IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT DELAWARE

In re:	:	Chapter 11
AMERICAN APPAREL, INC., *et al.*,[1]	:	Case No. 15-12055 (BLS)
Debtors.	:	(Jointly Administered)

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION OF DEBTORS AND DEBTORS IN POSSESSION AND (II) CONSOLIDATED REPLY TO CERTAIN OBJECTIONS TO CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION

[1] The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, Inc. (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF EXHIBITS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

FEDERAL STATUTES

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

TABLE OF AUTHORITIES
(Continued**)**

Page

RULES

TABLE OF AUTHORITIES
(Continued**)**

Page

OTHER AUTHORITIES

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this memorandum of law in support of confirmation of the *First Amended Joint Plan of Reorganization of the Debtors and Debtors in Possession* (Docket No. 585), dated January 14, 2016 (as it may be modified or amended, the "Plan"), pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code").[2] In support of this memorandum of law and confirmation of the Plan, the Debtors rely upon and incorporate herein by reference (a) the declarations of Paula Schneider, Mark Weinsten, Zul Jamal and Robert Flachs, and the *Declaration of Craig E. Johnson of Garden City Group, LLC, Certifying the Methodology for the Tabulation of Votes and Results of Voting with Respect to the Joint Plan of Reorganization of the Debtors and Debtors in Possession*, filed by Garden City Group, LLC (the "Voting Agent") and dated January 12, 2016 (Docket No. 550) (the "Voting Declaration" and, together with the preceding declarations, the "Declarations") and (b) the chart attached hereto as Exhibit A summarizing the Plan's compliance with each of the confirmation requirements in section 1129 of the Bankruptcy Code (the "Confirmation Standards Exhibit"), and respectfully represent as follows:

PRELIMINARY STATEMENT[3]

1. The Plan currently before the Court not only satisfies the requirements of section 1129 of the Bankruptcy Code and is, therefore, confirmable, it is far and away the best means of restructuring the Debtors' capital structure that has surfaced to date. The Plan is fully consensual, has been unanimously accepted by all Impaired Classes of Claims, has been thoroughly market-tested, provides a meaningful recovery to Holders of General Unsecured

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2 Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan or the Disclosure Statement, as applicable.

3 Capitalized terms not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them below or in the Plan, as applicable.

Claims (especially where the secured Prepetition Notes are materially undersecured), eliminates $200 million of debt from the Debtors' balance sheet and will be accompanied by $80 million of exit capital, cementing the feasibility of the Reorganized Debtors' turnaround plan. As the Debtors noted at their first appearance before this Court on October 6, 2015, the Debtors urgently needed to reduce the debt on their balance sheet and emerge from these chapter 11 cases as quickly as possible to implement their turnaround plan. It is therefore a remarkable achievement that within this short timeframe the Debtors now stand before the Court with a Plan that does not only just that, but that also boasts the support of the Creditors' Committee and over 95% of the Holders of the Debtors' Prepetition Notes, as well as the Voting Classes. This achievement is all the more impressive for a retail business, which the ravages of the marketplace in recent years have tended to leave on the liquidation block, and distinctively important in that the Plan will permit one of North America's largest apparel manufacturers to stay in business, preserving the jobs of several thousand of American workers.

2. Although the Debtors are before the Court today with a consensual Plan, this result did not come easily. Only after months of hard-fought negotiations — first with the Committee of Lead Lenders and then with the Creditors' Committee and other creditors — have the Debtors achieved this fully consensual and confirmable Plan. On the Petition Date, the Debtors filed the *Joint Plan of Reorganization of the Debtors and Debtors in Possession* (Docket No. 21), which was thereafter revised for solicitation and filed with the Court on November 20, 2015 (Docket No. 368) (the "Original Plan"). The Plan the Debtors now seek to confirm is materially more favorable than the Original Plan. These modifications come as a result of extensive negotiations among the Debtors, the Creditors' Committee and the Committee of Lead Lenders, whereby the Committee of Lead Lenders made significant economic concessions for

the benefit of unsecured creditors in these Chapter 11 Cases. Specifically, the amended Plan provides, among other things, the following:

- **Increase in GUC Support Payment**: The Committee of Lead Lenders agreed to fund a 150% increase in the GUC Support Payment to $2.5 million, and Holders of Prepetition Notes will not receive any cash distributions on account of their $143 million deficiency claims;
- **Increase in Litigation Trust Funding**: The Committee of Lead Lenders agreed to double funding available to the Litigation Trust, from $250,000 to $500,000, and further agreed to permit 75% of the first $2.5 million in proceeds that the Litigation Trust generates to be distributed to Holders of General Unsecured Claims other than the holders of the noteholders' deficiency claim;
- **Increase in Committed Exit Financing**: The Plan now provides that as of the Effective Date the Debtors will have $80 million of exit capital, which will be comprised of (1) the $40 million of debt and equity capital previously committed by the Supporting Parties under the Original Plan and (2) an additional $40 million in secured asset-based financing ("ABL Financing"), which may be supplied by a third-party lender or from the Supporting Parties; and
- **The Allowance of PIK Interest**: The Committee of Lead Lenders has agreed to relax the terms of the credit agreement governing the New Exit Term Loan to permit the Debtors to elect to pay interest in kind ("PIK Interest") instead of in cash interest payments in the event that the Debtors' total cash falls below certain thresholds.[4]

Among other things, these concessions will (a) increase the aggregate cash recovery of Holders of General Unsecured Claims to approximately 6% of their Claims, an improvement of over 30 times from the Original Plan (before accounting for any recovery on account of the Litigation Trust Assets) and (b) reduce the Holders of Prepetition Notes' entitlement to the Litigation Trust Proceeds, which again increases the recovery to Holders of other General Unsecured Claims. Finally, both the increase in committed exit financing and the revisions to the PIK Interest terms

[4] As set forth in the amended New Exit Financing Agreement, the New Exit Term Loan permits the Debtors to elect to pay PIK Interest, instead of in cash interest payments, under the following circumstances: (1) during the first year of the loan, when payment of cash interest would otherwise cause the Reorganized Debtors' total cash to fall below $20 million, (b) during the second year of the loan, when payment of cash interest would otherwise cause the Reorganized Debtors' total cash on hand to fall below $15 million and (c) thereafter, when payment of cash interest would otherwise cause the Reorganized Debtors' total cash on hand to fall below $10 million.

of the New Exit Financing Agreement will strengthen the feasibility of the Reorganized Debtors' turnaround plan by ensuring that the Debtors will have sufficient cash on hand during the critical investment and growth phases of that plan.

3. The Debtors have not limited their efforts with respect to their restructuring to the Creditors' Committee and the Committee of Lead Lenders. Rather, the Debtors, with the assistance of their advisors, launched a robust postpetition marketing process that picked up where their prepetition process left off, and involved the solicitation of 60 potentially interested parties — of which five signed non-disclosure agreements with the Debtors and thereafter gained access to a data room containing voluminous information relating to the Debtors' and their non-debtor affiliates' operations and businesses — for the purpose of obtaining alternative restructuring proposals or interest from strategic buyers, or both. Ultimately this process yielded a bid from Hagan Capital Group and Silver Creek Advisors ("Hagan Group"), which was originally proposed on December 29, 2015 and revised on January 10, 2016. The Debtors and their advisors thoroughly vetted both the Original Proposal and the Revised Proposal. In particular, the Debtors' board of directors, in the exercise of their fiduciary duties, reviewed the pertinent facts and determined that the Original Proposal and Revised Proposal each do not represent a material improvement over Plan valuation, cannot meet the self-stated necessary condition of securing noteholder support and, if pursued on a non-consensual basis, do not provide sufficient funding to immediately repay the DIP Credit Facility and fund a prolonged, contested process, which additionally presents significant and unwarranted risks with respect to the Debtors' business and ability to expeditiously exit these Chapter 11 Cases as a going concern.

4. In light of both the robust marketing process conducted by the Debtors and their professionals and the modifications made to the Original Plan, the Debtors believe — without a shadow of a doubt — that the Plan before the Court is superior to any other proposal received to date. This conclusion is further buttressed by the support of the Creditors' Committee and the Committee of Lead Lenders, and also by the unanimous vote in support of confirmation of the Plan received from the Voting Classes — the Plan is overwhelmingly supported by Holders of Prepetition Note Secured Claims against each Debtor (i.e., 84.85% in number and 99.99% in amount) and supported by Holders of General Unsecured Claims against each Debtor (i.e., 57.89% to 85.29% in number and 98.70% to 99.99% in amount).[5] Simply put, every impaired accepting class of creditors entitled to vote on the Debtors' Plan voted in favor and delivered the support necessary under 1126 of the Bankruptcy Code.

5. Further, and as is set forth in detail below, the Plan satisfies all requirements of section 1129 of the Bankruptcy Code, including that the Plan has been proposed in good faith pursuant to section 1129(a)(3) of the Bankruptcy Code, is in the best interest of creditors as required of section 1129(a)(7) of the Bankruptcy Code and, as noted above, is feasible as required of section 1129(a)(11) of the Bankruptcy Code. Moreover, the discretionary provisions of the Plan, as permitted by section 1123(b) of the Bankruptcy Code, including the Releases and the Exculpation, the assumption or rejection of Executory Contracts and Unexpired Leases and the settlement of certain claims are appropriate under the Bankruptcy Code and otherwise consistent with Third Circuit law.

6. Above all else, and consistent with the core principles envisioned by the drafters of the Bankruptcy Code, the Plan provides for the emergence of a Reorganized

[5] See Voting Decl. ¶ 55.

American Apparel with a significantly de-levered capital structure and sufficient liquidity, making it well-positioned to implement on a turnaround business plan that will maintain over 8,100 jobs and continue thousands of relationships with vendors and suppliers, some of whom rely almost exclusively on the Debtors for their future viability. Upon their emergence from chapter 11, the Reorganized Debtors will remain one of the largest North American apparel manufacturers and will continue operating their vertically integrated business through their somewhat reduced, but smarter, retail store footprint. Amazingly, through the persistence and cooperation of the Debtors and several key creditor constituencies, the Debtors' aspirations at the outset of these Chapter 11 Cases are now nearly a reality. For the foregoing reasons, and as is set forth herein, the Debtors respectfully request that the Court approve confirmation of the Plan and overrule any objections that may remain as of the date of the Confirmation Hearing.

STATEMENT OF FACTS

7. The facts relevant to Confirmation of the Plan are set forth in the Disclosure Statement, the Plan, the Declarations and any evidence presented or testimony that may be adduced at the Confirmation Hearing, all of which are incorporated herein by reference.

ARGUMENT

8. For the reasons set forth above and as will be set forth herein, the Debtors respectfully request that the Court approve Confirmation of the Plan. The remaining sections in this Brief are summarized as follows:

- **Part I** provides a section-by-section analysis of the Bankruptcy Code's requirements for confirmation of the Plan and an explanation of how the Plan meets each of these requirements (pages 7–54);
- **Part II** sets forth the Third Circuit's requirements for release, exculpation and injunction provisions included in a plan of reorganization and the reasons for why such provisions included in the Plan should be approved (pages 54–72);

- **Part III** discusses certain Equipment Lease Settlements and how such settlements meet the requirements of the Bankruptcy Code and Third Circuit law (pages 72–77);
- **Part IV** provides an analysis of the appropriateness of the Plan's provisions related to the assumption and rejection of Executory Contracts and Unexpired Leases (pages 77–80);
- **Part V** includes a description of the modifications to the Plan (pages 81–85);
- **Part VI** provides the Debtors' responses to any unresolved objections to approval of Confirmation of the Plan and describes the resolution of any objections that have been resolved (pages 85–99); and
- Finally, in **Part VII**, the Debtors request a waiver of the automatic stay to ensure immediate implementation of the Plan upon entry of the Confirmation Order (page 99).

I. THE PLAN MEETS EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE

9. To obtain confirmation of a chapter 11 plan, the proponent must demonstrate that the plan satisfies each of the requirements set forth in section 1129(a) of the Bankruptcy Code. See In re Lackawanna Detective Agency, Inc., 82 B.R. 336, 337 (Bankr. D. Del. 1988) ("Section 1129(a) of title 11 recites the standards which must be met before a plan can be confirmed."); In re Richard Buick, Inc., 126 B.R. 840, 846 (Bankr. E.D. Pa. 1991). Through evidence to be presented at the Confirmation Hearing, as set forth in the Declarations and cited herein, the Debtors will demonstrate (by a preponderance of the evidence) that the Plan satisfies such requirements and should be confirmed.[6] See In re Armstrong World Indus., Inc., 348 B.R. 111, 120 (D. Del. 2006) ("[T]he debtor's standard of proof that the requirements of 1129 are satisfied is preponderance of the evidence.").

[6] The Confirmation Standards Exhibit is attached hereto as Exhibit A.

A. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of Title 11

10. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the plan "complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) of the Bankruptcy Code indicates that the primary focus of this requirement is to ensure that the form of the plan complies with the provisions of sections 1122 (classification of claims and interests) and section 1123 (contents of a plan) of the Bankruptcy Code. See S. Rep. No. 95-989, 95th Cong. 2nd Sess. 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also In re Nutritional Sourcing Corp., 398 B.R. 816, 824 (Bankr. D. Del. 2008) ("As confirmed by legislative history, 11 U.S.C. § 1129(a)(1), which provides that the plan must 'compl[y] with the applicable provisions of this title,' requires that a plan comply with 11 U.S.C. §§ 1122 and 1123."); In re TCI 2 Holdings, LLC, 428 B.R. 117, 132 (Bankr. D.N.J. 2010) ("The legislative history reflects that 'the applicable provisions of chapter 11 . . . such as section 1122 and 1123, governing classification and contents of plan.'"); In re G-1 Holdings Inc., 420 B.R. 216, 258 (Bankr. D.N.J. 2009) (reviewing a plan to determine whether it "complied with other applicable provisions of § 1129(a)(1), including §§ 1122 and 1123"); In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986) (stating that "[o]bjections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123."), aff'd in part, rev'd in part on other grounds, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom., Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988). As demonstrated below, the Plan fully complies with all of the applicable provisions of the Bankruptcy Code (as required by

section 1129(a)(1) of the Bankruptcy Code), including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

1. Classification of Claims and Interests

11. Section 1122 of the Bankruptcy Code sets forth the basic rule governing the classification of claims and interests: with the exception of "convenience classes" of unsecured claims, the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class. 11 U.S.C. § 1122(a); see Armstrong World Indus., 348 B.R. at 160 (holding that Section 1122(a) of the Bankruptcy Code was satisfied where similar claims were classified together); In re Aleris Int'l, Inc., No. 09-10478 (BLS), 2010 Bankr. LEXIS 2997, at *41-42, 2010 WL 3492664, at *12 (Bankr. D. Del. May 13, 2010) (same); see also In re Eagle-Picher Indus., Inc., 203 B.R. 256, 270 (S.D. Ohio 1996) (same).

12. Although section 1122(a) of the Bankruptcy Code prohibits the inclusion of dissimilar claims in the same class, it does not require the placement of all similar claims in one class. See In re Jersey City Med. Ctr., 817 F.2d 1055, 1061 (3d Cir. 1987) ("[W]e agree with the general view which permits the grouping of similar claims in different classes."); In re First Interregional Equity Corp., 218 B.R. 731, 738-39 (Bankr. D.N.J. 1997) (same); In re Drexel Burnham Lambert Grp. Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together . . . . ."). Recognizing this flexibility, courts have long held that "the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan." In re Heritage Org., L.L.C., 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007); see also John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d 154, 158 (3d Cir. 1993) (finding that "the Code was not meant to allow a debtor complete freedom to place substantially similar claims in separate classes" and

that certain the Bankruptcy Code's confirmation requirements "would be seriously undermined if a debtor could gerrymander classes"); Boston Post Rd. Ltd. P'ship v. FDIC (In re Boston Post Rd. Ltd. P'ship), 21 F.3d 477, 481 (2d Cir. 1994) (holding that similar claims may be separately classified unless the sole purpose is to engineer an assenting impaired class); Aetna Cas. & Sur. Co. v. Clerk of the U.S. Bankr. Ct., (In re Chateaugay Corp.), 89 F.3d 942, 950 (2d Cir. 1996) (classification proper since the plan did not classify similar claims separately to gerrymander an impaired assenting class).

13. The Plan follows a non-consolidated structure, respecting the corporate separateness of each of the Debtors. Thus, classification of Claims and Interests must be analyzed on a Debtor-by-Debtor basis, just as this Plan is a plan for each of the Debtors and must be confirmed as to each of them. See In re Tribune Co., 464 B.R. 126, 183 (Bankr. D. Del. 2011) (holding that section 1129(a)(10) of the Bankruptcy Code "must be satisfied by each debtor in a joint plan"). Section II of the Plan reasonably provides for the separate classification of Claims against and Interests in the six Debtors into nine distinct Classes based upon (a) their security position, if any; (b) their legal priority against the applicable Debtor's assets; and (c) other relevant criteria.[7]

14. The nine Classes of Claims and Interests are as follows:

- Priority Claims against each Debtor (Class 1A, 1B, 1C, 1D, 1E & 1F Claims);
- Other Secured Claims against each Debtor (Class 2A, 2B, 2C, 2D, 2E & 2F Claims);
- Prepetition Note Secured Claims against each Debtor (Class 3A, 3B, 3C, 3D, 3E & 3F Claims);
- General Unsecured Claims against each Debtor (Class 4A, 4B, 4C, 4D, 4E & 4F Claims);

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

- UK Guaranty Claims against American Apparel, Inc. (Class 5A Claims);
- Section 510 Claims against each Debtor (Class 6A, 6B, 6C, 6D, 6E & 6F Claims);
- Intercompany Claims against each Debtor (Class 7A, 7B, 7C, 7D, 7E & 7F Claims);
- APP Interests in American Apparel, Inc. (Class 8A Interests); and
- Subsidiary Debtor Equity Interests in American Apparel (USA), LLC, American Apparel Retail, Inc., American Apparel Dyeing & Finishing, Inc., KCL Knitting, LLC and Fresh Air Freight, Inc. (Class 9B, 9C, 9D, 9E & 9F Interests).

15. The legal rights under the Bankruptcy Code of each of the Holders of Claims or Interests within a particular Class are substantially similar to other Holders of Claims or Interests within that Class. The Debtors' classification of Claims and Interests under the Plan does not discriminate unfairly between or among Holders of Claims or Interests. Valid business, factual and legal reasons exist for the Plan's separate classification of Claims or Interests in connection with a particular Debtor. At a threshold level, the Plan separates Claims from Interests, Priority Claims from General Unsecured Claims and Secured Claims from both Priority and General Unsecured Claims. More particularly, due to their unique and different rights:

- Prepetition Note Secured Claims (Class 3A, 3B, 3C, 3D, 3E & 3F Claims) are classified separately from Other Secured Claims (Class 2A, 2B, 2C, 2D, 2E & 2F Claims) because the claims arise pursuant to distinct underlying agreements or transactions (e.g., the Prepetition Indenture, as compared to, among other sources, federal law, state law and/or trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against the Debtors, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims;
- UK Guaranty Claims (Class 5A Claims) are classified separately from General Unsecured Claims against American Apparel, Inc. (Class 4A Claims) because the Claims arise pursuant to distinct agreements or transactions (e.g., the UK Loan, as compared to, generally, trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against American Apparel, Inc., and the relative nature of these Claims require differing forms of treatment (reinstatement in the case of the UK Guaranty Claims due to the anticipated continued performance of the underlying loan to a

Non-Debtor Affiliate as compared to cash and Litigation Trust units for General Unsecured Claims);

- Section 510 Claims (Class 6A, 6B, 6C, 6D, 6E & 6F Claims) are properly subordinated to General Unsecured Claims pursuant to section 510(b) of the Bankruptcy Code. There are no other subordinated General Unsecured Claims that are separately classified from the Section 510 Claims;

- APP Interests (Class 8A Interests) are Interests in American Apparel, Inc., and Subsidiary Debtor Equity Interests (Class 9B, 9C, 9D, 9E & 9F Interests) are the respective Interests held in Subsidiary Debtors (i.e., Debtors other than American Apparel, Inc.); and

- Because these are insider claims asserted by non-debtor affiliates, Intercompany Claims (Class 7A, 7B, 7C, 7D, 7E & 7F Claims) have been separately classified in Class 7.

16. Finally, the Plan's classification scheme is not an attempt to manufacture an impaired class that will vote in favor of the Plan. The Plan has been unanimously accepted by each pair of Impaired Classes of Claims against each of the Debtors that are entitled to vote (discussed in Part I.H below).[8]

17. Accordingly, for the foregoing reasons, the classification of Claims and Interests set forth in the Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.

2. Mandatory Contents of a Plan

18. Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a plan of reorganization filed by a corporate debtor.[9] As demonstrated herein, the Plan fully complies with each such requirement for each Debtor.

19. Specifically, section 1123(a) of the Bankruptcy Code requires that the Plan:

(a) designate Classes of Claims and Interests;

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[8] See generally Voting Decl.

[9] Section 1123(a)(8) of the Bankruptcy Code applies only in cases "in which the debtor is an individual" and is thus inapplicable to the Chapter 11 Cases. 11 U.S.C. § 1123(a)(8).

(b) specify unimpaired Classes of Claims and Interests;

(c) specify treatment of impaired Classes of Claims and Interests;

(d) provide for equality of treatment within each Class;

(e) provide adequate means for the Plan's implementation;

(f) prohibit the issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and

(g) 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 the Reorganized Debtors' officers and directors.

See 11 U.S.C. § 1123(a).

20. The Plan fully complies with each requirement of section 1123(a) of the Bankruptcy Code for each Debtor as described above.

a. Section 1123(a)(1) — Designation of Classes of Claims and Interests

21. As previously noted with respect to the Plan's compliance with section 1122, Section II.B of the Plan designates Classes of Claims and Interests (other than Administrative Claims and Priority Tax Claims) for each Debtor, as required by section 1123(a)(1) of the Bankruptcy Code.

b. Section 1123(a)(2) — Identification of Impaired Classes of Claims and Interests

22. Section II.B of the Plan further specifies for every Debtor each Class of Claims or Interests that is not Impaired under the Plan (i.e., Classes 1A through 1F, 2A through 2F, 5A, 7A through 7 F and 9B through 9F), in accordance with section 1123(a)(2) of the Bankruptcy Code.

c. Section 1123(a)(3) — Disclosure of Treatment of Claims and Interests

23. Section II.C of the Plan specifies the treatment at every Debtor of each Class of Claims and Interests that is Impaired under the Plan (i.e., Classes 3A through 3F, 4A

through 4F, 6A through 6F and 8A), and thus satisfies the requirement of section 1123(a)(3) of the Bankruptcy Code.

d. Section 1123(a)(4) — Identical Treatment of Claims in the Same Class

24. The Plan provides the same treatment for each Claim or Interest of a particular Class against each applicable Debtor unless the holder of a Claim or Interest agrees to less favorable treatment on account of its Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code. In the case of every Class of Claims that is receiving property under the Plan, the Debtors have proposed to distribute such property equally to every Holder of an Allowed Claim in such Class at each Debtor.[10]

e. Section 1123(a)(5) — Adequate Means of Implementation

25. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Section III of the Plan (entitled "Means of Implementation") as well as various other provisions thereof provide adequate means for the Plan's implementation. These provisions relate to, among other things: (a) the continued corporate existence of the Debtors (subject to the Restructuring Transactions) and the vesting of the Debtors' assets in the Reorganized Debtors; (b) the consummation of the Restructuring Transactions; (c) the obligations of successors to the Reorganized Debtors created pursuant to the Restructuring Transactions; (d) the adoption of the corporate constituent documents that will govern the Reorganized Debtors; (e) the identities of, and/or method for appointing, the directors and officers of Reorganized American Apparel and the other Reorganized Debtors; (f) the issuance and distribution of Reorganized American Apparel Equity Interests; (g) the treatment of certain employment, retirement and workers' compensation benefits, including the Management

[10] See e.g., Plan, Section II.C.

Incentive Plan; (h) the authorization for the Reorganized Debtors to consummate the (1) New Exit Facility Term Loan, (2) the Equity Commitment Agreement and (3) the Additional New Capital Commitment; (i) the preservation of rights of action by the Reorganized Debtors (other than claims settled or released pursuant to the Plan); (j) the general releases by (1) the Debtors and the Reorganized Debtors, (2) Holders of Claims or Interests entitled to vote on the Plan who do not opt out of granting the releases described in the Plan and (3) the Released Parties; (k) the cancellation and surrender of instruments, securities and other documentation; (*l*) the release of liens; (m) the mechanism for distributions of Reorganized American Apparel Equity Interests and/or Cash pursuant to the Plan; (n) the assumption or rejection of Executory Contracts and Unexpired Leases; and (o) the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements or documents related to the foregoing. Moreover, by virtue of the $80 million of debt and equity capital, comprising the $40 million committed pursuant to the Equity Commitment Agreement and the $40 million Additional New Capital Commitment, the Debtors expect to have as a condition to the effectiveness of the Plan, they will have sufficient Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan.

f. Section 1123(a)(6) — Prohibition Against Non-Voting Equity Securities

26. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. In these Chapter 11 Cases, section 1123(a)(6) of the Bankruptcy Code is inapplicable because the Reorganized American Apparel will be a limited liability company and not a corporation. See In re Adelphia Commnc'ns Corp., No. 02-41729 (REG) (Bankr. S.D.N.Y. Jan. 5, 2007) (concluding that Bankruptcy Code section 1123(a)(6) is inapplicable to limited liability companies); In re

L.A. Dodgers LLC, No. 11-12010 (KG) (Bankr. D. Del. Apr. 13, 2012) (same); In re MIG, Inc., No. 09-12118 (KG) (Bankr. D. Del. Nov. 19, 2010) (same). In any event, the New LLC Agreement attached as Exhibit A to the Plan (filed in the Plan Supplement dated December 30, 2015 (Docket No. 496)) does not contemplate that any membership interests issued pursuant to the Plan will be nonvoting.

g. Section 1123(a)(7) — Director and Officer Selection Provisions Consistent with Public Policy

27. Section 1123(a)(7) of the Bankruptcy Code requires that a plan of reorganization "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). The Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized American Apparel and the other Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy. In particular, the New Board of Reorganized American Apparel consists of seven directors (identified on Exhibit B to the Plan as disclosed in the Plan Supplement), which, to date, are as follows: (a) Paula Schneider (chief executive officer of the Reorganized American Apparel), (b) Luke Corning, (c) Adam Gray and (d) Andrew Herenstein.[11] As described in greater detail below in Part I.E, to the extent the remaining three directors become known prior to the Confirmation Hearing the Debtors will file a supplemental disclosure with the Bankruptcy Court. The directors for the boards of directors of the direct and indirect subsidiaries of

[11] See *Notice of Filing of Plan Supplement Relating to the Joint Plan of Reorganization of the Debtors and Debtors in Possession* (Docket No. 496).

Reorganized American Apparel will be identified and selected by the New Board.[12] In light of the foregoing, the manner of selection of the initial officers and directors of Reorganized American Apparel and the other Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

3. Permitted Contents of a Plan

28. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization, provided they are "not inconsistent with" applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6).

29. As permitted under section 1123(b) of the Bankruptcy Code, the Plan provides for (a) the impairment or unimpairment of Classes of Claims;[13] (b) the assumption or rejection of certain Executory Contracts or Unexpired Leases not previously rejected (or for which motions for assumption or rejection are pending) under section 365 of the Bankruptcy Code;[14] (c) the retention and enforcement of certain claims, demands, rights, defenses and causes of action by the Reorganized Debtors (i.e., the Retained Causes of Action), except the Specified Causes of Action;[15] and (d) the creation of the Litigation Trust to prosecute the Specified Causes of Action and make distributions (if any) to the Litigation Trust Beneficiaries.[16]

30. The Plan contains other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code, including, but not limited to, provisions:

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12 See Plan, Section III.G.2.

13 Plan, Section II.B.

14 Plan, Section IV.A.

15 Plan, Section III.J.1.

16 Plan, Section III.H.1.

(a) governing distributions on account of Allowed Claims;[17] (b) establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved;[18] (c) regarding the discharge, release and injunction against the pursuit of Claims and termination of Interests (see Part II below);[19] (d) regarding the retention of jurisdiction by the Court over certain matters after the Effective Date;[20] and (e) the settlement of certain matters between and among the Debtors and other parties in interest, including the Equipment Lease Settlements (see Part III below).[21]

31. Accordingly, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code (as well as with the other applicable provisions of the Bankruptcy Code) and thus satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

B. Section 1129(a)(2) — The Debtors Have Complied With Applicable Provisions of Title 11

32. While section 1129(a)(1) focuses on a plan's compliance with the Bankruptcy Code, section 1129(a)(2) focuses on the proponent's compliance with the Bankruptcy Code. See 11 U.S.C. § 1129(a)(2). The legislative history of this provision indicates that its principal purpose is to ensure that the proponent complies with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep.

17 Plan, Section V.

18 Plan, Section VI.

19 Plan, Section IX.

20 Plan, Section X.

21 Plan, Section II.J.2.

No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also In re PWS Holding Corp., 228 F.3d 224, 248 (3d Cir. 2000) ("[Section] 1129(a)(2) [of the Bankruptcy Code] requires that the plan proponent comply with the adequate disclosure requirements of § 1125"); In re Aleris Int'l, Inc., No. 09-10478 (BLS), 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) ("The legislative history of Section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the solicitation and disclosure requirements under Sections 1125 and 1126 of the Bankruptcy Code."). The Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code, regarding disclosure and solicitation of the Plan.

1. Compliance with Section 1125 of the Bankruptcy Code

33. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). In these cases, after a hearing held on November 19, 2015, the Court approved the Disclosure Statement by an order entered the next day (the "Disclosure Statement Order").[22] The Disclosure Statement Order specifically found, among other things, that the Disclosure Statement contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code.[23]

34. In addition, the Court considered and, in the Disclosure Statement Order, approved, among other things: (a) all materials to be transmitted to creditors entitled to vote on

[22] *Order (I) Approving Disclosure Statement,(II) Approving the Form and Manner of Service of Disclosure Statement Notice, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan of Reorganization and (IV) Scheduling Hearing on Confirmation of Plan of Reorganization* (Docket No. 365).

[23] Id. at E.

the Plan (collectively, the "Solicitation Materials"), including (i) the Plan and the Disclosure Statement (together with certain exhibits thereto), (ii) a notice of the Confirmation Hearing (the "Confirmation Hearing Notice") and related matters and (iii) an appropriate Ballot; (b) certain materials to be transmitted to creditors not entitled to vote on the Plan (i.e., the Confirmation Hearing Notice and a notice of non-voting status); (c) the procedures for the solicitation and tabulation of votes to accept or reject the Plan, including approval of (i) the deadline for creditors' submission of Ballots, (ii) the rules for tabulating votes to accept or reject the Plan and (iii) the proposed record date for Plan voting; and (d) the proposed date for the Confirmation Hearing and certain related notice procedures.[24] Thereafter, the Debtors (through the Voting Agent) transmitted the approved Solicitation Materials in accordance with the instructions of the Court in the Disclosure Statement Order.[25] The Service Affidavits demonstrate that (a) the Solicitation Materials were served in accordance with the requirements of the Disclosure Statement Order and (b) the Debtors did not solicit acceptance of the Plan from any creditor or equity security holder prior to the transmission of the approved Disclosure Statement.

2. Compliance with Section 1126 of the Bankruptcy Code

35. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.

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24 See generally id.

25 See *Affidavit of Service* (Docket No. 420); *Affidavit of Service* (Docket No. 451), and *Affidavit of Service* (Docket No. 466) (together, the " Service Affidavits"); *Certificate of Publication* (Docket No. 504).

36. As set forth in the Disclosure Statement and the Voting Declaration, in accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances from the Holders of all Allowed Claims in each Class of Impaired Claims entitled to receive distributions under the Plan. Claims in Classes 3A through 3F (Prepetition Note Secured Claims) and Classes 4A through 4F (General Unsecured Claims) (collectively, the "Voting Classes") are designated as Impaired under the Plan, and Holders of such Claims are entitled to receive distributions on account of such Claims against the applicable Debtors under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in those Classes were entitled to vote to accept or reject the Plan.[26] Holders of Claims or Interests in Classes 1A through 1F, 2A through 2F, 5A, 7A through 7F and 9B through 9F are designated under the Plan as Unimpaired. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims or Interests in those Classes are conclusively presumed to have accepted the Plan.[27]

37. Votes to accept or reject the Plan have not been solicited from the Holders of Claims or Interests in Classes 6A through 6F (subordinated Section 510 Claims) and Class 8A (APP Interests) under the Plan because such Holders are not entitled to receive or retain any property under the Plan on account of such Claims and/or Interests unless and until Holders of Allowed Claims in Classes senior in priority to them have been paid in full, plus interest, which the Plan does not contemplate.[28] Thus, Holders of Claims in Classes 6A through 6F and Interests

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[26] Section 1126(a) of the Bankruptcy Code provides that "[t]he holder of a claim or interest allowed under section 502 of this title may accept or reject a plan." 11 U.S.C. § 1126(a).

[27] Section 1126(f) of the Bankruptcy Code provides that "a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required." 11 U.S.C. § 1126(f).

[28] See Disclosure Statement, at 6 (estimating the percentage recovery for Class 6A through 6F and Class 8A Claimants at 0%).

in Class 8A have been deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.[29]

38. Based upon the foregoing, the Debtors' solicitation of votes with respect to the Plan was undertaken in conformity with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Order, and the Debtors acted in good faith at all times with respect to the solicitation of votes on the Plan. The Debtors, therefore, have complied with applicable provisions of the Bankruptcy Code and have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith

39. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Although the Bankruptcy Code does not define "good faith" as that term is used in this section, the Third Circuit has indicated that "for purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." PWS Holding Corp., 228 F.3d at 242 (quoting In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 150 n.5 (3d Cir. 1986); Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.), 200 F.3d 154, 165 (3d Cir. 1999) (the good faith standard in Section 1129(a)(3) requires that there be "'some relation'" between the chapter 11 plan and the "reorganization-related purposes" that chapter 11 was designed to serve) (citations omitted); see also In re W.R. Grace & Co., 729 F.3d 332, 346 (3d Cir. 2013) (under section 1129(a)(3), "courts may only

[29] Section 1126(g) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of [section 1126 of the Bankruptcy Code], a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." 11 U.S.C. § 1126(g).

confirm reorganization plans proposed in good faith"); In re Combustion Eng'g, Inc., 391 F.3d 190, 247 (3d Cir. 2004) (same).

40. Courts generally view the good faith requirement in light of the totality of the circumstances surrounding the establishment of the chapter 11 plan. See In re Zenith Elecs. Corp., 241 B.R. 92, 107 (Bankr. D. Del. 1999). In assessing good faith, the court may look to whether a plan has been proposed with a legitimate purpose and with a basis for expecting that a reorganization consistent with the Bankruptcy Code's objectives can be effectuated. See, e.g., id., at 107-08 (citing In re Sound Radio, Inc., 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (holding that the plan was proposed in good faith where such plan was "proposed with the legitimate purpose of restructuring [debtor's] finances to permit [debtor] to reorganize successfully . . . exactly what chapter 11 of the Bankruptcy Code was designed to accomplish")); see also In re W.R. Grace & Co., 475 B.R. 34, 87-88 (D. Del. 2012) (evaluating whether the plan "(1) fosters a result consistent with the [Bankruptcy] Code's objectives; (2) has been proposed with honesty and good intentions and with a basis for expecting that reorganization can be effected; and (3) [exhibits] a fundamental fairness in dealing with the creditors") (internal quotation marks omitted), aff'd sub nom. W.R. Grace & Co. v. Garlock Sealing Techs., LLC, 532 Fed. Appx. 264 (3d Cir. 2013). In determining whether a plan of reorganization will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the plan itself. See Combustion Eng'g, 391 F.3d at 246; Sound Radio, 93 B.R. at 853 (concluding that the good faith test provides the court with significant flexibility and is focused on an examination of the plan itself, rather than other, external factors), aff'd in part, remanded in part on other grounds, 103 B.R. 521 (D.N.J. 1989), aff'd, 908 F.2d 964 (3d Cir. 1990).

41. The Debtors must show, therefore, that the plan has not been proposed by any means forbidden by law and that the plan has a reasonable likelihood of success. See In re Century Glove, Inc., Nos. 90-400, 90-401 (SLR), 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("A court may only confirm a plan for reorganization if . . . 'the plan has been proposed in good faith and not by any means forbidden by law. . . .' 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.'") (citations omitted); see also Fin. Sec. Assur. Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship), 116 F.3d 790, 802 (5th Cir. 1997) (same); In re Koelbl, 751 F.2d 137, 139 (2d Cir. 1984) (noting that plan provisions may not contravene any law, including state law, and a plan must have been proposed with "a basis for expecting that a reorganization can be effected'") (citations omitted).

42. The primary goal of chapter 11 is to promote the restructuring of a debtor's debt obligations and other liabilities to enable the continued existence of a corporate entity that provides, among other things, jobs to its employees, a tax base to the communities in which it operates, goods and services to its customers and the other economic benefits to vendors, suppliers and other parties engaged in commerce with the debtor. Congress thus has recognized that the continuation of businesses as viable entities benefits the national economy. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."); Drexel, 138 B.R. at 760 (same; quoting Bildisco).

43. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Reorganized Debtors to continue to operate as viable going concern businesses through means consistent with the objectives and purposes of the Bankruptcy

Code and not otherwise forbidden by law. As described in the Disclosure Statement and the Plan, the Plan proposes to implement the Debtors' restructuring as a sustainable, viable business through (i) the conversion of over $200 million of Prepetition Notes into equity interests of the reorganized American Apparel; (ii) the infusion into the Reorganized American Apparel of up to $80 million of new capital; and (iii) distributions to General Unsecured Creditors in the form of a $2.5 million in cash (with Holders of Prepetition Notes not receiving such cash distributions on account of over $143 million of their unsecured deficiency claims, leading to a meaningful aggregate recovery for Holders of General Unsecured Creditors of approximately 6%) as well as units in the Litigation Trust, now seeded with $500,000 to pursue the Specified Causes of Action.

44. Good faith for purposes of section 1129(a)(3) of the Bankruptcy Code also may be found where the plan is supported by key creditor constituencies, or was the result of extensive arm's-length negotiations with creditors. See In re Leslie Fay Cos., 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith.") (citation omitted); Eagle-Picher Indus., 203 B.R. at 274 (finding that plan of reorganization was proposed in good faith when, among other things, it was based on extensive arm's-length negotiations among plan proponents and other parties in interest). Finally, good faith is not lacking simply because a plan "may not be one which the creditors would themselves design and indeed may not be confirmable." In re T-H New Orleans Ltd. P'ship, 116 F.3d 790, 803 (5th Cir. 1997) (affirming finding of good faith against allegations that the debtor did not effectively market the property so as to produce a bidder who would compete against lender at confirmation hearing); In re Montgomery Court Apartments, Ltd., 141 B.R. 324, 330 (Bankr. S.D. Ohio 1992) ("The Court

fails to see how [the creditor's] unhappiness with the Plan's terms can give rise to a finding of bad faith on the part of the Debtor under 11 U.S.C. § 1129(a)(3). Chapter 11 plans routinely alter the contractual rights of parties."); Zenith, 241 B.R. at 106 (fundamental fairness not offended by one group receiving better treatment than another under plan).

1. The Plan is the Result of a Good Faith Marketing Process and Arms'-Length Negotiations

45. The Plan is the result of extensive good-faith, arm's-length negotiations among the Debtors, the Creditors' Committee and the Committee of Lead Lenders and various other creditor constituencies, including the landlords of the Debtors' retail stores and counterparties to significant Executory Contracts and Unexpired Leases. Notwithstanding the allegations to the contrary set forth in the Charney Objection and specifically addressed in Part I.C.1 below, the Debtors proposed the Original Plan at the outset of these cases only after having conducted a robust marketing process and engaging in several weeks of intense prepetition negotiations with the Supporting Parties. The Debtors seek confirmation of the Plan now only after having conducted additional negotiations with the Committee of Lead Lenders and the Creditors' Committee to enhance the Original Plan, and having engaged in an additional post-petition marketing process. See Weinsten Decl., ¶ 73.

a. The Prepetition Plan Process

46. Specifically, after a thorough and in-depth analysis of all prepetition proposals and offers, and as a result of the global restructuring negotiations with the Committee of Lead Lenders and Standard General, on October 4, 2015, the Debtors entered into an agreement with the Committee of Lead Lenders and Standard General (in their respective capacities as Prepetition Secured Lenders and Holders of Prepetition Notes, the "Supporting

Parties") to effectuate a financial restructuring through these Chapter 11 Cases, and memorialized their agreement in the Restructuring Support Agreement.[30]

47. The Restructuring Support Agreement contemplated a restructuring of the Debtors through a chapter 11 process. It further provided that the Supporting Parties would commit to provide the requisite debtor-in-possession and exit financing to obtain approval of and consummate a chapter 11 plan. To that end, in connection with the Restructuring Support Agreement, the Supporting Parties agreed to provide the Debtors with a $90 million debtor-in-possession financing facility (the "DIP Credit Facility"), comprised of (i) $30 million in incremental loans and (ii) $60 million to refinance the Debtors' Prepetition ABL Facility. The Restructuring Support Agreement was accompanied by a chapter 11 plan[31] that contemplated the conversion of the DIP Credit Facility into an exit term loan facility upon the Debtors' exit from bankruptcy. The DIP Credit Facility required that the Debtors obtain confirmation of an acceptable chapter 11 plan by February 2, 2016, and to consummate that plan by April 5, 2016.

b. The Post-Bankruptcy Process

i. Negotiations with the Creditors' Committee and the Committee of Lead Lenders

48. Upon the Creditors' Committee's formation, the Debtors worked expeditiously to get the Creditors' Committee up to speed on the Debtors' businesses and these chapter 11 cases, as well as to place the Creditors' Committee in a position to make an informed assessment of the Original Plan. See Weinsten Decl., ¶ 75. The Debtors' management presented the Debtors' business plan in person with the Creditors' Committee and its advisors at the Debtors' Los Angeles headquarters, and the Debtors' and Creditors' Committee's advisors have

30 See Docket No. 22.

31 See Docket No. 21.

been in frequent contact throughout these cases, working cooperatively on the many motions brought by the Debtors in these cases and with respect to the negotiations of the Plan.

49. Over the course of these Chapter 11 Cases, the Debtors sought to improve the terms of the Original Plan and engaged the Creditors' Committee and the Committee of Lead Lenders in several additional weeks of negotiations, which entailed nearly daily communications and periodic meetings among the Debtors, the Committee of Lead Lenders and the Creditors' Committee, and the exchange of analyses on various matters. Id. As a result of the good faith efforts of the Debtors, the Creditors Committee and the Committee of Lead Lenders, these discussions culminated in a fully consensual Plan, containing material improvements to the recoveries of Holders of General Unsecured Claims as compared to the Original Plan. Id., ¶ 78. As discussed above, the Plan, as amended, now contemplates:

- An increase in GUC Support Payment. The Committee of Lead Lenders agreed to fund a 150% increase in the GUC Support Payment to $2.5 million, and Holders of Prepetition Notes will not receive any cash distributions on account of their $143 million deficiency claims;
- An increase in Litigation Trust Funding: The Committee of Lead Lenders agreed to double funding available to the Litigation Trust, from $250,000 to $500,000, and further agreed to permit 75% of the first $2.5 million in proceeds that the Litigation Trust generates to be distributed to Holders of General Unsecured Claims other than the holders of the noteholders' deficiency claim;
- An increase in Committed Exit Financing: The Plan now provides that as of the Effective Date the Debtors will have $80 million of exit capital; and
- The allowance of PIK Interest: The Committee of Lead Lenders has agreed to relax the terms of the credit agreement governing the New Exit Term Loan to permit the Debtors to elect to PIK Interest instead of in cash interest payments in the event that the Debtors' total cash falls below certain thresholds.

ii. The Marketing Process and the Revised Proposal

50. After having obtained agreement on the Original Plan with the Supporting Parties after intensive arm's-length negotiations and the Court's approval of the Disclosure Statement,

the Debtors resumed postpetition the proactive marketing process they had embarked on in the year leading up to the Petition Date. Weinsten Decl., ¶ 77.[32] During this postpetition process, the Debtors' Investment banker, Moelis & Company LLC ("Moelis"), contacted 59 potentially interested parties regarding an alternative restructuring or a strategic transaction. As set forth in additional detail in Part VI.A.1.a. below and in the Weinstein and Flachs Declarations, these efforts resulted in one bid for an alternative restructuring proposal (the "Original Proposal") that the Debtors ultimately rejected, followed by the revised Original Proposal (the "Revised Proposal") that has also been rejected. See Weinsten Decl., ¶¶ 78-79; Flachs Decl., ¶¶ 22-26.

51. The Debtors and their advisors, thoroughly evaluated the Revised Proposal. See Weinsten Decl., ¶ 79; Flachs Decl., ¶ 25. Importantly, the Revised Proposal was always conditioned on the consent of the Holders of Prepetition Notes (primarily held by the Committee of Lead Lenders). Flachs Decl., ¶ 28. That consent was not obtained, but the Debtors and their board of directors nonetheless analyzed the Proposal, including considering the merits of hypothetically implementing it non-consensually. Id.

52. After such evaluation, the flaws of the Revised Proposal were clear. The Revised Proposal offers lower liquidity and a more leveraged capital structure to the Debtors upon emergence from these chapter 11 cases than is expected under the Plan. In addition, the Revised Proposal poses significant risk with respect to the Debtors' ability to expeditiously exit these Cases because the Revised Proposal is conditioned upon consent of the Committee of Lead Lenders. Id., ¶¶ 27–28. At a minimum, the execution risk associated with the Proposal would have further exacerbated the uncertainty surrounding the Debtors' business, which, in turn, would

[32] At the November 19, 2015 hearing on the Disclosure Statement, and notwithstanding the restrictions set forth in the Restructuring Support Agreement, which limited the Debtors from seeking, soliciting, proposing or supporting an alternative transaction to the Plan (the "No Shop Provision"), the Supporting Parties formally waived the No Shop Provision to allow the Debtors to actively pursue alternatives to the Plan. See Flachs Decl., ¶ 12.

have had a negative impact on (a) the Debtors' execution of their turnaround business plan, (b) their relationships with customers, employees, landlords and vendors, (c) their ability to develop new and advantageous relationships with certain current and prospective vendors and (d) their ability to retain talented young professionals, all of which impacts the Debtors' ability to maintain sufficient liquidity to operate their business going forward. See Weinsten Decl., ¶ 78.

53. Simultaneously during this market testing period, the Debtors sought to improve the terms of the Original Plan and engaged the Creditors' Committee and the Committee of Lead Lenders in several additional weeks of negotiations. These discussions culminated in a fully consensual Plan, containing material improvements to the recoveries of Holders of General Unsecured Claims as compared to the Original Plan. See Weinsten Decl., ¶ 78; Flachs Decl., ¶ 35.

c. The Plan Has Strong Support Among Creditor Constituencies

54. The Plan is overwhelmingly supported by Holders of Prepetition Note Secured Claims against each Debtor (i.e., 84.85% in number and 99.99% in amount) and is supported by Holders of General Unsecured Claims against each Debtor (i.e., 57.89% to 85.29% in number and 98.70% to 99.99% in amount),[33] as well as by the Creditors' Committee. The support for the Plan from nearly all of the Debtors' primary stakeholder constituencies, as evidenced by the voting results and the fact that only seven parties filed formal objections to the Plan,[34] further evidences the Debtors' honesty and good faith in proposing the Plan, and the totality of the circumstances surrounding its formulation clearly promotes the rehabilitative objectives and purposes of the Bankruptcy Code.

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[33] See Voting Decl. ¶ 55.

[34] See Part VI.

55. Finally, each of the Creditors' Committee and the Committee of Lead Lenders, along with their respective professionals, performed an extensive independent review and analysis of the Plan and concluded that the Plan is in the best interests of each of their respective constituencies. The support of the Creditors' Committee and the Committee of Lead Lenders demonstrates the Plan's overall fairness. In addition, the Debtors' steadfast urging and continuous mediation of discussions among the Creditors' Committee and the Committee of Lead Lenders further demonstrates the Debtors' good faith in developing the Plan and forging consensus around it. Finally, the Plan contains no provision that is contrary to state or other laws nor is there any indication the Debtors lack the ability to consummate the Plan.

56. Accordingly, for the foregoing reasons, the Debtors have satisfied the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4) — All Payments to Be Made By the Debtors in Connection With These Cases Are Subject to the Approval of the Court

57. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan for services or for costs and expenses incurred in connection with the case or the plan, be approved by the Court as reasonable. See 11 U.S.C. § 1129(a)(4).

58. Pursuant to the Court's *Order Authorizing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* (Docket No. 327) this Court has authorized and approved on an interim basis the payment of certain fees and expenses of Professionals retained in these Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of Professionals through the Effective Date, remain subject to final review for reasonableness by the Court. Section II.A.1 of the Plan provides for the payment only of Allowed Administrative Claims, and makes all payments for Professionals' Fee Claims for

services rendered prior to the Effective Date subject to Court approval under the standards established by the Bankruptcy Code, including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable, by requiring Professionals to file final fee applications with the Court. In addition, Section X 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. Finally, the fees and expenses payable to the Voting Agent for its services as the Debtors' voting and solicitation agent are set by the parties' contract, which previously was approved by the Court.

59. The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors for the Professionals retained in these chapter 11 cases satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. See Lisanti v. Lubetkin (In re Lisanti Foods, Inc.), 329 B.R. 491, 503 (D.N.J. 2005) ("Pursuant to § 1129(a)(4), a Plan should not be confirmed unless fees and expenses related to the Plan have been approved, or are subject to the approval, of the Bankruptcy Court"); In re Crdentia Corp., No. 10-10926 (BLS), 2010 WL 3313383, at *8 (Bankr. D. Del. May 26, 2010) (holding that plan complied with Section 1129(a)(4) where all final fees and expenses payable to professionals remained subject to final review by the bankruptcy court); In re Stations Holdings Co., No. 02-10882, 2002 WL 31947022, *3 (Bankr. D. Del. Sep. 30, 2002) (stating that section 1129(a)(4) is satisfied if fees, costs, and expenses are subject to final court approval).

60. Accordingly, the Debtors believe that all payments to be made in connection with these cases are appropriate and should be authorized.

E. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Postconfirmation Management and Insiders

61. Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the proponent discloses the identity and affiliations of the proposed officers and directors of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the nature of any compensation proposed to be paid to such insider. See 11 U.S.C. § 1129(a)(5). In addition, under section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment or continuation in office of such officers and directors must be consistent with the interests of creditors, equity security holders and public policy. See id § 1129(a)(5); see In re G-I Holdings, Inc., No. 09-CV-05031 (GEB), 2009 U.S. Dist. LEXIS 108339, at *123 (D.N.J. Nov. 12, 2009) (section 1129(a)(5) of the Bankruptcy Code is satisfied when the plan discloses the debtor's existing officers and directors who will continue to serve in office after plan confirmation); In re Aleris Int'l, Inc., No. 09-10478 (BLS), 2010 Bankr. LEXIS 2997, at *73 (Bankr. D. Del. May 3, 2010) (same); see also Texaco, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) (same); Toy & Sports Warehouse, 37 B.R. at 149-50 (continuation of existing, experienced management is consistent with section 1129(a)(5) of the Bankruptcy Code).

62. The Debtors have previously disclosed the identities and the affiliations of four of the seven prospective members of the New Board of Reorganized American Apparel, and the New Board will select the directors of the other Reorganized Debtors. See Plan, Section III.G.2 & Exhibit B. One of these directors currently serves as a member of American Apparel's existing board of directors and will continue to serve as a director on the New Board. The other three identified directors are affiliated with Monarch Alternative Capital LP, Pentwater Capital Management LP, and Coliseum Capital Management, LLC. The remaining members of

the New Board will be selected in accordance with the Plan and the Governance Term Sheet and will be identified prior to the Confirmation Hearing as required by section 1129(a)(5) of the Bankruptcy Code to the extent known and determined.

63. Certain existing officers of American Apparel (who are "insiders" as such term is defined in section 101(31) of the Bankruptcy Code) will continue to serve as the officers of Reorganized American Apparel (collectively, the "Existing Officers"). The Existing Officers shall include Paula Schneider, Hassan Natha, Chelsea Grayson and other existing officers of the Debtors to the extent such officers are serving in such capacities on the Effective Date. However, it cannot be assured with certainty which of the Existing Officers will elect to remain employed by Reorganized American Apparel on the Effective Date. The prior compensation of such management, as well as that of the Debtors' current directors, has been disclosed by the Debtors in their previous filings with the Securities and Exchange Commission (the "SEC") (including American Apparel's proxy statement for the 2015 Annual Meeting of Stockholders, filed with the SEC on May 29, 2015), thereby satisfying the compensation disclosure requirements of section 1129(a)(5) of the Bankruptcy Code.

64. The appointment to or continuance in office of the officers and directors provided for under the Plan or disclosed herein is consistent with the interests of creditors and interest holders and with public policy. First, as established pursuant to the above-described disclosures, the prospective officers and directors of Reorganized American Apparel are qualified and experienced. Second, such directors and officers have been chosen or have had their continued employment consented to by a majority of Reorganized American Apparel's interest holders (i.e., the Requisite Supporting Parties). Finally, no party in interest has objected to the manner of selection of the board of directors or the officers of the Reorganized Debtors.

65. Based upon the foregoing, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval

66. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). In these cases, section 1129(a)(6) of the Bankruptcy Code is inapplicable because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation.

G. Section 1129(a)(7) — The Plan Is In the Best Interests of Creditors

67. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests under a plan of reorganization, each holder of a claim or interest (1) has accepted the plan or (2) will receive or retain property of a value, as of the effective date of the plan, not less than what such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on that date. See 11 U.S.C. § 1129(a)(7). Referred to as the "best interests of creditors" test, section 1129(a)(7) of the Bankruptcy Code focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship, 526 U.S. 434, 442 n.13 (1999) (stating that the "'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.").

68. 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 he would receive if the debtor

were liquidated." Drexel, 138 B.R at 761 (citations omitted); see also In re Lason, Inc., 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.'"). In considering whether a plan is in the "best interests" of creditors, a court need not consider any alternative to the plan other than the dividend projected in a liquidation of all the debtor's assets under chapter 7 of the Bankruptcy Code. See, e.g., In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 290 (Bankr. S.D.N.Y. 1990) (describing section 1129(a)(7) analysis as considering "whether the dividend payable to [a] claim under a plan equals or exceeds the dividends payable through a Chapter 7 liquidation.").

69. Under the Plan, Classes 3A through 3F, 4A through 4F, 6A through 6F and 8A are Impaired; consequently, the "best interests" test is applicable only to Holders of Claims and Interests in those Classes that do not vote to accept the Plan. The test requires that each holder of a Claim or Interest in these Classes must either accept the Plan or receive or retain under the Plan property having a present value, as of the Effective Date, not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

70. As set forth in the Disclosure Statement (including the Liquidation Analysis attached as Exhibit 2 thereto (the "Liquidation Analysis")), the declaration of Mark Weinsten and as will be demonstrated at the Confirmation Hearing, the "best interests" test is satisfied in these Chapter 11 Cases with respect to each non-accepting, Impaired Claim or Interest.

71. The Liquidation Analysis demonstrates that a chapter 7 liquidation of the Debtors' Estates would result in (a) a substantial diminution in the value of relative recoveries to be realized by holders of Claims in Classes 3A through 3F and 4A through 4F and (b) no greater value to be received by the Holders of statutorily subordinated Claims in Classes 6A through 6F or APP Interests in Class 8A,[35] as compared to the proposed distributions under the Plan.[36] In particular, Holders of General Unsecured Claims would receive no recovery in a liquidation scenario.[37]

72. Moreover, the liquidation value of the Debtors' assets under chapter 7 of the Bankruptcy Code would be reduced substantially by, among other things: (a) the increased costs and expenses arising from fees payable to a chapter 7 trustee and professional advisors to the trustee; (b) the erosion in value of assets in a chapter 7 case in the context of the rapid liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail; (c) the adverse effects on the Debtors' businesses as a result of the likely departure of key employees; (d) the reduction of value associated with a chapter 7 trustee's administration of the Debtors' businesses (including, but not limited to, asset disposition expenses, applicable taxes, litigation costs and Claims arising from the operation of the Debtors during the pendency of the chapter 7 cases); (e) the likely delay in distributions to Holders of Claims and Interests in a liquidation scenario; (f) certain Priority Claims triggered by the liquidation itself, such as Claims for severance pay and accelerated Priority Tax Claims that otherwise would be paid in the ordinary

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35 As set forth in the Liquidation Analysis, upon a liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code, because the liquidation value of the Debtors' assets would be insufficient to satisfy unsecured Claims, there would be no value remaining to be distributed to Classes of Claims and Interests structurally subordinated to such Claims. See Liquidation Analysis at 6.

36 See Liquidation Analysis, at 6.

37 Id.

course of business; and (g) a significant increase in unsecured Claims, such as rejection damage Claims, potential litigation claims, and tax and other governmental Claims.

73. Based on the foregoing analysis, no dissenting Holder of a Claim or Interest in an Impaired Class will receive less under the Plan than it would receive in a liquidation of the Debtors' assets. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

H. Section 1129(a)(8) — The Plan Has Been Accepted By the Requisite Classes of Creditors and Interest Holders

74. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan has either accepted the plan or is not impaired under the plan. See 11 U.S.C. § 1129(a)(8). All Unimpaired Classes of Claims and Interests under the Plan (i.e., Classes 1A through 1F, 2A through 2F, 5A, 7A through 7F and 9B through 9F) are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code[38] and, thus, have not voted on the Plan. As set forth in the Voting Declaration, Classes 3A through 3F and Classes 4A through 4F have accepted the Plan, and with respect to Classes 3A through 3F and Classes 4D through 4F, overwhelmingly so.[39] Accordingly, with respect to the Classes of Claims and Interests described above, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied.

75. However, because the Debtors do not currently anticipate that Holders of Impaired Claims and/or Interests in Classes 6A through 6F and 8A (collectively, the "Deemed Rejecting Classes") will receive any distribution pursuant to the Plan, such Holders have been

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[38] 11 U.S.C. § 1126(f); see Toy & Sports Warehouse, 37 B.R. at 150 (unimpaired classes of claims deemed to have accepted the plan pursuant to section 1126(f) of the Bankruptcy Code).

[39] See Voting Decl., ¶ 55.

deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code.[40] Accordingly, the requirements of section 1129(a)(8) of the Bankruptcy Code are not met with respect to the Deemed Rejecting Classes.

76. Nevertheless, even where certain impaired classes of claims or interests do not accept a plan, and therefore the requirements of section 1129(a)(8) of the Bankruptcy Code are not satisfied, the plan nevertheless may be confirmed over such nonacceptance pursuant to the "cramdown" provisions of section 1129(b)(1) of the Bankruptcy Code. As a result, the condition precedent to confirmation contained in section 1129(a)(8) is the only condition of section 1129(a) that is not necessary for confirmation of a plan of reorganization. As described in Part I.Q. below, the Debtors have met the "cramdown" requirements under section 1129(b) of the Bankruptcy Code necessary to obtain Confirmation of the Plan, notwithstanding the deemed rejection of the Deemed Rejecting Classes.

I. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims

77. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments, except to the extent that the holder of such a priority claim agrees to different treatment. See 11 U.S.C. § 1129(a)(9). In particular:

- Section 1129(a)(9)(A) of the Bankruptcy Code requires that holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code (i.e., administrative claims allowed under section 503(b) of the Bankruptcy Code) must receive cash equal to the allowed amount of such claims on the effective date of the plan;

- Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (1) if the class has accepted the

[40] See Plan, Section II.B.

plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan;

- Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (i.e., priority tax claims) must receive regular installment payments in cash:
    - of a total value, as of the effective date of the plan, equal to the allowed amount of the claim;
    - over a period ending not later than five years after the date the order for relief was entered in the chapter 11 case; and
    - in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code); and
- Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.

78. The Plan satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.[41] *First*, with respect to claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code:

- Subject to certain bar date provisions and except as otherwise agreed by the Holder of an Administrative Claim and the applicable Reorganized Debtor, the Plan provides that each Holder of an Allowed Administrative Claim will receive Cash equal to the amount of such Allowed Administrative Claim on either (i) the latest to occur of (A) the Effective Date (or as soon as thereafter as practicable), (B) the date such Claim becomes an Allowed Administrative Claim and (C) such other date as may be agreed upon by the Reorganized Debtors and the Holder of such Claim or (ii) on such other date as the Court may order (Plan, Section II.A.1.a); and

[41] In accordance with Section II.A.1.d of the Plan, on the Effective Date, all DIP Expenses shall be paid in Cash and the remaining DIP Claims will be converted into loans under the New Exit Facility Term Loan pursuant to the terms of the New Exit Financing Agreement. In addition, all obligations and claims in respect of or arising under the Prepetition ABL Facility shall be paid in full, in Cash, on the Effective Date to the extent not previously paid pursuant to the DIP Orders. See Plan, Section II.A.1.e.

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- Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business — including Administrative Claims arising from or with respect to the sale of goods or provision of services on or after the Petition Date, Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), Administrative Claims arising under Executory Contracts and Unexpired Leases and all Intercompany Administrative Claims — will be paid by the applicable Reorganized Debtor pursuant to the terms and conditions of the particular transactions giving rise to such Administrative Claims, without any further action by the Holders of such Administrative Claims or further approval from the Court (Plan, Section II.A.l.c).

79. *Second*, with respect to Priority Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Priority Claim against the Debtors, unless otherwise agreed to by the Debtors and the Holder of an Allowed Priority Claim against a Debtor, will receive Cash in the amount of such Allowed Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code. (Plan, Section II.C.1).

80. *Third*, with respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that, unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtors (with the consent of the Requisite Supporting Parties, such consent not to be unreasonably withheld, conditioned or delayed), each Holder of an Allowed Priority Tax Claim will receive, at the option of the Debtors, in full satisfaction of its Priority Tax Claim that is due and payable on or before the Effective Date, on account of and in full and complete settlement, release and discharge of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim or (ii) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the

Bankruptcy Code.[42] Such treatment of Priority Tax Claims is as favorable as the treatment accorded to the most favored non-priority unsecured Claim under the Plan — i.e., Classes 4A through 4F Claims (General Unsecured Claims) — which is estimated to receive an aggregate recovery of 6% on account of the estimated allowed amount of such Claims on the Effective Date.[43]

81. Accordingly, in light of the foregoing, the Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

J. Section 1129(a)(10) — The Plan Has Been Accepted By at Least One Impaired, Non-Insider Class at Each Debtor

82. Section 1129(a)(10) of the Bankruptcy Code requires that the Plan be accepted by at least one class of claims that is impaired under the Plan, determined without including the acceptance of the plan by any insider. See 11 U.S.C. § 1129(a)(10). In this case, given the non-consolidated nature of the Plan, section 1129(a)(10) of the Bankruptcy Code is satisfied with respect to each individual Debtor.

83. As set forth in the Voting Declaration, the Debtors have satisfied this requirement because Impaired Classes 3A through 3F and Classes 4A through 4F have voted to accept the Plan after excluding the votes of any insiders.[44] The Holders of Prepetition Note Secured Claims voted to approve the Plan by 99.99% in amount and 84.85% in number and Holders of General Unsecured Claims voted to approve the Plan by 98.70% to 99.99% in amount

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42 See Plan, Section II.A.2.a. Allowed Priority Tax Claims that are not due and payable on or before the Effective Date will be paid in the ordinary course of business by the Reorganized Debtors as they become due. Id. In the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full. Id.

43 See Plan, Section II.C.4.

44 See Voting Decl., ¶ 55.

and 57.89% to 85.29% in number. Thus, the Debtors have complied with section 1129(a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11) — The Plan Is Feasible

84. Under section 1129(a)(11) of the Bankruptcy Code, a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). One commentator has stated that this section "requires courts to scrutinize carefully the plan to determine whether it offers a reasonable prospect of success and is workable." 7 COLLIER ON BANKRUPTCY ¶ 1129.03[11] (Henry J. Sommer & Alan N. Resnick eds. 16th ed. rev. 2012); see also In re Indianapolis Downs, LLC, 486 B.R. 286, 298 (Bankr. D. Del. 2013) (same); see also In re S. Canaan Cellular Invs., 427 B.R. 44, 61 (Bankr. E.D. Pa. 2010); Leslie Fay, 207 B.R. at 788 (same).

85. Section 1129(a)(11) of the Bankruptcy Code, however, does not require a guarantee of the plan's success; rather, the proper standard is whether the plan offers a "reasonable prospect" of success. See, e.g., In re Indianapolis Downs, LLC, 486 B.R. 286, 298 (Bankr. D. Del. 2013) (finding that Debtors "carried their burden regarding feasibility" where the Debtors had taken steps to give that the court the "confidence that there is a reasonable assurance of success"); Kane, 843 F.2d at 649 ("As the Bankruptcy Court correctly stated, the feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.").

86. Courts have identified a number of factors relevant to evaluating the feasibility of a proposed plan of reorganization, including (1) the adequacy of the capital structure; (2) the earning power of the business; (3) prevailing macroeconomic conditions;

(4) the ability of management; (5) the probability of the continuation of the same management; (6) the availability of prospective credit, both capital and trade; (7) the adequacy of funds for equipment replacements; (8) the provisions for adequate working capital; and (9) any other matter bearing on the successful operation of the business to enable performance with the provisions of the plan. See, e.g., In re Resorts Int'l, 145 B.R. 412, 479 (Bankr. D.N.J. 1990); see also In re Aleris Int'l, Inc., 2010 Bankr. LEXIS 2997, *87 (Bankr. D. Del. May 3, 2010) (discussing some of the identified factors); In re Flintkote Co., 486 B.R. 99, 139 (Bankr. D. Del. 2012) (same). The foregoing list is neither exhaustive nor exclusive. In re W.R. Grace & Co., No. 11-199, 2012 U.S. Dist. LEXIS 80461, at *170 (D. Del. June 11, 2012) ("The bankruptcy court can consider a wide array of factors in determining a plan's feasibility, including assessment of the debtor's capital structure, the earning power of the business, economic conditions, and the ability of the corporation's management."); Drexel, 138 B.R. at 763 (noting the disparity in factors relied upon by various courts).

87. As described below and in the Disclosure Statement, the declaration of Mark Weinsten and as will be demonstrated at the Confirmation Hearing, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code. For purposes of determining whether the Plan satisfies the feasibility standards articulated above, the Debtors have analyzed their ability to meet their obligations under the Plan and with respect to future operations. The consolidated financial projections (attached as Exhibit 3 to the Disclosure Statement (collectively, the "Financial Projections")) project the Reorganized Debtors' operating profit, free cash flow and certain other items through fiscal year 2020, demonstrating that the Reorganized Debtors will be financially viable entities on a prospective basis and that the Plan is therefore feasible. See, e.g., In re M&S Assocs., Ltd., 138 B.R. 845, 852 (Bankr. W.D. Tex. 1992)

(adopting "time period contemplated by the plan" as the relevant time horizon for feasibility determination); Johns-Manville, 68 B.R. at 635 (approving a plan where it was demonstrated that upon confirmation it would "be able to meet its cash distribution obligations").

88. The Financial Projections are based on the Debtors' five-year strategic business plan (the "Business Plan"), which was formulated by the Debtors and refined and validated with the assistance of FTI Consulting, Inc. ("FTI"). See Weinsten Decl. ¶ 100. Since early 2015, FTI has been assisting the Debtors with the process of developing and verifying the Business Plan. See id. In addition, in connection with the Debtors' restructuring negotiations (including the formulation of the Plan), both the Business Plan and the Financial Projections were distributed to the Creditors' Committee, the Committee of Lead Lenders and Standard General, all of whom were subject to non-disclosure agreements.

89. The Financial Projections indicate that, after giving effect to Confirmation and consummating the Restructuring Transactions contemplated by the Plan (and subject to the reasonable limitations and assumptions described in the Financial Projections and elsewhere in the Disclosure Statement), Reorganized American Apparel and the other Reorganized Debtors will have and maintain sufficient liquidity and capital resources to meet their future financial obligations during the projection period. In particular, the $166 million cash, cash equivalents and other current assets projected to be on hand as of April 1, 2016 (see Financial Projections at 5) – including from the $80 million in exit financing provided by the Supporting Parties in accordance with the terms of the Plan and the Additional New Capital Commitment – are projected to provide sufficient sources of liquidity and capital for the Reorganized Debtors to meet their financial obligations under the Plan and to fund ongoing business operations. See Weinsten Decl, ¶ 103. In addition, the credit agreement governing the New Exit Term Loan will

be amended to provide the Debtors with further flexibility to elect to pay interest in kind instead of in cash anytime during the first two years of the loan, provided that certain criteria are met. This change will strengthen the feasibility of the Debtors' business plan by ensuring it will have sufficient cash on hand during the critical investment and growth phases of the plan. Id. Moreover, after giving effect to the Restructuring Transactions, Reorganized American Apparel will be capitalized with assets sufficient to satisfy its operating costs and other liabilities.[45]

90. Finally, the Plan's feasibility is underscored by the support of the Creditors' Committee and the Committee of Lead Lenders. The Committee of Lead Lenders has vested interests in ensuring the Plan's success because it has agreed, pursuant to the Restructuring Support Agreement, to receive, and will receive under the Plan, a substantial portion of their recoveries in the form of the Reorganized American Apparel Equity Interests (subject to dilution by any Management Incentive Plan Interests). Therefore, the support of the Committee of Lead Lenders, all the members of which will directly benefit by the Reorganized Debtors emerging from these cases as healthy entities that can meet their obligations to creditors, further supports the finding that Plan is feasible.

91. In sum, the Financial Projections demonstrate that: (a) the Plan provides a feasible means of completing a reorganization of the Debtors' businesses; (b) subject to the risks described herein and in the Disclosure Statement,[46] there is reasonable assurance that Confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of the Reorganized Debtors; and (c) Reorganized American Apparel will have sufficient assets to satisfy its known and reasonably projected liabilities. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

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45 See Disclosure Statement, 47.

46 See, e.g., Disclosure Statement, at 64-78.

L. Section 1129(a)(12) — The Plan Provides for the Payment of Fees

92. Section 1129(a)(12) of the Bankruptcy Code requires that, as a condition precedent to the confirmation of a plan of reorganization, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with section 1129(a)(12) by providing that on a prospective basis all fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.[47]

M. Section 1129(a)(13) — The Plan Provides for the Debtors' Obligations to Pay Retiree Benefits

93. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code 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. See 11 U.S.C. § 1129(a)(13). The Plan provides that as of the Effective Date, the Reorganized Debtors will have the authority to (i) maintain, reinstate, amend or revise existing retirement and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement and applicable non-bankruptcy law and (ii) enter into new employment, retirement

47 See Plan, Section II.A.1.b.

and other agreements for active and retired employees.[48] Therefore, to the extent it may be deemed applicable, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

N. Section 1129(a)(14) — The Plan Does Not Provide for the Payment of Any Domestic Support Obligations

94. Section 1129(a)(14) of the Bankruptcy Code provides that, if a chapter 11 debtor is subject to a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must pay all amounts related to any such obligation accruing postpetition under such order or statute. See 11 U.S.C. § 1129(a)(14). In these Chapter 11 Cases, section 1129(a)(14) of the Bankruptcy Code is inapplicable because none of the Debtors are required to pay any domestic support obligations pursuant to either order or statute. See, e.g., 7 COLLIER ON BANKRUPTCY ¶ 1129.03[14] n. 233 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. rev. 2012) (noting that "[a]lthough [section 1129(a)(14) of the Bankruptcy Code] does not use the term 'individual debtor,' the nature of domestic support obligations are such that it will be the rare case when a non-individual (such as a corporation or partnership) will be liable for such a debt.").

O. Section 1129(a)(15) — The Plan Does Not Provide for the Payment of Five Years' Worth of Disposable Income to Unsecured Creditors

95. Section 1129(a)(15) of the Bankruptcy Code requires, in chapter 11 cases involving individual debtors, either that the individual chapter 11 debtor pay all unsecured claims in full or that the debtor's plan devote an amount equal to five years' worth of the debtor's disposable income to unsecured creditors. See 11 U.S.C. § 1129(a)(15). In these Chapter 11 Cases, section 1129(a)(15) of the Bankruptcy Code is not applicable because none of the Debtors are individual debtors.

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[48] See Plan, Section III.G.3.

P. Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law

96. Section 1129(a)(16) of the Bankruptcy Code provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005). Although the Debtors – none of which are nonprofit entities – do not believe that any transfers of property under the Plan will be made by a nonprofit corporation or trust, to the extent that any such transfers are contemplated by the Plan, such transfers will be made in accordance with applicable non-bankruptcy law. Accordingly, the Plan satisfies the requirements of section 1129(a)(16) of the Bankruptcy Code.

Q. Section 1129(b) — The Plan Satisfies the "Cramdown" Requirements for Confirmation

97. Because the Debtors do not currently anticipate that Holders of Impaired Claims and/or Interests in the Deemed Rejecting Classes (i.e., Classes 6A through 6F (Section 510(b) Claims) and Class 8A (APP Interests)) will receive any distribution pursuant to the Plan, such Holders have been deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code.[49] Thus, to confirm the Plan, the Debtors are required to satisfy the

[49] See Plan, Section II.C.

requirements of section 1129(b) of the Bankruptcy Code with respect to the Holders of Claims and Interests in the Deemed Rejecting Classes.[50]

98. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as a "cramdown") for confirmation of a plan of reorganization despite the rejection of the plan by a class or classes of impaired claims or equity interests. Specifically, section 1129(b) of the Bankruptcy Code provides that, if all the requirements of section 1129(a) of the Bankruptcy Code are satisfied, other than the requirement of acceptance by all impaired classes under section 1129(a)(8) of the Bankruptcy Code, a plan nevertheless may be confirmed so long as the plan "does not discriminate unfairly" and is "fair and equitable" with respect to impaired, non-consenting classes. 11 U.S.C. § 1129(b)(1).

1. The Plan Does Not Discriminate Unfairly

99. Section 1129(b)(1) of the Bankruptcy Code does not prohibit discrimination between classes under a plan of reorganization; it prohibits only discrimination that is "unfair." Generally speaking, section 1129(b)(1) of the Bankruptcy Code is intended to "ensure[] that a dissenting class will receive relative value equal to the value given to all other similarly situated classes. Thus a plan proponent may not segregate two similar claims or groups of claims into separate classes and provide disparate treatment for those classes." Johns-Manville, 68 B.R. at 636; see also In re Armstrong World Indus., Inc., 348 B.R. 111, 121 (D. Del. 2006) (citing Johns-Manville and stating that the "hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination"); In re Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990) (same); Zenith, 241 B.R. at 105

[50] See In re Vita Corp., 358 B.R. 749, 751 (Bankr. C.D. Ill. 2007) (collecting cases holding that a class's failure to vote does not result in deemed acceptance). But see In re Northwest Airlines Corp., No. 05-17930 (ALG) (Bankr. S.D.N.Y. May 18, 2007); Adelphia, 368 B.R. at 261.

(explaining that "[w]here a class of creditors or shareholders has not accepted a plan of reorganization, the court shall nonetheless confirm the plan if it 'does not discriminate unfairly and is fair and equitable'"); In re TCI 2 Holdings, LLC, 428 B.R. 117, 157 (Bankr. D.N.J. 2010) (citing Armstrong World Indus., 348 B.R. at 121).

100. Under the foregoing standards, the Plan does not "discriminate unfairly" against the Deemed Rejecting Classes. Subordinated Section 510(b) Claims in Classes 6A through 6F are legally distinct from (a) every other Class of Claims against the applicable Debtor by virtue of their statutory subordination pursuant to section 510(b) of the Bankruptcy Code. With respect to Class 8A Interests, such Interests are the only Interests against American Apparel, Inc., and, therefore, there are no similar Classes of Interests against which to compare treatments under the Plan. Accordingly, the Plan does not "discriminate unfairly" against the Deemed Rejecting Classes.

2. The Plan is Fair and Equitable

101. Section 1129(b)(2)(B) of the Bankruptcy Code states that a plan is "fair and equitable" with respect to a class of unsecured claims if "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." 11 U.S.C. § 1129(b)(2)(B). Section 1129(b)(2)(C) further provides that a plan is fair and equitable with respect to a class of interests if the plan 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." 11 U.S.C. § 1129(b)(2)(C). This latter standard necessarily is satisfied with respect to any impaired dissenting class to the extent that there is no class of claims junior to such dissenting class. See Westpointe, L.P. v. Franke (In re Westpointe), 241 F.3d 1005, 1007 (8th Cir. 2001) ("[A] plan is fair and equitable as long as the holder of any interest junior to the dissenting impaired

class does not receive any property under the reorganization plan, and because there are no interests junior to the [impaired class], the confirmed plan satisfies this requirement."); Toy & Sports Warehouse, 37 B.R. at 153 (finding that plan was fair and equitable with respect to class of interests where "no interests junior to the shareholders are involved under the plan"); In re PWS Holding Corp., 228 F.3d 224, 237 (3d Cir. 2000) ("Section 1129(b)(2) of the Bankruptcy Code requires that creditors be paid in full before holders of equity receive any distribution.").

102. The Plan meets the standards of section 1129(b)(2) of the Bankruptcy Code with respect to the Deemed Rejecting Classes. *First*, the Plan satisfies the "fair and equitable" requirements of section 1129(b)(2)(B) of the Bankruptcy Code with respect to Section 510(b) Class 6A through 6F Claims because no Claim or Interest junior in priority to the Claims in Class 6 will receive or retain any property under the Plan on account of such Claims or Interests.[51] *Second*, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code with respect to Class 8A Interests because no Claim or Interest that is junior to such Interests will receive or retain any property under the Plan on account of such junior Claim or Interest. In addition, no Class of Claims or Interests senior to the Deemed Rejecting Classes are receiving more than full payment on account of their Claims or Interests in such Class.[52]

103. In addition, the Plan does not violate the absolute priority rule by reinstating Interests in Classes 9B through 9F solely for the purpose of preserving the Debtors' corporate structure. Courts have recognized that reinstatement of intercompany interests simply "constitutes a device utilized to allow the Debtors to maintain their organizational structure and

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51 See Plan, Section II.C; Disclosure Statement, at 6 (estimating that Classes junior to Classes 4 and 6 will receive no recovery pursuant to the Plan).

52 See e.g., Disclosure Statement, at 6.

avoid the unnecessary cost of having to reconstitute that structure." See In re Ion Media Networks, Inc., 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) ("This technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan."); U.S. Bank N.A. v. Wilmington Sav. Fund Soc'y (In re MPM Silicones, LLC), No. 14 CV 7471 (VB), 2015 U.S. Dist. LEXIS 66420, at *24 n.8 (S.D.N.Y. May 4, 2015) (citing Ion Media Networks); see also In re Pac. Ethanol Holding Co. LLC, No. 09-11713 (KG), 2010 Bankr. LEXIS 5249, at *28 (U.S. Bankr. D. Del. June 8, 2010) (finding plan that preserved the corporate structure for purposes of distributing equity interests in the reorganized debtors to be fair and equitable).

104. Accordingly, the requirements of section 1129(b) are satisfied with respect to the Deemed Rejecting Classes.

R. Section 1129(c) — The Plan is the Only Plan Filed in These Chapter 11 Cases

105. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan. The Plan is the only plan that has been filed in the Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

S. Section 1129(d) — The Principal Purpose of the Plan is Not the Avoidance of Taxes or the Application of Section 5 of the Securities Act

106. Section 1129(d) of the Bankruptcy Code provides that on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or of the application of section 5 of the Securities Act. No party in interest, including but not limited to any governmental unit, has

requested that the Bankruptcy Court deny Confirmation of the Plan on 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, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

II. THE PLAN'S RELEASE, EXCULPATION AND INJUNCTION PROVISIONS ARE APPROPRIATE AND SHOULD BE APPROVED

A. The Plan's Release, Exculpation and Injunction Provisions Should be Approved.

107. Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). In accordance with section 1123(b)(6), the Plan provides for (a) a release by the Debtors and Reorganized Debtors of the Released Parties[53] (Plan, Section IX.E.1) (the "Debtor Release"); (b) a release by certain Holders of Claims and Interests of the Debtors, the Reorganized Debtors and the Released Parties (Plan, Section IX.E.2) (the "Third Party Release" and, together with the Debtor Release, the "Releases"); (c) exculpation of the Debtors, the Reorganized Debtors and the Released Parties (Plan, Section IX.D) (the "Exculpation"); and (d) an injunction provision that implements the Debtor Release, the Third Party Release, the Exculpation and the discharge provisions of the Plan (Plan, Section

[53] The "Released Parties" means, collectively and individually, (i) the Debtors, (ii) the Creditors' Committee, (iii) the members of the Creditors' Committee, (iv) the Indenture Trustee, (v) the Prepetition Agent, (vi) the Supporting Parties, (vii) the DIP Agent, (viii) the DIP Lenders and (ix) the Representatives of each of the parties enumerated in the preceding clauses (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) (solely in their capacities as such); provided that any Excluded Party, any Entity that objects to Confirmation of, or votes to reject, the Plan (except the Creditors' Committee or any of its members, solely in their capacity as such), and any of their respective Representatives, in each case, shall not be a Released Party. See Plan, Section I.124.

"Representatives" means, with respect to any Entity, any successor, predecessor, officer, director, partner, limited partner, general partner, shareholder, manager, management company, investment manager, affiliate, employee, agent, attorney, advisor, investment banker, financial advisor, accountant or other Professional of such Entity or any of the foregoing and any committee of which such Entity is a member, in each case, in such capacity, serving on or after the Petition Date; provided that Representatives do not include any Excluded Party. See Plan, Section I. 127.

IX.C) (the "Injunction"). Certain of the objections to the approval of confirmation of the Plan, including the Charney Objection and the U.S. Trustee Objection, contest the scope of the Releases, the Exculpation and/or the Injunction.

108. These provisions are essential components of the Plan and fundamental conditions to the Supporting Parties' support of the Plan in accordance with the Restructuring Support Agreement. None of the stakeholders would have participated in the restructuring negotiations or made the compromises that led to the Plan absent the protection of the Exculpation, the Debtor Release, Third Party Release and the Injunction.

109. Further, the Releases—each of which are subject to the occurrence of the Effective Date—are *consensual* and, in any event, represent an integral part of the Plan and provide appropriate levels of protection to parties whose participation in the Debtors' restructuring process was critical. Moreover, the scope of the Releases is narrowly tailored, and is appropriately limited to the Debtors and various aspects of the chapter 11 proceedings and related transactions, and are subject to the standard exclusion for fraud, gross negligence and willful misconduct. Accordingly, the Releases represent the valid exercise of the Debtors' business judgment and are permissible under section 1123(b)(6) of the Bankruptcy Code. For the forgoing reasons, the Court should approve the Releases.

110. In evaluating releases, courts distinguish between the debtor's release of non-debtors and third parties' release of non-debtors. See In re Wash. Mut., Inc., 442 B.R. 314, 364 (Bankr. D. Del. 2011) (citing In re Exide Techs., 303 B.R. 48, 71-74 (Bankr. D. Del. 2003)). With respect to a debtor's release of a non-debtor, courts consider the five "Zenith factors":

(1) an identity of interest between the debtor and the third party, such that a suit against the third party is, in essence, a suit against the debtor or will deplete assets of the estate;

(2) substantial contribution by the third party to the plan;

(3) the essential nature of the release to the debtor's plan;

(4) an agreement by a substantial majority of creditors to support the plan and the release; and

(5) provision in the plan for payment of all or substantially all of the claims of the creditors and interest holders under the plan.

In re Zenith Elecs. Corp., 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing Master Mortgage Inv. Fund, Inc., 168 B.R. 930 (Bankr. W.D. Mo. 1994).); U.S. Bank Nat'l Assoc. v. Wilmington Trust Co. (In re Spansion, Inc.), 426 B.R. 114, 143 (Bankr. D. Del. 2010) (citing the Zenith factors); In re Wash. Mut., Inc., 442 B.R. at 346 (same). No factor is dispositive, nor is a proponent required to establish each factor required for the release to be approved; rather the factors are intended to provide guidance to the Court in determining the fairness of the releases. See In re Wash. Mut., Inc., 442 B.R. at 346 ("These factors are neither exclusive nor conjunctive requirements, but simply provide guidance in the [c]ourt's determination of fairness."); see also Exide Techs., 303 B.R. at 72 (finding that Zenith factors are not exclusive or conjunctive requirements); Indianapolis Downs, 486 B.R. at 304 (approving the debtors' releases despite not meeting the third and fifth Zenith factors). As demonstrated below, each of the Zenith factors weighs heavily in favor of approval of the Debtor releases.

111. With respect to a third party's release of non-debtors that is *consensual*, such releases are approved on the basis that they are premised upon the releasing creditor's consent. See Indianapolis Downs, 486 B.R. at 306; Spansion, 426 B.R. at 144; see also In re Genco Shipping & Trading Ltd, 513 B.R. 233, 241 (Bankr. S.D.N.Y. 2014) (noting that "affirmative consent of all impaired classes is required for the consensual confirmation of a plan"). In the event that a third party release of a non-debtor is determined to be *nonconsensual*, Courts in this District often evaluate such releases under the same paradigm discussed above with respect to a debtor's release of non-debtors (i.e., the Zenith factors).

1. Background to the Plan and Release Provisions

112. The Plan is the result of a prepetition process that involved key contributions and concessions from (i) the financial institutions participating in the Prepetition ABL Facility, now participating in the DIP Credit Facility, and proposed to provide the New Exit Facility Term Loan and the New Equity Investment; (ii) the financial institution participating in the UK Loan; and (iii) the Debtors' directors and officers.

113. Less than two months prior to the Petition Date, the Debtors were at risk of violating certain performance covenants under the Capital One Credit Facility, the predecessor to the Prepetition ABL Facility.[54] Weinsten Decl., ¶ 23. At that time, the Debtors approached certain major existing bondholders about the possibility of replacing Capital One and providing additional liquidity to stabilize the business or to provide debtor-in-possession financing. Id. As a result of such discussions, on August 17, 2015, the Capital One Lenders assigned their rights and obligations as lenders to a syndicate of lenders that included certain of the Company's existing creditors, including funds associated with Standard General and funds associated with then-existing bondholders Monarch Alternative Capital L.P., Coliseum Capital LLC and Goldman Sachs Asset Management, L.P. (collectively, the "Prepetition Secured Lenders"), and Capital One was replaced by Wilmington Trust, National Association ("Wilmington Trust") as administrative agent (such transactions, the "ABL Assignment"). Id.

114. Immediately following the ABL Assignment, the Capital One Credit Facility was amended and restated (the "ABL Amendment") pursuant to an amended and restated credit agreement among the Company, the Prepetition ABL Lenders and Wilmington Trust (the "Prepetition ABL Facility"), pursuant to which, among other things, (x) the commitment

[54] See Section II.B.1 of the Disclosure Statement for additional background.

thereunder was increased from $50 million to $90 million, (y) the borrowing base was increased by $15 million (provided that such increase would not apply to the extent the borrowing base exceeds $60 million) and (z) amounts borrowed and repaid under the Prepetition ABL Facility could no longer be re-borrowed.[55] Id., ¶ 24. Additionally, certain covenant violations existing as of June 30, 2015, under the Capital One Credit Facility were waived under the Prepetition ABL Facility. Id.

115. Although, the ABL Amendment provided the company with access to much-needed liquidity and capital, the ABL Amendment was only a short-term solution and was insufficient, on its own, to finance the Debtors' ongoing obligations on a long-term basis. Particularly, the additional financing under the ABL Amendment provided the Debtors' critical rescue financing to bridge a liquidity shortfall prior to the Petition Date and allowed the Debtors and the Supporting Parties to prepare an organized entry into chapter 11 with the Original Plan as a road map to an expeditious exit.

116. Given the lack of liquidity available to the Debtors, by the beginning of September, the Debtors were facing the possibility of being unable to pay their employees and shuttering their retail stores and manufacturing facilities, and a realistic prospect of filing for protection under chapter 7 of the Bankruptcy Code. Based on the Debtors' Liquidation Analysis, in a chapter 7 liquidation only the Prepetition Note Secured Parties and Holders of DIP Claims and Administrative Claims would be expected to receive a recovery, each of which would be paid less than or equal to their respective recovery under the Plan, leaving Holders of General Unsecured Claims with nothing.

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55 Certain of the Debtors' other financing agreements, including the Prepetition Senior Notes and an unsecured credit facility with Standard General Master Fund, L.P. (as assignee of Lion/Hollywood L.L.C.) were also amended to permit the incurrence of additional indebtedness evidenced by the Prepetition ABL Facility.

117. Rather than pursue an immediate liquidation (which would have benefitted no creditor constituency), the Debtors and their advisors entered into extensive arms'-length negotiations with Standard General and the Committee of Lead Lenders regarding (a) the terms of potential debtor in possession financing necessary to provide the Debtors with sufficient liquidity to sustain operations without material disruption to their businesses, while in a bankruptcy proceeding, and (b) the terms of a potential chapter 11 plan of reorganization.

118. Ultimately, as noted in Part I.C.1.a above, on October 4, 2015, the Debtors entered into the Restructuring Support Agreement with Standard General and the Committee of Lead Lenders (i.e., the Supporting Parties**)** regarding the key terms of a financial restructuring through a plan of reorganization, coupled with an aggregate commitment of $70 million in postpetition and exit financing. Concurrently with the negotiations of the Restructuring Support Agreement, the Debtors and the Supporting Parties negotiated and agreed on the terms of the DIP Credit Agreement.

2. The Debtor Release, Including the Release of Current Officers and Directors and Standard General, Satisfies Third Circuit Law and is Appropriate Under the Circumstances

119. Pursuant to the Debtor Release, the Debtors and Reorganized Debtors

> shall forever release, waive and discharge all Liabilities that they have, had or may have against any Released Party with respect to any of the Debtors or the Estates, the Chapter 11 Cases or the negotiation, consideration, formulation, preparation, dissemination, implementation, Confirmation or consummation of the Restructuring Support Agreement, the Plan, the Exhibits, the Disclosure Statement, the DIP Credit Agreement, the New Exit Financing Documents, any of the New Securities and Documents, the Restructuring Transactions or any other transactions proposed in connection with the Chapter 11 Cases or any distributions made under or in connection with the Plan or any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken in connection therewith or in connection with any obligations arising under the Plan or the obligations assumed [under the Plan].

Plan, Section IX.E.1. The Released Parties include the Debtors, the Creditors' Committee, the members of the Creditors' Committee, the Indenture Trustee, the Prepetition Agent, the Supporting Parties, the DIP Agent, the DIP Lenders, and the Representatives of such Released Parties serving in such capacity on or after the Petition Date.[56]

a. Identity of Interest

120. The Released Parties share an identity of interest with the Debtors sufficient to support the Releases for at least two reasons. First, the Debtors and all of the Released Parties "share the common goal" of confirming the Plan and implementing the restructuring as contemplated thereunder (and under the Restructuring Support Agreement). See, e.g., Tribune, 464 B.R. at 187 (noting an identity of interest between the debtors and the settling parties where such parties "share[d] the common goal of confirming the [plan] and the [plan] settlement"); Zenith, 241 B.R. at 110-11 (Bankr. D. Del. 1999) (concluding that the first factor—an identity of interest with the debtor—was satisfied where certain released parties who "were instrumental to formulating the Plan" shared an identity of interest with the debtors "in seeing that the Plan succeed and the company reorganize"). Given the extensive efforts of the Released Parties to restructure the Debtors, as detailed above and in the Declarations, and/or by their acceptance of the Plan by affirmative vote or by virtue of their claims being unimpaired under the Plan, the Released Parties clearly have an identity of interest with the Debtors for purposes of the Zenith analysis.

121. In addition, an identity of interest exists where, among other things, (a) the debtor has an indemnification obligation to the released party or (ii) where a suit against the released party would deplete assets of the debtors' estate. See Zenith, 21 B.R. at 110; SE Prop.

[56] See Plan, Section I.A.124 & I.A.127.

Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Engineering & Surveying, Inc.), 780 F.3d 1070, 1079-80 (11th Cir. 2015) (finding identity of interest, in the context of non-consensual third party releases, where debtor would deplete its assets in defending released parties against litigation); In re Mercedes Homes, Inc., 431 B.R. 869, 879-880 (Bankr. S.D. Fla. 2009) (finding identity of interest where debtors were required to indemnify released parties, the officers and directors, against claims or causes of action). Here, the Debtors' directors and officers also share an "identity of interest" with the Debtors based on their rights to indemnification from the Debtors, such that pursuing litigation against certain of the Released Parties amounts to litigation against the Debtors. See Indianapolis Downs, 486 B.R. at 303 ("An identity of interest exists when, among other things, the debtor has a duty to indemnify the nondebtor receiving the release."). Where, as is the case here, the debtors' organizational documents require the debtors' indemnification of the releases, courts have found that an identity of interest exists. See, e.g., Indianapolis Downs, 486 B.R. at 303 (finding identity of interest where the debtors' organizational documents require the debtors to indemnify the released parties and each of the released parties has asserted indemnification claims against the Debtors' estates). Further, the identity of interest arising from the Debtors indemnity relationship with the Released Parties is underscored by the Plan itself, which expressly preserves all of the Debtors' indemnity obligations to the Debtors' directors, officers or employees for any losses, claims, costs, damages or Liabilities resulting from such person's service in such capacity at any time from and after the Petition Date.[57] Accordingly, an identity of interest exists between the Debtors and their current officers and directors that is sufficient to warrant the Debtor Release.[58]

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[57] See Plan, Section IV.H.3:

> The Reorganized Debtors shall be obligated to indemnify any person, other than the Excluded Parties or any party who is not a Released Party, who is serving or has served (a) as one of the Debtors' directors, officers or employees at any time from and after the Petition Date for any

b. Substantial Contribution to the Reorganization

122. The second Zenith factor — a substantial contribution to the reorganization — supports the Debtor Releases because each of the Released Parties has in some manner either (a) affirmatively contributed value, monetary or otherwise, necessary to the reorganization or (b) agreed to compromise or forgo rights in furtherance of the reorganization. See W.R. Grace, 446 B.R. 96, 138 (Bankr. D. Del. 2011) (finding that parties involved in settlement with the debtor made substantial contribution where, absent the release, settling parties would not have contributed a significant sum necessary to the reorganization).

123. The DIP Lenders and the Supporting Parties have made or are making substantial financial contributions under the Plan (in the form of the ABL Amendment, DIP Credit Facility, the New Exit Facility Term Loan, the New Equity Investment and, potentially, the Additional New Capital Commitment), totaling approximately $125 million in advanced and committed funds. These outsize contributions provided and will continue to provide the lifeblood for the Debtors and the Reorganized Debtors to operate and will be essential to the Reorganized Debtors' ability to continue successfully operating following emergence for the benefit of all stakeholders of the Reorganized Debtors and to make distributions to unsecured creditors that would otherwise be impossible under a liquidation scenario. Weinsten Decl., ¶ 52. The DIP Lenders, in addition to providing much needed liquidity prior to and at the outset of

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losses, claims, costs, damages or Liabilities resulting from such person's service in such a capacity at any time from and after the Petition Date or (b) as a director, officer or employee of a Non-Debtor Affiliate at any time from and after the Petition Date (provided that nothing herein shall limit any obligations of such Non-Debtor Affiliate), to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor, which shall be deemed and treated as Executory Contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations shall survive and be unaffected by entry of the Confirmation Order.

58 Had the Debtors not re-affirmed their indemnity obligations, the parties entitled to indemnity, including the Released Parties, would have been entitled to assert claims based on such entitlements. They also may not have been willing to continue working for the Debtors absent this protection.

these case, have also agreed to forgo their right to receive immediate payment on the Effective Date and, instead, will convert the DIP Credit Facility into the New Exit Term Loan as contemplated under the Plan.

124. In addition, Standard General, which is both a DIP Lender and a Supporting Party, has provided a substantial contribution to these Chapter 11 Cases. Standard General not only is a party to the Equity Commitment Agreement, but also has (a) contributed 25% of the critical short-term financing prior to the Petition Date pursuant to the ABL Amendment, (b) provided one-fifth of the funding under the DIP Credit Facility, which it agreed to convert into the New Exit Facility Term Loan upon the Effective Date, (c) committed to provide additional funding upon exit through the New Exit Facility Term Loan and the Equity Commitment Agreement and (d) agreed, pursuant to the Restructuring Support Agreement, to forbear from exercising remedies against non-Debtor Affiliate American Apparel (Carnaby) Ltd. ("Carnaby") as a result of Carnaby's default on the U.K. Loan with Standard General, which would have jeopardized the Debtors' operations in the United Kingdom and subjected Carnaby to potential insolvency proceedings in the United Kingdom, a substantial risk that the Debtors believed was eminently prudent to avoid. Weinsten Decl., ¶ 53.

125. The DIP Lenders and the Supporting Parties also have made substantial contributions necessary to the reorganization by, in addition to the monetary commitments discussed above, among other things, (a) entering into the Restructuring Support Agreement and complying with its terms and obligations; (b) voting in favor of the Plan, (c) agreeing to the creation of (and the increased funding of) the Litigation Trust and GUC Support Payment, thereby allowing a meaningful distribution to General Unsecured Creditors, and (d) agreeing to a post-execution modification of the Restructuring Support Agreement to allow the Debtors' to

actively approach the market for an alternative restructuring proposal or a strategic purchaser of the Debtors' assets. Weinsten Decl., ¶ 54.

126. The Debtors' management and other Released Parties have made unique and substantial commitments of time and effort to bring this Plan before the Court for confirmation, and the Debtors' management will continue to work in their present roles for the Reorganized Debtors and, as such, make indispensable contributions to the successful reorganization of the Debtors. Weinsten Decl., ¶ 56. See Seaside Eng'g & Surveying, 780 F.3d at 1079-80 (debtor's professionals provided substantial contribution in the form of labor and services); Mercedes Homes, 431 B.R.at 881 (finding substantial contribution in the form of debtors' directors' and officers' expertise and knowledge). In addition, the Debtors' management and other Representatives have made a substantial contribution to this reorganization by, among other things:

- Presenting and discussing the turnaround plan with the Committee of Lead Lenders—who subsequently supported it—in connection with reaching agreement on the Restructuring Support Agreement prior to the Petition Date;
- Expending substantial time and effort specifically in connection with restructuring matters, including negotiating numerous agreements with creditors, contract and lease counterparties, vendors and suppliers, in addition to their normal duties in connection with the day-to-day operation of the Debtors' businesses;
- Agreeing to forgo the Debtors' pursuit of a key employee incentive plan in order to focus the Debtors' efforts on other aspects of these cases, such as obtaining approval of the KERP and the ability to conduct store closing sales out of 13 of their stores; and
- In the case of the directors and officers who are being retained by the Reorganized Debtors, their continuing commitment to put their expertise and experience to work for the Reorganized Debtors, which will help to maximize the value of the Reorganized Debtors to the benefit all of stakeholders.

See Weinsten Decl., ¶ 55; Schneider Decl., ¶ 20.

127. For all of the foregoing reasons, the Released Parties have provided the "substantial contributions" contemplated by the second Zenith factor.

c. Essential Nature of Releases

128. The essential nature of the releases—the third Zenith factor—also weighs in favor of the Releases. The Debtor Release and the Third Party Release were extensively negotiated by the Debtors and their key stakeholders, including the Supporting Parties, the DIP Lenders and the DIP Agent. Weinsten Decl., ¶ 56. Based on those negotiations, it is clear that the release and injunctive provisions of the Plan were necessary to induce each of the valuable financial contributions of the Supporting Parties and DIP Lenders discussed above, without which the Plan would not have been possible. Weinsten Decl., ¶ 56. Thus, the Releases were integral to both the Debtors' ability to secure the financial contributions necessary to consummate the Plan and remain a viable going concern business during and upon emergence from bankruptcy, and should therefore be approved.

d. Support for the Releases

129. The fourth Zenith factor is satisfied because the Classes of Claims entitled to vote to accept or reject the Plan have accepted the Plan, many overwhelmingly so, including the Creditors' Committee's constituency. Moreover, other of the Debtors' key constituencies that stand to benefit under the Plan are unimpaired, including the Other Secured Claims. Accordingly, this fourth factor also weighs in favor of granting the Releases.

e. Payment of Claims in the Affected Classes

130. The fifth Zenith factor, which looks to whether the plan provides for the payment of affected claims, is also satisfied here. The standard for determining whether this factor is present is "whether the non-consenting creditors receive reasonable compensation in exchange for the release." In re Tribune Co., 464 B.R. at 178 (citing In re Genesis Health

Ventures, Inc., 266 B.R. 591, 607-08 (Bankr. D. Del. 2001)). Here, creditors in each of the impaired classes of claims under the Plan are receiving meaningful recoveries. In the absence of agreement on the Plan, of which the Plan's release provisions were an integral part, these recoveries would not have been possible and Holders of General Unsecured Claims may not have received any recovery whatsoever. See Weinsten Decl., ¶ 58; Hr'g Tr. at 73-74, In re PNG Ventures, Inc., No. 09-13162 (CSS) (Bankr. D. Del. Mar. 29, 2010) (approving non-consensual third-party release where, but for the release and settlement, unsecured creditors would have been "out of the money" and not entitled to distributions under a plan). This also supports a finding that the affected creditors are receiving fair consideration for the Releases.

3. The Third Party Releases are Consensual

131. The Third Party Releases similarly should be approved. As a threshold matter, the Third Party Releases are *consensual* in nature and may therefore be approved on the basis that they are premised upon the releasing creditor's consent. See Indianapolis Downs, 486 B.R. at 306 (granting consensual third party releases of "impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases"); In re Genco Shipping & Trading Ltd., 513 B.R. 233, 271 (Bankr. S.D.N.Y. 2014) (finding third party release consensual with respect to parties that had the "ability to 'check the box' on the Plan ballots" which includes "those parties who voted in favor of the Plan and those who voted to reject the Plan but failed to opt out from granting the release provisions"). Here, "each Holder of a Claim[59] that (a) votes in favor of the Plan or (b) either (i) abstains from voting or (ii) votes to reject the Plan and, in the case of either (i) or (ii), does not opt out of the voluntary release contained in this Section IX.E.2 by checking the opt out box on the Ballot and returning

[59] The Charney Objection incorrectly asserts that Holders of Interests in Class 8A are bound by the Third Party Release. Charney Obj. at ¶ 22. However, as set forth below, this is not the case, and Holders of Interests in Class 8A are not deemed to have granted the Releases.

it in accordance with the instructions set forth thereon, indicating that they opt not to grant the releases provided in the Plan," granted the release set forth in section IX.E.2 of the Plan. Plan, Section IX.E.2.

132. Courts have found that a release of a non-debtor is consensual where the creditor was given the opportunity to "opt-out" of the release (as is the case here) but failed to do so. See Indianapolis Downs, 486 B.R. at 306 ("[T]he record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the [t]hird [p]arty [r]eleases may be properly characterized as consensual and will be approved."); Spansion, 426 B.R. at 144 ("[N]o creditor or interest holder whose rights are affected by the 'deemed' acceptance language has objected to the Plan . . . . [T]he silence of the unimpaired classes on this issue is persuasive."); In re Genco Shipping & Trading Ltd., 513 B.R. at 271, supra; cf. Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203, 214 (3d Cir. 2000) ("fairness, necessity to the reorganization, and specific factual findings to support these conclusions" are the "hallmarks of permissible non-consensual releases"). Thus, by declining to return a ballot, or by not opting out of a release, the creditor may be deemed to consent to the release.

4. The Third Party Releases are Necessary, Fair and Appropriate Given the Circumstances

133. In any event, as demonstrated above, the Third Party Releases are an integral part of the Plan and otherwise satisfy the five-part Zenith test. Even assuming, as the objecting parties assert, that the Third Party Releases are not consensual as to abstaining creditors and presumed accepting creditors, the Third Party Releases may still be approved so long as they satisfy the standards governing non-consensual third-party releases in this Circuit: fairness, necessity to the reorganization, and specific factual findings supporting those

conclusions. See Continental Airlines, 203 F.3d at 213-14 (explaining standards for approval of nonconsensual third-party releases).[60]

134. As noted above, each of the non-debtor Released Parties have made significant contributions to these Chapter 11 Cases, and their inclusion in the Third Party Releases was also a material inducement for their participation, negotiation, and ultimate resolution of claims through the Restructuring Support Agreement and the Plan. Indeed, consensual third party releases such as those proposed here are commonly approved in this District. See, e.g., In re Millennium Lab Holdings II, LLC, et al., No. 15-12284 (LSS) (Bankr. D. Del. Dec. 14, 2015);[61] In re Colt Holding Co. LLC, No. 15-11296 (LSS) (Bankr. D. Del. Dec. 16, 2015);[62] In re Trump Entertainment Resorts, Inc., No. 14-12103 (KG) (Bankr. D. Del. Mar. 12, 2015); In re Indianapolis Downs, LLC, Case No. 11-11046 (BLS) (Bankr. D. Del. March 20, 2013); In re Perkins & Marie Callender's Inc., Case No. 11-11795 (KG) (Bankr. D. Del. Nov. 1, 2011); In re Buffets Holdings, Inc., Case No. 08-10141(MFW) (Bankr. D. Del Apr. 17, 2009). Accordingly, the Third Party Release should be approved.

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60 The position that non-consensual releases may not be approved, as a categorical matter, is based largely on two outdated cases. See Wash. Mut. Inc., 442 B.R. at 352; In re Coram Healthcare Corp., 315 B.R. 321, 335 (Bankr. D. Del. 2004).

61 On January 12, 2016, upon the motion of certain of the debtors' lenders, the Millennium court certified for direct appeal to the Third Circuit the narrow issue of whether bankruptcy courts have the authority to release a non-debtor's direct claims against other non-debtors for fraud and other willful misconduct without the consent of the releasing non-debtor third party. The court certified this issue on the sole basis that confirmation order "involves a question of law requiring resolution of conflicting decisions" and citing its decision as conflicting with the court's decision in Washington Mutual. However, the court disagreed with the lenders on their argument that there is no controlling law in the Third Circuit on the issue of nonconsensual third party releases and instead found that "the Continental hallmarks are the law of this Circuit." The Court noted that the Continental hallmarks had been referenced in numerous cases since 2000, notably by the Third Circuit in In re Global Industrial Technologies, Inc., 645 F.3d 201 (3d Cir. 2011) and United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.), 315 F.3d 217, 227 (3d Cir. 2003).

62 The court in Colt Holdings Co. had previously approved the non-consensual third party releases in an order approving the plan on December 16, 2015. However, after entry of the order confirming the plan, a lender notified the court that it would not be able to reach its initial funding commitment. On January 12, 2016, the court issued an order stating that unless the lender was able to raise additional funding by February 8, 2016, the court would not grant the releases in favor of the lender in accordance with the confirmed plan.

5. The Exculpation Provisions are Appropriate

135. Courts evaluate the appropriateness of exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited and whether the exculpation provision was necessary for plan negotiations. See, e.g., Upstream Energy Servs. V. Enron Corp (In re Enron Corp.), 326 B.R. 497, 503 (S.D.N.Y. 2005) (evaluating the exculpation clause based on the manner in which the clause was made a part of the agreement, the necessity of the limited liability to the plan negotiations, and whether those who participating in proposing the plan did so in good faith).

136. Although the Debtors recognize that this Court and others have denied the application of exculpation provisions to non-estate fiduciaries,[63] the Debtors believe that the particular facts and circumstances of these Chapter 11 Cases warrant the inclusion of non-estate fiduciaries in the Exculpation. First, as noted above, each of the non-debtor Released Parties has made significant contributions to these Chapter 11 Cases, and their inclusion in the Exculpation was a material inducement for (a) their extension of liquidity through the DIP Credit Facility; (b) their participation in the negotiation and formulation of the Restructuring Support Agreement, the Disclosure Statement and the Plan; (c) the ultimate resolution of their claims thereunder; and (d) their respective contributions pursuant to the New Exit Financing Facility and the Equity Commitment Agreement. Moreover, the Committee of Lead Lenders, as the anticipated owners of the Reorganized American Apparel, realized it was entering into a situation colored by endless and costly litigation against third parties[64] and that, faced with these

63 See, e.g., In re PTL Holdings, LLC, No. 11-12676, 2011 WL 5509031 (Bankr. D. Del. Nov. 10, 2011); Wash. Mut., Inc., 442 B.R. at 346 (Bankr. D. Del. 2011). But see In re AgFeed USA, LLC., No. 13-11761 (BLS) (Bankr. D. Del. Nov. 4, 2014) (exculpating members of ad hoc equity committee that were not estate fiduciaries).

64 See Disclosure Statement, Section C.3 & Ex. 7 (entitled "Status of Pending and Recently Dismissed Litigation").

unique circumstances, it would also require treatment as an exculpated party before committing to support the Plan. The Exculpation was therefore important to the development of a feasible, confirmable Plan (one that creditors in the Voting Classes have voted to accept), and the Released Parties relied upon the protections afforded to them and the constituents involved.

137. Second, the scope of the Exculpation is appropriately limited to the Released Parties' acts or omissions in connection with the transactions contemplated by the Plan, the Restructuring Support Agreement and the Chapter 11 Cases, and the Exculpation does not protect the Released Parties from liability resulting from gross negligence or willful misconduct.[65]

138. Third, as with the Debtor Release, the Exculpation is necessary and appropriate to protect parties who have made substantial contributions to the Debtors' reorganization from future collateral attacks related to actions taken in good faith in connection with the Debtors' restructuring. This is especially relevant with respect to the Committee of Lead Lenders, which ever mindful of its future role as the anticipated owners of the Reorganized American Apparel, has been acting in a near-fiduciary capacity from the outset of these Chapter 11 Cases, and, to that end, have committed significant funding to support the Reorganized Debtors post-emergence.

139. Fourth, the Plan, including the Exculpation, is supported by all Holders of Claims in the Voting Classes who have voted to accept the Plan.

140. Exculpation provisions similar to the one contained in the Plan are often upheld by courts in this district,[66] particularly where, as here, the provisions contain carve-outs

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65 See Plan, Section IX.D.

66 See, e.g., AgFeed, supra note 63; In re Laboratory Partner's, Inc., No. 13-12769 (PJW) (Bankr. D. Del. July 10, 2014), In re Dex One Corp., No. 13-10533 (KG) (Bankr. D. Del. Apr. 29, 2013) (overruling objection of U.S. Trustee in finding that certain non-estate fiduciaries could be exculpated; including as exculpated

for gross negligence, willful misconduct or similar behavior.[67] The Debtors therefore respectfully submit that the inclusion of non-debtors in the Exculpation is amply warranted in these Chapter 11 Cases and that the Court overrule the objections of the U.S. Trustee and Mr. Charney.

6. The Injunction Is Necessary and Customary

141. The Injunction is necessary to effectuate and implement the release provisions in the Plan, particularly the Debtor Release, Third Party Release and Exculpation. Moreover, the Injunction is essential to protect the Debtors, the Reorganized Debtors and the assets of the Estates from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the Debtors and the Reorganized Debtors to effectively fulfill their responsibilities as contemplated in the Plan and thereby undermine the Debtors' efforts to maximize value for all of its stakeholders. See W.R. Grace & Co., 446 B.R. at 130 (court may approve injunctions where they are "fair and equitable"); In re Leslie Controls, Inc., 2010 Bankr. LEXIS 3729, *69 (Bankr. D. Del. Oct. 29, 2010) (exculpation, release and injunction provisions appropriate because they were "fair and equitable, are given for valuable consideration, and are in the best interests of the Debtor and its chapter 11 estate"); In re Drexel Burnham Lambert Grp., 960 F.2d 285, 292-93 (2d Cir. 1992) (court may approve release and injunction as important plan feature).[68]

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parties prepetition secured lenders, postpetition lenders, and their respective agents); In re FAHLiquidating Corp., No. 13-13087 (KG) (Bankr. D. Del. July 28, 2014) (overruling objection of U.S. Trustee in finding that certain non-estate fiduciaries could be exculpated); In re HSH Delaware GP LLC, No. 10-10187 (MFW) (Bankr. D. Del. Jan. 18, 2011) (same).

67 See In re PWS Holding Corp., 228 F.3d 224, 246-47 (3d Cir. 2000) (approving plan exculpation provision with willful misconduct and gross negligence exceptions); Indianapolis Downs, 486 B.R. at 306 (same); Wash. Mut., 442 B.R. at 350 (same).

68 See, e.g., In re Sorenson Commc'ns, Inc., No. 14-10454 (BLS) (Bankr. D. Del. Apr. 10, 2014) (finding that injunctions in the plan were necessary to preserve and enforce the releases and exculpations granted by the plan and were narrowly tailored to achieve that purpose); In re Physiotherapy Holdings, Inc., No. 13-12965

142. In accordance with these precedents and the necessity of the Injunction to the Plan, the Injunction should be approved.[69]

III. THE EQUIPMENT LEASE SETTLEMENTS ARE APPROPRIATE AND SHOULD BE APPROVED

143. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Plan provides for settlements with respect to certain of the Debtors equipment leases (the "Equipment Lease Settlements"), whereby the Debtors will acquire the assets that are the subject to these leases and terminate these leases on agreed terms.[70] The equipment leases are that certain (a) Lease Agreement between American Apparel, Inc. ("AAI") and TFG-California, L.P.("TFG") dated July 3, 2013, as supplemented by various lease schedules, whereby TFG leased certain computer and information technology equipment (the "Tetra Equipment") to the Debtors (the "Tetra Lease") and (b) Equipment Lease Agreement between American Apparel (USA), LLC ("AAUSA") and Utica Leaseco, LLC ("Utica," and together with TFG, the "Lessors") dated November 14, 2012, as amended by the First Amendment to Equipment Lease Agreement made as of January 31, 2014, whereby Utica leased certain manufacturing and distribution center equipment (the "Utica Equipment," and together with the Tetra Equipment, the "Equipment") to the Debtors (the "Utica Lease" and together with the Tetra Lease, the "Equipment Leases").[71]

(KG) (Bankr. Dec. 23, 2013) (same); In re Dex One Corp., No. 13-10533 (KG) (Bankr. D. Del. Apr. 29, 2013) (same).

69 Furthermore, Sections VIII.A.15 through VIIIA.17 of the Disclosure Statement, along with Sections IX.C through IX.E of the Plan, comply with the requirements of Bankruptcy Rule 3016(c) that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italics, or underlined text) all acts to be enjoined and entities that would be subject to the injunction." The Disclosure Statement states in bold letters all acts to be enjoined and identifies all entities that would be subject to the injunction. The applicable release, exculpation, and injunction provisions are clearly identified in the Plan and Disclosure Statement, are displayed in bold font, and specifically identify all acts to be enjoined and identifies all entities that would be subject to the injunction.

70 See Plan, Section III.J.2 & Ex. L.

71 In January 2011, AAUSA and Utica entered into a sale-leaseback transaction. In November 2012, AAUSA exercised its purchase option with respect to the equipment leased in connection with the January 2011 sale-leaseback transaction, and entered into another sale-leaseback transaction with Utica.

The settlement agreements memorializing these resolutions were disclosed in the Plan Supplement filed on January 14, 2016 (Docket No. 597).

144. The material terms of the Equipment Leases are described in the following chart:

	UTICA LEASE	TETRA LEASE
Original Equipment Cost / Purchase Price	N/A (Sale-leaseback) Purchase Price $4,533,406.24.	$859,353.59
Current Schedules	None	2
Aggregate Monthly Rent	$81,348.09 (as amended) plus rent factor based on declining balance of fixed rent)	$36,281.91
Aggregate Security Deposit/ Escrows	Escrowed funds of $401,467.40	Security Deposit of $429,676.80
Term	48 months (as amended)	24 month term initially expiring on December 31, 2015, lessor asserts currently in an automatic 12 month extension period because purchase option was purportedly not timely exercised.
Purchase Option	Yes, price equal to remaining fixed rent, unpaid rent factor, and if exercised after 12 months, $265,000. Utica asserts that the option can no longer be exercised.	Yes, price as agreed upon by the parties, not to exceed 20% of the Original Equipment Cost.
Informal Estimated Replacement Cost/Value	More than $5,000,000	$247,000
Right of First Refusal	No.	No.

145. The material terms of the Equipment Lease Settlements are described in the following chart:[72]

	UTICA SETTLEMENT	TETRA SETTLEMENT
Subject equipment	Manufacturing equipment and certain equipment at distribution center	Computer and information technology equipment

[72] The Equipment Lease Settlements were filed as an exhibit to *Third Notice of Plan Supplement Relating to the First Amended Joint Plan of Reorganization of the Debtors and Debtors in Possession* (Docket No. 597), dated January 14, 2016.

	UTICA SETTLEMENT	TETRA SETTLEMENT
Negotiated Purchase Price and Other Payments	$1.6 million, less future rent payments. Additional payments equal to $50,000 for attorney's fees and late charges of $4,844.96.	$326,537.19
Purchase price Payment; Refunds	Paid in cash. Utica to direct escrow agents to return Escrowed Funds to Debtors.	Purchase price paid by application of security deposit; Debtors to receive a deposit refund of $103,139.61 less tax.
Mutual Releases	Yes (includes $961,882.45 claim (Claim No. 653)).	Yes (includes unpaid postpetition rent for November 2015).

146. The Debtors believe that the Equipment Lease Settlements are authorized under section 1123(b)(3) of the Bankruptcy Code and rule 9019 of the Bankruptcy Rules. Section 1123(b) of the Bankruptcy Code provides that a chapter 11 plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or the estate." 11 U.S.C. § 1123(b)(3). As part of the restructuring process, the Court "may approve a compromise or settlement" under Bankruptcy Rule 9019(a), and "the standards for approval of settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019 . . . ." In re Coram Healthcare Corp., 315 B.R. 321, 334-35 (Bankr. D. Del. 2004); see also Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996) (applying a "best interest of the estate" standard to a proposed rule 9019 settlement); In re Louise's Inc., 211 B.R. 798, 801 (D. Del. 1997) (same); In re Marvel Entm't Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (same); In re Aleris Int'l, Inc., 2010 Bankr. LEXIS 2997, *60-61 (Bankr. D. Del. May 3, 2010) (same). Ultimately, the decision to approve or reject a proposed settlement lies within the sound discretion of the court. See In re Martin, 91 F.3d. at 393; In re Key3Media Group, Inc., 336 B.R. 87, 92 (Bankr. D. Del. 2005) ("[P]ursuant to Bankruptcy Rule 9019(a), the authority to approve a compromise settlement is within the sound discretion of the bankruptcy court.").

147. A bankruptcy court exercising its discretion to approve a settlement within the context of a plan of reorganization must determine whether the compromise is "fair, reasonable, and in the best interest[] of the estate." Key3 Media Group, 336 B.R. at 92; In re Louise's Inc., 211 B.R. at 801; In re Marvel Entm't Group, Inc., 222 B.R. at 249; see also Fry's Metals, Inc. v. Gibbons (In re Rfe Indus., Inc.), 283 F.3d 159, 165 (3d Cir. 2002) (remanding to the bankruptcy court to make a determination of the "fairness, reasonableness and adequacy" of a proposed settlement). In making such a determination, the bankruptcy court is not compelled to find that the "comprise is the best possible settlement," In re Nutritional Sourcing Corp., 398 B.R. 816, 833 (Bankr. D. Del. 2008), but is merely required to "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness." In re Aleris Int'l, Inc., 2010 Bankr. LEXIS 2997, at*60-61 (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983) cert. denied 464 U.S. 822 (1983)); In re Key3Media Group, Inc., 336 B.R. at 92-93; see also In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006) ("the court must conclude that the settlement is 'within the reasonable range of litigation possibilities.'") (quoting In re Penn Cent. Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979)).

148. In order to assist a bankruptcy court in making a determination as to the reasonableness of a settlement, bankruptcy courts in the Third Circuit are directed to consider the Martin factors, which ask "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." In re Martin, 91 F.3d at 393. These factors are not exclusive and a bankruptcy court must consider "all other factors relevant to a full and fair assessment of the wisdom of the proposed comprise." In re Nutritional Sourcing Corp., 398 B.R. at 833.

149. The Equipment Lease Settlements embodied in the Plan satisfy the applicable standard for approval of a settlement under Section 1123(b)(3) and Bankruptcy Rule 9019. The Equipment Lease Settlements are the result of good faith, arm's length negotiations between the Debtors and each of the Lessors and are otherwise fair, reasonable and in the best interests of the Debtors and their estates. Moreover, the Equipment Lease Settlements satisfy the Martin factors.

150. First, and most importantly, each of the Equipment Lease Settlements represents an exercise of sound business judgment and is in the paramount interest of creditors. In negotiating the Equipment Lease Settlements, the Debtors desired to own the Equipment upon emergence from bankruptcy. Not only would this provide the Debtors with flexibility (for example, the Debtors can sell or otherwise dispose of the Equipment that is not being used), but it also would avoid any future questions as to the Debtors' ability to retain necessary equipment for the operation of their business and the cost thereof. In addition to the operational benefits of owning the Equipment, theses settlements avoid significant uncertainty as to the ability or cost of acquiring the Equipment:

- *Utica*. To acquire the Utica Equipment, the Debtors are paying approximately $600,000 more than the Debtors' calculated option price. This premium represents an assessment of the risk and potential litigation fees of contesting Utica's position that the purchase option is no longer available, as well as a belief that the Utica Equipment is worth far more than the $1.6 million purchase price, is necessary for the Debtors operations and cannot be easily replaced without operational consequences.

- *TFG*. The dispute with TFG centers around the Debtors' ability to have exercised the option at the end of the lease term, rather than have the lease extended for another twelve months. First, the purchase price is less than the cost of assumption on TFG's terms (because it is less than twelve month's rent, at which point the Debtors would need to replace the TFG Equipment). In addition, rejection is not an attractive option due to the significant security deposit (approximately twelve months rent) that would

likely render any rejection claim substantially secured, thus causing the Debtors to bear the costs of replacing the TFG Equipment. The only alternative, then, would be to assume the lease and litigate with TFG. The premium over replacement costs (or the option price) represents an assessment of these litigation costs and related uncertainties.

151. Second, litigating any of these issues would be costly compared with the amounts at stake and the varying degrees of complexity. Further, because there can be no assurance that the Debtors would prevail on their various claims against Utica and Tetra, the Debtors would be faced with the cost, expense and inconvenience of contingency planning in the event they were unsuccessful and could not retain the equipment and, in the event the Debtors were not successful, would face operational risk and additional expense.

152. Moreover, entry into the Equipment Lease Settlements is supported by the Committee of Lead Lenders and the Creditors' Committee.

153. For the foregoing reasons, the Equipment Lease Settlements embodied in the Plan are fair, reasonable and in the best interests of the Debtors' estates, satisfy the Martin factors and, consequently, are an appropriate and permissible settlement under Section 1123(b)(3) and Bankruptcy Rule 9019.[73]

IV. THE ASSUMPTION OR REJECTION OF THE EXECUTORY CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN SHOULD BE APPROVED

154. The Plan proposes that the Debtors will assume and assign or reject all of their Executory Contracts and Unexpired Leases as of the Effective Date. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume and assign or reject executory contracts or unexpired leases upon a showing

[73] Should the Equipment Lease Settlements not be approved as part of the Confirmation, the Debtors reserve the right to designate the underlying Unexpired Leases as Unexpired Leases that will be assumed under the Plan and seek further relief from the Court in connection with resolving matters related to such Unexpired Leases.

that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Bildisco, 465 U.S. at 523 (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); Grp. of Inst'l Investors v. Chi., M., St. P., & P.R.R. Co., 318 U.S. 523, 550 (1943) ("[T]he question whether a lease should be rejected and, if not, on what terms it should be assumed is one of business judgment"); In re Pinnacle Brands, Inc., 259 B.R. 46, 53 (Bankr. D. Del. 2001) ("The Debtors' decision to assume or reject an executory contract is based upon its business judgment."); In re Market Square Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (the "resolution of th[e] issue of assumption or rejection will be a matter of business judgment by the bankruptcy court").[74]

155. Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001) ("A debtor's decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim or caprice.") (internal quotation marks omitted). The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. N.L.R.B. v. Bildisco (In re Bildisco), 682 F.2d 72, 79 (3rd Cir. 1982) (noting that the "usual test for rejection of an executory contract is simply whether rejection would benefit the estate") aff'd, 465 U.S. 513; In re Abitibibowater Inc., 418 B.R. 815, 831 (Bankr. D. Del. 2009) (satisfying the business judgment standard for purposes of Section 365 of the Bankruptcy Code "is not a difficult standard to satisfy and

[74] See also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject.").

requires only a showing that rejection will benefit the estate"). Further, "[s]ection 365 enables the trustee to maximize the value of the debtor's estate by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not." L.R.S.C. Co. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.), 209 F.3d 291, 298 (3d Cir. 2000); see also Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (section 365 of the Bankruptcy Code "allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed").

156. The Plan provides that on the Effective Date, each of the Debtors' Executory Contracts and Unexpired Leases not previously assumed or rejected pursuant to an order of the Court will be deemed rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except any Executory Contract or Unexpired Lease (a) identified on Exhibit C to the Plan as an Executory Contract or Unexpired Lease designated for assumption, (b) which is the subject of a separate motion or notice to assume or reject filed by the Debtors and pending as of the Confirmation Hearing, (c) that previously expired or terminated pursuant to its own terms or (d) that was previously assumed by any of the Debtors.[75]

157. After an extensive review and analysis, the Debtors have identified the Executory Contracts and Unexpired Leases to be assumed or rejected under the Plan in the exercise of their sound business judgment.[76] The Debtors' analysis was made with the goals of (a) preserving the agreements that the Debtors have determined are beneficial or otherwise essential to their businesses, the implementation of the Plan or the preservation of rights, claims or causes of action that the Debtors may have and (b) eliminating the agreements that are unduly

[75] See Plan, Section IV.A.

[76] See, e.g., Plan, Exhibit C.

burdensome or no longer necessary for these purposes. The Debtors adequately provided notice of the Plan's proposed assumption of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan and provided counterparties with an opportunity to object.[77]

158. In addition, any argument that the Debtors cannot provide adequate assurance of future performance under their Assumed Executory Contracts and Unexpired Leases is without any merit. As set forth in the Disclosure Statement, the Debtors anticipate having over $166 million in cash, cash equivalents and other current assets on hand as of April 1, 2016 to fund their ongoing operations. In addition, in connection with confirmation of the Plan and as set forth above and in the Disclosure Statement, the Debtors have demonstrated that the Plan is feasible, which is sufficient to satisfy the requirement of adequate assurance of future performance for purposes of section 365 of the Bankruptcy Code. See In re Jennifer Convertibles, Inc., 447 B.R. 713, 719-20 (Bankr. S.D.N.Y. 2011) (finding adequate assurance was provided where projections showed feasibility for the enterprise as a whole in the future).

159. Accordingly, for all of the foregoing reasons, the proposed assumption and rejection of Executory Contracts and Unexpired Leases set forth in the Plan should be approved in connection with the Confirmation of the Plan, subject to the notice procedures set forth therein. Further, any objection, including from counterparties of Executory Contracts and Unexpired Leases, that contend that the Debtors have not demonstrated adequate assurance of future performance should be overruled.

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77 See *Notice Regarding (A) Executory Contracts and Unexpired Leases to be Assumed Pursuant to the Joint Plan of Reorganization of the Debtors and Debtors in Possession and Section 365 of the Bankruptcy Code, (B) Amounts Required to Cure Defaults Under Such Contracts and Leases and (C) Related Procedures* (Docket No. 497).

V. THE MODIFICATIONS OF THE ORIGINAL PLAN REFLECTED IN THE PLAN ARE EITHER NOT MATERIAL OR OTHERWISE IN COMPLIANCE WITH SECTION 1127 OF THE BANKRUPTCY CODE

160. Upon reaching a settlement with the Creditors' Committee on the terms of an amended plan, the Debtors made certain modifications (the "Settlement Modifications") to reflect such settlement in the Original Plan, dated November 20, 2015, to achieve the Plan currently before the Court, dated January 14, 2016. In addition, in the interest of clarifying certain points, making certain ministerial revisions to reflect events that have occurred during these cases since the filing of the Original Plan and consensually resolving certain formal and informal objections to Confirmation of the Plan, the Debtors have made certain non-material modifications to the Plan (together with the Settlement Modifications, the "Modifications"). The Modifications include:

- GUC Support Payment:
  - Updating the definition of GUC Support Payment as meaning $2,500,000.00 in Cash (I.A.63).
  - Revising the GUC Support Payment so that it is no longer conditioned upon approval of the Plan by Holders of General Unsecured Claims and providing that Holders of General Unsecured Claims that are Prepetition Note Deficiency Claims shall not receive a distribution of the GUC Support Payment with respect to such claim. (II.4.B).
- Litigation Trust:
  - Adding a definition of Litigation Trust GUC Beneficiaries. (I.A.63).
  - Increasing the Litigation Trust Funds to $500,000 and establishing the Litigation Trust Proceeds Allocation, an agreed upon sharing mechanism that results in a greater allocation of the first $2.5 million in Litigation Trust Proceeds to the Litigation Trust GUC Beneficiaries. (I.A.81-83).
  - Providing that the Litigation Trust can retain proceeds of the Specified Causes of Action against FiveT Capital AG under certain circumstances (III.H.1.a).
  - Entitling the Litigation Trustee to the tolling provisions provided under section 108 of the Bankruptcy Code (III.H.1.e).

- Adding provision regarding the Oversight Authority of the Litigation Trustee, as discussed below (VI.B.2).

- Additional New Capital Commitment:
  - Adding a definition of Additional New Capital Commitment (I.A.2).
  - Adding provision to account for Additional New Capital Commitment in addition to the New Exit Facility Term Loan (III.D).
  - Adding the Additional New Capital Commitment as a condition to the Effective Date (VII.B.5).

- Equipment Lease Settlements:
  - Adding a definition of Equipment Lease Settlements (I.A.51).
  - Adding provisions to reflect the Equipment Lease Settlements as among the Settlement of Claims and Controversies approved under the Plan. The Equipment Lease Settlements are attached to the Plan as Exhibit L (III.J.2).

- Claims:
  - Deleting references to adjusting claims without objection (VI.D), disallowance of certain claims (VI.E), and amendments to claims (VI.G).
  - Adding provisions that grant the Litigation Trust Trustee oversight authority with respect to the Reorganized Debtors' Claims reconciliation, objection, estimation and settlement process (VI.B.2).

- Creditors' Committee:
  - Adding provision to provide the Creditors' Committee a consent right over the condition to the Effective Date with respect to the Debtors' obtaining the Additional New Capital Commitment (VII.C).
  - Adding provision entitling the Creditors' Committee's Professionals payment for fees and expenses under certain conditions (IX.A).

The Debtors, the Creditors' Committee and the Committee of Lead Lenders do not believe that the Modifications adversely affect the way any Claim or Interest Holder is treated under the Original Plan that was circulated with the Disclosure Statement.

161. The Debtors do not believe the Modifications will materially and adversely affect the way any Claim or Interest Holder is treated under the Original Plan

circulated to voting creditors with the Disclosure Statement. Section 1127 of the Bankruptcy Code provides:

> 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 sections 1122 and 1123 of the title. 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).

162. Accordingly, bankruptcy courts typically allow plan proponents to make non-material changes to a plan without any special procedures or vote re-solicitation. See, e.g., In re Fed.–Mogul Global Inc., No. 01-10578, 2007 WL 4180545, at *39 (Bankr. D. Del. Nov. 16, 2007) (stating that supplemental disclosure is not required where plan "[m]odifications do not materially and adversely affect or change the treatment of any Claim against or Equity Interest in any Debtor"); Enron Corp. v. New Power, Co. (In re New Power Co.), 438 F.3d 1113, 1117–18 (11th Cir. 2006) ("[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."); Beal Bank, S.S.B. v. Jack's Marine, Inc., 201 B.R. 376, 380 (E.D. Pa. 1996) (holding that resolicitation is required only where modifications materially and adversely affect voting creditors). Bankruptcy courts also typically allow plan proponents to make material changes to a plan without any special procedures or vote resolicitation where such material changes improve recoveries for (or at least do not adversely affect) the classes of claims that previously voted to accept the Plan. See In re Tropicana Entm't, LLC, 2009 Bankr. LEXIS 5455, *89 (Bankr. D.

Del. May 5, 2009) (authorizing debtors to modify a plan supplement where material modifications had been approved by affected entities).

163. In addition, Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, provides in relevant part that:

> 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 to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019.

164. Section 1127 of the Bankruptcy Code gives a plan proponent the right to modify the 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 re-solicitation 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 procedures or vote resolicitation,[78] or to make material modifications to the Plan, provided that such modifications do not adversely affect an classes of claims that previously voted to accept the Original Plan.[79]

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78 See, e.g. In re Ashinc Corporation, No. 12-11564 (CSS) (Bankr. D. Del. Dec. 9, 2015) (Doc. No. 3383) (approving modified plan where modifications did not "constitute changes that materially and adversely change the treatment of any Clams or Interests"); In re B456 Systems, Inc., No. 12-12859 (KJC) (Bankr. D. Del. May 20, 2013) (Doc. No. 1675) (approving modifications that did "not materially or adversely affect or change the treatment of any holder of a Claim or Interest"); In re Solar Trust of America, LLC, No. 12-11136 (KG) (Bankr. D. Del. Mar. 7, 2013) (Doc. No. 876) (approving modified plan where modifications did "not materially or adversely affect or change the treatment any other Claim or Equity Interest").

79 See, e.g. In re Burns & Roe Enters., Inc., No. 08-4191 (GEB), 2009 WL 438694, at *23 (D.N.J. Feb. 23, 2009) (confirming plan as modified without additional solicitation or disclosure because modifications did "not adversely affect creditors"; In re Century Glove, Inc., 1993 WL 239489 at *3 (upholding bankruptcy court's finding that section 1127 did not require further disclosure and resolicitation of votes on plan when

165. Because all creditors in these Chapter 11 Cases have notice of the Confirmation Hearing, and will have an opportunity to object to any modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. See 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 modification of the plan). Moreover, the Modifications improve recoveries to Holders of General Unsecured Claims without adversely impacting any other Class of Claims or Interests, and Holders of over 90% of the Prepetition Notes agreed to these Modifications.[80]

166. Accordingly, the Debtors respectfully submit that the Modifications should not require the Debtors to resolicit the Plan because (a) the Modifications, are (i) non-material and/or (ii) will not adversely affect the treatment of any creditor that has previously accepted the Plan and (b) the Plan, as modified and as anticipated to be modified, will continue to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code.

VI. THE PLAN SHOULD BE CONFIRMED OVER THE OBJECTIONS

167. As described above, and as will be addressed below, the only objection attempting to attack the core of the Plan and the process by which it was achieved is from Mr. Charney. Of the remaining six[81] objections that were filed,[82] two have already been consensually

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"the [plan] modification . . . did not materially and adversely impact any creditors who previously voted for the Plan"); In re New Power Co., 438 F.3d 1113, 1117–18 (11th Cir. 2006) ("the 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 Calpine Corp., No. 05-60200, 2007 WL 4565223, at *6 (Bankr. S.D.N.Y. Dec. 19, 2007) (approving immaterial modification to plan without requiring the debtors to resolicit the plan); In re Kmart Corp., No. 02-02474, 2006 WL 952042, at *27 (Bankr. N.D. Ill. Apr. 11, 2006) (if modification does not adversely change the treatment of claims, then resolicitation is not required).

80 Where necessary, the Debtors will obtain the consent of the Committee of Lead Lenders.

81 The Debtors have counted the objection (Docket No. 261) and the supplemental objection of Lt. Col. Matthew Lewin (Docket No. 515) as constituting one objection to confirmation of the Plan.

82 The Creditors' Committee reserves its right to respond to certain limited issues with respect to the Plan and may subsequently file a pleading in that regard.

resolved: (a) the objection of Travis County, Travis County Healthcare District dba Central Health, City of Austin and Austin Independent School District (Docket No. 511) has been resolved pursuant to the Confirmation Order and; (b) the objection of the Comptroller of Public Accounts of the State of Texas (Docket No. 516) has been resolved pursuant to the Confirmation Order. Addressed below, and summarized in the chart attached hereto as Exhibit B, are the remaining open objections (each an "Objection").

A. Objection by Dov Charney (Docket No. 523)

168. Mr. Charney objects to confirmation of the Plan on the grounds that (a) the Debtors purportedly failed to properly solicit an alternative proposal that allegedly is superior to the Plan, (b) the Plan is not feasible and (c) the Plan's release and exculpation provisions are overly broad. As set forth in Parts I.C, I.K and II.A above, and as is further set forth below, the Charney Objection is without merit and the Debtors' respectfully request that the Court overrule it in its entirety.

1. Allegations that the Debtors Failed to Conduct an Adequate Marketing Process and Consider a Alternative Proposals Are Wholly Without Merit.

169. As set forth in Part I.C above, the Plan has been proposed in good faith, in accordance with section 1129(a)(3) of the Bankruptcy Code, as is evidenced by (a) the extensive good faith, arm's-length negotiations between the Debtors, the Creditors' Committee and the Supporting Parties, which have led to the consensual Plan before the Court today and (b) the acceptance of the Plan by the Voting Classes.

a. The Debtors Conducted a Robust Marketing Process and Engaged in Good Faith Discussions with Interested Parties

170. Despite the overwhelming and hard-fought support for the Plan, the Charney Objection argues that the Debtors did not conduct a good-faith, meaningful marketing

process for their businesses. Charney Obj. ¶¶ 21, 22. He argues that the Debtors waited three weeks after receiving an indication of interest from Hagan Capital Group and Silver Creek Advisors, LLC (together, "Hagan Group") before providing Hagan Group with a process letter. Id. at ¶ 22(a). He claims that the Debtors have not promptly responded to Hagan Group's diligence requests. Id. at ¶ 22(d). He argues that conducting the process over the holidays made it difficult for Hagan Group to conduct the diligence necessary to put in place an ABL facility. Id. at ¶ 22(b). And he claims that the Debtors should have begun a marketing process immediately upon filing the cases. Id. at ¶ 22(c). He makes these charges notwithstanding the fact that Hagan Group submitted a proposal—albeit a deficient proposal—on December 29, 2015, which was followed by another (deficient) proposal on January 11, 2016. At bottom, his allegations have no merit.

171. As evidenced herein, Mr. Charney's allegations of delay, inefficiency, "stonewalling" and deficiency in responses are simply false. See, e.g., Charney Obj. ¶¶ 2, 8, 11 & 12. Early in the post-petition marketing process, investment banking firm Cardinal contacted Moelis, ostensibly on behalf of a party interested in a transaction with the Debtors. Flachs Decl., ¶ 15. At the time, Cardinal held itself out as a representative of Mr. Charney's and the Debtors understood Cardinal's role to be primarily a facilitator between the Debtors and potential financial partners of Mr. Charney. Id. Subsequently, in the first week of December, Cardinal contacted Moelis to introduce another potentially interested party, Hagan Group.

172. First, contrary to Charney's assertion, the Debtors did not wait three weeks to respond to Hagan Group's indication of interest letter. As set forth in the Flachs Declaration, Hagan Group delivered its indication of interest letter on December 7, 2015. See Flachs Decl., ¶ 17. The next day, the Debtors provided Hagan Group with, and Hagan Group executed, a non-

disclosure agreement, thereafter gaining access to and accessing, on December 8, 2015, a data room containing voluminous bodies of information and documentation relating to the Debtors' business. See Flachs Decl., ¶ 18; Weinsten Decl., ¶ 78. A few days later, on December 12, 2015, Cardinal Advisors ("Cardinal") contacted Moelis requesting bid instructions and timetables and a process letter. See Flachs Decl., ¶ 19. The next day, December 13, 2015 (*not* December 23, 2015, as Mr. Charney alleges), Moelis provided Hagan Group with a formal process letter, setting forth the parameters and timing for the submission of proposals, which also were described to Cardinal in previous communications. Id. ¶¶ 19, 39.

173. Second, the Debtors promptly responded to Hagan Group's diligence requests. On December 16, 2015, at Hagan Group's request, Moelis arranged a call with Hagan Group, Moelis, FTI and Jones Day. Id.,¶ 20. During the call, which lasted fifteen minutes, Hagan Group's representative asked just a handful of questions about the Debtors, which FTI answered. Id. Over the next two weeks, representatives from Hagan Group contacted Moelis with various questions and diligence requests. Id.,¶ 21. Moelis worked with the Debtors to respond to all of these questions and requests in a timely manner. Id. Moreover, contrary to the specific deficiencies alleged by Mr. Charney in his objection, see Charney Obj.,¶ 11, the Debtors have timely and adequately responded to each of Hagan Group's diligence requests:

- First, Moelis made several attempts to arrange the call with the Debtors' management, however, Hagan Group stated that they did not want to have this call until after they submitted their bid. This call is currently scheduled for January 15, 2016;
- Second, as it relates to valuation, Moelis referred Hagan Group to court filings containing pertinent information;
- Third, the Debtors have never performed benchmarking studies. Moelis informed Hagan Group of this fact and referred Hagan Group to a monthly model in the dataroom instead;

- Fourth, Hagan Group did not request the cure costs, KERP obligations and stub rent until an email dated December 31, 2015. Certain of these data (cure costs and KERP) were readily available in filings on the docket. Moelis had previously provided the Hagan Group a summary of the administrative expenses, has been working on those requests and provided Hagan Group a response, including supporting documentation, on January 12, 2016; and

- Fifth, on December 30, 2015, he Debtors' advisors informed Hagan Group that the Committee of Lead Lenders was running its own ABL financing process and any appraisal required for this process is being commissioned by the Committee of Lead Lenders, not the Debtors, and as such we could not provide Hagan Group such appraisal.

Id., ¶ 40.

174. Thirteen days after the December 16, 2015 call with Hagan Group, on December 29, 2015, Hagan Group delivered the Original Proposal, id., ¶ 22, which the Debtors immediately carefully evaluated and thereafter rejected and communicated such to Hagan Group. On January 10, 2016, the Debtors received the Revised Proposal from Hagan Group. Id., ¶ 25. Moelis presented its findings and evaluations regarding the Proposals to the Debtors' Finance & Restructuring Committee on January 7, 2016 (presented on the Original Proposal) and on January 12, 2016 (presented on the Revised Proposal) and to the Debtors' full board on January 13, 2016, ultimately recommending that the Debtors not take any further action with respect to the Revised Proposal. Id., ¶ 32. The Debtors' board considered and ultimately rejected both the Original Proposal and the Revised Proposal. Id.

175. Finally, Charney contends that the Debtors' post-petition marketing process, run in part over the holidays, was insufficient to determine the level of investor interest in the Debtors' businesses and should have begun on the Petition Date. As discussed in the Flachs Declaration, Moelis marketed the Debtors' businesses for months before filing these cases, contacting more than 90 potential investors. They followed up on this process after the bankruptcy cases were filed, contacting approximately 60 bidders. Moreover, the Debtors'

bankruptcy cases were very publicized; it is unlikely that any potential investor in the retail sector was unaware of the Debtors' situation before or after these Cases were filed. In fact, even the Hagan Group—a party that is not active in the retail industry—acknowledged that it has been "following this deal for a number of years."[83] The Debtors' businesses have been adequately marketed. Unfortunately, there has been little interest in pursuing a transaction.

b. ***The Debtors' Good Faith and Well-Reasoned Evaluation of the Proposals***

176. The Charney Objection also contends that the Original Proposal (and, presumably Mr. Charney will now argue, the Revised Proposal) is superior to the Plan. This is mistaken. The Debtors and their advisors thoroughly evaluated the Original Proposal and, later, the Revised Proposal, and after such evaluations, the flaws of the Proposals were clear. Critically, the key economic terms of the Proposals were deficient to those of the Plan. With respect to the Revised Proposal, not only did it offer lower liquidity and a more leveraged capital structure than is expected under the Plan, Flachs Decl., ¶ 27, the Revised Proposal, like the Original Proposal, also poses significant risks with respect to the Debtors' ability to expeditiously exit these Cases. Id. Specifically, the Revised Proposal is conditioned upon the consent of the Committee of Lead Lenders. Id., ¶ 28.

177. However, the consent of the Committee of Lead Lenders was never obtained, and a non-consensual execution of either of the Proposals would ultimately require the Debtors to exercise their fiduciary out, withdraw the Plan and terminate the Restructuring Support Agreement, thereby significantly delaying the Debtors' emergence from these chapter 11 cases. See Flachs Decl., ¶ 29. Further still, the Debtors would need to procure $90 million of

83 Interview by Betty Li with Chad Hagan, Managing Director, Hagan Capital, in NYC, NY (Jan. 12, 2016), available at http://www.bloomberg.com/news/videos/2016-01-12/american-apparel-meet-the-investor-backing-dov-charney.

unconditional funding to refinance and repay the DIP Credit Facility in full, plus at least an additional $40 to $50 million to administer the Cases through the effective date of a non-consensual plan if one could be achieved. Id. This, of course, assumes the Debtors prevail in a priming fight with the Committee of Lead Lenders unless such DIP is subordinated to the Prepetition Notes.

178. Following an expensive, contested financing process, the Debtors would still need to negotiate, document and solicit approval of the Revised Proposal, which could take 120 days, if not more. Flachs Decl., ¶ 30. Upon receiving the Original Proposal, the Debtors raised this precise concern with Hagan Group and Hagan Group expressed no interest in modifying the Original Proposal to provide the necessary funding for an extended chapter 11 process that would be required in order to execute the Original Proposal without the Committee of Lead Lenders' support. Id. The Revised Proposal also did not promise any such funding. Id. Accordingly, under the Revised Proposal, there is no guarantee that the Debtors would receive the funding necessary to continue operating their business as a going concern enterprise during an extended chapter 11 process.

179. Assuming that the Debtors secured the necessary funding to repay the DIP Credit Facility in full, the Revised Proposal nonetheless adds further legal risks associated with confirming a non-consensual plan. Flachs Decl., ¶ 31. First, the Debtors would have to seek the support of the Committee of Lead Lenders, which would now have a substantial deficiency claim and could vote to block the Revised Proposal either through voting as a general unsecured claim if not electing to waive their deficiency claim or through a section 1111(b) election as a fully secured claim. Second, the Revised Proposal does not address the feasibility defects of servicing $90 million of take back paper ("New Senior Notes") and the $40 million of additional debt

("New Term Loan") contemplated by the Revised Proposal and the likely high rate that such paper would garner. Third, the Revised Proposal does not account for the substantial damage that would result to the Debtors' businesses and employee morale, or the executive turnover, and brand damage. Finally, while the Debtors currently have a firm, $80 million exit capital commitment (inclusive of a $40 million ABL backstop) from the Committee of Lead Lenders, who have a vested and continued interest in the Reorganized Debtors, the Debtors have no financial security should Hagan Group choose to walk away from the process at any time. Id.

180. At a minimum, the execution risk associated with the Proposals would have further exacerbated the uncertainty surrounding the Debtors' business, which, in turn, would have a negative impact on (a) the Debtors' execution of their turnaround business plan, (b) their relationships with customers, employees, landlords and vendors, (c) their ability to develop new and advantageous relationships with certain current and prospective vendors and (d) their ability to retain talented young professionals, all of which impacts the Debtors' ability to maintain sufficient liquidity to operate their business going forward. See Weinsten ¶ 78. At worst, without the funding required for an extended chapter 11 process, the Debtors could lose their ability to operate as a going concern, which would result in the liquidation of their estates causing (a) the loss of thousands of domestic jobs, (b) the rejection of the all of the Debtors' leases and (c) the termination of the Debtors' business relationships with their vendors and suppliers. Flachs Decl., ¶ 38; Weinsten Decl., ¶ 33.

181. As noted above, after a timely and thorough evaluation of the Proposals, see Flachs Decl., ¶¶ 28-32, Moelis presented its findings and an evaluation of the Proposals to the Debtors' Finance & Restructuring Committee on January 7, 2016 and January 12, 2016, respectively. Id. , ¶ 32. The Finance and Restructuring Committee ultimately determined that

the Original Proposal and the Revised Proposal were far inferior options to the Original Plan and the Plan. Id.¶ The next day, January 13, 2016, the full Board met to consider the Proposals and the Plan. The Board, after being apprised of the terms of the Proposals and the Plan and weighing the terms, conditions, risks and benefits of each, determined for many of the reasons discussed above and in the Flachs Declaration that the Plan remains the Debtors' best possible path toward confirmation and emerging from these chapter 11 cases as a viable business enterprise. See Flachs Decl., ¶ 38.

2. The Plan is Feasible and Seeks to Effect an Operational Turnaround of the Debtors' Business

182. The Charney Objection asserts that the Debtors' Plan "shows no meaningful attention to the direction of [the Debtors'] underlying operations." Charney Obj., ¶ 20. This assertion, too, is wholly without merit. As set forth in the Schneider Declaration, the Debtors—now finally armed with sufficient financing—are in the midst of implementing their multi-faceted turnaround plan. Schneider Decl., ¶¶ 14–19. Further, the Debtors have taken advantage of their time in chapter 11 to implement an across-the-board evaluation of their retail store portfolio and, as a result, have rejected (to date) the leases of 15 of their underperforming stores and have conducted Store Closing Sales at many of the same. Weinsten Decl., ¶ 102. In addition, the Debtors have executed an asset purchase agreement with respect to the sale of their underperforming Oak business, which had never properly melded into the Debtors' operational structure. Id. These efforts have strengthened the feasibility of the Debtors' business plan, and have given the Debtors a viable retail footprint upon which to move forward. Thus, it is disingenuous for Mr. Charney to assert that the Debtors have not paid any "meaningful attention" to their underlying operations as part of their restructuring efforts.

3. The Plan's Release, Exculpation and Injunction Provisions are Appropriate, Fair and Consistent with Third Circuit Law.

183. Finally, the Charney Objection attacks the Plan's Release and Exculpation provisions. Charney Obj., ¶¶ 22–24. First, the Charney Objection incorrectly asserts that Holders of Interests in Class 8A (APP Interest), which are deemed to have rejected the Plan, are bound by the Third Party Release, and therefore are deprived of "potentially valuable causes of action under securities laws." See Charney Obj. at ¶ 22. Rather, as set forth in Parts II.A.3 above, the Third-Party Release is consensual. Each ballot sent out to Holders of Claims in the Voting Classes clearly set forth the Plan's Third-Party Release and provided each such Holder with the ability to opt out of the Debtor Release and the Third-Party Release. As result, the Third-Party Release is only being provided by Holders of Claims in the Voting Classes that both voted in favor of the Plan (including the Third- Party Release) and that did not opt out of the Releases in their timely submitted ballots. The Releases are also being provided by Holders of Claims and Interests in classes that are unimpaired under the Plan and are thus presumed to accept the Plan and by those parties that specifically negotiated the Third-Party Release in connection with the Restructuring Support Agreement. Holders of Claims and Interests in classes (like Class 8A) that are impaired under the Plan and deemed to reject the Plan, and thus are not entitled to vote to accept or reject the Plan, are not providing a Third-Party Release under the Plan.

184. In addition, the Charney Objection alleges that the Debtors did not properly disclose the Debtors' investigation into potential estate causes of action and that, without this disclosure, the Debtor Release is improper. See Charney Obj., ¶ 23. As part of the negotiation of the Restructuring Support Agreement, the Debtors, with the assistance of their advisors, undertook reasonable efforts to investigate potential claims or causes of action that the

Debtors may have against the Released Parties, including an evaluation of pending or recent litigations involving certain of the Released Parties, and have determined that no such claims exist.

185. Finally, the Charney Objection alleges that the Exculpation is overly broad and should instead be limited to "case fiduciaries and close affiliates." See Charney Obj., ¶ 24. Notwithstanding that the Charney Objection cites no case law for this, or any other allegation, the Debtors believe, as set forth in detail in Part II.A.5 above, that unique circumstances exist in these chapter 11 cases to extend the Exculpation to fiduciaries beyond the Debtors, the Creditors' Committee and their respective Representatives.

186. Accordingly, the Debtors respectfully submit that the Charney Objection should also be overruled as it relates to the appropriateness of the Plan's Release and Exculpation provisions.

B. Objection by Office of the United States Trustee (Docket No. 535)

187. The objection of the U.S. Trustee asserts that the Exculpation is overly broad and thus impermissible. Specifically, the U.S. Trustee argues that the exculpation provision must be limited to those parties who served in the capacity of estate fiduciaries (e.g., estate professionals and the Debtors' directors and officers). See UST Obj. ¶ 8. The Debtors believe, contrary to the assertion of the U.S. Trustee, that the Exculpation provided for in the Plan is appropriate. As set forth in detail in Part II.A above: (a) unique circumstances exist in these chapter 11 cases to extend the Exculpation to fiduciaries beyond the Debtors, the Creditors' Committee and their respective Representatives, (b) the scope of the Exculpation is appropriately limited to the Released Parties' acts or omissions in connection with transactions contemplated by the Plan, Restructuring Support Agreement and the Chapter 11 Cases and does not include liability resulting from gross negligence or willful misconduct, (c) the Exculpation is necessary

to protect parties who have made substantial contributions to the Debtors' reorganization and (d) the Exculpation is supported by all Holders of Claims in the Voting Classes who have voted to accept the Plan. Accordingly, the Debtors respectfully request that the U.S. Trustee's objection be overruled as it relates to the appropriateness of the Exculpation.

C. Objection by Lt. Col. Matthew E. Lewin (Docket Nos. 261 & 515)

188. The objection of Lt. Col. Matthew E. Lewin to the Plan principally asserts that the Plan's proposed treatment of Class 8A Interests — which will not receive a distribution under the Plan — failed to satisfy the requirements set forth in sections 1129(b)(2) and 1129(a)(7) of the Bankruptcy Code, and as such the Plan is not in the best interests of Holders of Class 8A Interests. In essence, Lt. Col. Lewin asks the Court to reject the Plan and provide Holders of Class 8A Interests equity in the Reorganized Debtors.

189. As set forth in Part I.Q.2, the distributions under the Plan are fair and equitable pursuant to Section 1129(b)(2)(B) of the Bankruptcy Code. Moreover, as set forth in Part I.G, the Plan satisfies the "best interest of the creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code. The Debtors do not believe that the Bankruptcy Code requires, or even permits, the relief sought in Lt. Col. Lewin's objections. See In re PWS Holding Corp., 228 F.3d 224, 237 (3d Cir. 2000) (the absolute priority rule requires that "creditors be paid in full before holders of equity receive any distribution."). As set forth in Part I.Q.2, any distribution to Holders of Class 8A Interests would violate the absolute priority rule with respect to Holders of Claims and Interests in Classes 4A through 4F and Class 6A through 6F. Accordingly, the Debtors' respectfully request that the Court overrule the objection of Lt. Col. Lewin.

D. Objection by the Internal Revenue Service (Docket No. 498)

190. The Objection of the Internal Revenue Service ("IRS") to the Plan asserts that (a) Debtor American Apparel (USA), LLC has failed to file Forms 1042 for the years 2012

through 2014, (b) the proposed third party non-debtor limitation of liability, injunction and release provisions set forth in Section IX of the Plan violated the Anti-Injunction Act, I.R.C. § 7421 to the extent third part releases apply, (c) the Plan must preserve the IRS's rights to (i) setoff in accordance with section 553 of the Bankruptcy Code and (ii) interest with respect to the IRS's administrative claims in accordance with sections 503(b)(1)(C) and 511 of the Bankruptcy Code, (d) the Debtors must pay IRS priority tax claims in full in cash on the Effective Date in accordance with section 1129(a)(9)(C) of the Bankruptcy Code and (e) the Plan impermissibly (i) sets an administrative claims bar date for taxes described in section 503(b)(1)(B) and (C) of the Bankruptcy Code and (ii) provides for the discharge of debts described under section 1141(d)(6) of the Bankruptcy Code.

191. The Debtors continue to work towards a consensual resolution with the IRS. The Debtors expect to reach such a resolution prior to the Confirmation Hearing and will modify the Confirmation Order to reflect such resolution.

192. Nonetheless, the IRS Objection should be overruled. First, as set forth above, the Third-Party Releases are consensual in nature and are, therefore, permissible and appropriate. Second, with respect to certain rights under the Bankruptcy Code afforded to governmental units, particularly taxing authorities, whether in connection with their administrative expense claims, priority unsecured claims or otherwise, the Plan is not designed to contract such rights. Accordingly, the IRS Objection should be overruled.

E. Objection by Hudson 6922 Hollywood, LLC (Docket No. 596)

193. The objection of Hudson 6922 Hollywood, LLC ("Hudson") to the Plan asserts that (a) the Debtors must provide Hudson with adequate assurance of future performance with respect to the Lease (as defined in the objection) pursuant to section 365(b)(1) of the Bankruptcy Code, (b) the Lease must be assumed without modification pursuant to section

365(b)(3)(C) of the Bankruptcy Code, including with respect to (i) Hudson's right to assert claims for accrued but unbilled adjustments and (ii) any attempt to assume the lease free and clear of the Debtors' indemnity obligations, (c) in the event the Lease is assumed, the Debtors must cure all defaults under the Lease and compensate Hudson for any actual pecuniary loss as a result of such defaults (including attorneys' fees) and (d) Section IV.A of the Plan is an attempt to change a valid contract.

194. The Debtors continue to work towards a consensual resolution with Hudson. The Debtors expect to reach such resolution prior to the Confirmation Hearing and will modify the Confirmation Order to reflect such resolution.

195. Nonetheless, the Hudson Objection should be overruled. With respect to their demand that the Debtors demonstrate adequate assurance of future performance, the Debtors have already done so, as set forth in Part I.K above. The remaining issues in the Hudson Objection are of the nature of a cure objection and will be dealt with in accordance with the procedures set for in Section IV.B of the Plan.

F. Other Miscellaneous Informal Inquiries

196. The Debtors received a handful of informal inquiries with respect to the Executory Contracts and Unexpired Leases proposed to be assumed pursuant to the Plan. The Debtors were able to address all such inquiries without the need for formal objections to the Plan by (a) agreeing to certain changes to Exhibit C of the Plan, a revised version of which will be filed before the Confirmation Hearing and/or (b) by agreeing to add clarifying language to the Confirmation Order. However, a number of inquiries, including a handful of formal objections, also related to the amount necessary to cure the Debtors' default under the respective Executory Contract or Unexpired Lease (the "Cure Amount Disputes"), and the Debtors remain in ongoing discussions with many of these parties. The Debtors will continue to work to resolve the Cure

Amount Disputes and, to the extent any Cure Amount Disputes require determination by the Court, will schedule a subsequent hearing on the matter, in accordance with the procedures described in the Plan. To the extent any of these Cure Amount Disputes also involve objections to the Debtors' ability to provide adequate assurance of future performance, the Debtors believe such objections are sufficiently addressed in this Brief and should therefore be overruled.

VII. WAIVER OF STAY

197. The Debtors respectfully request that the Court cause the Confirmation Order to become effective immediately upon its entry notwithstanding the 14-day stay imposed by operation of Bankruptcy Rule 3020(e), which states that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e); see also Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend (stating that a "court may, **in its discretion**, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately") (emphasis added). Such a waiver is appropriate in these circumstances to allow the Debtors to proceed with their rapid reorganization in order to conserve resources and fees. In light of the general consensus on the Plan, a prompt Effective Date is appropriate.

CONCLUSION

For all of the foregoing reasons, the Debtors submit that the Court should confirm the Plan, because it fully satisfies all applicable requirements of the Bankruptcy Code, and provide such other relief as the Court deems is just and appropriate.

Dated: January 15, 2016
Wilmington, Delaware

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EXHIBIT A

Confirmation Standards Chart

CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY DEBTORS AND DEBTORS IN POSSESSION

THE PLAN COMPLIES WITH EACH OF THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

This chart summarizes the requirements for confirmation of the *First Amended Joint Plan of Reorganization of the Debtors and Debtors in Possession*, dated January 14, 2016 [Docket No. 585] (as it may be modified or amended, the "Plan") under section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), and is provided in support of the Plan and the *Debtors' (I) Memorandum of Law in Support of Confirmation of First Amended Joint Plan of Reorganization of Debtors and Debtors in Possession and (II) Consolidated Reply to Objections to Confirmation of First Amended Joint Plan of Reorganization* (the "Confirmation Memorandum") filed with the Bankruptcy Court herewith. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan and the Confirmation Memorandum, as applicable.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1)	Section 1129(a)(1) — The Plan Must Comply with the Applicable Provisions of Title 11. The substantive provisions that are most relevant in the context of section 1129(a)(1) are sections 1122 (classification requirements) and 1123 (mandatory plan contents) of the Bankruptcy Code.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1122)***	A. Section 1122 of the Bankruptcy Code establishes the requirements for the classification of claims and interests in a plan of reorganization.	A. The Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.
	Section 1122 of the Bankruptcy Code provides that, except in the case of unsecured claims separately classified for administrative convenience, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class."	1. The Plan follows a non-consolidated structure, respecting the corporate separateness of each of the Debtors. Section II of the Plan reasonably provides for the separate classification of Claims against and Interests in the 6 Debtors into 9 distinct Classes based upon (a) their security position, if any, (b) their legal priority against the applicable Debtor's assets and (c) other relevant criteria. See Plan, Section II.B; Confirmation Memorandum, ¶ 13.
		2. Moreover, each class of Claims or Interests includes only substantially similar Claims or Interests against the applicable Debtor. See Plan, Section II.B. Specifically, the Plan classifies the following Claims and Interests: a. Priority Claims against each Debtor (Class 1A, 1B, 1C, 1D, 1E & 1F Claims); b. Other Secured Claims against each Debtor (Class 2A, 2B, 2C, 2D, 2E & 2F Claims); c. Prepetition Notes Secured Claims against each Debtor (Class 3A, 3B. 3C, 3D, 3E, & 3F Claims); d. General Unsecured Claims against each Debtor (Class 4A, 4B, 4C, 4D, 4E, & 4F Claims); e. UK Guaranty Claims against American Apparel, Inc. (Class 5A Claims); f. Section 510 Claims against each Debtor (Class 6A, 6B, 6C, 6D, 6E & 6F Claims); g. Intercompany Claims against each Debtor (Class 7A, 7B, 7C, 7D, 7E & 7F Claims); h. APP Interests in American Apparel, Inc. (Class 8A Interests); and i. Subsidiary Debtor Equity Interests in American Apparel (USA), LLC, American Apparel Retail, Inc., American Apparel Dyeing & Finishing, Inc., KCL Knitting, LLC and Fresh Air Freight, Inc. (Class 9B,

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		9C, 9D, 9E & 9F Interests). See Plan, Section II.B,1; Confirmation Memorandum, ¶ 14.
		3. Valid business, factual and legal reasons exist for the separate classification of Claims and Interests. a. At a threshold level, the Plan separates Claims from Interests, Priority Claims from General Unsecured Claims and Secured Claims from both Priority and General Unsecured Claims. See Confirmation Memorandum, ¶ 15. b. More particularly, due to their unique and different rights: i. Prepetition Note Secured Claims (Class 3A, 3B, 3C, 3D, 3E & 3F Claims) are classified separately from Other Secured Claims (Class 2A, 2B, 2C, 2D, 2E & 2F Claims) because the claims arise pursuant to distinct underlying agreements or transactions (e.g., the Prepetition Indenture and as compared to, among other sources, federal law, state law and/or trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against the Debtors, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims. ii. UK Guaranty Claims (Class 5A Claims) are classified separately from General Unsecured Claims against American Apparel, Inc. (Class 4A Claims) because the Claims arise pursuant to distinct agreements or transactions (e.g., the UK Loan and as compared to generally, trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against American Apparel, Inc., and the relative nature of these Claims require differing forms of treatment (reinstatement in the case of the UK Guaranty Claims due to the anticipated continued performance of the underlying loan to a Non-Debtor Affiliate as compared to cash and Litigation Trust units for General Unsecured Claims); iii. Section 510 Claims (Class 6A, 6B, 6C, 6D, 6E & 6F Claims) are properly subordinated to General Unsecured Claims pursuant to section 510(b) of the Bankruptcy Code. There are no other subordinated General Unsecured Claims that are separately classified from the Section 510 Claims; iv. APP Interests (Class 8A Interests) are Interests in American Apparel, Inc., and Subsidiary Debtor Equity Interests (Class 9B, 9C, 9D, 9E & 9F Interests) are the respective Interests held in Subsidiary Debtors (i.e., Debtors other than American Apparel, Inc.) and v. Because these are insider claims asserted by non-debtor affiliates, Intercompany Claims (Class 7A, 7B, 7C, 7D, 7E & 7F Claims) have been separately classified in Class 7. c. The Plan's classification scheme is not an attempt to manufacture an impaired class that will vote in favor of the Plan. The Plan has been unanimously accepted by each pair of Impaired Classes of Claims of the Debtors that are entitled to vote. See Confirmation Memorandum, ¶ 14-17.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a))***	A. Section 1123(a) of the Bankruptcy Code specifies seven requisites for the contents of a plan of reorganization.	A. The Plan contains each of the mandatory plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(1))***	1. Section 1123(a)(1) of the Bankruptcy Code requires that a plan of reorganization designate: (a) classes of claims, other than priority claims under section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code; and (b) classes of interests.	1. Section II.B of the Plan designates 9 classes of Claims and Interests. See Plan, Section II.B.1; see also supra pp. 1-2.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(2))***	2. Section 1123(a)(2) of the Bankruptcy Code requires that a plan specify classes of claims and interests that are unimpaired under the plan.	2. Section II.B of the Plan specifies that Claims and Interests in Classes 1A through 1F, 2A through 2F, 5A, 7A through 7F, and 9B through 9F are Unimpaired. See Plan, Section II.B.2,.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(3))***	3. Section 1123(a)(3) of the Bankruptcy Code requires that a plan specify the treatment of any class of claims or interests that is impaired under the plan.	3. Section II.B of the Plan specifies that Claims and Interests in Classes 3A through 3F, 4A through 4F, 6A through 6F, and 8A are Impaired and describes the treatment of each such Class. See Plan, Section II.C..
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(4))***	4. Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest of a particular class unless the holder consents to less favorable treatment of such claim or interest.	4. Section II.C of the Plan provides for equality of treatment within each Class of Claims or Interests, unless the Holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest. See Plan, Section II.C.1-9.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(5))***	5. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide adequate means for its implementation and lists several examples of the means by which plan implementation may be accomplished.	5. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Section III of the Plan, as well as various other provisions thereof, provide adequate means for the Plan's implementation. Those provisions relate to, among other things: a. the continued corporate existence of the Debtors (subject to the Restructuring Transactions) and the vesting of the Debtors' assets in the Reorganized Debtors; b. the consummation of the Restructuring Transactions; c. the obligations of successors to the Reorganized Debtors created pursuant to the Restructuring Transactions; d. the adoption of the corporate constituent documents that will govern the Reorganized Debtors; e. the identities of, and/or method for appointing, the known directors and officers of Reorganized American Apparel, Inc. and the other Reorganized Debtors; f. the issuance and distribution of Reorganized American Apparel Equity Interests; g. the treatment of certain employment, retirement and workers' compensation benefits, including the

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		Management Incentive Plan; h. the authorization for the Reorganized Debtors to consummate the (1) New Exit Facility Term Loan, (2) the Equity Commitment Agreement and (3) the Additional New Capital Commitment; i. the preservation of rights of action by the Reorganized Debtors (other than claims settled or released pursuant to the Plan); j. the general releases by (1) the Debtors and the Reorganized Debtors, (2) Holders of Claims or Interests entitled to vote on the Plan who do not opt out of granting the releases described in the Plan and (3) the Released Parties; k. the cancellation and surrender of instruments, securities and other documentation; l. the release of liens; m. the mechanism for distributions of Reorganized American Apparel Equity Interests and/or Cash pursuant to the Plan; n. the assumption or rejection of Executory Contracts and Unexpired Leases; and o. the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements or documents related to the foregoing. Moreover, by virtue of the $80 million of debt and equity capital, comprising the $40 million committed pursuant to the Equity Commitment Agreement and the $40 million Additional New Capital Commitment, the Debtors expect to have on the Effective Date sufficient Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. See Plan, Section III.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(6))***	6. Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in the debtor's charter of a provision prohibiting the issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of voting power among such classes.	6. In these Chapter 11 Cases, section 1123(a)(6) of the Bankruptcy Code is inapplicable because the Reorganized American Apparel will be a limited liability company and not a corporation. In any event, the New LLC Agreement attached as. Exhibit A to the Plan, which is the New LLC Agreement for Reorganized American Apparel, (filed in the Plan Supplement dated December 30, 2015 (Docket No. 496)) does not contemplate that any membership interests issued pursuant to the Plan will be nonvoting. See Plan, Section III.G.1; Plan Supp. Ex. A.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(7))***	7. Section 1123(a)(7) of the Bankruptcy Code requires that a plan contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director or trustee under the plan or any successor thereto.	7. The Debtors have previously disclosed the identities and the affiliations of four of the seven prospective members of the New Board of Reorganized American Apparel, and the New Board will select the directors of the other Reorganized Debtors. Exhibit B to the Plan sets forth the names and affiliations of the seven members comprising the New Board of directors of Reorganized American Apparel, Inc. In particular, the New Board of Reorganized American Apparel consists of seven directors (identified on Exhibit B to the Plan as disclosed in the Plan Supplement), which, to date, are as follows: (a) Paula Schneider, (b) Luke Corning, (c) Adam Gray, and (d) Andrew Herenstein. See Plan, Section III.G.2 & Exhibit B. See Confirmation Memorandum ¶ 27. The directors for the boards of directors of the direct and indirect subsidiaries of Reorganized American Apparel, Inc. will be identified and selected by the New Board. See Plan, Section III.G.2.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		In light of the foregoing, the manner of selection of the initial officers and directors of Reorganized American Apparel and the other Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code. See Confirmation Memorandum ¶27.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b))***	A. Section 1123(b) of the Bankruptcy Code contains various provisions that may be, but are not required to be, included in a plan of reorganization.	A. The Plan contains many of these discretionary plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(1))***	1. Section 1123(b)(1) of the Bankruptcy Code allows a plan to impair or leave unimpaired any class of claims (secured or unsecured) or interests.	1. Section II of the Plan provides for the impairment or unimpairment of Classes of Claims. See Plan, Section II.B; see also supra p.1.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(2))***	2. Section 1123(b)(2) of the Bankruptcy Code allows a plan, subject to section 365 of the Bankruptcy Code, to provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected.	2. Section IV.A of the Plan provides for the assumption or rejection of Executory Contracts and Unexpired Leases not previously rejected (or for which motions for assumption or rejection are pending) under section 365 of the Bankruptcy Code. See Plan, Section IV.A,
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(3)***	3. Section 1123(b)(3) of the Bankruptcy Code allows a plan to provide for the settlement or adjustment of any claim or interest belonging to a debtor or provide for the retention and enforcement of any claim or interest.	3. Section III.J.1 of the Plan provides that unless a Cause of Action against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order and the Final DIP Order), the Debtors expressly reserve such Causes of Action, which are to be either (i) comprised of the Retained Causes of Action and retained by the Debtors or Reorganized Debtors or (ii) comprised of the Specified Causes of Action and transferred to the Litigation Trust pursuant to the Plan, In accordance with section 1123(b)(3) of the Bankruptcy Code, any Specified Causes of Action that a Debtor may hold against any Entity shall vest in the Litigation Trust and the Litigation Trustee on behalf of the Litigation Trust and any Retained Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors.. See Plan, Section III.J.1. a. The Plan provides that, as of the Effective Date, the Debtors will forever release, waive and discharge all Liabilities they have, had, or may have against a Released Party, subject to certain exceptions. See Plan, Section IX.E.1.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(4))***	4. Section 1123(b)(4) of the Bankruptcy Code allows a plan to provide for the sale of all or substantially all of the property of a debtor's estate.	4. N/A. This section is not applicable because the Plan does not provide for the sale of all or substantially all of the property of the Debtors' Estates.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(5))***	5. Section 1123(b)(5) of the Bankruptcy Code allows a plan to modify the rights of holders of claims, with the exception of claims secured only by a security interest in real	5. Section II.B of the Plan modifies the rights of Holders of Claims in Impaired Classes and leaves unaffected the rights of Holders of other Claims in Unimpaired Classes. See Plan, Section II.B; see also supra p. 1.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	property that is the debtor's principal residence, or leave unaffected the rights of holders of any class of claims.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(6))***	6. Section 1123(b)(6) of the Bankruptcy Code allows a plan to include any other appropriate provisions not inconsistent with the provisions of title 11.	6. The Plan includes numerous other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including: a. governing distributions on account of Allowed Claims (see Plan, Section V); b. establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved (see Plan, Section VI); c. regarding the discharge, release and injunction against the pursuit of Claims and termination of Interests (see Plan, Section IX); and d. regarding the retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date (see Plan, Section X). e. regarding the settlement of certain matters between and among the Debtors and other parties in interest, including the Equipment Lease Settlements (see Plan, Section III.J.2).
11 U.S.C. § 1129(a)(2)	Section 1129(a)(2) — The Debtors Must Comply with the Applicable Provisions of Title 11.	
11 U.S.C. § 1129(a)(2) ***(11 U.S.C. § 1125)***	A. The primary purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that the proponent has adhered to the disclosure requirements of sections 1125 and 1126 of the Bankruptcy Code. As a result, the plan proponent's compliance with sections 1125 and 1126 of the Bankruptcy Code forms the basis of the inquiry under section 1129(a)(2) of the Bankruptcy Code.	A. The requirements of section 1129(a)(2) have been satisfied.
	1. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information.	1. The Debtors have adhered to the disclosure requirements of section 1125 of the Bankruptcy Code. a. By an order dated November 20, 2015 [Docket No. 365] (the "Disclosure Statement Order"), the Bankruptcy Court specifically found, among other things, that the Disclosure Statement contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code. See Disclosure Statement Order, at ¶ E. b. The Bankruptcy Court considered and, in the Disclosure Statement Order, approved all materials to be transmitted to creditors entitled to vote on the Plan (collectively, the "Solicitation Materials"), the timing and method of delivery of the Solicitation Materials and the rules for tabulating votes to accept or reject the Plan. c. The Debtors (through the Voting Agent) transmitted the approved Solicitation Materials in accordance with the instructions of the Bankruptcy Court in the Disclosure Statement Order. See *Affidavit of Service* (Docket No. 420); *Affidavit of Service* (Docket No. 451), *Affidavit of Service* (Docket No. 466); *Certificate of Publication* (Docket No. 504).

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	2. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.	2. The Debtors have adhered to the solicitation requirements of section 1126 of the Bankruptcy Code. a. The Debtors solicited acceptances from the Holders of Allowed Claims in each Class of Impaired Claims entitled to receive distributions under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in those Classes were entitled to vote to accept or reject the Plan. b. The Debtors did not solicit acceptances from (1) the Holders of Claims or Interests that are designated as Unimpaired because, pursuant to section 1126(f) of the Bankruptcy Code, such Holders are conclusively presumed to accept the Plan or (2) the Holders of Claims or Interests that are designated as Impaired but are not entitled to receive or retain any property under the Plan on account of such Claims and/or Interests because, pursuant to section 1126(g) of the Bankruptcy Code, Holders of such Claims and/or Interests are deemed to reject the Plan.
11 U.S.C. § 1129(a)(3)	Section 1129(a)(3) — The Plan Must Be Proposed in Good Faith and Not by Any Means Forbidden by Law.	
11 U.S.C. § 1129(a)(3)	A. Under the good faith standard, good faith is present if the plan has been proposed with the reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. Accordingly, a plan proponent simply must demonstrate that the plan is reasonably likely to succeed and that a reorganization is possible, consistent with the goals of chapter 11.	A. The Plan has been proposed by the Debtors in good faith and in the belief that a successful reorganization can be accomplished. 1. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by proposing to implement the Debtors' restructuring as a sustainable, viable business through (i) the conversion of over $200 million of Prepetition Notes into equity interests of the reorganized American Apparel; (ii) the infusion into the Reorganized American Apparel of up to $80 million of new capital; and (iii) distributions to General Unsecured Creditors in the form of a $2.5 million in cash (with Holders of Prepetition Notes not receiving such cash distributions on account of over $143 million of their unsecured deficiency claims, leading to a meaningful aggregate recovery for Holders of General Unsecured Creditors of approximately 6%) as well as units in the Litigation Trust, now seeded with $500,000 to pursue the Specified Causes of Action. 2. The Plan is overwhelmingly supported by Holders of Prepetition Note Secured Claims against each Debtor (i.e., 84.85% in number and 99.99% in amount) and is supported by Holders of General Unsecured Claims against each Debtor (i.e., 57.89% to 85.29% in number and 98.70% to 99.99% in amount), as well as by the Creditors' Committee. The support for the Plan from nearly all of the Debtors' primary stakeholder constituencies, as evidenced by the voting results and the fact that only seven parties filed formal objections to the Plan, further evidences the Debtors' honesty and good faith in proposing the Plan, and the totality of the circumstances surrounding its formulation clearly promotes the rehabilitative objectives and purposes of the Bankruptcy Code. See Confirmation Memorandum ¶54.
11 U.S.C. § 1129(a)(4)	Section 1129(a)(4) — All Payments to Be Made by the Debtor in Connection with Its Chapter 11 Case Must Be Subject to Court Approval.	
11 U.S.C. § 1129(a)(4)	A. Section 1129(a)(4) of the Bankruptcy Code requires that any payment made by a plan proponent, debtor or person issuing securities or acquiring property under a plan in connection with the plan or the bankruptcy case must have been disclosed and approved by the court, or be subject to the approval of the court, as	A. The Plan provides for the payment only of Allowed Administrative Claims, and makes all payments for Professionals' Fee Claims for services rendered prior to the Effective Date subject to Court approval under the standards established by the Bankruptcy Code, including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable, by requiring Professionals to file final fee applications with the Court. See Plan, Section II.A.1. In addition, 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. See Plan, Section X.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	reasonable.	
11 U.S.C. § 1129(a)(5)	Section 1129(a)(5) — The Plan Must Disclose Information Regarding Postconfirmation Management of the Debtor.	
11 U.S.C. § 1129(a)(5)	A. Section 1129(a)(5) of the Bankruptcy Code imposes the following two requirements: 1. First, a plan may be confirmed only 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. 2. Second, the appointment or continuation in office of existing management must be consistent with the interests of creditors, equity security holders and public policy.	A. The Debtors have fully satisfied the requirements imposed by section 1129(a)(5) of the Bankruptcy Code. 1. The Debtors have satisfied the disclosure requirements of section 1129(a)(5) of the Bankruptcy Code. a. The Debtors have disclosed the identities of the known directors that will comprise the New Board of Reorganized American Apparel. As established by these disclosures, the known directors of Reorganized American Apparel are qualified and experienced. See Plan, Exhibit B; Confirmation Memorandum ¶ 62; see also supra p. 4. b. In addition, the Debtors have disclosed that certain existing officers of American Apparel (who are "insiders" as such term is defined in section 101(31) of the Bankruptcy Code) will continue to serve as the officers of Reorganized American Apparel and that the prior compensation of such officers, as well as that of the Debtors' current directors, has been disclosed by the Debtors pursuant to their previous filings with the SEC as well as pursuant to various pleadings filed in their bankruptcy cases. See Confirmation Memorandum ¶63. 2. The appointment or continuation in office of existing management is consistent with the interests of creditors, equity security holders and public policy. a. The initial directors of Reorganized American Apparel have been selected by a majority of Reorganized American Apparel's interest holders (i.e., the Requisite Supporting Parties). Finally, no party in interest has objected to the manner of selection of the board of directors or the officers of the Reorganized Debtors. See Confirmation Memorandum ¶ 64.
11 U.S.C. § 1129(a)(6)	Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval.	
11 U.S.C. § 1129(a)(6)	A. Section 1129(a)(6) of the Bankruptcy Code requires that, after confirmation of a plan, any governmental regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan, or that such rate change is expressly conditioned on such approval. Section 1129(a)(6) is applicable only to debtors subject to governmental regulatory authority.	A. N/A. This section is not applicable because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation.
11 U.S.C. § 1129(a)(7)	Section 1129(a)(7) — The Plan Must Be in the Best Interests of Creditors.	
11 U.S.C. § 1129(a)(7)	A. Section 1129(a)(7) of the Bankruptcy Code codifies the so-called "best interests of creditors" test. The best interests of creditors test requires that, with respect to each impaired class of claims or interests, except for claims where the section 1111(b) election applies, each	A. The Plan satisfies the best interests of creditors test. 1. By its express terms, the best interests test is applicable only to nonaccepting Holders of Impaired Claims and Interests. 2. Under the Plan, only Classes 3A through 3F, 4A through 4F, 6A through 6F, and 8A are Impaired. See Plan,

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	holder of a claim or interest either has accepted the plan or will receive or retain property of a value, as of the effective date of the plan, that is not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.	Section II.B.2. 3. As set forth in the Disclosure Statement (including the Liquidation Analysis attached as Exhibit 2 thereto (the "Liquidation Analysis")), the declaration of Mark Weinsten and as will be demonstrated at the Confirmation Hearing, Holders of Impaired Claims or Interests under the Plan are not receiving less than they would receive in a chapter 7 liquidation of the Debtors. See Liquidation Analysis at 6.
11 U.S.C. § 1129(a)(8)	Section 1129(a)(8) — The Plan Must Be Accepted by the Requisite Classes of Claims and Interests.	
11 U.S.C. § 1129(a)(8)	A. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either vote to accept the plan or be unimpaired under the plan.	A. 36 of the 43 Classes have (i) voted to accept the Plan, (ii) are Unimpaired under the Plan or (iii) are deemed to have accepted the Plan. 1. All Unimpaired Classes of Claims and Interests under the Plan (i.e., Classes 1A through 1F, 2A through 2F, 5A, 7A through 7F and 9B through 9F) are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, thus, have not voted on the Plan.. See Plan, Section II.B.2. 2. As set forth in the Voting Declaration, Classes 3A through 3F and Classes 4A through 4F have accepted the Plan, and with respect to Classes 3A through 3F and Classes 4D through 4F, overwhelmingly so. See Voting Decl., ¶ 55
	B. Section 1129(a)(8) of the Bankruptcy Code is the only confirmation requirement that is not mandatory. If section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to certain classes of claims or interests, a plan nevertheless may be confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code.	B. Because the Holders of Claims and Interests in Classes 6A through 6F and 8A (collectively, the "Deemed Rejecting Classes") neither receive nor retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. See Plan, Section II.B. Nonetheless, the Plan may be confirmed with respect to these Classes under the "cramdown" requirements of section 1129(b) of the Bankruptcy Code because the Plan does not unfairly discriminate with respect to such Classes and is otherwise fair and equitable with respect to each Impaired Class of Claims or Interests that has not accepted the Plan. See Confirmation Memorandum ¶ 75-76.
11 U.S.C. § 1129(a)(9)	Section 1129(a)(9) — The Plan Must Provide for the Payment of Priority Claims.	
11 U.S.C. § 1129(a)(9)	A. Section 1129(a)(9) of the Bankruptcy Code provides for mandatory treatment of certain priority claims under a plan of reorganization.	A. The Plan meets these requirements regarding the payment of Priority Claims and Priority Tax Claims.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	1. Section 1129(a)(9)(A) provides that administrative claims under section 507(a)(2) must receive cash equal to the allowed amount of the claim on the effective date of the plan.	1. With respect to claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code: a. subject to certain bar dates and unless otherwise agreed by the Holder of an Administrative Claim and the applicable Reorganized Debtor, all Allowed Administrative Claims will be paid in full in Cash on either (i) the latest to occur of (A) the Effective Date (or as soon thereafter as practicable), (B) the date such Claim becomes an Allowed Administrative Claim and (C) such other date as may be agreed upon by the Reorganized Debtors and the Holder of such Claim or (ii) on such other date as the Bankruptcy Court may order ; (see Plan, Section II.A.1.a); and b. Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business will be paid by the applicable Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the Holders of such Administrative Claims or further approval from the Bankruptcy Court. Administrative Claims arising under Executory Contracts and Unexpired Leases and all Intercompany Administrative Claims, shall be paid by the applicable Reorganized Debtor, pursuant to the terms and conditions of the particular transaction giving rise to those Administrative Claims, without further action by the Holders of such Administrative Claims or further approval by the Bankruptcy Court. Holders of the foregoing Claims shall not be required to File or serve any request for payment of such Administrative Claims. (see Plan, Section II.A.1.c).
	2. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (a) if the 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 (b) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan.	2. With respect to Priority Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Priority Claim against the Debtors, unless otherwise agreed to by the Debtors (with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), will receive, at the Debtors' election (following consultation with the Creditors' Committee and with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), (i) Cash in the amount of such Allowed Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code and/or (ii) such other treatment required to render such Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code. See Plan, Section II.C.1.
	3. Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (i.e., priority tax claims) must receive regular installment payments in cash a. of a total value, as of the effective date of the plan, equal to the allowed amount of the claim;	3. With respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that, unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtors (with the consent of the Requisite Supporting Parties, such consent not to be unreasonably withheld, conditioned or delayed), each Holder of an Allowed Priority Tax Claim will receive, at the option of the Debtors, in full satisfaction of its Priority Tax Claim that is due and payable on or before the Effective Date, on account of and in full and complete settlement, release and discharge of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim or (ii) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Such treatment of Priority Tax Claims is as favorable as the treatment accorded to the most favored non-priority unsecured Claim under the Plan — i.e., Classes 4A through 4F Claims (General Unsecured Claims) — which is estimated to receive an aggregate recovery of 6%

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	b. over a period ending not later than 5 years after the date the order for relief was entered in the chapter 11 case; and c. in a manner not less favorable than the most favored non priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code).	on account of the estimated allowed amount of such Claims on the Effective Date. See Plan, Section II.C.4.
	4. Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.	N/A.
11 U.S.C. § 1129(a)(10)	Section 1129(a)(10) — The Plan Must Be Accepted by at Least One Impaired Class of Claims.	
11 U.S.C. § 1129(a)(10)	A. Section 1129(a)(10) of the Bankruptcy Code provides that if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider.	A. As set forth in the Voting Declaration, the Debtors have satisfied this requirement because Impaired Classes 3A through 3F have voted to accept the Plan after excluding the votes of any insiders. Because Impaired Classes 3A through 3F and Classes 4A through 4F have voted to accept the Plan after excluding the votes of any insiders. The Holders of Prepetition Note Secured Claims voted to approve the Plan by 99.99% in amount and 84.85% in number and Holders of General Unsecured Claims voted to approve the Plan by 98.70% to 99.99% in amount and 57.89% to 85.29% in number. Thus, the Debtors have complied with section 1129(a)(10) of the Bankruptcy Code. See Voting Decl., ¶ 55.
11 U.S.C. § 1129(a)(11)	Section 1129(a)(11) — The Plan Must Be Feasible.	
11 U.S.C. § 1129(a)(11)	A. Section 1129(a)(11) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Simply put, the feasibility test requires the court to determine whether the plan offers the debtor a reasonable assurance of success. Section	A. Here, the feasibility test is satisfied, as demonstrated by the Financial Projections set forth in Exhibit 3 to the Disclosure Statement and in the declaration of Mark Weinsten and as will be demonstrated at the Confirmation Hearing. See Disclosure Statement, Ex. 3. Further evidence of the feasibility of the Plan is evidenced by the support of the Supporting Parties. Each has vested interests in ensuring the Plan's success because they have agreed, pursuant to the Restructuring Support Agreement, to receive, and will receive under the Plan, a substantial portion of their recoveries in the form of interests in the Reorganized American Apparel in the form of the Reorganized American Apparel Equity Interests (subject to dilution by any Management Incentive Plan Shares). See Confirmation Memorandum ¶ 90..

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	1129(a)(11) of the Bankruptcy Code does not, however, require a guarantee of success.	
11 U.S.C. § 1129(a)(12)	Section 1129(a)(12) — The Plan Must Provide for the Payment of Fees to the United States Trustee.	
11 U.S.C. § 1129(a)(12)	A. Section 1129(a)(12) of the Bankruptcy Code requires a plan to provide that all fees payable under 28 U.S.C. § 1930 to the United States trustee, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the Plan.	A. The Plan complies with section 1129(a)(12) by providing that on a prospective basis all fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. See Plan, Section II.A.1.b.
11 U.S.C. § 1129(a)(13)	Section 1129(a)(13) — The Plan Must Provide for the Payment of Retiree Benefits.	
11 U.S.C. § 1129(a)(13)	A. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code 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.	A. To the extent it may be deemed applicable, the Plan complies with section 1129(a)(13) of the Bankruptcy Code by providing that as of the Effective Date, the Reorganized Debtors will have the authority to (i) maintain, reinstate, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement and applicable non-bankruptcy law; and (ii) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active and retired employees.. See Plan, Section III.G.3.
11 U.S.C. § 1129(a)(14) **11 U.S.C. § 1129(a)(15)** **11 U.S.C. § 1129(a)(16)**	A. These provisions of the Bankruptcy Code relate to individual debtors or to non-profit organizations.	A. N/A. As the Debtors are neither individuals nor non-profit organizations, these provisions of the Bankruptcy Code are not applicable in these cases.
11 U.S.C. § 1129(b)	Section 1129(b) — If a Class of Claims or Interests Rejects or Is Deemed to Reject the Plan, the Plan Must Satisfy the Cramdown Requirements of Section 1129(b).	
11 U.S.C. § 1129(b)	A. Section 1129(b) provides that a bankruptcy court is required to confirm a plan over the dissent of one or more classes of impaired claim or interest holders if the plan:	A. The Plan satisfies the requirements of section 1129(b) with respect to the Rejecting Classes, the Deemed Rejecting Classes (and to the extent applicable, the Non-Voting Classes).
	1. meets all requirements for confirmation set forth in section 1129(a) except the requirement of section 1129(a)(8) that all impaired classes accept the plan;	1. As demonstrated above, the Plan meets all the requirements of section 1129(a), except the requirement of section 1129(a)(8) with respect to the Rejecting Classes (i.e., Holders of Impaired Claims in Classes 4A through 4F).

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	2. does not discriminate unfairly; and	2. As explained in subsection B below, the Plan does not discriminate unfairly with respect to any impaired Class of Claims or Interests.
	3. is otherwise fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan.	3. As explained in subsection C below, the Plan is otherwise fair and equitable with respect to any impaired Class of Claims or Interests.
	B. The unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan. Conversely, where classes of claims or interests with dissimilar legal rights have been separately and properly classified under section 1122 of the Bankruptcy Code, the unfair discrimination standard is not applicable, and the plan may treat such classes differently.	B. The Plan does not discriminate unfairly. 1. Subordinated Section 510(b) Claims in Classes 6A through 6F are legally distinct from (a) every other Class of Claims against the applicable Debtor by virtue of their statutory subordination pursuant to section 510(b) of the Bankruptcy Code 2. With respect to Class 8A Interests such Interests are the only Interests against American Apparel, Inc., and, therefore, there are no similar Classes of Interests against which to compare treatments under the Plan. See Confirmation Memorandum ¶ 100.
	C. The Plan is otherwise fair and equitable with respect to a class of unsecured claims.	C. The Plan treats the Rejecting Classes, the Deemed Rejecting Classes (and to the extent applicable, the Non-Voting Classes) fairly and equitably.
	1. Pursuant to section 1129(b)(2)(C), in order for a plan to be fair and equitable with respect to a dissenting class of impaired equity interests, the plan must provide either: (a) that each interest holder in the class will receive or retain property of a value equal to the greatest of any fixed liquidation preference, any fixed redemption price or the value of the holder's interest; or (b) that no holder of an interest that is junior to the interests of that class will receive or retain any property under the plan on account of such junior interest.	1. The Plan meets the standards of section 1129(b)(2) of the Bankruptcy Code with respect to the Deemed Rejecting Classes. *First*, the Plan satisfies the "fair and equitable" requirements of section 1129(b)(2)(B) of the Bankruptcy Code with respect to Section 510(b) Class 6A through 6F Claims because no Claim or Interest junior in priority to the Claims in Class 6 will receive or retain any property under the Plan on account of such Claims or Interests. *Second*, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code with respect to Class 8A Interests because no Claim or Interest that is junior to such Interests will receive or retain any property under the Plan on account of such junior Claim or Interest. In addition, no Class of Claims or Interests senior to the Deemed Rejecting Classes are receiving more than full payment on account of their Claims or Interests in such Class. In addition, the Plan does not violate the absolute priority rule by reinstating Interests in Classes 9B through 9F solely for the purpose of preserving the Debtors' corporate structure. See Plan, Section II.C.; Disclosure Statement, at 6 (estimating that Classes junior to Classes 4 and 6 will receive no recovery pursuant to the Plan).
	2. In addition, a plan that provides for more than full payment to a class will not be fair and equitable with respect to a dissenting impaired junior class.	2. The Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code with respect to Class 8A Interests because no Claim or Interest that is junior to such Interests and Claims will receive or retain any property under the Plan on account of such junior Claim or Interest. In addition, no Class of Claims or Interests senior to the Rejecting Classes, the Deemed Rejecting Classes or the Non Voting Classes are receiving more than full payment on account of their Claims or Interests in such Class. See, e.g., Disclosure Statement, at 6.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(c)	A. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan.	A. The Plan is the only plan that has been Filed in the Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code.
11 U.S.C. § 1129(d)	A. Section 1129(d) of the Bankruptcy Code provides that on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or of the application of section 5 of the Securities Act.	A. No party in interest, including but not limited to any governmental unit, has requested that the Bankruptcy Court deny Confirmation of the Plan on 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, and the principal purpose of the Plan is not such avoidance.

EXHIBIT B

Summary of Plan Objections

CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION OF THE DEBTORS AND DEBTORS IN POSSESSION

SUMMARY OF PLAN CONFIRMATION OBJECTIONS

This chart summarizes the objections that have been filed to date (each, an "Objection") with respect to the *First Amended Joint Plan of Reorganization of the Debtors and Debtors in Possession*, dated January 14, 2016 (Docket No. 585) (as amended and modified, the "Plan"). For the reasons set forth below and in the *Debtors' (I) Memorandum of Law in Support of Confirmation of First Amended Joint Plan of Reorganization of the Debtors and Debtors in Possession and (II) Consolidated Reply to Objections to Confirmation of First Amended Joint Plan of Reorganization*, filed contemporaneously herewith (the "Confirmation Memorandum") the Debtors respectfully request that the Court overrule in their entirety any Objections not consensually resolved.

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
261 & 515	Lt. Col. Matthew E. Lewin	• The Plan should provide a distribution to shareholders. • The Plan is not in the "best interests" of shareholders.	• As set forth in the Confirmation Memorandum, the distributions under the Plan are consistent with the absolute priority rule and, accordingly, are "fair and equitable" pursuant to section 1129(b)(2)(B) of the Bankruptcy Code. See Confirmation Memorandum, Part I.Q.2, Section. In addition, the Plan satisfies the "best interests of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code. Id., Part I.G. The Debtors do not believe the Bankruptcy Code requires, or even permits, the relief sought in the objection. See Id., Part VI.C.	To be addressed at Confirmation Hearing.
498	Internal Revenue Service ("IRS")	• The IRS primarily objects to the Plan's (a) third party release provision to the extent such provisions violate the Federal Tax Injunction Act and (b) the terms surrounding the payment of the IRS's claims, including timing, interest and the IRS's ability to exercise its settlement and recoupment rights. Specifically, the IRS argues that: o The Plan's proposed third party non-debtor limitation of liability, injunction and release provisions violate the Tax Anti-Injunction Act, I.R.C. § 7421(a) (2010). o The Plan does not preserve the IRS's right to set off and recoupment under section 553 of the Bankruptcy Code. o The Plan does not provide for the payment of interest on the IRS's administrative	• The Debtors continue to work towards a consensual resolution with the IRS. The Debtors expect to reach such a resolution prior to the Confirmation Hearing and will modify the Confirmation Order to reflect such resolution. • Nonetheless, the Plan will treat administrative expense claims and priority unsecured claims of taxing authorities in a manner consistent with the Bankruptcy Code. Moreover, the Debtors contend the Plan does not violate the Tax Anti-Injunction Act.	To be addressed at Confirmation Hearing if not consensually resolved.

In re American Apparel, Inc., et al.
No. 15-12055 (BLS) (Bankr. D. Del.)

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
		expense claim. o The Plan does not provide that the Debtors must pay IRS priority tax claims in full in cash on the Effective Date in accordance with section 1129(a)(9)(C) of the Bankruptcy Code. o The Plan cannot set an administrative claims bar date for taxes described in section 503(b)(1)(B) and (C).		
511	Travis County, Travis County Healthcare District dba Central Health, City of Austin, Austin Community College, and Austin Independent School District (collectively, "Travis County")	• Travis County objected to the Plan on the basis that the Plan does not provide (a) for interest on its ad valorem tax claims, (b) sufficient details around the timing of the payment of its claims and (c) for the retention of Travis County's tax liens.	• A consensual resolution has been reached with Travis County and will be reflected in the Confirmation Order.	Resolved consensually.
516	The Comptroller of Public Accounts of the State of Texas (the "Texas Comptroller")	• The Texas Comptroller objected to the Plan's (a) third party release provision to the extent such provisions violate the Federal Tax Injunction Act and (b) the terms surrounding the payment of the Texas Comptroller's claims, including timing, interest, the use of setoff and remedies for nonpayment.	• A consensual resolution has been reached with the Texas Comptroller and will be reflected in the Confirmation Order.	Resolved consensually.
523	Dov Charney	• Mr. Charney objects to confirmation of the Plan on the basis that (a) the Debtors purportedly failed to properly solicit an alternative proposal that allegedly was superior to the Plan, (b) the Plan is not feasible and (c) the Plan's release and exculpation provisions are overly broad. Specifically, Mr. Charney argues: o The Debtors did not conduct a good faith, meaningful marketing process for their business because apparently the Debtors (a) waited three weeks before providing	• The Debtors respond, as set forth in Part VI.A that (a) the Plan has been proposed in good faith in accordance with section 1129(a)(3) of the Bankruptcy Code, (b) the Plan is superior to the Revised Proposal, (c) the Plan is feasible in accordance with section 1129(a)(11) of the Bankruptcy Code and (d) the Plan's Exculpation and Release provisions are appropriate given the unique circumstances of these chapter 11 cases. Specifically, the Debtors respond that: o The Debtors engaged in extensive, arm's-	To be addressed at the Confirmation Hearing.

In re American Apparel, Inc., et al.
No. 15-12055 (BLS) (Bankr. D. Del.)

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
		Hagan with a process letter, (b) did not promptly respond to Hagan's diligence requests, (c) conducted negotiations over the holidays which complicated diligence with respect to securing an ABL facility and (d) should have begun marketing their business promptly after filing these chapter 11 cases. o The Original Proposal (and presumably now the Revised Proposal) is superior to the Plan. o The Plan is not feasible because it "shows no meaningful attention to the direction of [the Debtors'] underlying operations.' o The Plan's release and exculpation provisions are overly broad because (a) Holders of Interests in Class 8A are bound by Third Party Release, therefore losing out on potential, (b) the Debtors failed to disclose the results of their investigation into potential estate causes of action and thus are improper and (c) the exculpations should be limited to "case fiduciaries and close affiliates." • Mr. Charney also reserves his rights to supplement his objection.	length and good faith negotiations in forming the Plan and that Mr. Charney's objections are without merit because the Debtors (a) provided Hagan Group with a formal process letter on December 13, 2015 (*not* December 23, 2015), (b) promptly responded to Hagan Group's diligence requests and (c) have undertaken a thorough marketing process conducted in good faith. o The Plan is superior to the Revised Proposal because (a) contains better economic terms for the Debtors' creditors, including Holders of General Unsecured Claims, (b) it carries the support of the Creditors' Committee and the Committee of Lead Lenders, (c) does not require the immediate repayment and refinancing of the DIP Credit Facility and result in the loss of $80 million of exit financing, and (d) does not require that the Debtors seek approval and solicit a completely new plan. o The Plan is feasible because the Debtors, among other things, (a) will have $80 million of committed exit capital available upon the Effective Date, (b) are in the midst of implementing their multi-faceted turnaround plan, (c) have implemented an across-the-board evaluation of their retail store portfolio, (d) executed an asset purchase agreement with respect to the underperforming Oak business and (e) will have a viable retail footprint upon which to move forward. o The Plan's Release and Exculpation provisions are appropriate because (a) the Third Party Releases are only being provided by Holders of Claims in the Voting Classes that have not elected to opt out of the Third Party Release, (b) the Debtors, with the assistance of their	

In re American Apparel, Inc., et al.
No. 15-12055 (BLS) (Bankr. D. Del.)

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
			advisors, took reasonable efforts to investigate potential causes of action that the Debtors may have against the Released Parties and determined none exist and (c) the Exculpation is appropriate given the unique circumstances of these chapter 11 cases.	
535	United States Trustee (the "UST")	• The UST objects to confirmation of the Plan on the grounds that the Exculpation provisions are overly broad and thus impermissible and should be limited to estate professionals and the Debtors' directors and officers.	• The Debtors respond that the Exculpation is appropriate because (a) of the unique circumstances of these chapter 11 cases, (b) the limited scope of Exculpation, (c) Exculpation is necessary to protect parties who have made substantial contributions to the Debtors' reorganization and (d) the Exculpation is supported by all Holders of Claims in the Voting Classes who have voted to accept the Plan.	To be addressed at the Confirmation Hearing.
596	Hudson 6922 Hollywood, LLC ("Hudson")	• Hudson objects to confirmation of the Plan on the grounds that (a) the Debtors have failed to provide adequate assurance of specific performance under the Lease pursuant to section 365(b)(1) of the Bankruptcy Code, (b) the Lease must be assumed without modification pursuant to section 365(b)(3)(C) of the Bankruptcy Code, (c) in the event the Lease is assumed, the Debtors must cure all defaults and compensation Hudson for actual pecuniary loss as a result of such default and (d) Section IV.A of the Plan is an attempt to change a valid contract.	• The Debtors continue to work towards a consensual resolution with Hudson. The Debtors expect to reach such a resolution prior to the Confirmation Hearing and will modify the Confirmation Order to reflect such resolution. • Nonetheless, the Debtors have demonstrated their ability to provide adequate assurance of future performance in light of, among other things, the $80 million in committed exit capital that will be available to the Reorganized Debtors upon the Effective Date and their projected cash under the Financial Projections.	To be addressed at Confirmation Hearing if not consensually resolved.