holders of Claims and Interests in Classes 6, 7 and 8 (collectively, the "**Deemed Rejecting Classes**") are Impaired and will receive no distribution under the Plan on account of their Claims or Interests. Therefore, Classes 6, 7 and 8 are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. As discussed below, the Debtors satisfy Section 1129(b)'s "cramdown" requirements with respect to the Deemed Rejecting Classes, and such deemed rejection should not prevent the Court from confirming the Plan.

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4 See *Certification and Declaration of Notice, Claims and Voting Agent Regarding Solicitation and Tabulation of Votes in Connection with the Debtors' First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 671] (the "**Voting Report**").

IV. THE PLAN SHOULD BE CONFIRMED

To confirm the Plan, the Court must find that the Debtors have satisfied the provisions of Section 1129 of the Bankruptcy Code by a preponderance of the evidence.[5] The Debtors submit that the Plan complies with all relevant sections of the Bankruptcy Code, Bankruptcy Rules, and applicable non-bankruptcy law. In particular, the Plan fully complies with the requirements of Sections 1122, 1123 and 1129 of the Bankruptcy Code. This Memorandum addresses each requirement individually.

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

Section 1129(a)(1) of the Bankruptcy Code requires that a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. A principal objective of Section 1129(a)(1) is to assure compliance with the sections of the Bankruptcy Code governing classification of claims and interests and the contents of a plan of reorganization. Consequently, the determination of whether the Plan complies with Section 1129(a)(1) requires an analysis of Sections 1122 and 1123 of the Bankruptcy Code.[6] As explained below, the Plan complies with Sections 1122 and 1123 in all respects.

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

The Plan satisfies the classification requirements of Section 1122 of the Bankruptcy Code. Section 1122 provides as follows:

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5 See In re Armstrong World Indus., Inc., 348 B.R. 111, 120 (D. Del. 2006).

6 See In re S & W Enter., 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) (determining that the provisions of Section 1129(a)(1) of the Bankruptcy Code are aimed most directly at Sections 1122 and 1123); see also S. REP. NO. 95-989, at 126 (1978); H.R. REP. NO. 95-595, at 412 (1977).

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.[7]

Claims or interests in a class need not be identical but should be substantially similar in nature to each other.[8] The Third Circuit has recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided that there is a rational basis to do so.[9] Courts have identified grounds justifying separate classification, including where members of a class possess different legal rights[10] and where there are good business reasons for separate classification.[11]

The Plan's classification of Claims and Interests into eight Classes[12] satisfies the requirements of Section 1122 because the Claims and Interests in each Class differ from the

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7 11 U.S.C. § 1122.

8 In re DRW Prop. Co. 82, 60 B.R. 505, 511 (Bankr. N.D. Tex. 1986).

9 See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d 154, 158–59 (3d Cir. 1993) (explaining that a classification is proper as long as each class represents a voting interest "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed").

10 See, e.g., In re Heritage Org., L.L.C., 375 B.R. 230, 299 n.86 (Bankr. N.D. Tex. 2007) (finding that if creditors had different legal rights under equitable subordination, separate classification would be appropriate); In re Mirant Corp., No. 03-46590DML11, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (permitting separate classification because holders of claims had different legal interests in the debtor's estate); In re Kaiser Aluminum Corp., No. 02-10429, 2006 WL 616243, at *5–6 (Bankr. D. Del. Feb. 6, 2006) (permitting a classification scheme after consideration of the characteristics of each class and creditors' legal rights).

11 See Aetna Cas. & Sur. Co. v. Clerk of U.S. Bankr. Court (In re Chateaugay Corp.), 89 F.3d 942, 949 (2d Cir. 1996) (finding that the debtor must have a legitimate reason supported by credible proof to justify separate classification of similar, unsecured claims); Frito-Lay, Inc. v. LTV Steel Co., Inc. (In re Chateaugay Corp.), 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because the classification scheme had a rational basis; separate classification based on bankruptcy court-approved settlement); In re Magnatrax Corp., No. 03-11402, 2003 WL 22807541, at *4 (Bankr. D. Del. Nov. 17, 2003) (permitting separate classification based on valid business, factual and legal reasons).

12 The Plan contains eight Classes of Claims and Interests, designated as Classes 1 through 8. See Plan Art. 5; Hill Decl. ¶ 5.

Claims and Interests in each other Class based on the different rights and attributes of the respective holders.[13] Thus, valid business, factual, and legal reasons exist for classifying separately the various Classes and Interests under the Plan. Additionally, each of the Claims or Interests in each particular Class is substantially similar to the other Claims or Interests in such Class. Thus, the Plan satisfies Section 1122 of the Bankruptcy Code.

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

The Plan meets the seven mandatory requirements of Section 1123(a) of the Bankruptcy Code. Specifically, Section 1123(a) requires that a plan:

(1) designate classes of claims and interests;

(2) specify unimpaired classes of claims and interests;

(3) specify treatment of impaired classes of claims and interests;

(4) 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;

(5) provide adequate means for implementation of the plan;

(6) provide for the prohibition of the issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and

(7) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.[14]

Articles 3, 4 and 5 of the Plan satisfy the first three requirements of Section 1123(a) by: (a) designating Classes of Claims and Interests,[15] as required by Section 1123(a)(1);

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13 See Plan Arts. 3, 5; see also Hill Decl. ¶ 5.

14 11 U.S.C. § 1123(a).

(b) specifying the Classes of Claims and Interests that are Unimpaired under the Plan, as required by Section 1123(a)(2); and (c) specifying the treatment of each Class of Claims and Interests that is Impaired, as required by Section 1123(a)(3). The Plan also satisfies Section 1123(a)(4)—the fourth requirement—because the treatment of each Claim or Interest within a Class is the same as the treatment of each other Claim or Interest within that Class, unless the holder agrees to a less favorable treatment on account of its Claim or Interest.

Article 7 and various other provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement, which is set forth in Section 1123(a)(5) of the Bankruptcy Code.[16] Article 7 of the Plan and various other provisions of the Plan specifically provide for, among other things, (a) the establishment of a Liquidating Trust for the purpose of liquidating the Debtors' remaining Assets and distributing the proceeds, if any, as prescribed by the Plan; (b) the ability, following confirmation and prior to the Effective Date, of the then-current officers and directors of each of the Debtors to execute such documents and take such other action as is necessary to effectuate the transactions provided for in the Plan; and (c) the transfer and assignment, on the Effective Date, of each Debtor's respective Assets to the Liquidating Trust free and clear of all Liens, Claims, interests and encumbrances. As a result thereof, the requirements of Section 1123(a)(5) of the Bankruptcy Code have been satisfied.

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15 Article 3 of the Plan designates Classes of Claims and Interests, other than for Administrative Expense Claims and Priority Tax Claims. Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not required to be classified. Sections 2.1 and 2.4 of the Plan describe the treatment under the Plan of Administrative Expense Claims and Priority Tax Claims, respectively.

16 See § 1123(a)(5); Plan Art. 7; Hill Decl. ¶ 8(b). Section 1123(a)(5) specifies that adequate means for implementation of a plan may include: (A) retention by the debtor of all or part of its property; (B) the transfer of property of the estate to one or more entities; (C) merger or consolidation of the debtor with one or more persons; (D) sale or distribution of property of the estate; (E) satisfaction or modification of any lien; (F) cancellation or modification of any indenture; (G) curing or waiving of any default; (H) extension of a maturity date or a change in an interest rate or other term of outstanding securities; (I) amendment of the debtor's charter; or (J) issuance of securities for cash, for property, for existing securities, in exchange for claims or interests, or for any other appropriate purpose. 11 U.S.C. § 1123(a)(5) .

The sixth requirement of Section 1123(a)—that a plan prohibit the issuance of nonvoting equity securities—does not apply to the Plan because the Debtors do not propose to issue any equity securities under the Plan. The policy behind Section 1123(a)(6) of the Bankruptcy Code is to ensure that public investors would have a voice in the selection of a reorganized debtor's management. This section does not apply because the Plan is a liquidating plan, and therefore the Debtors are issuing no securities under the Plan.

Similarly, the seventh requirement of Section 1123(a)—that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan"[17]—also does not apply because the Plan does not propose to retain any of the Debtors' officers as officers of the post-confirmation Debtors.[18] After the Effective Date, the Liquidating Trustee will be authorized to file each Debtor's final tax returns and will be authorized, but not directed, to file with the official public office for keeping corporate records in each Debtor's state of incorporation a certificate of dissolution or equivalent document.[19] The Liquidating Trustee has ample experience and will be overseen by the Liquidating Trust Committee, which will consist of (a) three (3) members appointed by the First Lien Facility Agent, (b) one (1) member appointed by the Second Lien Facility Agent, and (c) one (1) member appointed by the Creditors' Committee. The Plan thus satisfies Section 1123(a)(7) of the Bankruptcy Code.

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17 11 U.S.C. § 1123(a)(7).

18 See Plan § 7.6; Hill Decl. ¶ 8(d).

19 See Plan § 7.9; Hill Decl. ¶ 8(d).

3. The Discretionary Contents of the Plan Are Appropriate.

Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan. For example, a plan may impair or leave unimpaired any class of claims or interests, provide for the assumption or rejection of executory contracts or unexpired leases,[20] provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate" or "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest,"[21] provide for the sale of substantially all of the property of the estate and for the distribution of the proceeds of any such sale,[22] "modify the rights of holders of secured claims . . . or . . . unsecured claims, or leave unaffected the rights of holders of any class of claims"[23] and may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[24]

Here, the Plan employs various provisions in accordance with Section 1123(b)'s discretionary authority. For example, the Plan provides for treatment of Executory Contracts and Unexpired Leases,[25] provides a structure for Claim allowance and disallowance,[26] sets forth a process to distribute proceeds to holders of Allowed Claims through the establishment of the

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20 11 U.S.C. § 1123(b)(1), (2).

21 Id. § 1123(b)(3)(A), (B).

22 Id. § 1123(b)(4).

23 Id. § 1123(b)(5).

24 Id. § 1123(b)(6).

25 See Plan Art. 6; Hill Decl. ¶ 8(e).

26 See Plan Arts. 2, 3.

Liquidating Trust,[27] and provides for the implementation of release, exculpation, and injunction provisions.[28]

4. The Release, Exculpation, Limitation of Liability, and Injunction Provisions Are Integral Components of the Plan.

Article 12 of the Plan provides for releases to the Debtor Releasees and Creditor Releasees, as well as exculpation, limitation of liability, and injunction provisions prohibiting parties from pursuing Claims and causes of action released under the Plan. These provisions are proper because, among other things, they are the product of arm's-length negotiations, have been critical to obtaining the support of the various constituencies for the Plan, and, as part of the Plan, have received overwhelming support from the creditors that voted for the Plan, including those creditors who would benefit from the proceeds of the potential Claims and causes of action released under the Plan. The releases, exculpation, limitation of liability, and injunction provisions of Article 12 of the Plan are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and these Chapter 11 Cases. None of these provisions is inconsistent with the Bankruptcy Code, and therefore, the requirements of Section 1123(b) of the Bankruptcy Code are satisfied. The principal terms of these provisions in Article 12 of the Plan are discussed below.

a. The Releases

Since the Petition Date, the Debtors' management and professionals have been working diligently to maximize the value of the Debtors Assets. At the commencement of these Chapter 11 Cases, the Debtors received a stalking horse bid of $275 million for substantially all of their

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27 See Plan Art. 7; Hill Decl. ¶ 8(b).

28 See Plan Art. 12; Hill Decl. ¶ 8(i).

Assets. The Debtors' management and professionals maintained business operations throughout the auction process, as well as successfully managed the auction process, thereby encouraging a spirited auction. The end result of these efforts was a purchase price of $455 million—a 35% increase over the original stalking horse bid.[29] Shortly after the auction, the Debtors, the First Lien Facility Lenders and the Creditors' Committee negotiated a settlement agreement pursuant to which the First Lien Facility Lenders agreed to release their Liens and Claims on $10 million of the purchase price so that there could be a distribution to Creditors junior to the First Lien Facility Lenders. This $10 million Committee Settlement is the cornerstone of the consensual Plan.[30]

Additionally, the Debtors have been evaluating potential Claims and Interests that may impact the Chapter 11 Cases and have been negotiating the resolution of any such identified Claims with all of their key constituencies with an economic interest in these Chapter 11 Cases, including the Creditors' Committee, the First Lien Facility Agent and the Second Lien Facility Agent (hereinafter collectively referred to as the "**Key Constituencies**"). Most significantly, the Debtors' settled with GTCR[31] all causes of action, except those against current directors and officers, in exchange for payment by GTCR of $6,000,000.00, pursuant to a settlement agreement (the "**GTCR Settlement Agreement**") approved by this Court without any objection.

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29 See Hill Decl. ¶ 33.

30 See id. ¶ 34.

31 GTCR Golder Rauner, L.L.C., a Delaware limited liability company, GTCR Co-Invest II, L.P., a Delaware limited liability company, GTCR Co-Invest III, L.P., a Delaware limited liability company, GTCR Fund VIII, L.P., a Delaware limited liability company, GTCR Fund IX/A, L.P., a Delaware limited liability company, Fund VIII/B Graceway Splitter, L.P., a Delaware limited liability company, Fund IX/B Graceway Splitter, L.P., a Delaware limited liability company, and Golder Rauner II, L.L.C., a Delaware limited liability company (collectively, including any affiliates thereof, "**GTCR**").

See *Order Authorizing the Debtors to Enter into a Settlement Agreement with GTCR* [Docket No. 595] (the "**GTCR Settlement Order**").[32]

The Debtors, upon consultation with and in agreement with of all of their constituencies, now seek to release any potential remaining Claims and interests against the Debtor Releasees and Credit Releasees (each as defined below) as part of the Debtors' fully consensual Plan. In particular, Sections 12.7 and 12.8 of the Plan provide for releases by (i) the Debtors (the "**Debtor Releases**") and (ii) each present and former holder of a Claim or Interest (the "**Releases by Holders of Claims and Interests**"). The Debtor Releasees and Creditor Releasees are defined as (i) the officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, or agents of the Debtors (including their estates and beneficiaries), in each case as of the Petition Date or that have become officers and/or directors thereafter, including GTCR; (ii) the members of the Creditors' Committee, solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Creditors' Committee, and not with respect to the actions of such members as individual creditors, and its agents, attorneys and other professionals acting in conjunction with the Chapter 11 Cases, and the Creditors' Committee's agents, attorneys and other professionals; (iii) the Liquidating Trustee; (iv) the First Lien Facility Agent and its agents, attorneys and other professionals; (v) the First Lien Facility Lenders in their capacity as such; (vi) the Second Lien Facility Agent and its agents, attorneys and other professionals; (vii) the Second Lien Facility Lenders in their capacity as such; and (viii) the Debtors' Affiliates and their officers and directors, including GTCR.[33]

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32 See Plan §§ 1.43, 1.46; Hill Decl. ¶ 37.

33 See Plan §§ 1.32, 1.36.

These provisions provide releases to the Debtor Releasees and the Creditor Releasees with respect to any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities of any nature whatsoever (other than rights to enforce obligations of the Debtors or the Debtor Releasees, as applicable, under the orders of the Bankruptcy Court, the Plan and the securities, contracts, instruments, releases and other agreements and documents delivered in connection therewith), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the 363 Sale, or the Plan against any of the Debtor Releasees or the Creditor Releasees, as applicable, except fraud, willful misconduct or gross negligence as determined by a Final Order.[34]

As an initial matter, this Court has jurisdiction to grant the releases under its "related to" jurisdiction pursuant to 28 U.S.C. § 1334(b) and the Third Circuit's decision in Pacor, Inc. v. Higgins,[35] because the releases are integral to the consensual Plan.[36] Moreover, as explained below, the Debtor Releases and Releases by Holders of Claims and Interests are proper under Section 1123(b)(3)(A) of the Bankruptcy Code, Bankruptcy Rule 9019, and applicable case law.

34 See id. §§ 12.7, 12.8.

35 743 F.2d 984 (3d Cir. 1984), rev'd on other grounds.

36 See Transcript of Hearing Held on Apr. 20, 2006 at 114, In re Freedom Rings, L.L.C., No. 05-14268 (Bankr. D. Del. May 9, 2006) (Docket No. 385) (CSS) ("[T]here is a jurisdictional nexus between the proposed releases to non-Debtor third parties and the Debtor. The entire Plan hinges on the releases, and the evidence is uncontroverted that without the releases, there is little prospect of confirming a Plan.").

1. Debtor Releases

Section 1123(b)(3)(A) of the Bankruptcy Code provides that a plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or the estate." Bankruptcy Rule 9019(a) further provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Compromises and settlements are "a normal part of the process of reorganization."[37] The compromise or settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored in bankruptcy."[38] Specifically in the context of a plan, the debtor "can elect to release claims as part of the plan and as part of the fresh start, concentrating on the business affairs and forgetting about litigation that may have questionable value or no value at all, just to settle past scores of charges and expressions of discontent."[39]

"[T]he decision whether to approve a compromise under Bankruptcy Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate."[40] Courts should not, however, substitute their judgment for that of the debtor, but instead canvas the issues to see whether the compromise falls

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37 Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. L.A. Lumber Prods. Co., 308 U.S. 106, 130 (1939)).

38 In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006); see also In re Penn Cent. Transp. Co., 596 F.2d 1102 (3d Cir. 1979).

39 Transcript of Hearing Held on Jan. 18, 2006 at 44-45, In re AAI Pharma, No. 05-11341 (Bankr. D. Del. Feb. 22, 2006) (Docket No. 893) (PJW).

40 In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997) (declining to approve a settlement found to be a sub rosa plan).

below the lowest point in the range of reasonableness.[41] "[T]he debtor should be given considerable latitude in addressing" whether to release claims as part of its plan.[42]

The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a compromise should be approved. The four enumerated factors are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors."[43] The test boils down to whether the terms of the proposed compromise fall "within a reasonable range of litigation possibilities."[44]

The compromise embodied in the Debtor Releases in the Plan is fair and equitable. It represents a compromise that is in the reasonable range of potential litigation outcomes and obviates the expense, delay, inconvenience and uncertainty that would attend any litigation regarding the Debtor Releasees. Importantly, there are no significant potential causes of actions that the Debtors are releasing in the Debtor Releases.[45] The Debtors' most significant potential

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41 See In re Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986); In re W.T. Grant & Co., 699 F.2d 599, 608 (2d Cir. 1983); see also In re World Health, 344 B.R. at 296.

42 Transcript of Hearing Held on January 18, 2006 at 45, In re AAI Pharma, No. 05-11341.

43 Meyers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); accord Will v. Nw. Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006) (finding that the Martin factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor); see also TMT Trailer Ferry, Inc., 390 U.S. 414, 424 (1968); In re Marvel Entm't Group, Inc., 222 B.R. 243 (D. Del. 1998) (proposed settlement held in best interest of the estate).

44 In re Penn Cent. Transp. Co., 596 F.2d at 1114 (citations omitted).

45 See In re Spansion, Inc., 426 B.R. 114, 143 (Bankr. D. Del. 2010) (KJC) (noting that "the record does not reflect that there is any pending litigation in [that] case that would be discontinued by such a release" and citing In re DBSD North America, Inc., 419 B.R. 114, 143 (Bankr. S.D.N.Y. 2009), which "approv[ed] a debtor's release of third parties when the debtor testified that it was unaware of any significant potential claims that were being released"); Transcript of Hearing Held on Jan. 18, 2006 at 44, In re AAI Pharma, No. 05-11341 (noting that there was "nothing in this case that would suggest that there is any serious cause of action out there that the debtor is giving up").

causes of action are those related to distributions of equity, which have already been settled with GTCR pursuant to a settlement agreement approved by this Court without objection. See GTCR Settlement Order. The Debtors negotiated the terms of the Debtor Releases in good faith and at arm's length with the Key Constituencies, including several of the creditors who are the beneficiaries of the released potential causes of actions.[46] Accordingly, because the provision for the Debtor Releases is in the best interests of the Debtors, their estates and their creditors, it should be approved pursuant to Section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

Moreover, although the Debtors believe that the Debtor Releases are governed by the case law applicable to settlements as explained above,[47] the provision for Debtor Releases also satisfies the slightly more stringent test applied to third-party releases as outlined in In re Master Mortgage Investment Fund, Inc.[48] and applied in In re Zenith Electronics Corp.[49] The Master Mortgage/Zenith factors include: (i) whether an identity of interest between the debtors and the releasees exists, such that a suit against the releasees is, in essence, a suit against the debtors or would deplete assets of the estates; (ii) the contribution of the releasees since the petition date; (iii) the essential nature of the releases to the approval of the plan; (iv) whether a substantial majority of the impacted creditors support the plan; and (v) whether the plan pays substantially

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46 See In re Spansion, Inc., 426 B.R. at 143 ("The Debtor Releasees were actively involved in negotiating and formulating the Plan. It is a valid exercise of the Debtors' business judgment to include a settlement of any claims it might own against such parties as a discretionary provision of the plan."); Transcript of Hearing Held on Jan. 18, 2006 at 44, In re AAI Pharma, No. 05-11341 (recognizing plan's debtor releases as the result of good faith negotiations among the various plan constituencies).

47 See Transcript of Hearing Held on Jan. 18, 2006 at 44, In re AAI Pharma, No. 05-11341 (distinguishing debtor releases from third-party releases).

48 168 B.R. 930 (Bankr. W.D. Mo. 1994).

49 241 B.R. 92 (Bankr. D. Del. 1999) (MFW) (considering similar factors to determine if a debtor release of a third party should be allowed as part of a plan).

all of the claims of the impacted creditors.[50] The Master Mortgage/Zenith factors are not a rigid test; rather, the court should "engage[] in a fact specific review, weighing the equities of [the individual] case."[51] The factors are not "an exhaustive list of considerations, nor are they a list of conjunctive requirements."[52]

First, the Debtor Releasees share an identity of interest with the Debtors. The First Lien Facility Agent, the First Lien Facility Lenders, the Second Lien Facility Agent, the Second Lien Facility Lenders, and the Debtors' officers and directors are likely entitled to indemnification from the Debtors with respect to the released Claims and, in the case of the directors, such Claims are likely insured under the Debtors' D&O insurance policies.[53] Moreover, the Debtors and the Debtor Releasees "share the common goal of confirming the . . . Plan," which, as described in greater detail below with respect to the Releases by Holders of Claims and Interests, is the culmination of negotiations among and settlements between the Debtors and their Key Constituencies from the start of these Chapter 11 Cases.[54] These constituencies invested substantial time and effort in negotiating and drafting the Plan, and they stand to receive a substantial portion of the distributions made under the Plan.[55]

Second, each of the Debtor Releasees has participated in the Plan process and provided significant value to the estates and contributions to the Plan. Such contributions include, among other things, (a) compromising claims and accepting diminished recoveries, (b) funding the

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50 See In re Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 935-36 (Bankr. W.D. Mo. 1994).

51 See id. at 935.

52 See id.

53 See Hill Decl. ¶ 41.

54 See In re Tribune Co., 464 B.R. 126, 153 (Bankr. D. Del. 2011) (KJC).

55 See Hill Decl. ¶ 39.

Debtors during these Chapter 11 Cases, (c) funding the Plan, (d) negotiating and supporting the Plan, (e) in the case of GTCR, making the $6,000,000.00 settlement payment, and (f) in the case of directors, officers, and employees, their efforts on behalf of the Debtors prior to and throughout the Chapter 11 Cases.[56] Indeed, the significant and substantial work performed by the directors, officers, and employees was critical to the $180 million purchase price increase over the original stalking horse bid, which increase ultimately led to a consensual Plan fully supported by all the Debtors' Key Constituencies with an economic interest in these cases and a return to unsecured creditors (who are also the beneficiaries of the released potential Claims and causes of action).

Third, the Debtor Releases are an integral part of the Plan, and the failure to effect the release provisions set forth in the Plan would seriously impair the Debtors' ability to confirm the Plan, which would reduce the value available for distribution to Creditors and negatively impact the distribution to Creditors, including potentially extinguishing any recovery to Unsecured Creditors.[57] In negotiating the Plan, the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors' Committee each requested and relied on the release provisions in the Plan. Without these provisions, the Debtors may lose the support of the main constituents, in which case confirmation of the Plan would be highly unlikely.

Fourth, the overwhelming majority of the voting Creditors voted in favor of the Plan, including those Creditors who would benefit from the potential causes of action that are being released.[58] Finally, although the Plan does not pay all Creditors substantially all of their Claims,

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56 See id. ¶ 35.

57 See id. ¶ 36.

58 See Voting Rep. at Ex. A.

the Plan pays more than was expected at the commencement of the Chapter 11 Cases due in large part to the work of the Debtors' directors, officers, employees, and other Debtor Releasees. In particular, the $180 million purchase price increase, the Committee Settlement, and the GTCR Settlement Agreement all resulted from the efforts of the Debtor Releasees. Without such achievements, the projected recoveries under the Plan would be significantly less. Thus, all of these factors and the equities of this case weigh in favor of approval of the Debtor Releases set forth in the Plan.

2. Releases by Holders of Claims and Interests

The provision for Releases by Holders of Claims and Interests also meets the Master Mortgage/Zenith factors as applied by this Court to third-party releases, as well as the "fairness and necessity" guidelines discussed by the Third Circuit in In re Continental Airlines.[59] As discussed below, there is substantial overlap in the Master Mortgage/Zenith factors and the Continental guidelines. The Creditor Releasees have provided significant value to the Plan, resulting in a fully consensual Plan and a distribution to the Creditors that would benefit from the released potential Claims and causes of action. Therefore, the provision for Releases by Holders of Claims and Interests is proper under either standard.

In Continental, the Third Circuit surveyed the case law regarding plan releases but declined to establish its own rule regarding plan releases and injunctions.[60] The Third Circuit, however, focused on the fairness of releases, the necessity to the reorganization, and the specific

59 203 F.3d 203 (3d Cir. 2000).

60 Id. at 212-14.

factual findings regarding fairness and necessity.[61] Thus, this Court has held that, under Continental:

> to meet the burden of establishing that the third party releases are fair and necessary to the reorganization, . . . Plan proponents must establish by a preponderance of the evidence that, [1] there is material, specific and identifiable consideration flowing from the releasees to the releasors, either directly or through the Plan, that is a fair exchange for the releases being granted, and [2] that it is unlikely that the Debtor will be able to confirm a Plan, not necessarily the specific Plan before the Court, absent such releases.[62]

These fairness and necessity factors under Continental implicate similar concerns as the Master Mortgage/Zenith factors. As explained above with respect to the Debtor Releasees and such analysis being equally applicable to the Creditor Releasees, the Master Mortgage/Zenith factors look to (i) whether an identity of interest between the debtors and the releasees exists, such that a suit against the releasees is, in essence, a suit against the debtors or would deplete assets of the estates; (ii) the contribution of the releasees since the petition date; (iii) the essential nature of the releases to the approval of the plan; (iv) whether a substantial majority of the impacted creditors support the plan; and (v) whether the plan pays substantially all of the claims of the impacted creditors.[63]

Under both the Master Mortgage/Zenith and Continental standards, third-party releases are appropriate where material consideration is provided by the releasees that results in a distribution to unsecured creditors through the plan in exchange for the release of potential Claims that are unlikely to be pursued.[64] As explained above with respect to the Debtor

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61 See Transcript of Hearing Held on Apr. 20, 2006 at 114-15, In re Freedom Rings, L.L.C., No. 05-14268.

62 See id.

63 See In re Zenith Elecs. Corp., 241 B.R. at 110-11; In re Master Mortgage, 168 B.R at 935-36.

64 See Transcript of Hearing Held on Apr. 20, 2006 at 116-17, In re Freedom Rings, L.L.C., No. 05-14268 (finding that third-party releases are proper when the releasees provided significant consideration that flowed to the (Continued...)

Releasees, each of the Creditor Releasees has participated in the Plan process and made significant contributions to the Plan, including (a) compromising Claims and accepting diminished recoveries, (b) funding the Debtors during these Chapter 11 Cases, (c) funding the Plan, (d) negotiating and supporting the Plan, (e) in the case of GTCR, making the $6,000,000.00 GTCR settlement payment, and (f) in the case of directors, officers, and employees, their efforts on behalf of the Debtors prior to and throughout the Chapter 11 Cases.

In particular, the Liquidating Trustee has been actively involved in the Chapter 11 Cases. Such early involvement was fully supported by all constituents. The Liquidating Trustee's actions thus far in the Chapter 11 Cases has helped ensure a smooth transition to winding down the Debtors' estate, thus maximizing value for the benefit of the creditors. The Debtors believe—and there are no allegations to the contrary—that the Liquidating Trustee has acted in good faith.[65] Therefore, it is proper to include the Liquidating Trustee as a Creditor Releasee.

Medicis has also provided material consideration, namely the $455 million Sale Proceeds, which make up over 90% of the total Assets of the Debtors. Without this contribution, the Plan would have little chance of success and projected recoveries would be just a fraction of what they presently are.[66]

Additionally, although releases of directors and officers in a liquidating plan are not routine, the significant and substantial work performed by Debtors' directors, officers, and employees—critical to the $180 million purchase price increase over the original stalking horse

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benefit of the third party releasors through the plan of reorganization in exchange for release of potential claims that were unlikely to be asserted given the small size of the case and small size of the average claim).

65 See Hill Decl. ¶ 43.

66 See Hill Decl. ¶ 40.

bid—constitutes compelling circumstances to support the release of such parties.[67] Indeed, but for the substantial efforts of the directors, officers, and employees, there would be substantially less distribution, if any, to the Unsecured Creditors.[68] Recognizing the importance of the director, officer, and employee efforts to the Debtors' value in these Chapter 11 Cases, before these Chapter 11 Cases were even filed, the Debtors sought and obtained the First Lien Lenders' support for the Releases by Holders of Claims and Interests relating to these key persons in exchange for their efforts during the Chapter 11 Cases.[69] Thus, the Releases by Holders of Claims and Interests have been an integral part of the Debtors' negotiations with the Key Constituencies, starting with the filing of the Chapter 11 Cases and culminating in the consensual Plan.

Furthermore, the releases applicable to the Debtors' directors must be viewed in conjunction with the GTCR Settlement Agreement—in which GTCR settled with the Debtors all potential Claims and causes of action relating to certain equity payments except against current directors and officers.[70] Pursuant to the GTCR Settlement Agreement, GTCR paid $4.5 million to the First Lien Facility Agent for the benefit of the First Lien Claimholders (satisfying substantial First Lien Claims that otherwise would have reduced distributions to unsecured

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67 See Transcript of Hearing Held on June 30, 2004 at 17, In re Waterlink, No. 03-11989 (Bankr. D. Del. July 7, 2004) (PJW). This Court has noted that, once the Court determines it has jurisdiction over third-party releases, a per se rule against exercising its jurisdiction (i.e., rejecting such releases as in Zenith, 241 B.R. 92), is not appropriate. See Transcript of Hearing Held on Apr. 20, 2006 at 114, In re Freedom Rings, L.L.C., No. 05-14268.

68 See Transcript of Hearing Held on Apr. 11, 2006 at 18, In re Metalforming Techs., Inc., No. 05-11697 (Bankr. D. Del. Apr. 11, 2006) (MFW) (approving releases in "a sufficiently unique case" in which "but for the contributions made by the [releasees] . . . there would be no distribution to the general unsecured creditors").

69 See *Chapter 11 Voluntary Petition* [Docket No. 1], Annex 1 (Sale Support Agreement), ¶ 4d; Hill Decl. ¶¶ 41-42.

70 See GTCR Settlement Order, Ex. A (Settlement Agreement) at 2 (defining "Releasees" to exclude "any person that is an officer or director of the Debtors as of the Settlement Effective Date, in such person's capacity as an officer or director of the Debtors").

creditors) and paid $1.5 million directly to the Debtors' estates to constitute "Other Assets" under the Plan.[71] The releases for current directors and officers now sought under the Plan were explicitly raised and contemplated when negotiating the GTCR Settlement Agreement, and the parties to the GTCR Settlement Agreement and the Key Constituencies agreed that such releases would be effected through the Plan rather than the GTCR Settlement Agreement.[72] Indeed, the current directors and officers whose efforts have created substantial value for the Unsecured Creditors relied on such Plan provisions as part of overall global negotiations that led to the consensual Plan. The general Releases by Holders of Claims and Interests therefore are an integral part of the overall negotiations between the Debtors, GTCR, and the Key Constituencies for settlement of Claims and development of a consensual Plan.

For the reasons explained above, the Debtor Releases and Releases by Holders of Claims and Interests are proper under Section 1123(b)(3)(A) of the Bankruptcy Code, Bankruptcy Rule 9019, and the cases of this Court thereunder and the Third Circuit's decision in Continental. The releases are fair and equitable provisions and, as part of the Plan and part of the entire course of arm's length negotiations with Debtors' Key Constituencies, are integral to Debtors' consensual resolution of these Chapter 11 Cases. There are no significant potential Claims and causes of actions released, and the Debtor Releasees and Creditor Releasees have provided significant value during the Chapter 11 Cases. As such, the Plan and the releases have received overwhelming support from the Creditors, including those Creditors who would benefit from the proceeds of the potential Claims and causes of action released under the Plan.

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71 See GTCR Settlement Order, at ¶ 5.

72 See Hill Decl. ¶ 41.

b. Exculpation and Limitation of Liability

The exculpation and limitation of liability provisions are also integral parts of the negotiations among and global settlement between the Debtors and their constituents, which culminated in the consensual Plan.

By requesting that the Court approve the exculpation in Section 12.5 of the Plan, the Debtors are essentially asking the Court to make a finding of fact that the exculpated parties—which include the Purchaser (in its capacity as a purchaser under the Asset Purchase Agreement), the Debtors, the Liquidating Trustee, the First Lien Facility Agent, the First Lien Claimholders in their capacity as such, the Second Lien Facility Agent, the Second Lien Facility Lenders in their capacity as such, the Creditors' Committee (solely with respect to its conduct as a committee and not with respect to the actions of its members as individual creditors), and any of such parties' respective present members (with respect to members of the Creditors' Committee, solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Creditors' Committee, and not with respect to the actions of such members as individual creditors), officers, directors, shareholders, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents or Affiliates, or any of such parties' successors and assigns, with respect to any Claim, obligation, cause of action in any form whatsoever or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of their respective officers, directors, shareholders, members and/or enrollees, employees, representatives, advisors, attorneys, financial advisors, investment bankers, agents, related professionals or Affiliates, or any of their successors or assigns—have participated in good faith with respect to the Chapter 11 Cases, the negotiation and execution of the Plan, the Disclosure Statement, the Asset Purchase Agreement and the 363 Sale, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, and the administration of the

Plan, the Asset Purchase Agreement, the 363 Sale and the property to be distributed under the Plan, including all documents ancillary thereto, all decisions, any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors and all prepetition activities leading to the promulgation and confirmation of the Plan.[73]

The limitation of liability provision similarly restricts the liability of the Debtors, Liquidating Trust, Liquidating Trustee, the Creditors' Committee, First Lien Facility Agent, First Lien Claimholders (in their capacity as such), Second Lien Facility Agent, Second Lien Facility Lenders (in their capacity as such), or any of their respective members, officers, directors, employees, advisors, attorneys, professionals, agents or Affiliates for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases, the 363 Sale, the negotiation and pursuit of Confirmation of the Plan, the consummation of the Plan or any contract, instrument, release or other agreement or document created in connection with the 363 Sale, the Plan, or the administration of the Plan or the property to be distributed under the Plan.[74]

The Debtors believe—and there are no allegations to the contrary—that the exculpated parties and limited liability parties have participated in all of the foregoing in good faith.[75] Further, the scope of the exculpation and limitation of liability is targeted and has no effect on

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73 See Plan § 12.5.

74 See Plan § 12.9.

75 See, e.g., Sale Order § F ("The Auction was duly noticed and conducted in a noncollusive, fair and good faith manner"); id. § M ("The sales process conducted by the Debtors, including without limitation, the Bidding Procedures set forth in the Bidding Procedures Order, was at arms' length, noncollusive, in good faith, and substantively and procedurally fair to all parties."); id. § O ("The APA and the Transactions contemplated thereunder were proposed, negotiated and entered into by and among the Debtors and Buyer without collusion, in good faith and at arms' length."); id. § P ("Buyer is entering into the Transactions in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding.").

liability that is determined to have resulted from fraud, gross negligence or willful misconduct as determined by a Final Order.[76] Thus, the exculpation and limitation of liability provisions should be approved in connection with the confirmation of the consensual Plan.

c. The Injunction Provisions

Section 12.6 of the Plan provides that except as otherwise specifically provided in the Plan or the Confirmation Order, all Entities or Persons who have held, hold or may hold Claims, rights, causes of action, liabilities or any equity interests based upon any act or omission, transaction or other activity of any kind or nature related to the Debtors, the Liquidating Trust or the Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Interest and regardless of whether such Entity has voted to accept the Plan, and any successors, assigns or representatives of such Entities shall be precluded and permanently enjoined on and after the Effective Date from (a) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any Claim, Interest or any other right or claim against the Debtors, the Liquidating Trustee, the Liquidating Trust or any Assets of the Debtors or the Liquidating Trust which such Entities possessed or may possess prior to the Effective Date, (b) the creation, perfection or enforcement of any encumbrance of any kind with respect to any Claim, Interest or any other right or claim against the Debtors, the Liquidating Trustee, the Liquidating Trust or any assets of the Debtors or the Liquidating Trust which they possessed or may possess prior to the Effective Date, and (c) the assertion of any Claims that are released by the Plan.[77] This injunction is

76 See Plan §§ 12.5, 12.9.

77 See id. § 12.6.

necessary to preserve and enforce the releases, exculpation, and limitation of liability granted by the Plan, and it is narrowly tailored to achieve that purpose.[78] The Third Circuit in Continental indicated that fairness and necessity principles, including the Master Mortgage factors, apply to both releases and the injunctions that effectuate such releases.[79] As explained above, the releases are proper under the principles of Continental and Master Mortgage/Zenith factors, and, accordingly, the injunction provision tailored thereto should be approved.

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

The Debtors have satisfied Section 1129(a)(2), which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. The case law and legislative history discussing Section 1129(a)(2) indicate that this section principally embodies the disclosure and solicitation requirements of Section 1125 of the Bankruptcy Code.[80] The Debtors have complied with Section 1129(a)(2) of the Bankruptcy Code by distributing their Disclosure Statement and soliciting acceptances of the Plan through their Voting and Claims Agent as authorized by the Order dated March 1, 2012 [Docket No. 572] approving the Disclosure Statement and the Solicitation Procedures. The Debtors have also satisfied Section 1125 by obtaining Bankruptcy Court approval of the Disclosure Statement as containing adequate information, and the Debtors have complied with all noticing, solicitation and tabulation requirements described in the Solicitation Procedures.

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78 See id.

79 See Continental, 203 F.3d at 217 & n.17.

80 See In re WorldCom, Inc., No. 02-13533, 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that Section 1129(a)(2) requires plan proponents to comply with applicable Bankruptcy Code provisions, including "disclosure and solicitation requirements under sections 1125 and 1126").

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

Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law."[81] The section requires that a 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."[82] Courts generally view the good faith requirement in light of the totality of the circumstances surrounding the establishment of the chapter 11 plan.[83] In assessing good faith, courts should look to a chapter 11 plan itself to determine whether it seeks relief in good faith and is otherwise consistent with the Bankruptcy Code.[84] Accordingly, where the plan satisfies the purposes of the Code and has a good chance of succeeding, the good faith requirement of Section 1129(a)(3) is satisfied.[85] Failure to satisfy the section, on the other hand, generally requires a finding of "misconduct in bankruptcy proceedings, such as fraudulent misrepresentations or serious nondisclosures of material facts to the court."[86]

The Debtors have proposed the Plan in good faith, with the legitimate and honest purposes of effecting an orderly liquidation of the Debtors' assets and an orderly distribution of the proceeds to holders of Allowed Claims pursuant to the Plan.[87] The Plan is the product of

81 11 U.S.C. § 1129(a)(3).

82 In re Zenith Elecs., 241 B.R. 92, 107 (Bankr. D. Del. 1999) (internal quotation marks omitted).

83 In re T-H New Orleans L.P., 116 F.3d 790, 802 (5th Cir. 1997).

84 In re Madison Hotel Assocs., 749 F.2d 410, 425 (7th Cir. 1984).

85 In re Century Glove, Inc., Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) (citing In re Sun Country Dev., Inc., 764 F.2d 406, 408 (5th Cir. 1985)).

86 In re River Vill. Assocs., 161 B.R. 127, 140 (Bankr. E.D. Pa. 1993), aff'd, 181 B.R. 795 (E.D. Pa. 1995).

87 See Plan Arts. 7, 9; see also Hill Decl. ¶ 10.

comprehensive and arm's-length negotiations among the Debtors, the Creditors' Committee, the First Lien Facility Agent, and the Second Lien Facility Agent. The overwhelming support of Creditors for the Plan is the best evidence that the Plan has been proposed in good faith and treats Creditors with fundamental fairness. In addition, the Plan has not been proposed by any means prohibited by law. Accordingly, the Debtors submit that the Plan complies with Section 1129(a)(3) of the Bankruptcy Code.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments in Accordance with Section 1129(a)(4).

Section 1129(a)(4) of the Bankruptcy Code requires bankruptcy court approval of certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under the plan. Specifically, Section 1129(a)(4) provides 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 the approval of, the court as reasonable.[88]

This section of the Bankruptcy Code has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval by the Court as to their reasonableness.[89]

All payments made or to be made by the Debtors for services rendered and expenses incurred in connection with the Chapter 11 Cases have been approved by, or are subject to approval of, the Court. In particular, Article 2 of the Plan provides for the payment only of

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88 11 U.S.C. § 1129(a)(4).

89 See, e.g., Lisanti v. Lubetkin (In re Lisanti Foods, Inc.), 329 B.R. 491, 503 (D.N.J. 2005); WorldCom, 2003 WL 23861928, at *54; In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992).

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Allowed Administrative Expense Claims and Professional Claims.[90] Finally, the Bankruptcy Court will retain jurisdiction after the Effective Date to grant or deny applications for allowance of compensation or payment of expenses authorized pursuant to the Bankruptcy Code or the Plan.[91] Thus, the Plan complies fully with the requirements of Section 1129(a)(4).

E. The Debtors Have Disclosed the Identity and Affiliations of the Liquidating Trustee in Accordance with Section 1129(a)(5).

Section 1129(a)(5)(A) of the Bankruptcy Code provides that a court may confirm a plan only if the plan proponent discloses "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan."[92] The Liquidating Trustee, Kip Horton, was identified in the Debtors' Disclosure Statement and was selected with the support of the First Lien Facility Agent, the Second Lien Facility Agent and the Creditors' Committee.

F. The Plan Does Not Require Governmental Regulatory Approval in Accordance with Section 1129(a)(6).

The Bankruptcy Code permits confirmation of a plan only if any regulatory commission that will have jurisdiction over the debtor subsequent to confirmation has approved any rate change provided for in the debtor's plan.[93] Section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases because the Debtors' rates are not subject to approval of any governmental regulatory commission.

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90 See Plan Art. 2; see also In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (holding that the requirements of Section 1129(a)(4) were satisfied where the plan provided for payment of only "allowed" administrative expenses).

91 See Plan Art. 13.

92 11 U.S.C. § 1129(a)(5)(A).

93 Id. § 1129(a)(6).

G. The Plan Is in the Best Interests of Creditors and Interest Holders in Accordance with Section 1129(a)(7).

The Bankruptcy Code requires that a plan be in the best interests of creditors and equity holders.[94] The Section 1129(a)(7) "best interests" test requires that, with respect to each class, each holder of a claim or an equity interest in such class either:

(i) has accepted the plan; or

(ii) will receive or retain under the plan . . . 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 [the Bankruptcy Code].[95]

The best interests test applies to individual dissenting holders of claims and interests rather than classes,[96] and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan of reorganization.[97] As the language of Section 1129(a)(7) makes clear, the best interests test applies only to non-accepting impaired claims or interests; if a class of claims or interests unanimously approves a plan, the best interests test is deemed satisfied for all members of that class.[98]

To find that a plan satisfies the best interests test, the Court must: (a) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if each of the Debtors' Chapter 11 cases were converted to a chapter 7 case and the assets of such Debtors' estates were liquidated;

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94 Id. § 1129(a)(7).

95 Id. § 1129(a)(7)(A).

96 Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 441-42 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.").

97 See In re Adelphia Commc'ns Corp., 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (Section 1129(a)(7) was satisfied where an impaired holder of a claim would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation").

98 Drexel Burnham Lambert, 138 B.R. at 761.

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(b) determine the liquidation distribution that each non-accepting holder of a claim or an equity interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare such holder's liquidation distribution to the distribution under the plan that such holder would receive if the plan were confirmed and consummated.[99]

To calculate the probable distribution to holders of each Impaired Class of Claims and Interests if the Debtors were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtors' assets if their chapter 11 cases were converted to chapter 7 cases.[100] Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the best interests test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan.[101] However, the Debtors believe that in a chapter 7 liquidation, there would be additional costs and expenses that the Debtors would incur as a result of the ineffectiveness associated with replacing existing management and professionals, including.[102] Such costs would include the compensation of a trustee, as well as compensation of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Debtors in their Chapter 11 Cases (such as compensation of attorneys, financial advisors and accountants) that are allowed in the chapter 7 cases, litigation costs, and Claims arising from the operations of the Debtors during the pendency of the Chapter 11 Cases.

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99 See Adelphia, 368 B.R. at 251-52.

100 See id. at 251-54.

101 See id.

102 Cf. id. at 254 ("[T]he chapter 7 trustee's advisors would be entitled to reasonable compensation for services rendered and related expenses incurred, which would be entitled to treatment as administrative expense claims. Given the amount of time such professionals would be required to devote to become familiar with the Debtors and the issues related to these cases, such fees and costs would reduce overall recoveries." (footnote omitted)).

Attached as Exhibit D to the Disclosure Statement is a liquidation analysis (the "**Liquidation Analysis**") which shows (a) the expected recoveries if these cases were converted to chapter 7 and (b) the expected recoveries under the Plan. Based upon the Liquidation Analysis, the Debtors believe that anticipated recoveries to each Class of Impaired Claims under the Plan implies a greater or equal recovery to holders of Claims in Impaired Classes than the recovery available in a chapter 7 liquidation. Accordingly, the Debtors believe that the best interests test of section 1129(a)(7) of the Bankruptcy Code is satisfied.

H. Acceptance of Impaired Classes in Accordance with Section 1129(a)(8).

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan.[103] Pursuant to Section 1126(c), a class of impaired 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 actually vote to accept the plan.[104] A class that is not impaired under a plan, and each holder of a claim or interest in such class, is conclusively presumed to have accepted the plan.[105] Conversely, a class is deemed to have rejected a plan if the plan provides that the holders of claims or interests of such class are not entitled to receive or retain any property under the plan on account of such claims or interests.[106]

As set forth in the Voting Report, Classes 2, 3 and 5 voted to accept the Plan. Specifically, holders of Class 2 First Lien Facility Claims voting voted 100% in number and

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103 11 U.S.C. § 1129(a)(8).

104 Id. § 1126(c).

105 Id. § 1126(f); see also In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 290 (2d Cir. 1992) ("If the claimholder's interests are unimpaired, the claimholder is conclusively presumed to have accepted the plan, and his participation in or approval of the reorganization plan is not necessary for the plan to gain confirmation by the bankruptcy court." (internal quotation marks omitted)).

106 11 U.S.C. § 1126(g).

100% in amount in favor of the Plan. Holders of Class 3 Second Lien Facility Claims voting voted 100% in number and 100% in amount in favor of the Plan. Holders Class 5 General Unsecured Claims voting voted 92.73% in number and 99.99% in amount in favor of the Plan.

Thus, the only Impaired Classes not voting to accept the Plan are the Classes statutorily deemed to reject the Plan (Classes 6, 7 and 8). Section 1129(a)(8) is not satisfied. Nevertheless, as discussed more fully in Section IV.N below, the Debtors have satisfied Section 1129(a)(10) of the Bankruptcy Code—because at least one Impaired Class accepted the Plan—and Section 1129(b), which allows the plan proponent to "cramdown" any rejecting classes under certain conditions that are satisfied here.

I. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims in Accordance with Section 1129(a)(9).

Section 1129(a)(9) of the Bankruptcy Code generally requires that persons holding claims entitled to priority under Section 507(a) receive payment in full in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim. As required by Section 1129(a)(9) of the Bankruptcy Code, Section 2.1 of the Plan provides for payment in full of Allowed Administrative Expense Claims on or as soon as reasonably practicable after the Effective Date, unless the holder of such a claim agrees to a different treatment with respect to such claim. Further, Section 2.4 of the Plan provides for payment in full of Allowed Priority Tax Claims on or as soon as reasonably practicable after the Effective Date or, if applicable, in regular installment payments in accordance with Section 1129(a)(9)(C),[107] unless the holder of such a Claim agrees to a different treatment with respect to such Claim. Therefore, the Plan complies with Section 1129(a)(9) of the Bankruptcy Code.

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107 See id. § 1129(a)(9)(C) (providing that holders of claims under 11 U.S.C. § 507(a)(8) will receive payment for such claims in regular cash installments).

J. At Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders, in Accordance with Section 1129(a)(10).

Section 1129(a)(10) provides that to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. Here, Classes 2, 3 and 5 voted to accept the Plan, and such acceptance does not include acceptance of the Plan by an insider. Therefore, the Plan satisfies the requirement of Section 1129(a)(10).

K. The Plan Is Feasible in Accordance with Section 1129(a)(11).

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

> [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.[108]

To demonstrate that a plan is feasible, it is not necessary for a debtor to guarantee success; rather, only a reasonable assurance that the provisions of a plan can be performed is required.[109]

Here, because the Plan is a liquidating plan, there is no need to evaluate the commercial viability of the Debtors after confirmation,[110] but the Plan must still be feasible in what it

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108 Id. § 1129(a)(11).

109 See United States v. Energy Res. Co., 495 U.S. 545, 549 (1990); IRS v. Kaplan (In re Kaplan), 104 F.3d 589, 597 (3d Cir. 1997); Clarkson v. Cooke Sales & Serv. Co. (In re Clarkson), 767 F.2d 417, 420 (8th Cir. 1985) ("[T]he feasibility test contemplates 'the probability of actual performance of the provisions of the plan. . . . The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts.'" (quoting In re Bergman, 585 F.2d 1171, 1179 (2d Cir. 1978))).

110 Cf. In re Briscoe Enters., Ltd., II, 994 F.2d 1160, 1166 (5th Cir. 1993) (stating that reasonable assurance of commercial viability is required in case of reorganizing debtor).

proposes to do.[111] As will be shown at the Confirmation Hearing, the Debtors fully expect—and there is a high probability that the Debtors will have sufficient funds available—to meet their obligations under the Plan.[112] Accordingly, the Plan is feasible and satisfies Section 1129(a)(11) of the Bankruptcy Code.

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

Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. Section 2.2 of the Plan provides that all fees due and payable pursuant to 28 U.S.C. § 1930 shall be paid in full, in Cash, on or before the Effective Date.[113] The Plan, therefore, complies with Section 1129(a)(12) of the Bankruptcy Code.

M. The Plan Does Not Modify Retiree Benefits in Accordance with Section 1129(a)(13).

Section 1129(a)(13) of the Bankruptcy Code provides that a plan must provide for continued, post-confirmation payments of all retiree benefits at the levels established in accordance with Section 1114 of the Bankruptcy Code. The Debtors do not have any obligations on account of retiree benefits (as such term is used in Section 1114)[114] and, therefore, Section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

N. The Plan Satisfies the "Cramdown" Requirements of 11 U.S.C. § 1129(b).

Three of the Impaired Classes (Classes 2, 3 and 5) have voted to accept the Plan. However, Classes 6, 7 and 8 were deemed to reject the Plan, requiring the Debtors to "cramdown" these Classes pursuant to Section 1129(b) of the Bankruptcy Code.

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111 See Kaplan, 104 F.3d at 597; Bergman, 585 F.2d at 1179.

112 See Hill Decl. ¶ 25.

113 Plan § 2.2; see also Hill Decl. ¶ 29.

114 See Hill Decl. ¶ 30.

Section 1129(b) provides that if all applicable requirements of Section 1129(a), other than Section 1129(a)(8), are met, 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.[115] Thus, to confirm a plan that has not been accepted by all impaired classes, the plan proponent must show that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[116] The Debtors' satisfaction of these conditions is discussed in detail below.

1. The Plan Is Fair and Equitable with Respect to Each Impaired Class that Has Not Voted to Accept the Plan.

Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if the plan provides that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain under the plan on account of such junior claim or interest any property. 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 interests, then no holder of claims or interests in a junior class may receive property under the plan.[117] Another condition under the absolute priority rule is that senior classes cannot receive more than a 100 percent recovery for their claims.[118]

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115 See 11 U.S.C. § 1129(b).

116 See John Hancock Mut. Life, 987 F.2d at 157 n.5 ("Under [Section 1129(b)], the plan must also satisfy all of the requirements of [Section 1129(a)] except for subsection (a)(8) . . . and must not 'discriminate unfairly' against and must be 'fair and equitable' with respect to all impaired classes that do not approve the plan.").

117 203 N. LaSalle, 526 U.S. at 441-42 (explaining that, under the absolute priority rule, "a plan may be found to be 'fair and equitable' only if the allowed value of the claim [in a dissenting class of impaired unsecured creditors] is to be paid in full . . . 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'" (citations omitted)); Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 202 (1988) (stating

(Continued...)

The Plan satisfies the absolute priority rule with respect to all impaired Classes of Claims and Interests that have not voted in favor of the Plan. No holders of Claims and Interests junior to the Claims and Interests in Classes 6, 7 and 8 will receive or retain any property on account of their Claims and Interests, and no holders of Claims or Interests senior to the Claims and Interests in Classes 6, 7 and 8 are receiving more than full payment on account of the Claims and Interests in such Classes.[119] Accordingly, the Plan satisfies the requirements of Bankruptcy Code Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) and is fair and equitable with respect to all classes of Claims and Interests.

2. The Plan Does Not Unfairly Discriminate with Respect to Each Impaired Class that Has Not Voted to Accept the Plan.

The Plan also does not discriminate unfairly with respect to Impaired Classes that have rejected the Plan. The Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists.[120] Rather, courts typically examine the facts and circumstances of the particular case to determine whether unfair discrimination exists.[121] 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 compelling

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that "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)," rev'd on other grounds (internal quotation marks and citations omitted).

118 See In re Exide Techs., 303 B.R. 48, 61 (Bankr. D. Del. 2003); In re Genesis Health Ventures, Inc., 266 B.R. 591, 612 (Bankr. D. Del. 2001).

119 See Hill Decl. ¶ 31.

120 See In re 203 N. LaSalle St. Ltd. P'ship., 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established"), rev'd on other grounds sub nom. Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434 (1999).

121 See In re Bowles, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) (explaining that "whether or not a particular plan does [unfairly] discriminate is to be determined on a case-by-case basis"); In re Freymiller Trucking, Inc., 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (finding that determination of unfair discrimination requires court to "consider all aspects of the case and the totality of all the circumstances").

justifications for doing so.[122] The Plan does not unfairly discriminate with respect to Impaired Classes and the cramdown test is thus satisfied. Accordingly, the Plan should be confirmed.

O. The Purpose of the Plan Is Not the Avoidance of Taxes or the Avoidance of the Securities Laws in Accordance with 11 U.S.C. § 1129(d)

"[O]n request of a party in interest that is a governmental unit, the court may not confirm a plan if the principle purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."[123] The primary purpose of the Plan is not the avoidance of taxes or the avoidance of the application of the Securities Laws. Further, no party currently objects to confirmation of the Plan on the basis of Section 1129(d). Accordingly, Section 1129(d) does not bar confirmation of the Plan.

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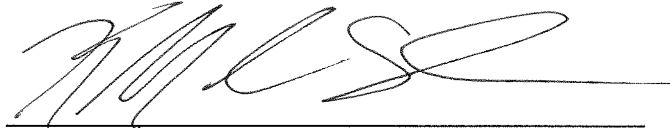
122 See In re Ambanc La Mesa Ltd. P'ship, 115 F.3d 650, 654-55 (9th Cir. 1997); In re Aztec Co., 107 B.R. 585, 589-91 (Bankr. M.D. Tenn. 1989); In re Johns-Manville Corp., 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986).

123 11 U.S.C. § 1129(d).

IV. CONCLUSION

For the reasons set forth herein, the Debtors submit that the Plan fully satisfies all applicable requirements of the Bankruptcy Code and respectfully request that the Court confirm the Plan.

Dated: April 9, 2012



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