UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
WAYPOINT LEASING HOLDINGS LTD., *et al.*,	:	**Case No. 18-13648 (SMB)**
Debtors.[1]	:	**(Jointly Administered)**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED CHAPTER 11 PLAN OF LIQUIDATION OF WAYPOINT LEASING HOLDINGS LTD. AND ITS AFFILIATED DEBTORS

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Dated: July 22, 2019
New York, New York

[1] A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as **Exhibit A**.

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TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Waypoint Leasing Holdings Ltd. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"), respectfully submit this memorandum of law (the "**Memorandum**") in support of the confirmation of the *Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 871] (as amended, supplemented, restated, or modified from time to time, the "**Plan**")[1] pursuant to section 1129 of title 11 of the United States Code (the "**Bankruptcy Code**"). In support of confirmation, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. Only eight months after the Debtors commenced these Chapter 11 Cases with minimal liquidity and an urgent need to sell their assets to preserve their value, the Debtors now seek to conclude their Chapter 11 Cases pursuant to the Plan, which has received overwhelming support from the Debtors' creditors. As outlined below, the Court approved the sale of substantially all of the Debtors' assets through several simultaneous sale transactions following rigorous marketing efforts and extensive, contentious, and difficult arm's-length negotiations with several groups of parties who are continuing to operate the Debtors' business on a going-concern basis, thereby preserving the jobs of the large majority of the Debtors' employees and the value of the Debtors' business platform. A substantial portion of the proceeds resulting from the sale of the Debtors' helicopter leasing platform was paid to the WAC Lenders

[1] Capitalized terms used but not otherwise herein defined shall have the meaning ascribed to such terms in the Plan, the Plan Supplement (as defined below), or the *Disclosure Statement for Second Amended Modified Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 819] (the "**Disclosure Statement**"), as applicable.

immediately following the sale closings, and a portion was set aside to fund the winddown of the Debtors' Estates and their non-Debtor subsidiaries worldwide (the "**Winddown**" and the "**Winddown Account**"), in accordance with a budget approved by the WAC Lenders (the "**Winddown Budget**"). Having successfully conducted this highly complex process within the framework of chapter 11, the Debtors must now finalize the resolution of their Chapter 11 Cases by reaching the ultimate goal in any chapter 11 case – the confirmation of their Plan. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 465 n.4 (1999) ("Confirmation of a plan . . . is the statutory goal of every chapter 11 case.").

2. Under the difficult circumstances that the Debtors found themselves in resulting from external market factors, they have been able to achieve the best possible outcome for their creditors. The Plan reflects a negotiated solution that maximizes the value of the Debtors' assets while minimizing the Claims against the Debtors, thereby allowing the Debtors and the Plan Administrator to effectuate the Winddown in a cost-efficient manner. The Plan has been accepted by 97.86% in amount and 94.66% in number of the holders of Claims who were entitled to vote to accept or reject the Plan and who actually voted across the Plan's voting Classes.[2] The Plan reflects the input of a number of the Debtors' creditors and the Office of the United States Trustee. No party in interest objected to the confirmation of the Plan. The support for the Plan speaks volumes about its fairness and the good-faith efforts underpinning the Plan that culminated in its filing.

3. This Memorandum addresses the requirements for confirmation of the Plan under the Bankruptcy Code and demonstrates that the Plan satisfies each confirmation requirement, thereby warranting prompt confirmation and implementation of the Plan in the best

[2] A table summarizing the results of the voting on the Plan, broken down by WAC Group or Debtor, as applicable, is attached hereto as **Exhibit B**.

interests of the Debtors and their stakeholders. For the reasons stated in this Memorandum, the Court should confirm the Plan. A proposed order confirming the Plan has been filed contemporaneously herewith (the "**Proposed Confirmation Order**").

BACKGROUND

4. On November 25, 2018 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases. On November 27, 2018, the Court entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure authorizing the joint administration and procedural consolidation of these Chapter 11 Cases. *See* ECF No. 25.

A. The Plan and the Disclosure Statement

5. On April 8, 2019, the Debtors filed the *Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 696] and the *Disclosure Statement for Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 697], as well as the *Motion of Debtors for Entry of an Order (I) Approving (A) Proposed Disclosure Statement, (B) Solicitation and Voting Procedures, and (C) Notice and Objection Procedures for Confirmation of Debtors' Plan, and (II) Granting Related Relief* [ECF No. 699] (the "**Disclosure Statement Motion**"). Amended versions of the Plan and Disclosure Statement were filed on April 26, 2019 [ECF Nos. 731 and 732, respectively], May 29, 2019 [ECF Nos. 802 and 803, respectively], and June 4, 2019 [ECF Nos. 818 and 819, respectively]. In addition, on June 26, 2019, the Debtors filed the *Notice of Filing Plan Supplement in Connection with Second Amended Modified Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings*

Ltd. and Its Affiliated Debtors [ECF No. 845] (the "**Plan Supplement**"). Amended versions of the Plan and the Plan Supplement were filed contemporaneously herewith in advance of the Confirmation Hearing [ECF Nos. 871 and 873, respectively].

6. On June 4, 2019, this Court entered an order approving the Disclosure Statement Motion [ECF No. 816] (the "**Disclosure Statement Order**"). Pursuant to the Disclosure Statement Order, the Court (i) established certain solicitation and voting procedures with respect to the Plan (the "**Solicitation and Voting Procedures**"); (ii) established notice and objection procedures with respect to the Plan (the "**Notice and Objection Procedures**"); (iii) set July 3, 2019 as the Voting Deadline; (iv) set July 8, 2019 as the Confirmation Objection Deadline; and (v) scheduled the Confirmation Hearing to commence on July 25, 2019.

B. Solicitation of Votes on the Plan

7. On June 11, 2019, in accordance with the Disclosure Statement Order, the Debtors commenced the solicitation of votes to accept or reject the Plan. Specifically, the Debtors caused Kurtzman Carson Consultants LLC to distribute copies of the Disclosure Statement, the Plan, and the applicable form of ballot with voting instructions (the "**Ballot**") to the holders of Claims entitled to vote on the Plan. *See* Solicitation Affidavit (as defined below). The Disclosure Statement Order established May 31, 2019 as the Voting Record Date for determining which holders of Claims were entitled to vote on the Plan. The voting period ended at 4:00 p.m. (prevailing Eastern Time) on July 3, 2019, the Voting Deadline.

8. Pursuant to the Disclosure Statement Order's Solicitation and Voting Procedures, the Debtors were not required to solicit votes from the holders of Claims and Interests, as applicable, in Classes 1A through 20A, 1B through 20B, 1F through 18F, and 20F, as each such Class is unimpaired by the Plan and is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code. Disclosure Statement Order ¶ III.F. Additionally, the Debtors

were not required to solicit votes from the holders of Claims and Interests in Classes 1D through 3D, 6D through 8D, and 19G, as each such Class will not receive any distribution or retain any property pursuant to the Plan and is conclusively deemed to reject the Plan under section 1126(g) of the Bankruptcy Code. Disclosure Statement Order ¶ III.G. Finally, the Debtors were not required to solicit votes from the holders of Claims in Classes 1E through 20E, as each such Class is impaired under the Plan, but is conclusively presumed to accept the Plan as Plan proponents. Disclosure Statement Order ¶ III.G. The Debtors did, however, distribute notices of non-voting status to the members of the above-listed Classes whose votes to accept or reject the Plan were not solicited pursuant to the Disclosure Statement Order's Notice and Objection Procedures. Disclosure Statement Order ¶ III.A.; Solicitation Affidavit ¶ 21-22.

9. In addition, the Debtors published notice of the Confirmation Hearing in *The New York Times* (National Edition), *The Financial Times* (Worldwide Edition), and *Aviation Week & Space Technology*, as evidenced by the *Affidavit of Publication re Notice of (I) Approval of Disclosure Statement; (II) Establishment of Voting Record Date; (III) Hearing on Confirmation of the Plan and Procedures for Objecting to Confirmation of the Plan; and (IV) Procedures and Deadline for Voting on the Plan in the New York Times, Financial Times, and Aviation Week & Space Technology*, filed on June 18, 2019 [ECF No. 837].

C. Objections to the Plan

10. Pursuant to the Disclosure Statement Order, the Confirmation Objection Deadline for the Plan was July 8, 2019.[3] Disclosure Statement Order ¶ I.3. No objections to the Plan were filed. This is consistent with the fact that nearly 98% in amount and 95% in number of

[3] The Confirmation Objection Deadline was extended with respect to certain limited issues for SunTrust Bank, as both the administrative agent and the collateral agent under the WAC7 Credit Agreement, and Macquarie PF Inc., as both the WAC1 Administrative Agent and a WAC Lender under the WAC1 Credit Agreement, the WAC3 Credit Agreement, and the WAC6 Credit Agreement, until July 12, 2019.

the holders of Claims who were entitled to vote to accept or reject the Plan and who actually voted across the Plan's voting Classes voted to accept the Plan. Thus, the Debtors are proceeding to the Confirmation Hearing with a fully consensual Plan.

FACTS

11. Except as set forth herein, the pertinent facts relating to the Chapter 11 Cases and the Plan are set forth in the First Day Declarations, the Disclosure Statement, the Plan, and the Plan Supplement. In addition, prior to or contemporaneously with the filing of this Memorandum, the following documents have been filed in support of confirmation of the Plan:

a. *Declaration of William Transier in Support of Confirmation of the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 874] (the "**Transier Declaration**");

b. *Declaration of Robert A. Del Genio in Support of Confirmation of the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 875] (the "**Del Genio Declaration**");

c. *Certification of Leticia Sanchez with Respect to the Tabulation of Votes on the Second Amended Modified Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and Its Affiliated Debtors* [ECF No. 861] (the **"Voting Certification**"); and

d. *Affidavit of Service* [ECF No. 838] (the "**Solicitation Affidavit**").

12. All facts referenced in the Transier Declaration, the Del Genio Declaration, and the Voting Certification are incorporated herein as though set forth fully at length. Certain additional facts may be provided by live testimony at the Confirmation Hearing, if necessary, or at the request of the Court. As necessary, specific facts from the Chapter 11 Cases will be referred to in this Memorandum in connection with the discussion of applicable legal principles.

A. The Sale Transactions

13. Because of the liquidity crisis that the Debtors experienced at the time of the commencement of the Chapter 11 Cases and the sensitive, highly degradable nature of the Debtors' assets, the all-encompassing theme underlying the Debtors' marketing and sale process was the need to negotiate a sale of their helicopter fleet as expeditiously as possible. Indeed, the Macquarie Purchase Agreement contained a provision providing for a "Closing Delay Payment," such that the purchase price that Macquarie Rotorcraft Leasing Holdings Limited ("**Macquarie**") would pay to the Debtors for substantially all of their assets would decrease by $200,000 every day past January 31, 2019, until the Macquarie Sale Transaction actually closed. By moving as quickly as they did to consummate the below-described sales, the Debtors were able to largely preserve the value of their business platform as a going concern and capture a substantial portion of the value of their asset base, to the benefit of the WAC Lenders.

14. The WAC9 Credit Bid was a credit bid for (i) 100% of the equity of WAC9 and (ii) all profit participating notes issued by WAC9 or any of its subsidiaries. The aggregate consideration provided was a credit bid for 100% of the obligations under the WAC Facility for WAC9, in an amount not less than $60,464,373.77 (in terms of the dollar-denominated tranche of the credit agreement obligations) and €33,588,431.00 (in terms of the euro-denominated tranche of the credit agreement obligations) as of the closing date and $3,569,259.39 in cash for the exit payment. A hearing to consider the WAC9 Sale Transaction was held on February 12, 2019, and this Court entered an order approving the WAC9 Purchase Agreement on February 14, 2019 [ECF No. 441]. The WAC9 Sale Transaction closed on February 26, 2019.

15. The WAC12 Credit Bid was a credit bid for (i) 100% of the equity of WAC12 and (ii) all profit participating notes issued by WAC12 or any of its subsidiaries. The aggregate consideration provided was a credit bid for 100% of the obligations under the WAC

Facility for WAC12, in an amount not less than $115 million and $2,805,839.67 in cash for the exit payment. A hearing to consider the WAC12 Sale Transaction was held on February 12, 2019, and this Court entered an order approving the WAC12 Purchase Agreement on February 14, 2019 [ECF No. 440]. The WAC12 Sale Transaction closed on February 28, 2019.

16. The WAC2 Credit Bid was a credit bid for substantially all of the assets of WAC2, including (i) 100% of the beneficial interests of certain trust subsidiaries of WAC2 and (ii) aircraft and related leases and certain other assets owned by WAC2, as identified in the WAC2 Credit Bid. The aggregate consideration provided was a credit bid of $18,340,000 and $4,449,500.00 in cash for the winddown payment. A hearing to consider the WAC2 Sale Transaction was held on March 12, 2019, and this Court entered an order approving the WAC2 Purchase Agreement on March 13, 2019 [ECF No. 525]. The WAC2 Sale Transaction closed on March 28, 2019.

17. Pursuant to the Macquarie Purchase Agreement, Macquarie acquired substantially all of the remaining assets of the Debtors, including one-hundred and twenty aircraft, all outstanding leases with respect to such aircraft, related parts, tooling and other inventory, certain leases for real estate, intellectual property, and certain other contracts for total consideration of approximately $445 million. A hearing to consider the Macquarie Sale Transaction was held on February 12, 2019, and this Court entered an order approving the Macquarie Purchase Agreement on February 15, 2019 [ECF No. 444]. The Macquarie Sale Transaction closed on March 13, 2019.

B. The Debtors' Chapter 11 Plan of Liquidation

18. The Plan constitutes a joint chapter 11 plan for each of the Debtors. The classification and treatment of Claims and Interests in the Plan apply to all of the Debtors. The primary objectives of the Plan are to provide a mechanism to implement the disposition of the

Debtors' remaining assets, to distribute the remaining net sale proceeds in conformity with the distribution scheme provided by the Bankruptcy Code and prior orders of this Court, and to establish procedures and oversight for the Winddown and liquidation of each of the Debtors in accordance with applicable local law. Pursuant to the *Order (I) Approving Purchase Agreement Among Debtors and Macquarie, (II) Authorizing Sale of Certain of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [ECF No. 444] (the "**Macquarie Sale Order**"), upon the closing of the Macquarie Sale Transaction, the balance of the sale proceeds was partially distributed to the WAC Lenders with the remainder set aside and allocated to either the Winddown Account, the Fee Reserve Account, or the WAC Lenders' respective cash collateral accounts as Holdback Amounts. The Macquarie Sale Order provides that the balance of any remaining Holdback Amounts will be distributed to the WAC Lenders on the Effective Date of the Plan.

19. The Plan divides Claims and Interests into Debtor groups for the purposes of describing their treatment under the Plan, tabulating votes, and making distributions. The Plan also provides for the satisfaction of other types of Claims that do not require classification, such as Administrative Expense Claims and Priority Tax Claims. The allowance, classification, and treatment of all Allowed Claims and Allowed Interests under the Plan is designed to take into account and conform to the relative priority and rights of such Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto.

20. Under the Plan, William Transier will serve as the Plan Administrator upon the Effective Date of the Plan to, among other things, (i) make distributions to holders of Allowed Claims in accordance with the Plan; (ii) direct and control the liquidation, sale, and/or abandoning

of the remaining assets of the Debtors; (iii) direct and control the Winddown, including the dissolution, liquidation, striking off, or similar action to wind down each of the Debtors and their direct and indirect non-Debtor subsidiaries and affiliates; (iv) control and effectuate the Claims reconciliation process; and (v) close the Chapter 11 Cases.

21. The Plan Administrator will, among other things, steer the Debtors and their non-Debtor subsidiaries towards a quick and efficient Winddown after the Effective Date of the Plan, subject to the oversight of the Plan Oversight Board pursuant to the Plan Oversight Board Bylaws (as discussed below). The Plan Administrator will be tasked with winding down more than 100 entities across nearly 20 jurisdictions globally in accordance with a budget approved by the WAC Lenders. Given the global nature of the Debtors' helicopter leasing business, the Winddown will require coordination with and oversight of a number of professionals around the world. Each of the relevant jurisdictions has several different available forms of liquidation proceedings that can vary greatly in cost and duration. For example, in China, a voluntary liquidation can take as little as three months and cost $6,000, while a court-supervised bankruptcy proceeding could last up to a year and cost $400,000. Similarly, in Bermuda, a member's voluntary liquidation can take as little as five weeks and cost $10,000, while a compulsory winddown could last up to three years and cost $150,000. Further, winding down each of the Debtors' Irish entities could take anywhere from six months to two years and cost anywhere from a nominal amount to over €30,000 per entity based on the liquidation proceeding utilized. Satisfying local law requirements and accessing the quickest and cheapest liquidation option in each Debtor's jurisdiction is ultimately a key to the efficient use of the limited funds in the Winddown Account, completing the Winddown as quickly as possible, and returning any remaining funds reserved for the Winddown to those WAC Lenders who have a reversionary interest in the Winddown Account.

22. The Plan and the Plan Supplement represent and reflect the terms negotiated with the WAC Lenders regarding, among other things, the distributions to the WAC Lenders, the creation and appointment of the Plan Oversight Board responsible for overseeing the Plan Administrator in his implementation and administration of the Plan pursuant to the terms of the Plan Oversight Board Bylaws, and the disposition of the Debtors' few remaining assets. Because the WAC Lenders collectively hold approximately 96.02% in amount of the aggregate Claims asserted against the Debtors, the Debtors were able to secure the overwhelming support of their creditors by negotiating a chapter 11 plan with terms supported by all of the WAC Agents and nearly all of the WAC Lenders.

23. The Plan and the Plan Supplement were the subject of extensive good-faith negotiations between the Debtors and the WAC Lenders. In the weeks leading up to the Confirmation Hearing, the Debtors engaged the WAC Lenders in extensive arm's-length negotiations with the goal of maximizing the value of the Debtors' assets and conducting the Winddown in a cost-efficient manner. The good-faith nature of these negotiations is evidenced by, among other things, the various iterations of the Plan and the Plan Supplement that were filed with the Court. As demonstrated by its fully consensual nature and the fact that every voting Class voted overwhelmingly to accept it, the Plan strikes an appropriate balance for all stakeholders.

JURISDICTION

24. This Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). The confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has jurisdiction to enter a final order with respect thereto. The Debtors are eligible debtors under section 109 of title 11 of the United States Code

(the "**Bankruptcy Code**"). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

ARGUMENT

25. This Memorandum is divided into three parts. Part I addresses the requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code and demonstrates the satisfaction of each such requirement and the achievement of the objectives of chapter 11 of the Bankruptcy Code. Part II addresses certain limited modifications to the Plan. Part III addresses the entry of the Proposed Confirmation Order.

I. THE PLAN SATISFIES SECTION 1129 OF THE BANKRUPTCY CODE AND SHOULD BE APPROVED

26. To achieve confirmation of the Plan, the Debtors must demonstrate by a preponderance of the evidence that the Plan satisfies section 1129(a) of the Bankruptcy Code. *See, e.g.*, *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (internal citations omitted); *In re Young Broad. Inc.*, 430 B.R. 99, 128 (Bankr. S.D.N.Y. 2010) (internal citations omitted).

27. Through filings with the Court and the evidence to be presented at the Confirmation Hearing, including the Transier Declaration, the Del Genio Declaration, and the Voting Certification submitted in support of the confirmation of the Plan, the Debtors will demonstrate, by a preponderance of the evidence, that all of the applicable subsections of section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan, and, therefore, the Plan should be confirmed.

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

28. Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. 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 governing the classification of claims and the contents of the plan, respectively. *See* S. REP. NO. 95-989, at 126 (1978); H.R. REP. NO. 95-595, at 412 (1977); *see also Kane v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 843 F.2d 636, 648-49 (2d Cir. 1988). As demonstrated below, the Plan fully complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as with all other applicable provisions of the Bankruptcy Code.

a. *The Classification of Claims and Interests Complies with Section 1122 of the Bankruptcy Code*

29. Section 1122 of the Bankruptcy Code 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 the other claims or interests of such class." 11 U.S.C. § 1122(a). Under this section, a plan may provide for multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to the other claims or interests in that class. In addition, substantially similar claims may not be classified separately when done for an illegitimate reason. Courts interpreting section 1122(a) of the Bankruptcy Code generally uphold separate classification of claims if a reasonable basis exists for the classification and all claims within a particular class are substantially similar. *See, e.g., Aetna Cas. & Sur. Co. v. Clerk, U.S. Bankr. Court, NY, NY (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996) (stating that "classification is constrained by two straight-forward rules: Dissimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason").

30. The classification scheme of the Plan complies with the Bankruptcy Code. Generally, the Plan incorporates a "waterfall" classification and distribution scheme that follows the statutory priorities prescribed by the Bankruptcy Code. All Claims and Interests within a particular Class have the same or similar rights against the Debtors. The Plan provides for the

separate classification of Claims and Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests in accordance with applicable law, generally grouping Claims based on the particular debt facilities or instruments that created the secured obligations underlying such Claims.

31. The Plan designates the following classes of Claims and Interests:[4]

Class	Type of Claim or Interest
Classes 1A through 20A	Priority Non-Tax Claims against the Debtors
Classes 1B through 20B	Other Secured Claims against the Debtors
Class 1C	WAC1 Secured Claims against the WAC1 Group
Class 2C	WAC2 Secured Claims against the WAC2 Group
Class 3C	WAC3 Secured Claims against the WAC3 Group
Class 6C	WAC6 Secured Claims against the WAC6 Group
Class 7C	WAC7 Secured Claims against the WAC7 Group
Class 8C	WAC8 Secured Claims against the WAC8 Group
Class 10C	WAC10 Secured Claims against WAC10
Class 1D	General Unsecured Claims against the WAC1 Group
Class 2D	General Unsecured Claims against the WAC2 Group
Class 3D	General Unsecured Claims against the WAC3 Group
Class 4D	General Unsecured Claims against WAC4
Class 5(i)D	General Unsecured Claims against WAC5
Class 5(ii)D	General Unsecured Claims against MSN 2047 Trust
Class 5(iii)D	General Unsecured Claims against MSN 2057 Trust
Class 5(iv)D	General Unsecured Claims against MSN 14786 Trust
Class 5(v)D	General Unsecured Claims against WLUK5A
Class 6D	General Unsecured Claims against the WAC6 Group
Class 7D	General Unsecured Claims against the WAC7 Group
Class 8D	General Unsecured Claims against the WAC8 Group
Class 10(i)D	General Unsecured Claims against WAC10
Class 10(ii)D	General Unsecured Claims against MSN 2826 Trust
Class 10(iii)D	General Unsecured Claims against MSN 2879 Trust
Class 10(iv)D	General Unsecured Claims against MSN 2916 Trust
Class 11(i)D	General Unsecured Claims against WAC11
Class 11(ii)D	General Unsecured Claims against WAG
Class 11(iii)D	General Unsecured Claims against MSN 2905 Trust
Class 14(i)D	General Unsecured Claims against WAC14
Class 14(ii)D	General Unsecured Claims against WAC5B
Class 15D	General Unsecured Claims against WAC15

[4] In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Fee Claims, and Priority Tax Claims have not been classified.

Class	Type of Claim or Interest
Class 16D	General Unsecured Claims against WLIL
Class 17D	General Unsecured Claims against LuxCo
Class 18D	General Unsecured Claims against LuxCo Euro
Class 19D	General Unsecured Claims against Holdings
Class 20D	General Unsecured Claims against Services
Classes 1E through 20E	Intercompany Claims against the Debtors
Classes 1F through 18F and 20F	Other Interests in the Debtors
Class 19G	Holdings Interests

See Plan § 3.3. Each of the Claims or Interests in each particular Class is substantially similar to all of the other Claims or Interests in such Class. Accordingly, the classification of Claims and Interests in the Plan complies with section 1122 of the Bankruptcy Code. *See In re Charter Commc'ns*, 419 B.R. 221, 264 n.35 (Bankr. S.D.N.Y. 2009) (explaining that debtors "enjoy considerable discretion when classifying similar claims in different classes").

i. The Classification of Secured Claims

The Secured Claims in Classes 1B through 20B, 1C, 2C, 3C, 6C, 7C, 8C, and 10C are not substantially similar to each other and merit separate classification. The collateral securing the Claims in each such Class is different than the collateral securing the Claims in each of the other such Classes. Likewise, each of these Classes contains Claims arising from different debt instruments, possessing different rights, and having different obligations. As a result, each Class of Secured Claims contains holders with unique legal, economic, and voting interests. Accordingly, the separate classification of these Secured Claims is permissible and appropriate under section 1122(a) of the Bankruptcy Code.

ii. The Classification of Unsecured Claims

32. The Plan classifies all unsecured, nonpriority Claims in Classes 1D, 2D, 3D, 4D, 5(i)D, 5(ii)D, 5(iii)D, 5(iv)D, 5(v)D, 6D, 7D, 8D, 10(i)D, 10(ii)D, 10(iii)D, 10(iv)D, 11(i)D, 11(ii)D, 11(iii)D, 14(i)D, 14(ii)D, 15D, 16D, 17D, 18D, 19D, and 20D. As unsecured, nonpriority

creditors, the holders of Claims in these Classes are legally and economically distinct from the holders of Secured Claims in other Classes and merit separate classification. Further, the unsecured, nonpriority Claims against different Debtors are not substantially similar to each other and merit their separate classification.

iii. The Classification of Interests

33. The Interests in Class 19G (Holdings Interests) only exist at the overall corporate parent, Holdings. The Interests in Classes 1F through 18F and 20F (Other Interests in the Debtors) do not exist at Holdings. The Classes of Interests for the other Debtors are Classes 1F through 18F and 20F, each of which contains Interests for a different Debtor.

34. Based upon the foregoing, the Debtors submit that the Plan's proposed classification of Claims and Interests is reasonable and appropriate. Accordingly, the Debtors submit that the Plan satisfies the requirements of section 1122(a) of the Bankruptcy Code.

b. *The Required Contents of the Plan Under Section 1123(a) of the Bankruptcy Code*

35. Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which the proponent of every chapter 11 plan, other than individual debtors, must comply. As demonstrated herein, the Plan fully complies with each of these enumerated requirements.

i. Section 1123(a)(1) of the Bankruptcy Code – Designation of Classes of Claims and Interests

36. Section 1123(a)(1) of the Bankruptcy Code requires that a plan designate classes of claims and interests subject to section 1122 of the Bankruptcy Code. Section 3.3 of the Plan designates the separate Classes of Claims and Interests, as discussed in detail above. Accordingly, the Plan satisfies the requirements of section 1123(a)(1) of the Bankruptcy Code.

ii. Section 1123(a)(2) of the Bankruptcy Code – Classes that Are Unimpaired Under the Plan

37. Section 1123(a)(2) of the Bankruptcy Code requires a plan to specify any class of claims or interests that is unimpaired under the plan. Section 3.3 of the Plan specifies that Classes 1A through 20A (Priority Non-Tax Claims against the Debtors), Classes 1B through 20B (Other Secured Claims against the Debtors), and Classes 1F through 18F and 20F (Other Interests in the Debtors) are unimpaired (collectively, the "**Unimpaired Classes**"). Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

iii. Section 1123(a)(3) of the Bankruptcy Code – Treatment of Classes that Are Impaired Under the Plan

38. Section 1123(a)(3) of the Bankruptcy Code requires a plan to specify the treatment of impaired classes of claims or interests. Article IV of the Plan sets forth the treatment of Classes 1C through 3C and 6C through 8C (Secured Claims against the WAC Groups), Class 10C (WAC10 Secured Claims against WAC10), Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups), Class 4D (General Unsecured Claims against WAC4), Class 5(i)D (General Unsecured Claims against WAC5), Class 5(ii)D (General Unsecured Claims against MSN 2047 Trust), Class 5(iii)D (General Unsecured Claims against MSN 2057 Trust), Class 5(iv)D (General Unsecured Claims against MSN 14786 Trust), Class 5(v)D (General Unsecured Claims against WLUK5A), Class 10(i)D (General Unsecured Claims against WAC10), Class 10(ii)D (General Unsecured Claims against MSN 2826 Trust), Class 10(iii)D (General Unsecured Claims against MSN 2879 Trust), Class 10(iv)D (General Unsecured Claims against MSN 2916 Trust), Class 11(i)D (General Unsecured Claims against WAC11), Class 11(ii)D (General Unsecured Claims against WAG), Class 11(iii)D (General Unsecured Claims against MSN 2905 Trust), Class 14(i)D (General Unsecured Claims against WAC14), Class 14(ii)D (General Unsecured Claims against WAC5B), Class 15D (General

Unsecured Claims against WAC15), Class 16D (General Unsecured Claims against WLIL), Class 17D (General Unsecured Claims against LuxCo), Class 18D (General Unsecured Claims against LuxCo Euro), Class 19D (General Unsecured Claims against Holdings), Class 20D (General Unsecured Claims against Services), Classes 1E through 20E (Intercompany Claims against the Debtors), and Class 19G (Holdings Interests) (collectively, the "**Impaired Classes**"), each of which is impaired under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

iv. Section 1123(a)(4) of the Bankruptcy Code – Equal Treatment Within Each Class

39. Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder thereto agrees to less favorable treatment than the other members of such class. Article IV of the Plan specifies the treatment of Claims and Interests in each respective Class and, as required by section 1123(a)(4) of the Bankruptcy Code, provides for the same treatment by the Debtors for each Claim or Interest in each respective Class, unless the holder of a particular Claim or Interest has voluntarily agreed to less favorable treatment for such Claim or Interest as compared to the Class's other members by granting the Accepting Claimant Releases (as defined below) through voting to accept the Plan. In that circumstance, such holder of a Claim or Interest granting the Accepting Claimant Releases is agreeing to be treated arguably less favorably than the other members of its Class. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

v. Section 1123(a)(5) of the Bankruptcy Code – Adequate Means for Implementation

40. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide "adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The Plan and the Plan

Supplement provide adequate means for the implementation of the Plan by creating the structure and mechanisms for the Debtors to distribute any remaining cash and to wind down themselves and their non-Debtor subsidiaries. Section 5.4 of the Plan provides for the appointment of the Plan Administrator for each of the Debtors for the purpose of, among other things, administering claims and any remaining assets, making distributions, and winding down the Debtors' estates. Section 5.3 of the Plan provides for the appointment of the Plan Oversight Board for the purpose of overseeing the Plan Administrator and his implementation and administration of the Plan. Section 5.5 of the Plan governs corporate action under the Plan. Section 5.12 of the Plan provides for the deemed substantive consolidation of the WAC Groups for certain limited purposes related to the Plan, including making distributions under the Plan.[5] Section 5.14 of the Plan provides that the funds in the Winddown Account shall be available to fund the expenses of the Debtors and their non-Debtor subsidiaries incurred in taking the steps to cause each Debtor to wind down, sell, and otherwise liquidate or abandon its assets pursuant to Section 6.5 of the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

vi. Section 1123(a)(6) of the Bankruptcy Code – Prohibition on the Issuance of Non-Voting Securities

41. Section 1123(a)(6) of the Bankruptcy Code prohibits the issuance of non-voting securities, and requires the amendment of a debtor's corporate charter to so provide. This section of the Bankruptcy Code also requires that a debtor's corporate charter provide an appropriate distribution of voting power among the classes of securities possessing voting power.

[5] Substantive consolidation of the WAC Groups, as set forth in the Plan, is in the best interests of the Debtors, the WAC Groups, and all holders of Claims. Such substantive consolidation is appropriate and equitable because no holders of Claims or Interests will be harmed as a result, and is fair, equitable, and reasonable in light of the nature of the Secured Claims of the WAC Lenders. Finally, such substantive consolidation was only effected after due notice and opportunity for a hearing with respect thereto. *See In re CHC Grp. Ltd.*, Case No. 16-31854 (BJH) (Bankr. N.D. Tex. Mar. 3, 2017) [ECF No. 1794] (approving "the deemed consolidation of the Debtors for the limited purpose of Plan Distribution").

The Plan is a liquidating plan and the corporate charter of each Debtor will, as soon as practicable after the Effective Date of the Plan, no longer be valid and existing, and so the requirement to amend such corporate charters is inapplicable. The only new securities to be issued under the Plan pursuant to Section 4.39 of the Plan are voting securities in order to allow the Plan Administrator to control Holdings. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

vii. Section 1123(a)(7) of the Bankruptcy Code – Provisions Regarding Directors and Officers

42. 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." 11 U.S.C. § 1123(a)(7). William Transier was disclosed as the Plan Administrator, subject to the terms of the Plan Administrator Agreement, pursuant to Section 5.4 of the Plan. The member representatives of the Plan Oversight Board were disclosed pursuant to Exhibit B of the Plan Supplement. The composition of each board of directors or managers, as applicable, and, to the extent applicable, any remaining officers, was disclosed prior to the Confirmation Hearing in Exhibit E of the Plan Supplement in accordance with section 1129(a)(5) of the Bankruptcy Code. Section 6.2 of the Plan, which governs the manner of the selection of any officer, director, or manager pursuant to the Plan, is consistent with the interests of holders of Claims and Interests and with public policy. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

viii. Section 1123(a)(8) of the Bankruptcy Code – Not Applicable

43. The Debtors are not individuals in these Chapter 11 Cases. Accordingly, section 1123(a)(8) of the Bankruptcy Code is not applicable to the Plan.

c. *The Plan Complies with Section 1123(b) of the Bankruptcy Code*

44. Section 1123(b) of the Bankruptcy Code sets forth the permissive provisions that may be incorporated into a chapter 11 plan. As demonstrated below, each provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

i. Section 1123(b)(1) of the Bankruptcy Code – Impairment of Claims and Interests

45. Section 1123(b)(1) of the Bankruptcy Code provides that a plan "may impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). Claims and Interests in the Impaired Classes are impaired and are receiving appropriate treatment under the Plan. Claims and Interests in the Unimpaired Classes are unimpaired and are also receiving appropriate treatment under the Plan. Accordingly, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

ii. Section 1123(b)(2) of the Bankruptcy Code – Executory Contracts

46. Section 1123(b)(2) of the Bankruptcy Code provides that a plan may provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. Section 9.1 of the Plan provides that, on the Effective Date of the Plan, each Executory Contract not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract: (i) is identified for assumption in the Plan Supplement; (ii) as of the Effective Date of the Plan, is subject to a pending motion to assume such Executory Contract; (iii) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (iv) is a D&O Policy. Accordingly, the Plan is consistent with section 1123(b)(2) of the Bankruptcy Code.

iii. Section 1123(b)(3) of the Bankruptcy Code – Settlement of Claims and Causes of Action

47. Section 1123(b)(3)(A) of the Bankruptcy Code allows a plan to 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). As permitted by section 1123(b)(3)(A) of the Bankruptcy Code, and as discussed in detail below, Section 11.5 of the Plan provides for a release of certain Claims and Causes of Action owned by the Debtors against the Debtor Released Parties. Section 1123(b)(3)(B) of the Bankruptcy Code allows a plan to provide for "the retention and enforcement by the debtor" of certain claims or interests. 11 U.S.C. § 1123(b)(3)(B). As permitted by section 1123(b)(3)(B) of the Bankruptcy Code, Section 5.9 of the Plan preserves for the Debtors all Causes of Action, except as otherwise provided in the Plan or by an order of this Court, and Section 7.7 of the Plan preserves any rights of setoff or recoupment that the Debtors or the Plan Administrator may have against the holder of any Claim. Accordingly, the Plan is consistent with section 1123(b)(3) of the Bankruptcy Code.

iv. Section 1123(b)(4) of the Bankruptcy Code – Sale of Property of the Debtors' Estates

48. The Plan does not provide for the sale, transfer, or assignment of all or substantially all of the Debtors' property and, therefore, section 1123(b)(4) of the Bankruptcy Code is not applicable to the Plan.

v. Section 1123(b)(5) of the Bankruptcy Code – Modification of Creditor Rights

49. Section 1123(b)(5) of the Bankruptcy Code provides that a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." 11 U.S.C. § 1123(b)(5). As set

forth in Article IV of the Plan, the Plan modifies the rights of holders of Claims and Interests in the Impaired Classes and leaves unaffected the rights of holders of Claims and Interests in the Unimpaired Classes. Accordingly, the Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.

vi. Section 1123(b)(6) of the Bankruptcy Code – Other Appropriate Provisions

50. Section 1123(b)(6) of the Bankruptcy Code is a "catchall" provision which permits inclusion in a plan of any appropriate provision as long as such provision is "not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan contains certain provisions for (i) distributions to holders of Claims and Interests; (ii) the resolution of Disputed Claims; (iii) the allowance of certain Claims; (iv) the release, injunction, and exculpation provisions set forth in Article XI of the Plan; (v) the Winddown of the Debtors and their non-Debtor subsidiaries; and (vi) the retention of this Court's jurisdiction for any matter arising in or under, or related to, the Chapter 11 Cases, in each case consistent with the applicable provisions of the Bankruptcy Code and the law of the United States Court of Appeals for the Second Circuit (the "**Second Circuit**"). Certain of these provisions are discussed *infra*. These provisions are consistent with the applicable provisions of the Bankruptcy Code and should be approved as an integral part of the Plan. Accordingly, the Plan is consistent with section 1123(b)(6) of the Bankruptcy Code.

51. Based upon the foregoing, the Plan fully complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as with all other applicable provisions of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

vii. The Plan's Releases and Exculpation Provisions Should Be Approved

52. The Plan provides for the release of certain claims by the Debtors and their Estates (the "**Estate Releases**") and the release of certain Claims held by certain holders of Claims and Interests (the "**Accepting Claimant Releases**"), as well as for the exculpation of the Exculpated Parties (as defined below). The Estate Releases, the Accepting Claimant Releases, and the Exculpation Provisions (as defined below) are integral components of the Plan, consistent with the Bankruptcy Code, and compliant with the applicable case law and precedent in the Second Circuit. Moreover, the Estate Releases, the Accepting Claimant Releases, and the Exculpation Provisions are the product of extensive, arm's-length negotiations conducted in good faith. As such, and for the reasons set forth below, the Estate Releases, the Accepting Claimant Releases, and the Exculpation Provisions should be approved.

(a) The Estate Releases Are Appropriate and Should Be Approved

53. Section 1123(b)(3)(A) of the Bankruptcy Code specifically provides that a chapter 11 plan may provide for the settlement or adjustment of any claim or interest belonging to the debtor or its estate. Accordingly, Section 11.5(a) of the Plan contains the Estate Releases for the Debtor Released Parties[6] for Claims, judgments, obligations, suits, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities, based on or in any way

[6] Section 1.24 of the Plan defines "**Debtor Released Parties**" as all holders of Claims who vote to accept the Plan, as well as all of the Released Parties; provided, however, that the holder of a Claim (other than a Debtor or a wholly-owned direct or indirect subsidiary of a Debtor) who is deemed to have accepted the Plan, but does not actually vote to accept the Plan, shall not be a Debtor Released Party. Section 1.82 of the Plan defines "**Released Parties**" as, collectively and in each case in their capacity as such, (i) the Debtors; (ii) the WAC Agents (except to the extent the Required Lenders under the applicable WAC Facility vote to reject the Plan); (iii) the WAC Lenders that vote to accept the Plan; (iv) the Steering Committee; and (v) with respect to each of the foregoing (i) through (iv), their respective current and former predecessors, successors and assigns, subsidiaries, and Affiliates, and its and their officers, directors, members, managers, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such persons' respective executors, Estates, servants, and nominees.

relating to or in any manner arising from, the Debtors, their Estates, or their Affiliates; the conduct of the Debtors' business; the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Forbearance Agreements, the Purchase Agreements, the Disclosure Statement, the Plan, or any contract, instrument, release, or other agreement or document created or entered into in connection therewith; the filing and the prosecution of the Chapter 11 Cases; and the pursuit of the confirmation of the Plan.

(1) *The Estate Releases Are an Exercise of the Debtors' Business Judgment*

54. Claims held by a debtor against third parties are property of the debtor's estate and may be released. *See MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 91-92 (2d Cir. 1988); *see also* 11 U.S.C. § 541(a)(1). When considering releases by a debtor of non-debtor third parties pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, the appropriate standard is whether such release is a valid exercise of the debtor's business judgment and is fair, reasonable, and in the best interests of the debtor's estate, using the standard for the approval of a settlement under Bankruptcy Rule 9019. *See In re Charter Commc'ns*, 419 B.R. at 257 ("When reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate"); Aug. 29, 2017 Hr'g Tr. at 11:24-12:2, *In re Angelica Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Aug. 29, 2017) [ECF No. 800] (holding with respect to a liquidating chapter 11 plan that "Courts in this district approved Debtor Releases when they represent a valid exercise of the Debtor's business judgment and are in the best interest of the estate"). Debtors have considerable leeway in issuing releases of their own claims, and such releases are considered "uncontroversial." *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 263 n.289 (Bankr. S.D.N.Y. 2007).

55. In determining whether such a release is a valid exercise of a debtor's business judgment, the court need not conduct a "'mini-trial' of the facts or the merits underlying each dispute" and the settlement "need not be the best that the debtor could have obtained." *In re NII Holdings, Inc.*, 536 B.R. 61, 99 (Bankr. S.D.N.Y. 2015) (internal citations omitted). The "court should instead canvass the settled issues to see whether the settlement falls below the lowest point in the range of reasonableness." *Id.* at 100 (internal quotations omitted).

> When courts in [the Second Circuit] consider whether a settlement is within the range of reasonableness, they apply the following factors: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay; (3) the paramount interests of creditors; (4) whether other parties in interest support the settlement; (5) the nature and breadth of releases to be obtained by officers and directors; (6) the competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement; and (7) the extent to which the settlement is the product of arm's-length bargaining.

Id. (citing *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007)). All of the above-listed factors weigh in favor of finding that the Estate Releases are reasonable, in the best interests of the Debtors' Estates, and a valid exercise of the Debtors' business judgment.

56. The Debtors submit that the Estate Releases reflect a reasonable balance, consistent with the Debtors' business judgment, of the risk and expense of litigating the claims and Causes of Action, on the one hand, against the benefits of resolving various disputes and issues on the other hand, and thereby remove what could otherwise be impediments to the orderly and efficient Winddown of the Debtors' Estates. This was an important aspect of the formulation of the Debtors' business judgment with respect to the Plan. As described herein, the Debtors benefit from the Estate Releases in many ways that reduce the extent of potential liabilities on the Debtors'

respective balance sheets and allow for the more efficient Winddown of the Debtors. Specifically, releases of certain claims against parties related to the Debtors, and limiting other claims to the D&O Policy proceeds[7], will reduce the number and the amount of Claims asserted against the Debtors and their non-Debtor subsidiaries by other Debtors during their Winddown. For all of these reasons, the Estate Releases are in the best interests of the Debtors' Estates and should be approved.

(2) *The Estate Releases Balance the Limited Value of the Released Claims Against the Burdens and Costs of Protracted Litigation and the Benefits Arising from Releasing the Claims*

57. The Estate Releases constitute a sound exercise of the Debtors' business judgment and meet the applicable legal standard. With respect to the first and second factors concerning any litigation's possibility of success and the likelihood of complex and protracted litigation with its attendant expenses, as described below and in the Transier Declaration, the Debtors do not believe that the released claims and Causes of Action have any value (or certainly no material value) for the Debtors and the Debtors' Estates. When considering whether to release or preserve the Debtors' potential claims and Causes of Action against certain third parties (including, specifically, any claims that the Debtors may potentially have against their current and former directors, managers, officers, shareholders, and employees), the Debtors, through their counsel, investigated such potential claims, as well as the cost and practicality of asserting and

[7] Limiting such claims and Causes of Action to available D&O Policy proceeds was an essential negotiated point that provided for certain potential claims and Causes of Action to be preserved in case they have any material value, while also ensuring that certain parties that would not thereby be covered by the Estate Releases will not be subject to personal liability because any preserved claims and Causes of Action are only recoverable to the extent of available D&O Policy proceeds.

pursuing any such claims under Irish law in Irish winddown proceedings (the law that would govern for a significant number of the Debtors).

58. Upon the advice of the Debtors' Irish law advisor, A&L Goodbody Solicitors, a plaintiff would need to meet a high evidentiary burden under Irish law to successfully prosecute potential intercompany claims and Causes of Action brought by and amongst the Debtors against any of the Debtors' Irish entities, including Waypoint Leasing (Ireland) Limited, the Debtors' main operating entity, as well as any potential claims and Causes of Action against any of the Debtors' current and former directors, managers, officers, shareholders, and employees. Furthermore, such claims could be brought by various parties, but are typically brought by an Irish liquidator on behalf of the relevant Debtor(s) in connection with Irish liquidation proceedings after such liquidator makes an assessment that there is a reasonable likelihood of success in pursuing such claims to warrant the time and expense of doing so. Even if meritorious claims were identified, Irish liquidators would require funding to pay for their fees and expenses associated with asserting and pursuing such claims.

59. Other than the Fee Reserve Account, almost all of the funds remaining in the Debtors' Estates following the Effective Date of the Plan will be the funds in the Winddown Account, and the Winddown Budget does not provide for any significant litigation expenses in completing the Winddown proceedings. Thus, if the released claims and Causes of Action were pursued unsuccessfully, the litigation—which would likely be complex and expensive due to the nature of the Chapter 11 Cases, resulting in complex factual disputes, potentially extensive discovery, and conflict of laws issues arising from the global nature of the Debtors' operations and capital structure—would potentially deplete the limited funds available for the Winddown and leave the Plan Administrator unable to complete his duties. The practical difficulties and unknown

costs associated with pursuing the released claims and Causes of Action further support the Debtors' business judgment in providing the Estate Releases.

60. Courts in this district and others have recognized that releases by debtors are in the best interests of the debtors' estates where "the costs involved [in pursuing the released claims] likely would outweigh any potential benefit from pursuing such claims."[8] The results of the Debtors' investigation led them to conclude that the claims and Causes of Action being released under the Plan likely hold no material value and would be burdensome and costly to pursue. Thus, the Estate Releases reflect a reasonable balance of the risk and expense of litigating the claims and Causes of Action, on the one hand, against the benefits of resolving various disputes and issues on the other hand, and thereby remove what could otherwise be impediments to the orderly and efficient Winddown of the Debtors' Estates. This balance formed the foundation of the Debtors' business judgment in determining whether to provide the Estate Releases. Accordingly, given the absence of any colorable claims or Causes of Action, the Estate Releases are supported by the Debtors' sound business judgment.

61. In contrast with the limited value of the claims and Causes of Action being released by the Debtors, the Debtors are receiving valuable benefits as a result of providing the Estate Releases. These benefits include a reduction of the claims and Causes of Action against the Debtors and their non-Debtor subsidiaries that must be wound down and the elimination of distractions to the Debtors' directors and former employees who will provide necessary services to wind down the Debtors and their non-Debtor subsidiaries. The Estate Releases will allow the Debtors and their non-Debtor subsidiaries to avoid numerous potential claims and Causes of

[8] *In re Lear Corp.*, Case No. 09-14326 (ALG), 2009 WL 6677955, at *7 (Bankr. S.D.N.Y. Nov. 5, 2009); *see also In re Cano Petroleum, Inc.*, Case No. 12-31549 (BJH), 2012 WL 2931107, at *15 (Bankr. N.D. Tex. July 18, 2012); *In re Calpine Corp.*, Case No. 05-60200 (BRL), 2007 WL 4565223, at *9-10 (Bankr. S.D.N.Y. Dec. 19, 2007).

Action against them during their Winddown proceedings. First, most, if not all, of the Debtors' current and former directors, managers, officers, and employees are entitled to indemnification from the Debtors and/or their non-Debtor subsidiaries pursuant to corporate organizational documents, employment contracts, and applicable law. The Estate Releases will minimize the chances that the Debtors and their non-Debtor subsidiaries will face indemnification claims from their current and former directors, managers, officers, and employees during the Winddown. Second, the Estate Releases will eliminate the intercompany claims amongst the Debtors and their non-Debtor subsidiaries, which will also reduce the claims to which the Debtors and their non-Debtor subsidiaries will be subject to during the Winddown. Third, the Estate Releases helped to induce the WAC Agents and the WAC Lenders that were voting in favor of the Plan to consent to releasing claims and Causes of Action against the Debtors, their affiliates, and related parties. It is unlikely that the WAC Lenders, the WAC Agents, and the other releasing holders of Claims would have agreed to provide such reciprocal releases if the Debtors did not provide the Estate Releases to the Debtor Released Parties. The elimination of the claims and Causes of Action described above reduces the likelihood that the Debtors and their non-Debtor subsidiaries will be subject to more expensive and time consuming Winddown proceedings. Specifically, the fewer remaining Claims against a Debtor, the more likely it is that such Debtor can access less expensive, more streamlined means of liquidation or termination under applicable local law. This is because in most jurisdictions solvent liquidations are cheaper, simpler, and quicker while insolvent liquidations are more burdensome and require more oversight. Thus, the more Claims that are eliminated against a Debtor, the likelier the chance that such Debtor will be able to proceed with a solvent liquidation rather than an insolvent liquidation. Further, within any particular liquidation proceeding, having fewer Claims will expedite and simplify such process since the liquidator will

have fewer Claims to notice, investigate, address, and resolve. The cost savings of any given liquidation proceeding are magnified by the fact that the Debtors will need to wind down more than 100 entities across nearly 20 jurisdictions globally.

62. The Estate Releases are important mechanisms to avoid distractions to key current and former directors, managers, officers, and employees who will be providing necessary assistance during the Winddown. The Debtors no longer have any employees and are wholly reliant on their former employees who are now employed by Macquarie to collect, gather, and process the information necessary to conduct the Winddown. These critical services include their former legal and finance teams preparing final accounts for each Debtor, maintaining compliance with mandatory chapter 11 reporting requirements, and otherwise facilitating and shepherding each Debtor through the Winddown. In addition, several of these former employees are already providing integral support to the Debtors during the Chapter 11 Cases by having agreed to maintain their positions on the Debtors' boards during the Winddown at a favorable rate to the Debtors, thereby saving the Debtors the cost of identifying and installing replacement directors. To the extent that these individuals could be subjected to potential liability resulting from unreleased claims, the employees would likely be distracted and disincentivized from providing services under the Transition Services Agreement or in their positions as directors serving on the Debtors' boards of directors during the Winddown while defending against such litigation.

63. The Estate Releases are also warranted because the Debtor Released Parties have provided substantial value to the Debtors' Estates. The Debtors' directors, managers, and officers actively participated in negotiations prepetition and during the course of the Chapter 11 Cases. Throughout the Chapter 11 Cases, the Debtors' directors, managers, and officers worked tirelessly to maximize recoveries for the Debtors' creditors. Moreover, even after the sale of

substantially all of the Debtors' assets and many of these individuals' transition to the purchaser, Macquarie, these individuals continue to provide valuable services to the Debtors under the Transition Services Agreement and in their capacities as directors on the Debtors' boards of directors, which merits their inclusion as Debtor Released Parties for purposes of the Estate Releases. Similarly, the WAC Lenders and other Debtor Released Parties provided integral support throughout the Chapter 11 Cases. The WAC Lenders allowed the Debtors to preserve the value of their assets and successfully prosecute the Chapter 11 Cases by agreeing to the Forbearance Agreements prepetition, working with the Debtors throughout the Chapter 11 Cases, and consenting to provide the Accepting Claimant Releases discussed below. *See* Mar. 29, 2018 Hr'g Tr. at 22:20-23:1, *In re ARO Liquidation, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. Mar. 29, 2018) [ECF No. 1752] ("In addition to their monetary contribution at the end of the case, the term loan lenders' forbearance and patience permitt[ed] the debtors to preserve the value in this case. . . . Such contributions . . . justify the releases granted to them."). Accordingly, the Estate Releases balance the limited value of the released claims against the burdens and costs of the potential for protracted litigation and the benefits arising from releasing such claims.

(3) *The Estate Releases Are in the Best Interests of Creditors and Are Supported by the Debtors' Other Parties in Interest*

64. With respect to the third and fourth factors concerning the paramount interests of creditors and whether other parties in interest support the settlement, these factors also support the Estate Releases. The Estate Releases are in the best interests of the Debtors' creditors because, as discussed above, they will help to facilitate a more efficient and cost-effective Winddown. The WAC Lenders will benefit from the cost savings derived from an efficient Winddown because of the potential prospect of a further distribution resulting from their

reversionary interest in any remaining unused funds in the Winddown Account at the conclusion of the Winddown.

65. Moreover, as described above, the WAC Lenders and the other holders of Claims did not object to and voted overwhelmingly to accept the Plan, which included the provision of the Estate Releases. Indeed, the Debtors did not receive any objections to the confirmation of the Plan, or to the Estate Releases contained therein, from any of their stakeholders or parties in interest, and the Debtors' business judgment has not otherwise been questioned, so that they arrive at the Confirmation Hearing with a fully consensual Plan. Accordingly, the Estate Releases are in the paramount interests of creditors and are supported by the Debtors' other stakeholders.

(4) *The Estate Releases Are Narrowly Tailored Products of Arm's-Length Bargaining by Competent Counsel*

66. With respect to the fifth, sixth, and seventh factors concerning the nature and breadth of the Estate Releases, the competency and experience of counsel and this Court, and the extent to which there has been arm's-length bargaining, these factors all support the Estate Releases as well. Following the conclusion of good-faith negotiations with the WAC Lenders, the Debtors carefully considered and agreed to narrow the Estate Releases and provide other limitations on their scope. These limitations support the Debtors' sound business judgment in determining to give the Estate Releases. In exchange for support from the WAC Lenders for the Estate Releases, the Debtors agreed to establish the Plan Oversight Board to oversee the Plan Administrator and to provide the Plan Oversight Board with limited oversight rights over certain decisions, including the prosecution or settlement of the claims and Causes of Action not subject to the Estate Releases. As revised, the Estate Releases only release claims and Causes of Action for conduct that occurred on or after June 1, 2018, and only release those parties who served in

their supportive roles for the Debtors on or after the Petition Date, such that the Estate Releases would not apply to former directors, officers, and similar parties who left their roles with the Debtors prior to the Petition Date. Finally, the Estate Releases do not include any claims or Causes of Action arising from fraud, gross negligence, or willful misconduct, and certain other claims and Causes of Action against applicable D&O Policies are preserved.

67. Counsel representing the Debtors, the WAC Agents, and the WAC Lenders in these negotiations have significant experience with navigating complex chapter 11 bankruptcies. Finally, the terms of the Estate Releases were the culmination of extensive, good faith, and arm's-length negotiations between the Debtors and the WAC Lenders, as evidenced by, among other things, the various iterations of the Plan and the Plan Supplement that were filed with the Court, which contained revisions to the Estate Releases. Accordingly, the Estate Releases are narrowly tailored products resulting from arm's-length bargaining by competent counsel. For all of these reasons, the Estate Releases clearly rise to a level well within the range of reasonableness.

(5) *The Estate Releases Can Be Granted Despite the Fact that the Plan Is a Liquidating Plan*

68. Courts may approve releases by debtors even in liquidating chapter 11 plans. *See, e.g.*, *In re ARO Liquidation, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. Mar. 30, 2018) [ECF No. 1732] (confirming chapter 11 plan of liquidation containing releases by debtors); *In re RFID Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Aug. 31, 2017) [ECF No. 544] (same); *In re Boston Generating, LLC,* Case No. 10-14419 (SCC) (Bankr. S.D.N.Y. Aug. 31, 2011) [ECF No. 915] (same); *see also In re Motors Liquidation Co.*, 447 B.R. 198, 202, 220 (Bankr. S.D.N.Y. 2011) ("The Debtors have proposed a liquidating plan. . . . Releases by estates . . . are perfectly permissible . . . [as] an appropriate exercise of business judgment."). Notwithstanding the applicability of section 1141(d)(3) of the Bankruptcy Code to prevent the

Debtors from obtaining a discharge, nothing in that section prevents the Debtors from granting the Estate Releases under the Plan. *See In re RFID Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Aug. 31, 2017) [ECF No. 544] (holding that "confirmation of the Plan does not provide the Debtors with a discharge under section 1141 of the Bankruptcy Code because the Debtors and their Estates will be wound down" while also approving debtor releases).

69. As described above, although the Debtors are liquidating, their extensive business platform and assets were preserved and sold as going concerns pursuant to multiple sales under section 363 of the Bankruptcy Code, effectively reorganizing the Debtors' business to maximize their assets' value. The Debtors' employees, directors, managers, and officers should be rewarded, not punished, for quickly effectuating these time-sensitive sales, rather than holding such assets hostage until a sale could be completed under a chapter 11 plan where releases would have been more easily elicited. Indeed, such was the urgency of completing the asset sales as quickly as possible that a daily purchase price penalty was included in the Macquarie Purchase Agreement.

70. Moreover, the various buyers of the Debtors' assets were not interested in purchasing the Debtors' assets under a chapter 11 plan, leaving the Debtors and their representatives with no choice but to conduct sales pursuant to section 363 of the Bankruptcy Code in order to maximize the value of the Debtors' assets. It would elevate form over substance in these circumstances to hold that such representatives are not entitled to the benefit of releases merely because the asset purchasers demanded sales under section 363 of the Bankruptcy Code. Judge Lane recently addressed this issue in a liquidating chapter 11 case, observing:

> The SEC also highlights a few specific facts in this case in support of its position [against the releases], namely that the debtors are at this point liquidating, not reorganizing. . . . The Court takes note of the argument that this is a liquidating plan, but that doesn't change

> the result here. . . . It would be myopic to ignore its crucial—prior crucial role that helped lead to the success of the sale. It would be equally myopic to ignore that as a practical matter, it is often the case that Section 363 sales such as the one here are the new way that an entity reorganizes under the Bankruptcy Code.

Mar. 29, 2018 Hr'g Tr. at 21:25-26:15, *In re ARO Liquidation, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. Mar. 29, 2018) [ECF No. 1752]; *see also In re RFID Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Aug. 31, 2017) [ECF No. 544] (confirming debtor releases in a liquidating chapter 11 plan and holding that "[t]he releases by the Debtors described in Section 12.8 of the Plan are an integral and necessary part of the Plan and represent a valid exercise of the Debtors' business judgment. The Debtor Releases are in the best interests of the Debtors.").

71. For reasons such as the foregoing, many courts in this district and others have approved similar releases by debtors in chapter 11 plans.[9] The Estate Releases constitute a sound exercise of the Debtors' business judgment and meet the applicable legal standard – the Estate Releases are fair, reasonable, and in the best interests of the Debtors, satisfying each of the foregoing factors. Moreover, no objections were filed taking issue with the Estate Releases. Accordingly, the Estate Releases are justified, in the best interests of the Debtors' Estates and stakeholders, and should be approved.

[9] *See, e.g., In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. July 26, 2017) [ECF No. 591]; *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. July 27, 2016) [ECF No. 1358]; *In re Hawker Beechcraft, Inc.*, Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2013) [ECF No. 1263]; *In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Dec. 11, 2013) [ECF No. 6065]; *In re FGIC Corp.*, Case No. 10-14215 (SMB) (Bankr. S.D.N.Y. Apr. 23, 2012) [ECF No. 314]; *In re Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2012) [ECF No. 3477]; *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. Nov. 17, 2011) [ECF No. 708]; *In re Innkeepers USA Tr.*, Case No. 10-13800 (SCC) (Bankr. S.D.N.Y. June 29, 2011) [ECF No. 1804]; *In re Neff Corp.*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. Sept. 21, 2010) [ECF No. 451].

(b) The Accepting Claimant Releases Are Appropriate and Should Be Approved

72. In addition to the Estate Releases, Section 11.5(b) of the Plan provides for the Accepting Claimant Releases by the Releasing Parties[10] of the Released Parties for Claims, judgments, obligations, suits, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities, based on or in any way relating to or in any manner arising from, the Debtors, their Estates, or their Affiliates; the conduct of the Debtors' business; the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Forbearance Agreements, the Purchase Agreements, the Disclosure Statement, the Plan, or any contract, instrument, release, or other agreement or document created or entered into in connection therewith; the filing and the prosecution of the Chapter 11 Cases; and the pursuit of the confirmation of the Plan. As discussed below, the Accepting Claimant Releases are fully consensual, beneficial to the Debtors and their stakeholders by allowing the Debtors to carry out the Winddown in a more timely and cost-efficient manner, and otherwise meet the requirements of the case law in the Second Circuit.

73. Courts have repeatedly held that chapter 11 plans may include consensual third-party releases. *See, e.g.*, *Deutsche Bank AG v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 142 (2d Cir. 2005) ("Nondebtor releases may also be tolerated if the affected creditors consent."); *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."); *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775 (Bankr. N.D. Tex. 2007)

[10] Section 1.83 of the Plan defines "**Releasing Parties**" as, collectively and in each case in their capacity as such, (i) the WAC Agents (except to the extent the Required Lenders under the applicable WAC Facility vote to reject the Plan); (ii) the Steering Committee; and (iii) all holders of Claims who vote to accept the Plan; provided, however, that the holder of a Claim (other than a Debtor or a wholly-owned direct or indirect subsidiary of a Debtor) that is deemed to have accepted the Plan, but does not actually vote to accept the Plan, shall not be a Releasing Party.

("Most courts allow consensual [third-party] releases to be included in a plan."); *see also In re Chassix Holdings, Inc.*, 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015) ("If (as prior cases have held) a creditor who votes in favor of a plan [has] implicitly endorsed and 'consented' to third party releases that are contained in that plan . . .").

74. Courts have differed in their rulings regarding what action (or inaction) is sufficient to manifest consent to third-party releases. In the Second Circuit, courts have found that third-party releases are consensual, permissible plan provisions where third parties consent by voting in favor of such plan. *See In re Calpine Corp.*, 2007 WL 4565223, at *10 (approving third-party releases where "[s]uch releases by Holders of Claims and Interests provide for the release by Holders of Claims and Interests that vote in favor of the Plan," and finding that such releases are consensual); *In re DBSD N. Am., Inc.*, 419 B.R. 179, 218-19 (Bankr. S.D.N.Y. 2009) ("Except for those who voted against the Plan, or who abstained and then opted out, I find the Third Party Release provision consensual and within the scope of releases permitted in the Second Circuit."); *In re Adelphia Commc'ns Corp.*, 368 B.R. at 268 (upholding third-party releases for creditors who voted to accept the plan because such creditors consented to such releases through their vote to support the plan); *In re Lear Corp.*, 2009 WL 6677955, at *7 (finding that third-party releases for creditors who voted to accept the plan were permissible).

75. Accordingly, the Accepting Claimant Releases are fully consensual. Consistent with the established case law, only those holders of Claims voting in favor of the Plan, including the WAC Agents, are providing the Accepting Claimant Releases. The Accepting Claimant Releases were conspicuously disclosed in boldface type in the Plan, the Disclosure Statement, and on the Ballots. The Ballots clearly indicated that a vote in favor of the Plan constituted consent to the Accepting Claimant Releases and that only holders of Claims who

affirmatively voted in favor of the Plan would be providing the Accepting Claimant Releases to the Released Parties. Prior to soliciting the Plan, the Debtors engaged in extensive negotiations with the Steering Committee and certain of the WAC Lenders regarding the Accepting Claimant Releases, and these third parties were fully aware of how the Accepting Claimant Releases would operate if they voted to accept the Plan. Because the Accepting Claimant Releases are fully consensual, case law disallowing nonconsensual third-party releases is irrelevant here. *See, e.g.*, *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. 717, 730 (Bankr. S.D.N.Y. 2019) (allowing consensual third-party releases while disallowing nonconsensual third-party releases).

76. Even if a holder of a Claim who either voted to reject the Plan or abstained from voting on the Plan is a member of a Class that voted to accept the Plan (or if such holder is deemed to have accepted the Plan), such holder will not provide the Accepting Claimant Releases under the Plan. This method of obtaining consent to third-party releases has been approved by this Court in numerous disclosure statement and solicitation procedure approval orders. *See, e.g.*, *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. Aug. 25, 2017) [ECF No. 1028] (approving solicitation procedures that provided that "[i]f you vote to accept the Plan, you will be deemed to consent to the Third Party Release"); *In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. June 13, 2017) [ECF No. 3319] (approving solicitation procedures that provided that "'Releasing Parties' means . . . all Holders of Claims entitled to vote for or against the Plan that do not vote to reject the Plan. . . . [S]uch entity will not be a Releasing Party with respect to its Claim or Interest in such non-voting Class"); *In re Ditech Holding Corp.*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y. May 10, 2019) [ECF No. 544] (approving solicitation procedures that provided that "Holders of Claims who accept the Plan are automatically deemed to have consented to the release provisions in Section 10.6(b) of the Plan"); *In re Nine West Holdings, Inc.*, Case No. 18-10947

(SCC) (Bankr. S.D.N.Y. Nov. 14, 2018) [ECF No. 864] (approving solicitation procedures that provided that "if you vote to accept the plan, you shall be deemed to have consented to the plan's third-party release . . . and any election you make to not grant the releases will be invalidated"); *In re Westinghouse Elec. Co. LLC*, Case No. 17-10751 (MEW) (Bankr. S.D.N.Y. Feb. 22, 2018) [ECF No. 2632] (approving solicitation procedures that provided that "if you vote to accept the plan, you will be deemed to have granted the releases contained in section 11.7 of the plan"); *In re Angelica Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. June 30, 2017) [ECF No. 384] (same).

77. The Accepting Claimant Releases will benefit the Debtors' Estates for the same reasons discussed above in support of the Estate Releases, including that the reduction of the number and the amount of Claims that may be asserted against the Debtors and their non-Debtor subsidiaries during the Winddown proceedings may allow these entities to access simpler and more cost-efficient proceedings. The Accepting Claimant Releases will allow for the more efficient, less expensive Winddown of the Debtors and their non-Debtor subsidiaries.

78. For the same reasons described above with respect to the Estate Releases, the Accepting Claimant Releases are proper notwithstanding the fact that the Plan contemplates a liquidation. *See In re RFID Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Aug. 31, 2017) [ECF No. 544] (confirming third-party releases in a liquidating chapter 11 plan and holding that "[t]he releases by Holders of Claims and Interests described in Section 12.9 of the Plan are essential provisions of the Plan. Such releases by Holders of Claims and Interests provide for the release by Holders of Claims and Interests that vote in favor of the Plan . . . and are consensual."). Notwithstanding the applicability of section 1141(d)(3) of the Bankruptcy Code to prevent the Debtors from obtaining a discharge, nothing in that section prevents the Debtors from including

the Accepting Claimant Releases in their Plan. For all of these reasons, the Accepting Claimant Releases are appropriate, consistent with the case law and the precedent in the Second Circuit, and should be approved. *See id.* (holding that "confirmation of the Plan does not provide the Debtors with a discharge under section 1141 of the Bankruptcy Code because the Debtors and their Estates will be wound down" while also approving third-party releases).

(c) The Exculpation Provisions Are Appropriate and Should Be Approved

79. Section 11.6 of the Plan also contains a release and exculpation for the Exculpated Parties[11] for any Claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for any Claim in connection with or arising out of the administration of the Chapter 11 Cases; the negotiation, formulation, preparation, and pursuit of the Purchase Agreements, the Disclosure Statement, and the Plan; the funding and consummation of the Plan, and any related agreements, instruments, and other documents (in each case in furtherance of the foregoing); the solicitation of votes on the Plan; the making of distributions under the Plan; the occurrence of the Effective Date of the Plan; negotiations regarding or concerning any of the foregoing, or the administration of the Plan or property to be distributed under the Plan, except for any actions determined by a final order to constitute gross negligence, willful misconduct, or fraud (the "**Exculpation Provisions**").

80. Courts have approved exculpation provisions where they were deemed "appropriately tailored to protect the Exculpated Parties from inappropriate litigation and do not

[11] Section 1.37 of the Plan defines "**Exculpated Parties**" as, collectively and in each case in their capacity as such, (i) the Debtors; (ii) the WAC Agents; (iii) the WAC Lenders that vote to accept the Plan; (iv) the Steering Committee; and (v) with respect to each of the foregoing (i) through (iv), their respective predecessors, successors and assigns, subsidiaries, and Affiliates, and its and their officers, directors, members, managers, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such persons' respective executors, Estates, servants, and nominees who served in such roles on or after the Petition Date.

relieve any party of liability for gross negligence or willful misconduct." *See In re Calpine Corp.*, 2007 WL 4565223, at *10. Additionally, exculpation provisions are permissible when they are important to a debtor's plan or where the exculpated party has provided substantial consideration to a debtor's restructuring. *See In re Chemtura Corp.*, 439 B.R. at 610 (citing *In re DBSD N. Am., Inc.*, 419 B.R. at 217); *see also In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Dec. 11, 2013) [ECF No. 6065] (confirming a plan that contained exculpation for released parties who were "instrumental to the successful prosecution of the Chapter 11 Cases or their resolution pursuant to the Plan, and/or provided a substantial contribution to the Debtors.").

81. The support of the Exculpated Parties was essential throughout the Chapter 11 Cases, and the Exculpation Provisions are an integral part of the Plan that otherwise satisfy the governing standards in the Second Circuit. The Exculpation Provisions provide necessary and customary protections to the Exculpated Parties (whether fiduciaries of the Debtors' Estates or otherwise) whose efforts were instrumental in facilitating the expeditious sale of the Debtors' assets as a going concern, the significant pay down of the Debtors' secured debt, the confirmation of the Plan, and the ultimate conclusion of the Chapter 11 Cases. In light of the record of these Chapter 11 Cases, the protections afforded by the Exculpation Provisions to the Exculpated Parties are reasonable and appropriate. *See, e.g., In re CIT Grp. Inc.*, Case No. 09-16565 (ALG), 2009 WL 4824498, at *5 (Bankr. S.D.N.Y. Dec. 8, 2009) (finding that "[a]ll persons who solicited votes on the Plan," were "entitled to the protections afforded by section 1125(e) of the Bankruptcy Code as well as the exculpation and limitation of liability provisions" in the proposed plan).

82. In the Second Circuit, exculpation provisions that cover non-estate fiduciaries are regularly approved. *See, e.g., In re Cengage Learning, Inc.*, Case No. 13-44106 (ESS) (Bankr. E.D.N.Y. Mar. 14, 2014) [ECF No. 1225] (approving exculpation for both estate

fiduciaries and non-estate fiduciaries for "any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, implementing, or consummating the Plan"); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Aug. 23, 2013) [ECF No. 4966] (overruling objection to exculpation for both estate fiduciaries and non-estate fiduciaries from liability for "any Prepetition or postpetition act taken or omitted to be taken in connection with, or arising from or relating in any way to, the Chapter 11 Cases"); *In re Charter Commc'ns, Inc.*, Case No. 09-11435 (JMP) (Bankr. S.D.N.Y. Nov. 17, 2009) [ECF No. 921] (approving exculpation for both estate fiduciaries and non-estate fiduciaries for "any pre-petition or post-petition act taken or omitted to be taken in connection with, or related to . . . the restructuring of the Company"); *In re Granite Broad. Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (providing exculpation for the controlling shareholder as well as for estate fiduciaries).

83. Courts have recognized the appropriateness of extending exculpation beyond estate-fiduciaries to parties who make a substantial contribution to a debtor's restructuring and, specifically, who play an integral role in building consensus in support of a debtor's restructuring. *See, e.g.*, *In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Dec. 11, 2013) [ECF No. 6066] (approving exculpation for lenders who "played a meaningful role . . . in the mediation process, and through the negotiation and implementation of the Global Settlement and Plan"); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG), 2003 WL 23861928, at *28 (Bankr. S.D.N.Y. Oct. 31, 2003) (approving exculpation where "[t]he inclusion of the Exculpation Provision . . . in the Plan [was] vital to the successful negotiation of the terms of the Plan in that without such provisions, the Covered Parties would have been less likely to negotiate the terms of the settlements and the Plan."). The Exculpated Parties that are not

fiduciaries of the Debtors' Estates provided a substantial contribution to the Debtors' Estates, and the protections afforded by the Exculpation Provisions are, therefore, reasonable and appropriate.

84. Courts in this and other districts have approved similar exculpation provisions in chapter 11 plans for similarly-situated debtors.[12] The Exculpation Provisions are consistent with the Bankruptcy Code and comply with the applicable case law. As such, the Exculpation Provisions should be approved. Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

d. *Section 1123(c) of the Bankruptcy Code Does Not Apply to the Debtors*

85. The Debtors are not individuals in these Chapter 11 Cases. Accordingly, section 1123(c) of the Bankruptcy Code is not applicable to the Plan.

e. *The Plan Complies with Section 1123(d) of the Bankruptcy Code*

86. Section 9.2 of the Plan provides for the cure of any default for each Executory Contract to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code and for the amount necessary to cure any such default in accordance with the underlying Executory Contract and applicable nonbankruptcy law. The Debtors filed a list of Executory Contracts to be assumed as Exhibit D of the Plan Supplement. All Executory Contracts listed thereto to be assumed as of the Effective Date of the Plan had no existing defaults and were listed with specified cure costs of $0. Notice of the specified cure costs of $0 was provided to each

[12] *See, e.g., In re Breitburn Energy Partners LP*, Case No. 16-11390 (SMB) (Bankr. S.D.N.Y. Mar. 26, 2018) [ECF No. 2387]; *In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. July 28, 2017) [ECF No. 3735]; *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. July 26, 2017) [ECF No. 591]; *In re Genco Shipping & Trading Ltd.*, Case No. 14-11108 (SHL) (Bankr. S.D.N.Y. July 2, 2014) [ECF No. 322]; *In re LodgeNet Interactive Corp.*, Case No. 13-10238 (SCC) (Bankr. S.D.N.Y. Mar. 7, 2013) [ECF No. 220]; *In re Reader's Digest Ass'n, Inc.*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2010) [ECF No. 574]; *In re Cengage Learning, Inc.*, Case No. 13-44106 (ESS) (Bankr. E.D.N.Y. Mar. 14, 2014) [ECF No. 1225]; *In re Physiotherapy Holdings, Inc.*, Case No. 13-12965 (KG) (Bankr. D. Del. Dec. 23, 2013) [ECF No. 197].

non-Debtor counterparty to all of the Executory Contracts listed on the Plan Supplement as being assumed, and none of such non-Debtor counterparties thereto timely objected. Accordingly, the Plan complies with section 1123(d) of the Bankruptcy Code.

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

87. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent comply with the applicable provisions of the Bankruptcy Code. The legislative history for section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the disclosure and solicitation requirements provided 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 § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also In re PWS Holding Corp.*, 228 F. 3d 224, 248 (3d Cir. 2000); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992). As demonstrated below, the Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code, as well as with the Disclosure Statement Order, regarding disclosure and Plan solicitation.

a. *Section 1125 of the Bankruptcy Code – Postpetition Disclosure and Solicitation*

88. Section 1125(b) of the Bankruptcy Code provides, in pertinent part, that:

> An acceptance or rejection of a plan may not be solicited after the commencement of [a] case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.

11 U.S.C. § 1125(b).

89. After notice and a hearing and pursuant to the Disclosure Statement Order entered on June 4, 2019, the Court approved the Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' holders of Claims to make an informed judgment regarding whether to vote to accept or reject the Plan, as required pursuant to section 1125(b) of the Bankruptcy Code.

90. As set forth in the Voting Certification, each holder of a Claim or Interest was sent the solicitation materials required by the Disclosure Statement Order, including, with respect to holders of Claims entitled to vote, the Disclosure Statement, the Plan, the notice of the Confirmation Hearing, and an applicable form of the Ballot and return envelope. Those holders of Claims and Interests who were not entitled to vote received the Disclosure Statement Order, the notice of the Confirmation Hearing, and the applicable notice of their non-voting status. The solicitation materials were transmitted in compliance with section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Debtors did not solicit votes to accept the Plan from any holders of Claims prior to the entry of the Disclosure Statement Order. The Voting Deadline to timely vote to accept or reject the Plan was July 3, 2019 at 4:00 p.m. (prevailing Eastern Time).

b. *Section 1126 of the Bankruptcy Code – Acceptance or Rejection of the Plan*

91. Section 1126 of the Bankruptcy Code provides, in relevant part, that:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan.
>
> * * *
>
> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(a), (f), (g).

92. As set forth in the Voting Certification and above, the Debtors solicited votes to accept or reject the Plan from the holders of Claims against the Debtors in each of the Impaired Classes entitled to receive distributions pursuant to the Plan in accordance with section 1126 of the Bankruptcy Code. The Impaired Classes entitled to vote to accept or reject the Plan were Classes 1C through 3C and 6C through 8C (Secured Claims against the WAC Groups), Class 10C (WAC10 Secured Claims against WAC10), Class 4D (General Unsecured Claims against WAC4), Class 5(i)D (General Unsecured Claims against WAC5), Class 5(ii)D (General Unsecured Claims against MSN 2047 Trust), Class 5(iii)D (General Unsecured Claims against MSN 2057 Trust), Class 5(iv)D (General Unsecured Claims against MSN 14786 Trust), Class 5(v)D (General Unsecured Claims against WLUK5A), Class 10(i)D (General Unsecured Claims against WAC10), Class 10(ii)D (General Unsecured Claims against MSN 2826 Trust), Class 10(iii)D (General Unsecured Claims against MSN 2879 Trust), Class 10(iv)D (General Unsecured Claims against MSN 2916 Trust), Class 11(i)D (General Unsecured Claims against WAC11), Class 11(ii)D (General Unsecured Claims against WAG), Class 11(iii)D (General Unsecured Claims against MSN 2905 Trust), Class 14(i)D (General Unsecured Claims against WAC14), Class 14(ii)D (General Unsecured Claims against WAC5B), Class 15D (General Unsecured Claims against WAC15), Class 16D (General Unsecured Claims against WLIL), Class 17D (General Unsecured Claims against LuxCo), Class 18D (General Unsecured Claims against LuxCo Euro), Class 19D (General Unsecured Claims against Holdings), and Class 20D (General Unsecured Claims against Services).

93. The Debtors did not solicit votes to accept or reject the Plan from any holders of Claims and Interests in the Unimpaired Classes, as such Classes are unimpaired and, therefore, deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

94. The Debtors also did not solicit votes to accept or reject the Plan from any holders of Claims and Interests in Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) and Class 19G (Holdings Interests), as such Classes do not receive or retain any distribution or property on account of their Claims and Interests and, therefore, are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

95. Further, the Debtors were not required to solicit votes from the holders of Claims in Classes 1E through 20E (Intercompany Claims against the Debtors), as such Classes are impaired under the Plan, but are conclusively presumed to accept the Plan pursuant to their role as Plan proponents. Certain of the Classes of Intercompany Claims against the Debtors are also Vacant Classes (as defined below), as described herein.

96. Finally, the Debtors did not solicit votes to accept or reject the Plan from Class 5(ii)E (Intercompany Claims against MSN 2047 Trust), Class 5(iii)E (Intercompany Claims against MSN 2057 Trust), Class 5(iv)E (Intercompany Claims against MSN 14786 Trust), Class 5(v)E (Intercompany Claims against WLUK5A), Class 10(ii)D (General Unsecured Claims against MSN 2826 Trust), Class 10(ii)E (Intercompany Claims against MSN 2826 Trust), Class 10(iii)D (General Unsecured Claims against MSN 2879 Trust), Class 10(iii)E (Intercompany Claims against MSN 2879 Trust), Class 10(iv)D (General Unsecured Claims against MSN 2916 Trust), Class 10(iv)E (Intercompany Claims against MSN 2916 Trust), Class 11(i)D (General Unsecured Claims against WAC11), Class 11(ii)D (General Unsecured Claims against WAG),

Class 11(ii)E (Intercompany Claims against WAG), Class 11(iii)D (General Unsecured Claims against MSN 2905 Trust), Class 11(iii)E (Intercompany Claims against MSN 2905 Trust), Class 14(i)D (General Unsecured Claims against WAC14), Class 14(ii)D (General Unsecured Claims against WAC5B), Class 15D (General Unsecured Claims against WAC15), or Class 18D (General Unsecured Claims against LuxCo Euro) because the Debtors determined that there were no holders of Claims from whom to solicit votes to accept or reject the Plan in such Classes (collectively, the "**Vacant Classes**").[13]

97. Section 1126(c) of the Bankruptcy Code specifies the requirements for the acceptance of a plan by impaired classes of claims and interests entitled to vote to accept or reject such plan:

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

11 U.S.C. § 1126(c).

98. As evidenced by the Voting Certification, the Plan has been accepted by holders of Allowed Claims in excess of two-thirds in amount and one-half in number of such holders who timely voted to accept or reject the Plan at each Debtor. Accordingly, the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

[13] As set forth in the Del Genio Declaration, after the Voting Certification set forth the original list of the Vacant Classes, the Debtors conducted an additional review of the Claims filed in the Chapter 11 Cases by the General Bar Date and the Claims scheduled in the Debtors' Schedules of Assets and Liabilities and determined that there were certain additional Classes (included in the list above) that also constituted Vacant Classes that were not originally characterized as such on the Voting Certification.

C. Section 1129(a)(3) of the Bankruptcy Code – The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

99. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Second Circuit has defined good faith as requiring a showing that "the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" *In re Johns-Manville Corp.*, 843 F.2d at 649 (quoting *Koelbl v. Glessing* (*In re Koelbl*), 751 F.2d 137, 139 (2d Cir. 1984)).

100. The Debtors have proposed the Plan in good faith and solely for the legitimate and honest purposes of maximizing the recoveries to their creditors following the sales of substantially all of their assets during the Chapter 11 Cases and responsibly winding down themselves and their non-Debtor subsidiaries under nonbankruptcy law. The support of the WAC Lenders, as well as the overwhelming acceptance of the Plan by the Impaired Classes entitled to vote to accept or reject the Plan, reflects the Plan's inherent fairness and the good-faith efforts of all of the parties involved to achieve the objectives of chapter 11 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4) of the Bankruptcy Code – The Plan Provides that Professional Fees and Expenses Are Subject to Court Approval

101. Section 1129(a)(4) of the Bankruptcy Code requires that any "payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4).

102. Section 2.2 of the Plan provides that the final allowance of all professional fees must be approved by the Court. Further, the Plan provides that the Court shall retain

jurisdiction "to hear and determine all Fee Claims." *See* Plan § 12.1(a)(viii). Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. Section 1129(a)(5) of the Bankruptcy Code – The Debtors Have Disclosed All Necessary Information Regarding Directors, Managers, Officers, and Insiders

103. Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors, 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, and, to the extent there are any insiders that will be retained or employed by the debtors, that there be disclosure of the identity and the nature of any compensation for such insiders.

104. The Debtors have satisfied the foregoing requirements. In accordance with Sections 5.3 and 5.4 of the Plan, William Transier will serve as the Plan Administrator for each of the Debtors while the Plan Oversight Board, comprised of three members, will be responsible for overseeing the Plan Administrator and his implementation and administration of the Plan. The Plan Administrator and the Plan Oversight Board's positions will commence on the Effective Date of the Plan. In Exhibit A of the Plan Supplement, the Debtors disclosed the Plan Oversight Board Bylaws governing the Plan Oversight Board and its supervisory role. In Exhibit B of the Plan Supplement, the Debtors disclosed the identity and affiliations of the members of the Plan Oversight Board. In Exhibit C of the Plan Supplement, the Debtors disclosed the duties, power, rights, and compensation of the Plan Administrator. In Exhibit E of the Plan Supplement, the Debtors disclosed the directors, managers, and officers that will be in place as of the Effective Date of the Plan on a Debtor-by-Debtor basis. Exhibit E of the Plan Supplement also noted the compensation to certain former employees of the Debtors in exchange for their continued services on the Debtors' various boards. In Exhibit F of the Plan Supplement, the Debtors disclosed the

proposed directorship agreements for these former employees, which include the proposed fees that the former employees would earn for their services rendered. The appointment of the Plan Administrator, the Plan Oversight Board, and the initial directors, managers, and officers of the Debtors as of the Effective Date of the Plan is consistent with the interests of the Debtors' creditors, equity holders, and with public policy.

105. As the directors, managers, and officers were affiliated with the Debtors prior to the Effective Date of the Plan during the Chapter 11 Cases and have institutional knowledge that will be instrumental in their assisting to efficiently effectuate the Winddown of the Debtors' Estates, their appointment is consistent with the interests of the holders of Claims and Interests, as well as with public policy for the duration of the post-Effective Date disposition period. Accordingly, the Plan complies with section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) of the Bankruptcy Code – The Plan Does Not Contain Any Rate Changes

106. Section 1129(a)(6) of the Bankruptcy Code provides that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). The Plan does not provide for any rate changes by the Debtors, and, therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

G. Section 1129(a)(7) of the Bankruptcy Code – The Plan Is in the Best Interests of All Holders of Claims and Interests in Each Debtor

107. Section 1129(a)(7) of the Bankruptcy Code provides, in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class –
>
> (i) has accepted the plan; or

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

11 U.S.C. § 1129(a)(7).

108. Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and equity holders for each debtor, and is commonly referred to as the "best interests test." The best interests test requires that "if the holder of a claim impaired under a plan of reorganization has not accepted the plan, then such holder must 'receive on account of such claim 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 if the debtor were liquidated under chapter 7 on such date.'" *Bank of Am. Nat'l Tr.*, 526 U.S. at 441 n.13. (quoting 11 U.S.C. § 1129(a)(7)).

109. Under the best interests test,

> the court must measure what is to be received by rejecting creditors . . . under the plan against what would be received by them in the event of liquidation under chapter 7. In doing so, the court must take into consideration the applicable rules of distribution of the estate under chapter 7, as well as the probable costs incident to such liquidation.

In re Adelphia Commc'ns Corp., 368 B.R. at 252. The Court must evaluate the Debtors' liquidation analysis as set forth in the Disclosure Statement (the "**Liquidation Analysis**"), cognizant of the fact that "[t]he hypothetical liquidation entails a considerable degree of speculation about a situation that will not occur unless the case is actually converted to chapter 7." *In re Affiliated Foods, Inc.*, 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000).

110. The Liquidation Analysis demonstrates that a holder of a Claim or Interest will receive property with a value not less than the value that such holder would receive in a chapter 7 liquidation. Although the Plan proposes to distribute the Debtors' remaining assets, and

a chapter 7 liquidation would have a similar effect, the Plan provides the best means of recovery to the Debtors' creditors. The Plan allows for the disposition of the Debtors' remaining assets in an efficient and orderly manner that will reduce costs. Furthermore, winding down the Debtors' Estates pursuant to the Plan avoids additional fees and expenses that would be incurred during a chapter 7 liquidation, including for the added time and expense that would be incurred by the chapter 7 trustee and its retained professionals in familiarizing themselves with the Debtors and the Chapter 11 Cases. Similar assumptions are typically taken into account in hypothetical liquidation analyses and have been approved by this Court. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 368 B.R. at 251-59 (considering the additional administrative costs of appointing one or more chapter 7 trustees, the loss of value associated with the loss of expertise of the debtors' employees and professionals, the increased claims against the debtors, and the resulting delays in distributions); *see also In re Uno Rest. Holdings Corp.*, Case No. 10-10209 (MG), 2010 WL 3373959, at *227 (Bankr. S.D.N.Y. May 11, 2010) (the liquidation analysis considered the increased costs and expenses of a chapter 7 liquidation arising from the fees payable to a chapter 7 trustee and its advisors and the erosion of asset value in the context of an expeditious liquidation with substantial increases in claims).

111. Consequently, if the Chapter 11 Cases were converted to cases under chapter 7, the amounts that holders of Claims would recover would diminish.[14] Based upon the foregoing, the Debtors submit that the best interests test is satisfied. Accordingly, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

[14] Although holders of certain Claims and Interests will not receive any distribution under the Plan, their treatment is not less favorable than what it would be in a chapter 7 liquidation because their recovery would also be $0 in a chapter 7 liquidation.

H. Section 1129(a)(8) of the Bankruptcy Code – The Requirements of Section 1129(a)(8) of the Bankruptcy Code Have Been Satisfied with Respect to the Unimpaired Classes and the Impaired Classes that Have Voted to Accept the Plan

112. Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accept a plan, as follows: "[w]ith respect to each class of claims or interests – (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8). Pursuant to section 1126(c) of the Bankruptcy Code, a class of claims accepts a plan if holders of at least two-thirds in amount and more than one-half in number of the allowed claims in that class who actually vote on such plan vote to accept it.

113. As evidenced by the Voting Certification, the Plan has been accepted by in excess of two-thirds in amount and one-half in number of holders of Claims in the Impaired Classes entitled to vote to accept or reject the Plan[15] and who timely voted to accept or reject the Plan. Accordingly, as to such Classes, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied. In addition, as set forth above, holders of Claims and Interests in the Unimpaired Classes are unimpaired under the Plan and are, therefore, conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

114. Holders of Claims and Interests in Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) and Class 19G (Holdings Interests) are not receiving or retaining any distribution or property on account of their Claims and Interests and, as such, are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the

[15] The Debtors determined that there were no holders of Claims in the Vacant Classes from whom to solicit votes to accept or reject the Plan. Pursuant to Section V.D.5 of the Disclosure Statement and Section 3.5 of the Plan, the Vacant Classes are deemed to be eliminated from the Plan for purposes of voting to accept or reject the Plan, and the Vacant Classes are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code.

Bankruptcy Code. As to these Classes, the Plan may be confirmed under the cram down provisions of section 1129(b) of the Bankruptcy Code, as discussed *infra*.

I. Section 1129(a)(9) of the Bankruptcy Code – The Plan Provides for Payment in Full of All Allowed Priority Claims

115. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under a plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code sets forth the specified treatment that a plan must provide.

116. In accordance with section 1129(a)(9) of the Bankruptcy Code, Section 2.1 of the Plan provides that each holder of an Allowed Administrative Expense Claim shall receive, in full and final satisfaction of such Claim, cash in an amount equal to such Allowed Administrative Expense Claim on, or as soon thereafter as is reasonably practicable, upon the later of the Effective Date of the Plan and the first business day after the date that such Administrative Expense Claim becomes an Allowed Administrative Expense Claim. Similarly, Section 2.2 of the Plan provides that all entities seeking an award by the Bankruptcy Court of Fee Claims shall file their respective final applications for the allowance of compensation for services rendered and the reimbursement of expenses incurred by the date that is forty-five days after the Effective Date of the Plan, and shall be paid in full from the Fee Reserve Account, in such amounts as are Allowed by the Bankruptcy Court, upon the later of the Effective Date of the Plan and the date upon which the order relating to any such Allowed Fee Claim is entered or upon such other terms as may be mutually agreed upon between the holder of such an Allowed Fee Claim and the Plan Administrator. Finally, Section 4.1 of the Plan provides that each holder of an Allowed Priority Non-Tax Claim shall receive, in full and final satisfaction of such Claim, cash in an amount equal

to such Claim payable on, or as soon thereafter as is reasonably practicable, the later of the Effective Date of the Plan and the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim. Accordingly, the Plan satisfies sections 1129(a)(9)(A) and 1129(a)(9)(B) of the Bankruptcy Code.

117. The Plan also satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code with respect to the treatment of Priority Tax Claims under section 507(a)(8) of the Bankruptcy Code. Pursuant to Section 2.3 of the Plan, each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for such Allowed Priority Tax Claim, cash in an amount equal to such Claim on, or as soon thereafter as is reasonably practicable, the later of the Effective Date of the Plan, the first business day after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, and the date such Allowed Priority Tax Claim becomes due and payable in the ordinary course of business. Accordingly, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. Section 1129(a)(10) of the Bankruptcy Code – At Least One Class of Impaired Claims Has Accepted the Plan

118. Section 1129(a)(10) of the Bankruptcy Code requires the acceptance of the Plan by "at least one class of impaired claims . . . determined without including any acceptance of the plan by any insider" if "a class of claims is impaired under the plan." 11 U.S.C. § 1129(a)(10). Each of the Debtors satisfy this standard.

119. As set forth in the Voting Certification and clarified by the Del Genio Declaration, all Impaired Classes entitled to vote to accept or reject the Plan (except Class 20D (General Unsecured Claims against Services) and the non-vacant Classes 1E through 20E (Intercompany Claims against the Debtors)) have voted to accept the Plan without including the votes for acceptance of the Plan by any insiders in such Classes.

120. One vote to accept the Plan was received by an insider in Class 20D (General Unsecured Claims against Services) and such vote was counted for purposes of determining the acceptance by such Class of the Plan under section 1129(a)(8) of the Bankruptcy Code, but has been excluded pursuant to section 1129(a)(10) of the Bankruptcy Code for determining whether there is an accepting Impaired Class. The Debtors solicited votes from six additional parties in Class 20D, but none returned Ballots. Pursuant to Section 3.6 of the Plan, if no holders of Claims eligible to vote in a Class vote to accept or reject the Plan, then the Debtors shall request the Court at the Confirmation Hearing to deem the Plan be accepted by such Class. Accordingly, with the vote of the insider in Class 20D excluded, the Debtors request that the Court deem the Plan be accepted by Class 20D, thereby satisfying section 1129(a)(10) of the Bankruptcy Code for Services. For substantially the same reasons that Class 20D should be deemed to have accepted the Plan, Classes 1E through 20E (Intercompany Claims against the Debtors) (other than the Classes of Intercompany Claims that are Vacant Classes)[16] are deemed to have accepted the Plan without including the presumed acceptance of the Plan by any insiders of such Classes, as none of such Classes has any holders of Claims that are not insiders and so may be allowed for voting purposes under section 1129(a)(10) of the Bankruptcy Code. Accordingly, with the presumed acceptance of the insiders in these Classes of Intercompany Claims excluded, the Debtors request that the Court deem the Plan be accepted by such Classes, thereby satisfying section 1129(a)(10) of the Bankruptcy Code for each of the applicable Debtors.

[16] The Classes of Intercompany Claims against the Debtors that are Vacant Classes are Class 5(ii)E (Intercompany Claims against MSN 2047 Trust), Class 5(iii)E (Intercompany Claims against MSN 2057 Trust), Class 5(iv)E (Intercompany Claims against MSN 14786 Trust), Class 5(v)E (Intercompany Claims against WLUK5A), Class 10(ii)E (Intercompany Claims against MSN 2826 Trust), Class 10(iii)E (Intercompany Claims against MSN 2879 Trust), Class 10(iv)E (Intercompany Claims against MSN 2916 Trust), Class 11(ii)E (Intercompany Claims against WAG), and Class 11(iii)E (Intercompany Claims against MSN 2905 Trust).

121. Holders of Claims and Interests in Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) and Class 19G (Holdings Interests) are members of Impaired Classes that will not receive any distribution or retain any property pursuant to the Plan, and so are conclusively deemed to reject the Plan. Each of the Debtors with these rejecting Impaired Classes has at least one Impaired Class that has voted to accept the Plan: Classes 1C through 3C and 6C through 8C (Secured Claims against the WAC Groups) and Class 19D (General Unsecured Claims against Holdings). Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11) of the Bankruptcy Code – The Plan Is Feasible

122. Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, the provision requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors, unless such liquidation or further financial reorganization is proposed in the plan. The feasibility test set forth in section 1129(a)(11) of the Bankruptcy Code requires the Court to determine whether the Plan may be implemented and has a reasonable likelihood of success. *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *In re Johns-Manville Corp.*, 843 F.2d at 649. As described below, the Plan is feasible in accordance with section 1129(a)(11) of the Bankruptcy Code.

123. The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. As noted by the United States Court of Appeals for the Ninth Circuit, "[t]he purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Haw., Inc. v. Shakey's, Inc.* (*In re Pizza of Haw., Inc.*), 761 F.2d 1374, 1382 (9th Cir. 1985). Clearly, the Plan does not contain any visionary

scheme, but is rather a practical plan for the orderly Winddown of the Debtors' Estates. Moreover, "just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds." *In re Cajun Elec. Power Coop., Inc.*, 230 B.R. 715, 745 (Bankr. M.D. La. 1999); *see also In re U.S. Truck Co., Inc.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

124. The feasibility standard is greatly simplified when a liquidating chapter 11 plan is tested against section 1129(a)(11) of the Bankruptcy Code. In the context of a liquidating chapter 11 plan, feasibility is established by demonstrating that a debtor is able to satisfy the conditions precedent to the effective date and otherwise has sufficient funds to make the payments required under such plan and to meet its post-effective date obligations to pay for the costs of administering and fully consummating the plan and closing the chapter 11 case. *See, e.g.*, *In re Journal Register Co.*, 407 B.R. 520, 539 (Bankr. S.D.N.Y 2009) (explaining that the feasibility test is "whether the things which are to be done after confirmation can be done as a practical matter under the facts"); *In re Finlay Enters., Inc.*, Case No. 09-14873 (JMP), 2010 WL 6580629, at *2-6 (Bankr. S.D.N.Y. May 18, 2010).

125. The Debtors have analyzed their ability to fulfill their obligations under the Plan and have taken into consideration their estimated costs of administration. As set forth in the Del Genio Declaration and the Transier Declaration, the Debtors expect to have sufficient funds to administer and consummate the Plan, to wind down the Debtors' Estates, and to close the Chapter 11 Cases. Despite the estimated, budgeted costs of the Winddown having increased beyond the funds available in the Winddown Account, as described in the Transier Declaration, the Debtors believe that completing the Winddown with the funds remaining in the Winddown

Account is achievable. The Winddown Budget, which has been agreed to by the WAC Lenders, contemplates the expected total costs of the Winddown in a "worst-case" scenario whereby each of the entities being liquidated by the Debtors has to undergo the most expensive and time-consuming liquidation proceeding available in that entity's jurisdiction of incorporation (which would typically occur when the entity is insolvent and requires court supervision for its liquidation). But the Debtors expect that certain, if not most, of the entities to be wound down will be able to access cheaper and quicker solvent liquidation proceedings, due at least in part to the Estate Releases eliminating certain Claims against the Debtors and their non-Debtor subsidiaries. Further, the Plan is straightforward and provides for the payment in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Other Secured Claims, as well as for distributions to holders of Claims and the disposition of the Debtors' remaining assets. The Plan provides various mechanisms for accomplishing all of these objectives, including the appointment of the Plan Administrator and the Plan Oversight Board. Accordingly, the Plan is workable and has more than a reasonable likelihood of success, and so satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

L. Section 1129(a)(12) of the Bankruptcy Code – All Statutory Fees Have Been Paid or Will Be Paid

126. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 2.4 of the Plan provides that on the Effective Date

of the Plan, and thereafter as may be required, such fees, together with interest, if any, pursuant to section 3717 of title 31 of the United States Code, shall be paid when due and payable by the Plan Administrator. Accordingly, the Plan satisfies all applicable requirements of section 1129(a)(12) of the Bankruptcy Code.

M. Sections 1129(a)(13) through 1129(a)(16) of the Bankruptcy Code – Not Applicable to the Plan

127. Because each Debtor is a moneyed, business, or commercial corporation or trust, and none is an individual or has obligations for retiree benefits or domestic support obligations, sections 1129(a)(13), 1129(a)(14), 1129(a)(15), and 1129(a)(16) are not applicable to the Plan.

N. The Plan Satisfies the "Cram Down" Requirements Under Section 1129(b) of the Bankruptcy Code

128. Section 1129(b) of the Bankruptcy Code provides a mechanism for the confirmation of a chapter 11 plan in circumstances where not all impaired classes of claims and interests accept such chapter 11 plan, as required by section 1129(a)(8) of the Bankruptcy Code. This mechanism is known colloquially as "cram down."

129. Section 1129(b) of the Bankruptcy Code states in relevant part:

> [I]f all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent under the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

130. Thus, under section 1129(b) of the Bankruptcy Code, a bankruptcy court may cram down a plan over the rejection or deemed rejection of a plan by impaired classes of

claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such rejecting classes. *See, e.g., In re Johns-Manville Corp.*, 843 F.2d at 650.

131. As stated above, holders of Claims and Interests in Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) and Class 19G (Holdings Interests) are conclusively deemed to have rejected the Plan. Out of all of the Classes for which holders of Claims were entitled to vote to accept or reject the Plan, no such Classes voted to reject the Plan. Accordingly, the cram down provisions of section 1129(b) of the Bankruptcy Code are applicable to holders of Claims and Interests in Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) and Class 19G (Holdings Interests), so that, notwithstanding their deemed rejections, the Plan may be confirmed as to each of these Classes.

a. *Section 1129(b)(1) of the Bankruptcy Code – The Plan Does Not Discriminate Unfairly*

132. Section 1129(b)(1) of the Bankruptcy Code prohibits discrimination that is unfair, which ensures that a plan does not unfairly discriminate against a dissenting class with respect to the value it will receive under a plan when compared to the value given to all other similarly situated classes. *See In re LightSquared Inc.*, 513 B.R. 56, 99 (Bankr. S.D.N.Y. 2014). Generally a plan unfairly discriminates, in violation of section 1129(b)(1) of the Bankruptcy Code, only if similarly situated classes are treated differently without a reasonable basis for the disparate treatment. *See In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986); *In re WorldCom, Inc.*, 2003 WL 23861928, at *59. As between two classes of claims or two classes of interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g., In re Johns-Manville Corp.*, 68 B.R. at 636, or (ii) taking into account the particular facts and

circumstances of the case, there is a reasonable basis for such disparate treatment between the classes. *See, e.g., In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. at 715 (separate classification and treatment was rational where members of each class "possess[ed] different legal rights"); *In re Buttonwood Partners Ltd.*, 111 B.R. at 63.

133. To determine whether a plan discriminates unfairly, courts consider "whether (1) there is a reasonable basis for discriminating, (2) the debtor cannot consummate the plan without the discrimination, (3) the discrimination is proposed in good faith, and (4) the degree of discrimination is in direct proportion to its rationale." *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 242 (Bankr. S.D.N.Y. 2014) (internal citation omitted). Claims and Interests have been classified under the Plan in accordance with section 1129(a) of the Bankruptcy Code, and the Plan does not "discriminate unfairly" with respect to any of the rejecting Classes.

134. As discussed above, the Plan properly classifies Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) into separate Classes. The holders of Unsecured Claims in these Classes are legally and economically distinct from the holders of Secured Claims in other Classes. There is only one class of General Unsecured Claims at each of the Debtors. All Classes of Claims will be treated the same, however, since all such Claims will simply receive any remaining value at their applicable Debtors after any Claims with a senior priority against the same Debtor have been paid in full. Therefore, there is no unfair discrimination between the holders of Claims in these Classes or with respect to the Classes containing the other unsecured, nonpriority Claims.

135. In a similar vein, the holders of Interests in Class 19G (Holdings Interests) are legally distinct in nature from all other Classes of Interests, as only members of Class 19G hold Interests in Holdings, the Debtors' overall corporate parent. The Interests in Classes 1F through

18F and 20F (Other Interests in the Debtors) do not exist at Holdings and hold Interests in different legal entities than the Holdings Interests. On a Debtor-by-Debtor basis, there is only ever one applicable Class of Interests. Other than the Holdings Interests in Class 19G, all Interests are being reinstated under the Plan. While the Holdings Interests are contained in the only Class of Interests that is an Impaired Class, there is no unfair discrimination because the Holdings Interests are dissimilar from the Other Interests because of the different legal rights possessed by the Holdings Interests as compared to the Other Interests. Reinstating the Other Interests preserves the legal structure of the Debtors' business to allow for the Winddown to be completed more smoothly. Therefore, there is a reasonable basis for the different treatment and there is no unfair discrimination between the holders of Interests in these Classes.

b. *Section 1129(b)(2) of the Bankruptcy Code – The Plan Is Fair and Equitable*

136. Pursuant to section 1129(b)(2) of the Bankruptcy Code, a plan must be fair and equitable with respect to each class that rejects such plan. The definition of "fair and equitable" varies based on the priority of the claims or interest of such rejecting class. The Plan is fair and equitable with respect to each of the rejecting Classes.[17]

137. To be fair and equitable as to holders of unsecured claims, section 1129(b)(2)(B) of the Bankruptcy Code requires a plan to provide either (i) that each holder of a non-accepting class of unsecured claims will receive or retain on account of such claim property of a value equal to the allowed amount of such claim, or (ii) that a holder of a claim or interest that is junior to the non-accepting class of unsecured claims will not receive or retain any property under such plan. This requirement, often referred to as the "absolute priority rule" is

[17] No Class of holders of Secured Claims has voted to reject the Plan and, accordingly, there is no discussion herein of the fair and equitable requirements with respect to secured claims under section 1129(b)(2)(A) of the Bankruptcy Code.

satisfied as to Classes 1D through 3D and 6D through 8D (General Unsecured Claims against the WAC Groups) because no Claims or Interests junior to such Classes will receive or retain any property under the Plan.

138. The fact that Interests in Classes 1F through 18F and 20F (Other Interests in the Debtors) are unimpaired and being reinstated under the Plan is justified and does not violate the absolute priority rule. As described in the Disclosure Statement, the Debtors and their non-Debtor subsidiaries have a complex corporate structure that was specifically created based on the Debtors' particular business and operational needs (and to comply with regulatory requirements and to maintain tax efficiencies), and the reinstatement of the Other Interests is a key component in preserving the Debtors' structure to allow the Winddown to proceed in a smooth and cost-efficient manner that was taken into account when determining the value of the distributions to be made to holders of Claims. Full impairment of the Other Interests would jeopardize the Debtors' carefully designed Winddown, and would make the Winddown much more complex and costly to accomplish. Further, the reinstatement of the Other Interests does not provide any economic substance, and so does not enable the holders of the Other Interests to recover any value under the Plan, as the Debtors and their non-Debtor subsidiaries will be liquidating. *See In re Ion Media Networks, Inc.*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) (noting 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," and so did not violate the absolute priority rule, despite unsecured creditors not being paid in full, because the "Plan's retention of intercompany equity interests for holding company purposes constitutes a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure"); *In re MPM*

Silicones, LLC, 531 B.R. 321, 331 n.8 (S.D.N.Y. 2015) (concurring with and quoting favorably the reasoning of *In re Ion Media Networks, Inc.* to hold that "[n]or does the Plan violate the absolute priority rule by preserving certain intercompany interests without paying the Subordinated Noteholders in full").

139. To be fair and equitable as to holders of interests, section 1129(b)(2)(C) of the Bankruptcy Code requires a plan to provide either (i) that each holder of a non-accepting class of interests will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of such interest, or (ii) that a holder of an interest that is junior to the non-accepting class of interests will not receive or retain any property under such plan. The absolute priority rule is satisfied as to Class 19G (Holdings Interests) because there are no Interests that are junior to Class 19G and, thus, no Interests junior to Class 19G will receive or retain any property under the Plan on account of such junior Interests.

140. Accordingly, the Plan is fair and equitable with respect to each of the rejecting Classes. Based on the foregoing, the Plan satisfies all requirements under section 1129(b) of the Bankruptcy Code. Thus, the Plan may be confirmed as to each of the rejecting Classes pursuant to cram down.

O. Section 1129(c) of the Bankruptcy Code – The Plan Is the Only Plan

141. The Plan is the only plan filed in these Chapter 11 Cases. Accordingly, section 1129(c) of the Bankruptcy Code is not applicable in the consideration of the Plan.

P. Section 1129(d) of the Bankruptcy Code – The Principle Purpose of the Plan Is Not for the Avoidance of Taxes

142. The principal purpose of the Plan is to facilitate distributions to holders of Claims and to wind down the Debtors' Estates, and is not for the avoidance of taxes or the

avoidance of the application of Section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

Q. Section 1129(e) of the Bankruptcy Code – The Chapter 11 Cases Are Not Small Business Cases

143. The provisions of section 1129(e) of the Bankruptcy Code apply only to small business cases. These Chapter 11 Cases are not "small business cases" as that term is defined in section 101(51C) of the Bankruptcy Code. Accordingly, section 1129(e) of the Bankruptcy Code is not applicable to the Plan.

II. THE MODIFICATIONS OF THE PLAN ARE PROPER

144. Pursuant to section 1127 of the Bankruptcy Code, a plan proponent may modify a plan at any time before its confirmation so long as the plan, as modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code and the plan proponent making the modification complies with section 1125 of the Bankruptcy Code. In addition, with respect to any modifications made after votes have been solicited to vote to accept or reject such plan, but prior to the confirmation of such plan, Bankruptcy Rule 3019 provides, in relevant part:

> [A]fter a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019(a). Here, the Debtors modified the Plan on July 22, 2019, after votes had been solicited, to:

- eliminate the concept of the Old Winddown Account as a separate segregated account from the Winddown Account, as well as the mechanism for all funds transferring from the

Old Winddown Account into the Winddown Account on the Effective Date of the Plan;

- provide all entities seeking an award by the Court of Fee Claims with 45 days after the Effective Date of the Plan to file final applications for the allowance of compensation, as opposed to the originally provided 30 days;

- provide that the Holdings Interests can be transferred on the Effective Date of the Plan, in addition to the original provision allowing for the Holdings Interests to be surrendered, cancelled, and/or redeemed;

- clarify what the Plan Administrator may use the funds contained in the Winddown Account to pay;

- allow for a reasonable period of time after the Effective Date of the Plan for the title to the aircraft constituting the WAC10 Collateral to be delivered to the WAC10 Administrative Agent, the WAC10 Security Trustee, and the WAC10 Lender;

- add "gross negligence" to the carve-out in the Exculpation Provisions; and

- revise certain immaterial typographical errors.

145. As described above, the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code, and the Debtors have complied with section 1125 of the Bankruptcy Code. Accordingly, the requirements of section 1127 of the Bankruptcy Code have been satisfied. Moreover, Bankruptcy Rule 3019 is satisfied because the modifications to the Plan do not impact, let alone materially impact, the treatment of any holders of Claims or Interests under the Plan. Therefore, the modifications of the Plan are proper in accordance with the requirements of the Bankruptcy Code.

III. CAUSE EXISTS TO WAIVE THE STAY OF THE PROPOSED CONFIRMATION ORDER

146. The Debtors respectfully request that this Court direct that the Proposed Confirmation Order shall be effective immediately upon its entry, notwithstanding the 14-day stay

imposed by the operation of Bankruptcy Rule 3020(e). 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." Fed. R. Bankr. P. 3020(e). As such, and as the Advisory Committee Notes to Bankruptcy Rule 3020(e) state, "the court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately." Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend.

147. Under the circumstances, it is appropriate for the Court to exercise its discretion to order that Bankruptcy Rule 3020(e) is not applicable so as to permit the Debtors to consummate the Plan and commence the Plan's implementation without delay following the entry of the Proposed Confirmation Order. Such relief is in the best interests of the Debtors' Estates, creditors, and other parties in interest, and will not prejudice the rights of any of the Debtors' parties in interest.

CONCLUSION

148. The Plan represents the culmination of well over a year of restructuring efforts by the Debtors to salvage the best outcome possible from a very difficult situation resulting from external market factors. The Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code. No objections were filed, so that the Debtors are seeking the confirmation of the Plan as fully consensual. The Debtors respectfully request that the Court confirm the Plan.

Dated: July 22, 2019
New York, New York

/s/ *Robert J. Lemons*

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Exhibit A

Debtors

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
Waypoint Leasing Holdings Ltd.	2899	MSN 760682 Trust	N/A
Waypoint Leasing (Luxembourg) S.à r.l.	7041	Waypoint 2916 Business Trust	N/A
Waypoint Leasing (Ireland) Limited	6600	MSN 920062 Trust	N/A
Waypoint Asset Co 10 Limited	2503	MSN 920125 Trust	N/A
MSN 2826 Trust	N/A	MSN 9229 AS	7652
MSN 2879 Trust	N/A	Waypoint Asset Co 3A Limited	6687
Waypoint Asset Co 11 Limited	3073	MSN 41371 Trust	N/A
MSN 2905 Trust	N/A	Waypoint Asset Euro 1A Limited	9804
Waypoint Asset Co 14 Limited	1585	Waypoint Asset Co 1K Limited	2087
Waypoint Asset Co 15 Limited	1776	MSN 4469 Trust	N/A
Waypoint Asset Co 3 Limited	3471	MSN 6655 Trust	N/A
AE Helicopter (5) Limited	N/A	Waypoint Leasing (Luxembourg) Euro S.à r.l.	8928
AE Helicopter (6) Limited	N/A	Waypoint Asset Co 1A Limited	1208
MSN 31141 Trust	N/A	Waypoint Leasing Labuan 1A Limited	2299
MSN 31492 Trust	N/A	Waypoint Asset Co 1C Limited	0827
MSN 36458 Trust	N/A	Waypoint Asset Co 1D Limited	7018
MSN 760543 Trust	N/A	Waypoint Asset Co 1F Limited	6345
MSN 760551 Trust	N/A	Waypoint Asset Co 1G Limited	6494
MSN 760581 Trust	N/A	Waypoint Asset Co 1H Limited	7349
MSN 760628 Trust	N/A	Waypoint Asset Co 1J Limited	7729
MSN 760631 Trust	N/A	MSN 20159 Trust	N/A

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
MSN 6658 Trust	N/A	Waypoint Asset Funding 6 LLC	4964
Waypoint 760626 Business Trust	N/A	Waypoint Asset Co 7 Limited	9689
MSN 7152 Trust	N/A	Waypoint Asset Euro 7A Limited	2406
MSN 7172 Trust	N/A	Waypoint Asset Co 8 Limited	2532
Waypoint Asset Funding 3 LLC	4960	MSN 31041 Trust	N/A
Waypoint Asset Malta Ltd	5348	MSN 31203 Trust	N/A
Waypoint Leasing Labuan 3A Limited	8120	MSN 31578 Trust	N/A
Waypoint Leasing UK 3A Limited	0702	MSN 760617 Trust	N/A
Waypoint Asset Co 4 Limited	0301	MSN 760624 Trust	N/A
Waypoint Asset Co 5 Limited	7128	MSN 760626 Trust	N/A
Waypoint Leasing Services LLC	8965	MSN 760765 Trust	N/A
MSN 14786 Trust	N/A	MSN 920063 Trust	N/A
MSN 2047 Trust	N/A	MSN 920112 Trust	N/A
MSN 2057 Trust	N/A	Waypoint 206 Trust	N/A
Waypoint Asset Co 5B Limited	2242	Waypoint 407 Trust	N/A
Waypoint Leasing UK 5A Limited	1970	Waypoint Asset Euro 1B Limited	3512
Waypoint Asset Co 6 Limited	8790	Waypoint Asset Euro 1C Limited	1060
MSN 31042 Trust	N/A	MSN 20012 Trust	N/A
MSN 31295 Trust	N/A	MSN 20022 Trust	N/A
MSN 31308 Trust	N/A	MSN 20025 Trust	N/A
MSN 920119 Trust	N/A	MSN 920113 Trust	N/A

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
Waypoint Asset Funding 8 LLC	4776	Waypoint Asset Co Germany Limited	5557
Waypoint Leasing UK 8A Limited	2906	MSN 31046 Trust	N/A
Waypoint Leasing US 8A LLC	8080	MSN 41511 Trust	N/A
Waypoint Asset Company Number 1 (Ireland) Limited	6861	MSN 760608 Trust	N/A
Waypoint Asset Euro 1D Limited	1360	MSN 89007 Trust	N/A
Waypoint Asset Co 1L Limited	2360	MSN 920141 Trust	N/A
Waypoint Asset Co 1M Limited	5855	MSN 920152 Trust	N/A
Waypoint Asset Co 1N Limited	3701	MSN 920153 Trust	N/A
Waypoint Asset Euro 1G Limited	4786	MSN 920273 Trust	N/A
Waypoint Asset Funding 1 LLC	7392	MSN 920281 Trust	N/A
Waypoint Leasing UK 1B Limited	0592	MSN 9205 Trust	N/A
Waypoint Leasing UK 1C Limited	0840	MSN 9229 Trust	N/A
Waypoint Asset Company Number 2 (Ireland) Limited	7847	Waypoint Asset Funding 2 LLC	7783

Exhibit B

Summary of Voting Results by WAC Group or Debtor

Summary of Voting Results by WAC Group or Debtor

Class	Description	WAC 1 Group (1)	WAC 2 Group (2)	WAC3 Group (3)	WAC4 (4)	WAC5 (5(i))	MSN 2047 Trust (5(ii))	MSN 2057 Trust (5(iii))	MSN 14786 Trust (5(iv))	WLUK5A (5(v))
Class A	**Priority Non-Tax Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class B	**Other Secured Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class C	**WAC Lender Secured Claims**	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	N/A	N/A	N/A	N/A	N/A	N/A
Class D	**General Unsecured Claims**	Impaired – Presumed to Reject	Impaired – Presumed to Reject	Impaired – Presumed to Reject	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept
Class E	**Intercompany Claims**	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Vacant	Vacant	Vacant	Vacant
Class F	**Other Interests**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class G	**Holdings Interests**	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Summary of Voting Results by WAC Group or Debtor

Class	Description	WAC6 Group (6)	WAC7 Group (7)	WAC8 Group (8)	WAC10 (10(i))	MSN 2826 Trust (10(ii))	MSN 2879 Trust (10(iii))	MSN 2916 Trust (10(iv))	WAC11 (11(i))	WAG (11(ii))
Class A	**Priority Non-Tax Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class B	**Other Secured Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class C	**WAC Lender Secured Claims**	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	Impaired – Voted to Accept	N/A	N/A	N/A	N/A	N/A
Class D	**General Unsecured Claims**	Impaired – Presumed to Reject	Impaired – Presumed to Reject	Impaired – Presumed to Reject	Impaired – Voted to Accept	Vacant	Vacant	Vacant	Vacant	Vacant
Class E	**Intercompany Claims**	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Vacant	Vacant	Vacant	Impaired – Presumed to Accept	Vacant
Class F	**Other Interests**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class G	**Holdings Interests**	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Summary of Voting Results by WAC Group or Debtor

Class	Description	MSN 2905 Trust (11(iii))	WAC14 (14(i))	WAC5B (14(ii))	WAC15 (15)	WLIL (16)	LuxCo (17)	LuxCo Euro (18)	Holdings (19)	Services (20)
Class A	**Priority Non-Tax Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class B	**Other Secured Claims**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept
Class C	**WAC Lender Secured Claims**	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Class D	**General Unsecured Claims**	Vacant	Vacant	Vacant	Vacant	Impaired – Voted to Accept	Impaired – Voted to Accept	Vacant	Impaired – Voted to Accept	Impaired – Voted to Accept
Class E	**Intercompany Claims**	Vacant	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept	Impaired – Presumed to Accept
Class F	**Other Interests**	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	Unimpaired – Presumed to Accept	N/A	Unimpaired – Presumed to Accept
Class G	**Holdings Interests**	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Impaired – Presumed to Reject	N/A