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\*NOT ADMITTED TO THE NEW YORK BAR

September 19, 2019

**By Hand Delivery**

Honorable Laurie Selber Silverstein  
United States Bankruptcy Court  
District of Delaware  
824 North Market Street  
6th Floor, Courtroom #2  
Wilmington, Delaware 19801

*In re. SportCo Holdings Inc.*, Case No. 19-11299 (LSS) (Bankr. D. Del.)

Dear Judge Silverstein:

The Debtors,<sup>1</sup> the Official Committee of Unsecured Creditors of SportCo Holdings Inc. *et al.* (the "Committee"), Prospect Capital Corp. ("Prospect"), and

<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry's Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors' corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

Wellspring Capital Management LLC and certain of its affiliates and employees (“Wellspring”) submit this letter to summarize for the Court their respective positions with respect to certain disputes relating to Plan confirmation discovery. The parties have held two meet-and-confers and have exchanged correspondence on the below issues, but have been unable to reach agreement.

The parties stand ready to answer any questions the Court might have and to provide additional information, should the Court so request. The parties respectfully request that the Court convene a telephonic conference to address the below issues.

The parties thank the Court for its consideration.

## **I. Wellspring’s Requests**

Pursuant to Requests 5 through 8 and 12 through 14 of the first set of Plan confirmation discovery requests that Wellspring served on the Debtors, Committee, and Prospect (attached hereto as **Exhibits A, B, and C**, respectively), Wellspring seeks, among other things, documents and communications between and among the Debtors, the Committee, and Prospect regarding the 2012 and 2013 recapitalization transactions, the liens that Prospect acquired in connection with these transactions, the claims that Prospect asserts against Wellspring in the litigation Prospect filed in South Carolina state court (the “S.C. Action”), and the Committee’s investigation of potential claims against any other person or entity (besides Wellspring).<sup>2</sup>

### *A. Wellspring’s Position*

Through these requests, Wellspring seeks discovery regarding communications and documents relating to the claims asserted in the S.C. Action; the settlement between Prospect and the Debtors and/or the Committee relating to the Plan; the DIP Orders and the Releases provided therein to Prospect; the Committee’s investigation of the claims asserted in the S.C. Action; and any analysis of the validity, value, and potential recovery on these claims in connection with the formulation of the Debtors’ proposed chapter 11 Plan.

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<sup>2</sup> In its second set of Plan confirmation discovery requests, Wellspring also seeks, among other things, documents and communications regarding the negotiations among the Debtors, the Committee, and Prospect regarding the claims in the S.C. Action; the funding of the claims in the S.C. Action; all settlements embodied in or relating to the Plan; and the releases Prospect received from the Debtors, as discussed at the September 11, 2019 hearing. (See **Exhibit D** (Wellspring Requests 7–10 to Debtors), **Exhibit E** (Wellspring Requests 5–8 to Prospect), **Exhibit F** (Wellspring Requests 3–6 to Committee).) Wellspring understands the Debtors, the Committee, and Prospect take the same positions with respect to these materials as they do with respect to the materials requested in Wellspring’s first set of Plan confirmation discovery requests.

The Debtors' proposed Plan identifies the S.C. Action as one of the Debtors' few remaining assets, and the Debtors and Prospect have stated that the Plan reflects the settlements or comprises provided in exchange for the releases provided to Prospect. (*See, e.g., Exhibit G*, Hr'g Tr. 41:2–4 (Sept. 11, 2019), *In re. SportCo Holdings Inc.*, Case No. 19-11299 (LSS) (Bankr. D. Del.) (MS. KELBON: "I guess where you say the settlement, there are plan releases in favor of the second lien lenders.")). The allocation of rights and recoveries relating to the claims asserted in the S.C. Action was central to Plan negotiations between and among the Debtors, the Committee, and Prospect,<sup>3</sup> and the proposed Plan contemplates funding the litigation of these claims out of amounts that would otherwise be distributable to creditors of the Debtors. Discovery on these negotiations goes directly to the whether the Plan was proposed in good faith by the Debtors, and whether and what value was ascribed to the claims.

As Wellspring has pointed out before, there is a fundamental inconsistency reflected in the Debtors' proposed Plan and the DIP orders that preceded it. Namely, the proposed Plan contemplates funding litigation against Wellspring relating to, *inter alia*, two transactions that Prospect knowingly funded (and from which it then received more than \$100 million in principal and interest), while releasing Prospect from any and all potential claims and causes of action arising out of those same transactions. The discovery Wellspring seeks is of crucial importance so that the Court and other creditors may understand the Debtors' and the Committee's basis (or lack thereof) for agreeing to these releases of Prospect. Moreover, as an unsecured creditor, Wellspring is entitled to this information from the Committee under 11 U.S.C. § 1102(b)(3).

Prospect has asserted a common interest privilege over all such documents and communications, as has the Committee, regardless of the time period in which such communications took place.<sup>4</sup> The parties asserting the common interest privilege bear the burden of proving its application. Wellspring submits that no privilege attached where the communications sought occurred before any settlement was reached (*see n.3 supra*), and where the parties' interests were not aligned. Moreover, these materials are not protected by the common interest privilege because any shared interest between Prospect and the Committee, or Prospect and the Debtors, regarding the potential recovery on the claims is commercial, not legal. *See, e.g., In re Simplicity*, 584 B.R. 495 (Bankr. D. Del. 2018) (collecting cases holding that the common interest privilege does not apply where parties share a financial interest in the outcome of a litigation); *Miller UTK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 732–33 (N.D. Ill. 2014) (holding that

<sup>3</sup> *See, e.g., id.* 34:3–10 (MR. CHAFETZ: "The committee was not onboard when . . . the debtors filed the original version of the plan and only three [sic] additional, really substantial arm's-length negotiations did we get to a point where we were comfortable with how the Type A and Type B causes of action were allocated between the various constituencies and also the percentages of proceeds and how those proceeds were being shared.")).

<sup>4</sup> Wellspring understands the Debtors have taken the same position.

“[a] shared rooting interest in the successful outcome of a case . . . is not a common *legal* interest” (quotations omitted)).

To the extent that the Court were to find that a common interest might apply to some subset of these documents, Wellspring requests that Prospect, the Committee, and the Debtors identify these documents on a log on or before October 4, 2019, and provide them to the Court for review *in camera*.

Given the rapidly approaching Plan confirmation hearing, Wellspring also respectfully requests that the Court set a September 27, 2019 deadline for document discovery and an October 4, 2019 deadline for the exchange of privilege logs.

B. *Prospect, the Committee, and the Debtors’ Positions*

1. Prospect’s Position

Wellspring’s argument pertaining to these Requests is misplaced for several reasons. First, the post-hearing revisions to the Plan removed the requirement for a FRBP 9019 settlement. Second, the litigation against Wellspring will not be funded out of estate cash but rather out of Prospect’s collateral. Third, and most importantly, the Final DIP Order granted an estate release to the Second Lien Lenders because Wellspring opted not to bring a challenge before expiration of the challenge deadline.

Prospect, the Committee and the Debtors have agreed to produce copies of prior drafts of the Plan as well as the Plan term sheet negotiated among them. In addition, the Committee has agreed to produce documentation regarding its investigation of Prospect that ultimately led to Committee support for the Plan and the terms negotiated therein.

Regarding privileges, in addition to the assertion of the attorney-client and work product privileges as to all communications between Prospect and its inside and outside counsel, Prospect asserts the common interest privilege over all communications between Prospect and the Committee concerning the South Carolina Action and any other potential claims against Wellspring (as well as objections to Wellspring’s proofs of claim). As the Third Circuit made clear in *Teleglobe*, the common interest privilege exists to permit parties with similar legal interests to share information without having to disclose it to others. *In re Teleglobe Communications Corp.*, 493 F. 3d 345, 364 (CA3 2007). The privilege applies to any communications in the course of a matter of common interest where the communication was designed to further that effort and was not otherwise waived. *In re Leslie Controls, Inc.*, 437 B.R. 493 (Bkrtcy. D. Del. 2010). Here, Prospect and the Committee<sup>5</sup> share a common interest in the pursuit of claims

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<sup>5</sup> The common interest privilege also extends to communications with the Debtors. For purposes of this particular dispute and the limited documents at issue, neither Prospect nor the Committee asserts the common interest privilege as to the documents and communications with the Debtors, but does not waive it with respect to any future requests.

against Wellspring because of their obvious benefit to the estate. Moreover, the claims asserted in the South Carolina Action filed by Prospect pre-petition are now property of the estate to be pursued by a litigation trustee. All documents and communications between Prospect and the Committee concerning these claims against Wellspring are designed to further the effort to prosecute claims against Wellspring. Particularly instructive is Judge Sontchi's analysis in *Leslie Controls* where he applied the common interest privilege to information sharing between a debtor, an ad hoc committee and a third party notwithstanding the communications occurred while plan negotiations remained ongoing, because the information sharing related to their "common enemy". *Id.* at 502. *Accord In re Simplicity, LLC*, 584 B.R. 495, 501(Bkrtcy. D. Del. 2018) (discussing *Leslie Controls*). This principle is especially true here because Wellspring is seeking privileged information concerning litigation where it is the **defendant**. Stated differently, Wellspring seeks to use this bankruptcy contested matter to circumvent the discovery process that will occur in the South Carolina Action by requesting information from the very parties prosecuting the suit, all under the guise that it is a "creditor" in need of that information to determine whether the Plan should be confirmed.

Subject to the above and the confidentiality order, the parties already informed Wellspring that they will commence with a rolling production and will undertake best efforts to conclude the production on or before September 27.

Regarding a privilege log, Prospect agrees to produce a privilege log as to the assertion of the common interest privilege only.<sup>6</sup> Prospect objects to the preparation of a log for the attorney client and work product privileges as unduly burdensome because those emails number in the thousands.

## 2. The Committee's Position

As indicated in the parties' meet-and-confers, the Committee is willing to produce all non-privileged materials in its possession, custody, or control that are responsive to Wellspring's requests. This includes all of the non-privileged materials the Committee received from the Debtors and Prospect. However, the Committee reemphasizes its position that its lawyers' internal analyses and communications with members of the Committee regarding the Plan, potential claims against Prospect and the Rule 2004 investigation, which includes, but is not limited to the S.C. Action, are privileged and not subject to disclosure. As the Committee has previously set forth in its Objection to Wellspring's Motion for Entry of an Order Extending the Challenge Deadline for the Prepetition Term Lien and Claim Matters, (*see* DE No. 315 at 5-6), Wellspring is not entitled to these materials, because, among other reasons, it is the very entity being investigated by the Committee and is thus in an adversarial position with

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<sup>6</sup> To the best of Prospect's knowledge, Wellspring has not requested documents from co-lender Summit Partners. Prospect asserts the common interest privilege with respect to communications with Summit Partners and will include in the log any common interest materials between Prospect and Summit Partners regarding the Final DIP Order and the Plan.



regard to the Committee. *See e.g., In re Refco Inc.*, 336 B.R. 187, 196 (Bankr. S.D.N.Y. 2006) (“[The attorney-client] privilege clearly can be enforced against those who are not represented by the committee or who are standing in an adversarial relationship to the unsecured creditors as a group.”). The Committee will identify on a privilege log any documents withheld from production on the basis of privilege.

Separately, the Committee agrees with Wellspring’s proposed timeline for (a) the close of document discovery; and (b) the production of privilege logs. However, the Court should also set a date for the deposition of Alex Carles and Wellspring’s corporate designee as the Debtors, Prospect, and the Committee have already set dates for the depositions of their designees.

### 3. The Debtors’ Position

The Debtors agree with the positions of Prospect and the Committee, as stated above.

## II. The Committee’s Requests

On September 9 and 12, 2019, the Committee served document requests on Wellspring seeking documents relevant to Plan confirmation, including, among others, documents relating to Wellspring’s position on the Plan.<sup>7</sup>

### A. *The Committee’s Position*

Wellspring has indicated its willingness to produce documents responsive to Committee Requests 3 through 5, but has refused to produce any other documents, objecting on the basis that the documents sought are not relevant to Plan confirmation or can be sought from other parties. Wellspring’s refusal to produce a single document in response to the vast majority of Committee’s confirmation-related discovery is especially egregious since the Committee, oppositely, is in the midst of gathering, reviewing and collecting documents responsive to Wellspring’s requests. Such one-sided discovery is inconsistent with the disclosure policies embodied in Federal Rules of Civil Procedure and, by incorporation, the Federal Rules of Bankruptcy Procedure.

All of the Committee’s requests to Wellspring are relevant to Plan confirmation as they go to Wellspring’s claim to being an unsecured creditor (and having the requisite standing to object to the Plan), Wellspring’s motives in objecting to the Plan,

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<sup>7</sup> The Committee’s First Set of Requests for the Production of Documents Related to the Confirmation of the Debtors’ Joint Plan of Liquidation to Wellspring Capital Management LLC (the “Committee Requests”) are attached hereto as **Exhibit H**. The Committee’s Supplemental Requests for Production of Documents Related to Confirmation of the Debtors’ Joint Plan of Liquidation to Wellspring Capital Management (the “Committee’s Supplemental Requests”) are attached hereto as **Exhibit I**.

and the pre-existing relationship between Wellspring, individually and as members of the Debtors' board of directors, the Debtors, and Debtors' counsel, McDermott Will & Emory. Any remaining objections by Wellspring are similarly baseless. Wellspring cannot avoid compliance with the requests on the unsubstantiated assertion that such documents are in the possession of another party. Additionally, even if it were true (it is not) that the Committee has refused to produce all communications related to the S.C. Action, the Committee's refusal would not be a basis for Wellspring to do the same where, as here, Wellspring has not asserted privilege over such communications. More importantly, these Requests seek information on, and support for, the positions/theories Wellspring will advance against the Debtors' proposed Chapter 11 Plan at confirmation.

Additionally, Wellspring has refused to produce Alex Carles or a corporate designee for a deposition. However, Mr. Carles has knowledge relevant to Wellspring's objections to the Plan and efforts to prevent the Plan from being filed. The Committee believes that Mr. Carles, who sits on the Debtors' Board of Directors, has been actively involved in trying to effectuate Wellspring's plan to block confirmation of the Debtors' Plan. In addition, the Committee has the right to depose any witness that Wellspring calls at Plan confirmation, or to call Mr. Carles in support of the Committee's case in support of Plan confirmation.

B. *Wellspring's Position*

The Committee's summary conflates and confuses its 16 different requests and Wellspring's position with respect to them. Wellspring addresses these in turn below, but notes at the outset that it is the proponents of the Debtors' proposed Plan—not Wellspring—that bear the burden of establishing the Plan's confirmability and that it was negotiated and proposed in good faith by the Plan's proponents. *See In re Tribune Co.*, 464 B.R. 121, 151–52 (Bankr. D. Del. 2011). The Committee's accusations toward Wellspring are unsupported and improper, but they are also not germane to the analysis. The Court has an independent duty to assess whether a Plan is confirmable, and the motivations of objectors are not relevant to that analysis. *See In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 832 (Bankr. E.D. Pa. 1995) (agreeing with plan objectors that “their motivations [were] irrelevant because [the] Court has an independent duty to determine whether a reorganization plan meets the confirmation requirements of 11 U.S.C. § 1129,” and collecting cases). All discovery sought by the Committee on this purported basis should be rejected as seeking material that is not “relevant to any party's claim or defense” at Plan confirmation, and disproportionate to the needs of the case, especially in light of the costs and time constraints of this Chapter 11 proceeding. *See* Fed. R. Civ. P. 26(b)(1); Fed R. Bankr. P. 7026.

1. Committee Requests 1–2

The Committee demands documents and communications regarding the Debtors' retention of its present bankruptcy counsel. In addition to being privileged, any such materials are irrelevant to Plan confirmation. The Debtors have proposed a Plan (of which Wellspring is clearly not a beneficiary); Wellspring's relationship to the Debtors

has no bearing on any issue relevant to confirmation of that Plan. Given that the Committee is a proponent of Plan confirmation, it appears they are not challenging the Debtors' good faith in proposing the Plan (and, if the Committee does intend to dispute the Debtors' good faith in negotiating and proposing the Plan, it should seek information relevant to that argument from the Debtors).

2. Committee Requests 6–9

The Committee demands from Wellspring documents and communications with the Debtors regarding the S.C. Action, the proposed Plan's treatment of the claims asserted in the S.C. Action, and Wellspring's filings and communications regarding those claims (and potential releases from them). Because the Court has already resolved the issue of lifting the stay to allow Wellspring to remove the S.C. Action, and because the proposed Plan does not provide releases to Wellspring or any of the defendants in the S.C. Action, the requested discovery is irrelevant to Plan confirmation and pursuing this discovery is a waste of estate assets. In contrast, the Plan proponents' negotiation of the funding and potential recoveries of the claims in the S.C. Action are central to Plan confirmation issues, including whether the Plan proponents are proposing the Plan in good faith. Wellspring's views on the claims asserted in the S.C. Action (and desire for their dismissal or release), however, are irrelevant because the Plan does not release or dismiss these claims and Wellspring is not a Plan proponent. To the extent Wellspring is compelled to produce such documents and communications (and to the extent such documents exist and are not privileged), so should the Committee. The parties must be on a level playing field.

3. Committee Requests 10–14

Consistent with the objections Wellspring received to its similar requests to the Plan proponents, Wellspring believes it is premature for the parties to begin identifying all exhibits, witnesses, and related materials for the Plan confirmation hearing, particularly before Plan confirmation document production has been completed. Wellspring has informed the Plan proponents that it is happy to meet and confer on these issues at the appropriate time when such conversations would be productive.

4. Committee Supplemental Requests

The Committee's Supplemental Requests demand documents and communications of two members of the Debtors' board of directors—Justin Vorwerk and Alexander Carles—relating to the filing of the Debtors' First Amended Plan, on the purported basis that they are relevant to Wellspring's opposition to the Plan.<sup>8</sup> Again, however, any such materials are entirely irrelevant to Plan confirmation. Notably, the Debtors *did* propose and file with the Court the First Amended Plan.

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<sup>8</sup> As Wellspring informed the Committee, Wellspring's counsel does not represent Mr. Vorwerk (who is not an employee of Wellspring) and is not authorized to respond or produce documents on his behalf.



5. Deposition Demands

Any deposition of Wellspring and/or Mr. Carles would be nothing more than harassment. The Committee demanded a deposition of Wellspring just a few weeks ago, but were unable to articulate any concrete reason for that deposition. That request was consequently denied. The same remains true today. The burden and expense of preparing and presenting a Wellspring employee for deposition on an entirely irrelevant issue far outweighs any (purely hypothetical) benefit to the Plan confirmation process that would result. *See* Fed. R. Civ. P. 26(b)(1); *In re Eddington Thread Mfg.*, 181 B.R. at 832.

Respectfully submitted,

/s/ Jacqueline P. Rubin

Jacqueline P. Rubin

cc (via ECF): Counsel of record

# **EXHIBIT A**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*  
  
Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)  
  
(Jointly Administered)

**WELLSPRING’S FIRST SET OF REQUESTS FOR PRODUCTION  
TO THE DEBTORS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“the Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that the Debtors produce all materials described below within its possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

**DEFINITIONS**

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “AcuSport” means AcuSport Corporation and/or the bankruptcy estate of AcuSport and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of AcuSport.

2. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

3. “Committee” means the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

4. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

5. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

6. “Debtors” and “You” mean, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc; Jerry’s Sports, Inc.; Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

7. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars, appointment books, schedules, bulletins, checks, invoices, receipts and statements of account,



ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related attachments, electronic files or other data compilations which relate to the categories of documents listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

8. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

9. “Ellett” means Ellett Brothers, LLC and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Ellett.

10. “Final DIP Order” means the Final Order (I) Approving the Debtors’ Postpetition Financing, (II) Authorizing the Debtors Continued Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, and (IV) Granting

Related Relief (Doc. 238), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

11. “Including” means including without limitation.

12. “Incremental Term Loan” means the loan memorialized in the First Amendment to the Third Amended and Restated Loan and Security Agreement and Consent (dated March 7, 2013), pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc., and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

13. “Interim DIP Order” means the Interim Order (I) Authorizing the Debtors To Obtain Postpetition Financing, (II) Authorizing the Debtors To Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief (Doc. 51), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

14. “Lender Party” means any Lender as defined in the Second Lien Loan including Prospect, Summit, and any other person who may have become a lender under the Second Lien Loan and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of a Lender Party.

15. “March 2013 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around March 7, 2013, and all

transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

16. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

17. “Prospect” means Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

18. “Second Lien Loan” means the loan memorialized in the Second Lien Loan and Security Agreement (dated September 28, 2012), as amended, restated, supplemented, or otherwise modified from time to time, pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc., and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

19. “Secured Party” means any affiliate of a Lender Party to extent such affiliate held or holds obligations under the Second Lien Loan.

20. “September 2012 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around September 28, 2012, and

all transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

21. “S.C. Action” means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

22. “SportCo” means SportCo Holdings, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of SportCo.

23. “Summit” means Summit Partners Credit Fund, L.P., Summit Partners Credit Fund A-1, L.P., Summit Investors I, LLC, and Summit Investors I (UK), LP, collectively, together with their respective affiliates and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Summit.

24. “USC” means “United Sporting Companies, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of USC.

25. “Valuations” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any and all estimates, appraisals, assessments, calculations, and determinations of value in any form.

## **INSTRUCTIONS**

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates,

officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by virtue of any handwritten or other notes or markings. If a Document responsive to these Requests cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

5. In objecting to any Request herein, You shall state whether any responsive materials are being withheld, as well the specific grounds and reasons for the objection. If You object to part of any Request herein, You shall specify in the objection the part of the Request objected to and shall produce all Documents responsive to the remainder of the Request. If the



objection is based on a claim of privilege or attorney work product, or any other type of protection or immunity from disclosure, see the instructions listed in No. 8 below.

6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

8. If any Document responsive to these Requests is withheld or redacted under a claim of privilege, attorney work product, or any other type of protection or immunity from disclosure, You must provide a privilege log consistent with Federal Rule 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014, and Local Rule 7026-1.

9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2011 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

10. All Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), as made applicable by Bankruptcy Rule 7034, and in conformance with a duly negotiated and agreed upon confidentiality order.

11. All Documents within the Debtors' possession, custody, or control, whether or not called for or responsive to these Requests must be maintained and preserved in an accessible

form by the Debtors until the conclusion of any and all litigation Concerning the Debtors, including the S.C. Action.

### **REQUESTS FOR PRODUCTION**

1. All Communications and Documents Concerning the financial condition, Assets, liabilities, prospects, or projections of each of the Debtors.

2. All Communications and Documents Concerning all consideration, including principal and interest payments, equity, cash, and payments in kind, that Prospect has received or demanded to receive from the Debtors.

3. All Communications and Documents Concerning the Plan and any Drafts thereof.

4. All Documents and Communications Concerning the Second Lien Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

5. All Documents and Communications Concerning the September 2012 Transactions and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

6. All Documents and Communications Concerning the Incremental Term Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

7. All Documents and Communications Concerning the March 2013 Transactions and any potential causes of action relating to them, including but not limited to in

connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

8. All Documents and Communications Concerning potential, contemplated, or actual transaction(s) between the Debtors and AcuSport and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of same.

9. All Documents and Communications Concerning the below listed provisions.

(a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;

(b) The Debtors' Stipulations in the Final DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Final DIP Order, and/or the subject matter of Paragraph 58 of the Final DIP Order;

(c) The provision(s) of the Plan Concerning the Liquidation Trust or Liquidation Trustee (as defined by the Plan) contemplated by the Plan;

(d) The provision(s) of the Plan Concerning the Oversight Committee (as defined by the Plan);

(e) The provision(s) of the Plan Concerning the substantive consolidation of the Debtors' Estates;

(f) The provision(s) of the Plan Concerning the allocation of 37.5% of the proceeds from any action, lawsuit, or litigation Concerning the "Type A Causes of Action" (as defined by the Plan);

(g) The provision(s) of the Plan Concerning the funding of the prosecution of the "Type A Causes of Action" (as defined by the Plan);

(h) The provisions of the Plan Concerning the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan), including the basis for the definition and classification of each cause of action asserted in the S.C. Action;

(i) The provisions of the Plan Concerning the allocation of any potential recovery on the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan);

(j) The provision(s) of the Plan Concerning the payment of Administrative Expense Claims (as defined by the Plan), including the anticipated amount of Administrative Expense and Priority Claims (as defined by the Plan), the maximum potential amount of such claims, and the extent to which the approved budget will be sufficient to pay them.

10. All Documents and Communications Concerning any consideration and/or accommodations the Debtors and/or Committee received from Prospect in connection with the following provisions.

(a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;

(b) The Debtors' Stipulations in the Final DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Final DIP Order, and/or the subject matter of Paragraph 58 of the Final DIP Order;

(c) The provision(s) of the Plan Concerning the Liquidation Trust or Liquidation Trustee (as defined by the Plan) as contemplated by the Plan;

(d) The provision(s) of the Plan Concerning the Oversight Committee (as defined by the Plan);

(e) The provision(s) of the Plan Concerning the substantive consolidation of the Debtors' Estates;

(f) The provision(s) of the Plan Concerning the allocation of 37.5% of the proceeds from any action, lawsuit, or litigation Concerning the "Type A Causes of Action" (as defined by the Plan);

(g) The provision(s) of the Plan Concerning the funding of the prosecution of the "Type A Causes of Action" (as defined by the Plan);

(h) The provisions of the Plan Concerning the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan), including the basis for the definition and classification of each cause of action asserted in the S.C. Action;

(i) The provisions of the Plan Concerning the allocation of any potential recovery on the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan);

(j) The provision(s) of the Plan Concerning the payment of Administrative Expense Claims (as defined by the Plan), including the anticipated amount of Administrative Expense and Priority Claims (as defined by the Plan), the maximum

potential amount of such claims, and the extent to which the approved budget will be sufficient to pay them.

11. All Documents and Communications supporting, refuting, or Concerning the Debtors' position that the Plan was negotiated and agreed to in good faith.

12. All Communications and Documents Concerning the allegations, claims, and causes of action asserted in the S.C. Action.

13. All Communications between and among the Debtors and the Committee and/or Prospect Concerning any of the allegations, claims, and causes of action asserted in the S.C. Action, including any and all Documents produced or provided by the Debtors to the Committee.

14. All Communications and Documents Concerning the Debtors' and/or Committee's investigation of potential claims or causes of action against any other person or entity, including any and all Documents produced or provided by the Debtors to the Committee.

15. All Documents Concerning the Debtors' document retention and preservation practices, policies, and procedures.



Dated: August 29, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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*Counsel for Wellspring*

## **EXHIBIT B**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*

Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)

(Jointly Administered)

**WELLSPRING’S FIRST SET OF REQUESTS FOR PRODUCTION TO  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SPORTCO  
HOLDINGS, INC. *ET AL.***

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“the Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* (the “Committee”) produce all materials described below within its possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

## DEFINITIONS

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “AcuSport” means AcuSport Corporation and/or the bankruptcy estate of AcuSport and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of AcuSport.

2. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

3. “Committee” and “You” mean the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

4. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of

letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

5. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

6. “Debtors” means, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc; Jerry’s Sports, Inc.; Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

7. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars,

appointment books, schedules, bulletins, checks, invoices, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related attachments, electronic files or other data compilations which relate to the categories of documents listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

8. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

9. “Ellett” means Ellett Brothers, LLC and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Ellett.

10. “Final DIP Order” means the Final Order (I) Approving the Debtors’ Postpetition Financing, (II) Authorizing the Debtors Continued Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, and (IV) Granting

Related Relief (Doc. 238), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

11. “Including” means including without limitation.

12. “Incremental Term Loan” means the loan memorialized in the First Amendment to the Third Amended and Restated Loan and Security Agreement and Consent (dated March 7, 2013), pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc., and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

13. “Interim DIP Order” means the Interim Order (I) Authorizing the Debtors To Obtain Postpetition Financing, (II) Authorizing the Debtors To Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief (Doc. 51), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

14. “Lender Party” means any Lender as defined in the Second Lien Loan including Prospect, Summit, and any other person who may have become a lender under the Second Lien Loan and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of a Lender Party.

15. “March 2013 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around March 7, 2013, and all



transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

16. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

17. “Prospect” means Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

18. “Second Lien Loan” means the loan memorialized in the Second Lien Loan and Security Agreement (dated September 28, 2012), as amended, restated, supplemented, or otherwise modified from time to time, pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc., and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

19. “Secured Party” means any affiliate of a Lender Party to extent such affiliate held or holds obligations under the Second Lien Loan.

20. “September 2012 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around September 28, 2012, and

all transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

21. “S.C. Action” means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

22. “SportCo” means SportCo Holdings, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of SportCo.

23. “Summit” means Summit Partners Credit Fund, L.P., Summit Partners Credit Fund A-1, L.P., Summit Investors I, LLC, and Summit Investors I (UK), LP, collectively, together with their respective affiliates and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Summit.

24. “USC” means “United Sporting Companies, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of USC.

25. “Valuations” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any and all estimates, appraisals, assessments, calculations, and determinations of value in any form.

### **INSTRUCTIONS**

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates,

officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by virtue of any handwritten or other notes or markings. If a Document responsive to these Requests cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

5. In objecting to any Request herein, You shall state whether any responsive materials are being withheld, as well the specific grounds and reasons for the objection. If You object to part of any Request herein, You shall specify in the objection the part of the Request objected to and shall produce all Documents responsive to the remainder of the Request. If the

objection is based on a claim of privilege or attorney work product, or any other type of protection or immunity from disclosure, see the instructions listed in No. 8 below.

6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

8. If any Document responsive to these Requests is withheld or redacted under a claim of privilege, attorney work product, or any other type of protection or immunity from disclosure, You must provide a privilege log consistent with Federal Rule 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014, and Local Rule 7026-1.

9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2011 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

10. All Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), as made applicable by Bankruptcy Rule 7034, and in conformance with a duly negotiated and agreed upon confidentiality order.

#### **REQUESTS FOR PRODUCTION**

1. All Communications and Documents Concerning the financial condition, Assets, liabilities, prospects, or projections of each of the Debtors.

2. All Communications and Documents Concerning all consideration, including principal and interest payments, equity, cash, and payments in kind, that Prospect has received or demanded to receive from the Debtors.

3. All Communications and Documents Concerning the Plan and any Drafts thereof.

4. All Documents and Communications Concerning the Second Lien Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

5. All Documents and Communications Concerning the September 2012 Transactions and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

6. All Documents and Communications Concerning the Incremental Term Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

7. All Documents and Communications Concerning the March 2013 Transactions and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

8. All Documents and Communications Concerning potential, contemplated, or actual transaction(s) between the Debtors and AcuSport and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

9. All Documents and Communications Concerning the below listed provisions.

- (a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;
- (b) The Debtors' Stipulations in the Final DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Final DIP Order, and/or the subject matter of Paragraph 58 of the Final DIP Order;
- (c) The provision(s) of the Plan Concerning the Liquidation Trust or Liquidation Trustee (as defined by the Plan) contemplated by the Plan;
- (d) The provision(s) of the Plan Concerning the Oversight Committee (as defined by the Plan);
- (e) The provision(s) of the Plan Concerning the substantive consolidation of the Debtors' Estates;
- (f) The provision(s) of the Plan Concerning the allocation of 37.5% of the proceeds from any action, lawsuit, or litigation Concerning the "Type A Causes of Action" (as defined by the Plan);
- (g) The provision(s) of the Plan Concerning the funding of the prosecution of the "Type A Causes of Action" (as defined by the Plan);
- (h) The provisions of the Plan Concerning the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan), including the basis for the definition and classification of each cause of action asserted in the S.C. Action;
- (i) The provisions of the Plan Concerning the allocation of any potential recovery on the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan);
- (j) The provision(s) of the Plan Concerning the payment of Administrative Expense Claims (as defined by the Plan), including the anticipated amount of Administrative Expense and Priority Claims (as defined by the Plan), the maximum potential amount of such claims, and the extent to which the approved budget will be sufficient to pay them.

10. All Documents and Communications Concerning any consideration and/or accommodations the Debtors and/or Committee received from Prospect in connection with the following provisions.

- (a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;
- (b) The Debtors' Stipulations in the Final DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Final DIP Order, and/or the subject matter of Paragraph 58 of the Final DIP Order;
- (c) The provision(s) of the Plan Concerning the Liquidation Trust or Liquidation Trustee (as defined by the Plan) as contemplated by the Plan;
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- (f) The provision(s) of the Plan Concerning the allocation of 37.5% of the proceeds from any action, lawsuit, or litigation Concerning the "Type A Causes of Action" (as defined by the Plan);
- (g) The provision(s) of the Plan Concerning the funding of the prosecution of the "Type A Causes of Action" (as defined by the Plan);
- (h) The provisions of the Plan Concerning the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan), including the basis for the definition and classification of each cause of action asserted in the S.C. Action;
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- (j) The provision(s) of the Plan Concerning the payment of Administrative Expense Claims (as defined by the Plan), including the anticipated amount of Administrative Expense and Priority Claims (as defined by the Plan), the maximum potential amount of such claims, and the extent to which the approved budget will be sufficient to pay them.

11. All Documents and Communications supporting, refuting, or Concerning the Committee's position that the Plan was negotiated and agreed to in good faith.

12. All Communications and Documents Concerning the allegations, claims, and causes of action asserted in the S.C. Action.

13. All Communications between and among the Committee and the Debtors and/or Prospect Concerning any of the allegations, claims, and causes of action asserted in the S.C. Action, including any and all Documents produced or provided by Prospect to the Committee.

14. All Communications and Documents Concerning the Debtors' and/or Committee's investigation of potential claims or causes of action against any other person or entity, including any and all Documents produced or provided by Prospect or the Debtors to the Committee.

Dated: August 29, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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*Counsel for Wellspring*



## **EXHIBIT C**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*  
  
Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)  
  
(Jointly Administered)

**WELLSPRING'S FIRST SET OF REQUESTS FOR PRODUCTION TO  
PROSPECT CAPITAL CORP.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“the Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that Prospect Capital Corp. (“Prospect”) produce all materials described below within its possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

**DEFINITIONS**

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “AcuSport” means AcuSport Corporation and/or the bankruptcy estate of AcuSport and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of AcuSport.

2. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

3. “Committee” means the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

4. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

5. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

6. “Debtors” means, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc; Jerry’s Sports, Inc.; Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

7. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars, appointment books, schedules, bulletins, checks, invoices, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document,

booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related attachments, electronic files or other data compilations which relate to the categories of documents listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

8. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

9. “Ellett” means Ellett Brothers, LLC and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Ellett.

10. “Final DIP Order” means the Final Order (I) Approving the Debtors’ Postpetition Financing, (II) Authorizing the Debtors Continued Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, and (IV) Granting Related Relief (Doc. 238), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

11. “Including” means including without limitation.

12. “Incremental Term Loan” means the loan memorialized in the First Amendment to the Third Amended and Restated Loan and Security Agreement and Consent (dated March 7, 2013), pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc., and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

13. “Interim DIP Order” means the Interim Order (I) Authorizing the Debtors To Obtain Postpetition Financing, (II) Authorizing the Debtors To Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief (Doc. 51), including any Drafts (as defined herein), interim versions, portions, and excerpts of the same.

14. “Lender Party” means any Lender as defined in the Second Lien Loan including Prospect, Summit, and any other person who may have become a lender under the Second Lien Loan and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of a Lender Party.

15. “March 2013 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around March 7, 2013, and all transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

16. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

17. “Prospect” and “You” mean Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

18. “Second Lien Loan” means the loan memorialized in the Second Lien Loan and Security Agreement (dated September 28, 2012), as amended, restated, supplemented, or otherwise modified from time to time, pursuant to which Prospect was the collateral and administrative agent for itself and certain other lenders, and the borrowers were Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Simmons Gun Specialties, Inc.; Bonitz Brothers, Inc.; and Outdoor Sports Headquarters, Inc. and all related agreements, contracts, or arrangements between or among Prospect, the Debtors, Wellspring, and/or other persons or entities.

19. “Secured Party” means any affiliate of a Lender Party to extent such affiliate held or holds obligations under the Second Lien Loan.

20. “September 2012 Transactions” means the authorization of and payment to the shareholders of SportCo of any amount of consideration on or around September 28, 2012, and all transactions, financings, agreements, approvals, resolutions, forbearances, or other actions taken by any person or entity Concerning the same.

21. “S.C. Action” means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

22. “SportCo” means SportCo Holdings, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of SportCo.

23. “Summit” means Summit Partners Credit Fund, L.P., Summit Partners Credit Fund A-1, L.P., Summit Investors I, LLC, and Summit Investors I (UK), LP, collectively, together with their respective affiliates and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Summit.

24. “USC” means “United Sporting Companies, Inc. and any agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of USC.

25. “Valuations” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any and all estimates, appraisals, assessments, calculations, and determinations of value in any form.

### **INSTRUCTIONS**

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document



or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by virtue of any handwritten or other notes or markings. If a Document responsive to these Requests cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

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6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

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9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2011 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

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### **REQUESTS FOR PRODUCTION**

1. All Communications and Documents Concerning the financial condition, Assets, liabilities, prospects, or projections of each of the Debtors.

2. All Communications and Documents Concerning all consideration, including principal and interest payments, equity, cash, and payments in kind, that Prospect has received or demanded to receive from the Debtors.

3. All Communications and Documents Concerning the Plan and any Drafts thereof.

4. All Documents and Communications Concerning the Second Lien Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

5. All Documents and Communications Concerning the September 2012 Transactions and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

6. All Documents and Communications Concerning the Incremental Term Loan, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

7. All Documents and Communications Concerning the March 2013 Transactions and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

8. All Documents and Communications Concerning potential, contemplated, or actual transaction(s) between the Debtors and AcuSport and any potential causes of action relating to them, including but not limited to in connection with, and inclusion in, the Plan, the Interim DIP Order, or the Final DIP Order, and any Drafts of the same.

9. All Documents and Communications Concerning the below listed provisions.

- (a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;
- (b) The Debtors' Stipulations in the Final DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Final DIP Order, and/or the subject matter of Paragraph 58 of the Final DIP Order;
- (c) The provision(s) of the Plan Concerning the Liquidation Trust or Liquidation Trustee (as defined by the Plan) contemplated by the Plan;
- (d) The provision(s) of the Plan Concerning the Oversight Committee (as defined by the Plan);
- (e) The provision(s) of the Plan Concerning the substantive consolidation of the Debtors' Estates;
- (f) The provision(s) of the Plan Concerning the allocation of 37.5% of the proceeds from any action, lawsuit, or litigation Concerning the "Type A Causes of Action" (as defined by the Plan);
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- (i) The provisions of the Plan Concerning the allocation of any potential recovery on the "Type A Causes of Action" and the "Type B Causes of Action" (as defined by the Plan);
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- (a) The Debtors' Stipulations in the Interim DIP Order, the Effect of Stipulations on Third Parties in Paragraph 40 of the Interim DIP Order, and/or the subject matter of Paragraph 58 of the Interim DIP Order;
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13. All Communications between and among Prospect and the Debtors and/or the Committee Concerning any of the allegations, claims, and causes of action asserted in the S.C. Action, including any and all Documents produced or provided by Prospect to the Debtors and/or Committee.

14. All Communications and Documents Concerning the Debtors' and/or Committee's investigation of potential claims or causes of action against Prospect, including any and all Documents produced or provided by Prospect to the Debtors and/or the Committee.

Dated: August 29, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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*Counsel for Wellspring*

## **EXHIBIT D**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*  
  
Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)  
  
(Jointly Administered)

**WELLSPRING’S SECOND SET OF REQUESTS FOR PRODUCTION TO  
THE DEBTORS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the “Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that the Debtors produce all materials described below within their possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

**DEFINITIONS**

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.



applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

2. “Committee” means the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

3. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

4. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

5. “Debtors” and “You” mean, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc; Jerry’s Sports, Inc.;

Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

6. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars, appointment books, schedules, bulletins, checks, invoices, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related

attachments, electronic files or other data compilations which relate to the categories of documents listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

7. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

8. “Including” means including without limitation.

9. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

10. “Prospect” means Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

11. “Revised Plan” means the Debtors’ First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on September 10, 2019 (Doc. 367), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent

to the Debtors' First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

12. "S.C. Action" means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

### INSTRUCTIONS

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by

virtue of any handwritten or other notes or markings. If a Document responsive to these Requests cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

5. In objecting to any Request herein, You shall state whether any responsive materials are being withheld, as well the specific grounds and reasons for the objection. If You object to part of any Request herein, You shall specify in the objection the part of the Request objected to and shall produce all Documents responsive to the remainder of the Request. If the objection is based on a claim of privilege or attorney work product, or any other type of protection or immunity from disclosure, see the instructions listed in No. 8 below.

6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

8. If any Document responsive to these Requests is withheld or redacted under a claim of privilege, attorney work product, or any other type of protection or immunity from disclosure, You must provide a privilege log consistent with Federal Rule 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014, and Local Rule 7026-1.

9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2019 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

10. All Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), as made applicable by Bankruptcy Rule 7034, and in conformance with a duly negotiated and agreed upon confidentiality order.

11. All Documents within the Debtors' possession, custody, or control, whether or not called for or responsive to these Requests must be maintained and preserved in an accessible form by the Debtors until the conclusion of any and all litigation concerning the Debtors, including the S.C. Action.

#### **REQUESTS FOR PRODUCTION**

1. All Documents and Communications concerning the Revised Plan.

2. Documents sufficient to identify the assets, liabilities, and creditors of each of the Debtors.

3. All Documents concerning the statements made at the September 11, 2019 hearing by counsel for the Debtors and counsel for Prospect, respectively, that "all the administrative claims and priority claims are going to be paid," and that "there's more than enough cash on hand in the budget to cover all admins and all priorities and tax priority claims." (Hr'g Tr. 15:4–5, 39:5–7 (Sept. 11, 2019), *In re SportCo Holdings*, No. 19-11299 (LSS) (Bankr. D. Del.).)

4. All Documents and Communications concerning the discussions between and among Prospect, the Committee, and the Debtors relating to the funding of Administrative

Expense and Priority Claims (as defined in the Plan and Revised Plan), as referenced by counsel for the Committee at the September 11, 2019 hearing. (*See id.* at 33:2–11.)

5. Documents sufficient to support the statements made by counsel for the Debtors at the September 11, 2019 hearing that “[a]t this point in time, there’s approximately fifteen or so million dollars left to distribute,” and “we are well under the limit under 3017-2.” (*Id.* at 21:5–6, 9.)

6. All Documents and Communications concerning the Debtors’ “case in support of exculpation for Prospect,” as referenced by counsel for the Debtors at the September 11, 2019 hearing. (*Id.* at 15:16–17.)

7. All Documents and Communications concerning the “really substantial arm’s-length negotiations” between and among the Debtors, the Committee, and Prospect regarding the “Type A” and “Type B” Causes of Action (as defined in the Plan and Revised Plan), including the funding of the litigation of those causes of action, “how the Type A and Type B causes of action were allocated between the various constituencies,” and “the percentages of proceeds and how those proceeds were being shared,” referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 34:6–10.)

8. All Documents and Communications concerning the “litany of different reasons or rationales” for funding the litigation of the “Type A” Causes of Action (as defined in the Plan and Revised Plan) referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 33:23–34:1.)

9. All Documents and Communications concerning all settlements that are embodied in or related to the Plan, as referenced by the Court at the September 11, 2019 hearing. (*Id.* at 17:22–23.)

10. All Documents and Communications concerning all releases that “Prospect and the other term loan lenders” are receiving from the Debtors, as referenced by counsel for Prospect at the September 11, 2019 hearing. (*Id.* at 26:16–17.)

11. All Documents and Communications concerning the liquidation analysis that accompanied the Revised Plan.

12. All Documents, including Drafts, that the Debtors intend to introduce, use, or otherwise rely upon during any Plan confirmation hearing.

13. A list identifying each person the Debtors intend to call as a witness or otherwise rely upon during any Plan confirmation hearing, including each person’s name, address, phone number, and business affiliation.

14. A list identifying each person the Debtors intend to call as an expert witness or otherwise rely upon during any Plan confirmation hearing, including each person’s name, address, phone number, business affiliation, purported area of expertise, purported qualifications, and a summary of that person’s experience in that person’s purported area of expertise.

15. A copy of the entire report of any person who may testify as an expert witness or whom the Debtors will otherwise rely upon during any Plan confirmation hearing, which shall contain (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness’s qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the witness’s study and testimony in the case.



16. All Documents considered by any proposed expert witness who may testify or whom the Debtors may otherwise rely upon during any Plan confirmation hearing.

Dated: September 12, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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## **EXHIBIT E**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*  
  
Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)  
  
(Jointly Administered)

**WELLSPRING’S SECOND SET OF REQUESTS FOR PRODUCTION TO  
PROSPECT CAPITAL CORP.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the “Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that Prospect Capital Corp. (“Prospect”) produce all materials described below within its possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

**DEFINITIONS**

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

2. “Committee” means the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

3. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

4. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

5. “Debtors” means, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc.; Jerry’s Sports, Inc.; Outdoor Sports

Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

6. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars, appointment books, schedules, bulletins, checks, invoices, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related attachments, electronic files or other data compilations which relate to the categories of documents

listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

7. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

8. “Including” means including without limitation.

9. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

10. “Prospect” and “You” mean Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

11. “Revised Plan” means the Debtors’ First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on September 10, 2019 (Doc. 367), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of

Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

12. “S.C. Action” means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

### INSTRUCTIONS

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by virtue of any handwritten or other notes or markings. If a Document responsive to these Requests

cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

5. In objecting to any Request herein, You shall state whether any responsive materials are being withheld, as well the specific grounds and reasons for the objection. If You object to part of any Request herein, You shall specify in the objection the part of the Request objected to and shall produce all Documents responsive to the remainder of the Request. If the objection is based on a claim of privilege or attorney work product, or any other type of protection or immunity from disclosure, see the instructions listed in No. 8 below.

6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

8. If any Document responsive to these Requests is withheld or redacted under a claim of privilege, attorney work product, or any other type of protection or immunity from disclosure, You must provide a privilege log consistent with Federal Rule 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014, and Local Rule 7026-1.



9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2011 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

10. All Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), as made applicable by Bankruptcy Rule 7034, and in conformance with a duly negotiated and agreed upon confidentiality order.

### **REQUESTS FOR PRODUCTION**

1. All Documents and Communications concerning the Revised Plan.

2. All Documents concerning the statements made at the September 11, 2019 hearing by counsel for the Debtors and counsel for Prospect, respectively, that “all the administrative claims and priority claims are going to be paid,” and that “there’s more than enough cash on hand in the budget to cover all admins and all priorities and tax priority claims.” (Hr’g Tr. 15:4–5, 39:5–7 (Sept. 11, 2019), *In re SportCo Holdings*, No. 19-11299 (LSS) (Bankr. D. Del.).)

3. All Documents and Communications concerning the discussions between and among Prospect, the Committee, and the Debtors relating to the funding of Administrative Expense and Priority Claims (as defined in the Plan and Revised Plan), as referenced by counsel for the Committee at the September 11, 2019 hearing. (*See id.* at 33:2–11.)

4. All Documents and Communications concerning the Debtors’ “case in support of exculpation for Prospect,” as referenced by counsel for the Debtors at the September 11, 2019 hearing. (*Id.* at 15:16–17.)

5. All Documents and Communications concerning the “really substantial arm’s-length negotiations” between and among the Debtors, the Committee, and Prospect regarding the “Type A” and “Type B” Causes of Action (as defined in the Plan and Revised Plan), including the funding of the litigation of those causes of action, “how the Type A and Type B causes of action were allocated between the various constituencies,” and “the percentages of proceeds and how those proceeds were being shared,” referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 34:6–10.)

6. All Documents and Communications concerning the “litany of different reasons or rationales” for funding the litigation of the “Type A” Causes of Action (as defined in the Plan and Revised Plan) referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 33:23–34:1.)

7. All Documents and Communications concerning all settlements that are embodied in or related to the Plan, as referenced by the Court at the September 11, 2019 hearing. (*Id.* at 17:22–23.)

8. All Documents and Communications concerning all releases that “Prospect and the other term loan lenders” are receiving from the Debtors, as referenced by counsel for Prospect at the September 11, 2019 hearing. (*Id.* at 26:16–17.)

9. All Documents, including Drafts, that Prospect intends to introduce, use, or otherwise rely upon during any Plan confirmation hearing.

10. A list identifying each person Prospect intends to call as a witness or otherwise rely upon during any Plan confirmation hearing, including each person’s name, address, phone number, and business affiliation.

11. A list identifying each person Prospect intends to call as an expert witness or otherwise rely upon during any Plan confirmation hearing, including each person's name, address, phone number, business affiliation, purported area of expertise, purported qualifications, and a summary of that person's experience in that person's purported area of expertise.

12. A copy of the entire report of any person who may testify as an expert witness or whom Prospect will otherwise rely upon during any Plan confirmation hearing, which shall contain (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the witness's study and testimony in the case.

13. All Documents relied upon by any proposed expert witness who may testify or whom Prospect may otherwise rely upon during any Plan confirmation hearing.

Dated: September 12, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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Lewis R. Clayton, Esq. (admitted *pro hac vice*)  
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Jacqueline P. Rubin, Esq. (admitted *pro hac vice*)  
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*Counsel for Wellspring*

## **EXHIBIT F**

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

In re:

SPORTCO HOLDINGS, INC. *et al.*  
  
Debtors<sup>1</sup>.

CHAPTER 11

CASE NO. 19-11299 (LSS)  
  
(Jointly Administered)

**WELLSPRING’S SECOND SET OF REQUESTS FOR PRODUCTION TO  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SPORTCO  
HOLDINGS, INC. *ET AL.***

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the “Federal Rules”), Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court District of Delaware (the “Local Rules”), Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (collectively “Wellspring”) request that the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* (the “Committee”) produce all materials described below within its possession, custody, or control, in accordance with the definitions and instructions set forth below by delivering copies to the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, at 1285 Avenue of the Americas, New York, New York, 10019-6064, on or before September 20, 2019 at 4:00 p.m.

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

## DEFINITIONS

The definitions and rules of construction set forth in Federal Rule 34, as made applicable by Bankruptcy Rules 7034 and 9014, as well as the Local Rules and any other applicable law or rules, are incorporated herein by reference. The following additional definitions apply with respect to each of the following Requests, and unless otherwise stated in a specific Request, each of the terms defined below, when used in any Request, instruction, or definition, shall have the meaning given herein:

1. “Assets” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means both real assets and intangible assets, including real property, intellectual property, good will, contracts, and inventory.

2. “Committee” and “You” mean the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.* and any of its members, agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. *et al.*

3. “Communication” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, whether in-person or by means of letter, note, document, memorandum, message, correspondence, telephone, telegraph, telex, cable, facsimile, e-mail, text message, instant message, or any other medium, whether formal or informal.

4. “Concerning” means regarding, relating to, referring to, reflecting, discussing, describing, analyzing, supporting, evidencing, constituting, comprising, containing, setting forth, showing, disclosing, explaining, summarizing, or mentioning.

5. “Debtors” means, collectively and individually, the following entities: Bonitz Brothers, Inc.; Ellett Brothers, LLC; Evans Sports, Inc; Jerry’s Sports, Inc.; Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc. together with all parents, subsidiaries, and affiliates of each of them, and any agents, employees, advisors, attorneys, consultants, representatives, officers, or directors, or any other person acting under the control or on behalf of the Debtors.

6. “Document” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means the original or copies all written, printed, typed, electronically stored, recorded, or graphic matter, photographic matter, or sound reproduction, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the foregoing, the term “Document” includes correspondence, communications, reports, tests, analyses, studies, contracts, agreements, term sheets, spreadsheets, letters, telegrams, mailgrams, memoranda, inter-office or intra-office communications, memoranda for files memoranda of telephone or other conversations or meetings, any type of transcript (including conference calls and television interviews), press releases, statements, financial models, calendars, appointment books, schedules, bulletins, checks, invoices, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document,



booklets, books, notebooks, work papers, drawings, graphs, charts, photographs, phone records, video or voice recordings, electronic tapes, printouts, data cards, and other data compilations from which information can be obtained, which are in the possession, custody or control of You or your counsel. “Documents” also shall include all electronic data including emails and any related attachments, electronic files or other data compilations which relate to the categories of documents listed above, whether stored on a personal computer, network computer system, backup computer tape, server, and/or disk, or by some other storage mechanism or database. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals, copies, or drafts, shall be considered to be separate Documents.

7. “Draft” has the broadest possible meaning under Federal Rules 26 and 34, Bankruptcy Rules 7026 and 7034, and Local Rule 7026-1, and means any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the document.

8. “Including” means including without limitation.

9. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

10. “Prospect” means Prospect Capital Corp. and any current or former agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of Prospect.

11. “Revised Plan” means the Debtors’ First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on September 10, 2019 (Doc. 367), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all Drafts (as defined herein), interim versions, portions, and excerpts of the same, and Communications about any Drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

12. “S.C. Action” means the action in the South Carolina State Court bearing the caption *Prospect Capital Corp. v. Wellspring Capital Management et al.*, Case No. 2019-cp-3202045.

### INSTRUCTIONS

1. In responding to these Requests, You shall produce all responsive Documents that are in Your possession, custody, or control, or that are in the possession, custody, or control of agents, employees, advisors, attorneys, consultants, representatives, affiliates, officers, or directors, or any other person acting under the control or on behalf of You. A Document shall be deemed to be within Your control if You have the right to secure the Document or a copy of the Document from another person having possession, custody, or control of the Document.

2. In responding to these Requests, You shall produce all responsive Documents available at the time of production, and if additional responsive Documents become

available, You shall promptly supplement Your responses as required by Federal Rule 26(e), Bankruptcy Rule 7026, and Local Rule 7026-1.

3. Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), Bankruptcy Rule 7034, and Local Rule 7034-1.

4. Each requested Document shall be produced in its entirety, with any attachments, Drafts, and non-identical copies, including without limitation copies that differ by virtue of any handwritten or other notes or markings. If a Document responsive to these Requests cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents contained in file folders, loose-leaf binders, and notebooks with tabs or labels identifying such documents are to be produced intact, together with such file folders, loose-leaf binders, or notebooks. Documents attached to each other should not be separated, and all such attached Documents shall be produced.

5. In objecting to any Request herein, You shall state whether any responsive materials are being withheld, as well the specific grounds and reasons for the objection. If You object to part of any Request herein, You shall specify in the objection the part of the Request objected to and shall produce all Documents responsive to the remainder of the Request. If the objection is based on a claim of privilege or attorney work product, or any other type of protection or immunity from disclosure, see the instructions listed in No. 8 below.

6. If there are no Documents responsive to any particular Request, You shall so state in writing.

7. Whenever necessary to bring within the scope of these Requests Documents that might otherwise be construed to be outside its scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form

shall be deemed to include within its use the plural form as well, and vice versa; and (c) the disjunctive shall be deemed to include the conjunctive.

8. If any Document responsive to these Requests is withheld or redacted under a claim of privilege, attorney work product, or any other type of protection or immunity from disclosure, You must provide a privilege log consistent with Federal Rule 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014, and Local Rule 7026-1.

9. Unless otherwise indicated in a specific Request, the Requests call for Documents and Communications that were created during the period January 1, 2011 through the present, or any other period, if broader, for which You agree or are compelled to produce documents in this case.

10. All Documents shall be produced in the form required by Federal Rule 34(b)(2)(E)(i), as made applicable by Bankruptcy Rule 7034, and in conformance with a duly negotiated and agreed upon confidentiality order.

### **REQUESTS FOR PRODUCTION**

1. All Documents and Communications concerning the Revised Plan.

2. All Documents and Communications concerning the discussions between and among Prospect, the Committee, and the Debtors relating to the funding of Administrative Expense and Priority Claims (as defined in the Plan and Revised Plan), as referenced by counsel for the Committee at the September 11, 2019 hearing. (Hr'g Tr. 33:2–11 (Sept. 11, 2019), *In re SportCo Holdings*, No. 19-11299 (LSS) (Bankr. D. Del.).)

3. All Documents and Communications concerning the “really substantial arm’s-length negotiations” between and among the Debtors, the Committee, and Prospect regarding the “Type A” and “Type B” Causes of Action (as defined in the Plan and Revised Plan),

including the funding of the litigation of those causes of action, “how the Type A and Type B causes of action were allocated between the various constituencies,” and “the percentages of proceeds and how those proceeds were being shared,” referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 34:6–10.)

4. All Documents and Communications concerning the “litany of different reasons or rationales” for funding the litigation of the “Type A” Causes of Action (as defined in the Plan and Revised Plan) referenced by counsel for the Committee at the September 11, 2019 hearing. (*Id.* at 33:23–34:1.)

5. All Documents and Communications concerning all settlements that are embodied in or related to the Plan, as referenced by the Court at the September 11, 2019 hearing. (*Id.* at 17:22–23.)

6. All Documents and Communications concerning all releases that “Prospect and the other term loan lenders” are receiving from the Debtors, as referenced by counsel for Prospect at the September 11, 2019 hearing. (*Id.* at 26:16–17.)

7. All Documents, including Drafts, that the Committee intends to introduce, use, or otherwise rely upon during any Plan confirmation hearing.

8. A list identifying each person the Committee intends to call as a witness or otherwise rely upon during any Plan confirmation hearing, including each person’s name, address, phone number, and business affiliation.

9. A list identifying each person the Committee intends to call as an expert witness or otherwise rely upon during any Plan confirmation hearing, including each person’s name, address, phone number, business affiliation, purported area of expertise, purported

qualifications, and a summary of that person's experience in that person's purported area of expertise.

10. A copy of the entire report of any person who may testify as an expert witness or whom the Committee may otherwise rely upon during any Plan confirmation hearing, which shall contain (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the witness's study and testimony in the case.

11. All Documents considered by any proposed expert witness who may testify or whom the Committee may otherwise rely upon during any Plan confirmation hearing.

Dated: September 12, 2019  
New York, New York

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP

/s/ Jacqueline P. Rubin

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## **EXHIBIT G**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
SPORTCO HOLDINGS, INC., Case No. 19-11299 (LSS)  
*et al.*, (Jointly Administered)  
Debtors. Courtroom No. 2  
824 Market Street  
Wilmington, Delaware 19801  
Wednesday, September 11, 2019  
10:05 A.M.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE LAURIE S. SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Christopher A. Ward, Esquire  
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-and-

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Proceedings recorded by electronic sound recording:  
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Wilmington, Delaware 19801

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1 (Proceedings commenced at 10:05 a.m.)

2 THE COURT: Please be seated.

3 Good morning.

4 MR. WALSH: Good morning, Your Honor. Tim Walsh,  
5 from McDermott Will, & Emery, on behalf of the debtor.

6 Your Honor, we have a number of matters on the  
7 calendar, I think the vast majority of which have been  
8 satisfied by Your Honor's orders, so I think we only have two  
9 matters left. One is the sale of the Bellefontaine facility  
10 and the other is the conditional approval of the disclosure  
11 statement.

12 THE COURT: Yes.

13 MR. WALSH: So I'd like to start with the sale,  
14 get that out of the way, and then Ms. Preusker, from my  
15 office, will address the Court if that's okay on the  
16 disclosure statement, and then Mr. Ward will address the  
17 Court, with respect to the Wellspring objection.

18 THE COURT: Okay.

19 MR. WALSH: Okay. Your Honor, with respect to the  
20 sale, this is a motion for the sale of the Bellefontaine  
21 facility. On May 29th, the debtors retained CBRE to market  
22 and sell the facility. We were able to generate a stalking  
23 horse bidder. The facility is one of the debtors'  
24 distribution facilities located in Ohio. Proposed sale  
25 includes the sale of the land, all structures, improvements,

1 furniture, fixtures, and equipment, and all the personal  
2 property listed on the APA.

3           The purchaser is not purchasing any of the  
4 avoidance action. The land is described in Exhibit A to the  
5 debtors' motion, as well as the personal property on Schedule  
6 1. We're seeking an order having the sale done free and  
7 clear of all liens, claims, and encumbrances.

8           The bid procedures were approved by Your Honor on  
9 August 18th. We did have a stalking horse bidder; that was  
10 E. Brothers, Ltd. The amount of the bid was 7,395,000,  
11 subject to a break-up fee of 270,000, and an experience  
12 reimbursement up to 100,000. Pursuant to the bid procedures,  
13 the incremental overbid was \$50,000. The good faith deposit  
14 of \$369,750 was paid. The APA was executed.

15           With respect to qualified bids, Your Honor, we did  
16 receive one bid prior to Labor Day weekend. That was from  
17 Thomas & Marker Construction Company and that was in the  
18 amount of 7,815,000.

19           So, we held an auction, Your Honor, on September  
20 6th at my office. The auction lasted about an hour. Our  
21 stalking horse bidder E. Brothers, Ltd. was the successful  
22 bidder and Thomas & Marker was the backup bidder. The  
23 purchase price is now \$8,415,000. We are looking in our  
24 order to have a finding that E. Brothers, Ltd. is purchasing  
25 the facility in good faith, pursuant to 363(m).

1           An affidavit -- the Declaration of Matthew  
2 Robinson was filed yesterday, Your Honor. In his  
3 declaration, he states that the sale process and auction was  
4 conducted in good faith, without collusion, and that E.  
5 Brothers, Ltd. is not related in any way to the debtors.

6           Pursuant to the motion, Your Honor, we're also  
7 seeking approval of assumption and assignment of certain  
8 contracts. There's a schedule of those contracts. They're  
9 primarily for electricity and other utilities at the  
10 facility. That is attached to the debtors' motion.

11           We only received informal comments from Prospect,  
12 which were incorporated into the executed APA. We have  
13 received any objections to the order and we ask that Your  
14 Honor enter the order.

15           THE COURT: Thank you. Does anyone else wish to  
16 be heard in connection with the Bellefontaine facility?

17           (No verbal response)

18           THE COURT: I hear no one.

19           I reviewed the motion, as well as the declaration  
20 of Mr. Robinson from E. Brothers, and based on that, I will  
21 approve the sale. It conformed with the bid procedures that  
22 were put in place. It resulted in an auction and an  
23 increased purchase price, and based on that, I will find that  
24 the purchase price is sufficient and fair and the highest and  
25 best offer for the property.

1 I will also make a 363(m) finding, based on the  
2 declaration of Mr. Robinson, which supports that the  
3 purchaser is unrelated to the debtors, that he participated -  
4 - it participated in good faith, that there's certainly no  
5 evidence of collusion on the record that would suggest  
6 otherwise, and I will make the 363(m) finding request.

7 I only had two questions on the order, which I  
8 thought was refreshingly brief in its size and certainly  
9 covered everything that I thought you'd cover in a sale  
10 order. But the one -- the first comment I have is in  
11 Paragraph 7 on Page 5 and that does deal with the provisions  
12 in assumed contract, purported anti-assumption provisions,  
13 and I will enter an order that says that those provisions are  
14 unenforceable for purposes of this transaction, but the  
15 language that says they're void and of no further force and  
16 effect, I think goes too far, because that could suggest that  
17 in the future if someone tried to assign the contract, these  
18 provisions were unenforceable, and that is not the law, as I  
19 understand it. So, that provision needs to be modified to  
20 reflect that.

21 MR. WALSH: Understood, Your Honor. No problem.

22 THE COURT: And then in Paragraph 12, there's a  
23 reference in the second line to any particular purchaser.  
24 So, is that just a -- what is that referred to as opposed to  
25 "the purchaser" that I'm approving?

1 MR. WALSH: I think that's a good point, Your  
2 Honor. I think when we originally filed the order, we put  
3 that in there as a placeholder, but I think we should put in  
4 the successful --

5 THE COURT: Well, that's conform that to indicate  
6 it's to the purchaser, and with that -- with those changing,  
7 I will sign a form of order approving the sale.

8 MR. WALSH: Thank you, Your Honor. We'll make  
9 those changes and we'll upload the order.

10 THE COURT: Thank you.

11 MS. PREUSKER: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. PREUSKER: Megan Preusker from McDermott Will  
14 & Emery, on behalf of the debtors. I'll be addressing the  
15 motion to the conditional approval of the combined plan and  
16 disclosure statement, as well as the solicitation procedures.

17 Your Honor, the debtors filed their motion on  
18 August 22nd, requesting conditional approval of the combined  
19 plan and disclosure statement to solicitation purposes only,  
20 as well as certain solicitation procedures. And, yesterday,  
21 on September 10th, we also filed an amended combined plan and  
22 disclosure statement, as well as an amended conditional  
23 approval order with supporting exhibits.

24 From August 22nd until yesterday, we negotiated  
25 with parties in interest to incorporate language that they



1 requested that included comments from the United States  
2 Trustee, the official committee of unsecured creditors, and  
3 the prepetition term loan agent.

4 I'd like to address the revisions to the proposed  
5 conditional order and highlight some of the key changes for  
6 the Court. In particular, Your Honor will note that we've  
7 extended the proposed solicitation deadlines significantly  
8 from those initially proposed, based on feedback, primarily  
9 from the United States Trustee.

10 The order now provides for a voting deadline of  
11 October 15th, which is 34 days from today's hearing. Within  
12 three business days after the conditional approval order is  
13 entered, the balloting agent will serve a confirmation notice  
14 and on those parties -- those holders of claims who are  
15 entitled to vote on the plan, they will receive a compact  
16 disc containing a copy of the combined plan and disclosure  
17 statement, as well as a ballot.

18 I will note for the Court that the relief opt-out  
19 language in the ballot has been removed, as the plan does not  
20 contain third-party, nondebtor releases.

21 The revised schedule also provides that any  
22 creditor seeking to challenge allowance of its claim for  
23 voting purposes may file a 3018 motion by October 9th and we  
24 also have requested a final hearing date on the confirmation  
25 of the plan for October 21st, which is 40 days from today.

1           Your Honor, we acknowledge that the proposed  
2 deadlines are just a few days shorter than those provided for  
3 in the Local Rules, so what we've done here is we're trying  
4 to balance the need to provide creditors, particularly those  
5 in the voting classes, with sufficient time to evaluate the  
6 combined plan and disclosure statement, and make an informed  
7 decision whether to vote for it, and we're also balancing the  
8 needs of the estate and the interests and reducing  
9 administrative expenses.

10           Those are all the comments I have regarding the  
11 conditional approval order. Unless the Court has any  
12 questions, I would let Mr. Ward address Wellspring's  
13 objection to the proposed plan and disclosure statement.

14           THE COURT: Okay. Well, I do have a couple of  
15 questions about the order, but I'd like to hear the  
16 objections and resolve the objections first.

17           MS. PREUSKER: Okay. Thank you.

18           MR. WARD: Good morning, Your Honor. For the  
19 record, Chris Ward, Polsinelli, on behalf of the debtors.  
20 I'm handling the Wellspring objection, which is the only  
21 objection filed to preliminary approval of the combined plan  
22 and disclosure statement.

23           I also want to represent to the Court that we've  
24 been in touch with Mr. Buchbinder. We've incorporated all of  
25 his changes with respect to disclosures. He cannot be here

1 today, but he wanted me to advise the Court that he has  
2 reviewed the plan and disclosure statement. He has  
3 confirmation issues, many of the same of Wellspring, that  
4 we'll addressing at the confirmation hearing, but they're not  
5 for today, Your Honor.

6 THE COURT: Thank you.

7 MR. WARD: So, I think Wellspring in their  
8 preliminary statement actually lays out what their -- just  
9 what their objections are here, Your Honor. I guess the most  
10 efficient way to address this -- and, frankly, I think we  
11 have addressed most of these issues in the revised plan and  
12 disclosure statement that was filed yesterday afternoon, so I  
13 don't think we have to get into too many of those issues,  
14 but, obviously, they'll tell us where we stand on those and  
15 we're happy to discuss those with the Court.

16 Your Honor, the first objection that written had  
17 was to the plan calls for substantive consolidation. If you  
18 read the plan, it's a substantive consolidation for voting  
19 and distribution purposes. It is not an actual substantive  
20 consolidation of the estates, but, regardless, we think that  
21 is a confirmation order. We will have a declaration in  
22 support of the plan filed prior to confirmation. We'll  
23 address the substantive consolidation issues. We don't think  
24 that affects any disclosure issues, with respect to the  
25 approval of the disclosure statement going out to creditors,

1 Your Honor.

2 THE COURT: Why not?

3 MR. WARD: Well, because I don't think it's -- at  
4 this point in time, Your Honor, we're not substantively  
5 consolidating the estates. I think this is a fairly common  
6 means to -- for the ease of the estate to have claims filed  
7 against one debtor for distribution purposes and calculation  
8 purposes, Your Honor. Wellspring has not articulated any  
9 reason why if we did not do that procedure, that it would  
10 inure to anyone's benefit, Your Honor, and I think we will be  
11 here at confirmation prepared to discuss substantive  
12 consolidation versus non-substantive consolidation -- I hate  
13 that word -- and how that would affect creditors, Your Honor.

14 I don't think it's an issue for disclosure. I  
15 think it's an issue of whether the plan is confirmable or  
16 not, Your Honor.

17 THE COURT: Okay. I'll hear the objection then.

18 MR. WARD: Thank you. The next issue they raised  
19 was the third-party releases. There are no third-party  
20 releases on the plan. There was not that box on the ballot,  
21 as filed. That was in our -- that has been removed, so I  
22 think that issue is moot.

23 Their third objection to the liquidation analysis,  
24 in addition to filing a revised plan and disclosure statement  
25 yesterday, we filed a more fulsome liquidation analysis that

1 I think for disclosure purposes should alleviate the  
2 objection of Wellspring. Obviously, they will reserve all of  
3 their rights to object to the contents of the liquidation  
4 analysis at the confirmation hearing. It is an exhibit to  
5 the plan, Your Honor.

6 THE COURT: Okay. I didn't see that. Where is  
7 the more fulsome -- I could have certainly just missed it.

8 MR. WARD: I have a separate copy, Your Honor, if  
9 it would be easier for me to just hand it to you.

10 THE COURT: I'd probably -- I reviewed the  
11 blackline and it wasn't on the blackline, so, okay.

12 MR. WARD: If Your Honor does want to take a look  
13 at it, I can approach --

14 THE COURT: Yes.

15 MR. WARD: -- but this is just not the time-  
16 stamped copy, but a copy.

17 THE COURT: Okay. That's fine. Thank you.

18 I'll see what issues are left.

19 MR. WARD: Oh, all right. Thank you, Your Honor.  
20 Sorry.

21 THE COURT: I want to see what issues are left.

22 MR. WARD: The next objection was to the  
23 conditions precedent to the plan, that there was no  
24 representation at all and administrative and priority claims  
25 are going to be paid before claims underneath them

1 (indiscernible) the waterfall and absolute priority rule.

2           Your Honor, again, I think the budget speaks for  
3 itself. We wouldn't be filing a plan if we didn't believe  
4 that all the administrative claims and priority claims are  
5 going to be paid. There's no class-skipping proposed by the  
6 plan, so we don't think that that objection for disclosure  
7 purposes matters. But to the extent that we can clear up  
8 language to make it clear that we're not class-skipping and  
9 trying to get outside the absolute priority rule, we're happy  
10 to do that.

11           The next issue was exculpation. Our exculpation  
12 clause includes Prospect in their capacity as the DIP lender.  
13 The United States Trustee also raised this issue. We  
14 understand the objection, Your Honor. That is an issue for  
15 confirmation. It is fully disclosed. We will be back here  
16 with Prospect prepared to put on a case in support of  
17 exculpation for Prospect at confirmation.

18           The next objection was the funding mechanism for  
19 the plan, Your Honor. I will defer that to the committee and  
20 Prospect, since that was something that was negotiated by the  
21 committee.

22           Moving on to that is the right to vote under the  
23 plan for contingent and unliquidated creditors. Your Honor,  
24 yesterday, the committee filed a substantive objection to the  
25 claims of Wellspring, so now they're claims are subject to

1 objection. Under the solicitation procedures, we have a  
2 mechanism for Rule 3018 motion to be filed, responses to be  
3 filed to that. So, I think this objection to the disclosure  
4 statement is mooted at this point. I think it becomes a  
5 discussion of what does the 3018 procedure look like between  
6 now and the October 21st confirmation date.

7 I think -- we've discussed the issue with  
8 Wellspring. We're aware that there's going to be discovery  
9 issues related. There's going to have to be a hearing on the  
10 Wellspring 3018 motion and the parties' objection to that  
11 motion.

12 I think this side of the room's preference is to  
13 have that hearing in advance of the confirmation hearing.  
14 Currently, the way the procedure is set up, the confirmation  
15 hearing would start with 3018 motions. I think that's  
16 something that we have to discuss with the Court. I think  
17 the party would like some guidance on where we stand with  
18 Wellspring before we walk into the confirmation hearing. I  
19 know that --

20 THE COURT: Okay. Well, I have not read the  
21 objection, nor have I seen the proofs of claim. So, we can  
22 talk about that, but wouldn't the first issue be whether or  
23 not Wellspring's vote affects the outcome of the voting? If  
24 it doesn't --

25 MR. WARD: And that is something --

1 THE COURT: -- then why do I need to deal with the  
2 objection? If it does, then I will need to deal with it.

3 MR. WARD: And, Your Honor, we started discussing  
4 that issue with Wellspring this morning. I mean, I think  
5 it's something that we need to delve into a little further  
6 with Prospect and the committee --

7 THE COURT: Okay.

8 MR. WARD: -- but I know that Prospect and the  
9 committee want to be heard on the 3018 issues --

10 THE COURT: Certainly.

11 MR. WARD: -- as well.

12 THE COURT: Okay.

13 MR. WARD: The final issue raised in the  
14 Wellspring objection, Your Honor, was reference to the  
15 settlements and compromises in the plan. I think it's fairly  
16 common if there's a 9019 provision in the plan that  
17 incorporates all settlements in the case that were involved  
18 with Prospect, the committee, and the debtors, so I don't  
19 think that's a disclosure issue. If they have an issue with  
20 9019 approval mechanism, that's something we can deal with at  
21 confirmation.

22 THE COURT: Well, I would like to know what  
23 settlements are embodied in the plan, because many people  
24 have heard me say from this bench that I don't understand  
25 that a plan is a 9019. It's not a settlement. A plan is not



1 a settlement in my view.

2           There may be settlements embodied in the plan,  
3 which need to be approved under 9019, but a plan, itself, I  
4 don't view it as a settlement. I view as an edict that some  
5 creditors get crammed down on. But I don't view it as a  
6 settlement. So, I just need to understand if there are  
7 settlements if the plan, what they are.

8           MR. WARD: Understood, Your Honor. I will defer  
9 to Ms. (Indiscernible) on that issue, as they have raised it.  
10 But I think those are the open Wellspring issues. As I said,  
11 I think most of those are issues that we can deal with at  
12 confirmation or we can work on procedures and language for  
13 the disclosure statement order to move forward for today.

14           THE COURT: Okay.

15           MR. WARD: Thank you. I think it probably makes  
16 sense to hear from the committee and Prospect or --

17           THE COURT: Well, maybe it makes sense to hear  
18 from Wellspring so we know exactly what objections are still  
19 open. And then the committee, I'm happy to hear from, and  
20 Prospect, in response to what's actually still open.

21           MR. ADLERSTEIN: Good morning, Your Honor. Jacob  
22 Adlerstein, Paul Weiss Rifkind Wharton & Garrison on behalf  
23 of Wellspring.

24           Your Honor, we have, in advance of this hearing,  
25 spoken to the debtors about a certain number of issues and we

1 obviously, we reviewed the filing that was made yesterday  
2 about the revised plan and proposed order. Those pleadings,  
3 in some respects, address some of the issues that we raised  
4 in our objection. I think those pleadings and the  
5 circumstances around their filing may have raised new issues  
6 and that may give rise to confirmation objections.

7           We're not prepared to (indiscernible). We think  
8 today is the appropriate time to address what new issues may  
9 arise if there are confirmation issues and we can raise them  
10 at the appropriate time at confirmation. So, I wanted to try  
11 to keep my remarks limited because we're mindful of the  
12 conditional nature of the relief that's before Your Honor,  
13 but we do think there are issues raised in the debtors'  
14 initial filing and subsequent filing that even at the  
15 conditional stage are appropriate for the Court to consider,  
16 some of which have not yet been addressed by what's currently  
17 before Your Honor.

18           And I'm going to try to put it into two  
19 categories, first being application of the local rules and  
20 the voting procedures, which counsel to the debtors touched  
21 upon, in terms of the 3018 process, and then I'll move to  
22 some of the more substantive, both confirmation, and also  
23 disclosure issues, associated with the underlying plan.

24           So, going to the application of the Local Rules,  
25 Your Honor, we identified in our objection -- I didn't hear

1 debtors' counsel respond to the fact that it appears that  
2 there is not a technical compliance with Local Rule 3017-2 in  
3 that the quantum of assets that are being distributed under  
4 the plan appears to be in excess of the twenty-five-million-  
5 dollar cap that the Local Rule contemplates and requires. In  
6 talking to counsel to the debtors previously, I thought that  
7 it may be the case that it's possible that that actually is  
8 not the amount of assets that are going to be distributed.  
9 There may have been assets that have already been  
10 distributed, and it wasn't clear to me if they're going to be  
11 prepared to make that representation.

12 But if there isn't technical compliance with the  
13 Local Rule, we do have concerns about the fact that we are  
14 using a Local Rule that already contemplates truncated time  
15 periods. We're not going to quibble at this point about  
16 whether it's a couple -- if they are capable of utilizing the  
17 Local Rule, we're not going to quibble about the three or  
18 four days that they're seeking to shorten, but I think it  
19 dovetails with what would be our concern, which is to ensure  
20 that we have the requisite time to put forward the discovery  
21 we need and to put forward the case we will hopefully, if  
22 we're in a position we need to make, to make a confirmation  
23 and that there not be the proponents of the plan and those in  
24 support of it do not use the truncated period to restrict our  
25 due process rights.

1 MR. WARD: And I apologize, Your Honor, I did miss  
2 one point in their objection. This was the 3017-2 issue. At  
3 the outset of the case, there was more than \$25 million of  
4 assets -- \$30 million to distribute.

5 At this point in time, there's approximately  
6 fifteen or so million dollars left to distribute. The first  
7 lien lender we paid off. Our now-first lien lender is being  
8 paid down. So, that is the -- that was the confusion. But  
9 we are well under the limit under 3017-2 and I apologize for  
10 missing that representation.

11 THE COURT: Okay. Thank you.

12 MR. ADLERSTEIN: So, on that basis, Your Honor, on  
13 the basis of that representation, I mean, again, our  
14 confusion was on the basis of the plan and the disclosure  
15 statement identifies (indiscernible) of remaining asset which  
16 seem to just add up to an amount in excess of \$25 million.

17 THE COURT: I saw that, as well.

18 MR. ADLERSTEIN: So, I think, then, our objection  
19 on that point may be resolved for purposes of conditional  
20 approval. I would say, though, to the extent we are back  
21 before Your Honor with issues on discovery, we're going to  
22 hold, then, to the benefit of their burden of what they're  
23 trying to do, which is if they want to seek this on an  
24 expedited schedule, they should have to live up to what may  
25 be expedited discovery requests coming from those who are

1 opponents of the plan.

2           On the voting procedures, Your Honor -- so,  
3 Wellspring filed a series of claims. As I believe, the  
4 number of claims was in excess of 100. The reason why so  
5 many claims were filed is that the debtors' bar date  
6 specifically -- proposed bar date order, I guess it's not  
7 been approved yet by Your Honor -- but it specifically  
8 requires that claimants that have multiple claims against the  
9 debtor file separate claims in respect of each of those  
10 claims. And so, that's why there were a number of claims  
11 filed by Wellspring-affiliated entities.

12           Yesterday, the committee filed an objection. It's  
13 unclear to us from that objection -- and we haven't had a  
14 chance to talk to committee counsel yet -- whether that's an  
15 objection to all the claims that were filed, if it's an  
16 objection only to a subset of them and we'll have to work  
17 through exactly what that objection seeks to address.

18           But in any event, what we had proposed to the  
19 debtor this morning to address our concerns on the voting  
20 procedures and ultimately to avoid what could be an  
21 unnecessary burden on the Court and the parties to go through  
22 a 3018 process, in what is already a truncated period, is to  
23 allow for the Wellspring claims to be voted -- to be allowed  
24 only for voting purposes with a full -- with respect to  
25 liquidated claims and the liquidated amounts asserted. With

1 respect to unliquidated claims, we would be fine with a  
2 nominal one-dollar amount, which is typical for courts in  
3 this district, again, only for voting purposes with a full  
4 reservation of rights as to all parties as to whether each of  
5 those claims individually should constitute a claim, whether  
6 there should be some grouping of claims for purposes of  
7 numerosity and whether they ultimately matter for confirming  
8 and confirmation of the plan. We're not trying to prejudice  
9 any parties' rights on that issue. We just think that if the  
10 claims can be voted in the amounts they're asserted or for  
11 unliquidated claims in a nominal amount that reflects the  
12 fact that they're filed, that would avoid an unnecessary and  
13 potentially burdensome 3018 process and we can determine at  
14 confirmation if and to the extent there's actually something  
15 that requires Court intervention.

16           As I understand it, parties on this side of the  
17 courtroom have not agreed with that approach, but that's  
18 certainly what we think is an appropriate way to address the  
19 issue and still reserve parties' rights to deal with, if  
20 there are concerns about the matter, in which those claims  
21 are voted at confirmation.

22           Now, there's an ambiguity, I would just say in  
23 terms of the voting procedures. The proposed order, purports  
24 to say that claims for which an objection is filed it need to  
25 file a 3018. The plan and disclosure statement actually

1 don't say that. The plan and disclosure statement simply say  
2 that if a claim has been filed, (indiscernible) in the amount  
3 which is asserted.

4           So, either way, however we choose to address this,  
5 I think that ambiguity issue has to be clarified or that  
6 inconsistency, rather.

7           So, then, Your Honor, that covers kind of the open  
8 objections that we have to the voting procedures and how we  
9 would propose to address it in a way that we think is fair,  
10 provides appropriate enfranchisement of creditors with claims  
11 that have been asserted prior to confirmation, to what is  
12 otherwise a truncated period, while reserving the rights of  
13 all parties to assess whether those claims should be voted  
14 and in what amounts and what the import of that is for  
15 confirmation.

16           Moving, then, to what I described as kind of a  
17 second category of objections we have raised in our  
18 objection, I'll start with those that have not been addressed  
19 and principally among them, subcon. I -- with respect to  
20 debtors' counsel, I don't understand how this is a limited  
21 subcon plan. The plan provides for substantive consolidation  
22 for purposes of voting, distribution, and claim allowance.  
23 In a liquidating plan, I'm not sure what more substantive  
24 consolidation can occur than that.

25           And so, to us, this feels like a full subcon plan,

1 which is seeking to say a creditor's claim will receive a  
2 distribution regardless of which debtor entity is it asserted  
3 against, regardless of what assets that debtor entity may  
4 have, as contrasted with other debtor entities, and  
5 regardless of what other claims may be assertible against  
6 those entities, as contrasted with other entities. So, to  
7 me, that is substantive consolidation.

8           And it's not our burden to explain why that  
9 results in prejudice to parties; it's the debtors' burden to  
10 demonstrate why that's appropriate, given applicable Third  
11 Circuit case law that provides to the extraordinary remedy,  
12 that should be utilized in only very rare circumstances, the  
13 disclosure statement. And we do think there are disclosure-  
14 specific issues. One, the disclosure statement doesn't  
15 address any reason why substantive consolidation is  
16 appropriate here, other than for an administrative  
17 convenience, which is the one specific rationale that the  
18 Third Circuit has said is insufficient to justify application  
19 of that remedy.

20           In addition, it is unclear to us how this would  
21 work if, ultimately, the Court were to deny confirmation on  
22 the basis that substantive consolidation is not appropriate.  
23 We have now undertaken -- the estate, I should say -- have  
24 undertaken a process that could be time-consuming and  
25 expensive. Why are we not addressing that issue at the



1 outset?

2           The fact that there may be a burden they could  
3 demonstrate later on does not explain why today there should  
4 be conditional approval if there's no explanation at all as  
5 to why we're going down that path. And why the more typical  
6 path of saying creditors who have claims against debtor  
7 entities vote those claims, with respect to those debtor  
8 entities and receive recoveries from those debtor entities.

9           So, again, I don't think it's the -- I don't think  
10 it's Wellspring's burden to explain the prejudice. I think  
11 it's the debtors' burden to explain why it's appropriate.

12           Going to third-party releases, we agree that the  
13 plan and the ballots have been clarified to say that there  
14 aren't going to be third-party releases. The revised filing  
15 last night makes clear that there's only one party or one  
16 (indiscernible) party that are receiving releases by the  
17 debtors and that is Prospect and the other term loan lenders  
18 and that may be a basis upon which they'll be confirmation-  
19 related issues, but I don't think necessarily an issue for  
20 today, other than the disclosure statement does not provide  
21 any explanation for the basis for those releases, what  
22 investigation, if any, was undertaken with respect to the  
23 claims that are being released, and what consideration is  
24 being provided.

25           Again, the way this is being set up as a

1 conditional approval prior to ultimately final approval, the  
2 estates ultimately are going to bear the risk that if the  
3 disclosure statement doesn't have adequate information or the  
4 -- as a substantive matter, that the releases are  
5 inappropriate, that they will have gone on for naught, and  
6 so, we raise the issue to simply say there should be an  
7 explanation as to why this is appropriate. But in some  
8 respects, I think that's a risk that the estates can choose  
9 to bear if they so choose.

10 On the liquidation analysis, debtors' counsel is  
11 correct that we raised an objection because what was  
12 initially attached to the plan did not seem even, to us, to  
13 satisfy the minimum standards that we require to go out and  
14 solicit votes. What has been revised, we do have potential  
15 concerns and we may have questions about the assumptions and  
16 conclusions that are reflected in it, but I'm not here today  
17 to say it's not a basis upon which a conditional approval  
18 could be granted if the Court, otherwise, was comfortable  
19 with the basis for the plan, especially with going out to  
20 vote.

21 THE COURT: Okay.

22 MR. ADLERSTEIN: On the CPs to the effective date  
23 and the budget, it's not clear to us in the way that the plan  
24 was revised if the ambiguity or if the issue has been  
25 addressed in the sense that there was a condition precedent

1 to effectiveness that said all admin and priority claims had  
2 to be less than the amounts asserted or addressed in the  
3 approved budget. That specific CF to effectiveness has been  
4 removed, but there are still statements throughout the plan  
5 and disclosure statement, including in the treatment section,  
6 that they're only going to get paid up to the amounts set  
7 forth in the approved budget.

8 THE COURT: I saw that.

9 MR. ADLERSTEIN: And to us, Your Honor, that  
10 raises a lot of -- I mean it's a feasibility issue. It's an  
11 issue taken to its extreme, if the budget said there's a  
12 dollar available for admin and priority claims and we knew  
13 that the amount of admin and priority claims was in excess of  
14 a dollar, that does not seem like a plan that is confirmable.

15 Now, I don't know where on the spectrum of a  
16 budget that has millions of dollars of excess capacity and  
17 one that's millions of dollars underfunded, we don't know  
18 today where this plan sits because there's no disclosure  
19 about it. There's no explanation about how the budget was  
20 set up and whether that budget is satisfactory and the basis  
21 upon which the debtors have concluded that budget is  
22 satisfactory.

23 And so, that's why we raised it as a disclosure  
24 issue. It's it obviously one that is a confirmation and  
25 effectiveness issue, but I think it's one also that can and

1 should be addressed in some way at this stage, which to my  
2 view of what was filed, is not yet addressed.

3 THE COURT: Okay.

4 MR. ADLERSTEIN: Exculpation for non-estate  
5 fiduciaries, Your Honor, I hear what debtors' counsel's  
6 position is, is that this is a confirmation issue.  
7 Obviously, there's case law in the circuit that says that  
8 things that render plans unconfirmable can be addressed at  
9 this stage. We're also mindful of the statements Your Honor  
10 has made in prior cases and positions that many of the judges  
11 in this district have taken about the availability of  
12 exculpation of non-estate fiduciaries. So, in our mind, it  
13 was an issue that can and should be addressed, at a minimum,  
14 to explain why exculpation is appropriate here and the basis  
15 upon which the debtors have come to the view that that is a  
16 plan that they are a proponent of and want to move forward  
17 on, but I'll leave it at that in terms of its applicability  
18 at this stage.

19 On the liquidation trust funding, we have asked  
20 for additional disclosure about the basis upon which  
21 initially in the plan, I believe it was 37 and a half percent  
22 of proceeds from the Type A causes of action were going to be  
23 distributed to those prepetition term loan lenders that  
24 participated in the funding of that litigation. It is  
25 unclear what that meant, and so we ask for additional

1 disclosure about how that amount was calculated or  
2 determined, the basis for concluding that that's reasonable,  
3 and what went into that calculation.

4           The revised plan, as we've so (indiscernible) --  
5 and we're still digesting (indiscernible) in terms of what I  
6 called see on this issue, it seems like the amount has now  
7 changed. I believe it's gone from 37 and a half to 38  
8 percent and now there's been all these additional bases that  
9 have been included as an explanation for that amount. So,  
10 there's a little bit of inconsistency about what was the  
11 purpose or why was it initially included as a distribution  
12 that's gone only to those term loan lenders because now  
13 statements have added also being on account of waivers of  
14 diminution-in-value claims, et cetera. We don't know the  
15 basis upon which the diminution-in-value claim was calculated  
16 and there may be questions about that.

17           I think a lot of those are confirmation issues  
18 that we'll need the benefit of discovery to look into and  
19 understand exactly what (indiscernible). I would only raise  
20 it to say I think there has been disclosure. I'm not sure if  
21 the disclosure really satisfied the issues that we're  
22 raising, but there's more disclosure there. I think it  
23 raises additional questions that if we need to, we'll raise  
24 at confirmation.

25           THE COURT: Okay.

1 MR. ADLERSTEIN: And then on settlements and  
2 compromises, Your Honor, and I'm addressing this last so that  
3 kind of in my mind, it's all the way up there with subcon in  
4 terms of the concerns that we have, which is there's a  
5 blanket statement in the plan and disclosure statement that  
6 says this an effectively a settlement and compromise of all  
7 sorts of potential claims and causes of action that could  
8 have been brought.

9 There's no description of any single settlement  
10 set forth in the plan of any single claim that's being  
11 compromised, who that claim belongs to, who the claim is  
12 asserted or assertable against, the investigation that was  
13 undertaken with respect to those claims, and the  
14 consideration that's being provided in connection with that  
15 settlement. So, I just simply don't know how one assesses  
16 the propriety of that settlement without any of that  
17 information.

18 And as long as that is in the plan, it's -- to the  
19 extent that that is being used to somehow have a different  
20 standard apply to whatever they're trying to seek approval of  
21 in connection with confirmation, that's something that  
22 creditors should understand because it's not simply, these  
23 are the what you're getting on account of your claims;  
24 there's some settlement. Who's that binding? Why -- how  
25 does that relate to other treatment of creditors under the

1 plan? None of that is disclosed.

2 And so, I think there's certainly confirmation-  
3 related issues associated with it, but there's a basic level  
4 of disclosure that I don't think any voting creditor  
5 understands what is being settled and on what basis and for  
6 what. So, those are the issues. Again, some of the issues  
7 were addressed in connection with the new filing. New issues  
8 may have been raised, but I think the ones I just outlined  
9 are things that certainly remain open from our perspective.

10 THE COURT: Thank you. Okay. Who, on this side,  
11 wants to respond?

12 MR. CHAFETZ: If you don't mind just giving us a  
13 moment, Your Honor?

14 THE COURT: That's fine.

15 (Pause)

16 MR. CHAFETZ: Thank you, Your Honor.

17 Eric Chafetz on behalf of the official committee  
18 of unsecured creditors. Initially, I'd like to point out  
19 that we -- the committee is in favor of conditional approval  
20 of the disclosure statement as is, but that does not  
21 necessarily mean that we are signed off on every provision  
22 included in the combined plan and disclosure statement. We  
23 have a few issues that we believe are confirmation issues,  
24 but we think should be addressed later on -- not today -- but  
25 we just wanted to raise that and make that abundantly clear.

1 THE COURT: Okay.

2 MR. CHAFETZ: One of those issues was one of the  
3 issues that Mr. Adlerstein pointed out dealing with funding  
4 of admin and priority claims. We pointed out to the debtors  
5 and to Prospect last evening that there are still certain  
6 inconsistencies and from the committee's perspective, aside  
7 from professional fees, which should be addressed in the  
8 context of budget negotiations, all other admin and priority  
9 claims should be paid as a condition to confirmation of the  
10 plan. I don't think there should be any ambiguities in the  
11 combined plan and disclosure statement with respect to that.  
12 So, I just wanted to make that point perfectly clear.

13 And this is not the appropriate time, but we do  
14 want to discuss some of the committee's concerns with the  
15 budget going forward, because as Your Honor may be aware, the  
16 budget does not go past September 30th. That was the most  
17 recently approved DIP budget that Your Honor approved, but  
18 I'll table that issue for later on, but I just wanted to  
19 raise that in this context.

20 I guess the only real issue that the committee  
21 wanted to focus on was the funding mechanism that Wellspring  
22 pointed out. Mr. Adlerstein is correct, and I know he kind  
23 of tabled that issue for confirmation, that for the Type A  
24 causes of action that went from 37.5 percent to 38 percent  
25 and now there's a litany of different reasons or rationales



1 for why those funds would come off the top, to be abundantly  
2 clear, the reason for the change was the parties were still  
3 negotiating. The committee was not onboard when the  
4 committee filed -- I'm sorry, excuse me -- when the debtors  
5 filed the original version of the plan and only three  
6 additional, really substantial arm's-length negotiations did  
7 we get to a point where we were comfortable with how the Type  
8 A and Type B causes of action were allocated between the  
9 various constituencies and also the percentages of proceeds  
10 and how those proceeds were being shared.

11 So, it was really just a timing issue, for lack of  
12 a better term, and the additional disclosures that we did  
13 include, obviously, everybody will have to make their case  
14 during the confirmation hearing. But that's really the main  
15 overlying or underlying rationale for the difference between  
16 the original plan and the current plan before Your Honor.

17 THE COURT: Okay.

18 MR. CHAFETZ: And for now, I'll cede the podium to  
19 Prospect.

20 THE COURT: Ms. Kelbon?

21 MS. KELBON: Your Honor, I think -- Regina Stango  
22 Kelbon, on behalf of the Prospect, Your Honor -- I'll just  
23 respond to a few of Mr. Adlerstein's comments that I think  
24 affect what's today's -- on for Your Honor today, because I  
25 do believe most of his, if not all of them, are confirmation

1 issues.

2           As to subcon, Your Honor, I do believe that is a  
3 confirmation issue and will be addressed adequately at  
4 confirmation, but just noted to say that we believe there is  
5 -- are no assets and creditors at the other entities of  
6 merit. We have -- the second lien lenders have guarantees of  
7 all of those entities and secured guarantees and we believe  
8 we would dominate any other distribution. This is a  
9 straight, absolute priority plan, and but for the giving up  
10 of value that goes to the second lien lenders, there would be  
11 no plan here and I think we'll be able to demonstrate that  
12 and that should be addressed at confirmation.

13           THE COURT: Why isn't that disclosure statement  
14 issue as to the rationale that the debtors have for  
15 substantive consolidation so that during discovery on this  
16 plan, the parties know what your view is to know what to take  
17 a shot at?

18           MS. KELBON: Well, if the debtors -- I'm sure the  
19 debtors could add a sentence or two as to substantive  
20 consolidation in this disclosure statement.

21           THE COURT: I think there needs be in the  
22 disclosure statement, the debtors' rationale --

23           MS. KELBON: Rationale.

24           THE COURT: -- for why it is that substantive  
25 consolidation was appropriate because my read of the plan is

1 the same as Mr. Adlerstein's. I think it's substantive  
2 consolidation. It's voting distribution and it's claims  
3 allowance.

4           The fact that maybe the corporate entities will be  
5 out there in this context of this plan, I don't think that  
6 means this isn't a true substantive consolidation. I can be  
7 convinced otherwise, perhaps -- I haven't heard an argument -  
8 - but at least my read of the plan is that you get one vote.  
9 You get one distribution. And that's substantive  
10 consolidation.

11           Now, maybe there are more assets of the other  
12 debtors -- I don't know -- but I think the debtors' rationale  
13 needs to be there so that parties can explore whether, in  
14 fact, substantive consolidation, as set forth in this  
15 particular plan is appropriate.

16           MS. KELBON: All right. Your Honor, I'm sure the  
17 debtors will be able to do that.

18           We're truly -- and we're happy to make these  
19 changes today because we really do want to stay on track,  
20 Your Honor.

21           THE COURT: Okay.

22           MS. KELBON: The conditions to the effectiveness  
23 on the admin and priority, it was primarily put in there as a  
24 governor for the professional fees of the debtor, and we do  
25 understand there is a budget negotiation still ongoing with

1 the committee's professionals, so we appreciate that and  
2 those discussions will continue to happen, Your Honor, after  
3 today.

4 As to the admin and priority claims --

5 THE COURT: Let me ask you on that, then, because  
6 I do see in the treatment section in particular -- and I'm  
7 just looking at the chart that's in the disclosure statement  
8 -- it says paid in full, up to the total amount set forth in  
9 the approved budget. And so, do I know what the approved  
10 budget is?

11 MS. KELBON: Yes, Your Honor. We have filed --  
12 the last one was filed. I believe the August 15th budget  
13 either has been filed or was about to be filed; that's the  
14 approved budget.

15 THE COURT: Well, then, maybe that should be --

16 MS. KELBON: So, we -- and we call it the "August  
17 15th budget" it's called the "approved budget" in the  
18 disclosure statement.

19 THE COURT: Is the people -- okay, so I missed  
20 that.

21 MS. KELBON: Okay.

22 THE COURT: Is there something in here, other than  
23 the -- that says August 15th budget? Does it tell me what's  
24 in the budget?

25 MS. KELBON: No, but it's being -- it will be

1 filed of record, Your Honor, if it hasn't already been, Your  
2 Honor.

3 THE COURT: What's budgeted for?

4 MS. KELBON: We had asked the debtor to file it of  
5 record.

6 THE COURT: Has it been filed yet?

7 MR. WARD: No, it has not been filed yet, Your  
8 Honor.

9 MR. CHAFETZ: Your Honor, that's the issue that I  
10 was alluding to a little bit earlier. The most recent budget  
11 that people have been able to really comment on and discuss  
12 only goes through September 30th. So, it's -- that's the  
13 issue we have. Obviously, we know this process is going to  
14 be going on for at least another three weeks if confirmation  
15 goes as we hope it does on the 21st.

16 THE COURT: Well, I have to say I'm not -- it may  
17 sound callous -- I'm not concerned about the professional  
18 fees budget, okay, because you'll negotiate something or you  
19 won't and I guess we'll figure that out and if that's what's  
20 holding up a plan, I suspect the professionals will figure  
21 that out.

22 I'm concerned about the other administrative  
23 creditors, because the way that this is drafted, it sounds  
24 like it's an offer. It sounds like you're going to get paid  
25 up until the approved budget, which certainly, administrative

1 creditors can compromise their claims, but it sounds like an  
2 offer.

3 MS. KELBON: Okay. I guess, Your Honor, the way I  
4 would answer that is, based on our discussions with the CRO,  
5 there's more than enough in the budget that -- there's more  
6 than enough cash on hand in the budget to cover all admins  
7 and all priorities and tax priority claims and the amount  
8 that's disclosed in the plan, there's disclosure in the  
9 disclosure statement of how much each class is --

10 THE COURT: Yes.

11 MS. KELBON: -- is what we believe is the maximum  
12 amount. And so, I believe that's a feasibility issue, but it  
13 will be covered.

14 THE COURT: So, for disclosure purposes, I'd like  
15 a statement added to the disclosure statement that you just  
16 said, okay, that the CRO believes or the debtor believes --  
17 whatever -- that these are budgeted, they're in the budget,  
18 and that these debtors believe these are enough to satisfy  
19 the maximum amount of the claims.

20 People can disagree with that, but if that's the  
21 debtors' position, I want that disclosure in the disclosure  
22 statement.

23 MR. WALSH: Your Honor, that is, in fact, our  
24 position and I just conferred with the CRO and we're happy to  
25 put that (indiscernible).

1 THE COURT: Thank you. Then that should be added.

2 MS. KELBON: Your Honor, next was exculpation.

3 And we believe that we put on a case that Your Honor will  
4 either agree or not agree as to why this is unique  
5 circumstances, why Prospect would be entitled to it under all  
6 the funding mechanisms in this particular instance.

7 THE COURT: I think -- and I think Mr. Adlerstein  
8 somewhat conceded that is this a confirmation issue, so I  
9 think there's enough that the creditors can explore that  
10 issue and I don't think it's (indiscernible), so it can be  
11 addressed that way.

12 MS. KELBON: Your Honor, then, I guess as to the  
13 settlement comment --

14 THE COURT: Yes.

15 MS. KELBON: -- whether there's settlements, I  
16 guess to the extent that there's any settlements, it is that  
17 Prospect and the second lien lenders are funding admins,  
18 they're funding priority, they're funding the tax priority,  
19 they're funding the trust, and Prospect is funding and/or  
20 both lenders as the second lien lenders are funding the Type  
21 A prosecution and Type B. So, to the extent this is -- and  
22 they're waiving their diminution claim, which diminution  
23 claim was explained in the disclosure statement as to how we  
24 get to the number, and we believe it is far in excess of  
25 that, and we can put on a case that would far exceed that --

1 but for purposes of being conservative for this disclosure,  
2 we put all of that in there, and that is, in fact, I guess  
3 where you say the settlement, there are plan releases in  
4 favor of the second lien lenders.

5 Almost every case I've been in, Your Honor, that  
6 has not been an issue -- plan releases -- but that would be,  
7 I guess, the universe of the compromises and the settlements.  
8 There's also estate releases in the DIP order, which already  
9 were previously effective.

10 THE COURT: All right.

11 MS. KELBON: So, it really is in our view, that  
12 that is the universe.

13 THE COURT: Okay. So, let's put a statement in  
14 the disclosure statement with respect to the universe of the  
15 settlements in the (indiscernible).

16 MS. KELBON: Thank you, Your Honor.

17 THE COURT: Thank you. Mr. Adlerstein?

18 MR. WARD: Your Honor, I was just going to rise  
19 and go through the open issues and make sure we're addressing  
20 them so everyone is on the same page with where we're going  
21 on the revisions.

22 THE COURT: Okay.

23 MR. WARD: Going through counsel's arguments,  
24 substantive consolidation, we will put in -- I think it's  
25 more than a sentence or two --



1 THE COURT: I think it is, too.

2 MR. WARD: -- I heard that I think we need a more  
3 comprehensive description of substantive consolidation, why  
4 it's warranted, and what the law is, and we will add that  
5 language.

6 We will add language on the budget that Your Honor  
7 requested about the administrative and priority claims.

8 Exculpation was a confirmation issue.

9 I think the trust funding issue was covered in the  
10 disclosures. I'm not sure if the Court was requiring any  
11 more disclosure on that issue?

12 THE COURT: I actually wanted to hear from Mr.  
13 Adlerstein whether I forgot anything or whether there was  
14 some still open issue now that I've directed what needs to be  
15 done.

16 MR. ADLERSTEIN: Thank you, Your Honor. Jacob  
17 Adlerstein, Paul Weiss (indiscernible).

18 I don't think you forgot any issues, Your Honor,  
19 but I would say two things -- well, actually, with one  
20 exception -- two things. One, there have been -- there are  
21 going to be a number of changing it sounds like to the  
22 disclosure. In addition, many of those emanate from things  
23 or some of those emanate from changes that were made in just  
24 the past 24 hours. Again, as I previewed in my initial  
25 remarks, there may be discovery that we need to seek in

1 connection with the statements that they're now adding to the  
2 disclosure statement on the bases of things that we did not  
3 understand when it was initially filed, as well as changes to  
4 the plan including on the funding mechanism that were just  
5 filed yesterday.

6           So, I just wanted to make clear that we may need  
7 to seek discovery associated with that and, again, to the  
8 extent the parties on this side of the courtroom want to run  
9 a truncated process and run it as fast as possible, we will  
10 go as quickly as we can, but I just don't want there to,  
11 then, be future complaints about the discovery we seek and  
12 the timeline in which we need to have those responses made.

13           So, for relief I'm asking for, in respect to that.  
14 I just wanted to make that aware --

15           THE COURT: Discovery is open.

16           MR. ADLERSTEIN: Yeah. And then the one issue  
17 that I don't think has been addressed was on the voting  
18 procedures and the 3018.

19           THE COURT: Yes, we have to talk about them.

20           MR. ADLERSTEIN: So, again, Your Honor, I haven't  
21 heard a response to the proposal we've made and why we  
22 thought that was appropriate.

23           MR. WARD: I think that issue, the committee and  
24 Prospect discussion, or the last changes made to the plan was  
25 the settlement compromises language. We will add a

1 description of that, as well.

2           And while I'm at the podium, on the discovery  
3 issue, Your Honor, we've already had a meet-and-confer  
4 (indiscernible) on discovery that has been issued. If  
5 there's future discovery to be issued, Your Honor, we will  
6 deal with it. We understand the position that we're putting  
7 all the parties in. We're going to work to get the discovery  
8 done. We've asked for deponents that they're looking for at  
9 Wellspring, so we can get those depositions on the calendar.  
10 We're prepared to move forward with the discovery no matter  
11 if it's issued already or going to be issued in the future.

12           THE COURT: Okay. Thank you.

13           Voting, we do need to talk about. Do y'all need a  
14 few minutes?

15           MR. CHAFETZ: Yeah, if you don't mind, Your Honor?

16           THE COURT: Okay. Let's take five minutes.

17           MR. CHAFETZ: Thank you, Your Honor.

18           (Recess taken at 10:55 a.m.)

19           (Proceedings resumed at 11:03 a.m.)

20           THE COURT: Please be seated.

21           MR. WARD: Thank you for the accommodation, Your  
22 Honor. Chris Ward for the record.

23           We have not been able to resolve the timeline 3018  
24 issues.

25           THE COURT: Okay.

1 MR. WARD: I think Wellspring's position is they  
2 should go forward under the procedures in our 3018 motion and  
3 in the plan and be heard at the confirmation hearing. The  
4 parties on this side of the room would prefer to have a  
5 hearing on the Wellspring 3018 motion prior to confirmation.  
6 The committee may have a little more, if they want to weigh  
7 in on this, but I think that is the issue.

8 THE COURT: Let me understand the impact on --  
9 well, let me understand the impact, because as I said before,  
10 until we know the outcome of the voting, we don't know  
11 whether or not Wellspring's votes matter, so ...

12 MR. WARD: And I think the voting deadline is  
13 October 15. The confirmation is October 21st, so I think the  
14 ask would be in the time period.

15 THE COURT: Let me ask another question: When is  
16 the general bar date?

17 MR. WARD: Well, one of the orders that I have to  
18 hand up before this hearing ends, Your Honor, is the bar date  
19 order, and we can -- October 16th, Your Honor, is what I'm  
20 being told.

21 THE COURT: So, the bar date occurs after the  
22 voting deadline, so how's that going to work? So, you're  
23 mailing out to people who file proofs of claim, which a few  
24 will who are active in the case, and know about this, but  
25 most won't or at least there's the potential because the bar

1 date falls after the voting deadline that they won't. So,  
2 are you going to continually mail out --

3 MR. WARD: They will receive two notices, Your  
4 Honor. The creditor matrix will receive the bar date notice  
5 and they will receive the confirmation notice, depending on  
6 which class they're in. So, they will be receiving two  
7 mailings over the next couple of weeks -- actually, within  
8 the next week.

9 THE COURT: Okay. So, let's say someone files a  
10 proof of claim on October 5th, are you going to then send out  
11 a ballot? How's that going to work?

12 MR. WARD: If it is a proof of claim for someone  
13 that is not in our creditor matrix that did not receive  
14 notice, then I think we do, Your Honor. I mean, absolutely.  
15 They are now a known creditor and they would have to receive  
16 a ballot.

17 THE COURT: Okay. So, you're going to send --  
18 this is a little bit of an unusual situation.

19 MR. WARD: It is, Your Honor. We don't disagree  
20 with you on that.

21 THE COURT: Okay. So, you're going to send  
22 ballots to your creditor matrix, your full creditor matrix,  
23 which will include anybody on the schedules.

24 MR. WARD: Correct, uh-huh.

25 THE COURT: I don't know how your schedules look

1 in terms of how many disputed claims or -- we have, but --  
2 so, presumably, some people will get to vote and have their  
3 votes counted because they are listed on the schedules or  
4 they're not disputed, contingent, et cetera.

5 Maybe they think Wellspring's votes were  
6 important, yeah, by numerosity in any event --

7 MR. WARD: And that's exactly why we need the  
8 issue resolved before confirmation, Your Honor, is the  
9 numerosity issue. They do have 115 claims that we're going  
10 to have to deal with as part of this.

11 THE COURT: Okay. Let me hear from the committee  
12 now.

13 MR. CHAFETZ: Thank you, Your Honor. Eric  
14 Chafetz, again, on behalf of the official committee of  
15 unsecured creditors.

16 I guess the real -- and realizing that Your Honor  
17 has not reviewed either our claim objection or Wellspring's  
18 115 proofs of claim --

19 THE COURT: Yes.

20 MR. CHAFETZ: -- I think one of the main gating  
21 issues here, and what we do raise in our claim objection, is  
22 whether Wellspring is a creditor at all. There are certain  
23 subordination provisions including in a sixth amendment to  
24 the term loan agreement that clearly state that Wellspring is  
25 not entitled to any recoveries until Prospect is paid in

1 full. The liquidation analysis that was handed up to Your  
2 Honor clearly shows that Prospect is not receiving anywhere  
3 near 100 cents on account of their claims.

4           There's also an issue that even if Wellspring does  
5 have a claim, who that claim is potentially even against. If  
6 that claim is just against the main holding company, the main  
7 holding company's only assets are the worthless equity  
8 interests and all the operating subsidiaries. Again,  
9 Prospect, which is really -- which is owed over \$250 million  
10 now is receiving less than 15 percent recovery.

11           In our view, we think that both the 3018 motion  
12 and our claim objection should be heard in advance of  
13 confirmation just so we can determine whether or not some of  
14 these other issues should even be addressed by this Court  
15 because they won't be if Prospect is not -- excuse me -- if  
16 Wellspring is not deemed to be an actual creditor.

17           THE COURT: Well, you said two different things.  
18 You said they're not a creditor and they're claims are  
19 subordinated. I know you don't have a subordinated claim  
20 holder class. If you think their claims are subordinated,  
21 where's the subordinated claim holder class?

22           MR. CHAFETZ: We don't. The plan currently  
23 addressed, does not have a subordinated claim holder class.

24           THE COURT: Well, is that going to be a problem if  
25 you're trying to subordinate their claims? Then how are they

1 treated?

2 MR. CHAFETZ: They're -- as of --

3 THE COURT: They're creditors. They just have  
4 subordinated claims.

5 MR. CHAFETZ: They're treated as general unsecured  
6 creditors assuming they have a valid claim under the current  
7 permutation of the plan.

8 THE COURT: I guess I don't understand how that  
9 can work. I have not read their claims and I have not read  
10 your claim objection, but if what you're telling me is they  
11 have a contract that says they're claims are subordinated,  
12 the payment -- subordinated in payment to Prospect's claims,  
13 then that doesn't make them not a creditor; that makes them  
14 the holder of a subordinated claim.

15 MR. CHAFETZ: Yes, Your Honor, that is correct and  
16 the current plan does not have a class four Prospect-specific  
17 --

18 THE COURT: So, why should I send this plan out?  
19 You have a class you're not treating. I don't understand.  
20 What am I missing?

21 MR. CHAFETZ: Can we have two minutes?

22 THE COURT: Uh-huh.

23 MR. CHAFETZ: Thank you.

24 (Pause)

25 MR. WARD: Your Honor, since we have a courtroom



1 of people, if I can try and be efficient and deal with the  
2 two completely uncontested matters that are at the end of the  
3 agenda?

4 THE COURT: Yeah, let's deal with those.

5 MR. WARD: So, I know we have the debtors' motion  
6 for a bar date, which we briefly discussed which is at Docket  
7 Number 304. We uploaded a certification of counsel, an order  
8 that incorporated comments from the Office of the United  
9 States Trustee, Prospect, and the committee.

10 THE COURT: I saw that and I didn't sign it  
11 because I think you need to -- as I'm recalling, I don't have  
12 that for some reason in front of me -- but as I'm recalling,  
13 you have an admin bar date in the bar date order as well.

14 MR. WARD: Correct.

15 THE COURT: A second admin bar date?

16 MR. WARD: There's a first administrative claims  
17 bar date and a second administrative claims bar date.

18 THE COURT: Okay. You're -- I don't -- on your  
19 notice, it doesn't mention that. I think it needs to mention  
20 that so people who have admin claims pay attention to it.

21 MR. WARD: Okay.

22 THE COURT: I think that was my only comment.

23 MR. WARD: Thank you, Your Honor. And as you  
24 probably saw from the redline, the U.S. Trustee had  
25 substantial comments --

1 THE COURT: Yes.

2 MR. WARD: -- that we incorporated into that.

3 THE COURT: Yes.

4 MR. WARD: But we can change the notice and the  
5 order to include the administrative claims bar dates, as  
6 well, and we will file that under certification of counsel  
7 and upload it for the Court.

8 THE COURT: Okay. What's your other thing?

9 MR. WARD: The other -- the last item on the  
10 agenda was the motion to approve *de minimis* asset procedures.  
11 At the last hearing, you graciously gave us the opportunity  
12 to file that on shortened notice. We did. The objection  
13 deadline was actually at the hearing today, given the  
14 shortened notice.

15 There have been no objections received. The filed  
16 copy of the motion already included Mr. Buchbinder's comments  
17 to the monetary ranges for the sales, so there's no redline  
18 and the order has been uploaded.

19 THE COURT: Okay. I'll approve that.

20 MR. WARD: All right. Thank you, Your Honor.

21 I think with that, I'll cede the podium to Mr.  
22 Chafetz again.

23 MR. CHAFETZ: Thank you, Your Honor. Just to  
24 clarify, based on the colloquy we just had, I think the  
25 committee would be fine adding a subordinated class to

1 address Wellspring's alleged claims to the plan. I'm pretty  
2 sure Prospect is okay with that as well -- they can speak --  
3 they're a little bit closer to subordination that we were  
4 talking about, but I believe it's also a subordination  
5 they're not allowed to get paid.

6           So, to your point, Your Honor, they, arguably, are  
7 potentially a creditor, but they're a subordinated creditor,  
8 so I think adding that specific class would be a fix here.

9           THE COURT: You would need to add a class, Mr.  
10 Adlerstein.

11           MR. ADLERSTEIN: Jacob Adlerstein, Your Honor,  
12 Paul Weiss, on behalf of Wellspring.

13           There's a lot of movement going on here. We're  
14 talking about using a Local Rule that has a streamline  
15 process for simple cases with small dollars in a truncated  
16 time period. Now, we are, on a day that they're trying to  
17 commence solicitation using that truncated period, talking  
18 about adding classes to plans, I don't understand -- I mean,  
19 this is not the way in which I think this Local Rule is  
20 intended to be accomplished, nor is it the way in which time  
21 periods and due process should be afforded to parties who are  
22 looking at the plan.

23           I mean, if that was their position, why wasn't it,  
24 even on the truncated 14-day period they had when they filed  
25 it, why wasn't that in the plan when they filed it? And

1 we're talking about new plans and new classes and new  
2 structures. I'm a little bit confused as to how we can  
3 commence that period in that already shortened clock today.

4 THE COURT: I understand, but I think Wellspring  
5 is sophisticated enough to understand what's happening here  
6 and it will be easy to add the class and you get no recovery.  
7 So, while this is becoming more marginal as to whether or not  
8 the truncated process should go forward, I'm going to permit  
9 it, but if you want the hearing on this claim before then,  
10 that complicates things, okay. And I'm not sure when it gets  
11 fit in, so I'm going to have to take a look at my calendar  
12 and that could push confirmation.

13 If you need it heard and more importantly, what I  
14 understand is you need a decision, okay, and you want to do  
15 this, and you want -- and I've seen nothing and you want to  
16 use a truncated period -- I've got you in for confirmation on  
17 October 21st.

18 What's -- let me hear a thought from the  
19 committee, Prospect, whoever's -- I guess it was the  
20 committee's objection -- when do you think this is in a  
21 position to be heard, then I'll hear from you, Mr.  
22 Adlerstein.

23 MR. CHAFETZ: Preferably, Your Honor, and,  
24 obviously, based on your schedule, a week or so before  
25 confirmation. There's going to have to be a hearing on a

1 3018 motion that Wellspring is probably going to file, so it  
2 probably makes sense in its best use of everybody's limited  
3 amount of time, to do it in advance of the confirmation  
4 hearing just so there is some certainty.

5 THE COURT: I'm not sure if I can hear it then or  
6 not. The week before we run into holidays.

7 Mr. Adlerstein?

8 MR. ADLERSTEIN: Your Honor, our deadline to file  
9 our 3018, which, again, on a truncated period is October 15th  
10 --

11 THE COURT: Oh.

12 UNIDENTIFIED: October 9th.

13 MR. ADLERSTEIN: October 9th, I'm sorry.

14 THE COURT: Oh, October 9th.

15 MR. ADLERSTEIN: Their timeline to respond to that  
16 is October 15th.

17 We -- the bar date is October 16th. So, they're  
18 talking -- I'm not sure why we're setting up a particularized  
19 process for Wellspring and we're now penalizing Wellspring  
20 for having filed the claims --

21 THE COURT: Okay. October 9th is your deadline to  
22 file.

23 MR. ADLERSTEIN: That's our deadline to file the  
24 3018 under this already truncated period.

25 THE COURT: Okay. And the response is due?

1 MR. ADLERSTEIN: The 15th.

2 THE COURT: And we're hearing it at the  
3 confirmation.

4 MR. ADLERSTEIN: Your Honor, I'm not going to  
5 address the substance of what was raised about the proofs of  
6 claim. All that, I think, Your Honor has made it very clear  
7 that you've not looked at it.

8 THE COURT: I haven't looked at anything. I have  
9 no view.

10 MR. ADLERSTEIN: It's not a today issue.

11 I just want to (indiscernible) this is all on  
12 issue of their making in terms of why we're doing this on  
13 this time period and we certainly would object to anything  
14 earlier than that truncated period.

15 THE COURT: No, we're going to hear it with  
16 confirmation. I've got the day on the 21st slotted. If it  
17 turns out it's not an issue because of voting, then we'll  
18 deal with it, but it sounds like it's probably going to be  
19 with numerosity. So, you know, parties can also continue to  
20 talk.

21 MR. WARD: Well, I think, Your Honor, we've a lot  
22 of changes to the plan and disclosure statement and the  
23 solicitation order. We will get with the parties and get  
24 those done and circulated and submit everything under  
25 certification of counsel with a revised clean and redline

1 plan and disclosure statement.

2 THE COURT: Anything else for today?

3 MR. WARD: I think we've had quite enough today,  
4 Your Honor.

5 (Laughter)

6 THE COURT: Okay. Thank you.

7 MR. WARD: Actually, I was wrong. The other issue  
8 that's out there, Your Honor, is we mentioned discovery. We  
9 did have a meet-and-confer. There was going to be discovery  
10 issues that we're not going to be able to agree on. I think  
11 we would ask the Court for a telephonic hearing or a status  
12 conference on discovery issues. I don't know if we want to  
13 do that and reach out to Ms. Johnson --

14 THE COURT: No, I'm not going to schedule anything  
15 now. I want the parties to discuss. You can ask for a  
16 telephonic status -- no motions, please. I may want a  
17 letter, a short letter if there are issues, but no motion  
18 practice, please.

19 MR. WARD: We have plenty of letter going back-  
20 and-forth already that we can turn into something for the  
21 Court, Your Honor.

22 THE COURT: Okay. Anything else?

23 MR. WARD: That is it, Your Honor.

24 THE COURT: Thank you, we're adjourned.

25 (Proceedings concluded at 11:19 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

September 12, 2019

William J. Garling, CET\*\*D-543

Certified Court Transcriptionist

For Reliable



## **EXHIBIT H**

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

In re:

SPORTCO HOLDINGS, INC., *et al.*

Debtors<sup>1</sup>.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' FIRST SET OF  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS RELATED TO  
CONFIRMATION OF THE DEBTORS' JOINT PLAN OF LIQUIDATION TO  
WELLSPRING CAPITAL MANAGEMENT LLC**

**DEFINITIONS**

1. "Bankruptcy Court" or the "Court" means the United States Bankruptcy Court for the District of Delaware.
2. "Chapter 11 Cases" means the chapter 11 cases filed by the Debtors in the Bankruptcy Court on the Petition Date, jointly administered under Case No. 19-11299.
3. "Communication" means any writing or any oral conversation of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or messages, personal conversations, telephone conversations, letters, meetings, memoranda, telegraphic and telex communications or transmittals of Documents, and all Documents concerning such writing or such oral conversation.
4. "Concerning" means consisting of, reflecting, referring to, relating to, regarding, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry's Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors' corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

with (whether to support or to rebut) the subject matter designated in any paragraph of these requests. A request for documents “concerning” a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

5. The “Complaint” means that certain complaint filed by Prospect on May 23, 2019 in the Court of Common Pleas, Lexington County, Eleventh Judicial Circuit for the State of South Carolina, captioned *Prospect Capital Corp. v. Wellspring Capital Management LLC, et al.*, case number 2019CP3202045.

6. “Debtors” means the above-captioned debtors and debtors-in-possession, including their predecessors or successors, assignees, prior or current parents, partners, subsidiaries, affiliates or controlled companies, and each of their prior or current Officers, Directors, employees, agents, advisors, and attorneys.

7. “Directors” means each present and former director of the Debtors.

8. “Document(s)” means, without limitation, the original and all copies, prior drafts, and translations of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation all Electronically Stored Information, correspondence, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), telegrams, telexes, messages (including, but not limited to, reports of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, bulletins, instructions, papers, files, minutes, other communications (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, memoranda or agreements, assignments, licenses, ledgers, books of account, orders, invoices, statements, bills, checks,

vouchers, notebooks, receipts, acknowledgments, microfilm, photographs, motion pictures, video tapes, photographic negatives, phonograph records, tape recordings, wire recordings, voice mail recordings or messages, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term “Document(s)” is intended to be at least as broad in meaning and scope as the usage of this term in or pursuant to the Federal Rules of Civil Procedure.

9. “Electronically Stored Information” shall include, without limitation, the following: information that is generated, received, processed, recorded, or accessed by computers and other electronic devices, including but not limited to—

- a. e-mail;
- b. Internal or external web sites;
- c. Output resulting from the use of any software program; and
- d. All information stored on cache memories, magnetic disks (such as computer hard drives or floppy drives), optical disks (such as DVDs or CDs), magnetic tapes, microfiche, or on any other media for digital data storage or transmittal (e.g., a smartphone such as an iPhone®, a tablet such as an iPad®, or a personal digital assistant such as a Blackberry®).

10. “Identify” means to state, to the extent known (or, if not known, to so state), the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

11. “Insider” and/or “Insiders” is defined pursuant to 11 U.S.C. § 101(31). For the sake of clarity, the term “Insider” and/or “Insiders” includes the following: (a) Wellspring and (b) all entities and/or individuals who hold or have held an interest of any kind, direct or indirect,

including but not limited to ownership interests and management interests, but excluding passive equity stakes held in retirement accounts or mutual funds, in the Debtors.

12. “Officers” means each present and former officer of the Debtors.

13. “Petition Date” means June 10, 2019.

14. “Plan” means the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on August 22, 2019 (Doc. 308), and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all drafts, interim versions, portions, and excerpts of the same, and Communications about any drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

15. “Prospect” means Prospect Capital Corp.

16. “Second Lien Loan” means the Second Lien Loan and Security Agreement entered into on September 28, 2012 by and among Ellet Brothers, LLC, Evans Sports, Inc., Jerry’s Sports, Inc., Outdoor Sports Headquarters, Inc., Simmons Guns Specialties, Inc., and Bonitz Brothers, Inc., collectively as the borrowers, and Prospect Capital Corporation, Summit Partners Credit Fund, L.P., Summit Partners Credit Fund A-1, L.P., Summit Investors I, LLC, Summit Investors I (UK), L.P., and Summit Partners Credit Offshore Intermediate Fund, L.P, collectively as the lenders (the “Second Lien Lenders”).

17. “Wellspring” means Wellspring Capital Management LLC (“Wellspring Capital”), Wellspring Capital Partners IV, L.P. (“Wellspring Capital IV”), WCM GenPar IV, L.P. (“WCM IV LP”) and WCM GenPar IV GP, LLC (“WCM IV GP”), along with each of their predecessors and successors, assignees, prior and current parents, partners, subsidiaries, affiliates or controlled

companies, and each of their prior or current Officers, Directors, employees, agents, advisors, and attorneys.

18. You means Wellspring Capital, the recipient of these requests.

### **RULES OF CONSTRUCTION**

1. The following rules of construction apply to these Requests: (1) the terms “all” and “each” shall be construed as encompassing the ordinary definitions of both “all” and “each,” conjunctively; (2) the connectives, “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all responses that might otherwise be construed to be outside of their scope; and (3) the use of the singular form of any word shall include the plural and vice versa.

2. Capitalized terms not defined herein shall have the meaning ascribed to them in the Complaint, as applicable. All other words, terms, and phrases not defined herein are to be given their normal and customary meaning in the context in which they are used.

### **INSTRUCTIONS**

1. Unless otherwise indicated, the time period applicable to these requests is from January 1, 2018 through the present, and includes any documents created on an earlier date, but in use, modified, accessed, opened, uploaded or downloaded during the relevant time period.

2. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required to promptly produce any document requested herein that it locates or obtains after responding to these Requests, up to the date on which these Chapter 11 Cases are closed by an order of the Court.

3. Where an objection is made to any document request, the objection shall state with specificity all grounds for objection.

4. Where a claim of privilege is asserted in objecting to the production of any document and a document called for by this Request is withheld on the basis of such assertion, the objecting party shall identify the extent and nature of the privilege (including work product) that is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked. In addition, the objecting party shall provide the following information with respect to any document so withheld: (i) the type of document, *e.g.*, letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

5. In the event that a requested document has been lost, destroyed, discarded, and/or otherwise disposed of; the parties will identify the document by identifying: (i) its author or preparer; (ii) all persons to whom distributed or shown; (iii) date; (iv) subject matter; (v) attachments or appendices; (vi) date, manner, and reason for destruction or other disposition; (vii) person authorizing destruction or other disposition; (viii) the document request or requests to which the document is responsive.

6. Produce all responsive documents as they are kept in the usual course of business, or organize and label them to correspond with the Request to which they are responsive.

**DOCUMENT REQUESTS TO WELLSPRING CAPITAL MANAGEMENT LLC**

1. All Documents and Communications concerning the Debtors' retention of McDermott Will & Emery LLP as counsel in these Chapter 11 Cases.
2. Documents sufficient to identify any conflict waivers executed by and between Wellspring, the Debtors and/or McDermott Will & Emery LLP.
3. All Documents and Communications from December 1, 2016 to the present with the Debtors, Prospect or any other entity or person concerning negotiations over the Sixth Amendment to the Second Lien Loan, including but not limited to Wellspring's agreement to not seek cash payment of any amounts owed by the Debtors under the Expense Reimbursement Agreement (as defined in the Second Lien Loan) until the Second Lien Loan is indefeasibly paid in full.
4. All Documents and Communications with the Debtors, Prospect, or any other entity or person concerning negotiations over that certain Summary of Proposed Terms and Conditions for Restructuring of the Second Lien Credit Facility, dated December 28, 2018.
5. All Documents and Communications concerning Wellspring's assertion of its status as an unsecured creditor of the Debtors.
6. All Documents and Communications with the Debtors concerning the Complaint and the claims asserted against Wellspring therein.
7. All Documents and Communications with the Debtors regarding motions or pleadings to be filed in the Chapter 11 Cases relative to the Complaint including, but not limited to, relief from the stay and actions for declaratory relief.
8. All Documents and Communications with the Debtors or Prospect concerning negotiations involving a release of claims held by the Debtors and Prospect against Wellspring.
9. All Documents and Communications with the Debtors regarding the provisions of the Plan, including any releases of claims contained therein.
10. All Documents, including drafts, that Wellspring intends to utilize as exhibits or otherwise rely on at the confirmation hearing.
11. A list identifying each person Wellspring intends to call as a witness or otherwise rely on at the confirmation hearing, setting forth their name, address, phone number, and business affiliation.
12. A list identifying each person Wellspring expects to call as an expert witness or otherwise rely on at the confirmation hearing, setting forth their name, address, phone number,



business affiliation and for each such witness set forth his or her academic background, any special qualifications, and a summary of his or her experience in his or her area of expertise.

13. A copy of the entire report of any person who may testify as an expert witness or who Wellspring will otherwise rely on at the confirmation hearing, which shall contain a complete statement of that person's opinions and the basis therefor; the facts and data considered in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; and whether compensation has been or is to be paid for the report and testimony and, if so, the terms of the compensation.

14. All documents relied upon by any proposed expert witness who may testify or who Wellspring may rely on at the confirmation hearing.

Dated: September 9, 2019

**LOWENSTEIN SANDLER LLP**

/s/ Michael A. Kaplan

Jeffrey Cohen, Esq. (admitted *pro hac vice*)

Eric Chafetz, Esq. (admitted *pro hac vice*)

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Creditors*

# **EXHIBIT I**

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

In re:

SPORTCO HOLDINGS, INC., *et al.*

Debtors<sup>1</sup>.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' SUPPLEMENTAL  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS RELATED TO  
CONFIRMATION OF THE DEBTORS' JOINT PLAN OF LIQUIDATION TO  
WELLSPRING CAPITAL MANAGEMENT LLC**

**DEFINITIONS**

1. "Amended Plan" means the Debtor' First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on September 10, 2019 (Doc. No. 367) and any other potential, proposed, or filed plan of liquidation or reorganization preceding or subsequent to the Debtors' First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation, including all drafts, interim versions, portions, and excerpts of the same, and Communications about any drafts of any potential, contemplated, or filed plan of liquidation or reorganization.

2. "Bankruptcy Court" or the "Court" means the United States Bankruptcy Court for the District of Delaware.

3. "Chapter 11 Cases" means the chapter 11 cases filed by the Debtors in the Bankruptcy Court on the Petition Date, jointly administered under Case No. 19-11299.

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification numbers, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry's Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors' corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

4. “Communication” means any writing or any oral conversation of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or messages, personal conversations, telephone conversations, letters, meetings, memoranda, telegraphic and telex communications or transmittals of Documents, and all Documents concerning such writing or such oral conversation.

5. “Concerning” means consisting of, reflecting, referring to, relating to, regarding, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or to rebut) the subject matter designated in any paragraph of these requests. A request for documents “concerning” a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

6. “Debtors” means the above-captioned debtors and debtors-in-possession, including their predecessors or successors, assignees, prior or current parents, partners, subsidiaries, affiliates or controlled companies, and each of their prior or current Officers, Directors, employees, agents, advisors, and attorneys.

7. “Directors” means each present and former director of the Debtors.

8. “Document(s)” means, without limitation, the original and all copies, prior drafts, and translations of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation all Electronically Stored Information, correspondence, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), telegrams, telexes, messages (including, but not limited to, reports of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars,

bulletins, instructions, papers, files, minutes, other communications (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, memoranda or agreements, assignments, licenses, ledgers, books of account, orders, invoices, statements, bills, checks, vouchers, notebooks, receipts, acknowledgments, microfilm, photographs, motion pictures, video tapes, photographic negatives, phonograph records, tape recordings, wire recordings, voice mail recordings or messages, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term “Document(s)” is intended to be at least as broad in meaning and scope as the usage of this term in or pursuant to the Federal Rules of Civil Procedure.

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- a. e-mail;
- b. Internal or external web sites;
- c. Output resulting from the use of any software program; and
- d. All information stored on cache memories, magnetic disks (such as computer hard drives or floppy drives), optical disks (such as DVDs or CDs), magnetic tapes, microfiche, or on any other media for digital data storage or transmittal (e.g., a smartphone such as an iPhone®, a tablet such as an iPad®, or a personal digital assistant such as a Blackberry®).

10. “Identify” means to state, to the extent known (or, if not known, to so state), the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

11. “Insider” and/or “Insiders” is defined pursuant to 11 U.S.C. § 101(31). For the sake of clarity, the term “Insider” and/or “Insiders” includes the following: (a) Wellspring and (b) all entities and/or individuals who hold or have held an interest of any kind, direct or indirect, including but not limited to ownership interests and management interests, but excluding passive equity stakes held in retirement accounts or mutual funds, in the Debtors.

12. “Officers” means each present and former officer of the Debtors.

13. “Petition Date” means June 10, 2019.

14. “Prospect” means Prospect Capital Corp.

15. “Wellspring” means Wellspring Capital Management LLC (“Wellspring Capital”), Wellspring Capital Partners IV, L.P. (“Wellspring Capital IV”), WCM GenPar IV, L.P. (“WCM IV LP”) and WCM GenPar IV GP, LLC (“WCM IV GP”), along with each of their predecessors and successors, assignees, prior and current parents, partners, subsidiaries, affiliates or controlled companies, and each of their prior or current Officers, Directors, employees, agents, advisors, and attorneys.

16. You means Wellspring Capital, the recipient of these requests.

#### **RULES OF CONSTRUCTION**

1. The following rules of construction apply to these Requests: (1) the terms “all” and “each” shall be construed as encompassing the ordinary definitions of both “all” and “each,” conjunctively; (2) the connectives, “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all responses that might otherwise be construed to be outside of their scope; and (3) the use of the singular form of any word shall include the plural and vice versa.

2. Capitalized terms not defined herein shall have the meaning ascribed to them in the Complaint, as applicable. All other words, terms, and phrases not defined herein are to be given their normal and customary meaning in the context in which they are used.

### **INSTRUCTIONS**

1. Unless otherwise indicated, the time period applicable to these requests is from the Petition Date through the present, and includes any documents created on an earlier date, but in use, modified, accessed, opened, uploaded or downloaded during the relevant time period.

2. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required to promptly produce any document requested herein that it locates or obtains after responding to these Requests, up to the date on which these Chapter 11 Cases are closed by an order of the Court.

3. Where an objection is made to any document request, the objection shall state with specificity all grounds for objection.

4. Where a claim of privilege is asserted in objecting to the production of any document and a document called for by this Request is withheld on the basis of such assertion, the objecting party shall identify the extent and nature of the privilege (including work product) that is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked. In addition, the objecting party shall provide the following information with respect to any document so withheld: (i) the type of document, *e.g.*, letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressees of the document, and any other recipients

shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

5. In the event that a requested document has been lost, destroyed, discarded, and/or otherwise disposed of; the parties will identify the document by identifying: (i) its author or preparer; (ii) all persons to whom distributed or shown; (iii) date; (iv) subject matter; (v) attachments or appendices; (vi) date, manner, and reason for destruction or other disposition; (vii) person authorizing destruction or other disposition; (viii) the document request or requests to which the document is responsive.

6. Produce all responsive documents as they are kept in the usual course of business, or organize and label them to correspond with the Request to which they are responsive.



**DOCUMENT REQUESTS TO WELLSPRING CAPITAL MANAGEMENT LLC**

1. All Documents and Communications by, with, or involving, in any way, Justin Vorwerk relating to the filing of the Amended Plan.

2. All documents and Communications by, with, or involving, in any way, Alexander Carles relating to the filing of the Amended Plan.

Dated: September 12, 2019

**LOWENSTEIN SANDLER LLP**

/s/ Michael A. Kaplan

Jeffrey Cohen, Esq. (admitted *pro hac vice*)

Eric Chafetz, Esq. (admitted *pro hac vice*)

Michael A. Kaplan, Esq. (admitted *pro hac vice*)

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