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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
AMERICAN MEDIA, INC., *et al.*,[1]	)	Case No. 10-16140 (MG)
Debtors.	)	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF ENTRY OF AN ORDER (I) APPROVING (A) THE DEBTORS' DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. §§ 1125 AND 1126(b), (B) THE SOLICITATION OF VOTES AND SOLICITATION AND ELECTION PROCEDURES, (C) FORMS OF BALLOTS AND (D) THE ELECTION FORM, AND (II) CONFIRMING THE DEBTORS' AMENDED JOINT PREPACKAGED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Media, Inc. (3383); American Media Operations, Inc. (4424); American Media Consumer Entertainment, Inc. (3852); American Media Consumer Magazine Group, Inc. (3863); American Media Distribution & Marketing Group, Inc. (3860); American Media Mini Mags, Inc. (3854); American Media Newspaper Group, Inc. (3864); American Media Property Group, Inc. (4153); Country Music Media Group, Inc. (2019); Distribution Services, Inc. (1185); Globe Communications Corp. (2593); Globe Editorial, Inc. (3859); Mira! Editorial, Inc. (3841); National Enquirer, Inc. (4097); National Examiner, Inc. (3855); Star Editorial, Inc. (9233); and Weider Publications, LLC (1848).

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The above-captioned debtors and debtors in possession (each, a "***Debtor***" and, collectively, the "***Debtors***") submit this Memorandum of Law (the "***Memorandum***") in Support of Entry of an Order (I) Approving (A) the Debtors' Disclosure Statement Pursuant to 11 U.S.C. §§ 1125 and 1126(b), (B) the Solicitation of Votes and Solicitation and Election Procedures, (C) Forms of Ballots, and (D) the Election Form and (II) Confirming the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "***Plan***"), pursuant to section 1129 of title 11 of the United States Code (the "***Bankruptcy Code***"). In support of this Memorandum, the Debtors respectfully represent as follows:

I. PRELIMINARY STATEMENT[2]

The Debtors seek confirmation of a Plan that will enable them to realize their goals of restructuring their balance sheet to improve their financial position, and emerging from chapter 11 on an expedited basis in order to preserve the value of their estates for the benefit of all parties in interest. The Plan represents the culmination of extensive prepetition negotiations between the Debtors and certain of their major creditors, particularly the Committee (as defined below) and the Administrative Agent (as defined below). These negotiations resulted in a Plan that enjoys the overwhelming support of the Debtors' creditors, with all but one of the Debtors' creditors that were entitled to vote on the Plan voting to accept the Plan, and that will enable the Debtors to emerge from bankruptcy less than two months after the commencement of these chapter 11 cases.

As discussed more fully below, the prepetition solicitation conducted by the Debtors and the Voting Agent (as defined below) complies with all applicable nonbankruptcy law requirements governing the solicitation of a chapter 11 plan prior to the commencement of

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[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

chapter 11 cases, as well as all applicable requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), the Local Bankruptcy Rules of the Southern District of New York (the "***Local Rules***"), and the Amended Procedural Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York, Administrative Order 387, amending General Order 203 (the "***Prepack Guidelines***").

In addition, as already noted, the Plan is supported by the overwhelming majority of the Debtors' creditors. As set forth below, Classes 2, 5 and 6 have voted to accept the Plan, and while Class 7 has voted to reject the Plan, such rejection is based on the vote of a single creditor holding only $3,106,782 in Claims against the Debtors.[3] Moreover, notwithstanding the rejection of the Plan by Class 7 and the extensive noticing of the hearing on confirmation of the Plan, no objections to confirmation have been received.

Based on, among other things, the extensive prepetition negotiations over the terms of the Plan and the overwhelming support for the Plan among the Debtors' creditors, the Plan is in the best interests of the Debtors' estates and all parties in interest. In addition, as set forth herein, the Debtors submit that all of the requirements for confirmation of the Plan under Bankruptcy Code section 1129 have been satisfied and, thus, the Plan should be confirmed.

[3] Holders of Claims holding a total of $722,423,345.38 in Claims voted to accept the Plan.

II. BACKGROUND AND PLAN OVERVIEW[4]

A. Prepetition Negotiations

1. In September 2010, the Debtors (along with their legal and financial advisors) began discussions with an ad hoc committee comprised of certain holders of Subordinated Notes and PIK Notes (the "***Committee***"), the Administrative Agent, the lenders under the Term Facility (the "***Term Facility Lenders***"), the lenders under the Revolving Facility (the "***Revolver Lenders***"), and potential new financing lenders. The Debtors actively negotiated with all groups to create a consensus on the appropriate restructuring (and/or repayment) of the Debtors' outstanding debt. Ultimately, as further discussed below, the Debtors were able to reach a consensual resolution with the members of the Committee and certain of the Term Facility Lenders and Revolver Lenders on the terms of a comprehensive balance sheet restructuring as reflected in the Plan and entered into a restructuring support agreement (the "***RSA***") with such parties to document the parties' support of the proposed restructuring.

B. The Proposed Joint Prepackaged Plan of Reorganization

1. Overview and Summary of the Plan

2. On the November 17, 2010 (the "***Petition Date***"), the Debtors filed with the Court, among other things, (i) the Plan and (ii) the accompanying disclosure statement (the "***Disclosure Statement***").[5] As noted above, the Debtors and certain of their major creditors negotiated the terms of the Debtors' restructuring and entered into the RSA prior to the Petition

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[4] The factual background concerning the Debtors' business operations, capital structure and prepetition indebtedness, and the events leading up to the commencement of these chapter 11 cases, is set forth in detail in the Declaration of Christopher Polimeni, Executive Vice President, Chief Financial Officer and Treasurer of American Media, Inc., in Support of the Debtors' Chapter 11 Petitions and Request for First Day Relief (the "***First Day Declaration***") and the Disclosure Statement (as defined below). The factual background contained in the First Day Declaration and the Disclosure Statement is hereby expressly incorporated by reference as if set forth fully and at length herein.

Date. Pursuant to the RSA, the Debtors and their major creditors agreed that the Debtors would implement a comprehensive balance sheet restructuring by soliciting votes to accept or reject the Plan through a "prepackaged" bankruptcy and the commencement of these chapter 11 cases. The Plan sets forth the Debtors' post-Effective Date capital structure and provides for the treatment of Classes of Claims against and Interests in the Debtors. Specifically, upon the Effective Date, among other things:[6]

(i) Holders of Term Facility Claims will receive their *pro rata* share of the following in an aggregate amount equal to the Allowed amount of all Term Facility Claims: (i) cash, in an amount to be determined by the Debtors but in any event no less than 70% of the amount of all Allowed Term Facility Claims; and (ii) New Second Lien Notes; *provided however*, that the aggregate amount of New Second Lien Notes distributed to Term Facility Lenders shall not be greater than the Backstop Commitment; *provided further, however*, that notwithstanding the foregoing, and for the avoidance of doubt, the unpaid reasonable and documented out-of-pocket fees and expenses (including legal fees and expenses) of the Administrative Agent through and including the Effective Date shall be paid in full, in cash to the Administrative Agent. In addition, and pursuant to the Plan, each Holder of a Term Facility Claim shall have the right to require the Backstop Parties to purchase from such Holder, on the Effective Date, its *pro rata* share of the New Second Lien Notes which it receives pursuant to the Plan for the face amount of such Holder's New Second Lien Notes, which face amount such Holder shall receive in cash;

(ii) the Holders of Allowed Revolver Claims shall receive payment in full, in cash;

(iii) the Holders of Allowed Subordinated Notes Claims will receive 98% of the New Common Stock, subject to dilution for the Equity Incentive Plan (holders of Allowed Subordinated Notes Claims other than the Backstop Parties will also be diluted by the Backstop Shares);

(iv) the Holders of Allowed PIK Notes Claims will receive New Second Lien Notes;

(v) the Holders of Allowed 2011 Notes Claims will receive approximately 2% of the New Common Stock, subject to dilution for the Equity Incentive Plan (Holders of

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[5] On December 15, 2010, the Debtors filed an amended version of the Plan reflecting certain non-material Modifications (as defined below) to the version of the Plan that was filed on the Petition Date. *See* Docket No. 115.

[6] The summary of Plan provisions contained herein is subject in its entirety to the terms and provisions in the Plan or other documents referenced therein.

Allowed 2011 Notes Claims other than the Backstop Parties will also be diluted by the Backstop Shares);

(vi) the Holders of Allowed General Unsecured Claims will be unimpaired; and

(vii) Interests in AMI, including warrants, will be cancelled.

2. The Solicitation of Votes to Accept or Reject the Plan

3. Prior to the Petition Date, on October 30, 2010, the Debtors commenced the solicitation of votes to accept or reject the Plan from Holders of Claims in Classes 2, 5, 6 and 7 (the "***Voting Classes***"). In connection therewith, the Debtors' voting agent, Kurtzman Carson Consultants LLC (the "***Voting Agent***" or "***KCC***"), distributed to Holders of Claims in the Voting Classes a solicitation package (the "***Solicitation Package***"), containing, among other things, (i) the Plan, (ii) the Disclosure Statement, and (iii) appropriate forms of ballots (the "***Ballots***") for each of the Holders of Claims in the Voting Classes to vote to accept or reject the Plan. The Debtors established November 15, 2010 at 5:00 p.m. (ET) (the "***Voting Deadline***") as the deadline for returning Ballots to accept or reject the Plan.

4. After the Voting Deadline, the Voting Agent tabulated the votes to accept or reject the Plan reflected in the Ballots received on or prior to the Voting Deadline. The Voting Agent filed a declaration certifying the results and methodology for the tabulation of Ballots accepting or rejecting the Plan on the Petition Date (the "***KCC Declaration***") (Docket No. 24). As set forth in the KCC Declaration, Classes 2, 5 and 6 unanimously voted to accept the Plan. Class 7 voted to reject the Plan.[7]

[7] According to the KCC Declaration, two creditors in Class 7 (holding approximately 0.018% of the Claims in Class 7) voted to accept the Plan, and one creditor (holding approximately 41.4% of the Claims in Class 7) voted to reject the Plan.

3. The Election by Holders of Term Facility Claims

5. In addition to the foregoing, on November 24, 2010, the Debtors distributed an election form (the "***Election Form***") to all Holders of Term Facility Claims other than the Backstop Parties. By completing the Election Form and timely returning it to the Voting Agent, Holders of Term Facility Claims indicated whether they were electing to require that the Backstop Parties purchase in cash from such Holders, on the Effective Date, their *pro rata* share of the New Second Lien Notes which they receive pursuant to the Plan for the face amount of such Holder's New Second Lien Notes. Holders of Term Facility Claims that received the Election Form were instructed to return the Election Form by 5:00 p.m. (ET) on December 10, 2010, unless such deadline was extended by the Debtors.[8] As set forth in the Affidavit of Service and Declaration of David Hartie Regarding the Service and Transmittal of Class 2 Election Form and the Tabulation of Elections (Docket No. 118), approximately 94% of the Holders of Term Facility Claims (excluding the Backstop Parties) elected to put their New Second Lien Notes to the Backstop Parties.

III. THE DISCLOSURE STATEMENT SHOULD BE APPROVED

6. Under Bankruptcy Code section 1126(b), prepetition disclosure statements are subject to requirements distinct from postpetition disclosure statements. First, the solicitation must be "in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation." 11 U.S.C. § 1126(b)(1). Second, "if there is not any such law, rule, or regulation . . . acceptance or rejection [of the plan must

[8] Upon the request of counsel to the Administrative Agent, on December 7, 2010, the Election Form was transmitted to counsel to the Administrative Agent to be distributed to certain entities who alleged an entitlement to receive a distribution as a Class 2 claimant. The Debtors allowed such claimants to submit an Election Form on a provisional basis and agreed to extend the election deadline for such parties to December 14, 2010 at 5:00 p.m. (ET). The Administrative Agent will determine to what extent, if any, these claimants are entitled to any recovery.

have been] solicited after disclosure to such holder of adequate information, as defined in [Bankruptcy Code section 1125(a)]." 11 U.S.C. § 1126(b)(2).

Bankruptcy Code section 1125(a) defines "adequate information" in the following terms:

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

11 U.S.C. § 1125(a)(1). The adequacy of a disclosure statement "is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties." *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988). As such, in examining the adequacy of the information contained in a disclosure statement, the bankruptcy court enjoys broad discretion. *See Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988).

7. The Debtors submit that the Disclosure Statement contains adequate information within the meaning of Bankruptcy Code section 1125. The Disclosure Statement is extensive and comprehensive and contains descriptions and summaries of, among other things, (i) the Plan (Disclosure Statement pages 14-41), (ii) certain events preceding the commencement of these chapter 11 cases (Disclosure Statement pages 5-12), (iii) claims asserted against the Debtors' estates (Disclosure Statement pages 14-17), (iv) funding under the Plan (Disclosure Statement pages 9-12, (v) risk factors affecting the Plan (Disclosure Statement pages 43-56), (vi) a liquidation analysis setting forth the estimated return that Holders of Claims and Interests would receive in a hypothetical chapter 7 case (Disclosure Statement page 63; Exhibit I to the Disclosure Statement), (vii) financial forecasts that would be relevant to creditors'

determinations of whether to accept or reject the Plan (Disclosure Statement pages 41-42; Exhibit G to the Disclosure Statement), and (viii) certain federal tax law consequences of the Plan (Disclosure Statement pages 64-81). In addition, the Disclosure Statement was subject to the review and comment of the Administrative Agent and the Committee.

8. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of Bankruptcy Code section 1125 and should be approved as such by the Court.

IV. THE DEBTORS' SOLICITATION PROCEDURES SHOULD BE APPROVED

9. The Bankruptcy Rules require, among other things, that a debtor distribute its plan and disclosure statement to all affected creditors and equity security holders, that it adopt effective procedures for the transmission of its plan and disclosure statement to beneficial owners of securities, and that creditors and equity security holders be permitted a reasonable period of time in which to accept or reject the proposed plan. *See* Fed. R. Bankr. P. 3017, 3018. The Debtors respectfully submit that, as evidenced by the KCC Declaration, they have satisfied all such requirements, and that no party in interest has objected with respect to these matters.

A. The Debtors Established an Appropriate Voting Record Date

10. Bankruptcy Rule 3018(b) provides that, with respect to a prepetition solicitation, the holders of record of the applicable claims against and interests in a debtor entitled to vote to accept or reject a plan are determined on "the date specified in the solicitation." Fed R. Bankr. P. 3018(b). The Solicitation Package clearly identified October 29, 2010 as the record date (the "***Voting Record Date***") for determining which Holders of Claims were entitled to vote on the Plan. Accordingly, the Debtors' designation of the Voting Record Date conforms to Bankruptcy Rule 3018(b).

B. The Debtors Have Complied with Applicable Notice Requirements with Respect to the Solicitation Package

11. Bankruptcy Rule 3017(d) provides that, unless the Court orders otherwise,[9] all creditors and equity security holders should be mailed (i) the plan or a summary of the plan, (ii) the disclosure statement, (iii) a notice of the time within which acceptances and rejections of the plan may be filed and (iv) any other information as the Court may direct. Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3017(d) also requires that holders of claims or equity interests entitled to vote on the plan be sent ballots that conform to Official Form 14. *Id.*

12. On October 30, 2010, the Debtors caused the Solicitation Package to be transmitted to Holders of Claims in the Voting Classes. The Ballots conform with Official Form 14, except to the extent that they have been tailored to address the particular circumstances of these chapter 11 cases and to include certain additional information that the Debtors believe to be relevant and appropriate for creditors entitled to vote to accept or reject the Plan.

13. The Solicitation Packages were transmitted by the Debtors to the Voting Agent which, in turn, forwarded the Solicitation Packages, by overnight mail, to the Holders of Claims in the Voting Classes as of the Voting Record Date. Such Holders were instructed to return their Ballots to the address specified on the pre-addressed, postage-paid envelope included in the Solicitation Package. All other Classes of Claims and Interests were not provided with a Solicitation Package, but Holders of Interests in AMI were given a separate letter indicating how they could receive a copy of the Plan and the Disclosure Statement. Such Holders hold Claims or Interests in Classes that are either (i) unimpaired and conclusively presumed to accept the Plan

[9] On November 19, 2010, the Court entered an order relieving the Debtors of the obligation to mail copies of the Plan and the Disclosure Statement to holders of Claims and Interests in Classes that are presumed to accept or deemed to reject the Plan, unless a specific written request is made to counsel to the Debtors or the Voting Agent. *See* Docket No. 47.

pursuant to Bankruptcy Code section 1126(f) or (ii) impaired, entitled to receive no distribution on account of such Claims or Interests, and therefore deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g).

C. The Holders of Claims in the Voting Classes Were Provided a Reasonable Time to Accept or Reject the Plan

14. Bankruptcy Rule 3018(b) provides that prepetition acceptances or rejections of a plan are valid only if the plan was transmitted to substantially all the holders of claims or equity interests in each solicited class and the time for voting was not unreasonably short. Fed. R. Bankr. P. 3018(b). The Prepack Guidelines provide that the Court will approve as reasonable a "fourteen (14) day voting period, measured from the date of commencement of mailing" for debt for borrowed money and securities which are not Publicly Traded Securities (as defined in the Prepack Guidelines). The Debtors have no Publicly Traded Securities.

15. The Debtors commenced the solicitation of votes for approval of the Plan on or about October 30, 2010. As previously noted, the Debtors established 5:00 p.m. (Prevailing Eastern Time) on November 15, 2010 as the Voting Deadline, which is a period of sixteen (16) days (the "***Voting Period***") – two more days than required. In addition, the Ballots clearly indicated that all Ballots were required to be properly executed, completed and delivered to the Voting Agent, so that they were actually received by the Voting Agent prior to the Voting Deadline.

D. The Debtors' Vote Tabulation Procedures Should Be Approved

16. Bankruptcy Code section 1126(c) provides:

> 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). Further, Bankruptcy Rule 3018(a) provides that the "court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

17. The Debtors request that the Court approve their vote tabulation methodology. In determining whether the Plan had been accepted or rejected, the Voting Agent did not count or consider the following Ballots: (i) any Ballot that was received after the Voting Deadline; (ii) any Ballot that was illegible, mutilated or incomplete; (iii) any Ballot that did not indicate an acceptance or rejection or that indicated both an acceptance and a rejection; (iv) any Ballot cast or submitted by a person or entity that did not hold a claim in one of the Voting Classes; (v) any form of Ballot other than the official form sent by the Voting Agent or a copy of such official form; (vi) any copy of a Ballot, facsimile Ballot, or Ballot transmitted by electronic means; and (vii) any Ballot that was superseded by a properly executed duplicate Ballot voting the same claim prior to the Voting Deadline.

18. The Voting Agent tabulated Ballots based on information regarding the holdings of each of the Holders of Claims in the Voting Classes that was received from the Administrative Agent and the Depository Trust & Clearing Corporation.

E. The Debtors' Prepetition Solicitation Was Exempt from Registration and Disclosure Requirements Otherwise Applicable Under Nonbankruptcy Law

19. Bankruptcy Code section 1126(b) provides, in relevant part, as follows:

> [A] holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if — (1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or (2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

11 U.S.C. § 1126(b). Thus, prepetition solicitation must comply with either generally applicable federal or state securities laws and regulations (including the registration and disclosure requirements thereof) or, if such laws and regulations do not apply, the solicited holders must receive "adequate information" under Bankruptcy Code section 1125.

20. The Debtors respectfully submit that their prepetition solicitation is exempt from registration pursuant to section 4(2) of the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa (as amended from time to time, the "***Securities Act***") and under state "Blue Sky" laws, or any similar rules, regulations, or statutes. Specifically, section 4(2) of the Securities Act creates an exemption from the registration requirements under the Securities Act for transactions not involving a "public offering." By virtue of Section 18 of the Securities Act, section 4(2) also provides that any state "Blue Sky" law requirements shall not apply to such offer or sale. The Debtors believe that their prepetition solicitation did not constitute a public offering because the manner in which the Debtors conducted the solicitation does not constitute a general solicitation, and none of the securities issued pursuant to the Plan will be registered under the Securities Act or other "Blue Sky" requirements. Therefore, the requirements of Bankruptcy Code section 1126(b)(1) are inapplicable to the Debtors' prepetition solicitation.

V. THE ELECTION PROCEDURES SHOULD BE APPROVED

21. Pursuant to the Plan, each Holder of a Term Facility Claim other than a Backstop Party had the right to elect to require that the Backstop Parties purchase in cash from such Holder, on the Effective Date of the Plan, its *pro rata* share of the New Second Lien Notes which it receives pursuant to the Plan for the face amount of such Holder's New Second Lien Notes. In order to enable applicable Holders of Term Facility Claims to make the foregoing election, the Debtors (i) distributed an Election Form to such Holders on November 24, 2010 and (ii) required that applicable Holders of Term Facility Claims return the Election Form to the Voting Agent by

December 10, 2010 at 5:00 p.m. (ET), unless such deadline was extended by the Debtors (the "***Election Procedures***" and, together with the Solicitation Procedures, the "***Solicitation and Election Procedures***").[10] The Debtors submit that the form of the Election Form is appropriately tailored to the requirements of the election contemplated by the Plan, and that the timeline for the distribution and return of the Election Forms was reasonable and appropriate.

VI. THE PLAN SHOULD BE CONFIRMED[11]

22. To confirm the Plan, the Debtors must demonstrate that the Plan satisfies the applicable provisions of Bankruptcy Code section 1129 by a preponderance of the evidence. *See In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."); *see also Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters., Ltd., II (In re Briscoe Enters., Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("[t]he combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown") (footnote omitted). As set forth below and in the Declaration of Christopher Polimeni in Support of Confirmation of the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket No. 119) (the "***Polimeni Declaration***") and the Declaration of Zul Jamal in Support of

[10] As previously noted, upon the request of counsel to the Administrative Agent, on December 7, 2010, the Election Form was transmitted to counsel to the Administrative Agent to be distributed to certain entities who alleged an entitlement to receive a distribution as a Class 2 claimant. The Debtors allowed such claimants to submit an Election Form on a provisional basis and agreed to extend the election deadline for such parties to December 14, 2010 at 5:00 p.m. (ET). The Administrative Agent will determine to what extent, if any, these claimants are entitled to any recovery.

Confirmation of the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket No. 120) (the "***Jamal Declaration***"), the Debtors, and the Plan presented by the Debtors, satisfy each of the requirements of Bankruptcy Code section 1129. Accordingly, the Plan should be confirmed.

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

23. Bankruptcy Code section 1129(a)(1) requires that "[t]he plan compl[y] with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). Bankruptcy Code section 1129(a)(1) has been interpreted by courts as requiring that a plan comply with section 1122 (governing classification of claims) and 1123 (governing the contents of a plan). *See In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 757 ("***Drexel I***") (Bankr. S.D.N.Y. 1992) (noting that "[t]he legislative history of § 1129(a)(1) explains that this provision embodies the requirements of §§ 1122 and 1123, respectively, governing classification of claims and the contents of the Plan"); S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 (stating that "[p]aragraph (1) [of 1129(a)] requires that the plan comply with the applicable provisions of chapter 11, such as §§ 1122 and 1123, governing classification and contents of [a] plan"); H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963 (same). As set forth below, the Plan complies fully with the requirements of both Bankruptcy Code sections 1122 and 1123.

1. The Plan Satisfies the Classification Requirements of 11 U.S.C. § 1122

24. Bankruptcy Code section 1122 governs the classification of claims or interests under a plan and provides, in pertinent part, as follows:

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[11] Bankruptcy Code sections 1129(a)(14)-(16) are inapplicable to the Plan and therefore are not discussed herein.

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122. Under this section, the relevant inquiries are (i) whether all claims and interests in a class have substantially similar rights with respect to the debtor's assets, and (ii) whether there are sufficient business or legal justifications to justify separate classes of similar claims or interests. *See In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996).

25. Section 3 of the Plan provides for the classification of Claims and Interests in ten individual Classes, each based upon the legal nature and/or priority of such Claims and Interests. Administrative Claims and Priority Tax Claims are not classified and are separately treated in Section 2 of the Plan. The Classes of Claims and Interests are as follows:

Class 1	Priority Non-Tax Claims
Class 2	Term Facility Claims
Class 3	Revolver Claims
Class 4	Other Secured Claims
Class 5	PIK Notes Claims
Class 6	Subordinated Notes Claims
Class 7	2011 Notes Claims
Class 8	General Unsecured Claims
Class 9	Intercompany Claims
Class 10	Interests in AMI

26. Each of the Claims or Interests in each particular Class is substantially similar to the other Claims or Interests in such Class. In addition, the Plan's classification scheme properly

follows the Debtors' capital structure. Specifically, (i) secured debt is classified separately from unsecured debt and (ii) the various tranches of unsecured bond debt are classified separately. This gives effect to priority and subordination issues. Accordingly, the Debtors' classification of Claims and Interests does not prejudice the rights of Holders of such Claims and Interests. *See In re Holywell Corp.*, 913 F.2d 873, 880 (11th Cir. 1990) (plan proponent allowed considerable discretion to classify claims and interests according to facts and circumstances of case so long as classification scheme does not violate basic priority rights or manipulate voting). The classification of Claims and Interests in the Plan complies with Bankruptcy Code section 1122.

2. The Plan Complies with the Requirements of 11 U.S.C. § 1123(a)

27. Bankruptcy Code section 1123(a) sets forth seven (7) requirements for the contents of a plan of reorganization with which every chapter 11 plan must comply. *See* 11 U.S.C § 1123(a). As demonstrated below, the Plan fully complies with each of those requirements.

a. The Plan Designates Classes of Claims and Interests – 11 U.S.C. § 1123(a)(1)

28. Bankruptcy Code section 1123(a)(1) requires that a plan designate classes of claims, other than claims of a kind specified in Bankruptcy Code sections 507(a)(1) (administrative expense claims), 507(a)(2) (claims arising during the "gap" period in an involuntary case), or 507(a)(8) (priority tax claims). *See* 11 U.S.C. § 1123(a)(1). As set forth above, Section 3 of the Plan designates ten (10) Classes of Claims and Interests and therefore complies with Bankruptcy Code section 1123(a)(1).

b. The Plan Specifies Unimpaired Classes – 11 U.S.C. § 1123(a)(2)

29. Bankruptcy Code section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the plan." *See* 11 U.S.C. § 1123(a)(2). Section 3 of

the Plan specifies the Classes of Claims and Interests that are unimpaired under the Plan and, thus, the Plan complies with Bankruptcy Code section 1123(a)(2).

c. The Plan Adequately Specifies the Treatment of Impaired Classes – 11 U.S.C. § 1123(a)(3)

30. Bankruptcy Code section 1123(a)(3) requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." *See* 11 U.S.C. § 1123(a)(3). Section 4 of the Plan specifies the treatment of those Classes of Claims and Interests that are impaired under the Plan and thus the Plan complies with Bankruptcy Code section 1123(a)(3).

d. The Plan Provides for the Same Treatment for Claims or Interests Within the Same Class – 11 U.S.C. § 1123(a)(4)

31. Bankruptcy Code section 1123(a)(4) requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). This provision provides creditors of the same class with a right to equality of treatment. Section 4 of the Plan provides for equality of treatment for each Claim or Interest within a particular Class and thus the Plan complies with Bankruptcy Code section 1123(a)(4).

e. The Plan Provides Adequate Means for its Implementation – 11 U.S.C. § 1123(a)(5)

32. Bankruptcy Code section 1123(a)(5) requires a plan of reorganization to "provide adequate means for the plan's implementation" and sets forth several examples of such means, including retention by the debtor of property of the estate, sales of the debtor's property, satisfaction or modification of any lien, and issuance of securities of the debtor in exchange for claims or interests. 11 U.S.C. § 1123(a)(5); *see generally In re Spiegel, Inc.*, No. 03-11540, 2005 WL 1278094 (Bankr. S.D.N.Y. May 25, 2005).

33. Section 5 of the Plan provides for, among other things: (i) the distribution of New Second Lien Financing; (ii) the offer to purchase New Second Lien Notes; (iii) the issuance of New Common Stock; (iv) the cancellation of existing securities and agreements; (v) the entry into a Stockholders Agreement by the Reorganized Debtors and the parties that receive New Common Stock under the Plan; (vi) the cancellation of liens; and (vii) the limited substantive consolidation of the Debtors' estates. In addition, Section 5 of the Plan provides for the establishment of an Equity Incentive Plan and a Director Severance Plan, and Section 5.2(a) of the Plan authorizes the Debtors to implement an Emergence Incentive Plan. Moreover, the Debtors have also filed with the Court many of the salient documents that will govern the operations of the Reorganized Debtors in connection with the Plan Supplement. *See* Docket No. 116.

1. The Limited Substantive Consolidation of the Debtors' Estates Is Appropriate

34. In addition to the foregoing, Section 5.1 of the Plan provides for the limited substantive consolidation of the Debtors' estates for purposes of the Plan only. Accordingly, on the Effective Date, all of the Debtors and their estates will, for Plan purposes only, be deemed merged and (a) all assets and liabilities of the Debtors shall be treated for purposes of the Plan only as though they were merged, (b) all guarantees of the Debtors of payment, performance, or collection of obligations of any other Debtor shall be eliminated and cancelled, (c) all joint obligations of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, shall be considered a single Claim against the Debtors, and (d) any Claim filed in the chapter 11 cases shall be deemed filed against the consolidated Debtors and a single obligation of the Debtors on and after the Effective Date. The proposed substantive consolidation of the Debtors' estates is limited in that it shall not (other than for voting,

treatment, and distribution purposes under the Plan) affect (i) the legal and corporate structures of the Debtors (including the corporate ownership of the Debtor Subsidiaries), (ii) any Intercompany Claims, or (iii) the substantive rights of any creditor.

35. The text of the Bankruptcy Code contemplates that a consolidation may appropriately be used to effectuate a plan of reorganization. *See* 11 U.S.C. § 1123(a)(5)(C) (stating that "[n]othwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plans implementation, such as . . . consolidation of the debtor with one or more persons . . . ."); *see also In re WorldCom, Inc.*, Case No. 02-13533, 2003 WL 23861928, at *35 (Bankr. S.D.N.Y. Oct. 31, 2003) (nothing that consolidation is contemplated by Bankruptcy Code section 1123(a)(5)); *In re Footstar, Inc.*, Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Sept. 30, 2005) (same). Indeed, it is well established that courts have the general equitable power to order such consolidations in circumstances where consolidation is not employed by a plan proponent "offensively to achieve advantage over one group in the plan negotiation process." *See, e.g.*, *In re Owens Corning*, 419 F.3d 195, 215 (3d Cir. 2005); *Union Sav. Bank. v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 518-19 (2d Cir. 1988) (observing that, as an equitable remedy, consolidation is also used to afford creditors equitable treatment and thus may be ordered when the benefits to creditors therefrom exceed any harm suffered).

36. Pursuant to Section 5.1 of the Plan, the Debtors propose the substantive consolidation of their estates solely to facilitate implementation of the Plan. The Debtors do not seek to improperly enhance or impair the recoveries of any creditors by way of the substantive consolidation. Indeed, the Debtors are not aware of any creditor actually affected by the substantive consolidation of their estates contemplated by the Plan.

37. It is well-settled that substantive consolidation is appropriate where creditors consent to it. *See, e.g.*, *In re Owens Corning*, 419 F.3d at 211 (describing standards for consolidation as "what must be proven (absent consent) . . . ."); *In re Delta Air Lines, Inc.*, 370 B.R. 537, 539 (Bankr. S.D.N.Y. 2007) (consolidation of debtors for plan purposes approved where no objection lodged); *In re Kaiser Aluminum Corp.*, Case No. 02-10429 (JFK), 2006 WL 616243, at *22 (Bankr. D. Del. Feb. 6, 2006) (approving "deemed substantive consolidation" where (i) deemed consolidation "will promote efficiency and decrease costs in the implementation of the Plan," and (ii) no creditor objected to the proposed deemed consolidation and stating that "[i]n the absence of any creditor objection to the deemed substantive consolidation, and in light of the overwhelming creditor support for the Plan, the deemed substantive consolidation of the Substantively Consolidated Debtors . . . is consensual."). In fact, consensual consolidations have routinely been approved in this judicial district. *See, e.g.*, *In re Bally Total Fitness of Greater New York, Inc.*, Case No. 08-14818 (BRL) (Bankr. S.D.N.Y. Aug. 19, 2009); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Dec. 26, 2007); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Apr. 25, 2007); *In re Adelphia Commc'ns Corp.*, Case No. 02-41729 (REG) (Bankr. S.D.N.Y. Jan. 5, 2007); *In re Spiegel, Inc.*, No. 03-11540, 2005 WL 1278094 (each approving consolidation of the debtors for plan implementation purposes).

38. In these chapter 11 cases, the Debtors' creditors have voted overwhelmingly in support of the Plan. Classes 2, 5 and 6 voted unanimously to accept the Plan, and the rejection of the Plan by Class 7 was based on the vote of only a single creditor holding $3,106,782 in Claims against the Debtors. Moreover, no creditor has objected to the substantive consolidation of the

Debtors' estates contemplated by the Plan. Accordingly, the proposed substantive consolidation of the Debtors' estates is consensual and should be approved.

39. Moreover, even if the substantive consolidation of the Debtors' estates was not consensual, there is a sufficient basis upon which to authorize substantive consolidation. In determining whether substantive consolidation is warranted, courts in this district apply the following two prong disjunctive test: (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. *See In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d at 518.

40. As set forth in the Polimeni Declaration, the limited substantive consolidation of the Debtors' estates is warranted on the facts of these cases. Specifically, the Debtors' creditors generally dealt with the Debtors as a single business unit. Indeed, the Debtors believe that many of their creditors, including their wholesalers and advertisers, are unaware of the legal distinctions between the various Debtor entities. As a result, the Debtors' creditors believed they were dealing with AMI and were largely unaware of the existence of separate Debtor subsidiaries. Even the Debtors' lenders dealt with the Debtors' enterprise as a whole. Therefore, from the perspective of the Debtors' creditors, the Debtors operate as a single business enterprise.

41. Finally, in the event that the Court does not approve the substantive consolidation of the Debtors' estates for Plan purposes only, the Debtors have reserved the right to establish at the Confirmation Hearing the ability to confirm the Plan on an entity-by-entity basis. As such, the Debtors request that (i) the Plan be treated as a separate plan of reorganization for each of the Debtors, (ii) the Debtors not be required to re-solicit votes with respect to the Plan, and (iii) the

Court confirm the Plan. As set forth in the Jamal Declaration, while the Debtors believe the substantive consolidation of the estates will, among other things, facilitate timely distributions, the Debtors do not believe that the de-consolidation of their estates would have any impact on creditor recoveries. All Allowed General Unsecured Creditors are contemplated to be paid in full, whereas the Debtors' funded debt Claim Holders (i.e. those Holders of Claims in Classes 2, 5, 6 and 7) would be entitled to assert the full amount of their respective claims at AMO and each Debtor subsidiary entity because each of the foregoing is either a borrower/issuer or guarantor under the 2009 Credit Agreement and the Indentures.

42. Based on the foregoing, Debtors submit that the Plan complies with Bankruptcy Code section 1123(a)(5).

f. Prohibition of the Issuance of Nonvoting Equity Securities – 11 U.S.C. § 1123(a)(6)

43. Bankruptcy Code section 1123(a)(6) requires a plan of reorganization to provide for the inclusion in a debtor's corporate charter of provisions prohibiting the issuance of non-voting equity securities and arranging "an appropriate distribution" of power among the classes of securities possessing voting power. *See* 11 U.S.C. § 1123(a)(6). Section 5.2(b) of the Plan specifically provides that:

> In addition, on or before the Effective Date, pursuant to and only to the extent required by Bankruptcy Code section 1123(a)(6), the Restated Certificate of Incorporation, the New Preferred Stock Certification of Designation (if applicable), the certificates of incorporation of the Debtors that are corporations, and the organization documents for the Debtors that are limited liability companies shall also be amended (and as to the corporate Debtors, filed with the Secretary of State of their respective states of incorporation) as necessary to satisfy the provisions of the Bankruptcy Code and shall include, among other things, (i) a provision increasing the number of authorized shares of Reorganized AMI, (ii) a provision prohibiting the issuance of non-voting equity securities and (iii) a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power.

See Plan, Section 5.2(b). The Plan therefore complies with Bankruptcy Code section 1123(a)(6).

g. The Plan Contains Appropriate Provisions with Respect to the Selection of Post-Confirmation Directors and Officers – 11 U.S.C. § 1123(a)(7)

44. Bankruptcy Code section 1123(a)(7) provides that a plan may "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). This provision is supplemented by Bankruptcy Code section 1129(a)(5), which directs the scrutiny of the Court to the methods by which the management of the reorganized corporation is to be chosen to provide adequate representation of those whose investments are involved in the reorganization, such as creditors and equity holders. *See* 7 *Collier on Bankruptcy* ¶ 1123.01[7] (16th ed. 2010).

45. Sections 5.2(c) and (d) of the Plan comply with Bankruptcy Code section 1123(a)(7) by properly and adequately disclosing or otherwise identifying the procedures for determining the identity and affiliations of all individuals or entities proposed to serve as officers or members of the boards of directors, as applicable, of the Reorganized Debtors. Specifically, Section 5.2(c) provides that the initial boards of directors of Reorganized AMI will be composed of nine members, eight of whom shall be selected by members of the Committee consistent with the terms outlined in the Stockholders Agreement, and one of whom shall be the post-Effective Date chief executive officer of AMI. In addition, Section 5.2(d) of the Plan provides that, after the Effective Date, the selection of officers of the Reorganized Debtors will be as provided in the organizational documents for the applicable Reorganized Debtors. Moreover, the Debtors disclosed the identity of the members of the initial boards of directors and the initial officers of

the Reorganized Debtors in connection with the filing of the Plan Supplement. *See* Docket No. 116. The selection process for the initial members of the boards of directors and the officers of the Reorganized Debtors provides adequate representation of the interests of the Holders of Claims and Interests and is consistent with public policy. The Plan therefore complies with Bankruptcy Code section 1123(a)(7).

3. The Plan Complies with the Requirements of 11 U.S.C. § 1123(b)

46. Bankruptcy Code section 1123(b) sets forth the permissive provisions that may be incorporated into a chapter 11 plan, including any "provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." *See* 11 U.S.C. § 1123(b)(6). The permissive provisions contained in the Plan are discussed below.

a. The Plan Impairs Certain Classes and Leaves Others Unimpaired – 11 U.S.C. § 1123(b)(1)

47. Section 1123(b)(1) 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). Pursuant to Sections 3 and 4 of the Plan, (a) Classes 2, 5, 6, 7, 9, and 10 are impaired, and (b) Classes 1, 3, 4, and 8 are unimpaired. The Plan complies with Bankruptcy Code section 1123(b)(1).

b. Treatment of Executory Contracts and Unexpired Leases – 11 U.S.C. § 1123(b)(2)

48. Section 1123(b)(2) allows a Plan to provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to Bankruptcy Code section 365. Section 8.1 of the Plan provides that, except as otherwise provided in the Plan, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, the Debtors will be deemed to have assumed each executory contract and unexpired lease to which they are a party, unless such contract or lease (a) was previously assumed or rejected by the Debtors, (b) previously expired or

terminated pursuant to its own terms, (c) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date or (d) is set forth in a schedule, as an executory contract or unexpired lease to be rejected, if any, filed by the Debtors as part of the Plan Supplement. The Debtors have determined not to reject any of their executory contracts or unexpired leases and, accordingly, the Plan Supplement filed by the Debtors on December 15, 2010 does not include a schedule of any executory contracts or unexpired leases to be rejected by the Debtors.

c. Settlement or Retention of Claims or Interests – 11 U.S.C. § 1123(b)(3)

49. Bankruptcy Code section 1123(b)(3) provides that a plan may provide for the settlement or retention of any claim or interest belonging to the debtor. Section 10.9 of the Plan provides that all claims or causes of actions accruing to the Debtors, other than those claims and causes of action that are released or enjoined pursuant to the Debtor Release, the Third Party Release, the Exculpation or the Injunction (each as defined below), shall become assets of the Debtors on the Effective Date.

d. Other Appropriate Measures – 11 U.S.C. § 1123(b)(6)

50. Bankruptcy Code section 1123(b)(6) is a catch-all provision that permits inclusion of any appropriate provision so long as it is consistent with the applicable provisions of the Bankruptcy Code. Section 11 of the Plan provides that, among other things, the Court shall retain jurisdiction over all matters arising in, arising under, and related to the Debtors' chapter 11 cases and the Plan. This provision is appropriate because the Court otherwise has jurisdiction over all of these matters during the pendency of these chapter 11 cases, and case law establishes that a bankruptcy court may retain jurisdiction over the debtor or the property of the estate following confirmation. *See Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.)*, 419 F.3d 83, 96 (2d Cir. 2005) ("a bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of

reorganization.") (quoting *In re Petrie Retail*, 304 F.3d 223, 230 (2d Cir. 2002)). Accordingly, the continuing jurisdiction of the Court is consistent with applicable law and is therefore permissible under Bankruptcy Code section 1123(b)(6).

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

B. The Debtors, as Plan Proponents, Have Complied With the Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1129(a)(2)

52. Bankruptcy Code section 1129(a)(2) requires the proponent of a plan to comply "with the applicable provisions of this title." See 11 U.S.C. § 1129(a)(2). Whereas Bankruptcy Code section 1129(a)(1) focuses on the form and content of a plan itself, section 1129(a)(2) is concerned with the applicable activities of a plan proponent under the Bankruptcy Code. *See* 7 *Collier on Bankruptcy* ¶ 1129.03[2], at 1129-26 (15th ed. Rev. 2006). In determining whether a plan proponent has complied with this section, courts focus on whether the disclosure and solicitation requirements adhere to Bankruptcy Code sections 1125 and 1126. *See, e.g., In re WorldCom, Inc.*, 2003 WL 23861928, at *49 ("The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code."); *Drexel I*, 138 B.R. at 759 (noting that the legislative history of section 1129(a)(2) explains that this provision embodies the disclosure and solicitation requirements under section 1125 and 1126); *In re Johns-Manville Corp.*, 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part, on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 (2d Cir. 1988) (stating that "[o]bjections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Code"). As discussed above, the Debtors have complied with all

applicable disclosure and solicitation requirements of Bankruptcy Code sections 1125 and 1126. Thus, the requirements of Bankruptcy Code section 1129(a)(2) have been satisfied.

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law – 11 U.S.C. § 1129(a)(3)

53. Bankruptcy Code section 1129(a)(3) 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 United States Court of Appeals for the Second Circuit (the "***Second Circuit***") has defined the good faith standard 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." *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988) (citing *Koelbl v. Glessing (In re Koelbl)*, 751 F.2d 137, 139 (2d Cir. 1984) (internal quotations omitted)). In the context of a chapter 11 plan, courts have held that "a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code." *In re WorldCom, Inc.*, 2003 WL 23861928, at *51; *see also In re Leslie Fay Cos.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 107 (Bankr. D. Del. 1999). Moreover, "[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied." *In re Mid-State Raceway, Inc.*, Case No. 04-65746, 2006 WL 4050809, at *16 (Bankr. N.D.N.Y. Feb. 10, 2006) (quoting *Brite v. Sun Country Dev., Inc.* (*In re Sun Country Dev., Inc).*, 764 F.2d 406, 408 (5th Cir. 1985)); *see also In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395, 2007 WL 2779438, at *5 (Bankr. S.D.N.Y. Sept. 17, 2007) (holding that the good faith requirement was satisfied where the plan was proposed with the legitimate and honest purpose of reorganizing the debtors, maximizing the value of the debtors' assets, and expeditiously making distributions to creditors and other interest holders); *In re*

Spiegel, Inc., No. 03-11540, 2005 WL 1278094, at *6 (Bankr. S.D.N.Y. May 25, 2005) (same); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) (same). The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan. *See In re Cellular Info. Sys., Inc.*, 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994).

54. The Debtors have proposed the Plan in good faith, with the legitimate and honest purpose of reorganizing the Debtors' ongoing businesses and improving the Debtors' financial position while providing significant recoveries to their creditors. The Plan is the product of extensive negotiations among the Debtors and certain of their major creditors, including the Committee and the Administrative Agent. These negotiations resulted in a Plan that was supported by almost every single one of the Debtors' creditors that voted. The support of the Committee, the Administrative Agent and the overwhelming acceptance of the Plan by Holders of Claims entitled to vote on the Plan reflect the overall fairness of the Plan and the acknowledgement by the Debtors' creditors that the Plan has been proposed in good faith and for proper purposes. *See In re Eagle-Picher Indus.*, 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996), aff'd, 172 F.3d 48 (6th Cir. 1998) (finding that a plan of reorganization was proposed in good faith when, among other things, it was based on extensive negotiations among the plan proponents and other parties in interest).

D. The Plan Provides for Court Approval of Payment of Services and Expenses – 11 U.S.C. § 1129(a)(4)

55. Bankruptcy Code section 1129(a)(4) provides that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

See 11 U.S.C. § 1129(a)(4). In essence, this subsection requires that any and all postpetition fees in the bankruptcy case be disclosed and subject to the court's review. *See In re Johns-Manville Corp.*, 68 B.R. at 632 (Bankr. S.D.N.Y. 1986) (implying that the court must be permitted to review and approve the reasonableness of professional fees paid from estate assets). *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation.").

56. Pursuant to Section 2.2 of the Plan, the payment of compensation for services rendered or reimbursement for expenses incurred by professionals in connection with the Debtors' chapter 11 cases under Bankruptcy Code sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) are subject to review by the Court. Section 2.2 of the Plan further provides that the Debtors will pay all reasonable fees, costs and expenses of the Committee's counsel incurred through and including the date on which the Plan is confirmed. In addition, Section 11(h) of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all applications of retained professionals under Bankruptcy Code sections 330, 331 and 503(b) for awards of compensation for services rendered or expenses incurred prior to the Effective Date.

57. Based on the foregoing, the Plan fully complies with the requirements of Bankruptcy Code section 1129(a)(4).

E. All Necessary Information Regarding the Directors and Officers of the Debtors Under the Plan Has Been Disclosed – 11 U.S.C. § 1129(a)(5)

58. Bankruptcy Code section 1129(a)(5) provides that a plan of reorganization may be confirmed if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by

the reorganized debtor and the compensation to be paid to such insider. 11 U.S.C. § 1129(a)(5)(B). In addition, under Bankruptcy Code section 1129(a)(5)(A)(ii), the appointment of, or continuation in office of, existing management must be consistent with the interests of creditors, equity security holders and public policy. 11 U.S.C. § 1129(a)(5)(A)(ii).

59. In determining whether the post-effective date management of a debtor is consistent with the interests of creditors, equity security holders, and public policy, a court must consider proposed management's competence, discretion, experience, and affiliation with entities having interests adverse to the debtor. *See In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989); *see also In re W.E. Parks Lumber Co.*, 19 B.R. 285, 292 (Bankr. W.D. La. 1982) (a court should consider whether "the initial management and board of directors of the reorganized corporation will be sufficiently independent and free from conflicts and the potential of post-reorganization litigation so as to serve all creditors and interested parties on an even and loyal basis"). In general, however, "[t]he [d]ebtor should have first choice of its management, unless compelling cause to the contrary exists." *In re Sherwood Square Assocs.*, 107 B.R. at 878. The case law is also clear that a plan may contemplate the retention of the debtor's existing directors and officers. *See, e.g., In re Texaco Inc.*, 84 B.R. 893, 906 (Bankr. S.D.N.Y. 1988) (determining that section 1129(a)(5) was satisfied where plan disclosed debtor's existing directors and officers who would continue to serve in office after plan confirmation); *see also In re Trans World Airlines, Inc.*, 185 B.R. 302, 314 (Bankr. E.D. Mo. 1995).

60. In accordance with Sections 5.2(c) and (d) of the Plan, the Debtors filed a list of the initial members of the boards of directors of the Reorganized Debtors and the initial officers of the Reorganized Debtors with the Court as part of the Plan Supplement on December 15, 2010 (Docket No. 116). Based on the standard set forth above, the Debtors submit that the

appointment of each of the proposed initial directors and officers of the Reorganized Debtors is consistent with the interests of the Debtors' creditors, equity security holders and public policy. In addition, the Debtors have disclosed the nature of compensation to be paid to any insiders, to the extent known. Specifically, as set forth in the Plan Supplement and Section 5.2 of the Plan, the Debtors will be assuming the prepetition employment agreements with the existing members of their management. Further, the Debtors filed the Director Severance Plan, the Emergence Incentive Plan and the Equity Incentive Plan as part of the Plan Supplement. Accordingly, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(5).

F. The Plan Does Not Contain Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission – 11 U.S.C. § 1129(a)(6)

61. Bankruptcy Code section 1129(a)(6) requires that any regulatory commission having jurisdiction over the rates charged by a reorganized debtor in the operation of its business approve any rate change provided for in a plan of reorganization. *See* 11 U.S.C. § 1129(a)(6). Bankruptcy Code section 1129(a)(6) is inapplicable because the Plan does not provide for a change in any rates that are subject to regulatory approval.

G. The Plan is in the Best Interests of Creditors and Interest Holders – 11 U.S.C. § 1129(a)(7)

62. Bankruptcy Code section 1129(a)(7) requires that a plan be in the best interests of creditors and stockholders. The best interests test focuses on individual dissenting creditors rather than classes of claims. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999). Under the best interests test, the court must find that each non-accepting creditor will receive or retain value that is not less than the amount it would receive if the debtor were liquidated in a hypothetical proceeding under chapter 7 of the Bankruptcy Code. *See 203 N. LaSalle*, 526 U.S. at 441; *United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 228 (1996). By its express terms, Bankruptcy Code section 1129(a)(7)

applies only to non-accepting impaired claims or equity interests. *See* 11 U.S.C. § 1129(a)(7). If a class of claims or equity interests unanimously accepts the plan, the best interests test automatically is deemed satisfied for all members of that class.

63. Bankruptcy Code section 1129(a)(7) is inapplicable to Holders of Claims in Classes 1, 3, 4, and 8 because those Classes are unimpaired and deemed to accept, and to Holders of Claims in Class 9, which is impaired and deemed to accept. Bankruptcy Code section 1129(a)(7) is also inapplicable to Holders of Claims in Classes 2, 5 and 6, which unanimously voted to accept the Plan.

64. Bankruptcy Code section 1129(a)(7) is applicable with respect to Holders of Claims in Class 7 that voted to reject the Plan. In addition, Bankruptcy Code section 1129(a)(7) is applicable to Holders of Interests in Class 10 that were deemed to reject the Plan.

65. To determine the value that Holders of Claims in Class 7 or Interests in Class 10 would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, the Court must first determine the aggregate dollar amount that likely would be generated by the hypothetical liquidation of the Debtors in a case under chapter 7. The value generated in such a scenario would consist of the net proceeds of the disposition of each of the Debtors' assets and any cash held by the Debtors.

66. In addition, the liquidation of the Debtors' estates would also result in certain priority claims, such as severance pay, and would likely accelerate the payment of other priority claims and priority tax claims that otherwise would be payable in the ordinary course of business. These priority claims and tax claims would be paid in full out of the net proceeds of the liquidation of the Debtors' estates, after the payment of secured claims to the extent of the value of the underlying collateral, before the balance would be made available to pay general

unsecured claims or to make any distribution in respect of Interests. The Debtors further believe that the liquidation of their estates would result in an increase of the number and amount of general unsecured claims, including rejection damage claims, tax claims and other governmental claims.

67. Exhibit I to the Disclosure Statement sets forth the liquidation analysis (the "***Liquidation Analysis***") prepared by the Debtors to determine whether the Plan satisfies the best interests test and to assist creditors in voting on the Plan. As set forth in the Liquidation Analysis and as further described in the Jamal Declaration, the distributions to be received by Holders of Claims in Class 7 or Interests in Class 10 in a hypothetical liquidation under chapter 7 of the Bankruptcy Code are less than or equal to the expected recoveries to such Holders under the Plan. Under the Plan, Holders of Claims in Class 7 will receive a distribution that is equal to approximately 53.5% of their Claims, but in a chapter 7 liquidation, there would likely be no distribution to Holders of Class 7 Claims. In addition, while Holders of Interests in Class 10 will not receive a distribution under the Plan, such Holders would similarly receive no distribution in a liquidation of the Debtors' estates under chapter 7 of the Bankruptcy Code.

68. Based on the foregoing, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(7).

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

69. Bankruptcy Code section 1129(a)(8) requires that each class of impaired claims or interests accept the plan: "With 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). Class 7 voted to reject the Plan. In addition, Class 10 is impaired and deemed to reject the Plan under Bankruptcy Code section 1126(f) because Holders of Interests in Class 10 will not receive a recovery under the Plan. Accordingly, section 1129(a)(8) is not satisfied. As a result, the

Debtors must satisfy the "cram down" requirements of section 1129(b) (as discussed below) to confirm the Plan.

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

70. Bankruptcy Code section 1129(a)(9) 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) requires a plan to provide as follows:

> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of [the Bankruptcy Code], on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of [the Bankruptcy Code], each holder of a claim of such class will receive -
>
> > (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
> >
> > (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of [the Bankruptcy Code], the holder of such claim will receive on account of such claim regular installment payments in cash -
>
> > (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
> >
> > (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
> >
> > (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b));
>
> (D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S.C. § 1129(a)(9).

71. In accordance with sections 1129(a)(9)(A) and (B), Section 2.1 of the Plan provides that Allowed Administrative Expense Claims shall be paid in full, in cash, on the latest of: (a) on or as soon as reasonably practicable after the Effective Date; (b) on or as soon as reasonably practicable after the date such Administrative Expense Claim is Allowed; and (c) the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is practicable. Section 2.1 of the Plan further provides that Allowed Administrative Expense Claims that arise in the ordinary course of the Debtors' businesses shall be paid in full in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing or other documents relating to, such transactions. Thus, the Plan satisfies the requirements of Bankruptcy Code sections 1129(a)(9)(A) and (B).

72. The Plan also satisfies the requirements of Bankruptcy Code section 1129(a)(9)(C) with respect to the treatment of Priority Tax Claims. Section 2.3 of the Plan provides that each Allowed Priority Tax Claim shall (a) to the extent such Claim is due and owing on the Effective Date, be paid in full, in cash, on the Effective Date, or (b) to the extent such Claim is not due and owing on the Effective Date, be paid in full, in cash, in accordance with the terms of any agreement between the Debtors and such Holder, or as may be due and owing under applicable nonbankruptcy law, or in the ordinary course of business. Based on the foregoing, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9).

J. The Plan Has Been Accepted by at Least One Impaired Class that is Entitled to Vote – 11 U.S.C. § 1129(a)(10)

73. Bankruptcy Code section 1129(a)(10) requires that, if a class of claims is impaired under a plan, at least one class of impaired claims must have voted to accept the plan.

See 11 U.S.C. § 1129(a)(10). The Plan satisfies that requirement. Classes 2, 5 and 6 are impaired under the Plan and have voted to accept the Plan. These Classes, therefore, qualify as impaired accepting classes and satisfy the requirement of section 1129(a)(10).

K. The Plan is Not Likely to be Followed by Liquidation or the Need for Further Financial Reorganization – 11 U.S.C. § 1129(a)(11)

74. Bankruptcy Code section 1129(a)(11) requires that, as a condition precedent to confirmation, the Court determine that the Plan is feasible. Specifically, the Court must determine that:

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

11 U.S.C. § 1129(a)(11). As discussed in Section X.F. of the Disclosure Statement and the Jamal Declaration, the Plan is feasible within the meaning of this provision.

75. The feasibility test set forth in Bankruptcy Code section 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *Kane v. Johns-Manville Corp.*, 843 F.2d 649.

76. The Second Circuit has stated that "the feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed." *Id.; see also In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd*, 800 F.2d 581 (6th Cir. 1986); *In re WorldCom, Inc.*, 2003 WL 23861928, at *57 ("The feasibility test set forth in section 1129(a)(11) requires the [c]ourt to determine whether the [p]lan is workable and has a reasonable likelihood of success."); *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 709 (Bankr. S.D.N.Y. 1993) ("It is not necessary that the success be guaranteed, but only that the plan

presents a workable scheme of reorganization and operation from which there may be a reasonable expectation of success.") (quoting 5 *Collier on Bankruptcy* ¶ 1129.02[11], at 1129-54 (15th ed. 1992)); *In re Prudential Energy Co.*, 58 B.R. 857, 862 (Bankr. S.D.N.Y. 1986) ("Guaranteed success in the stiff winds of commerce without the protection of the [Bankruptcy] Code is not the standard under § 1129(a)(11).").

77. The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. *See In re Kent Terminal Corp.*, 166 B.R. 555, 560 (Bankr. S.D.N.Y. 1994). "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 Drexel I*, 138 B.R. at 762.

78. Applying the foregoing standards of feasibility, courts have identified the following factors as probative:

(1) the adequacy of the capital structure;

(2) the earning power of the business;

(3) economic conditions;

(4) the ability of management;

(5) the probability of the continuation of the same management; and

(6) any other related matters which will determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.

See In re Leslie Fay Cos., Inc., 207 B.R. at 789 (citing 7 *Collier on Bankruptcy* ¶ 1129.LH[2], at 1129-82 (15th ed. rev. 1996)); *see also In re Texaco*, 84 B.R. at 910; *Prudential Energy*, 58 B.R. at 862-63. The foregoing list is neither exhaustive nor exclusive. *Drexel I*, 138 B.R. at 763. The Plan satisfies these standards of feasibility.

79. For purposes of determining whether the Plan satisfies the above-described feasibility standards, the Debtors have analyzed their ability to fulfill their obligations under the Plan and retain sufficient liquidity and capital resources to conduct their businesses. As part of this analysis, the Debtors have prepared a financial forecast (the "***Forecast***") for the Reorganized Debtors that is attached to the Disclosure Statement as Exhibit G, and that is discussed in detail in Section X.F. of the Disclosure Statement and the Jamal Declaration. Based upon the information contained in the Disclosure Statement, the Jamal Declaration and the Forecast, the Debtors believe that their cash on hand upon emergence, together with the proceeds of the New Financing, will provide sufficient liquidity to make all payments required pursuant to the Plan and satisfy all ongoing capital requirements. In addition, no party has challenged the Forecast or the feasibility of the Plan.

80. The Debtors further believe that their new management team is qualified to manage the implementation of the Plan and achieve success following the Debtors' emergence from chapter 11, and that they have or will be able to satisfy all of the conditions precedent to the Effective Date contained in Section 9.1 of the Plan.

81. Based upon the foregoing, the Plan is feasible because there is a reasonable likelihood that the Reorganized Debtors will meet their financial obligations under the Plan in the ordinary course of business and because confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors. The Plan therefore satisfies the feasibility standard of Bankruptcy Code section 1129(a)(11).

L. The Plan Provides for Full Payment of All Statutory Fees – 11 U.S.C. § 1129(a)(12)

82. Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 [title 28, the United States Code], as determined by the court at the hearing on confirmation of the plan...." 11 U.S.C. § 1129(a)(12). Bankruptcy Code section 507 provides that "any fees

and charges assessed against the estate under [section 1930] chapter 123 of title 28" are afforded priority as administrative expenses. *Id*. at § 507(a)(2). In accordance with Bankruptcy Code sections 507 and 1129(a)(12), Section 12.1 of the Plan provides that all such fees and charges will be paid on the Effective Date and thereafter as may be required. Thus, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(12).

M. The Plan Provides for an Appropriate Treatment of Retiree Benefits – 11 U.S.C. § 1129(a)(13)

83. Bankruptcy Code section 1129(a)(13) requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all retiree benefits at the level established by agreement or by court order pursuant to Bankruptcy Code section 1114 at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits. Section 8.5 of the Plan provides that all employee compensation and benefit plans entered into before or after the Petition Date and not since terminated shall be deemed to be, and shall be treated as if they were, executory contracts to be assumed pursuant to the Plan. Section 8.5 of the Plan further provides that the Debtors' obligations under such plans and programs shall survive confirmation of the Plan. Thus, the requirements of Bankruptcy Code section 1129(a)(13) have been satisfied.

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

84. As described above, Holders of Claims in Class 7 voted to reject the Plan, and Class 10 is deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g). As a result, Bankruptcy Code section 1129(a)(8) has not been satisfied and, accordingly, the Debtors are seeking confirmation of the Plan pursuant to Bankruptcy Code section 1129(b).

85. Bankruptcy Code section 1129(b) provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity

interests. This mechanism is commonly referred to as "cram down." Section 1129(b) provides in pertinent part:

> Notwithstanding section 510(a) of [the Bankruptcy Code], if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of 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) (emphasis supplied). Thus, under Bankruptcy Code section 1129(b), the Court may "cram down" a plan that has not been accepted by all impaired classes if the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes.

1. The Plan Does Not Discriminate Unfairly With Respect to the Rejecting Classes

86. Bankruptcy Code section 1129(b)(1) does not prohibit discrimination between classes; it prohibits only discrimination that is *unfair*. *See In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of Bankruptcy Code section 1129(b) only if similar classes are treated differently without a reasonable basis for the disparate treatment. *See In re Buttonwood Partners, Ltd.*, 111 B.R. 57 (Bankr. S.D.N.Y. 1990); *Johns-Manville*, 68 B.R. 618. Accordingly, as between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g., Johns-Manville*, 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, *see, e.g., Buttonwood Partners*, 111 B.R. at 63; *In re Rivera Echevarria*, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

87. The Plan does not "discriminate unfairly" with respect to the rejecting Classes of Claims and Interests. Class 7 (2011 Notes Claims) and Class 10 (Interests in AMI) consist of

Claims that are dissimilar to other Classes of Claims treated under the Plan and Interests. Accordingly, the separate classification of the Claims in Class 7 and the Interests in Class 10 is appropriate. Moreover, Holders of Claims in Class 7 are receiving the same treatment as Holders of Claims in Class 6. Specifically, Holders of Claims in Class 7 are receiving 2% of the New Common Stock, which represents the *pro rata* portion that Class 7 represents of the aggregate amount of Allowed Claims in Class 6 and Class 7 (subject to dilution on account of the Backstop Shares and the Equity Incentive Plan). Based on the foregoing, the Debtors submit that the Plan does not discriminate unfairly with respect to either Class 7 or Class 10. Accordingly, the first prong of the cram down analysis is satisfied.

2. The Plan is Fair and Equitable with Respect to the Rejecting Classes

88. Bankruptcy Code section 1129(b) defines the phrase "fair and equitable" as follows:

> (a) As to secured creditors: Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the "indubitable equivalent" of its allowed secured claim or (iii) the property is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds is provided in clause (i) or (ii) of this subparagraph.
>
> (b) As to unsecured creditors: Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.
>
> (c) As to equity interest holders: Either (i) each holder of an equity interest 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 the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

11 U.S.C. § 1129(b)(2). In the instant case, the "fair and equitable" rule is satisfied with respect to Class 7 because, as evidenced by the valuations and estimates contained in the Disclosure

Statement, no Class of Claims senior to Class 7 is receiving more than payment in full on account of such Claims, and no Class of Claims or Interests that is junior to Class 7 will receive any distribution under the Plan. In addition, the Plan is fair and equitable with respect to Class 10 because such Holders are not entitled to any recovery under the Plan, and no Holders of Interests junior to Class 10 will receive or retain any property under the Plan.

VII. THE LIMITED RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS OF THE PLAN SHOULD BE APPROVED

89. The Plan provides for (i) the release of certain causes of action of the Debtors and their estates, (ii) the release of certain causes of action by certain Holders of Claims and Interests, (iii) the exculpation of claims for certain parties, and (iv) a permanent injunction enjoining the prosecution of certain claims. The release, exculpation and injunction provisions contained in the Plan are proper because, among other things, such provisions are the product of arm's-length negotiations and have been critical to the formulation of the Plan.

A. The Debtor Release Should Be Approved

90. Section 10.7 of the Plan (the "***Debtor Release***") contains a release of the Released Parties[12] from all claims and causes of action that the Debtors, the Reorganized Debtors and the estates and their Affiliates would have been entitled to assert based on or relating to, among other things, (i) the Debtors, (ii) the chapter 11 cases, (iii) the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, (iv) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (v) the business or contractual arrangements between any Debtor and any Released Party, (vi) the restructuring of Claims and Interests before or during the chapter 11 cases, (vii) the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other documents, or (viii) other acts, omissions, transactions, agreements or events taking place on or before the Effective Date. The Debtor Release does not

absolve any Released Party from liability with respect to (a) any act or omission that constitutes gross negligence, willful misconduct, criminal acts or fraud or (b) Claims that arise in the ordinary course of the Debtors' businesses and contractual obligations that are not otherwise being satisfied or discharged under the Plan (the "***Release Carve Out***").

91. Pursuant to Bankruptcy Code section 1123(b)(3)(A), a plan may provide for the "settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). The rules governing the approval of a settlement under Bankruptcy Rule 9019 are useful in evaluating plan releases. In reviewing such releases, courts frequently use the benchmark for approval of a settlement under Bankruptcy Rule 9019. *See, e.g.*, *Resolution Trust Corp. v. Best Prods. Co. (In re Best Prods. Co.)*, 68 F.3d 26, 33 (2d Cir. 1995) (the release and injunction provisions of the plan were deemed submitted for approval of the

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[12] The Released Parties include each of: (i) the Debtors and Reorganized Debtors; (ii) any direct or indirect shareholder of the Debtors, and such shareholder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors; (iii) the current and former (in each case, as of the Effective Date) directors, officers, and employees, professional advisors, sub-advisors, managers, affiliated management companies, and managing and executive directors of the Debtors; (iv) the members of the Committee and their respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, and managing and executive directors; (v) the Indenture Trustees and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (vi) the Term Facility Lenders, the Revolver Lenders, the Administrative Agent, the collateral agent and other agents under the 2009 Credit Agreement and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (vii) the New First Lien Notes Holders and the indenture trustee, the escrow agent and the collateral agent under the New First Lien Indenture, and their respective directors, officers, partners, members, representatives, employees and professional advisors; (viii) the New Second Lien Notes Holders and the indenture trustee, the escrow agent, and the collateral agent under the New Second Lien Indenture, and their respective directors, officers, partners, members, representatives, employees and professional advisors; (ix) the New Revolver Facility Lenders and the New Revolver Facility administrative agent and their respective directors, officers, partners, members, representatives, employees and professional advisors; (x) the Backstop Parties, and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (xi) the indenture trustee under the New PIK Notes Indenture and the holders of the New PIK Notes, if any, and their respective directors, officers, partners, members, representatives, employees and professional advisors; (xii) Holders of New Common Stock and such Holder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors; and (xiii) Holders of the New Preferred Stock, if any, and such Holder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors.

court pursuant to Bankruptcy Code section 1123(b)(3)(A) and Bankruptcy Rule 9019(a)); *In re Bally Total Fitness, Inc.*, No. 07-12395, 2007 WL 2779438, at *12 (Bankr. S.D.N.Y. Sept. 17, 2007) ("To the extent that a release or other provision in the [p]lan constitutes a compromise of a controversy, this [c]onfirmation [o]rder shall constitute an order under Bankruptcy Rule 9019 approving such compromise."); *In re Spiegel, Inc.*, No. 03-11540, 2005 WL 1278094, at *11 (Bankr. S.D.N.Y. May 24, 2005) (approving releases pursuant to Bankruptcy Code section 1123(b)(3) and Bankruptcy Rule 9019). Under Bankruptcy Rule 9019, courts may approve a settlement so long as it does not "fall below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1973); *In re Enron Corp.*, No. 02 Civ. 8489, 2003 WL 230838, at *2 (S.D.N.Y. Jan. 31, 2003) ("[A]pproval of the settlement lies within the sound discretion of the bankruptcy court . . . .") (citations omitted); *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying [dispute]"); *Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. of Chicago (In re Ionosphere Clubs)*, 156 B.R. 414, 426-27 (S.D.N.Y. 1993), *aff'd* 17 F.3d 600 (2d Cir. 1994).

92. Based on the foregoing, the Debtors believe that the Debtor Release satisfies the standard applied by courts in evaluating such provisions. The Debtors do not believe that they possess any valuable claims or causes of action against any of the Released Parties. Moreover, even if the Debtors could potentially assert any claims or causes of action against the Released Parties, the Debtors believe that the cost and expense associated with pursuing such claims or causes of action would ultimately exceed the value of any such claims or causes of action. The Debtors further submit that the Debtor Release is an important component of the Plan, and the

Debtor Release was negotiated as part of the comprehensive restructuring embodied in the Plan. Accordingly, the Debtors submit that the Debtor Release is consistent with applicable law, represents a valid settlement of whatever claims and causes of action that the Debtors may have against the Released Parties pursuant to Bankruptcy Code section 1123(b)(3)(A) and, thus, should be approved.

B. The Third Party Release Should Be Approved

93. Section 10.8 of the Plan contains a release (the "***Third Party Release***") by Holders of Claims and Interests of claims and causes of action that could be asserted by such Holders against the Released Parties, including certain non-Debtor Released Parties. The scope of the Third Party Release is substantially similar to the Debtor Release. In addition, the Third Party Release is also subject to the Release Carve Out.

94. The Second Circuit has determined that releases of non-Debtors may be approved as part of a chapter 11 plan of reorganization if there are "unusual circumstances" that render the release terms important to the success of the plan. *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 143 (2d Cir. 2005). Courts have approved releases of non-debtors when: (i) the estate received substantial consideration; (ii) the enjoined claims were channeled to a settlement fund rather than extinguished; (iii) the enjoined claims would indirectly impact the reorganization by way of indemnity or contribution; (iv) the plan otherwise provided for the full payment of the enjoined claims; and (v) the affected creditors consent to the release. *Id.* at 142; *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 266 (Bankr. S.D.N.Y. 2007).

95. Before a determination can be made as to whether third party releases are warranted by "unusual circumstances," the Second Circuit has concluded that there is a threshold jurisdictional inquiry as to whether the Bankruptcy Court has subject matter jurisdiction to grant

such releases. *See In re Dreier LLP*, 429 B.R. 112, 132 (Bankr. S.D.N.Y. 2010) (finding no jurisdiction to approve releases of claims that did not affect the estate); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 695-96 (Bankr. S.D.N.Y. 2010) (discussing and approving releases in a case under chapter 15 of the Bankruptcy Code). Courts in this district have determined that jurisdiction over a third party cause of action or claim exists if it will "directly and adversely impact the reorganization." *In re Dreier LLP*, 429 B.R. at 132. Conversely, the court may lack jurisdiction if the released claim is one that would "not affect property of the estate or the administration of the estate." *Id.* at 133. Here, all of the released Claims could "directly and adversely impact the reorganization" of the Debtors' estates. Each of the non-Debtor Released Parties could have a potential Claim for indemnification and contribution against the Debtors for any liabilities incurred on such Claims, as well as any expenses incurred to defend such Claims.[13] In addition, because all Allowed General Unsecured Claims are being satisfied in full under the Plan, the Debtors would have to satisfy these indemnification and contribution Claims in full. The ultimate effect of doing so would reduce the Debtors' distributable value and would likely reduce recoveries for the Debtors' creditors under the Plan. The Debtors' estates therefore would be directly and adversely impacted if the released Claims were pursued.

96. In addition, the circumstances of these chapter 11 cases are unique and satisfy the *Metromedia* requirements. Among other things, the non-Debtor Released Parties have provided substantial consideration to the Debtors' estates by, among other things, their support for the reorganization process (evidenced by, among other things, their overwhelming votes in favor of

[13] A chart setting forth examples of indemnification provisions included in the 2009 Credit Agreement, the 2011 Notes Indenture, the Subordinated Notes Indenture, the New First Lien Indenture, and the New Second Lien

the Plan and the fact that not a single objection to confirmation was filed). Moreover, the Committee, the Administrative Agent and many of the other non-Debtor Released Parties were instrumental in the formulation of the Plan and the Debtors' overall restructuring process, which required the involved parties to expend significant efforts over a period of months. Without the significant cooperation and material compromises afforded by the non-Debtor Released Parties (as evidenced by, among other things, their overwhelming support for the Plan), it would not have been possible for the Debtors to complete their restructuring on such an expedited basis and in such a successful manner. Indeed, without the participation of the Backstop Parties, it is unlikely that the Debtors could have obtained sufficient financing to ensure the success of the Plan.

97. Several other considerations also warrant approval of the Third Party Release contained in the Plan. First, the Plan pays all Allowed General Unsecured Claims in full and provides substantial recoveries to Holders of Claims related to the Debtors' funded debt obligations. Second, the Debtors are not aware of any claims or causes of action that have been or could be asserted against any of the non-Debtor Released Parties. Third, even if there were potential claims or causes of action against any of the non-Debtor Released Parties, the Debtors believe that the non-Debtor Released Parties would have potential Claims for indemnification against the Debtors, which, as already noted, could adversely affect recoveries under the Plan and the Debtors' efforts to reorganize. Fourth, approximately 72% of the creditors that were eligible to vote, voted to accept the Plan with the Third Party Release incorporated in the Plan, and the Ballots sent to Holders of Claims entitled to vote on the Plan included conspicuous language discussing the Third Party Release in order to ensure that all parties voting on the Plan

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Indenture is attached hereto as Exhibit B. The chart provides a non-exclusive selection of indemnification

were adequately informed of the Third Party Release. Thus, the Holders of Claims that voted on the Plan were therefore aware of and had a reasonable opportunity to consider the Third Party Release when voting to accept or reject the Plan. Finally, no party has objected to the Third Party Release or the Plan.

98. Based on the foregoing, the Debtors believe that the Third Party Release is appropriate under the *Metromedia* decision and other applicable case law and should therefore be approved.

C. The Exculpation Should Be Approved

99. Section 10.4 of the Plan includes a customary exculpatory provision (the "***Exculpation***") which, with certain limited exceptions, protects the Released Parties from liability for claims and causes of action related to any act or omission taken in connection with, or arising out of, (i) the chapter 11 cases, (ii) the formulation, dissemination, consummation or administration of the Plan, (iii) property to be distributed under the Plan, or (iv) any other act or omission in connection with the chapter 11 cases, the Plan or any contract, instrument, indenture or other agreement or document related thereto or delivered thereunder. The Exculpation is subject to a carve-out for acts or omissions constituting gross negligence, willful misconduct, criminal acts and fraud.

100. Courts in this jurisdiction consistently approve exculpation provisions that protect key parties in a debtor's restructuring from liability for conduct related to the debtor's restructuring so long as such parties are not shielded from liability for conduct constituting gross negligence, willful misconduct or fraud. *See, e.g., Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 501 (Bankr. S.D.N.Y. 2005) (discussing bankruptcy court's ruling

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provisions from applicable agreements and has been included for illustrative purposes only.

on exculpation provision contained in debtor's plan); *In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (finding that an exculpation provision that carves out gross negligence and willful misconduct and fraud was appropriate). Indeed, courts in this jurisdiction have recognized that negotiating and implementing a plan would not be possible if participating parties were not afforded protection from liability for their involvement in a debtor's restructuring. *See SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 293 (2d Cir. 1992) (upholding an injunction in a settlement agreement resulting from complex negotiations involving numerous parties). Moreover, courts have approved exculpation provisions that extend to both prepetition and postpetition conduct. *See In re Oneida Ltd.*, 351 B.R. at 94 n.22 (noting that exculpation provision covered both prepetition and postpetition conduct related to the debtor's restructuring).

101. Based on the foregoing, the Debtors submit that the Exculpation is appropriate and should be approved. The Exculpation is integral to the Plan and the success of the Debtors' restructuring. The Debtors were able to formulate and propose the Plan only after engaging in extensive, arm's-length negotiations with numerous parties during the period leading up to the Petition Date. In the absence of the protection from liability provided by the Exculpation to the parties that participated in the foregoing negotiations, the Debtors would not have been able to propose the Plan and successfully consummate their restructuring. Moreover, the Exculpation (i) specifically provides that the Released Parties will not be protected from liability for acts or omissions that constitute gross negligence, willful misconduct, criminal acts or fraud and (ii) applies solely to acts or omissions directly related to the Debtors' chapter 11 cases and the formulation, confirmation and implementation of the Plan. Accordingly, the Exculpation is enforceable under applicable law and should be approved.

D. The Injunction Should Be Approved

102. Section 10.5 of the Plan contains an injunction (the "***Injunction***") that, among other things, permanently enjoins Holders of Claims or Interests from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Interest against any Reorganized Debtor, (ii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Reorganized Debtor with respect to any such Claim or Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor, as applicable with respect to any such Claim or Interest, (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor with respect to any such Claim or Interest, and (v) pursuing any Claim released pursuant to the Debtor Release or the Third Party Release. The Injunction does not enjoin any claims that have been alleged or that could have been alleged in the Anderson Litigation.

103. The Injunction is necessary to preserve and enforce the Debtor Release, the Third Party Release and the Exculpation and is narrowly tailored to achieve that purpose. In addition, the Injunction is a key component of the Debtors' ultimate reorganization. *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992). Thus, the Injunction is appropriate and should be approved.

VIII. THE MODIFICATIONS TO THE PLAN ARE NOT MATERIAL

104. As previously represented to the Court, since the Petition Date, the Debtors have received comments on the Plan from the Office of the United States for the Southern District of New York, counsel to the Committee, counsel to the Administrative Agent, counsel to certain of the indenture trustees for the Debtors' prepetition note issuances and counterparties to certain

prepetition litigation. To address these comments and concerns, the Debtors made certain modifications (the "***Modifications***") to the Plan and filed the Plan, as modified, with the Court on December 15, 2010. *See* Docket No. 115. The Modifications do not materially or adversely affect the way any Claim or Interest is treated under the version of the Plan distributed to Holders of Claims in the Voting Classes in connection with the prepetition solicitation of votes on the Plan.

105. Bankruptcy Code section 1127 provides, in relevant part:

> The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and 1123 of the [Bankruptcy Code]. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan . . . .
>
> Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. §§ 1127(a), (d).

106. Bankruptcy Rule 3019, designed to implement Bankruptcy Code section 1127, in turn, provides, in relevant part:

> In a . . . chapter 11 case, after 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 of the trustee, any committee appointed under the [Bankruptcy 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.

107. Here, the requirements of Bankruptcy Code section 1127(d) have been met because all Holders of Claims and Interests in these chapter 11 cases have received notice of the hearing on confirmation of the Plan and will have an opportunity to object to the Modifications

at that time. *See* Docket No. 115; *see also Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater)*, 57 B.R. 354, 358 (D. Utah 1985) (creditors who had knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modifications of the plan). Moreover, the Debtors submit that several of their major creditors or their representatives reviewed the Modifications and have not objected to any such Modifications.

108. Bankruptcy Code section 1127 provides a plan proponent with the right to modify a plan "at any time" before confirmation. This right would be meaningless if the promulgation of all plan modifications, ministerial or substantive, adverse to certain claimants or not, necessitated the resolicitation of votes. Accordingly, in keeping with traditional bankruptcy practice, courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedure or resolicitation. *See, e.g.*, *In re Am. Solar King Corp.*, 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (stating that "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.") (citation omitted); *see also Enron Power Corp. v. New Power Co. (In re New Power Co.)*, 438 F.3d 1113, 1117-18 (11th Cir. 2008) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); *In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I*, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) (all creditors were deemed to have accepted plan as modified because "[n]one of the changes negatively affects the repayment of creditors, the length of the [p]lan, or the protected property interests of parties in interest.").

109. Accordingly, because the Modifications are non-material and do not materially adversely affect the treatment of any creditor that has previously accepted the Plan, and the Plan

continues to comply with the requirements of Bankruptcy Code section 1122 and 1123, the Debtors believe that resolicitation is not required.

IX. PROPOSED ORDER

110. Attached hereto as Exhibit A are proposed findings of fact, conclusions of law and an order confirming the Plan (the "***Confirmation Order***"). The findings of fact and conclusions of law in the Confirmation Order are supported by the declarations in support of confirmation of the Plan filed concurrently herewith.

X. IMMEDIATE EFFECTIVENESS

111. The Debtors respectfully request that the Court direct that the order confirming the Plan become effective immediately upon its entry notwithstanding the 14-day stay imposed by Bankruptcy Rule 3020(e). Under the unique circumstances of these chapter 11 cases and given the overwhelming support of the Plan by affected creditors and the fact that no objections to confirmation of the Plan have been filed, the Debtors believe the request for waiver of the stay is reasonable. Specifically, the waiver of the stay is necessary to ensure the Debtors maintain their relationships with their advertisers. As previously expressed to the Court, in December, the Debtors' advertisers establish their budgets for the next calendar year and make non-binding commitments to advertise in the Debtors' publications. The Debtors believe that while the Debtors' advertisers have continued to do business with the Debtors and have continued to make commitments to advertise in the Debtors' publications, a large part of their decision to do so has been based on their belief that these chapter 11 cases will not have a material impact on the Debtors' ongoing business operations. Indeed, AMI's competitors have attempted to dissuade customers from advertising in AMI's magazines by arguing that there can be no assurance any particular AMI publication will be on a newsstand in the near future since the company has filed for bankruptcy. AMI has thus had to repeatedly assure its customers and vendors that its pre-

packaged chapter 11 cases will have only a minimal, if any, impact on its operations. In the event that the Debtors are unable to emerge by year-end, the Debtors believe that some of the Debtors' advertisers may cancel their non-binding commitments to advertise in the Debtors' publications and choose to place advertisements with the Debtors' competitors. The Debtors further believe that such a loss would materially affect the Debtors' businesses and it may take years for the Debtors to regain that loss.

112. Moreover, the Debtors believe that their expedited emergence before year-end is critical to avoiding any disruptions to their businesses and relationships with their trade creditors. The Debtors have repeatedly informed their business counterparties and their employees that the Debtors' restructuring is a balance sheet restructuring that will not have a negative impact on the Debtors' business operations and will permit the Debtors to enjoy a fresh start in the new calendar year. Finally, the Debtors note that, in connection with the filing of the Plan Supplement, they provided notice of their intent to request that the Court direct that the order confirming the Plan become effective immediately upon its entry notwithstanding the 14-day stay period contemplated by Bankruptcy Rule 3020(e). *See* Docket No. 117. The Debtors therefore seek a waiver of the stay to preserve their credibility with their employees and counterparties and minimize the possibility of disruption to their businesses post-emergence.

XI. CONCLUSION

113. The Plan complies with and satisfies all applicable requirements of Bankruptcy Code section 1129. Accordingly, the Debtors request that the Court (i) approve (a) the Disclosure Statement, (b) the solicitation of votes and the Solicitation and Election Procedures, (c) the forms of ballots, and (d) the Election Form, (ii) confirm the Plan, (iii) overrule any objections to confirmation of the Plan, if necessary, and (iv) grant the Debtors such other and further relief as is just and proper.

New York, New York
Dated: December 17, 2010

/s/ *Ira S. Dizengoff*

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
AMERICAN MEDIA, INC., *et al.*,[1]	)	Case No. 10-16140 (MG)
Debtors.	)	(Jointly Administered)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (I) APPROVING (A) THE DEBTORS' DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. §§ 1125 AND 1126(b), (B) SOLICITATION OF VOTES AND SOLICITATION AND ELECTION PROCEDURES, (C) FORMS OF BALLOTS, AND (D) THE ELECTION FORM AND (II) CONFIRMING THE DEBTORS' AMENDED JOINT PREPACKAGED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

This order (this "***Confirmation Order***") is entered to effectuate confirmation of the *Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* dated December 15, 2010 (Docket No. 115) (the "***Plan***") and attached hereto as Exhibit A and approve the adequacy of (i) the *Disclosure Statement Relating to the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* **(**Docket No. 19) (the "***Disclosure Statement***"), (ii) the solicitation of votes and solicitation and election procedures, (iii) the forms of ballots and (iv) the election form. The Debtors having:

a. commenced, on November 17, 2010 (the "***Petition Date***"), these chapter 11 cases (collectively, the "***Chapter 11 Cases***") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***");

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Media, Inc. (3383); American Media Operations, Inc. (4424); American Media Consumer Entertainment, Inc. (3852); American Media Consumer Magazine Group, Inc. (3863); American Media Distribution & Marketing Group, Inc. (3860); American Media Mini Mags, Inc. (3854); American Media Newspaper Group, Inc. (3864); American Media Property Group, Inc. (4153); Country Music Media Group, Inc. (2019); Distribution Services, Inc. (1185); Globe Communications Corp. (2593); Globe Editorial, Inc. (3859); Mira! Editorial, Inc. (3841); National Enquirer, Inc. (4097); National Examiner, Inc. (3855); Star Editorial, Inc. (9233); and Weider Publications, LLC (1848).

b. continued to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code section 1107(a) and 1108;

c. filed, on November 17, 2010, the *Motion Pursuant to Bankruptcy Code Sections 363(b), 365 and 503(b)(1) and Bankruptcy Rules 2002 and 6004 for an Order Authorizing the Debtors to (I) Assume or Enter into Certain Agreements in Connection with the New Financing and Backstop Commitment, (II) Incur and Pay Related Fees and Expenses as Administrative Expenses, (III) Transfer Certain Funds into Escrow and (IV) Establish Special Purpose Entities as Non-Debtor Entities* (Docket No. 17) (the "***Escrow Motion***");

d. filed, on November 24, 2010, the *Declaration of Zul Jamal in Support of Motion Pursuant to Bankruptcy Code Sections 363(b), 365 and 503(b)(1) and Bankruptcy Rules 2002 and 6004 for an Order Authorizing the Debtors to (I) Assume or Enter into Certain Agreements in Connection with the New Financing and Backstop Commitment, (II) Incur and Pay Related Fees and Expenses as Administrative Expenses, (III) Transfer Certain Funds into Escrow, and (IV) Establish Special Purpose Entities as Non-Debtor Entities* (Docket No. 63);

e. filed, on November 17, 2010, *Affidavit of Service and Declaration of David Hartie Regarding the Service and Transmittal of Solicitation Packages and the Certification and Tabulation of Ballots Accepting or Rejecting the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 24) (the "***Voting Certification***") detailing the results of the Plan voting process;

f. filed, on November 17, 2010, the *Debtors' Motion for an Order (A) Scheduling a Combined Hearing to Consider the Adequacy of the Disclosure Statement and Solicitation and Election Procedures and Confirmation of the Plan, (B) Establishing Deadlines and Procedures to File Objections to the Disclosure Statement, the Solicitation and Election Procedures and the Plan, and (C) Approving the Form and Manner of the Notice of the Combined Hearing* (Docket No. 21) (the "***Scheduling Motion***");

g. distributed, on November 22, 2010, notice (the "***Combined Notice***") of the combined hearing (the "***Combined Hearing***") to consider the adequacy of the Disclosure Statement and solicitation and election procedures (the "***Solicitation and Election Procedures***") and confirmation of the Plan; consistent with the *Order (A) Scheduling a Combined Hearing to Consider the Adequacy of the Disclosure Statement and Solicitation and Election Procedures and Confirmation of the Plan, (B) Establishing Deadlines and Procedures to File Objections to the Disclosure Statement, the Solicitation and Election Procedures and the Plan, and (C) Approving the Form and Manner of the Notice of Combined Hearing* (Docket No. 47) (the "***Scheduling Order***"); as evidenced by the *Affidavit of Service of Ricardo Tejeda Romero re: Summary of Plan of Reorganization, Notice of Commencement of Chapter 11 Bankruptcy Cases, and Notice of Combined Hearing on Disclosure Statement and Plan Confirmation* (Docket No. 68);

h. filed, on December 1, 2010 an amended notice of the Combined Hearing (Docket No. 78), as evidenced by the *Affidavit of Service of Ricardo Tejeda Romero re: Amended Summary of Plan of Reorganization, Notice of Commencement of Chapter 11 Bankruptcy Cases, and Notice of Combined Hearing on Disclosure Statement and Plan Confirmation Dated December 1, 2010* (Docket No. 79); *See Affidavit of Service of Isidro N. Panizales re: Amended Summary of Plan of Reorganization, Notice of Commencement of Chapter 11 Bankruptcy Cases, and Notice of Combined Hearing on Disclosure Statement and Plan Confirmation Dated December 1, 2010* (Docket No. 80);

i. published, on November 29, 2010, notice of the Combined Hearing in The New York Times (National Edition), USA Today (National Edition) and the Miami Herald consistent with the Scheduling Order, as evidenced by *Affidavit of Publication of Summary of Plan of Reorganization and Amended Notice of Hearing to Consider (A) Adequacy of the Disclosure Statement and Solicitation and Election Procedures and (B) Confirmation of Plan of Reorganization and Related Matters in the Miami Herald* (Docket No. 90); *Affidavit of Publication of Summary of Plan of Reorganization and Amended Notice of Hearing to Consider (A) Adequacy of the Disclosure Statement and Solicitation and Election Procedures and (B) Confirmation of Plan of Reorganization and Related Matters in the New York Times* (Docket No. 91); *Affidavit of Publication of Summary of Plan of Reorganization and Amended Notice of Hearing to Consider (A) Adequacy of the Disclosure Statement and Solicitation and Election Procedures and (B) Confirmation of Plan of Reorganization and Related Matters in USA Today* (Docket No. 92);

j. filed, on November 17, 2010, the *Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 20), which was subsequently amended as provided herein, and the *Disclosure Statement Relating to the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 19);

k. filed, on December 15, 2010, the *Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 115) to reflect certain non-substantive changes to the Plan;

l. filed, on November 24, 2010, the *Plan Financing Supplement to the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 65); and *Notice of Filing Plan Financing Supplement to the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 66);

m. filed, on December 15, 2010, the *Plan Supplement to the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 116); and *Notice of Filing of Plan Supplement to Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 117);

n. filed, on December 17, 2010, the *Affidavit of Service and Declaration of David Hartie Regarding the Service and Transmittal of Class 2 Election Form and the Tabulation of Elections* (Docket No. [ ]) (the "***Election Certification***")*;* and

o. filed, on December 17, 2010, the *Debtors' Memorandum of Law in Support of Entry of an Order (I) Approving (A) the Debtors' Disclosure Statement Pursuant to 11 U.S.C. §§ 1125 and 1126(b), (B) Solicitation of Votes and Solicitation and Election Procedures, (C) Forms of Ballots, and (D) Form of Ballot, and (II) Confirming the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Confirmation Brief***") (Docket No. [ ]); the *Declaration of Christopher Polimeni in Support of Confirmation of the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Polimeni Declaration***") (Docket No. [ ]); and the *Declaration of Zul Jamal in support of the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Jamal Declaration***") (Docket No. [ ]), each in support of confirmation of the Plan.

This Court having:

a. entered, on November 19, 2010, the Scheduling Order (Docket No. 47);

b. entered on November 29, 2010, the *Order Authorizing the Debtors to (I) Assume or Enter into Certain Agreements in Connection with the New Financing and Backstop Commitment, (II) Incur and Pay Related Fees and Expenses as Administrative Expenses, (III) Transfer Certain Funds into Escrow and (IV) Establish Special Purpose Entities as Non-Debtor Entities* (Docket No. 72);

c. set December 20, 2010, at 10:00 a.m. (Prevailing Eastern Time), as the date and time for the commencement of the Combined Hearing;

d. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Polimeni Declaration, the Jamal Declaration and all pleadings, exhibits, statements, responses and comments regarding confirmation;

e. heard the statements, arguments and objections made by counsel in respect of confirmation;

f. considered all oral representations, testimony, documents, filings and other evidence regarding confirmation; and

g. taken judicial notice of all papers and pleadings filed in the Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Court that notice of the Combined Hearing, the Plan and all modifications thereto have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby and that any party in interest

so affected has had the opportunity to object to confirmation of the Plan and the adequacy of the Disclosure Statement; and, after due deliberation and based upon the record described above, it appearing to the Court that the legal and factual bases set forth in the documents filed in support of confirmation of the Plan and the adequacy of the Disclosure Statement and presented at the Combined Hearing establish just cause for the relief granted herein; the Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Findings of Fact and Conclusions of Law

1. The findings of fact and conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent a conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

B. Jurisdiction and Venue

2. This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court has jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. By prior

order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 (Docket No. 38). The Debtors have operated their businesses and managed their properties as debtors in possession since the Petition Date pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. Filing of the Plan

4. On November 17, 2010, the Debtors filed the Plan (Docket No. 20) and the Disclosure Statement (Docket No. 19). On November 24, 2010, the Debtors filed the Plan Financing Supplement[2] with the indicative terms of the New First Lien Notes and the New Second Lien Notes (Docket No. 65). On December 15, 2010, the Debtors filed non-substantive amendments to the Plan (Docket No. 114). On December 15, 2010, the Debtors filed the Plan Supplement, which included the following documents: (a) the New First Lien Indenture; (b) the New Second Lien Indenture; (c) the Purchase Agreement for New First Lien Notes; (d) the Registration Rights Agreement for New First Lien Notes; (e) the Registration Rights Agreement for New Second Lien Notes; (f) the Escrow Agreement for New First Lien Notes; (g) the Intercreditor Agreement Among Reorganized Debtors, Collateral Agent for the New Revolver Facility Lenders, Trustee and Collateral Agent for New First Lien Note Holders, and Trustee and Collateral Agent for New Second Lien Note Holders; (h) the Intercreditor Agreement Among Reorganized Debtors, Collateral Agent for New Revolver Facility Lenders, and Trustee and Collateral Agent for New First Lien Note Holders; (i) the Stockholders Agreement; (j) the Restated Bylaws; (k) the Restated Certificates of Incorporation; (l) the Equity Incentive Plan;

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

(m) the Director Severance Plan; (n) the Emergence Incentive Plan; (o) the identity of members of the New Boards and the initial officers of the Reorganized Debtors; and (p) the New Revolver Credit Facility Credit Agreement (Docket No. 116). The documents contained in the Plan Financing Supplement and the Plan Supplement were filed in draft form and remain subject to modification and amendment, in either case, on terms consistent with the Plan and this Confirmation Order.

E. Judicial Notice

5. The Court takes judicial notice of (and deems admitted into evidence for confirmation of the Plan and approval of the Disclosure Statement) the docket of the Chapter 11 Cases and all related adversary proceedings, appeals and District Court proceedings, maintained by the clerk of the applicable court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts and all evidence and arguments made, proffered or adduced at the hearings held before the applicable court during the pendency of the Chapter 11 Cases. Any resolutions of objections to confirmation of the Plan or approval of the Disclosure Statement explained at the Combined Hearing are hereby incorporated by reference. All unresolved objections, statements and reservations of rights are hereby overruled on the merits.

F. Transmittal of Solicitation Package

6. As set forth in the Voting Certification, on October 30, 2010, the Debtors, through their solicitation agent, Kurtzman Carson Consultants LLC ("***KCC***"), caused the applicable forms of ballots, in the forms attached to the Scheduling Motion as Exhibit B (the "***Ballots***"), and copies of the Disclosure Statement and Plan (collectively with the Ballots, the "***Solicitation Package***") to be served and distributed as required by the Bankruptcy Code, Bankruptcy Rules

3017 and 3018, the Disclosure Statement, the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "***Local Rules***"), all other applicable provisions of the Bankruptcy Code, the Scheduling Order, and all other rules, laws, and regulations applicable to such solicitation. The Plan and the Disclosure Statement were transmitted to all creditors entitled to vote on the Plan and sufficient time was prescribed for creditors to vote to accept or reject the Plan. The Solicitation Package was transmitted and served in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rule 3017(d), the Local Rules, the Amended Procedural Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York, General Order M-387, dated November 24, 2009 (the "***Prepack Guidelines***"), the Scheduling Order and all other applicable rules, laws, and regulations. Such transmittal and service was adequate and sufficient under the circumstances and no other or further notice is or shall be required.

G. Mailing and Publication of Combined Notice

7. On November 22, 2010, the Debtors caused the Combined Notice to be mailed to all of the Debtors' known creditors and Interest Holders of record. On December 1, 2010, the Debtors caused the Amended Summary of Plan of Reorganization, Notice of Commencement of Chapter 11 Bankruptcy Cases, and Notice of Combined Hearing on Disclosure Statement and Plan Confirmation, attached to the Scheduling Order, to be mailed to all of the Debtors' known creditors and Interest Holders of record. Additionally, the Debtors published the Combined Notice in The New York Times (National Edition), USA Today (National Edition) and the Miami Herald on November 29, 2010. Publication of the Combined Notice was in substantial compliance with the Scheduling Order and Bankruptcy Rule 2002(l). The Debtors have given

proper, adequate and sufficient notice of the hearing to approve the Disclosure Statement as required by Bankruptcy Rule 3017(a). The Debtors have given proper, adequate and sufficient notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d). Due, adequate, and sufficient notice of the Combined Hearing, along with deadlines for filing objections to the Plan and the Disclosure Statement, has been given to all known Holders of Claims and Interests substantially in accordance with the procedures set forth in the Scheduling Order. No other or further notice is or shall be required.

H. Objections

8. All objections and all reservations of rights that have not been withdrawn, waived or settled pertaining to confirmation of the Plan and adequacy of the Disclosure Statement are overruled on the merits.

I. Adequacy of Disclosure Statement

9. The adequacy of the Disclosure Statement is governed by Bankruptcy Code section 1125(a). The Disclosure Statement contains adequate information as that term is defined in Bankruptcy Code section 1125(a) and complies with any additional requirements of the Bankruptcy Code and the Bankruptcy Rules. Specifically, but without limitation, the Disclosure Statement complies with the requirements of Bankruptcy Rule 3016(c) by sufficiently describing in specific and conspicuous bold language the provisions of the Plan that provide for releases and injunctions against conduct not otherwise enjoined under the Bankruptcy Code and sufficiently identifies the persons and entities that are subject to the releases and injunctions.

J. Solicitation

10. Bankruptcy Code sections 1125(g) and 1126(b) apply to the solicitation of acceptances and rejections of the Plan prior to the commencement of these Chapter 11 Cases.

The solicitation of acceptances and rejections of the Plan was exempt from the registration requirements of the Securities Act of 1933 (as amended, and including the rules and regulations promulgated thereunder, the "***Securities Act***") and applicable state and local securities laws, and no other non-bankruptcy law applies to the solicitation. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Prepack Guidelines, and all other rules, laws, and regulations. In particular, the solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan and the Disclosure Statement were transmitted to all creditors entitled to vote on the Plan and sufficient time was prescribed for such creditors to accept or reject the Plan. The solicitation materials and solicitation procedures comply with Bankruptcy Code section 1126, thereby satisfying the requirements of Bankruptcy Rule 3018. The Debtors' procedures for transmitting the Disclosure Statement, the Plan, the Ballots, and the voting instructions are adequate and comply with the requirements of Bankruptcy Rule 3017(d) and (e), all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Prepack Guidelines, the Scheduling Order, and all other applicable rules, laws, and regulations.

11. The form of the Ballots was adequate and appropriate and complied with Bankruptcy Rule 3018(c). The form of the Ballots was sufficiently consistent with Official Form No. 14 and the form of ballot annexed to the Prepack Guidelines and adequately addressed the particular needs of these Chapter 11 Cases and was appropriate for each Class entitled to vote to accept or reject the Plan.

K. Good Faith Solicitation

12. All persons who solicited votes on the Plan, including any such persons released pursuant to Section 10 of the Plan, solicited such votes in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are entitled to the protections afforded by Bankruptcy Code section 1125(e) as well as the exculpation and limitation of liability provisions set forth in Section 10 of the Plan.

L. Voting Certification

13. On November 17, 2010, KCC filed the Voting Certification, certifying the method and results of the ballot tabulation for each of the Classes entitled to vote under the Plan (the "***Voting Classes***"). Under the Plan, Holders of Claims in Classes 2, 5, 6 and 7 are impaired and, therefore, were entitled to vote on the Plan. As evidenced by the Voting Certification, Holders of Claims in Classes 2, 5 and 6 voted to accept the Plan. As further evidenced by the Voting Certification, Holders of Claims in Class 7 voted to reject the Plan. All procedures used to tabulate the Ballots were fair and reasonable and conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Prepack Guidelines, the Scheduling Order and all other applicable rules, laws, and regulations.

M. Election Certification

14. On December 17, 2010, KCC filed the Election Certification, certifying the method and results of the Class 2 election for Holders of Term Facility Claims (other than the Backstop Parties) to put the New Second Lien Notes they would otherwise receive pursuant to the Plan to the Backstop Parties. As further evidenced by the Election Certification, the procedures used to tabulate the election forms relating to such election were fair and reasonable.

N. Modifications to the Plan

15. Subsequent to solicitation of the Plan, the Debtors made certain non-material modifications to the Plan in response to various comments received from parties in interest, including the U.S. Trustee. None of the modifications made since the solicitation adversely affects the treatment of any Holder of a Claim or Interest under the Plan. Accordingly, pursuant to Bankruptcy Code section 1127(a), none of the modifications require additional disclosure under Bankruptcy Code section 1125 or resolicitation of votes under Bankruptcy Code section 1126.

O. Bankruptcy Rule 3016

16. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the clerk of the Court simultaneously with the Plan satisfies Bankruptcy Rule 3016(b).

P. Burden of Proof

17. As more fully set forth herein, the Debtors, as proponents of the Plan, have met their burden of proving each of the elements of Bankruptcy Code sections 1129(a) and 1129(b) by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan.

Q. Compliance with the Requirements of Bankruptcy Code Section 1129

18. The Plan complies with all applicable provisions of Bankruptcy Code section 1129 as follows:

(i) Section 1129(a)(1) – Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

19. The Plan complies with all applicable provisions of the Bankruptcy Code as required by Bankruptcy Code section 1129(a)(1), including, without limitation, sections 1122 and 1123.

(a) Sections 1122 and 1123(a)(1) – Proper Classification

20. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1122(a) and 1123(a)(1), Section 3 of the Plan provides for the separate classification of Claims and Interests into ten Classes, based on differences in the legal nature or priority of such Claims and Interests (other than Administrative Claims and Priority Tax Claims, which are addressed in Section 2 of the Plan and which are not required to be designated as separate Classes pursuant to Bankruptcy Code section 1123(a)(1)). Valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Interests.

21. As required by Bankruptcy Code section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the requirements of Bankruptcy Code sections 1122(a), 1122(b) and 1123(a)(1) have been satisfied.

(b) Section 1123(a)(2)—Specification of Unimpaired Classes

22. Section 3 of the Plan specifies that Classes 1, 3, 4, and 8 are unimpaired under the Plan. Additionally, Section 2 of the Plan specifies that Administrative Claims and Priority Tax

Claims are unimpaired, although these Claims are not classified under the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(a)(2) have been satisfied.

(c) Section 1123(a)(3)—Specification of Treatment of Impaired Classes

23. The Plan specifies in Section 3 that Classes 2, 5, 6, 7, 9 and 10 are impaired under the Plan and sets forth the treatment of the impaired Classes in Section 4 of the Plan, thereby satisfying Bankruptcy Code section 1123(a)(3).

(d) Section 1123(a)(4)—No Discrimination

24. Section 4 of the Plan provides for the same treatment for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest. Accordingly, the Plan satisfies Bankruptcy Code section 1123(a)(4).

(e) Section 1123(a)(5)—Adequate Means for Plan Implementation

25. Section 5 of the Plan and various other provisions of the Plan specifically provide in detail adequate and proper means for implementation of the Plan including, but not limited to: (i) the distribution of New Second Lien Financing; (ii) the offer by the Backstop Parties to purchase New Second Lien Notes; (iii) the issuance of New Common Stock; (iv) the cancellation of existing securities and agreements; (v) the entry into a Stockholders Agreement by the Reorganized Debtors and the parties that receive New Common Stock under the Plan; (vi) the cancellation of liens; and (vii) the substantive consolidation of the Debtors' estates. In addition, Section 5 of the Plan provides for the establishment of an Equity Incentive Plan, a Director Severance Plan and an Emergence Incentive Plan. Moreover, the Reorganized Debtors will have, immediately upon the Effective Date, sufficient Cash to make all payments required to be

made on the Effective Date pursuant to the terms of the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(a)(5) have been satisfied.

(f) Section 1123(a)(6)—Voting Power of Equity Securities

26. Section 5.2 of the Plan provides that the organizational documents of each Reorganized Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, including section 1123(a)(6). The Restated Certificates of Incorporation provide that the Reorganized Debtors shall not issue any non-voting equity securities to the extent required by Bankruptcy Code section 1123(a)(6). Accordingly, the Plan satisfies Bankruptcy Code section 1123(a)(6).

(g) Section 1123(a)(7)—Selection of Officers and Directors

27. The identity and affiliations of the members of the New Boards as of the Effective Date are listed in Exhibit O to the Plan Supplement as filed on December 15, 2010. The Restated Certificates of Incorporation of Reorganized AMI and each of the Reorganized Debtors describe the manner of the selection of additional members of the New Boards following the Effective Date. Section 5 of the Plan describes the manner of selection of officers and directors for the Reorganized Debtors. The selection of the initial directors and officers of the Reorganized Debtors was, is and will be consistent with the interests of Holders of Claims and Interests and public policy. Accordingly, the requirements of Bankruptcy Code section 1123(a)(7) have been satisfied.

(h) Section 1123(b)—Discretionary Contents of the Plan

28. The Plan contains various provisions that may be construed as discretionary but are not required for confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with Bankruptcy Code section 1123(b) and are not inconsistent

with the applicable provisions of the Bankruptcy Code. Thus, Bankruptcy Code section 1123(b) is satisfied.

i. Section 1123(b)(1)-(2) – Claims and Executory Contracts

29. Pursuant to Bankruptcy Code sections 1123(b)(1) and 1123(b)(2), Section 3 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests, and Section 8 of the Plan provides for the assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases of the Debtors not previously assumed, assumed and assigned, or rejected pursuant to Bankruptcy Code section 365 and appropriate authorizing orders of the Court.

ii. Section 1123(b)(3)— Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action

30. **Release by the Debtors**. The releases and discharges of Claims and Causes of Action described in Section 10.7 of the Plan (the "***Debtor Release***") releases certain parties defined in the Plan as the "***Released Parties***." The Released Parties include (i) the Debtors and Reorganized Debtors; (ii) any direct or indirect shareholder of the Debtors, and such shareholder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors; (iii) the current and former (in each case, as of the Effective Date) directors, officers, employees, professional advisors, sub-advisors, managers, affiliated management companies, and managing and executive directors of the Debtors; (iv) the members of the Committee and their respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, and managing and executive directors; (v) the Indenture Trustees and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (vi) the Term Facility Lenders, the

Revolver Lenders, the Administrative Agent, the collateral agent and other agents under the 2009 Credit Agreement and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (vii) the New First Lien Notes Holders and the indenture trustee, collateral agent and escrow agent under the New First Lien Indenture and their respective directors, officers, partners, members, representatives, employees and professional advisors; (viii) the New Second Lien Notes Holders and the indenture trustee, collateral agent and escrow agent under the New Second Lien Indenture and their respective directors, officers, partners, members, representatives, employees and professional advisors; (ix) the New Revolver Facility Lenders and the New Revolver Facility administrative agent and their respective directors, officers, partners, members, representatives, employees and professional advisors; (x) the Backstop Parties, and their respective directors, officers, partners, members, representatives, employees, and professional advisors; (xi) the indenture trustee under the New PIK Notes Indenture and the Holders of the New PIK Notes, if any, and their respective directors, officers, partners, members, representatives, employees and professional advisors; (xii) Holders of New Common Stock and such Holder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors; and (xiii) Holders of the New Preferred Stock, if any, and such Holder's respective directors, officers, partners, members, representatives, employees, professional advisors, sub-advisors, managers, affiliated management companies and managing and executive directors.

31. **Third Party Releases**. The releases of Claims and Causes of Action by Holders of Claims and Interests described in Section 10.8 of the Plan (collectively, the "***Third Party Releases***") release the Released Parties.

32. **Injunction**. The injunction provisions described in Sections 10.5 and 10.6 of the Plan (the "***Plan Injunction***") permanently enjoin all Persons who have held, hold or may hold Claims against or Interests in any Debtor, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Interest against any Reorganized Debtor, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against any Reorganized Debtor with respect to any such Claim or Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor, as applicable with respect to any such Claim or Interest, (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor with respect to any such Claim or Interest, and (v) pursuing any Claim released pursuant to Sections 10.7 and 10.8 of the Plan. Section 10.5(a) of the Plan does not enjoin any Claims that have been alleged or could have been alleged in that certain litigation in the United States District Court for the Southern District of New York captioned *Anderson News, LLC, et al. v. American Media, Inc., et al.*, Case No. 09-Civ.-2227 (PAC) and the appeal of the August 2, 2010 order dismissing such action, currently pending in the United States Court of Appeals for the Second Circuit (collectively, the "***Anderson Litigation***").

33. In addition, upon entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, are enjoined from taking any actions to interfere with the implementation or Consummation of the Plan.

34. **Exculpation**. The exculpation provisions described in Section 10.4 of the Plan (the "***Exculpation***") exculpate the Released Parties from certain liability arising from the Chapter 11 Cases subject to a limited carve-out solely for gross negligence, willful misconduct, criminal acts and fraud. Nothing in Section 10.4 of the Plan (1) exculpates any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or ultra vires act as determined by a Final Order or (2) limits the liability of the professionals of the Released Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

35. Each of the Debtor Releases, the Third Party Releases, the Plan Injunction and the Exculpation: (i) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b), and (d); (ii) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (iii) is an integral element of the transactions incorporated into the Plan; (iv) confers a material benefit on, and is in the best interests of, the Debtors, their Estates and their creditors; (v) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors, their organization, capitalization, operation and reorganization; and (vi) is consistent with Bankruptcy Code sections 105, 1123, 1129, and other applicable provisions.

36. **Preservation of Claims and Causes of Action**. Section 10.9 of the Plan appropriately provides for the preservation by the Debtors of any action, cause of action, liability, obligation, right, suit, debt, sum of money, damage, judgment, claim and demand whatsoever, whether known or unknown, in law, equity or otherwise (the "***Causes of Action***"), in accordance with Bankruptcy Code section 1123(b)(3)(B). The provisions regarding the retained

Causes of Action in the Plan are appropriate and are in the best interests of the Debtors, the Estates and all Holders of Claims and Interests.

(i) Section 1123(d)—Cure of Defaults

37. Section 8.2 of the Plan provides for the satisfactions of any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(d) are satisfied.

(ii) Section 1129(a)(2)—Compliance of the Debtors and Others With the Applicable Provisions of the Bankruptcy Code

38. The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Scheduling Order, and other orders of this Court, thereby satisfying Bankruptcy Code section 1129(a)(2). In particular, the Debtors are properly debtors under Bankruptcy Code section 109. The Debtors are proper proponents of the Plan pursuant to Bankruptcy Code section 1121(a). The Debtors, as proponents of the Plan, complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Prepack Guidelines and the Scheduling Order in transmitting the Plan, the Disclosure Statement, the Ballots and notices, and in soliciting and tabulating votes on the Plan.

(iii) Section 1129(a)(3)—Proposal of Plan in Good Faith

39. The Debtors have proposed the Plan in good faith, for proper purposes and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the formulation of the Plan and all modifications thereto. The Chapter 11 Cases were filed, and the Plan and all modifications thereto were proposed, with the legitimate and honest purpose of reorganizing and maximizing the value of the Debtors and the recovery to claimholders. Therefore, the Debtors have proposed

the Plan in good faith and not by any means forbidden by law, and Bankruptcy Code section 1129(a)(3) is satisfied with respect to the Plan.

(iv) Section 1129(a)(4)—Court Approval of Certain Payments as Reasonable

40. All fees and expenses of professionals retained in the Chapter 11 Cases remain subject to final review for reasonableness by the Court. Pursuant to Section 2.2, professionals are required to file their final fee applications with the Court no later than forty-five (45) days after the Effective Date. These applications remain subject to Court approval under the standards established by the Bankruptcy Code, including the requirements of Bankruptcy Code sections 327, 328, 330, 331, 503(b) and 1103, as applicable. Finally, Section 11(h) of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, including requests by professionals. Accordingly, the Plan fully complies with the requirements of Bankruptcy Code section 1129(a)(4).

(v) Section 1129(a)(5)—Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy

41. The Plan complies with the requirements of Bankruptcy Code section 1129(a)(5) because, in the Disclosure Statement, the Plan and/or the Plan Supplement, the Debtors have disclosed the following: (a) the identity and affiliations of each proposed director, each proposed officer and the manner in which additional officers and directors of the Reorganized Debtors will be chosen following confirmation; and (b) the identity and nature of any compensation for any insider who will be employed or retained by the Reorganized Debtors. The method of appointment of directors and officers of the Reorganized Debtors was, is and will be consistent with the interests of Holders of Claims and Interests and public policy. Accordingly, the requirements of Bankruptcy Code section 1129(a)(5) are satisfied.

(vi) Section 1129(a)(6)—Approval of Rate Changes

42. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and therefore will not require governmental regulatory approval. Therefore, Bankruptcy Code section 1129(a)(6) is inapplicable to the Chapter 11 Cases.

(vii) Section 1129(a)(7)—Best Interests of Holders of Claims and Interests

43. The liquidation analysis attached as Exhibit I to the Disclosure Statement (the "***Liquidation Analysis***"), the Polimeni Declaration, the Jamal Declaration and other evidence proffered or adduced at the Confirmation Hearing (i) are reasonable, persuasive and credible, (ii) are based upon reasonable and sound assumptions, (iii) have not been controverted by other evidence, (iv) provide a reasonable estimate of the liquidation values of the Debtors in the event the Debtors were liquidated under chapter 7 of the Bankruptcy Code, and (v) establish that each Holder of a Claim or Interest in an impaired Class that has not accepted the Plan will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies Bankruptcy Code section 1129(a)(7).

44. Specifically, the Liquidation Analysis properly estimated that the net liquidation value of the Debtors would be comprised of, among other things, the Debtors' cash on hand, trade receivables and property value after reductions for certain liquidation fees and costs likely to be incurred in a chapter 7 case, including estimated expenses of the trustee and its professionals as well as wind-down expenses. The Liquidation Analysis assumes that, in the hypothetical chapter 7 cases, the bankruptcy trustee would wind down the Debtors' operations in

an orderly manner and liquidate substantially all of the Debtors' assets over a six-month period. Accordingly, the requirements of Bankruptcy Code section 1129(a)(7) are satisfied.

(viii) Section 1129(a)(8)—Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class

45. Classes 1, 3, 4 and 8 are unimpaired by the Plan and therefore, under Bankruptcy Code section 1126(f), such Classes are conclusively presumed to have accepted the Plan. Class 9, Intercompany Claims, is impaired but deemed to have accepted the Plan because the Debtors, at their discretion, may adjust, continue or discharge Intercompany Claims pursuant to the Plan. Classes 2, 5, 6 and 7 were entitled to vote on the Plan and Classes 2, 5 and 6 voted to accept the Plan. Accordingly, Bankruptcy Code section 1129(a)(8) has been satisfied with respect to Classes 1-6, 8 and 9.

46. Class 7 rejected the Plan and Class 10 is deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g), but, as found in section (xiv) below, the Plan is confirmable under Bankruptcy Code section 1129(b) notwithstanding the rejections by such Classes. Therefore, Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to these Classes.

(ix) Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Bankruptcy Code Section 507(a)

47. The treatment of Administrative Claims and Priority Non-Tax Claims under the Plan satisfies the requirements of Bankruptcy Code sections 1129(a)(9)(A) and (B), and the treatment of Priority Tax Claims under the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9)(C).

(x) Section 1129(a)(10)—Acceptance by at Least One Impaired Class

48. As set forth in the Voting Certification, at least one impaired Class of Claims voted to accept the Plan. Specifically, Holders of Claims in Classes 2, 5 and 6 voted to accept

the Plan. As such, there is at least one Class of Claims that is impaired under the Plan that has accepted the Plan, determined without including any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). Accordingly, the requirements of Bankruptcy Code section 1129(a)(10) have been satisfied.

(xi) Section 1129(a)(11)—Feasibility of the Plan

49. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The Plan does not provide for the liquidation of all or substantially all of the property of the Debtors. The financial projections in Exhibit G to the Disclosure Statement, the Polimeni Declaration, the Jamal Declaration and the evidence proffered or adduced at the Confirmation Hearing: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; (d) establish that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors or any successor to the Reorganized Debtors under the Plan except as provided in the Plan; and (e) establish that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

(xii) Section 1129(a)(12)—Payment of Bankruptcy Fees

50. The Debtors have paid or will pay by the Effective Date fees payable under 28 U.S.C. § 1930. On and after the Effective Date, the Reorganized Debtors shall pay the applicable U.S. Trustee fees for each of the Reorganized Debtors when due in the ordinary course until such time as the Court enters a final decree in such Reorganized Debtor's Chapter 11

Case. Accordingly, the requirements of Bankruptcy Code section 1129(a)(12) have been satisfied.

(xiii) Section 1129(a)(13)—Retiree Benefits

51. Bankruptcy Code section 1129(a)(13) requires a plan to provide for "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) at levels established pursuant to section 1114 of the Bankruptcy Code. Section 8.5 of the Plan provides that all employee compensation and benefit plans entered into before or after the Petition Date and not since terminated shall be deemed to be, and shall be treated as if they were, executory contracts to be assumed pursuant to the Plan. The Debtors' obligations under such plans and programs shall survive confirmation of the Plan. Accordingly, the requirements of Bankruptcy Code section 1129(a)(13) have been satisfied.

(xiv) Section 1129(b)—Confirmation of Plan Over Nonacceptance of Impaired Class

52. Notwithstanding the fact that Class 7 has voted not to accept the Plan and Class 10 is deemed to reject the Plan (collectively, the "***Rejecting Classes***"), the Plan may be confirmed pursuant to Bankruptcy Code section 1129(b)(1) because: (a) Classes 2, 5 and 6 are impaired and have voted to accept the Plan; and (b) the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy Bankruptcy Code section 1129(a)(8). After entry of the Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

53. The Plan does not unfairly discriminate because members within each Class are treated similarly. Accordingly, the Plan does not discriminate unfairly with respect to the Rejecting Classes or any other Class of Claims or Interests.

54. To determine whether a plan is "fair and equitable" with respect to a class of unsecured claims, Bankruptcy Code section 1129(b)(2)(B) provides that "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property . . . ." There are no Classes junior to Class 7 that will receive any distribution under the Plan.

55. To determine whether a plan is "fair and equitable" with respect to a class of interests, Bankruptcy Code section 1129(b)(2)(C)(ii) provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property." There are no Classes junior to the Class 10 that will receive any distribution under the Plan. Therefore, the Plan is fair and equitable and satisfies the requirements of Bankruptcy Code section 1129(b).

56. Additionally, with respect to Intercompany Claims, Class 9 is impaired and deemed to accept the Plan. The preservation of Intercompany Claims is a means to preserve the Reorganized Debtors' corporate structure that does not have any economic substance and that does not enable any Claim Holder or Interest Holder junior to the Rejecting Classes to retain or recover any value under the Plan. Accordingly, the impaired status of Class 9 is consistent with the requirement that no Holders of Claims or Interests junior to the Holders of Claims or Interests in the Rejecting Classes receive or retain any property under the Plan on account of such Claims or Interests. Accordingly, the Plan is fair and equitable and does not discriminate unfairly, as required by Bankruptcy Code section 1129(b), and may be confirmed under Bankruptcy Code section 1129(b) notwithstanding the Rejecting Classes' rejection of the Plan.

(xv) Section 1129(c)—Only One Plan

57. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

(xvi) Section 1129(d)—Principal Purpose of the Plan Is Not Avoidance of Taxes

58. No governmental unit has requested that the Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the requirements of Bankruptcy Code section 1129(d) have been satisfied.

R. Satisfaction of Confirmation Requirements

59. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

S. Executory Contracts

60. The Debtors have exercised reasonable business judgment in determining whether to assume or reject their executory contracts and unexpired leases pursuant to Section 8 of the Plan. Each assumption of an executory contract or unexpired lease pursuant to Section 8 of the Plan shall be legal, valid and binding upon the applicable Debtor or Reorganized Debtor and their assignees or successors and all non-Debtor parties (and their assignees or successors) to such executory contract or unexpired lease, all to the same extent as if such assumption had been effectuated pursuant to an order of the Court entered before the date of the entry of this Confirmation Order under Bankruptcy Code section 365.

T. Issuance of New Common Stock

61. Issuance of the New Common Stock is an essential element of the Plan and is in the best interests of the Debtors, their Estates, and their creditors. The Debtors are authorized, without further approval of this Court or any other party, to issue the New Common Stock in accordance with the Plan, execute the Stockholders Agreement and to execute and deliver all agreements, documents, instruments, and certificates relating thereto.

U. Distributions of New Common Stock and New Second Lien Notes Are Exempt From the Securities Act

62. The distribution of the New Common Stock pursuant to the Plan in exchange for the Subordinated Notes and the 2011 Notes is exempt from the requirements of section 5 of the Securities Act, as amended, and any state or local laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealing in, a security pursuant to Bankruptcy Code section 1145(a).

63. The distribution of the New Second Lien Notes pursuant to the Plan is exempt from the requirements of section 5 of the Securities Act, as amended, and any state or local laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealing in, a security pursuant to Bankruptcy Code section 1145(a), section 3(a)(9) of the Securities Act and section 4(2) of the Securities Act.

V. New Financing

64. On the Effective Date, (i) AMO will merge into the Reorganized AMI and (ii) the Escrow Issuer and New LLC will merge into Reorganized AMI, which will assume the Escrow Issuer's obligations under the New First Lien Notes, the New First Lien Indenture and the related registration rights agreement, (iii) the Reorganized Debtor Subsidiaries will guarantee Reorganized AMI's obligations under the New First Lien Notes and the New First Lien Indenture

and (iv) the proceeds of the New First Lien Notes Offering (and any other amounts held in escrow) will be released from escrow. In addition, on the Effective Date, (i) Reorganized AMI will enter into the New Second Lien Indenture and the New Revolver Credit Facility Agreement and (ii) the Reorganized Debtor Subsidiaries will guarantee Reorganized AMI's obligations under the New Second Lien Indenture and the New Revolver Credit Facility Agreement.

65. The Reorganized Debtors' assumption or execution of the New First Lien Indenture, the New Second Lien Indenture and the New Revolver Facility Credit Agreement, and all documents related to the foregoing, including the granting of the guarantees, liens and security interests relating thereto (together, the "***New Financing***"), is an exercise of reasonable business judgment, proposed in good faith, critical to the success and feasibility of the Plan and in the best interests of the Debtors, the Reorganized Debtors, their Estates and creditors. The financial accommodations extended to the Debtors and/or the Reorganized Debtors pursuant to the New Financing are, were and continue to be extended and implemented in good faith and for legitimate business purposes. The liens, claims, liabilities and obligations of the Debtors and/or the Reorganized Debtors created under the New Financing are valid, binding and enforceable, properly perfected and not subject to avoidance. All documentation relating to the New Financing will continue to be valid, binding and enforceable agreements.

W. Corporate Action

66. Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including the (a) assumption of the Management Agreements, (b) selection of the directors and officers of the Reorganized Debtors, (c) issuance of the New Common Stock by Reorganized AMI, (d) issuance of the New Second Lien Notes, (e) release of the proceeds of the New First Lien Notes Offering from escrow, (f) assumption of

the obligations under the New First Lien Notes and the New First Lien Indenture and execution of the New Second Lien Indenture, the New Revolver Facility Credit Agreement and the registration rights agreement relating to the New Second Lien Notes, (g) the issuance of guarantees of the New First Lien Notes, the New Second Lien Notes and the New Revolver Facility Credit Agreement by the Reorganized Debtor Subsidiaries, (h) adoption of the Equity Incentive Plan and the issuance of awards pursuant to the Plan, (i) adoption of the Director Severance Plan, (j) implementation of the Emergence Incentive Plan, (k) the execution of the Stockholders Agreement and (l) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the implementation of the Plan, shall be deemed to have occurred and shall be in effect upon the Effective Date, without any requirement of further action by the directors or officers of the Debtors or the Reorganized Debtors.

X. Implementation

67. All documents and agreements necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents (including the Restated Certificates of Incorporation and the Restated Bylaws of the Reorganized Debtors, the New First Lien Indenture, the New Second Lien Indenture, the New Revolver Facility Credit Agreement and the Stockholders Agreement) have been negotiated in good faith, at arm's length, and are in the best interests of the Debtors and the Reorganized Debtors and shall, upon completion of documentation and execution be valid, binding, and enforceable documents and agreements not in conflict with any federal or state law.

Y. Plan Conditions to Consummation

68. Each of the conditions to the Effective Date, as set forth in Section 9 of the Plan, is reasonably likely to be satisfied or waived in accordance with the terms of the Plan.

Z. Retention of Jurisdiction

69. The Court properly may retain jurisdiction over the matters set forth in Section 11 and other applicable provisions of the Plan.

ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

(i) Confirmation of Plan and Related Matters

1. Approval of Disclosure Statement. Pursuant to Bankruptcy Rule 3017(b), the Disclosure Statement is approved under Bankruptcy Code sections 1125(a) and 1125(g).

2. Solicitation. The Solicitation and Election Procedures, including the procedures for transmittal of Solicitation Packages, the forms of Ballots, and the Voting Deadline, are approved under Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Scheduling Order, the Prepack Guidelines, the Local Rules, all other applicable provisions of the Bankruptcy Code, and all other rules, laws, and regulations applicable to such solicitation. The solicitation materials are approved under Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Scheduling Order, the Prepack Guidelines, the Local Rules, all other applicable provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations.

3. Confirmation. The Plan, in the form attached hereto as Exhibit A, including all provisions thereof, all Exhibits attached thereto, the Plan Financing Supplement and the Plan Supplement (each as may be amended by the Confirmation Order or in accordance with

the Plan), is approved and confirmed under Bankruptcy Code section 1129. The terms of the Plan, the Plan Financing Supplement, the Plan Supplement and exhibits thereto are incorporated by reference into and are an integral part of this Confirmation Order. All acceptances and rejections previously cast for or against the Plan are hereby deemed to constitute acceptances or rejections of the Plan in the form attached to this Confirmation Order. The documents contained in the Plan Financing Supplement and Plan Supplement, and any amendments, modifications, and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery and performance thereof by the Debtors and the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Without further order or authorizations of the Court, the Debtors, the Reorganized Debtors and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Financing Supplement and/or Plan Supplement that are consistent with the Plan.

4. Confirmation Order Binding on All Parties. Subject to the provisions of the Plan and Bankruptcy Rule 3020(e), in accordance with Bankruptcy Code section 1141(a) and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Plan and this Confirmation Order shall be binding upon, and inure to the benefit of: (a) the Debtors; (b) the Reorganized Debtors; (c) any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the Holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan); (d) any other person giving, acquiring or receiving property under the Plan; (e) any and all non-Debtor parties to executory contracts or unexpired leases with any of the Debtors; and (f) the respective heirs, executors, administrators, trustees, affiliates, officers, directors,

agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. On the Effective Date, all settlements, compromises, releases, waivers, discharges, exculpations and injunctions set forth in the Plan shall be effective and binding on all Persons who may have had standing to assert any settled, released, discharged, exculpated or enjoined causes of action, and no other Person or entity shall possess such standing to assert such causes of action after the Effective Date.

5. Notice. Notice of the Combined Hearing was proper and adequate.

6. Objections. All objections and all reservations of rights that have not been withdrawn, waived or settled, pertaining to the confirmation of the Plan are overruled on the merits.

7. Effectiveness of All Actions. All actions contemplated by the Plan are hereby authorized and approved in all respects (subject to the provisions of the Plan). The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Reorganized Debtor or any officer or director thereof to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order. Pursuant to this Confirmation Order, Delaware General Corporate Law section 303, and other applicable law, the Debtors and the Reorganized Debtors are authorized and empowered, without action of their respective stockholders or members or boards of directors or managers (but subject to consent rights, if any, set forth in the Plan) to take any and all such actions as any of their executive officers may determine are necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

8. Vesting of Assets and Operation as of the Effective Date. Except as otherwise explicitly provided in the Plan, on the Effective Date, all property comprising the Estates shall vest in each of the Debtors and, ultimately, in the Reorganized Debtors, free and clear of all Claims, liens and interests (except for the liens and security interests granted to secure the New Financing). As of the Effective Date, each of the Reorganized Debtors may operate its business and use, acquire, and dispose of property and settle and compromise Claims without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and this Confirmation Order.

9. Mergers. On the Effective Date, (i) AMO will merge into Reorganized AMI and (ii) the Escrow Issuer and New LLC will merge into Reorganized AMI.

10. Organizational Documents. On or immediately prior to the Effective Date, the Reorganized Debtors shall, and are hereby authorized to, (i) file their respective Restated Certificates of Incorporation, forms of which are attached to the Plan Supplement as Exhibit K, with the Delaware Secretary of State, (ii) adopt their respective Restated Bylaws, forms of which are attached to the Plan Supplement as Exhibit J and (iii) adopt the Stockholders Agreement, which is attached to the Plan Supplement as Exhibit I.

11. Reorganized Debtors' Boards of Directors and Officers. The boards of directors and officers of each of the Reorganized Debtors have been identified in the Plan Supplement, and the Reorganized Debtors shall be authorized to employ such officers without further order of the Court or other further action by any other person or entity.

12. Cancellation of Interests. On the Effective Date, all notes, instruments, certificates, and other documents evidencing Interests shall be cancelled, terminated and

extinguished and the obligations of the Debtors thereunder or in any way related thereto shall be discharged including, but not limited to, (a) the Interests in AMI and (b) any options or warrants to purchase Interests of AMI, or obligating such Debtors to issue, transfer or sell Interests or any other capital stock of such Debtors.

13. Cancellation of the Notes, the Indentures, and the 2009 Credit Agreement. On the Effective Date, except as otherwise specifically provided for in the Plan, all of the agreements and other documents evidencing the Claims or rights of any Holder of a Claim against the Debtors, including all credit agreements, indentures and notes evidencing such Claims. Notwithstanding the foregoing and anything contained in the Plan, the 2009 Credit Agreement and the Indentures shall continue in effect to the extent necessary to (i) allow the Reorganized Debtors, the Administrative Agent and the Indenture Trustees to make distributions pursuant to the Plan on account of the Claims under the 2009 Credit Agreement and Indentures, as applicable, (ii) permit the applicable Indenture Trustee to assert its charging lien, (iii) permit the applicable Indenture Trustee to perform such other functions with respect thereto, (iv) permit the applicable Indenture Trustee or Administrative Agent to maintain and enforce any right to indemnification, contribution or other Claim it may have under the Indentures or 2009 Credit Agreement, as applicable, (v) permit the applicable Indenture Trustee and Administrative Agent to exercise its rights and obligations relating to the interests of the applicable noteholders or lenders and their relationship with the noteholders or lenders, and (vi) appear in these Chapter 11 Cases, *provided, however*, that the Indenture Trustees and the Administrative Agent will not be reimbursed by the Debtors for fees and expenses for post-Effective Date services in connection with (v) and (vi) above.

14. Surrender of Existing Securities. As a condition precedent to receiving any distribution on account of any Notes Claims, each record Holder of any Notes Claims shall be deemed to have surrendered such notes or other documentation underlying such notes and all such surrendered notes and other documentation shall be deemed to be cancelled in accordance with Section 5.7 of the Plan. If the record Holder of a Subordinated Note, PIK Note or 2011 Note is The Depository Trust Company ("***DTC***") or its nominee or such other securities depository or custodian thereof or is held in book entry or electronic form pursuant to a global security held by DTC, then the beneficial Holder of such a Note Claim shall be deemed to have surrendered such Holder's security, note, debenture or other evidence of indebtedness upon surrender of such global security by DTC or such other securities depository or custodian thereof.

15. Issuance of New Common Stock. Issuance of the New Common Stock in accordance with the Plan is approved. Each of the Debtors and the Reorganized Debtors are authorized and empowered, without further approval of this Court or any other party, to take such actions and to perform such acts as may be necessary, desirable or appropriate to implement the issuance of the New Common Stock in accordance with the Plan and to execute and deliver all agreements, documents, securities, instruments, and certificates relating thereto. The New Common Stock to be issued is hereby deemed issued as of the Effective Date regardless of the date on which it is actually distributed. All New Common Stock issued by the Reorganized Debtors pursuant to the provisions of the Plan is hereby deemed to be duly authorized and issued, fully paid and nonassessable.

16. Exemption from Registration. The (i) offer by the Debtors and/or the Reorganized Debtors of the New Common Stock issued under the Plan in exchange for the

Subordinated Notes Claims and the 2011 Notes Claims is exempt from the registration requirements of the Securities Act and similar state statutes pursuant to applicable securities law and (ii) issuance by the Reorganized Debtors of the New Common Stock pursuant to the Plan in exchange for the Subordinated Notes Claims and the 2011 Notes Claims is exempt from the registration requirements of the Securities Act and similar state statutes pursuant to Bankruptcy Code section 1145. In addition, pursuant to section 3(a)(9) of the Securities Act, section 4(2) of the Securities Act, and Bankruptcy Code section 1145, the distribution of the New Second Lien Notes pursuant to the Plan is exempt from registration requirements of the Securities Act and similar state statutes including any state or local laws requiring registration for offer or sale of a security and is exempt from any other requirements of federal, state or local securities laws.

17. New Financing. On the Effective Date, (i) the Escrow Issuer and New LLC are authorized to merge into Reorganized AMI immediately following the merger of AMO into Reorganized AMI, which will assume the Escrow Issuer's obligations under the New First Lien Notes, the New First Lien Indenture and the related registration rights agreement, (ii) the proceeds of the New First Lien Notes Offering (and any other amounts held in escrow) will be released from escrow, and (iii) the Reorganized Debtors, as applicable, are authorized to (a) enter into or assume, as applicable, and deliver the documents and agreements related to the New Financing, including all guarantees and security documents relating thereto, and the registration rights agreement relating to the New Second Lien Notes, (b) execute and deliver such security documents, control agreements, certificates, financing statements and other documentation as required under the terms of the New Financing or as the applicable agents under the New Financing reasonably request, and (c) deliver insurance and customary opinions (collectively, the documents in (a)-(c), the "***New Financing Documents***"), and such documents and all other

documents, instruments and agreements to be entered into, delivered or contemplated thereunder shall become effective in accordance with their terms on the Effective Date. Without limiting the foregoing, the Reorganized Debtors are authorized to enter into, perform and take all other actions to consummate any and all transactions contemplated by the New Financing Documents, including to pay, and shall pay, as and when due, all fees, indemnities, expenses and other amounts provided under the New Financing Documents. The Reorganized Debtors, as applicable, may enter into such amendments and modifications as may be agreed to by and between the Reorganized Debtors, as applicable, and the applicable or requisite indenture trustees, noteholders, lenders and agents under the New Financing Documents on and after the Effective Date without further order of the Court to effectuate the transactions contemplated by the Plan and this Confirmation Order, notwithstanding anything to the contrary in the Plan. The New Financing Documents shall constitute the legal, valid, binding and authorized obligations of the applicable Reorganized Debtors, enforceable in accordance with their terms. On the Effective Date, all of the liens and security interests granted in accordance with the New Financing Documents are hereby deemed approved and shall be legal, valid, binding, enforceable and non-avoidable liens on and security interests in the collateral granted thereunder in accordance with the terms of the New Financing Documents and shall be deemed properly perfected as of the Effective Date. The Debtors or the Reorganized Debtors, as applicable, are hereby authorized to make any and all filings with any state or local recording officer or otherwise, including this Confirmation Order, to evidence the release of any liens existing on the property of the Estates immediately prior to the Effective Date. All obligations of the Reorganized Debtors arising pursuant to the New Financing Documents are in exchange for fair and reasonably equivalent value and do not constitute a preferential transfer or fraudulent

transfer or fraudulent conveyance under applicable federal or state laws and will not subject the indenture trustees, noteholders, lenders or agents party to the New Financing Documents to any liability by reason of the incurrence of such obligation or grant of such liens or security interests under applicable federal or state laws, including but not limited to successor or transferee liability.

18. Election to Put New Second Lien Notes to Backstop Parties. The election form provided to Holders of Term Facility Claims and the election procedures, as described in the Scheduling Motion, were reasonable and appropriate. To the extent that a Holder of a Term Facility Claim has made an election to have the Backstop Parties purchase (or elect to receive) its New Second Lien Notes pursuant to the Plan, the Backstop Parties will purchase (or elect to receive) such New Second Lien Notes on the Effective Date, and such Holder shall receive the face amount of such New Second Lien Notes in Cash on the Effective Date. The failure of a Holder to make an election reflects an agreement that such Holder will retain its New Second Lien Notes received pursuant to the Plan.

19. Executory Contracts and Unexpired Leases. On the Effective Date, all executory contracts or unexpired leases of the Debtors, other than any executory contract or unexpired lease that (a) was previously assumed or rejected or (b) is subject to a pending motion to assume or reject as of the Confirmation Date, shall be deemed assumed as of the Confirmation Date (but subject to the occurrence of the Effective Date) in accordance with, and subject to, the provisions and requirements of Bankruptcy Code sections 365 and 1123.

20. All executory contracts or unexpired leases assumed by the Debtors pursuant to the foregoing (the "***Assumed Agreements***") shall remain in full force and effect for the benefit of the Reorganized Debtors, as applicable, and be enforceable by the Reorganized

Debtors, as applicable, in accordance with their terms notwithstanding any provision in such Assumed Agreements that purports to prohibit, restrict or condition such assumption. The assumption of the Assumed Agreements shall be free and clear of all liens, encumbrances, pledges, mortgages, deeds of trust, security interests, claims, charges, options, rights of first refusal, easements, servitudes, proxies, voting trusts or agreements, and/or transfer restrictions under any shareholder or similar agreement or encumbrance (except for the liens and security interests granted to secure the New Financing). Any provision in the Assumed Agreements that purports to declare a breach or default based in whole or in part on the above-captioned cases is hereby deemed unenforceable, and the Assumed Agreements shall remain in full force and effect.

21. Employee Benefits. All employee, retirement and other agreements or arrangements in place as of the Effective Date with the Debtors' officers, directors, or employees, who will continue in such capacities or similar capacities after the Effective Date, or retirement plans and welfare benefit plans for such persons, shall remain in place after the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs and plans; *provided, however*, that the foregoing shall not apply to any stock-based compensation or incentive plan existing as of the Petition Date. Notwithstanding the foregoing, pursuant to Bankruptcy Code section 1129(a)(13), on and after the Effective Date, all retiree benefits (as that term is defined in Bankruptcy Code section 1114), if any, shall continue to be paid in accordance with applicable law.

22. Vesting of Assets in the Reorganized Debtors. Except as otherwise provided in the Plan or any agreement, instrument or other document incorporated therein, on the Effective Date, all property in each Estate, and all Causes of Action (except those released

pursuant to the Debtor Releases) shall vest in each of the respective Reorganized Debtors, free and clear of all liens, Claims, charges or other encumbrances (except for the liens and security interests granted to secure the New Financing). On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims, Interests or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

23. Incentive and Severance Plans. The terms of the Equity Incentive Plan, the Director Severance Plan and the Emergence Incentive Plan, as set forth in the Plan Supplement, are hereby approved, and the Debtors and Reorganized Debtors are authorized, without further approval of this Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating to the Equity Incentive Plan, the Director Severance Plan and the Emergence Incentive Plan, and to perform their obligations thereunder.

24. Effectuating Documents; Further Transactions. On and after the Effective Date, the Reorganized Debtors and the managers, officers and members of the boards of directors thereof are authorized to issue, execute, deliver, file or record such contracts, securities, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan (including the New Financing) and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization or consents except for those expressly required pursuant to the Plan.

25. D&O Insurance Policy. Notwithstanding anything in the Plan or in this Confirmation Order to the contrary, as of the Effective Date, the Debtors shall assume (and

assign to the Reorganized Debtors if necessary to continue the D&O Insurance Policy in full force) the D&O Insurance Policy pursuant to Bankruptcy Code section 365(a). Entry of this Confirmation Order shall constitute the Court's approval of the Debtors' foregoing assumption of the D&O Insurance Policy. Until the sixth anniversary of the Effective Date, Reorganized AMI shall cause the individuals serving as directors of the Reorganized Debtors to be covered by the D&O Insurance Policy (provided that Reorganized AMI may substitute therefor policies of at least the same coverage and amounts containing terms and conditions that are not less advantageous in any material respect than the D&O Insurance Policy); provided that in no event shall Reorganized AMI be required to expend annually in the aggregate an amount in excess of 150.0% of the annual premiums currently paid by AMI for such insurance (the "***Insurance Amount***"), and provided further that if Reorganized AMI is unable to maintain the D&O Insurance Policy (or such substitute policy) as a result of the preceding proviso, Reorganized AMI shall obtain as much comparable insurance as is available for the Insurance Amount.

26. Preservation of Rights of Action. In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, pursuant to the Debtor Releases provided by Section 10.7 of the Plan), the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Reorganized Debtors' rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any

indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtors or Reorganized Debtors have released any Person or Entity on or before the Effective Date (including pursuant to the Releases by the Debtors or otherwise), the Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the confirmation or Consummation.

27. Exemption from Certain Transfer Taxes. The issuance, transfer or exchange of debt and equity under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any contract, lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan shall be exempt from all taxes (including, without limitation, stamp tax or similar taxes) to the fullest extent permitted by Bankruptcy Code section 1146, and the appropriate state or local governmental officials or agents shall not collect any such tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

28. Provisions Governing Distributions. The distribution provisions of Section 6 of the Plan are hereby approved and authorized in their entirety. Except as otherwise

set forth in the Plan, the Reorganized Debtors shall make all distributions under the Plan. Notwithstanding anything contained in the Plan, the Plan Financing Supplement, the Plan Supplement or this Confirmation Order, each of the Indenture Trustees will serve as Disbursement Agent to facilitate distributions to its respective Class of Notes Claims and the Administrative Agent will serve as the Disbursement Agent to facilitate distributions to Holders of Term Facility Claims and Revolver Claims.

(ii) Discharge of Debtors, Releases and Injunctions

29. Discharge of Debtors. Pursuant to Bankruptcy Code section 1141(d), and except as otherwise specifically provided in the Plan or in this Confirmation Order, except to the extent otherwise provided in the Plan, the treatment of all Claims against or Interests in the Debtors under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims against or Interests in the Debtors of any nature whatsoever, known or unknown, including any interest accrued or expenses incurred thereon from and after the Petition Date, or against their Estates or properties or interests in property. Except as otherwise provided in the Plan, upon the Effective Date, all Claims against and Interests in the Debtors shall be satisfied, discharged and released in full exchange for the consideration provided under the Plan. Except as otherwise provided in the Plan, all Persons shall be precluded from asserting against the Debtors, or their respective properties or interests in property, any other Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date. For the avoidance of doubt, Section 10.3 of the Plan shall not discharge any Claims that have been alleged or could be alleged in the Anderson Litigation.

30. Releases, Limitations of Liability and Indemnification. The releases set forth in Section 10.7 and 10.8 of the Plan, and the exculpation and limitation of liability provisions set forth in Section 10.4 of the Plan are incorporated in this Confirmation Order as if

set forth in full herein and are hereby approved and authorized in their entirety and shall be, and hereby are, effective and binding, subject to the respective terms thereof, on all persons and entities who may have had standing to assert released Claims or causes of action, and no person or entity shall possess such standing to assert such Claims or causes of action after the Effective Date.

31. Injunctions. Except to the extent otherwise provided in the Plan, all Persons who have held, hold or may hold Claims against or Interests in any Debtor are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Interest against any Reorganized Debtor, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against any Reorganized Debtor with respect to any such Claim or Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor, as applicable with respect to any such Claim or Interest, (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any Reorganized Debtor, or against the property or interests in property of any Reorganized Debtor with respect to any such Claim or Interest, and (v) pursuing any Claim released pursuant to Sections 10.7 or 10.8 of the Plan. For the avoidance of doubt, Section 10.5(a) of the Plan shall not enjoin any Claims that have been alleged or could have been alleged in the Anderson Litigation. Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

32. Exculpations. Except as otherwise specifically provided in the Plan or Plan Supplement, no Released Party shall have or incur any liability for any claim, cause of action, or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Chapter 11 Cases, the formulation, dissemination, confirmation, Consummation, or administration of the Plan, or property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Cases, the Plan, or any contract, instrument, indenture, or other agreement or document related thereto or delivered thereunder, *provided*, *however*, that the foregoing shall be subject to a limited carve-out solely for gross negligence, willful misconduct criminal acts and fraud. Notwithstanding anything herein to the contrary, nothing in the Plan shall (1) exculpate any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or ultra vires act as determined by a Final Order or (2) limit the liability of the professionals of the Released Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

(iii) Plan Modifications

33. Plan Modifications. The modifications to the Plan were made in a manner consistent with Section 12.6 of the Plan and did not materially or adversely modify the treatment of any Claims or Interests. The Plan, as modified, satisfies the requirements of Bankruptcy Code sections 1122 and 1123. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under Bankruptcy Code section 1125 or resolicitation of votes under Bankruptcy Code section 1126, nor do they require that Holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Such modifications are approved pursuant to section 1127(a).

(iv) Notice and Other Provisions

34. Notice of Confirmation Order. On or before the fifth (5th) day following the occurrence of the Effective Date, the Debtors shall serve notice of entry of this Confirmation Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), on: (a) the U.S. Trustee; (b) the United States Attorney for the Southern District of New York; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the parties listed in the consolidated list of fifty (50) largest unsecured creditors filed by the Debtors in these bankruptcy cases; (f) counsel to the Administrative Agent; (g) counsel to the Committee; and (h) other parties in interest, by causing a notice of this Confirmation Order in substantially the form of the notice annexed hereto as Exhibit B (the "***Notice of Confirmation***"), which form is hereby approved, to be delivered to such parties by first class mail, postage prepaid. The Notice of Confirmation shall also be published in The New York Times (National Edition), USA Today (National Edition) and the Miami Herald and any other publications the Debtors deem necessary in their sole discretion.

35. Notice need not be given or served under the Bankruptcy Code, the Bankruptcy Rules, or this Confirmation Order to any Person to whom the Debtors mailed a notice of the Combined Hearing, but received such notice returned marked "undeliverable as addressed," "moved - left no forwarding address," "forwarding order expired," or similar reason, unless the Debtors have been informed in writing on or before the Effective Date by such Person of that Person's new address.

36. Mailing and publication of the Notice of Confirmation in the time and manner set forth in the preceding paragraphs shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no other or further notice is necessary. The Notice of Confirmation shall have the

effect of an order of the Bankruptcy Court, shall constitute sufficient notice of the entry of the Confirmation Order to any filing and recording officers, and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

37. Professional Compensation. Except as otherwise expressly permitted in the Plan or other orders of the Court, all final requests for professional compensation and reimbursement Claims shall be filed no later than 45 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Court orders, the Allowed amounts of such professional compensation and reimbursement Claims shall be determined by the Court. Except as otherwise specifically provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall, in the ordinary course of business and without any further notice to or action, order or approval of the Court, pay in Cash the reasonable legal, professional or other fees and expenses incurred by that Reorganized Debtor after the Effective Date pursuant to the Plan. Upon the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 and 1103 in seeking retention or compensation for services rendered after such date shall terminate, and each Reorganized Debtor may employ and pay any professional in the ordinary course of business without any further notice to or action, order or approval of the Court.

38. The Debtors or Reorganized Debtors shall promptly pay in full, in Cash reasonable, documented and necessary fees for services rendered and out-of-pocket expenses incurred by the Administrative Agent, the Indenture Trustees, and the Committee (and their agents, attorneys and professionals) without the need of such parties to file fee applications with the Court; provided that each party and/or its counsel provide the Debtors (or the Reorganized Debtors, as applicable) with the invoices (or such other documentation as the Debtors (or the

Reorganized Debtors, as applicable) may reasonably request) for which it seeks payment. If the Debtors (or the Reorganized Debtors, as applicable) have no objection to such fees, such fees shall be paid within ten business days of the request for payment. To the extent that the Debtors (or the Reorganized Debtors, as applicable) object to such fees, the Debtors (or the Reorganized Debtors, as applicable) shall not be required to pay any disputed portion of such fees until a resolution of such objection is agreed to by the Debtors (or the Reorganized Debtors, as applicable) and such party and/or their counsel or a further order of the Court upon a motion by such party brought in accordance with the terms of the Plan and this Confirmation Order; *provided, however*, nothing in this Paragraph 38 shall modify, alter or amend the provisions of the Plan relating to the payment by the Debtors (or the Reorganized Debtors, as applicable) of any fees and expenses requested by the Indenture Trustees in accordance with Section 12.2 of the Plan.

39. Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, liens, pledges or other security interests shall revert to the Reorganized Debtors and their successors and assigns.

40. Failure to Consummate Plan and Substantial Consummation. If the Effective Date does not occur, then the Plan, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), the

assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be null and void. In such event, nothing contained in the Plan or this Confirmation Order, and no acts taken in preparation for consummation of the Plan, shall, or shall be deemed to, (a) constitute a waiver or release of any Claims by or against or Interests in the Debtors or any other Person, (b) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, (c) constitute an admission of any sort by the Debtors or any other Person, or (d) be construed as a finding of fact or conclusion of law with respect thereto.

41. References to Plan Provisions. The failure to include or specifically reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety.

42. Exhibits. Each reference to a document, agreement or summary description that is in the form attached as an exhibit to the Plan in this Confirmation Order, or in the Plan, the Plan Financing Supplement, or the Plan Supplement shall be deemed to be a reference to such document, agreement or summary description in substantially the form of the latest version of such document, agreement or summary description filed with the Court (whether filed as an attachment to the Plan, Plan Financing Supplement, Plan Supplement or filed separately).

43. Plan Provisions Mutually Dependent. The provisions of the Plan are hereby deemed nonseverable and mutually dependent.

44. Confirmation Order Provisions Mutually Dependent. The provisions of this Confirmation Order are hereby deemed nonseverable and mutually dependent.

45. Confirmation Order Supersedes. It is hereby ordered that this Confirmation Order shall supersede any orders of this Court issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order.

46. Conflicts Between Confirmation Order and Plan. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however,* that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

47. Retention of Jurisdiction. Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court, except as otherwise provided in the Plan or herein, shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, but not limited to, the matters set forth in Section 11 of the Plan.

48. Final Order. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

49. Immediate Effectiveness. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, 8001, 8002 or otherwise, immediately upon the entry of this Confirmation Order, this Confirmation Order and, immediately upon the occurrence of the Effective Date, the terms of the Plan, the Plan Financing Supplement, and the Plan Supplement, shall be, and hereby are, immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized

Debtors, any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the Holders of such Claims or Interests accepted, were deemed to have accepted, rejected or were deemed to have rejected the Plan), any trustees or examiners appointed in the Chapter 11 Cases, all persons and entities that are party to or subject to the settlements, compromises, releases, discharges, injunctions, stays and exculpations described in the Plan or herein, each person or entity acquiring property under the Plan, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors and the respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any, of any of the foregoing. The Debtors are authorized to consummate the Plan at any time after the entry of the Confirmation Order subject to satisfaction or waiver of the conditions precedent to consummation set forth in Section 9 of the Plan.

Dated: New York, New York
_____, 2010

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code

EXHIBIT B

Proposed Notice of Entry of Confirmation Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
AMERICAN MEDIA, INC., *et al.*,[1]	)	Case No. 10-16140 (MG)
Debtors.	)	Jointly Administered

NOTICE OF ENTRY OF ORDER CONFIRMING DEBTORS' AMENDED JOINT PREPACKAGED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE THAT, on [_____], 2010, the United States Bankruptcy Court for the Southern District of New York (the "***Court***") entered the *Findings of Fact, Conclusions of Law and Order (I) Approving (A) the Debtors' Disclosure Statement Pursuant to 11 U.S.C. §§ 1125 and 1126(b), (B) Solicitation of Votes and Solicitation and Election Procedures, and (C) Forms of Ballots, and (II) Confirming the Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. [XX]] (the "***Confirmation Order***"). Among other things, the Confirmation Order confirmed the *Debtors' Amended Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 115] (the "***Plan***"),[2] thereby authorizing American Media, Inc., and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "***Debtors***") to implement the Plan in accordance with its terms.

PLEASE TAKE FURTHER NOTICE THAT in conjunction with the Confirmation Order, the Court granted the Debtors a waiver under rule 3020(e) of the Federal Rules of Bankruptcy Procedure of the 14-day stay period between the date of entry of the Confirmation Order and the Effective Date of the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Plan and its provisions are binding on the Debtors, the Reorganized Debtors, any holder of a Claim or Interest and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder or assign voted to accept the Plan.

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: American Media, Inc. (3383); American Media Operations, Inc. (4424); American Media Consumer Entertainment, Inc. (3852); American Media Consumer Magazine Group, Inc. (3863); American Media Distribution & Marketing Group, Inc. (3860); American Media Mini Mags, Inc. (3854); American Media Newspaper Group, Inc. (3864); American Media Property Group, Inc. (4153); Country Music Media Group, Inc. (2019); Distribution Services, Inc. (1185); Globe Communications Corp. (2593); Globe Editorial, Inc. (3859); Mira! Editorial, Inc. (3841); National Enquirer, Inc. (4097); National Examiner, Inc. (3855); Star Editorial, Inc. (9233); and Weider Publications, LLC (1848).

[2] Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to such terms in the Plan.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Plan or related documents you should contact Kurtzman Carson Consultants LLC, the notice and claims agent retained by the Debtors in these chapter 11 cases (the "***Notice and Claims Agent***"), by (a) calling the Debtors' restructuring hotline at (877) 660-6698, (b) visiting the Debtors' restructuring website at: www.kccllc.net/AMI, and/or (c) writing the Debtors at American Media c/o Kurtzman Carson Consultants LLC, 599 Lexington Avenue, 39th Floor, New York, New York, 10022. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at https://ecf.nysb.uscourts.gov.

New York, New York
Dated: December [20], 2010

/s/ DRAFT

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Ira S. Dizengoff
Arik Preis
Meredith A. Lahaie

Counsel to the Debtors and Debtors in Possession

Exhibit B

Indemnification Provisions

Document	Section or Article	Indemnification Language
2009 Credit Agreement	9.03	The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnitee.

Document	Section or Article	Indemnification Language
2011 Notes Indenture	7.07	The Company and each Note Guarantor, jointly and severally shall indemnify the Trustee against any and all loss, liability or expense (including reasonable attorneys' fees) incurred by or in connection with the administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Company of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; provided, however, that any failure so to notify the Company shall not relieve the Company or any Note Guarantor of its indemnity obligations hereunder. The Company shall defend the claim and the indemnified party shall provide reasonable cooperation at the Company's expense in the defense. Such indemnified parties may have separate counsel and the Company and the Note Guarantors, as applicable shall pay the fees and expenses of such counsel; provided, however, that the Company shall not be required to pay such fees and expenses if it assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Company and the Note Guarantors, as applicable, and such parties in connection with such defense. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, negligence or bad faith.

Document	Section or Article	Indemnification Language
Subordinated Notes Indenture	7.07	The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connective with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith. The obligations of the Issuer under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

Document	Section or Article	Indemnification Language
PIK Notes Indenture	7.07	The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connective with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith. The obligations of the Issuer under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.
New First Lien and New Second Lien Notes Indentures	7.07	The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith as determined by a court of competent jurisdiction in a final and non-appealable decision.

Document	Section or Article	Indemnification Language
New First Lien and New Second Lien Notes Indentures	10.09(d)	The Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture, the Security Documents or the Intercreditor Agreement unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.
New First Lien and New Second Lien Notes Indentures	10.09(n)	No provision of this Indenture, the Intercreditor Agreement or any Security Document shall require the Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Collateral Agent) if it shall have received indemnity satisfactory to the Collateral Agent against potential costs and liabilities incurred by the Collateral Agent relating thereto.
New First Lien and New Second Lien Notes Indentures	2.06(i)(x)	Each Holder of a Note agrees to indemnify the Issuer and Trustee against any liability that may result from the transfer, exchange or assignment of such Holder’s Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.