N THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
CHAPARRAL ENERGY, INC., *et al.*,[1]	)	Case No. 20-11947 (MFW)
Debtors.	)	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF (I) APPROVAL OF THE DISCLOSURE STATEMENT, AND (II) CONFIRMATION OF THE JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION

[1] The Debtors in these cases, along with the last four digits (or five digits, in cases in which multiple Debtors have the same last four digits) of each Debtor's federal tax identification number, are: CEI Acquisition, L.L.C. (1817); CEI Pipeline, L.L.C. (6877); Chaparral Biofuels, L.L.C. (1066); Chaparral CO2, L.L.C. (1656); Chaparral Energy, Inc. (90941); Chaparral Energy, L.L.C. (20941); Chaparral Exploration, L.L.C. (1968); Chaparral Real Estate, L.L.C. (1655); Chaparral Resources, L.L.C. (1710); Charles Energy, L.L.C. (3750); Chestnut Energy, L.L.C. (9730); Green Country Supply, Inc. (2723); Roadrunner Drilling, L.L.C. (2399); and Trabajo Energy, L.L.C. (9753). The Debtors' address is 701 Cedar Lake Boulevard, Oklahoma City, OK 73114.

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Chaparral Energy, Inc. and its subsidiaries that are debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**"), hereby file this memorandum of law in support of confirmation of the *Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization*, filed on August 16, 2020 [Docket No. 16] (the "**Initial Plan**") (as amended by the *Debtors' Amended Joint Prepackaged Chapter 11 Plan of Reorganization* the "**Amended Plan**" and, collectively with the Initial Plan and as may be further amended, modified, or supplemented from time to time in accordance with the terms thereof, the "**Plan**"), pursuant to section 1129 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**") and approval of the *Disclosure Statement for the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization*, dated August 15, 2020 [Docket No. 17] (as may be further amended, modified, or supplemented from time to time in accordance with the terms thereof, the "**Disclosure Statement**"), pursuant to sections 1125 and 1126 of the Bankruptcy Code and rules 3017 and 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").[2] This memorandum of law is supported by the *Declaration of Charles Duginski, Chief Executive Officer and President of Chaparral Energy, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 25] (the "**First Day Declaration**") and the following declarations filed substantially contemporaneously herewith:

(a) *Declaration of Charles Duginski, Chief Executive Officer and President of Chaparral Energy, Inc., in Support of (i) Approval of the Disclosure Statement and (ii) Confirmation of the Joint Prepackaged Chapter 11 Plan of Reorganization* (the "**Duginski Declaration**");

(b) *Declaration of Paul Legoudes in Support of Confirmation of Joint Prepackaged Chapter 11 Plan of Reorganization of Chaparral Energy, Inc. and its Debtor Affiliates* (the "**Legoudes Declaration**");

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or the Disclosure Statement, as applicable.

(c) *Declaration of David Gehring in Support of Confirmation of Joint Prepackaged Chapter 11 Plan of Reorganization of Chaparral Energy, Inc. and its Debtor Affiliates* (the "**Gehring Declaration**");

(d) *Declaration of James Lee of Kurtzman Carson Consultants, LLC Regarding the Mailing, Voting, and Tabulation of Ballots Accepting and Rejecting the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* (the "**Lee Declaration**"); and

(e) *Certificate of Service of Robert Miller re: Notice of Filing Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* [Docket No. 192] (the "**Plan Supplement Certificate**"), *Certificate of Service of Robert Miller re: Notice of Filing Amended Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* [Docket No. 201] (the "**Amended Plan Supplement Certificate**"), and *Certificate of Service of Robert Miller re: Notice of Filing Second Amended Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* [Docket No. 217] (the "**Second Amended Plan Supplement Certificate**", and, together with the Plan Supplement Certificate and the Amended Plan Supplement Certificate, the "**Plan Supplement Certificates**").

In further support of approval of the Disclosure Statement and confirmation of the Plan, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. In the months leading up to and throughout the Chapter 11 Cases, the Debtors have worked tirelessly to build a consensus among their major economic stakeholders. The Plan is the product of months of good-faith, arm's-length negotiations among the Debtors, their secured lenders, senior noteholders, and other key constituents, who all worked towards a consensual, value-maximizing restructuring. These hard-fought negotiations occurred almost entirely out-of-court and resulted in the execution of a restructuring support agreement (the "**Restructuring Support Agreement**") on August 15, 2020, which contemplated the commencement of the prepackaged Chapter 11 Cases and the consummation of the transactions described in the Plan and the *Plan Supplement to the Chapter 11 Joint Prepackaged Plan of*

Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors [Docket No. 143] (the "**Plan Supplement**"), the *Amended Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* [Docket No. 183] (the "**Amended Plan Supplement**"), the *Second Amended Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* [Docket No. 210] (the "**Second Amended Plan Supplement**"), and the *Third Amended Plan Supplement to the Chapter 11 Joint Prepackaged Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors* (the "**Third Amended Plan Supplement**", and, together with the Plan Supplement, the Amended Plan Supplement, and the Second Amended Plan Supplement, the "**Plan Supplements**"). The Restructuring Support Agreement was executed by creditors holding approximately 78% of the RBL Claims and approximately 78% of the Senior Notes Claims. On the same day, the Debtors launched the solicitation of votes on the Plan.

2. Support for the Plan is overwhelming and unequivocal: the Plan has been unanimously accepted by both voting classes and the Debtors have resolved all comments and objections to the Plan or Disclosure Statement. The Plan provides for a balance sheet restructuring that reduces the Debtors' net debt burden by approximately $300 million, ensures that the Debtors have enough capital to fund their exit and post-emergence liquidity needs, and sends a strong message to the Debtors' employees, vendors, and other business partners and counterparties that they are well positioned for future success. The Plan provides value to classes of claims and interests that would otherwise have been unavailable, reinstating all General Unsecured Claims and providing a distribution to holders of Chaparral Parent Equity Interests comprised of cash and cashless exercise warrants (or, for certain holders, additional cash in lieu of warrants). To limit any disruption to their operations, the Debtors pursued these

prepackaged cases with a goal to emerge expeditiously from chapter 11. The Debtors now stand poised to emerge from chapter 11 on schedule, with a fully consensual plan, and without impairing any General Unsecured Claims.

3. Following the solicitation of votes on the Initial Plan, the Debtors received informal comments and requests with respect to the Initial Plan and Confirmation Order from a number of parties in interest, including the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") and the U.S. Securities and Exchange Commission ("**SEC**"). The Debtors engaged in good faith negotiations with these parties and believe they have successfully resolved all such comments and requests through modifications or additions of new language to the Plan, as memorialized in the Amended Plan filed substantially contemporaneously herewith, and to the Confirmation Order.

4. The Amended Plan =includes, among other things, changes to the Third-Party Releases and to the eligibility requirements for holders of Chaparral Parent Equity Interests to receive a distribution under the Plan, which the Debtors agreed to make as a result of comments and requests received by the U.S. Trustee and the SEC. Specifically, the Debtors agreed to, among other things:

(a) Remove all Holders of Interests in Class 8 (Chaparral Parent Equity Interests) from the definition of "Released Parties" set forth in Article I of the Plan.

(b) Remove all Holders of Interests in Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Equity Interests) from the definition of "Releasing Parties" set forth in Article I of the Plan.

(c) Remove the conditions that holders of Chaparral Parent Equity Interests (i) not opt out of the Third-Party Releases and (ii) not object to the plan in order to be eligible to receive a distribution under the Plan.

5. In addition, the Debtors received three formal objections related to the assumption of certain executory contracts under the Plan. The Debtors believe that they have resolved each of the three formal objections.

6. Accordingly, because the Plan and Disclosure Statement satisfy the applicable provisions of the Bankruptcy Code, and because the Plan is in the best interests of their estates and economic stakeholders, the Debtors respectfully request that the Bankruptcy Court confirm the Plan, approve the Disclosure Statement, and enter the Confirmation Order.

NO OUTSTANDING CONFIRMATION OBJECTIONS

7. As described above, the Debtors believe they have resolved all formal objections and all informal comments to the Plan. The Debtors worked constructively with the objecting parties to develop mutually acceptable language in the Confirmation Order, as detailed in Exhibit A hereto. With the addition of such language, the Debtors believe that the relief sought herein is fully consensual.

BACKGROUND[3]

I. NEGOTIATIONS AND RESTRUCTURING TRANSACTIONS

8. As discussed above, on August 15, 2020, the Debtors, along with creditors holding approximately 78% of the RBL Claims and approximately 78% of the Senior Notes Claims, agreed to the terms of a comprehensive deleveraging transaction embodied in the Restructuring Support Agreement. The groundwork for this agreement was laid over the course of several months of discussions among the Debtors and their advisors, the advisors to the RBL Agent and the RBL Lenders, and the advisors to and members of an ad hoc group of holders of

[3] A detailed description of the Debtors and their businesses, and the facts and circumstances surrounding the Debtors' chapter 11 cases, are set forth in greater detail in the First Day Declaration. The Debtors are operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No committees have been appointed or designated pursuant to section 1102 of the Bankruptcy Code.

Senior Notes (the "**Ad Hoc Group**"). From April through August 2020, the Debtors and their advisors actively engaged in good-faith negotiations with the RBL Lenders, the Ad Hoc Group, and their respective advisors with the aim of driving a consensual, comprehensive restructuring transaction that would materially decrease the Debtors' leverage and poise the Debtors for success going forward.

9. In the course of these negotiations, the Debtors, the RBL Lenders, and the Ad Hoc Group exchanged and considered, with the assistance of their respective advisors, numerous restructuring proposals. The negotiations culminated on August 15, 2020 with the execution of the Restructuring Support Agreement by certain of the RBL Lenders, the members of the Ad Hoc Group, and the Debtors, which agreement requires each party to support the consummation of the Restructuring Transactions through a prepackaged bankruptcy case. Importantly, the Restructuring Support Agreement includes an agreement on the consensual use of cash collateral, a fully committed exit facility, and a rights offering for $35 million of convertible notes (the "**Rights Offering**") that is fully backstopped by certain holders of the Senior Notes who are members of the Ad Hoc Group (the "**Backstop Parties**"), each of which is essential to the Debtors' proposed restructuring.

10. The Debtors now seek to consummate these Restructuring Transactions that will position their businesses for success and profitability in the future. The Plan facilitates the Debtors' reorganization on terms that provide a recovery for all stakeholders. More specifically, the Plan provides, among other things, that:

(a) The Debtors will emerge from chapter 11 with a $300 million exit revolving credit facility (the "**Exit Facility**"). The Exit Facility will have an initial borrowing base equal to the lesser of (i) $175 million or (ii) the Reorganized Debtors' proved developed producing reserves on a PV-15 basis, plus hedges, on a six-month roll-forward basis. There will be a

minimum of $20 million of availability under the Exit Facility at emergence.

(b) RBL Lenders will receive, on account of their RBL Claims, (i) their pro rata share of (a) cash in the amount of the difference between their outstanding loans as of the effective date of the Plan and the initial borrowing base under the Exit Facility and (b) an additional amount of cash to be determined based on excess cash as of the Effective Date and (ii) new first-lien revolving loans.[4]

(c) The Debtors will fully equitize their approximately $300 million of outstanding prepetition Senior Notes Claims, with each holder of a Senior Notes Claim receiving, upon the Debtors' emergence from bankruptcy, its pro rata share of (i) 100% of the total issued and outstanding shares of new common stock of the Reorganized Debtors (the "**New Common Stock**"), subject to dilution by any New Common Stock issued upon conversion of the New Convertible Notes (as defined below), the issuance of shares of New Common Stock pursuant to any management incentive plan that may be approved by the board of directors of Reorganized Chaparral Parent, New Common Stock issued in connection with the "Put Option Premium" paid to the Backstop Parties, and any New Common Stock issued upon exercise of the warrants described below, and (ii) rights to participate in the Rights Offering.

(d) The Reorganized Debtors will raise $35 million through the Rights Offering of new second lien convertible notes (the "**New Convertible Notes**"), which will be issued at par. The New Convertible Notes will be convertible into shares of New Common Stock equal to 50% of the New Common Stock outstanding upon the Reorganized Debtors' emergence from bankruptcy (subject to certain anti-dilution protections).

(e) All other Claims, including General Unsecured Claims, will receive treatment that renders them unimpaired under the Bankruptcy Code.

(f) All of the Debtors' existing common stock and other equity interests will be cancelled, released, and extinguished, and will be of no further force or effect. However, holders of the Debtors' existing common stock and certain other equity interests (including interests related to claims pending in the Company's prior bankruptcy cases) will receive their pro rata share of $1.2 million of cash and the package of cashless exercise warrants (or in the case of certain holders of equity interests, cash in an amount equal to $0.01508 per share in lieu of such warrants).

[4] The Plan provided the RBL Lenders who did not wish to provide revolving commitments with the option of receiving a distribution of cash and first-lien, second-out term loans instead of cash and first-lien, first-out revolving loans. However, because all RBL Lenders elected to provide revolving credit commitments, the Exit Facility will not include a second-out term loan component.

11. The transactions set forth in the Plan are supported by all of the Debtors' major stakeholders, treat all General Unsecured Claims as Unimpaired, provide value to the holders of Chaparral Parent Equity Interests, set forth a clear pathway to emergence, and will leave the Reorganized Debtors deleveraged and positioned for long-term viability.

II. THE SOLICITATION

12. The Debtors established August 11, 2020 as the record date (the "**Voting Record Date**") for determining which Holders of Class 3 RBL Claims and Class 4 Senior Notes Claims (together, the "**Voting Classes**") were entitled to vote on the Plan. Lee Declaration ¶ 4. Prior to the Petition Date, on August 15, 2020, the Debtors caused Kurtzman Carson Consultants LLC (the "**Solicitation Agent**") to commence service of the solicitation package (the "**Solicitation Package**") containing the Disclosure Statement, the Plan, and the applicable ballots with voting instructions (the "**Ballots**") to holders of Class 3 RBL Claims and the banks and brokerage firms (the "**Nominees**") that held Class 4 Senior Notes Claims on behalf of underlying beneficial holders entitled to vote to accept or reject the Plan (the "**Solicitation**"). Lee Declaration ¶¶ 4-5. The Ballots included instructions that only holders of Class 3 RBL Claims and Class 4 Senior Notes Claims that are also "accredited investors" within the meaning of Rule 501(a) of Regulation D of the Securities Act (as defined below) (collectively, the "**Eligible Holders**") were eligible to submit their Ballots prior to the Petition Date and required the holders submitting votes prior to the Petition Date represent that they were Eligible Holders. All holders of Class 3 RBL Claims and Class 4 Senior Notes Claims that are not Eligible Holders were also instructed to vote after the Bankruptcy Court approved the Solicitation Package.

13. On August 15, 2020, the Solicitation Agent commenced service of the Solicitation Packages via electronic mail upon (i) the RBL Lenders in Class 3 and (ii) Nominees for

subsequent distribution to beneficial holders of Senior Notes Claims in Class 4 as of the Voting Record Date. *See* Lee Declaration ¶ 5.

14. On August 17, 2020, the Solicitation Agent caused to be served via overnight mail the Solicitation Packages (including the beneficial ballots for Class 4 Senior Notes Claims) to the Nominees appearing on the security position reports received from DTC, or the Nominees' agents, for subsequent forwarding to the underlying beneficial owners of Senior Notes Claims. *See* Lee Declaration ¶ 6. The Solicitation Agent also provided the master ballots to each Nominee, or its agent, for their use in reporting the voting of the underlying beneficial owners. *See* Lee Declaration ¶¶ 5-6.

15. On August 16, 2020, the Debtors filed the Initial Plan, the Disclosure Statement, and the Combined Hearing Motion,[5] pursuant to which the Debtors sought a combined hearing on approval of the Disclosure Statement and confirmation of the Plan. The Bankruptcy Court entered an order approving the Combined Hearing Motion on August 18, 2020 [Docket No. 87] (the "**Combined Hearing Order**").

16. The Combined Hearing Order, among other things, (i) scheduled the hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan for October 1, 2020 at 10:30 a.m. (Prevailing Eastern Time), (ii) established September 21, 2020 at 4:00 p.m. (Prevailing Eastern Time) as the deadline for parties to object to the adequacy of the Disclosure Statement or confirmation of the Plan (the "**Objection Deadline**"), (iii) approved the

[5] *Motion of the Debtors for Entry of an Order (i) Scheduling a Combined Hearing to Consider (a) Approval of Disclosure Statement and (b) Confirmation of Plan, (ii) Establishing a Deadline to Object to Disclosure Statement and Plan, (iii) Approving the Form and Manner of Notice of the Combined Hearing, Objection Deadline, and Notice of Commencement, (iv) Approving Solicitation Procedures and Forms of Ballots, (v) Approving Opt Out Procedures and Opt Out Forms, (vi) Approving the Rights Offering Procedures and Related Materials, (vii) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases, and (viii) Conditionally Waiving Requirement to (a) File Statement of Financial Affairs and Schedules of Assets and Liabilities and (b) Convene Section 341 Meeting of Creditors* [Docket No. 18] (the "**Combined Hearing Motion**").

Solicitation, balloting, tabulation, and related activities undertaken, or to be undertaken, by the Debtors in connection with the Plan (collectively, the "**Solicitation Procedures**") and approved the forms of Ballots, (iv) approved the Rights Offering Procedures, and (v) approved the form of notice of the Confirmation Hearing and commencement of these Chapter 11 Cases (the "**Combined Notice**"). Combined Hearing Order. The Combined Hearing Order additionally authorized the Debtors to continue the prepetition Solicitation in respect of the Plan after the Petition Date. *See Id.* ¶ 9.

17. Between August 19, 2020, and August 21, 2020, the Solicitation Agent caused to be served the Combined Notice on the Core/2002 List maintained by the Solicitation Agent, the creditor matrix, and the Nominees appearing on the security position reports received from DTC (or the Nominees' agents) for subsequent forwarding to the underlying beneficial owners of Senior Notes Claims. *See* Lee Declaration ¶ 8. Additionally, the Solicitation Agent caused to be served the Combined Notice and the Notice of (A) Non-Voting Status with Respect to the Debtors' Plan and (B) Election to Opt Out of Voluntary Release of Claims and Interests by Holders of Chaparral Parent Equity Interests (the "**Equity Holder Opt Out Form**") on the list of registered equity holders (provided by the Debtors' stock transfer agent as of the Voting Record Date) and Nominees appearing on the security position reports received from DTC, or the Nominees' agents, for subsequent forwarding to the underlying beneficial owners of Chaparral Parent Equity Interests. *See Id.* A certificate of service evidencing service of the above was filed with the Court on August 28, 2020 [Docket No. 126]. The Equity Holder Opt Out Form contained the full text of the release, exculpation, and injunction provisions set forth in Article VIII of the Plan and advised the Holders of Chaparral Parent Equity Interests that they will be deemed to have consented to the third-party release provision in Article VIII of the Plan unless

they timely and properly chose to opt out of the releases. The Equity Holder Opt Out Form also included instructions for where Holders could obtain copies of the Plan, Disclosure Statement, and related exhibits such as the valuation analysis, financial projections, and plan supplement documents, and information generally about the Plan and Combined Hearing.[6]

18. As discussed below, each of the Voting Classes voted to accept the Plan. *See* Lee Declaration, Ex. A. Finally, the Rights Offering was launched on September 8, 2020, in accordance with the Rights Offering Procedures.

19. The Disclosure Statement and Ballots directed the Voting Parties to cast a vote to accept or reject the Plan by following the instructions on the Ballots. These instructions provided that the Voting Parties could return their properly executed and completed Ballots by (i) first class mail, (ii) overnight delivery, (iii) hand delivery, or (iv) email, so as to be received by the Solicitation Agent no later than 5:00 p.m. (Prevailing Eastern Time) on September 15, 2020 (the "**Voting Deadline**"). Each Ballot contained detailed instructions on how to complete it and how to make any applicable elections contained therein.

20. On August 24, 2020, the Combined Notice was published in *The Wall Street Journal* and *The Oklahoman*. *See* Lee Declaration ¶ 9. The affidavit evidencing the publication of the Combined Notice in the respective publications listed was filed with the Court on August 28, 2020 [Docket No. 125].

[6] As discussed above, the Plan as amended includes, among other things, changes to the Third Party Releases and to the eligibility requirements for holders of Chaparral Parent Equity Interests to receive a distribution under the Plan, which the Debtors agreed to make as a result of comments and requests received by the U.S. Trustee and the SEC. Specifically, the Debtors agreed to, among other things: (a) remove all holders of Interests in Class 8 (Chaparral Parent Equity Interests) from the definition of "Released Parties" set forth in Article I of the Plan, (b) remove all holders of Interests in Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Equity Interests) from the definition of "Releasing Parties" set forth in Article I of the Plan, and (c) remove the conditions that holders of Chaparral Parent Equity Interests (i) not opt out of the Third Party Releases and (ii) not object to the plan in order to be eligible to receive a distribution under the Plan.

21. The Solicitation Agent posted links to the electronic versions of the Combined Notice, Scheduling Order, Disclosure Statement and Prepackaged Plan on the public access website at www.kccllc.net/chaparral2020. *See* Lee Declaration ¶ 10.

22. The Debtors filed the Plan Supplement on September 9, 2020, which included forms of the (a) New Corporate Governance Documents, (b) New Stockholders Agreement, (c) Restructuring Steps Memorandum, (d) Rejected Executory Contract and Unexpired Lease List, (e) identity of the members of the Reorganized Chaparral Parent Board and the officers of Reorganized Chaparral Parent, (f) Exit Facility Credit Agreement, (g) New Convertible Notes Indenture, (h) New Warrants Agreement and Certificate, and (i) Backstop Commitment Agreement. The Debtors filed the Amended Plan Supplement on September 15, 2020, which included revised versions of the New Convertible Notes Term Sheet and Governance Term Sheet. The Debtors filed the Second Amended Plan Supplement on September 23, 2020, which included revised versions of the New Corporate Governance Documents and New Convertible Notes Indenture. The Solicitation Agent served the Plan Supplements on the Core/2002 List maintained by the Solicitation Agent. *See* Plan Supplement Certificates. The Debtors will file and cause to be served the Third Amended Plan Supplement prior to the Confirmation Hearing, which will include additional disclosure regarding the identity of the members of the Reorganized Chaparral Parent Board and the officers of Reorganized Chaparral Parent.

III. VOTING RESULTS FOR PLAN

23. After the Voting Deadline, and following a complete review by the Solicitation Agent of all Ballots received, the Solicitation Agent finalized the tabulation of the Ballots. *See* Lee Declaration, ¶¶ 11-15. Both Voting Classes voted unanimously to accept the Plan. *See Id.*, Ex. A. Below is a chart summarizing the voting results:

Class	Accept		Reject		Result
	Amount (% of Amount Voted)	**Number (% of Number Voted)**	**Amount (% of Amount Voted)**	**Number (% of Number Voted)**	
Class 3 (RBL Claims)	$188,500,000 100%	14 (100%)	$0 (0%)	0 (0%)	Accept
Class 4 (Senior Notes Claims)	$274,232,000 100%	76 (100%)	$0 (0%)	0 (0%)	Accept

ARGUMENT

I. THE SOLICITATION AND SOLICITATION PROCEDURES AND THE DISCLOSURE STATEMENT SHOULD BE APPROVED

24. To determine whether a prepetition solicitation of votes to accept or reject a plan should be approved, the Bankruptcy Court must determine whether the Solicitation complied with sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017(d), 3017(e), 3018(b), and 3018(c).

A. The Solicitation Complied with the Requirements of 1125 and 1126 of the Bankruptcy Code

(i) The Solicitation Satisfies Sections 1125(g) and 1126(b)(1) of the Bankruptcy Code

25. Sections 1125(g) and 1126(b) of the Bankruptcy Code govern the acceptance of a plan of reorganization by a holder of a claim or equity interest prior to the commencement of a chapter 11 case. Section 1125(g) of the Bankruptcy Code provides, in relevant part:

> [A]n acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.

11 U.S.C. § 1125(g). Section 1126(b)(1) of the Bankruptcy Code provides that a holder of a claim or interest that has accepted or rejected a plan prepetition is deemed to have accepted or rejected the plan if:

> (1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or
>
> (2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

11 U.S.C. § 1126(b).

26. The Debtors commenced the Solicitation before the commencement of the Chapter 11 Cases and the Solicitation complied with applicable nonbankruptcy law, thereby satisfying the requirements of sections 1125(g) and 1126(b) of the Bankruptcy Code. Because the Plan includes an issuance of New Common Stock in Reorganized Chaparral Parent to Holders of Senior Notes Claims on account of their Senior Notes Claims, the Debtors' prepetition Solicitation was in part governed by the United States Securities Act of 1933 (as amended, the "**Securities Act**") and the regulatory authority of various states under state securities laws ("**Blue Sky Laws**"). *See, e.g.*, 15 U.S.C. § 77e; *see also id*. § 77b(a)(1), (3). In general, the Securities Act requires an issuer of securities to file a registration statement with the U.S. Securities and Exchange Commission prior to commencing a public offering. 15 U.S.C. § 77e(c). The Debtors, however, were not required to file a registration statement under one or more of the exceptions to the registration requirements of the Securities Act, Blue Sky Laws, and similar statutes, rules, and regulations. Specifically, the Debtors' prepetition Solicitation of creditors was exempt from registration under section 4(a)(2) of the Securities Act and Regulation D (a safe harbor regulation promulgated under that section), which create an exemption from the Securities Act's registration requirements and otherwise applicable state laws for transactions not involving a "public offering." *Id*. § 77r(b)(4)(E) (preempting state law in offerings conducted pursuant to regulations under section 4(a)(2) of the Securities Act).

27. The Debtors took steps to ensure that the only parties entitled to vote on the Plan prior to the Petition Date were "accredited investors" (as such term is defined in Regulation D). *See* 17 C.F.R. § 230.506(b). Each Holder of RBL Claims and Senior Notes Claims that executed the Restructuring Support Agreement represented that it was, and was reasonably believed by the Debtors to be, an accredited investor. In addition, the Ballots clearly stated that only accredited

investors were permitted to vote prior to the Petition Date and required that each Holder submitting a Ballot prior to the Petition Date represent that it was an accredited investor. Moreover, any Holders of RBL Claims and Senior Notes Claims who were not parties to the Restructuring Support Agreement and voted in favor of the Plan prior to the Petition Date would not become committed to acquire the New Common Stock as a result of such prepetition vote because they had the right to change their votes at any time prior to the Voting Deadline. Accordingly, the Debtors were not required to file a registration statement regarding the offer of the New Common Stock of Reorganized Chaparral Parent in connection with the prepetition Solicitation.

28. Debtors in this district have utilized section 4(a)(2) and Regulation D of the Securities Act to exempt their prepetition Solicitation from the registration and disclosure requirements otherwise applicable under nonbankruptcy law. *See, e.g.*, *In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 22, 2020) (approving vote tabulation procedures substantially similar to those utilized here); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020) (same); *In re Anna Holdings, Inc.*, No 19-12551 (CSS) (Bankr. D. Del. Dec. 16, 2019) (same); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 29, 2019) (same); *In re EV Energy Partners, L.P.*, No. 18-10814 (CSS) (Bankr. D. Del. May 17, 2018) (same).

29. The Solicitation, therefore, meets the requirements of applicable nonbankruptcy law and complies with sections 1125(g) and 1126(b)(1) of the Bankruptcy Code.

(ii) The Disclosure Statement Contains Adequate Information Within the Meaning of Sections 1126(b)(2) and 1125(a) of the Bankruptcy Code

30. The Solicitation complies with section 1126(b)(2) of the Bankruptcy Code, which requires that the Debtors demonstrate compliance with section 1125(a) of the Bankruptcy Code.

Section 1126(b)(2) of the Bankruptcy Code requires that a plan proponent provide "adequate information" regarding the proposed plan to holders of impaired claims and interests entitled to vote on the plan. The Bankruptcy Code defines "adequate information" as:

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

11 U.S.C. § 1125(a)(1). Therefore, a disclosure statement must, as a whole, provide information that is reasonably practicable to permit an informed judgment by impaired creditors or equity interest holders entitled to vote on the plan of reorganization. *See, e.g., Krystal-Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321 (3d Cir. 2003) ("Under 11 U.S.C. § 1125(b), a party seeking chapter 11 bankruptcy protection has an affirmative duty to provide creditors with a disclosure statement containing adequate information to enable a creditor to make an informed judgment about the Plan.") (internal quotation marks omitted); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.").

31. The Bankruptcy Court has broad discretion to determine the adequacy of information contained in a disclosure statement. "Adequate information" is a flexible standard, based on the facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much

information is available from outside sources). Courts within the Third Circuit and elsewhere have acknowledged that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g.*, *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *In re River Vill. Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (same); *In re Phx. Petrol. Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same).

32. The Disclosure Statement contains adequate information necessary to enable all parties in interest to make an informed judgment with respect to the Plan as required by section 1125 of the Bankruptcy Code. The Disclosure Statement contains historical information about the Debtors' business and detailed financial information, together with further explanations or summaries of (i) the events leading to the commencement of the Chapter 11 Cases; (ii) the Debtors' restructuring efforts and the Restructuring Transactions; (iii) anticipated events during the Chapter 11 Cases; (iv) the Plan and transactions to be consummated pursuant thereto; (v) financial information, projections and a liquidation analysis; (vi) risk factors affecting the Plan; (vii) means for implementing the Plan; (viii) securities law and federal tax law consequences of confirming the Plan; (ix) voting procedures and requirements; and (x) alternatives to confirmation of the Plan.

33. Accordingly, the Debtors submit that the Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code and should be approved.

(iii) The Solicitation of Classes Presumed to Accept and Classes Deemed to Reject the Plan Is Not Required Under Section 1126(f) of the Bankruptcy Code

34. Section 1126(f) of the Bankruptcy Code provides that each holder of a claim or interest in an unimpaired class is "conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to [any unimpaired] class . . . is not required." 11 U.S.C. § 1126(f). Section 1126(g) of the Bankruptcy Code provides that "a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." 11 U.S.C. § 1126(g).

35. The Plan provides that certain Classes of Claims against or Interests in the Debtors are conclusively presumed to accept or deemed to reject the Plan (collectively, the "**Non-Voting Classes**") pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code. Specifically, the Plan provides that holders of Claims in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 5 (General Unsecured Claims) are Unimpaired and, therefore, conclusively presumed to accept the Plan. The Plan further provides that Holders of Interests in Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Parent Interests) are not entitled to receive or retain any property under the Plan on account of such Interests and, therefore, are deemed to reject the Plan. Accordingly, the Debtor did not solicit votes to accept or reject the Plan from Holders of Claims or Interests in the Non-Voting Classes.[7]

36. In accordance with the Combined Hearing Order, the Debtors provided the Combined Notice, which includes a summary of the Plan and other relevant information, to holders of Claims or Interests in the Non-Voting Classes. The Debtors also made the Disclosure

[7] The Claims and Interests in Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests) are held by the Debtors and presumed to accept or deemed to reject the Plan because they are either Unimpaired or Impaired.

Statement and the Plan available to holders of Claims and Interests in the Non-Voting Classes at no cost on the website of the Debtors' Solicitation Agent and notified holders of Claims and Interests in the Non-Voting Classes that copies of the Plan and the Disclosure Statement could also be obtained by calling or emailing the Solicitation Agent or emailing the Debtors' counsel. The Solicitation Procedures undertaken by the Debtors comply with the Bankruptcy Code and should be approved.

(iv) The Tabulation of Votes Satisfies Section 1126(c) of the Bankruptcy Code

37. The Solicitation Agent used standard tabulation procedures in tabulating the votes received from the Voting Classes, as approved in the Combined Hearing Order. *See* Combined Hearing Order ¶ 17. The Solicitation Agent reviewed all Ballots received by the Voting Deadline in accordance with the procedures described in the Disclosure Statement and the instructions in the Ballots. *See* Lee Declaration ¶ 12. The Debtors respectfully request that the Bankruptcy Court approve the Debtors' tabulation of votes confirming that, with respect to Class 3 and Class 4, the requisite majorities in amount and number of voting Claims voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code.

(v) Solicitation of the Plan Complies with Section 1125(e) of the Bankruptcy Code and Was in Good Faith

38. Section 1125(e) of the Bankruptcy Code provides that "a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan. 11 U.S.C. § 1125(e). As discussed in the First Day Declaration, the Duginski Declaration, and the Combined Hearing Motion, and as demonstrated by the Debtors' compliance with the Combined Hearing Order, the Debtors at all times engaged in arm's-length, good-faith negotiations and

took appropriate actions in connection with the Solicitation in compliance with section 1125 of the Bankruptcy Code. *See* First Day Declaration ¶¶ 40-46; Combined Hearing Motion ¶ 27. Therefore, the Debtors respectfully request that the Bankruptcy Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

B. The Solicitation Complied with the Bankruptcy Rules and the Combined Hearing Order

(i) The Solicitation Procedures and Ballots Comply with Bankruptcy Rules 3017 and 3018

39. Pursuant to Bankruptcy Rule 3017(d), unless a court orders otherwise, a debtor must transmit to all creditors, equity security holders and the U.S. Trustee:

(a) the plan or a court-approved summary of the plan;

(b) the disclosure statement approved by the court;[8]

(c) notice of the time within which acceptances and rejections of the plan may be filed; and

(d) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3017(d) also requires that the debtor mail an appropriate form of ballot to all holders of claims and equity interests entitled to vote on the plan, and that notice be mailed to all creditors and equity security holders of the time fixed for filing objections to confirmation of the Plan and the hearing on confirmation. *Id.*

40. Bankruptcy Rule 3017(e) requires that a court "consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes and other securities, [and] determine the adequacy of

[8] As discussed above, the Debtors commenced the Solicitation prior to the Petition Date and, therefore, prior to obtaining approval of the Disclosure Statement by the Court, as permitted by section 1126(b) of the Bankruptcy Code.

[such] procedures." Fed. R. Bankr. P. 3017(e). Bankruptcy Rule 3018(c) provides that "[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form." Fed. R. Bankr. P. 3018(c).

41. For the reasons described below, the Debtors submit that the Solicitation Package, the Combined Notice, the Publication Notice, and the Ballots satisfy the requirements of Bankruptcy Rules 3017(d) and (e) and 3018(c).

1. The Solicitation Package

42. The Solicitation Package included the Disclosure Statement, the Plan, the Ballots, and notice of the deadline to submit the Ballots to accept or reject the Plan. *See* Lee Declaration ¶ 5. On August 15, 2020, the Solicitation Agent commenced service of the Solicitation Packages via electronic mail upon (i) the RBL Lenders in Class 3 and (ii) Nominees for subsequent distribution to beneficial holders of Senior Notes Claims in Class 4 as of the Voting Record Date. *See Id.* On August 17, 2020, the Solicitation Agent caused to be served via overnight mail the Solicitation Packages (including the beneficial ballots for Class 4 Senior Notes Claims) to the Nominees appearing on the security position reports received from DTC, or the Nominees' agents, for subsequent forwarding to the underlying beneficial owners of Senior Notes Claims. *See Id.* ¶ 6. The Solicitation Agent also provided the master ballots to each Nominee, or its agent, for their use in reporting the voting of the underlying beneficial owners. *See Id.* ¶ 5-6.

43. In addition, the Debtors filed the Plan Supplements and caused the Solicitation Agent to serve the Plan Supplement on September 9, 2020, the Amended Plan Supplement on September 15, 2020, and the Second Amended Plan Supplement on September 23, 2020. *See* Plan Supplement Certificates. The Debtors will file and cause to be served the Third Amended

Plan Supplement prior to the Confirmation Hearing. Therefore the Solicitation Package satisfies Bankruptcy Rule 3017(d).

2. The Combined Notice and the Publication Notice

44. Between August 19, 2020, and August 21, 2020, the Solicitation Agent served the Combined Notice on, among others, the creditors listed on the Core/2002 List maintained by the Solicitation Agent, creditor matrix, Nominees appearing on the security position reports received from DTC (or the Nominees' agents) for subsequent forwarding to the underlying beneficial owners of Senior Notes Claims, and of registered equity holders (provided by the Debtors' stock transfer agent as of the Voting Record Date) and Nominees appearing on the security position reports received from DTC, or the Nominees' agents, for subsequent forwarding to the underlying beneficial owners of Chaparral Parent Equity Interests. *See* Lee Declaration ¶ 8. The Combined Notice was served between 31 and 33 days before the September 21, 2020 deadline to object to confirmation of the Plan and forty-three days before the October 1 Combined Hearing. The Combined Notice provided (i) a summary of the Plan (including the treatment of Allowed Claims and Allowed Interests thereunder), (ii) instructions on how parties could obtain copies of the Plan and the Disclosure Statement, (iii) the date, time, and place of the Combined Hearing, (iv) the procedures and deadline for filing an objection to the adequacy of the Disclosure Statement or to confirmation of the Plan, and (v) the time within which votes to accept or reject the Plan may be submitted.

45. Furthermore, the Publication Notice was published in the *Wall Street Journal* (National Edition) and in *The Oklahoman* on August 24, 2020. *See* Lee Declaration ¶ 9. The Solicitation Procedures, including service of the Combined Notice and publication of the Publication Notice, afforded parties in interest ample notice of these proceedings and should be approved.

3. The Ballots

46. Bankruptcy Rules 3017(d) and 3018(c) require the Debtors to solicit votes on the Plan using a form of ballot substantially conforming to Official Form No. 14. The forms of the Ballots, which were annexed as Exhibits 3-A through 3-C to the Combined Hearing Motion, were based on Official Form No. 14, but were modified to address the particular circumstances of these Chapter 11 Cases. The Ballots included, for example, a modification to allow Holders of Claims in the Voting Classes to elect to opt out of providing certain releases under the Plan. The Ballots also clearly stated that to be counted as votes to accept or reject the Plan, all Ballots had to be properly completed and delivered to the Solicitation Agent so that they would be received no later than the Voting Deadline. The Ballots therefore satisfy Bankruptcy Rules 3017(d) and 3018(c) and should be approved.

(ii) The Solicitation Period Was Reasonable Under Bankruptcy Rule 3018(b)

47. Bankruptcy Rule 3018(b) provides, in relevant part, that (a) a plan of reorganization must have been transmitted to substantially all creditors and equity security holders of the same class, (b) the period of time prescribed for such creditors and equity security holders to accept or reject the plan must not have been unreasonably short, and (c) the solicitation must have been in compliance with section 1126(b) of the Bankruptcy Code. Fed. R. Bankr. P. 3018(b).

48. On August 15, 2020, the Debtors caused the Solicitation Agent to distribute the Solicitation Package to Holders of Claims in the Voting Classes as described above. *See* Lee Declaration ¶ 5. The Voting Deadline of September 15, 2020 at 5:00 p.m. (Prevailing Eastern Time) provided the Holders of Claims in the Voting Classes 31 days to submit completed Ballots, which is ample under the circumstances of these prepackaged cases, and no party has objected thereto.

49. In light of the foregoing and the Debtors' compliance with applicable nonbankruptcy law and section 1126(b) of the Bankruptcy Code as set forth above, the Solicitation satisfied the standards set forth in Bankruptcy Rule 3018(b).

(iii) The Debtors' Solicitation Procedures Should Be Approved Under Bankruptcy Rule 3017(e)

50. Bankruptcy Rule 3017(e) requires that this Bankruptcy Court "consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to the beneficial holders" of securities and determine their adequacy. Fed. R. Bankr. P. 3017(e). As set forth herein, the Debtors employed appropriate Solicitation Procedures, including transmitting a Ballot that complied with Bankruptcy Rule 3017(d) to each Holder of a Claim in the Voting Classes, along with comprehensive instructions regarding submission of Ballots.

51. Based on the facts set forth herein and in the Combined Hearing Motion, (a) the Solicitation Package and Solicitation Procedures should be approved, as they satisfy the requirements of sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017(d) and (e) and 3018(b) and (c); and (b) the Disclosure Statement should be approved since it contains adequate information as required by section 1125(a) of the Bankruptcy Code.

II. THE PLAN SATISFIES APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE

52. Confirmation requires that the Debtors demonstrate that the Plan satisfies the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. *See In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006). As set forth below, the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, as well as applicable nonbankruptcy law.

A. Plan Complies with Applicable Provisions of Bankruptcy Code (11 U.S.C. § 1129(a)(1))

53. Section 1129(a)(1) of the Bankruptcy Code requires that the Plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1); *see also In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 270-73 (S.D. Ohio 1996) (examining each requirement of chapter 11 to demonstrate that Bankruptcy Code section 1129(a)(1) was satisfied). The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, including, principally, rules governing the classification of claims and interests and the contents of a plan. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) ("[T]he legislative history of subsection 1129(a)(1) suggests that Congress intended the phrase 'applicable provisions' in this subsection to mean provisions of Chapter 11 that concern the form and content of reorganization plans"); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("The legislative history of § 1129(a)(1) explains that this provision embodies the requirements of §§ 1122 and 1123, respectively, governing classification of claims and the contents of the Plan."). The Debtors

respectfully submit that the Plan complies with sections 1122 and 1123 of the Bankruptcy Code in all respects.

(i) Plan Satisfies Classification Requirements of Bankruptcy Code (11 U.S.C. §§ 1122 and 1123(a)(1))

54. Section 1123(a)(1) of the Bankruptcy Code requires that a plan classify all claims (with the exception of certain priority claims) and all interests, and that such classification comply with section 1122 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1123(a)(1), 1122. Section 1122(a) of the Bankruptcy Code, in turn, provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to other claims or interests of such class." 11 U.S.C. § 1122(a).

55. The Third Circuit and this Bankruptcy Court have recognized that, under section 1122 of the Bankruptcy Code, plan proponents have significant flexibility to place similar claims into different classes, provided there is a valid business, factual, or legal justification for doing so. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158 (3d Cir. 1993); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) ("[W]e agree with the general view which permits the grouping of similar claims in different classes."); *In re Coram Healthcare Corp.*, 315 B.R. 321, 348 (Bankr. D. Del. 2004) (explaining the Bankruptcy Code "does not expressly prohibit placing 'substantially similar' claims in separate classes").

56. Article III of the Plan provides for the classification of Claims and Interests into nine separate Classes:[9]

Class 1:	Other Secured Claims
Class 2:	Other Priority Claims
Class 3:	RBL Claims
Class 4:	Senior Notes Claims
Class 5:	General Unsecured Claims

[9] In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified in the Plan.

Class 6: Intercompany Claims
Class 7: Intercompany Interests
Class 8: Chaparral Parent Equity Interests
Class 9: Other Chaparral Parent Interests

57. This classification scheme is premised on, among other things, (a) the secured or unsecured status of the underlying obligation and (b) the differences in the legal nature and/or priority of the underlying obligation. The Debtors respectfully submit that the Plan's classification scheme fully satisfies the requirements of section 1122 of the Bankruptcy Code.

(ii) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2))

58. Section 1123(a)(2) of the Bankruptcy Code requires that a plan specify any class of claims or interests that is not impaired under the plan. 11 U.S.C. § 1123(a)(2). The Plan meets this requirement by identifying Claims in Classes 1, 2, and 5 as Unimpaired.[10] *See* Plan, Art. III.

(iii) Treatment of Impaired Classes of Claims and Interests (11 U.S.C. § 1123(a)(3))

59. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). The Plan satisfies this requirement by identifying Claims and Interests in Classes 3, 4, 8, and 9 as being Impaired and specifying the treatment accorded to the Claims and Interests in each such Class.[11] *See* Plan, Art. III.

(iv) Same Treatment Within Each Class (11 U.S.C. § 1123(a)(4))

60. Section 1123(a)(4) of the Bankruptcy Code requires that the plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular

[10] The Claims and Interests in Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests) are held by the Debtors and presumed to accept or deemed to reject the Plan because they are either Unimpaired or Impaired.

[11] The Claims and Interests in Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests) are held by the Debtors and presumed to accept or deemed to reject the Plan because they are either Unimpaired or Impaired.

claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). A plan "does not require precise equality, only approximate equality." *In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3rd Cir. 2013) (quoting *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007)). This standard therefore allows for deviations in procedural recovery for holders of claims in the same class, where such deviations are based on legitimate reasoning. *See Id*. ("differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant's opportunity to recover"). Section 1123(a)(4) further permits variations in the ultimate form of the recovery received by holders of interests in the same class, where the plan offers each such holder the same treatment options. *See In re W.R. Grace & Co.*, 729 F.3d at 327 ("[C]ourts have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the same opportunity' for recovery."); *In re Dana Corp.*, 412 B.R. 53, 62 (S.D.N.Y. 2008) ("The key inquiry under § 1123(a)(4) is not whether all of the claimants in a class obtain the same thing, but whether they have the same opportunity.").

61. In addition, a plan may treat one set of claim holders more favorably than others so long as the more favorable treatment is not for the claim but for distinct, legitimate rights of contributions from the favored group separate from the claim. *See Ad Hoc Comm. of Non-Consenting Creditors v. Peabody Energy Corp. (In re Peabody Energy Corp.)*, 933 F.3d 918, 925-28 (8th Cir. 2019); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 249-50 (Bankr. S.D.N.Y. 2007) ("[T]he requirements of section 1123(a)(4) apply only to a plan's treatment *on account of particular claims* or interests in a specific class—not the treatment that members of the class may separately receive under a plan on account of the class members' other rights or contributions.") (emphasis in original); *see also In re Heron, Burchette, Ruckert & Rothwell*,

148 B.R. 660, 672 (Bankr. D.D.C. 1992) ("The objectors fail to distinguish between a partner's treatment under the plan on account of a claim or interest and treatment for other reasons. Only the former is governed by § 1123(a)(4).").

62. The Plan meets the requirements of section 1123(a)(4) of the Bankruptcy Code because Holders of Allowed Claims or Interests will receive, on account of such Claims and Interests, the same rights and treatment as other Holders of Allowed Claims or Interests within such Holders' respective Classes. *See* Plan, Art. III. With respect to Class 3 (RBL Claims), each Holder of an RBL Claim has the same opportunity to elect to receive one of two forms of consideration under the Plan. *See Id.*, Art. III.B.3. Moreover, all Holders of RBL Claims elected to provide revolving commitments and are therefore receiving the same distribution under the Plan. *See* Duginski Declaration ¶ 18. With respect to Class 4 (Senior Notes Claims), each Holder of a Senior Notes Claim has the same rights under the Plan and receives the same treatment under the Plan: (a) its pro rata share of 100% of the total issued and outstanding New Common Stock (subject to dilution) and (b) rights to purchase its pro rata share of the $35 million aggregate principal amount of New Convertible Notes in the Rights Offering as provided under the Plan. *See* Plan, Art. III.B.4. The consideration provided in the Backstop Commitment Agreement to the Backstop Parties, including the Backstop Premium, is not consideration on account of the Backstop Parties' Allowed Senior Notes Claims; rather, such consideration is provided in exchange for the new, valuable backstop commitments provided by the Backstop Parties.

63. For these reasons, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(v) Adequate Means of Implementation (11 U.S.C. § 1123(a)(5))

64. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provides the means by which the Plan will be implemented. Among other things, Article IV of the Plan provides for:[12]

(a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, reorganization, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan;

(b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree;

(c) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution or other certificates or documentation for other transactions as described in clause (a) above pursuant to applicable state law;

(d) the execution and delivery of the Rights Offering Documents, the New Convertible Notes Indenture, and the Exit Facility Documents;

(e) the execution and delivery of the New Stockholders Agreement and the New Corporate Governance Documents, and any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Reorganized Debtor (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable);

(f) the issuance, distribution, reservation, or dilution, as applicable, of the New Common Stock, as set forth herein;

(g) the adoption of the Management Incentive Plan and the issuance and reservation of the New Common Stock to the participants in the Management Incentive Plan as determined by and on the terms and

[12] This summary is qualified in its entirety by reference to the provisions of the Plan. To the extent that there is any conflict between the summary contained in this filing and the Plan, the Plan shall control.

conditions set by the Reorganized Chaparral Parent Board after the Effective Date;

(h) the vesting of all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens securing obligations under the Exit Facility Documents, New Convertible Notes Indenture, and Liens securing obligations on account of Other Secured Claims that are Reinstated pursuant to the Plan, if any);

(i) the cancellation of all notes, instruments, certificates, shares, and other documents evidencing Claims or Interests on the Effective Date, except to the extent otherwise provided in the Plan, and that the obligations of the Debtors or the Reorganized Debtors thereunder or in any way related thereto shall be discharged and deemed satisfied in full, and that the RBL Agent and the Indenture Trustee shall automatically and fully be released from all duties and obligations thereunder; and

(j) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

65. The precise terms governing the execution of these transactions are set forth in the applicable definitive documents or forms of agreements included in the Plan Supplement. Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

(vi) Charter Provisions (11 U.S.C. § 1123(a)(6))

66. Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in a corporate debtor's charter of provisions prohibiting the issuance of nonvoting equity securities. *See* 11 U.S.C. § 1123(a)(6). Article IV.K of the Plan provides that the New Corporate Governance Documents will prohibit the issuance of non-voting equity securities to the extent required by section 1126(a)(6) of the Bankruptcy Code. Accordingly, the Debtors respectfully submit that the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(vii) Manner of Selection of Officers and Directors and Their Successors (11 U.S.C. § 1123(a)(7))

67. Section 1123(a)(7) of the Bankruptcy Code requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee."

68. Pursuant to Article IV.L of the Plan, on the Effective Date, the terms of the current members of the Chaparral Parent board of directors shall expire, and the Reorganized Chaparral Parent Board will include those directors set forth in the list of directors of the Reorganized Debtors included in the Plan Supplement. On and after the Effective Date, the existing officers of Reorganized Chaparral Parent shall continue to serve as officers for the Reorganized Debtors and the officers and overall management structure of Reorganized Chaparral Parent, and all officers and management decisions with respect to Reorganized Chaparral Parent (and/or any of its direct or indirect subsidiaries), compensation arrangements, and affiliate transactions shall only be subject to the approval of the Reorganized Chaparral Parent Board (or, with respect to the appointment of vice presidents, shall be only subject to approval consistent with the New Corporate Governance Documents). Effective as of the Effective Date, the Reorganized Debtors will either assume or reject the existing employment agreements with the current members of the senior management team or will enter into new employment agreements on the Effective Date with such individuals (to the extent any applicable member of the senior management team agrees), in each case, upon terms acceptable to the applicable employee, Reorganized Chaparral Parent, the Required Consenting Noteholders, and the Required Backstop Parties.

69. The selection of the members of the Reorganized Chaparral Parent Board and members of the senior management team is consistent with the interests of all Holders of Claims and Interests, and public policy. No party in interest has objected to the manner of selection of the boards of directors or the officers of the Debtors. Accordingly, the Debtors respectfully submit that the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

(viii) Remaining Requirements Are Inapplicable (11 U.S.C. § 1123(a)(8))

70. Section 1123(a)(8) of the Bankruptcy Code provides that "in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan." Section 1123(a)(8) is inapplicable because the Debtors are not individuals.

(ix) Amount Necessary to Cure a Default (11 U.S.C. § 1123(d))

71. Section 1123(d) of the Bankruptcy Code provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and nonbankruptcy law."

72. The Plan complies with section 1123(d) of the Bankruptcy Code. The Plan provides for the satisfaction of monetary defaults under each Executory Contract and Unexpired Lease to be assumed under the Plan by payment of the cure amount, if any, on the Effective Date or in the ordinary course of business, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree, subject to the limitations described in Article V of the Plan or the proposed Confirmation Order. Accordingly, the Debtors respectfully submit that the Plan satisfies the requirements of section 1123(d) of the Bankruptcy Code.

B. Proponents of Plan Have Complied with Applicable Provisions of Title 11 (11 U.S.C. § 1129(a)(2))

73. Section 1129(a)(2) of the Bankruptcy Code requires that a plan proponent "comply with the applicable provisions of [title 11]." 11 U.S.C. § 1129(a)(2). The legislative history of section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a) of the Bankruptcy Code] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also* 7 COLLIER ON BANKRUPTCY 1129.02[2] (16th ed. 2020) (collecting cases) (stating that, with respect to compliance with section 1129(a)(2) of Bankruptcy Code, courts "have focused on compliance by the plan proponent with the disclosure and solicitation requirements of sections 1125 and 1126").

74. As set forth herein, the Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 regarding disclosure and solicitation of votes, and therefore have satisfied section 1129(a)(2) of the Bankruptcy Code.

C. Plan Was Proposed in Good Faith (11 U.S.C. § 1129(a)(3))

75. Section 1129(a)(3) provides that a court shall confirm a plan only if the "plan has been proposed in good faith and not by any means forbidden by law." Courts consider a plan as proposed in good faith "if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code." *Hanson v. First Bank of S.D., N.A.*, 828 F.2d 1310, 1315 (8th Cir. 1987) (quoting *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr.S.D.N.Y.1984)); *see also In re Combustion Eng'g., Inc.*, 391 F.3d 190, 247 (3d Cir. 2004) ("[F]or purposes of determining good faith under Section 1129(a)(3) . . . the

important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code") (quotations and citation omitted); *Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, 165 (3d Cir. 1999) (explaining the good faith standard in section 1129(a)(3) of the Bankruptcy Code requires that there be "some relation" between the chapter 11 plan and the "reorganization-related purposes" that chapter 11 was designed to serve) (citations omitted); *In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del 2001) ("The good faith standard requires that the plan be proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code.") (quoting *In re Zenith Elecs. Corp.*, 241 B.R. 92, 107 (Bankr. D. Del. 1999)) (internal quotations omitted).

76. A court must also view the requirement of good faith in the context of the totality of the circumstances surrounding the formulation of a chapter 11 plan. *See McCormick v. Banc One Leasing Corp. (In re McCormick)*, 49 F.3d 1524, 1526 (11th Cir. 1995) ("The focus of a court's inquiry is the plan itself, and courts must look to the totality of the circumstances surrounding the plan."); *In re Block Shim Dev. Co. Company-Irving*, 939 F.2d 289, 292 (5th Cir. 1991) (finding that good-faith requirement "is viewed in the context of the circumstances surrounding the plan"); *CoreStates Bank, N.A. v. United Chem. Techs.*, 202 B.R. 33, 57 (E.D. Pa. 1996) (concluding that courts must view good faith by looking at totality of circumstances). In determining whether a plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the plan itself and not the proponent of the plan. *See In re Matter of Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (concluding that the good-faith test provides the court with significant flexibility and is focused on an examination of the

plan itself, rather than other, external factors), *aff'd in part, remanded in part on other grounds*, 103 B.R. 521 (D.N.J. 1989), *aff'd*, 908 F.2d 964 (3d Cir. 1990); *see also In re Combustion Eng'g., Inc.*, 391 F.3d at 246.

77. The Debtors negotiated, developed, and proposed the Plan in good faith and the Plan satisfies section 1129(a)(3) of the Bankruptcy Code. The Plan was negotiated with, and is supported by, holders of RBL Claims and Senior Notes Claims. *See* Duginski Declaration ¶ 23. These parties only came to consensus after many months of protracted, arm's-length negotiations. As described in the Duginski Declaration, the Plan delivers significant value to the Debtors' stakeholders and preserves the Reorganized Debtors as a going concern. *See Id*. ¶ 30; *See* Gehring Declaration ¶¶ 14-15. The Plan was proposed in good faith and not by any means forbidden by law, has a high likelihood of success, and will achieve a result consistent with the objectives of the Bankruptcy Code.

78. Here, as the record shows, the purpose of the Plan is to effectuate a reorganization that maximizes recoveries to all of the Debtors' economic stakeholders. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

D. Payments Under the Plan Are Subject to Court Approval (11 U.S.C. § 1129(a)(4))

79. As required by section 1129(a)(4) of the Bankruptcy Code, all payments promised, received, made, or to be made by the Debtors in connection with services provided or for costs or expenses incurred in connection with the Chapter 11 Cases, including for the Debtors' professionals, are subject to the review by, and approval of, the Bankruptcy Court. *See* 11 U.S.C. § 1129(a)(4); *see also In re Credentia Corp.*, 2010 Bankr. LEXIS 2838, at *20 (Bankr. D. Del. May 26, 2010) (holding that plan complied with section 1129(a)(4) where all final fees and expenses payable to professionals remained subject to final review by bankruptcy court); *In*

re Johns-Manville Corp., 68 B.R. 618, 632 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. MacArthur v. Johns-Manville Corp.*, 837 F.2d. 89 (2d Cir. 1988) (concluding that court must be permitted to review and approve reasonableness of professional fees made from estate assets).

80. Article II.B of the Plan provides that all requests for payment of Professional Fee Claims incurred prior to the Effective Date must be filed with the Bankruptcy Court no later than 45 calendar days after the Effective Date. Distributions on account of Professional Fee Claims shall be made only when such Claims become Allowed by entry of an order of the Bankruptcy Court. Accordingly, the Debtors submit that the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

E. Plan Properly Discloses Post-Confirmation Management Services of Certain Individuals (11 U.S.C. § 1129(a)(5))

81. Section 1129(a)(5)(A)(i) of the Bankruptcy Code requires that the proponent of a plan disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors. Section 1129(a)(5)(B) of the Bankruptcy Code requires a plan proponent to disclose the identity of an "insider" (as defined by section 101(31) of the Bankruptcy Code) to be employed or retained by the reorganized debtor and the nature of any compensation for such insider. Additionally, the Bankruptcy Code provides that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy. 11 U.S.C. § 1129(a)(5)(A)(ii). Section 1129(a)(5)(A)(ii) directs the Court to ensure that the post-confirmation governance of the Reorganized Debtors is in "good hands," which courts have interpreted to mean: (a) experience in the reorganized debtors' business and

industry;[13] (b) experience in financial and management matters;[14] (c) that the debtors and creditors believe control of the entity by the proposed individuals will be beneficial;[15] and (d) it does not "perpetuate[] incompetence, lack of discretion, inexperience, or affiliations with groups inimical to the best interests of the debtor."[16] The "public policy requirement would enable [the court] to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed management." 7 COLLIER ON BANKRUPTCY ¶ 1129.02[5][b] (16th ed. 2020). While section 1129(a)(5) requires the plan proponent disclose the identity of proposed directors and officers, the plan proponent is not required to do so for proposed directors and officers that are unknown at the time. *See In re Charter Comm'ns*, 419 B.R. 221, 260 n.30 (Bankr. S.D.N.Y. 2009) ("Although section 1129(a)(5) requires the plan to identify all directors of the reorganized entity, that provision is satisfied by the Debtors' disclosure at this time of the identities of the *known* directors.") (emphasis in original); *see also In re Am. Solar King Corp.*, 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988) ("[Section 1129(a)(5)] does not (and cannot) compel the debtor to do the impossible, however. If there is no proposed slate of directors as yet, there is simply nothing further for the debtor to disclose under subsection (a)(5)(A)(i).").

82. The Plan satisfies section 1129(a)(5) of the Bankruptcy Code. On the Effective Date, the Reorganized Chaparral Parent Board shall consist of directors determined and selected by the Ad Hoc Group, which shall include the Chief Executive Officer of Reorganized Chaparral Parent, as set forth in the Plan Supplement. On and after the Effective Date, the existing officers

[13] *See In re Rusty Jones, Inc.*, 110 B.R. 362, 372, 375 (Bankr. N.D. Ill. 1990) (stating that 1129(a)(5) not satisfied where management had no experience in the debtor's line of business); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149-50 (Bankr. S.D.N.Y. 1984) (continuation of debtors' president and founder, who had many years of experience in the debtors' businesses, satisfied section 1129(a)(5)); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. at 760 (citing *Toy & Sports*, 37 B.R. at 149-50).

[14] *See In re Stratford Assocs. Ltd. P'ship*, 145 B.R. 689, 696 (Bankr. D. Kan. 1992); *In re Sherwood Square Assoc.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989).

[15] *See In re Apex Oil Co.*, 118 B.R. 683, 704-05 (Bankr. E.D. Mo. 1990).

[16] *In re Beyond.com Corp.*, 289 B.R. 138, 145 (Bankr. N.D. Cal. 2003).

of Reorganized Chaparral Parent shall continue to serve as officers for the Reorganized Debtors and the officers and overall management structure of Reorganized Chaparral Parent, and all officers and management decisions with respect to Reorganized Chaparral Parent (and/or any of its direct or indirect subsidiaries), compensation arrangements, and affiliate transactions shall only be subject to the approval of the Reorganized Chaparral Parent Board (or, with respect to the appointment of vice presidents, shall be only subject to approval consistent with the New Corporate Governance Documents). Effective as of the Effective Date, the Reorganized Debtors will either assume or reject the existing employment agreements with the current members of the senior management team or will enter into new employment agreements on the Effective Date with such individuals (to the extent any applicable member of the senior management team agrees).

83. The Debtors will disclose the identity and affiliations of the members of the Reorganized Chaparral Parent Board prior to the Confirmation Hearing in the Third Amended Plan Supplement.

84. The Reorganized Debtors' proposed officers have significant knowledge and business and industry experience, are competent, and will provide the Reorganized Debtors with continuity in running the business. In instances where specific individuals are not yet known, the Debtors have disclosed which creditor constituency has the right to appoint the applicable director. The Debtors and their creditors believe control of the Reorganized Debtors by the proposed individuals or individuals to be appointed in accordance with the Plan and New Corporate Governance Documents will be beneficial, and no party in interest has objected to the Plan on these grounds. Therefore, the requirements under section 1129(a)(5)(A)(ii) of the Bankruptcy Code are satisfied.

F. Plan Does Not Require Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6))

85. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. The Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction. Accordingly, the Debtors respectfully submit that section 1129(a)(6) of the Bankruptcy Code is not applicable.

G. Plan Satisfies the Best Interests Test (11 U.S.C. § 1129(a)(7))

86. Section 1129(a)(7) of the Bankruptcy Code requires that holders of impaired claims or interests must either (a) vote to accept a plan or (b) "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 [of the Bankruptcy Code] on such date." 11 U.S.C. § 1129(a)(7)(A)(ii); *see also In re Tranel*, 940 F.2d 1168, 1172-73 (8th Cir. 1991) (considering evidence supporting best interests of creditors test outcome); *In re AOV Indus.*, 31 B.R. 1005, 1012-13 (D.D.C. 1983) (if no impaired creditor receives less than liquidation value, plan of reorganization is in best interests of creditors), *aff'd in part, rev'd in part*, 792 F.2d 1140, 1144 (D.C. Cir. 1986), *vacated in light of new evidence*, 791 F.2d 1004 (D.C. Cir. 1986); *In re Econ. Lodging Sys., Inc.*, 205 B.R. 862, 864-65 (Bankr. N.D. Ohio 1997) (analyzing evidence relating to best interests of creditors test); *Eagle-Picher Indus.*, 203 B.R. at 266 (best interest of creditors test must be met even in cramdown situation).

87. The best interests of creditors test focuses on individual dissenting creditors, rather than classes of claims. *See, e.g.*, *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship (In re 203 N. LaSalle St. P'ship*), 526 U.S. 434, 441-42 (1999); *see also U.S. v.*

Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213, 228 (1996). A court, in considering whether a plan is in the "best interests" of creditors, is not required to consider any alternative to the plan other than the dividend projected in a liquidation of all the debtor's assets under chapter 7 of the Bankruptcy Code. *See*, *e.g.*, *In re Victory Constr. Co.*, 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984); *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990); *In re Jartran, Inc.*, 44 B.R. 331, 389-93 (Bankr. N.D. Ill. 1984) (best interests test satisfied by showing that, upon liquidation, cash received would be insufficient to pay priority claims and secured creditors so that unsecured creditors and equity holders would receive no recovery). Accordingly, if the Bankruptcy Court finds that each non-consenting member of an Impaired Class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the best interests of creditors test.

88. The "best interests" test is generally satisfied by utilizing a liquidation analysis to demonstrate that an impaired class will receive no less under the plan than under a chapter 7 liquidation. To demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code, the Debtors prepared a liquidation analysis estimating and comparing the range of proceeds generated under the Plan and a hypothetical chapter 7 liquidation (the "**Liquidation Analysis**"). *See* Disclosure Statement, Exhibit F. The assumptions and estimates in the Liquidation Analysis are appropriate in the context of these Chapter 11 Cases and are based upon the knowledge and expertise of the Debtors' advisors. *See* Legoudes Declaration ¶ 6. The Debtors' advisors have intimate knowledge of the Debtors' businesses and relevant industry and restructuring experience. As reflected in the Liquidation Analysis, the Debtors submit that the best interests test is satisfied as to every single holder of a Claim against, or Interest in, the Debtors, because Holders of Claims and Interests in all Impaired Classes are estimated to receive an equal or lower

recovery in a hypothetical chapter 7 liquidation than under the Plan. *See Id.* ¶ 14. In a hypothetical liquidation scenario, the Holders of Claims in Class 3 (RBL Claims) would receive an estimated recovery of between approximately 92% to 100%, Holders of Claims in Class 4 (Senior Notes Claims) would receive an estimated recovery of approximately 0% to 12%, Holders of Claims in Class 5 (General Unsecured Claims) would receive an estimated recovery of approximately 0% to 12%, and Holders of Interests in Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Parent Interests) would receive no recovery. *See* Disclosure Statement, Ex. F at 4; Legoudes Declaration ¶ 18. Under the Plan, however, Holders of Claims in Class 3 (RBL Claims) are entitled to an estimated recovery of approximately 100%, Holders of Claims in Class 4 (Senior Notes Claims) are entitled to an estimated recovery of approximately 15% to 47%, and Holders of Claims in Class 5 (General Unsecured Claims) are entitled to a recovery of 100%. *See* Disclosure Statement, Ex. F at 4; Legoudes Declaration ¶ 18. While Holders of Interests in Chaparral Parent are not entitled to a recovery under the Plan on account of their Interests, Holders of Chaparral Parent Equity Interests (which includes Holders of common stock of Chaparral Parent issued and outstanding immediately prior to the Effective Date and holders of certain claims in the Prior Bankruptcy Cases which, if allowed in those cases, would entitle the holders thereof to receive common stock of Chaparral Parent) are entitled to receive their pro rata share of $1.2 million of cash and the package of cashless exercise warrants (or in the case of certain holders of equity interests, cash in an amount equal to $0.01508 per share in lieu of such warrants). The amount offered to the Holders of Chaparral Parent Equity Interests is above any possible recovery that they would be entitled to on account of their Interests in Chaparral Parent in a liquidation scenario. *See* Disclosure Statement, Ex. F at 4; Legoudes Declaration ¶ 18.

89. As demonstrated in the Liquidation Analysis, holders of Impaired Claims or Interests will receive at least as much or more of a recovery under the Plan because, among other things, the continued operation of the Debtors as a going concern, rather than a chapter 7 liquidation, will allow the realization of more value on account of the assets of the Debtors.

90. Accordingly, the Debtors submit that, since the members of each Impaired Class have accepted the Plan or received at least as much as they would if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, the Plan meets the "best interests of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code.

H. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(8))

91. Subject to the exceptions contained in section 1129(b) of the Bankruptcy Code, including the "cramdown" provisions discussed below, section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or equity interests must either have accepted the plan or not be Impaired under the plan. A class of claims accepts a plan if the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in the number of claims that actually vote on the plan vote to accept the plan. *See* 11 U.S.C. § 1126(c). A class of equity interests accepts a plan if holders of at least two-thirds (2/3) of the amount of interests that actually vote on the plan vote to accept the plan. *See* 11 U.S.C. § 1126(d).

92. Under the Plan, Holders of Claims in Classes 1 (Other Secured Claims), 2 (Other Priority Claims), and 5 (General Unsecured Claims) are Unimpaired and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have voted to accept the Plan.

93. More than the requisite number of holders and Claim amounts in the following Impaired Classes of Claims that are entitled to vote to accept or reject the Plan, and that voted, have affirmatively voted to accept the Plan:

- Class 3 (RBL Claims) voted 100% in number and 100% in amount to accept the Plan; and
- Class 4 (Senior Notes Claims) voted 100% in number and 100% in amount to accept the Plan.

See Lee Declaration, Ex. A.

94. Although Class 8 (Chaparral Parent Equity Interests), Class 9 (Other Chaparral Parent Interests) and, to the extent Impaired, Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests), are deemed to reject the Plan, the Plan may nonetheless be confirmed over such rejections because, as set forth below, the Plan satisfies the requirements for cramdown under section 1129(b) of the Bankruptcy Code.

95. Accordingly, because every Impaired Class either (a) voted to accept or will be deemed to accept the Plan or (b) can be crammed down pursuant to the requirements of section 1129(b) of the Bankruptcy Code, satisfaction of section 1129(a)(8) of the Bankruptcy Code is not required in order for the Bankruptcy Court to confirm the Plan.

I. Plan Provides for Payment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9))

96. The Plan complies with section 1129(a)(9) of the Bankruptcy Code because, except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides for full payment of Allowed Administrative Claims (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) on the applicable distribution date or in the ordinary course of business in accordance with the following: (1) if an Administrative Claim is Allowed as of the Effective Date, on or as soon as reasonably practicable after the Effective Date (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date,

no later than 60 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holders of such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

97. Further, each holder of an Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim, either (i) Cash equal to the amount of such Allowed Priority Tax Claim on the Effective Date or (ii) treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. For the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code.

98. Accordingly, the Debtors respectfully submit that the Plan complies with section 1129(a)(9) of the Bankruptcy Code.

J. At Least One Impaired Class Voted in Favor of Plan (11 U.S.C. § 1129(a)(10))

99. Section 1129(a)(10) requires that if a class of claims is impaired under the plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. *See* 11 U.S.C. § 1129(a)(10). As discussed above, Class 3 (RBL Claims) and Class 4 (Senior Notes Claims), each of which is an Impaired Class, have voted to accept the Plan without counting the acceptance of any insiders. Therefore, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code, as the Plan has been accepted by an impaired class as to each Debtor. *See* Lee Declaration, Ex. A.

K. Plan Is Feasible and Not Likely to Be Followed by Further Reorganization or Liquidation (11 U.S.C. § 1129(a)(11))

100. Section 1129(a)(11) of the Bankruptcy Code requires that a court find that a plan is feasible as a condition precedent to confirmation. Specifically, the bankruptcy court must determine that "[confirmation of the plan] is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). To demonstrate that a plan is feasible, it is not necessary that success be guaranteed; the plan need only offer a reasonable assurance of success. *See Johns-Manville Corp.*, 843 F.2d at 649 ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); *Prudential Ins. Co. of Am. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 1341 (8th Cir. 1985) (same); *In re Rivers End Apartments*, 167 B.R. 470, 476 (Bankr. S.D. Ohio 1994) (to establish feasibility, "a [plan] proponent must demonstrate that its plan offers 'a reasonable prospect of success' and is workable"); *In re Apex Oil Co.*, 118 B.R. 683, 708 (Bankr. E.D. Mo. 1990) (guarantee of success is not required to meet feasibility standard of section 1129(a)([11]); *In re Elm Creek Joint Venture*, 93 B.R. 105, 110 (Bankr. W.D. Tex. 1988) (a guarantee of success is not required under section 1129(a)(11) of the Bankruptcy Code, only reasonable expectation that payments will be made).

101. There is a relatively low threshold of proof necessary to satisfy the feasibility requirement. *See Mercury Capital Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (Bankr. D. Conn. 2006), *remanded*, Case No. 04-30511, 2008 WL 687266 (Bankr. D. Conn. Mar. 10, 2008), *stay denied*, Case No. 04-330511, 2008 WL 2003118 (Bankr. D. Conn. May 7, 2008), *appeal denied*, Case No. 08-107, 2008 WL 2079126 (D. Conn. May 16, 2008) ("[A] 'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting *Computer Task Grp.*

Inc. v. Brotby (In re Brotby), 303 B.R. 177, 191-92 (B.A.P. 9th Cir. 2003)); *Berkeley Fed. Bank & Trust v. Sea Garden Motel & Apts. (In re Sea Garden Motel & Apts.)*, 195 B.R. 294, 304-05 (D.N.J. 1996); *In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 833 (E.D. Pa. 1995) ("[T]he feasibility inquiry is peculiarly fact intensive and requires a case by case analysis, using as a backdrop the relatively low parameters articulated in the statute."). Indeed, "[t]he mere prospect of [] uncertainty cannot defeat confirmation on feasibility grounds since a guarantee of the future is not required." *Drexel Burnham Lambert Grp., Inc.*, 138 B.R. at 762.

102. The Plan is feasible. As set forth in the Duginski Declaration, the Debtors and their advisors have thoroughly analyzed their ability post-confirmation to meet their obligations under the Plan and continue as a going concern without the need for further financial restructuring. *See* Duginski Declaration ¶ 37-41. The Debtors' management team has designed and has made significant progress in implementing a business plan that will better position the Debtors to succeed given current industry trends. To properly execute on this business plan, the Plan will deleverage the Debtors' balance sheet by reducing net funded debt by approximately $300 million.

103. Moreover, as set forth in the Disclosure Statement, the Debtors prepared projections of the Debtors' financial performance through 2024. *See* Disclosure Statement, Ex. D. These financial projections reflect a series of realistic assumptions regarding the Debtors and their industry. The financial projections demonstrate the Debtors' ability to generate sufficient cash to service their debt and meet their obligations under the Plan. On the basis of these projections, which were prepared by the Debtors and their advisors, the Debtors believe their financial future, taking into account the provisions of the Plan, is sound.

104. In addition, upon the Effective Date, the Debtors expect to have sufficient funds to make all payments contemplated by the Plan as a result of the injection of $35 million in liquidity through the Rights Offering. The Debtors, along with their professionals, have closely evaluated their cash situation to ensure that they will be able to make all Plan payments required on the Effective Date as well as in the months to come. *See* Duginski Declaration at ¶ 40. In fact, pursuant to the interim and final "all trade" orders [Docket Nos. 83, 167], the Debtors generally have been paying obligations in the ordinary course during the pendency of these Cases. The Debtors therefore submit that the Plan is feasible and confirmation will not be followed by liquidation. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

L. Plan Provides for Payment of All Fees Under 28 U.S.C. § 1930 (11 U.S.C. § 1129(a)(12))

105. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan." Section 507(a)(2) of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because Article XII.C of the Plan provides that all such fees and charges, to the extent not previously paid, will be paid by each of the applicable Reorganized Debtors for each quarter (including any fraction thereof) until the applicable Chapter 11 Case of such Reorganized Debtor is converted, dismissed, or closed, whichever occurs first.

M. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))

106. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the

Bankruptcy Code. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code because Article V.G of the Plan provides that from and after the Effective Date, all retiree benefits as defined in section 1114 of the Bankruptcy Code, if any, will continue in accordance with applicable law.

N. Remaining Requirements Are Inapplicable (11 U.S.C. § 1129(a)(14), (15), and (16))

107. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. The Debtors are not subject to any domestic support obligations and, as such, section 1129(a)(14) does not apply.

108. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). The Debtors are not "individuals" and, accordingly, section 1129(a)(15) is inapplicable.

109. Section 1129(a)(16) of the Bankruptcy Code applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. *See* 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." *See* H.R. Rep. No. 109-31, 109th Cong., 1st Sess., at 145 (2005). The Debtors are each a moneyed, business, or commercial corporation and, accordingly, the Debtors respectfully submit that section 1129(a)(16) is inapplicable. To the extent there are any transfers of property made pursuant to the Plan, such transfers will be made in accordance with applicable nonbankruptcy law.

III. PLAN SATISFIES CRAMDOWN REQUIREMENTS FOR CLASSES 6, 7, 8, AND 9 (11 U.S.C. § 1129(B)(2)(B) AND (C))

110. Section 1129(b) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) are met other than section 1129(a)(8), a plan may be confirmed

so long as the requirements set forth in section 1129(b) are satisfied. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8)), the plan proponent must show that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes. 11 U.S.C. § 1129(b). Here, Class 8 (Chaparral Parent Equity Interests), Class 9 (Other Chaparral Parent Interests), and, to the extent Impaired, Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests), are deemed to reject the Plan. For the reasons detailed below, the Debtors respectfully submit that the Plan satisfies section 1129(b) of the Bankruptcy Code's cramdown requirements with respect to such Classes.

A. Plan Does Not Unfairly Discriminate with Respect to Classes 6, 7, 8, and 9

111. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of the particular case when making such a determination. *See 203 N. LaSalle St. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a chapter 11 plan" and that "the limits of fairness in this context have not been established"); *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) ("[W]hether or not a particular plan does so [unfairly] discriminate is to be determined on a case-by-case basis."); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances"). *See also Armstrong World Indus., Inc.*, 348 B.R. at 121–22 (relying heavily on the facts of the case to determine whether the plan unfairly discriminated against certain classes).

112. In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for

creditors and interest holders with similar legal rights without compelling justifications for doing so. *See, e.g., Coram Healthcare Corp.*, 315 B.R. at 349 (citing cases and noting that separate classification and treatment of claims is acceptable if the separate classification is justified because such claims are essential to a reorganized debtor's ongoing business); *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 661 (Bankr. D. Del. 2003) (permitting different treatment of two classes of similarly situated creditors upon a determination that the debtors showed a legitimate basis for such discrimination). A threshold inquiry in assessing whether a proposed plan of reorganization unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to the class allegedly receiving more favorable treatment. *See Armstrong World Indus., Inc.*, 348 B.R. at 122.

113. The Plan does not discriminate unfairly with respect to any Class deemed to reject the Plan:

(a) Interests classified in Class 8 (Chaparral Parent Equity Interests) are legally distinct from, and not equally situated to, Claims or Interests in any other Class under the Plan, including Class 9 (Other Chaparral Parent Equity Interests). Class 8 (Chaparral Parent Equity Interests) consists of (a) common stock of Chaparral Parent issued and outstanding immediately prior to the Effective Date (other than restricted stock and/or restricted stock units that have not vested or are not scheduled to be settled as of the Petition Date) and (b) Prior Bankruptcy Equity Interests (i.e., any right of a Holder of a Prior Bankruptcy Claim to receive common stock of Chaparral Parent expressly provided under the Prior Bankruptcy Plan upon such Prior Bankruptcy Claim becoming fixed, liquidated, and allowed in the Prior Bankruptcy Cases). All Chaparral Parent Equity Interests are classified together and receive the same treatment under the Plan. Therefore, there is no unfair discrimination among holders of Chaparral Parent Equity Interests.

(b) Interests classified in Class 9 (Other Chaparral Parent Interests) are legally distinct from, and not equally situated to, Claims or Interests in any other Class under the Plan. Interests classified in Class 9 (Other Chaparral Parent Interests) consist of Interests in Chaparral Parent other than Chaparral Parent Equity Interests, including Subordinated Claims (if any), restricted stock and/or restricted stock units that have not vested or are not scheduled to be settled as of the Petition Date, and any other claim,

interest, or other equity-related rights associated with any equity-related agreements that are not Chaparral Parent Equity Interests. All Other Chaparral Parent Interests are classified together and receive the same treatment under the Plan. Therefore, there is no unfair discrimination among holders of Other Chaparral Parent Interests.

(c) With respect to Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests), the relevant Claims and Interests may be Unimpaired or Impaired. Certain of these intercompany claims and intercompany interests, which exist to support the Debtors' corporate structure, ultimately may be reinstated because reinstatement of intercompany claims and interests advances an efficient reorganization by avoiding the need to unwind and recreate the corporate structure and relationships of the reorganized Debtors. This reinstatement does not affect the economic substance of the Plan for the Debtors' stakeholders.

114. Accordingly, the Debtors respectfully submit that the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

B. Plan Is Fair and Equitable with Respect to Classes 6, 7, 8, and 9 (11 U.S.C. § 1129(b)(2)(B)(ii))

115. Section 1129(b)(2)(B)(ii) of the Bankruptcy Code provides, among other things, that a plan is fair and equitable with respect to a class of impaired unsecured claims if, under the plan, no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest. *See* 11 U.S.C. § 1129(b)(2)(B)(ii). Section 1129(b)(2)(C) of the Bankruptcy Code provides, among other things, that a plan is fair and equitable with respect to a class of interests if the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. 11 U.S.C. § 1129(b)(2)(C)(i)-(ii).

116. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the rule of absolute priority. With respect Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Parent Interests), no Claim or Interest junior to the Interests in such Classes will receive a recovery under the Plan on account

of such Claim or Interest. Furthermore, no Claim or Interest senior to the Interests in Class 8 (Chaparral Parent Equity Interests) and Class 9 (Other Chaparral Parent Interests) will receive a recovery under the Plan in an amount in excess of such senior Claim or Interest. *See In re Genesis Health*, 266 B.R. 591, 612 (Bankr. D. Del. 2001) ("A corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims.").

117. Even though Claims and Interests in Class 6 (Intercompany Claims) and Class 7 (Intercompany Interests) may be reinstated under the Plan and, therefore, would be Unimpaired, such treatment is for the purposes of preserving the Debtors' corporate structure and will have no economic substance. Bankruptcy courts have held that the "technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan." *Ion Media Networks, Inc. v. Cyrus Select Opportunities Master Fund, Ltd. (In re Ion Media Networks, Inc.)*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009). Here, as in *Ion Media*, the retention of intercompany interests would "constitute[] a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure." *Id.*

118. Accordingly, the Plan is "fair and equitable" with respect to all Impaired Classes of Claims and Interests and satisfies section 1129(b) of the Bankruptcy Code.

IV. PLAN SATISFIES REMAINING CONFIRMATION REQUIREMENTS

A. One Plan (11 U.S.C. § 1129(c))

119. Section 1129(c) of the Bankruptcy Code states, among other things, that the Bankruptcy Court may only confirm one plan. 11 U.S.C. § 1129(c). As set forth in the Duginski Declaration, no plan of reorganization other than the Plan has been filed in the Chapter 11 Cases, and the Plan is the only chapter 11 plan being considered for confirmation at this time.

See Duginski Declaration ¶ 51. Accordingly, the Debtors respectfully submit that the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

B. Principal Purpose of Plan (11 U.S.C. § 1129(d))

120. Section 1129(d) of the Bankruptcy Code states, among other things, that "on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). As set forth in the Duginski Declaration, the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code. *See* Duginski Declaration ¶ 52.

C. Not Small Businesses Cases (11 U.S.C. § 1129(e))

121. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases. *See* 11 U.S.C. § 1129(e). *See* Duginski Declaration ¶ 53.

V. RELEASES, EXCULPATIONS, AND INJUNCTIONS PROVIDED UNDER PLAN ARE APPROPRIATE AND SHOULD BE APPROVED

122. Article VIII of the Plan provides the following: (a) releases by the Debtors, the Reorganized Debtors, and the Estates (the "**Debtor Releases**"); (b) releases by the Releasing Parties of the Released Parties (the "**Third-Party Releases**"); (c) an exculpation provision for the Exculpated Parties (the "**Exculpation**"); and (d) a customary injunction provision intended to implement the Debtor Releases, Third-Party Releases, Exculpations, and discharge provided by the Plan (the "**Injunction**"). *See* Plan, Art. VIII.D, E, F, and G.

123. The Plan also provides for certain settlements of Claims against, and Interests in, the Debtors, including through the discharge, release, exculpation, and injunction provisions contained in Article VIII of the Plan. Article VIII.A of the Plan additionally provides that the provisions of the Plan constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest.

124. As set forth below, the Debtors' Releases, Third-Party Releases, Exculpations, and Injunctions are integral components of the Plan, consistent with the Bankruptcy Code, and comply with applicable case law and, as such, should be approved.

A. Debtor Releases Are Appropriate

125. Article VIII.D of the Plan provides for Debtor Releases of certain claims, rights, and causes of action that the Debtors may have against the Released Parties specified in the Plan. *See* Plan, Art. I.A.123, VIII.D. The Released Parties are the following parties, in each case in their capacities as such: (a) each of the Debtors; (b) the Reorganized Debtors; (c) the RBL Agent; (d) the Indenture Trustee; (e) the Ad Hoc Group and each member of the Ad Hoc Group;

(f) Consenting Senior Noteholders; (g) each of the Backstop Parties; (h) the Exit Facility Lenders, Exit Facility Agent, New Convertible Notes Indenture Trustee, and holders of the New Convertible Notes; (i) each Holder of an RBL Claim or a Senior Notes Claim; (j) each current and former Affiliate of each Entity in clause (a) through the following clause (k); and (k) each Related Party of each Entity in clause (a) through this clause (k); provided, however, that in each case, an Entity shall not be a Released Party if it affirmatively elects to "opt out" of being a Releasing Party. *See* Plan, Art. I.A.123.

126. The Debtor Releases do not release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, the Exit Facility, the New Convertible Notes, or any document, instrument, or agreement (including those set forth in the Plan Supplement, the Exit Facility, and the New Convertible Notes) executed to implement the Plan, including the assumption of the Indemnification Provisions as set forth in the Plan.

127. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A); *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 263 n.289 (Bankr. S.D.N.Y. 2007) ("The Debtors have considerable leeway in issuing releases of any claims the Debtors themselves own . . ."). The standard for approving a debtor's release of claims under a chapter 11 plan is, generally speaking, the same as the standard for approving settlements pursuant to Bankruptcy Rule 9019. *See Coram Healthcare*, 315 B.R. at 334-35 (holding that standards for approval of a settlement under section 1123 of the Bankruptcy Code generally are the same as those under Bankruptcy Rule 9019). Under Bankruptcy Rule 9019, a settlement of a cause of action generally should be approved if it exceeds the lowest point in the range of reasonable outcomes. *See, e.g.*, *In re New Century TRS Holdings, Inc.*, 390 B.R. 140,

168 (Bankr. D. Del. 2008), *rev'd on other grounds*, 407 B.R. 576 (D. Del. 2009), *remanded on other grounds* Bank. No. 07-10416 (KJC), 2009 WL 1833875 (D. Del. June 26, 2009); *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). In the context of a chapter 11 plan, the release of a claim of the estate should be approved if the release is a "valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate." *U.S. Bank Nat'l Assoc. v. Wilmington Tr. Co. (In re Spansion, Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010).

128. The Debtors proposed the Debtor Releases based on their business judgment and believe that such releases satisfy the standard—to the extent applicable—for court-approved settlements, which requires that a settlement exceed the lowest point in the range of reasonableness and be fair, equitable, and in the best interests of the estate. *See In re Exaeris, Inc.*, 380 B.R. 741, 746–47 (Bankr. D. Del. 2008); *In re New Century TRS Holdings, Inc.*, 390 B.R. 140, 168 (Bankr. D. Del. 2008); *In re World Health Alts. Inc.*, 344 B.R. 291 (Bankr. D. Del. 2006); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 135 (Bankr. D.N.J. 2010); *In re G-1 Holdings, Inc.*, 420 B.R. 216, 257 (Bankr. D.N.J. 2009). Under the Debtor Releases, the Debtors release those parties that have participated in good-faith negotiations to accomplish the Debtors' restructuring and helped facilitate the comprehensive reorganization contemplated by the Plan. There is no doubt that without the support of the Released Parties, the Debtors would not have been able to achieve this restructuring, which preserves the Debtors' going-concern value, and enables the Debtors to emerge from chapter 11 in a stronger position for future competitive and strategic growth.

129. The Debtors and their advisors considered the Debtors' Releases and ultimately concluded that the settlement of claims and controversies set forth in the Plan would be in the

best interests of the Debtors and their estates. *See* Duginski Declaration ¶ 56. The Released Parties are vital to the Debtors' reorganization and critical to the consummation of the Plan. *See Id.* The Debtors' officers and directors as well as the RBL Lenders and Ad Hoc Group were instrumental in negotiating the Plan, which provides for: (a) agreed-upon recoveries to Holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes); (b) payment in full or reinstatement of, or otherwise leaving unimpaired, all Allowed Claims in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 5 (General Unsecured Claims); (c) access to cash collateral and exit financing, the preservation of the Debtors' businesses as a going concern and maintenance of jobs, and the avoidance of potentially costly and protracted litigation; and (d) a distribution to holders of equity. *See Id.*

130. Additionally, some courts in this jurisdiction consider the following list of non-exclusive factors in determining the propriety of a debtor release (collectively, the "***Zenith* Factors**"):[17]

- there is identity of interest between the debtor and the third-party;
- the third-party has made a substantial contribution to the debtor's reorganization;
- the release is essential to the debtor's reorganization;
- a substantial majority of creditors support the release; and
- the plan provides for the payment of all or substantially all of the claims in the class or classes affected by the release.

131. *See In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del 2013) (citing *Zenith Elecs. Corp.*, 241 B.R. at 110). No one factor is determinative, and a plan

[17] These factors were first articulated as the standard for approving a third-party releases. *See In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994). In *Zenith*, this Court applied the *Master Mortgage* factors to a debtor release. *See Zenith Elecs. Corp.*, 241 B.R. at 110. As such the Debtors have applied the *Zenith* Factors to the Debtor Releases and, for the reasons set forth herein, submit that the Debtor Releases in this case satisfy such factors and should be approved.

proponent is not required to establish each factor for a release to be approved. *See In re Wash. Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011) ("These factors . . . simply provide guidance in the [c]ourt's determination of fairness"). Importantly, not each factor is relevant in every case and consensual case and consensual releases may be approved where only one or two factors are present.[18]

132. The Debtors submit that each of the *Zenith* Factors support the proposed Debtor Releases. *First*, there is an identity of interest among the Debtors and all of the Released Parties in that they all "share the common goal" of confirming the Plan and implementing the restructuring that it contemplates. *See In re Tribune Co.*, 464 B.R. 126, 187 (Bankr. D. Del. 2011) (noting an identity of interest between the debtors and the settling parties where such parties "share[d] the common goal of confirming the DCL Plan and implementing the DCL Plan Settlement"); *Zenith Elecs. Corp.*, 241 B.R. at 110 (concluding that the first factor—an identity of interest with the debtor—was satisfied where certain released parties who "were instrumental in formulating the Plan" shared an identity of interest with the debtor "in seeing that the Plan succeed and the company reorganize"). Specifically, each Released Party either participated in (or represented, or was represented by, parties participating in) the negotiation of the Plan or accepted the Plan by affirmative vote (and did not opt out of the Third-Party Releases). Many of the Released Parties have indemnification rights against the Debtors under their respective debt documents, including the RBL Credit Agreement and Senior Notes Indenture. *See* RBL Credit Agreement § 12.03; Senior Notes Indenture § 7.7. *See* Duginski Declaration ¶ 57. Similarly, under their articles of incorporation and bylaws, the Debtors have indemnification obligations to their current and former directors and officers, and the indemnification rights of the Debtors'

[18] The *Zenith* Factors are also considered by bankruptcy courts assessing the propriety of nonconsensual third-party releases, as discussed below.

former officers and directors will survive and be assumed by the Reorganized Debtors. *See* Plan Supplement, Ex. A (Article VII of the Third Amended and Restated Bylaws). Accordingly, pursuing litigation against certain of the Released Parties would be tantamount to litigation against the Debtors. *See Indianapolis Downs, LLC*, 486 B.R. at 303 ("An identity of interest exists when, among other things, the debtor has a duty to indemnify the nondebtor receiving the release.").

133. *Second*, many of the Released Parties have made a substantial contribution to the Chapter 11 Cases. Courts find a substantial contribution when there has been a fair exchange for releases, such as when *released* parties (i) affirmatively contribute value necessary to the reorganization or (ii) agree to compromise or forgo rights in furtherance of the reorganization. *See In re W.R. Grace & Co.*, 446 B.R. 96, 138 (Bankr. D. Del. 2011) (finding that parties involved in settlement with debtor made substantial contribution where, absent the release, settling parties would not have contributed a significant sum, which was necessary for the reorganization), *aff'd*, 475 B.R. 34 (D. Del. 2012), *aff'd*, 729 F.3d 311, 729 F.3d 332, 532 F. App'x 264 (3d Cir. 2013); Hr'g Tr. 74:14–75:5, *In re PNG Ventures, Inc.*, Case No. 09-13162 (Bankr. D. Del. Mar. 5, 2010) [Docket No. 368] (explaining that a contribution is substantial when there is a fair exchange for the release of the creditors' claims and finding that lenders, by compromising their claims and providing financing so that unsecured creditors received distributions they would not otherwise have received, made such a contribution). Likewise, courts have found that individuals offering important labor or services in furtherance of the reorganization provide a substantial contribution. *See SE Prop. Holdings, L.L.C. v. Seaside Eng'g & Surveying, Inc. (In re Seaside Eng'g & Surveying, Inc.)*, 780 F.3d 1070, 1079–80 (11th Cir. 2015) (concluding that labor and services of debtors' professionals constituted substantial

contribution); *In re Mercedes Homes*, 431 B.R. 869, 881 (Bankr. S.D. Fla. 2009) (finding that debtors' officers' and directors' expertise and knowledge, which would be used to work for reorganized debtors, constituted substantial contribution). Here, the Released Parties have given fair consideration in exchange for the Debtor Releases:

(a) The RBL Agent and the holders of RBL Claims, in their capacities as such and, to the extent applicable, as Exit Facility Agent and Exit Facility Lenders, have (i) consented to the use of their Cash Collateral to fund these Chapter 11 Cases;[19] (ii) voted in favor of, and therefore provided the Third-Party Releases set forth in, the Plan; (iii) agreed to provide revolving commitments to the Reorganized Debtors under the Exit Facility to ensure that the Debtors have sufficient liquidity to operate their businesses upon emergence;[20] (iv) agreed to forbear from exercising rights and remedies arising as a result of numerous prepetition events of default under the RBL Credit Agreement; and (v) otherwise supported and taken reasonable steps to consummate the Plan and Exit Facility. In addition, certain holders of RBL Claims agreed to execute the Restructuring Support Agreement, which was crucial to obtaining the support of the Ad Hoc Group for a consensual, value-maximizing, prepackaged bankruptcy proceeding. *See* Duginski Declaration ¶ 57.

(b) The Ad Hoc Group and the Consenting Noteholders have, among other things, (i) voted in favor of, and therefore provided the Third-Party Releases set forth in, the Plan; (ii) executed the Restructuring Support Agreement, which was crucial to obtaining the support of the RBL Agent and the holders of RBL Claims for a consensual, value-maximizing, prepackaged bankruptcy proceeding; (iii) agreed, by executing the Restructuring Support Agreement and voting in favor of the Plan, to reinstate all General Unsecured Claims and to provide a "gift" distribution to holders of Chaparral Parent Equity Interests;[21] (iv) agreed to forbear from exercising rights and remedies arising as a result of a prepetition event of default under the Senior Notes Indenture; and (v) otherwise supported and taken reasonable steps to consummate the Plan. In addition, 100% of the RBL Claims in amount voted in favor of the Plan and agreed to support the settlements and compromises set forth in the

[19] *In re Hercules Offshore, Inc.*, 565 B.R. 732, 763 (Bankr. D. Del. 2016) (granting releases to lenders and acknowledging value provided by use of cash collateral).

[20] *See In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 291 (Bankr. S.D.N.Y. 2016) (holding that creditors have made a substantial contribution to the debtors' estate where they provide exit financing to the reorganized debtors).

[21] *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 272 (Bankr. S.D.N.Y. 2014) (finding that certain creditors made a substantial contribution where, among other things, they forewent consideration "to which they would otherwise be entitled" and provided "a distribution of warrants to existing equity holders" and agreed to "receive equity in exchange for debt").

Plan, including the reinstatement of all General Unsecured Claims and the "gift" distribution to holders of Chaparral Parent Equity Interests. *See Id.*

(c) The Backstop Parties, by executing the Backstop Commitment Agreement, have provided valuable commitments to fully backstop the Rights Offering.[22] The Rights Offering is an integral component of the Plan; without the full $35 million in proceeds, the Debtors will not have sufficient cash to make distributions under the Plan. In addition, were the Rights Offering not fully backstopped, the RBL Lenders would not have agreed to provide the Debtors with the use of their Cash Collateral and would not have agreed to provide new revolving commitments. *See Id.*

(d) The Debtors' directors and officers have made a substantial contribution to the Chapter 11 Cases through (i) negotiating the restructuring, as embodied in the Plan and the related agreements; (ii) obtaining substantial recoveries for holders of General Unsecured Claims (who are Unimpaired and will receive payment in full in cash) and Holders of Chaparral Parent Equity Interests, to which neither set of stakeholders would have otherwise been entitled; (iii) obtaining agreement from the Consenting Creditors to provide considerations to the Holders of Chaparral Parent Equity Interests; and (iv) devoting significant time to negotiate these prepackaged Chapter 11 Cases in addition to their regular duties. *See Id.*

134. *Third*, the Debtor Releases are essential to the Debtors' reorganization. During the course of negotiations with the Released Parties, the identity of interests was considered and the substantial contributions described above were conditioned on the inclusion of the releases contained in the Plan, including the Debtor Releases. *See* Duginski Declaration ¶ 57. Without such Plan releases, the Debtors would not have been able to provide the unimpaired recoveries to Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), and Class 5 (General Unsecured Claims) or the distributions to the holders of Chaparral Parent Equity Interests. *See Id.* Had the Plan releases, including the Debtor Releases, not been provided, the Debtors' chances of securing all of the valuable consideration provided by the Plan and consummating a value-maximizing transaction for the benefit of all stakeholders would have been diminished.

[22] *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 272 (Bankr. S.D.N.Y. 2014) (finding that certain creditors made a substantial contribution where they provided a backstop agreement).

135. *Fourth*, a substantial majority of creditors support the Plan releases, including the Debtor Releases. This is affirmed by the fact that 100% of Class 3 Claims and 100% of Class 4 Claims voted to accept the Plan.

136. *Finally*, the Plan provides for payment of all or substantially all of the affected claims. *See, e.g.*, *In re United Artists Theatre Co. v. Walton*, 315 F.3d 217, 227 (3d Cir. 2003) (indicating releases should be "given in exchange for fair consideration") (citing *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203, 214–15 (3d Cir. 2000)). As mentioned above, under the Plan, the Debtors' key constituencies stand to receive significant value that otherwise would not be available absent the substantial contributions by the Released Parties. *See also Millennium Lab Holdings II*, 591 B.R. at 586 (affirming bankruptcy court's finding that releases were appropriate where payments and distributions made under the plan "dwarfed any recoveries . . . in a wipeout liquidation"); *In re W.R. Grace*, 446 B.R. at 138–39 (approving third-party release provision in plan of reorganization where, absent the release and settlement, substantial expenses would be incurred by the estate and where creditors' recovery after litigation was uncertain but recovery under the plan would be certain and significant).

137. For these reasons, the Debtor Releases are justified, fair, reasonable, in the best interests of the estates and creditors, are an integral part of the Plan, and satisfy the *Zenith* Factors.

B. Third-Party Releases Are Appropriate and Comply with Applicable Law

138. Article VIII.E of the Plan provides for Third-Party Releases of certain claims, rights, and causes of action that the Releasing Parties may have against the Released Parties. The Releasing Parties consist of the following, in each case in their capacities as such:

> (a) each of the Debtors; (b) the Reorganized Debtors; (c) the RBL Agent; (d) the Indenture Trustee; (e) the Ad Hoc Group and each member of the Ad Hoc Group; (f) the Consenting Senior

> Noteholders; (g) each of the Backstop Parties; (h) the Exit Facility Lenders, Exit Facility Agent, New Convertible Notes Indenture Trustee, and holders of the New Convertible Notes; (i) each Holder of an RBL Claim or a Senior Notes Claim that (i) votes to accept the Plan or (ii) votes to reject the Plan or does not vote to accept or reject the Plan and does not affirmatively elect on a timely submitted ballot to "opt out" of being a Releasing Party; (j) each Holder of a Claim that is presumed to accept the Plan and does not affirmatively elect to "opt out" of being a Releasing Party by timely filing with the Bankruptcy Court on the docket of the Chapter 11 Cases an objection to the Third-Party Release (or, in the case of any Claim that is a Royalty Class Action Claim, by affirmatively electing on a timely submitted opt out form to "opt out" of being a Releasing Party); (k) each current and former Affiliate of each Entity in clause (a) through the following clause (l); and (l) each Related Party of each Entity in clause (a) through this clause (l).

139. *See* Plan, Art. I.A.124. The Third-Party Releases satisfy the standards for approval of third-party releases employed in the Third Circuit, are appropriate, and are consistent with the applicable provisions of the Bankruptcy Code and, therefore, should be approved.

140. Importantly, the Third-Party Releases are fully consensual and should be approved on that basis alone. Where releasing parties have consented to a plan provision that releases claims against non-debtors, such releases have been approved. *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013) ("Courts in this jurisdiction have consistently held that a plan may provide for a release of third-party claims against a non-debtor upon consent of the party affected."). Specifically, in cases in which holders of claims or interests had an opportunity, but chose not, to opt out of third-party releases, courts have approved third-party releases as consensual. For example, in *Indianapolis Downs*, the court, approving an opt out release, found that:

> As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots.

486 B.R. at 306.

141. Each of the Releasing Parties has consented to the Third-Party Releases by either: (a) voting in favor of the Plan, (b) holding Claims or Interests that are treated as Unimpaired under the Plan, and/or (c) choosing not to opt out of the Third-Party Releases despite being provided with the opportunity to do so.

142. *First*, if a holder of a claim affirmatively votes to accept a plan, it thereby provides its consent to any third-party releases in the plan. *See Coram Healthcare*, 315 B.R. at 336 (finding that voting in favor of a plan of reorganization that provides for a third-party release indicates consent to the release, even without an explicit election opting to accept the third-party release provision); *Exide Techs.*, 303 B.R. at 74 (same); *see also In re Adelphia Commc'ns*, 368 B.R. at 268 ("[C]onsent [to the release] can be established by a vote in support of a plan."). Therefore, Holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes Claims) who voted to accept the Plan thereby consented to the Third-Party Releases.

143. *Second*, a holder of a claim or interest that is left unimpaired under a plan is deemed to accept the plan and to consent to the third-party releases in the plan, particularly when such holders have not objected to the releases. Such holders are receiving adequate consideration for the third-party release because they are being paid in full or otherwise rendered unimpaired by the plan. *See Spansion*, 426 B.R. at 144 (finding that a release was not overreaching to the extent it bound unimpaired classes deemed to have accepted the plan as those creditors had not objected to the release, were being paid in full, and had received adequate consideration for the release); *Indianapolis Downs*, 486 B.R. at 306 ("In this case, the third-party releases in question bind certain unimpaired creditors who are deemed to accept the Plan: these creditors are being paid in full and have therefore received consideration for the releases."). The

Plan provides that the Holders of Claims or Interests in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 5 (General Unsecured Claims), and, to the extent Unimpaired, Class 6 (Intercompany Claims), are deemed to accept the Plan. Further, each such holder was provided with an opportunity to opt out of the Third-Party Releases by timely filing with the Bankruptcy Court an objection to the Third-Party Releases, and no such holder has yet opted out of the Third-Party Releases.[23] Therefore, all such holders of Unimpaired Claims who did not opt out of the Third-Party Releases have consented to the Third-Party Releases and are receiving adequate consideration for the Third-Party Releases.

144. *Third*, a holder of a claim or interest, including a claim or interest that is impaired under a plan, who does not vote to accept the plan may be deemed to consent to a third-party release if the holder is provided with ample notice of the third-party releases and is provided with an opportunity to opt out of the third-party releases. As discussed above, Holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes Claims) are Impaired and entitled to vote to accept or reject the Plan, and Holders of Claims in Classes 1, 2, 5, and 6 are presumed to accept. Of the Claims and in those Classes:

(a) With respect to Class 1 (Other Secured Claims), Class 2 (Other Priority Claims) and Class 5 (General Unsecured Claims), no holder has opted out of the Third-Party Releases.

(b) With respect to Class 3 (RBL Claims), the class unanimously voted to accept the Plan.

(c) With respect to Class 4 (Senior Notes Claims), holders of 100% in amount of Senior Notes Claims voted to accept the Plan and no holder voted to reject the Plan. Of the holders that did not vote, none opted out of the Third-Party Releases.

[23] The deadline for Holders of Royalty Class Action Claims to opt out of the Third-Party Releases is November 9, 2020 at 5:00 p.m. (prevailing Eastern Time). Though certain holders of Chaparral Parent Equity Interests elected to "opt out" of the Third Party Releases, the Plan as amended no longer includes Chaparral Parent Equity Interests within the definitions of "Releasing Parties" or "Released Parties," as described herein.

145. With respect to these Claims, the Third-Party Releases are consensual because the holders thereof were provided with ample notice and had an opportunity to affirmatively opt out of the Third-Party Releases:

(a) Holders of Claims in Classes 1, 2, 5, and 6 were provided with an opportunity to opt out of the Third-Party Releases by timely filing an objection to the Third-Party Releases (or in the case of Claims that are Royalty Class Action Claims, by affirmatively electing, on a timely submitted opt out form, to "opt out" of the Third-Party Releases).

(b) Holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes Claims) who did not vote to accept the Plan were provided with an opportunity to opt out of the Third-Party Releases by checking the appropriate box on their respective ballots.

146. Implied consent by failure to act is consent in this context. *See Wellness Int'l Network Ltd. v. Sharif*, 135 S. Ct. 1932, 1948 (2015) (holding that a party may consent to adjudication by a bankruptcy court either expressly or impliedly, so long as such consent was knowing and voluntary and that the key inquiry is whether the litigant or counsel was aware of the need for consent and the right to refuse it and still voluntarily appeared before the court). In *Sharif*, the Supreme Court stated that such an implied consent standard, "[a]pplied in the bankruptcy context," offers "pragmatic" advantages, like "increasing judicial efficiency and checking gamesmanship." *Id.* If such an implied consent standard satisfies the strictures of Article III of the Constitution of the United States, a similar implied consent standard applies to determining whether parties consent to a provision within a chapter 11 plan. This Bankruptcy Court has previously approved consensual third-party releases where holders of claims failed to opt out of the releases after being provided detailed instructions on how to opt out and informed of the consequences. *See, e.g.*, *In re Pace Indus., LLC*, Case No. 20-10927 (MFW) (Bankr. D. Del. May 29, 2020) (Docket No. 215) (approving plan releases and finding them consensual where creditors were required to file objections to the releases to opt out); *In re Triangle*

Petroleum Corp., Case No. 19-11025 (MFW) (Bankr. D. Del. June 14, 2019) (Docket No. 71) (approving third-party releases with respect to holders of claims that voted to reject or abstained from voting on the plan but failed to opt out of granting such releases); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. May 14, 2018) (Docket No. 487) (same); *In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. July 23, 2018) (Docket No. 145) (same); *see also In re Homer City Generation, L.P.*, Case No. 17-10086 (MFW) (Bankr. D. Del. Feb. 15, 2017) (Docket No. 157) (releases deemed consensual where creditors must affirmatively check box to opt out of granting releases provided by the plan); *but see In re Wash. Mut., Inc.*, 442 B.R. 314, 355 (Bankr. D. Del. 2011) ("Failing to return a ballot is not a sufficient manifestation of consent to a third-party release.").[24]

147. Here, the Debtors provided every known holder of a Claim with an opportunity to opt out of the Third-Party Releases and made every effort to ensure that each holder of a Claim had notice of the Third-Party Releases and the consequences of failing to opt out of the Third-Party Releases. On August 19, 2020, the Solicitation Agent provided each known holder of a Claim with the Combined Notice, which clearly and conspicuously included (a) the full text of the Debtor Releases, Third-Party Release, Exculpation, and Injunction, (b) notice of the manner in which Claims and Interests in each Class may opt out of the Third-Party Release, (c) notice

[24] Other courts in this district have also approved consensual third-party releases where holders of claims or interests failed to opt out of the releases after being provided detailed instructions on how to opt out and informed of the consequences. *See, e.g.*, *In re Z Gallerie, LLC*, Case No. 19-10488 (LSS) (Bankr. D. Del. June 13, 2019) (Docket No. 384) Hr'g Tr. 48:9–11 ("With respect to third-party releases I'm prepared to find that they are consensual because of the opt-out box in the ballots."); *In re EV Energy Partners, L.P.*, Case No. 18-10814 (CSS) (Bankr. D. Del. May 16, 2018) (Docket No. 252) Hr'g Tr. 214:6–12 ("And with regard to the third-party releases, I mean, look, I think they're consensual. I don't think they're nonconsensual. It's very clear in the notice, you know, shareholders and creditors have to read legal notices; that's just the way it is. And if you don't know that, then you're proceeding at your own risk."); *In re Gibson Brands*, Case No. 18-11025 (CSS) (Bankr. D. Del. Oct. 2, 2018) (Docket No. 873) Hr'g Tr. 62:10–14 ("I have ruled numerous times that 'check the box' isn't required for a creditor to be deemed – to have been deemed to consent to something, that it's sufficient to say, here's your notice, this is what's going to happen and if you don't object, you'll have been deemed to consent.").

that failure to opt out of the Third-Party Releases will result in deemed consent to the Third-Party Releases and may affect the rights of the Holders of Claims and Interests, and (d) directions for obtaining a copy of the Plan and Disclosure Statement.[25]

148. In addition, on August 24, 2020, the Publication Notice, substantially in the form attached to the Combined Hearing Order as Exhibit 2, was published in the *Wall Street Journal* (National Edition) and in the *Oklahoman*. The Publication Notice clearly and conspicuously advised all parties in interest to carefully review and consider the Plan, including the Third-Party Release, and provided directions for obtaining a copy of the Plan and Disclosure Statement. Together, the Combined Notice and the Publication Notice provide clear notice that the Plan includes release provisions that may impact the rights of the Holders of Claims. This Bankruptcy Court has considered similar publication notices as sufficient to deem a third-party release consensual. *See In re Homer City Generation, L.P.*, Case No. 17-10086 (MFW) (Bankr.

[25] The Combined Hearing Notice included the following information and instructions with respect to opting out of the Third Party Releases:

> **Releases. Please be advised that, as described further below, under the Plan, the following holders (among others) are deemed to have granted the releases contained in Article VIII of the Plan (as reflected below):**
>
> **(a) each holder of an RBL Claim, Senior Notes Claim, Chaparral Parent Equity Interest, or Royalty Class Action Claim that does not affirmatively elect on a timely submitted ballot or opt out form, as appropriate, to "opt out" of being a Releasing Party;**
>
> **(b) each holder of a Claim or Interest (other than any described in the foregoing clause (a)) that is presumed to accept the Plan or deemed to reject the Plan and does not affirmatively elect to "opt out" of being a Releasing Party by timely filing with the Bankruptcy Court before the Objection Deadline an objection to the Third-Party Release. IF YOU DO NOT OBJECT TO THE RELEASES CONTAINED IN THE PLAN BY THE OBJECTION DEADLINE, YOU WILL BE DEEMED TO HAVE CONSENTED TO SUCH RELEASES.**
>
> **Election to withhold consent to the releases contained in the Plan is at the holder's option.**

D. Del. Feb. 15, 2017) Hr'g Tr. at 52:20–23, 53:21–54:1 ("I also note that the Debtor has given publication notice. And that in both of those, the provision in question was highlighted for the creditors to realize they had to take action . . . I am satisfied, again, in the narrow facts of this case where the creditors are, in fact, getting paid in full that releases of those types of claims [creditor claims against third parties such as breach of fiduciary duty, lender liability, etc.] are also appropriate. Again, proper notice was given of that. It was clearly stated in the plan of reorganization that that is what was happening.").

149. Moreover, the ballots used to solicit votes from holders of Claims in the Voting Classes (i.e., holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes Claims)) provided clear notice of the Third-Party Releases and indicated that such holders would be deemed to have consented to the Third-Party Releases if they: (i) voted to accept the plan; (ii) failed to submit a ballot and check the opt-out box on their ballot, (iii) submitted a ballot but abstained from voting and did not check the opt-out box on their ballot; or (iv) voted to reject the Plan but did not check the opt-out box on their ballot. Specifically, the ballots included the following conspicuous language with respect to the Third-Party Release:

> If you do not consent to the releases contained in the Plan and the related injunction, you may elect not to grant such releases but only if you (1) vote to reject the Plan in Item 1 above or abstain from voting on the plan and (2) affirmatively elect to "opt out" of being a releasing party by timely objecting to the Plan's third-party release provisions. IF YOU (A) VOTE TO ACCEPT THE PLAN, (B) FAIL TO SUBMIT A BALLOT BY THE VOTING DEADLINE AND TO AFFIRMATIVELY ELECT TO "OPT OUT" OF BEING A RELEASING PARTY, (C) SUBMIT THIS BALLOT BUT ABSTAIN FROM VOTING AND DO NOT AFFIRMATIVELY ELECT TO "OPT OUT" OF BEING A RELEASING PARTY, OR (D) VOTE TO REJECT THE PLAN BUT DO NOT AFFIRMATIVELY ELECT TO "OPT OUT" OF BEING A RELEASING PARTY, THEN YOU WILL BE DEEMED TO CONSENT TO THE THIRD-PARTY RELEASES SET FORTH IN ARTICLE VIII.E OF THE PLAN.

Importantly, the holders of Claims in Class 3 (RBL Claims) and Class 4 (Senior Notes Claims) are sophisticated financial institutions. Accordingly, holders of such Claims that failed to opt out of the Third-Party Releases are appropriately deemed to have consented to such releases.

150. Therefore, all Holders of Claims had ample opportunity and time to evaluate and opt out of the Third-Party Releases. Courts in this district have approved, and found consensual, similar releases by Holders of Claims presumed to accept the Plan or entitled to vote on the Plan. *See, e.g., In re Spansion, Inc.*, 426 B.R. at 144 (finding that a release was not overreaching to the extent it bound unimpaired classes deemed to have accepted the plan as those creditors had not objected to the release, were being paid in full, and had received adequate consideration for the release); *see also In re Indianapolis Downs, LLC*, 486 B.R. at 306 ("In this case, the third-party releases in question bind certain unimpaired creditors who are deemed to accept the Plan: these creditors are being paid in full and have therefore received consideration for the releases."); *see also In re Pace Indus., LLC*, Case No. 20-10927 (MFW) (Bankr. D. Del. May 29, 2020) (Docket No. 215) (approving third-party releases by unimpaired creditors); *In re Triangle Petroleum Corp.*, Case No. 19-11025 (MFW) (Bankr. D. Del. June 14, 2019) (Docket No. 71) (same); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. May 14, 2018) (Docket No. 487) (same); *In re Homer City Generation, L.P.*, Case No. 17-10086 (MFW) (Bankr. D. Del. Feb. 15, 2017) (Docket No. 157) (same).

151. Finally, the Third-Party Releases were a critical, negotiated term of the Plan. Without the Third-Party Releases, the Consenting Creditors would not have been willing to fund and support the Restructuring Transactions contemplated by the Plan. *See* Duginski Declaration ¶ 61. Among other things, the Released Parties' significant contributions to the Chapter 11 Cases have allowed the rights of holders of General Unsecured

Claims to be left unimpaired, provided for a distribution to "out of the money" Chaparral Parent Equity Interests, and facilitated the Debtors' path to emergence from chapter 11 as a stronger, more competitive enterprise. *See Id.* Without the Third-Party Releases, the Debtors would not have been able to obtain the level of support necessary to effectuate the Restructuring Support Agreement and the Plan. Because of these contributions, and the fact that the Releasing Parties have consented to the Third-Party Releases, the Third-Party Releases should be approved.

152. Even if the Third-Party Releases were not fully consensual (which they are), the Third-Party Releases should still be approved because they satisfy the standards governing nonconsensual third-party releases in this Circuit, articulated in *Gillman v. Continental Airlines (In re Continental Airlines)*: fairness; necessity to the reorganization; and specific factual findings supporting those conclusions. 203 F.3d 203, 214 (3d Cir. 2000). Courts have looked to the *Zenith* Factors (which are derived from the factors originally articulated in *In re Master Mortgage Inv. Fund*, 168 B.R. 930 (Bankr. W.D. Mo. 1994)) as guideposts in applying the *Continental* standards. *See Continental*, 203 F.3d at 217, n.17 ("Although some courts may consider identity of interest when deciding whether to grant a permanent injunction, that factor is not considered in a vacuum; rather, it must be supported by actual record facts in evidence, and accompanied by other key considerations, e.g., [the other four *Master Mortgage* factors]."); *In re 710 Long Ridge Rd. Operating Co., II, LLC*, Case No. 13-13653 (DHS), 2014 WL 886433, at *14–15 (Bankr. D.N.J. Mar. 5, 2014) (applying *Zenith* Factors to determine permissibility of third-party release). Consideration of those factors confirms that the Third-Party Releases are appropriate as to "non-consenting creditors," as discussed above.

C. Exculpations Should Be Approved

153. Article VIII Section F of the Plan provides for the exculpation of: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) any Professional of each Entity in clauses (a)

and (b); (d) each current and former Affiliate of each Entity in clause (a) through the following clause (e) (solely to the extent such parties are fiduciaries of the foregoing Entities in clauses (a) and (b)); and (e) each Related Party of each Entity in clause (a) through this clause (e) (solely to the extent such parties are fiduciaries of the foregoing Entities in clauses (a) and (b) (the "**Exculpated Parties**").

154. Here, as noted above, the Exculpated Parties played a critical role in the formulation of the Plan, and clearly satisfy the standard for exculpation under the Third Circuit, which permits exculpations of estate fiduciaries who made a substantial contribution to a chapter 11 case. *See In re Washington Mutual, Inc.*, 442 B.R. 314, 351 (Bankr. D. Del. 2011) (citing *In re PWS Holding Corp.*, 228 F.3d 224 (3d Cir. 2000)) ("The standard for exculpations has been extant in this district since the Third Circuit's *PWS* decision in 2000.").

D. Injunctions Are Narrowly Tailored and Should Be Approved

155. The Injunctions contained in Article VIII Section G of the Plan are necessary to effectuate and implement the release provisions in the Plan, particularly the Debtor Releases, Third-Party Releases, and Exculpations. Moreover, the Injunctions are essential to protect the Debtors, the Reorganized Debtors, and the assets of the Estates from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the Debtors and the Reorganized Debtors to effectively fulfill their responsibilities as contemplated in the Plan and thereby undermine the Debtors' efforts to maximize value for all of their stakeholders. Additionally, the Injunctions are narrowly tailored to achieve their purpose, and similar injunctions have been approved by courts in other chapter 11 cases. *See, e.g., In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Apr. 10, 2014) (holding that injunctions in the plan were necessary to preserve and effectuate the releases and exculpations under the plan and were narrowly tailored to achieve that purpose); *In re Physiotherapy*

Holdings, Inc., No. 13-12965 (KG) (Bankr. Dec. 23, 2013) (same). Accordingly, to enable the Debtors and the Reorganized Debtors to comply with their obligations under the Plan and applicable related documents, the Debtors respectfully request that the Bankruptcy Court approve the Injunctions contained in Article VIII Section G of the Plan.

VI. CANCELATION AND WAIVER OF THE MEETING OF CREDITORS AND EQUITY HOLDERS UNDER SECTION 341 OF THE BANKRUPTCY CODE IS REASONABLE GIVEN THE FACTS AND CIRCUMSTANCES OF THE CHAPTER 11 CASES

156. The purpose of the Section 341 meeting is to provide parties in interest with a meaningful opportunity to obtain and examine important information about the debtor. However, section 341(e) of the Bankruptcy Code provides that:

> Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

11 U.S.C. § 341(e).

157. As described in the Combined Hearing Motion, the Solicitation was commenced prior to the Petition Date, on August 15, 2020, thereby satisfying the threshold statutory requirement. Since the Voting Classes voted to accept the Plan and all Holders of Allowed General Unsecured Claims are unimpaired under the terms of the Plan, no party will be prejudiced if the meeting of creditors is not held. Rather, holding such a meeting will only impose additional administrative burden and expenses on the Debtors' Estates with no attendant benefit to the stakeholders.

158. Accordingly, as further described in the Combined Hearing Motion, the Debtors submit that sufficient cause exists to cancel any scheduled meeting of creditors or equity security holders and waive the requirement of a section 341 meeting.

VII. THE MODIFICATIONS TO THE PLAN SHOULD BE PERMITTED WITHOUT THE NEED FOR FURTHER SOLICITATION OF VOTES ON THE PLAN

159. Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. *See* 11 U.S.C. § 1127(a). Bankruptcy Rule 3019 provides that modifications after a plan has been accepted will be deemed accepted by all creditors and equity security holders who previously accepted the plan, if the court finds that the proposed modifications do not adversely change the treatment of the claim of any creditor or interest of any equity security holder. *See* Fed. R. BANKR. P. 3019(a). Courts interpreting Bankruptcy Rule 3019 have held that a proposed modification to a previously accepted plan will be deemed accepted if such modification is not material or does not adversely affect the way creditors and stakeholders are treated. *See, e.g., In re Glob. Safety Textiles Holdings LLC*, No. 09-12234 (KG), 2009 WL 6825278, at *4 (Bankr. D. Del. Nov. 30, 2009).

160. The Amended Plan modifies the Initial Plan in the following ways:[26]

(a) Certain technical modifications, including the elimination of ambiguity in certain provisions.

(b) The definition of "Exculpated Party" was narrowed in response to comments from the U.S. Trustee and the SEC.

(c) The definition of "Released Parties" was modified to provide that Holders of Chaparral Parent Equity Interests are not Released Parties in response to comments from the U.S. Trustee and the SEC.

(d) The definition of "Releasing Parties" was modified to provide that Holders of Claims and Interests (including Chaparral Equity Interests) who are deemed to reject the Plan are not Releasing Parties in response to comments from the U.S. Trustee and the SEC.

[26] The foregoing is intended as a summary only. The Debtors filed a redline showing all of the differences between the Initial Plan and the Amended Plan contemporaneously herewith.

(e) Article II.B.4 was modified to apply to post-Effective Date (rather than post-Confirmation Date) fees and expenses in response to a comment by the U.S. Trustee.

(f) Article III.B.8 was modified to remove the requirement that Holders of Chaparral Parent Equity Interests (x) not "opt out" of the Third-Party Releases and (y) not object to the Plan in order to be eligible to receive a distribution under the Plan. Article IV.D was modified to reflect the same change.

(g) Article VI.A was modified to clarify that the Debtors shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date absent further order of the Court in response to a comment from the U.S. Trustee.

(h) Article VIII.B was modified to provide that the discharge of Claims does not go into effect with respect to Class 5 (General Unsecured Claims) until such Claims are paid in full in response to a comment from the U.S. Trustee. Article VIII.E was similarly modified to provide that the Third-Party Releases do not release General Unsecured Claims in respect to a comment by the U.S. Trustee.

(i) Article VIII.F clarifies language related to the Plan exculpation provisions and provides that Exculpated Parties may raise reasonable reliance upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan as an affirmative defense to actual fraud, willful misconduct, or gross negligence in response to a comment from the U.S. Trustee.

(j) Article VIII.G was modified to provide that the injunction shall not prohibit the holders of Royalty Class Action Claims or Royalty Class Action Interests from seeking relief from the automatic stay with respect to such claims or interests in response to a comment from the U.S. Trustee.

(k) Article X.A was modified to provide that the Debtors will provide the U.S. Trustee with copies of any alteration, amendment, or modification to the Plan.

161. The changes do not adversely affect the rights of any Holder of a Claim that previously accepted the Plan.

162. In addition, the Plan continues to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code. Moreover, the proposed Plan amendments comply with the

requirements of the Restructuring Support Agreement, that such amendments are acceptable to the Required Consenting Creditors. Accordingly, no further solicitation is required.

VIII. GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

163. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

164. The Debtors submit that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the proposed Confirmation Order will be effective immediately upon its entry. *See, e.g.*, *In re Chisholm Oil and Gas Operating, LLC*, No. 20-11593 (BLS) (Bankr. D. Del. Sept. 23, 2020) (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re Pyxus Int'l, Inc.*, No. 20-11570 (LSS) (Bankr. D. Del. Aug. 21, 2020) (same); *In re Skillsoft Corp.*, No. 20-11532 (MFW) (Bankr. D. Del. Aug. 6, 2020) (same). Such relief is supported by the Consenting Creditors and is in the best interests of the Debtors' Estates, creditors and parties in interest as it minimizes costs associated with the Chapter 11 Cases. As noted above, the Chapter 11 Cases and the related Plan transactions have been negotiated and implemented in good faith and with a high degree of transparency and public dissemination of information.

165. For these reasons, the Debtors, their advisors, and other key constituents are working to expedite the Debtors' entry into and consummation of the documents and

transactions related to the restructuring transactions so that the Effective Date of the Plan may occur as soon as possible after the Confirmation Date. Based on the foregoing, the Debtors request a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully submit that the Plan, Disclosure Statement, and Solicitation comply with, and satisfy all of, the requirements of sections 1125, 1126, and 1129 of the Bankruptcy Code and sections 3017 and 3018 of the Bankruptcy Rules, and request that the Bankruptcy Court (a) enter the order, substantially in form of the proposed Confirmation Order, confirming the Plan and approving the Disclosure Statement and Solicitation and (b) grant such other and further relief as the Bankruptcy Court may deem just and proper.

[Remainder of page intentionally left blank]

Dated: September 29, 2020
Wilmington, Delaware

Respectfully submitted,

/s/ John H. Knight

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Exhibit A

Summary of Objections

Objection	Resolution
Objection of TGS-NOPEC Geophysical Company ASA, TGS-NOPEC Geophysical Company, and A2D Technologies, Inc. d/b/a TGS Geological Products and Services to Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization [Docket No. 195] *CGG Land (U.S.) Inc.'s Objection to Debtors' Joint Prepackaged Chapter 11 Plan Of Reorganization* [Docket No. 196]	The following language has been included in the Confirmation Order: Notwithstanding anything in the Plan, the Plan Supplement, any schedule of Assumed Executory Contracts and Unexpired Leases, any schedule of Rejected Executory Contracts and Unexpired Leases, or this Confirmation Order, (i) the transfer under the Plan of any seismic, geological, or geophysical data, derivatives, or interpretations thereof, or of intellectual property (collectively, the "Materials") owned by (a) TGS-NOPEC Geophysical Company ASA, TGS-NOPEC Geophysical Company, A2D Technologies, Inc., d/b/a TGS Geological Products and Services, successor to A2D LP, or their affiliates and/or (b) CGG Land (U.S.) Inc., or its affiliates (collectively, the "Seismic and Geological Counterparties"); and/or (ii) the assumption, assumption and assignment, rejection, modification, termination or release (including validity and applicability of the provisions of the Plan with respect to any change in ownership or control provisions) under the Plan of any master license agreement, license agreement, and/or supplemental or related agreements between any of the Seismic and Geological Counterparties and any Debtor (the "Seismic or Geological Agreements"), in each case, shall remain subject to a subsequent order of the Court after notice to the applicable Seismic and Geological Counterparty and an opportunity to respond; provided, however, that Reorganized Chaparral Parent and/or the Reorganized Debtors are authorized to continue operating under the Seismic or Geological Agreements (including the use of the Materials and any intellectual property thereunder) in the ordinary course of business (without the payment of any change in ownership or control fees) until the earliest of (x) sixty (60) days from the entry of the Confirmation Order or such later date as may be agreed between the Reorganized Chaparral Parent and/or the Reorganized Debtors and the applicable Seismic and Geological Counterparty and (y) the date such agreements are deemed assumed, assumed and assigned, rejected or terminated, in which case, the order authorizing such assumption, assumption and assignment, rejection or termination, shall govern with respect to all matters provided for therein, including any continued operation under the applicable Seismic or Geological Agreement; provided further that all rights

Objection	Resolution
	and defenses of the Debtors (including Reorganized Chaparral Parent and the Reorganized Debtors) and the Seismic and Geological Counterparties under non-bankruptcy and bankruptcy law, and all objections of the Seismic or Geological Counterparties (and the Debtors', Reorganized Chaparral Parent's, and the Reorganized Debtors' rights and defenses with respect thereto) to the terms of the Plan, insofar as they should relate or be applied to the Seismic and Geological Counterparties and regarding assumption or assumption and assignment (including all rights and defenses under section 365 of the Bankruptcy Code and with respect to the validity and enforceability of change in ownership and control provisions and whether any Materials constitute intellectual property), are reserved and preserved with respect to such Seismic or Geological Agreements.
USA Compression Partners, LLC's Limited Objection to Proposed Cure Amount Set Forth in Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization [Docket No. 206]	The Debtors and USA Compression Partners, LLC have agreed on a Cure Amount of $126,563.42.