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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re BENCHMARK POST, INC., Debtor.	Case No. 2:17-bk-15568-BR Chapter 11 **NOTICE OF MOTION AND MOTION FOR CONFIRMATION OF *FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION PROPOSED JOINTLY BY BENCHMARK POST, INC. AND BENCHMARK SOUND SERVICES, INC.*; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PEDRO JIMENEZ IN SUPPORT THEREOF** Date: June 12, 2018 Time: 10:00 a.m. Place: U.S. Bankruptcy Court Courtroom 1668 255 East Temple Street Los Angeles, CA 90012

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TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, CREDITORS, AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that a hearing will be held on June 12, 2018 at 10:00 a.m., before the Honorable Barry Russell, United States Bankruptcy Judge, in Courtroom "1668" at 255 E. Temple Street, Los Angeles, California, to consider the motion (the "Motion") for confirmation of the *First Amended Chapter 11 Plan Of Reorganization Proposed Jointly By Benchmark Post, Inc. And Benchmark Sound Services, Inc.* (the "Plan") proposed jointly by Benchmark Post, Inc., the debtor and debtor in possession in the above-captioned Chapter 11 bankruptcy case ("Benchmark Post"), and Benchmark Sound Services, Inc., the debtor and debtor in possession in the related Chapter 11 bankruptcy case bearing case number 2:17-bk-15570-BR ("Benchmark Sound" and, together with Benchmark Post, the "Debtors"). As set forth more fully in the accompanying Memorandum of Points and Authorities, the Plan should be confirmed because it meets all of the applicable requirements of 11 U.S.C. §§ 1129(a) and (b).

PLEASE TAKE FURTHER NOTICE that the Motion is based upon this Notice of Motion and Motion, 11 U.S.C. § 1129, the attached Memorandum of Points and Authorities and Declaration of Pedro Jimenez, the entire record of the Debtors' bankruptcy cases, the statements, arguments, and representations of counsel to be made at the hearing on the Motion, and any other evidence properly presented to the Court at or prior to the hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be in writing and filed with the Bankruptcy Court and served upon counsel for the Debtors at the address set forth in the upper left-hand corner of the first page of this Notice and Motion by not later than May 15, 2018. Failure to timely file and serve an opposition to the Motion may be deemed by the Court to be consent to the granting of the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that any reply to any opposition to the Motion must be filed with the Court and served upon any party who filed the opposition by not later than May 29, 2018.

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WHEREFORE, Benchmark Post respectfully requests that the Court enter an order:

1. Finding that the Plan meets each and every requirement for confirmation pursuant to 11 U.S.C. §§ 1129(a) and (b);

2. Confirming the Plan; and

3. Granting such other and further relief as is just and proper under the circumstances.

DATED: April 24, 2018

SulmeyerKupetz
A Professional Corporation

By: _____

David S. Kupetz
Jason D. Balitzer
Attorneys for Benchmark Post, Inc., Debtor and Debtor in Possession

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MEMORANDUM OF POINTS AND AUTHORITIES[1]

I.

INTRODUCTION

Benchmark Post, Inc., the debtor and debtor in possession in the above-captioned Chapter 11 bankruptcy case ("Benchmark Post"), hereby submits this Motion and Memorandum of Points and Authorities in support of confirmation of the *First Amended Chapter 11 Plan Of Reorganization Proposed Jointly By Benchmark Post, Inc. And Benchmark Sound Services, Inc.* (the "Plan") proposed jointly by Benchmark Post and its affiliate, Benchmark Sound Services, Inc., the debtor and debtor in possession in the related Chapter 11 bankruptcy case bearing the case number 2:17-bk-15570-BR ("Benchmark Sound" and, together with Benchmark Post, "Benchmark" or the "Debtors"). As discussed below, the Plan complies with all of the requirements for confirmation under Sections 1129(a) and (b) of 11 U.S.C. § 101 *et seq.* (the "Code") and should, therefore, be confirmed.

II.

STATEMENT OF FACTS

A. Background and Events Leading to the Debtors' Bankruptcy Filing

In 2008, Benchmark Sound Services, LLC, the predecessor to Benchmark Sound (which was set up as a corporation in 2012), was founded by an individual sound mixer named Pedro Jimenez. Initially, Benchmark Sound had no permanent facility, but would rather rent space or facilities as necessary depending on the size of the project and the location of the client. In 2010, Benchmark Sound entered into an agreement with Universal Studio's Sound Department ("Universal") and operated out of Universal's lot until December 2015. Following the completion of Comcast's acquisition of NBC Universal in 2013, Universal extended its agreement with Benchmark Sound and agreed to construct and provide additional facilities for Benchmark Sound to be able to expand its business on the Universal lot. By mid-2014, however, Universal backed out of its agreement to build and deliver additional facilities to Benchmark Sound.

[1] Capitalized terms not otherwise defined in this Motion and Memorandum of Points and Authorities shall have the meaning ascribed to them in the Plan.

By 2014, Benchmark Sound's business was growing and there was no available space to expand at the Universal lot. Accordingly, Benchmark Sound looked outside the studio's lot for expansion and, in October 2014, leased its current space at 2901 West Alameda Avenue, Suite 100, Burbank, California (the "Burbank Facility"). Benchmark Post was formed in October 2014, and it was originally intended that Benchmark Post would handle non-Universal business while Benchmark Sound continued servicing Universal.

The initial plan and goal was for the Burbank Facility to serve as an overflow facility for Benchmark Sound while it continued to primarily operate out of the Universal Studio's lot. In December 2015, however, Benchmark Sound's relationship with Universal terminated. At that time, Universal constituted approximately 60% of Benchmark's revenue. In December 2015, Benchmark departed from the Universal lot and has since not worked with Universal.

After taking possession of the Burbank Facility in October 2014, Benchmark discovered that the mixing stages at the facility had numerous acoustic problems, could not be used as they had been delivered to Benchmark, and had to be torn down. As a result, Benchmark embarked on a major remodel project. In June 2015, Benchmark signed an agreement with an architect for the work and, in November 2015, entered into a contract with the general contractor for the project named KipJoe Inc. dba Steiner Construction ("Steiner").

Benchmark's secured lender, JPMorgan Chase Bank, NA ("JP Morgan" or the "Bank"), entered into an equipment loan with Benchmark Post in May 2015. Benchmark Sound guaranteed the equipment loan. The Bank also entered into a tenant improvement loan with Benchmark Post in December 2015 to fund the construction project, which Benchmark Sound guaranteed as well.

The original construction contract with Steiner contemplated completion in three phases and was expected to cost approximately $1.7 million. Phase 1 was a smaller build-out of kitchen and equipment/server room areas; phase 2 included edit rooms, food prep area, central machine room and mix stage-1, while phase 3 was to include mix stages 2 & 3. Construction began in February 2016. Unfortunately, numerous delays ensued, which had a severe negative impact on Benchmark's business. Further, the newly remodeled mixing stage-1 was constructed in an inadequate, deficient, and negligent manner resulting in major acoustic problems that limited the types of projects and

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clients that can work in the room, which in turn negatively impacted Benchmark's original revenue projections.

Because of the delays, and the need to get a second stage up and running, all attention was devoted to completing phase 2, which included mix stage 1. As August 2016 approached, Steiner was nowhere close to completing phase 2, even though the original projections contemplated that all three phases would be completed by September 2016.

In August 2016, the Bank became concerned at the apparent lack of progress in the construction project and refused to release any further funds under both the equipment loan and the tenant improvement loan. Steiner then walked off the job in September. Subsequently, Steiner and two subcontractors, Renegade Flooring and Trendex Corporation, recorded mechanics liens against the premises. In connection with its mechanics' lien, Steiner asserted a claim in the sum of approximately $458,000 against Benchmark. Benchmark Post disputed Steiner's claim. In February 2017, Steiner filed a complaint against Benchmark Post and CF Burbank Office, L.P., the owner of the Burbank Facility, in the California Superior Court for alleged breach of contract, foreclosure of mechanics' liens, and quantum meruit.

In February 2017, JPMorgan and Benchmark reached agreement on and executed modified tenant improvement/construction and equipment loan documents. However, the Bank declined to fund the loans until the litigation brought by Steiner was resolved. Benchmark tried to engage Steiner in discussions to resolve its litigation, but Steiner rebuffed all efforts to settle the matter.

Simply put, in the 3 years leading up to the Petition Date, Benchmark experienced dramatic changes and severe challenges that have seriously impacted its financial results. It went from generating $3.8 million[2] in 2014 and operating a mixing studio inside the Universal lot to generating approximately half that amount in 2015 and 2016. Notwithstanding these negative turns of events, the company has continued to provide first class post-production sound services.

[2] This figure includes approximately $900,000 from Marquee Soundworks, Inc. ("Marquee"), an entity that is also wholly owned by Pedro Jimenez, and which used to be part of the Benchmark enterprise but has been dormant since 2015.

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On May 5, 2017, in an effort to reorganize their debts and emerge on a viable ongoing basis, Benchmark Sound and Benchmark Post both filed voluntary petitions under Chapter 11 of the United States Bankruptcy Court.

B. The Debtors' Reorganization Efforts

The following is a chronological list of significant events which have occurred during the Debtors' bankruptcy proceedings:

a. On May 5, 2017, the Debtors filed their voluntary Chapter 11 petitions and various "first day" motions, including motions respecting (i) use of cash collateral, (ii) utilities, (iii) employee wages, (iv) limiting notice, (v) joint consolidation, and (vi) an extension of the deadline to file schedules and related papers.

b. On May 11, 2017, the Court held a hearing on the "first day" motions and granted the motions relating to cash collateral (on an interim basis with final approval to follow), utilities, employee wages, and an extension of the deadline to file schedules and related papers. The Court denied the motions to limit notice and jointly administer the Debtors' cases.

c. On May 11, 2017, the Court entered a scheduling order setting July 25, 2017 as the deadline for the Debtors to file a disclosure statement and plan of reorganization. The scheduling order set August 8, 2017 as the date for a preliminary hearing on the adequacy of the Debtors' plan and disclosure statement.

d. On May 12, 2017, the Debtors submitted their 7-Day Packages to the Office of the United States Trustee. They have amended the 7-Day Packages from time to time as appropriate.

e. On May 24, 2017, the Debtors and their bankruptcy counsel attended the Initial Debtor Interview (the "IDI") at the Office of the United States Trustee (the "OUST"). At the IDI, the OUST analyst request that the Debtors provide a minimal amount of supplemental documentation relating to administrative compliance matters. The Debtors subsequently submitted this documentation to the OUST.

f. On May 26, 2017, the Debtors filed their applications to employ SulmeyerKupetz, A Professional Corporation ("SK"), as their general bankruptcy counsel. The Court entered orders approving these applications on June 26, 2017.

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g. On May 30, 2017, the Court held a final hearing the cash collateral motion and authorized use of cash collateral on a final basis.

h. On June 6, 2017, the Debtors filed motions for the establishment of a claims bar date. These motions were granted on June 7, 2017, and a claims bar date of August 15, 2017 was set. The Debtors gave notice of the claims bar date to all parties in interest on June 29, 2017.

i. On June 12, 2017, the Debtors and their counsel attended the 341(a) meetings of creditors for these cases.

j. On June 27, 2017, Benchmark Post filed motions to assume executory contracts with Dolby Laboratories, Inc. and Audio Intervisual Design. The Court entered orders granting these motions on July 21, 2017.

k. On June 28, 2017, the Debtors filed their initial monthly operating reports to the OUST. The Debtors have thereafter continued to file monthly operating reports and, as far as they are aware, remain in full compliance with the requirements of the OUST.

l. On June 30, 2017, the Debtors filed applications to employ Winningham Becker & Company, LLP as their accountants *nunc pro tunc* as of the petition date. The Court entered orders approving these applications on July 28, 2017.

m. On July 6, 2017, the Debtors filed applications to employ Hymes, Schreiber & Knox, LLP as their special business counsel. The Court entered orders approving these applications on August 3, 2017.

n. On July 13, 2017, the Debtors filed ex parte motions requesting that the Court continue the July 25, 2017 deadline for the Debtors to file their plan of reorganization and disclosure statement. The Court entered orders on July 14, 2017 vacating the July 25, 2017 deadline and setting the August 8, 2017 hearing as a status conference.

o. On July 25, 2017, the Debtors filed status reports in advance of the scheduled August 8, 2017 status conference.

p. On August 1, 2017, the Debtors filed motions to extend the exclusivity period for filing a plan of reorganization to December 1, 2017.

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q. On August 1, 2017, the Debtors filed motions to extend the deadline to assume or reject their nonresidential commercial lease at the Burbank Facility to December 1, 2017.

r. On August 16, 2017, the Court held a status conference (which had been originally set for August 8, 2017), and set a hearing on the adequacy of the Debtors' disclosure statement for November 21, 2017 at 10:00 a.m. The Court ordered the Debtors to timely file their plan and disclosure statement and provide notice thereof to all creditors in accordance with the Local Bankruptcy rules (i.e., no less than 42 days prior to the hearing).

s. On August 22, 2017, the Court granted the Debtors' motions to extend the exclusivity period and the deadline to assume or reject the lease at the Burbank Facility to December 1, 2017.

t. On October 10, 2017, the Debtors filed their initial jointly proposed plan, the disclosure statement describing that plan, and a motion to approve that disclosure statement. The hearing to approve the initial disclosure statement was set for November 21, 2017.

u. On November 7, 2017, the Debtors filed status reports in advance of the November 21, 2017 hearing on their initial disclosure statement. In the status report, the Debtors indicated that they were in the process of discussing potential modifications to the proposed plan with certain creditors that contacted the Debtors to request clarifications and/or or modifications.

v. On November 20, 2017, Benchmark Post filed a stipulation into which it entered with the Los Angeles County Treasurer and Tax Collector (the "LATTC") the regarding the treatment of the LATTC's claim. The order approving that stipulation was entered on November 27, 2017.

w. On November 21, 2017, the Court conducted a hearing on the Debtors' motion to approve the initial disclosure statement, at which hearing the Debtors informed the Court that they were currently in discussions with creditor JPMorgan regarding modifications to the plan that would ensure that JPMorgan would support the Plan and that they anticipated submitting an amended plan and disclosure statement memorializing the results of those discussions.

x. On November 30, 2017, the Debtors filed motions to assume their nonresidential commercial lease for the Burbank Facility. The Court entered its orders approving these motions on January 3, 2018. The Debtors thereafter made the requisite cure payment to their commercial landlord and have assumed and are performing under the commercial lease.

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y. On February 12, 2018, the Debtors filed their first amended plan, i.e. the Plan, and the disclosure statement describing the Plan (the "Disclosure Statement").

z. On April 3, 2018, the Court conducted a hearing at which it approved the Disclosure Statement and set the confirmation hearing on the Plan as well as certain deadlines related to confirmation of the Plan.

aa. On April 17, 2018, the Debtors served the Disclosure Statement, the Plan, notice of the confirmation hearing and related deadlines, and a ballot for voting to all creditors and interested parties.

C. Summary of the Plan

The Plan is an operating plan of reorganization, pursuant to which the Debtors will continue operating the Benchmark enterprise and utilize the earnings from the same to pay creditors as contemplated under the Plan. Management of the Debtors will not change. The effective date of the Plan is 15 days after entry of the order confirming the Plan (the "Effective Date"). (The Debtors after the Effective Date are referred to herein as the "Reorganized Debtors.") The Plan provides for payment in full of all allowed claims over time. The Plan will be funded by the Reorganized Debtors' ongoing operations and contributions from Pedro Jimenez. Cash flow statements describing the projected revenue and expenses of the combined Benchmark enterprise for 2018-2020, the first three years of the Plan, are attached to the Disclosure Statement as Exhibit J. These projections show that the Debtors' cash position will be vastly improved by the end of 2020, and the Debtors believe that their ongoing operations will continue to flourish beyond 2020 and through the life of the Plan.

Under the Plan, there are five (5) classes of creditors and interest holders as follows:

CLASS	IMPAIRMENT/VOTING RIGHTS
Class 1, Secured Claim of JPMorgan	Impaired, entitled to vote on the Plan
Class 2, Pension Benefit Guaranty Corporation	Unimpaired, not entitled to vote on the Plan
Class 3, Unsecured Deficiency Claim of JPMorgan	Impaired, entitled to vote on the Plan
Class 4, Other Allowed General Unsecured Claims	Impaired, entitled to vote on the Plan
Class 5, Equity Interests	Unimpaired, not entitled to vote on the Plan

All allowed administrative claims of professionals employed by the Debtors' estates (the "Estates") shall be paid over a period of three months, with the first payment to be made on the later

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of: (i) the Effective Date or (ii) upon entry of an order approving claimant's fees and expenses, or as otherwise agreed to by the holders of such allowed administrative claims. Outstanding U.S. Trustee fees and clerk's office fees, if any, will be paid in full on the Effective Date.

The sole priority tax claim (i.e., the claim of the LATTC) shall be paid in full, with interest accruing at the rate of 1.5% from November 1, 2017, over the course of 8 months.

The secured and unsecured deficiency claims of JPMorgan, which together comprise Classes 1 and 3, shall be paid in full, with interest accruing at a rate of 6.5%, from July 2018 through April 2025. As set forth in the Plan and the Disclosure Statement, the Debtors will first make interest-only payments to JPMorgan, which will then be followed by combined interest and principal payments, and the amount of principal that will be repaid in the monthly payments will increase at certain intervals.

The Pension Benefit Guaranty Corporation's (the "PBGC") Class 2 claim, which is contingent and unliquidated, will not be paid since the contingency that would give rise to the PBGC's right to payment (failure to meet minimum funding contributions to the Pension Plan) has not been met.

The other unsecured claims, which comprise Class 4, will be paid in full over a period of 84 months commencing on January 1, 2019.

Pedro Jimenez, the sole owner of the Debtors, will retain his interests in the Debtors. The Plan does not provide for the issuance of any new shares in the Reorganized Debtors.

As set forth below, the Plan complies with all of the applicable provisions of Sections 1129(a) and (b) of the Code necessary for this Court to confirm the Plan. Among other things, the Debtors will have sufficient funds to satisfy both ongoing operations and scheduled creditor payments. Thus, the Plan is "feasible." Moreover, as demonstrated by the liquidation analysis contained in the Disclosure Statement accompanying the Plan, the Debtors' creditors will recover more under the Plan than they would in a Chapter 7 liquidation. For these reasons and those set forth below, the Debtors respectfully request that the Court confirm the Plan and grant this Motion in its entirety.

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III.

DISCUSSION

A. Standard for Confirmation of a Chapter 11 Plan

Section 1129 of the Code outlines the requirements for confirmation of a Chapter 11 plan. As this Court knowns, a court must confirm a plan if each applicable requirement of Section 1129(a) is satisfied. In such a case, Section 1129(b) need not be considered. *See* 11 U.S.C. §§ 1129(a) and (b). Section 1129(b) only applies when Section 1129(a)(8) is not satisfied. In the event Section 1129(b) is invoked, the Chapter 11 plan need only satisfy the requirements of that section with respect to classes that voted against the plan. *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 650 (2d. Cir. 1988).

As discussed below, following balloting process, the Debtors believe that all applicable subsections of Section 1129 will be satisfied. As a result, the Court should confirm the Plan.

B. The Plan Will Satisfy All Applicable Requirements of 11 U.S.C. § 1129(a)

As set forth more fully below, the Plan should be confirmed because all of the applicable requirements of Bankruptcy Code section 1129(a) will be met.

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

Section 1129(a)(1) of the Code provides that a court may confirm a plan of reorganization only if "the plan complies with the applicable provisions of this title." The phrase "applicable provisions" has been interpreted to mean Sections 1122 and 1123 of the Code which govern the classification of claims and interests and the contents of a plan of reorganization. *Johns-Mansville Corp.*, 843 F.3d at 648-49. *See also In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001); *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 223 (Bankr. D.N.J. 2000).

The Plan complies with both Section 1122 and Section 1123.

a. The Plan Complies with Section 1122: Classification of Claims and Interests

Section 1122(a) provides:

> Except as provided in subsection (b) of this section, 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.

11 U.S.C. § 1122(a).

Courts have interpreted the phrase "substantially similar" to mean that the claims share "common priority and rights." *Phoenix Mutual Life Insurance Company v. Greystone III Joint Venture (In the Matter of Greystone III Joint Venture)*, 995 F.2d 1274, 1278 (5th Cir. 1992). In this regard, courts have recognized that a plan proponent generally has the discretion to separately classify claims where the legal character of a claim accords it different treatment than other creditors. *See Steelcase Inc. v. Johnston (In re Johnston)*, 21 F.3d 323, 328 (9th Cir. 1994). As such, this Court has broad discretionary power to approve a plan's proposed classification of claims. *See Johnston*, 21 F.3d at 327 (citing *In re Palisades-On-The-Desplaines*, 89 F.2d 214, 217 (7th Cir. 1937) for notion that "Congress intended to give the court 'broad latitude' in classifying claims under analogous provision of the former Bankruptcy Act"). Significantly, a bankruptcy court's approval of a classification scheme is reviewed under a "clearly erroneous" standard. *See Johnston*, 21 F.3d at 327.

Here, the Plan designates four (4) classes of claims and one (1) class of interests. Based on the foregoing principles, the classification of claims and interests, summarized as follows, is appropriate under the Plan. The Plan contains the following classifications:

Class 1, Secured Claim of JPMorgan
Class 2, Pension Benefit Guaranty Corporation
Class 3, Unsecured Deficiency Claim of JPMorgan
Class 4, Other Allowed General Unsecured Claims
Class 5, Equity Interests

All of the foregoing claims and interests are either appropriately classified together, due to the fact that they are "substantially similar," or separately. The classification of the secured claim separate from the unsecured claims is proper, as secured claims and unsecured claims necessarily have different levels of priority and legal character. Likewise, classification of equity interests separately from claims against the Debtors is not only proper; it is required. *See* 7-1122 *Collier on Bankruptcy*, P. 1123.03[1][a] (16th ed. 2017). Claims and interests are inherently different and, in turn, cannot be classified together. Furthermore, the classification of JPMorgan's unsecured claim separately from other general unsecured claims is justified because JPMorgan can took to third party guarantors (Pedro Jimenez, both in his individual capacity as well as trustee of his personal trust, and Marquee)

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for payment on this claim. Unsecured claims of creditors who may look to third party guarantors for payment may be separately classified from the unsecured claims of creditors who enjoy no such recourse. *Wells Fargo Bank, N.A. v. Loop 76, LLC (In re Loop 76, LLC)*, 465 B.R. 525, 541 (B.A.P. 9th Cir. 2012). The Plan therefore complies with the provisions of section 1122 of the Code.

b. The Plan Complies With Section 1123: Contents of the Plan

Sections 1123(a) and (b) set forth certain mandatory and permissive provisions for a Chapter 11 plan. *See* 11 U.S.C. § 1123(a), (b). The Plan complies with those requirements.

(1) Section 1123(a): Mandatory Plan Provisions

(a) Section 1123(a)(1): The Plan Designates Classes of Claims and Interests

Section 1123(a)(1) requires a plan "designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the "gap" period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interests[.]" 11 U.S.C. § 1123(a)(1). Here, the Plan satisfies this statutory requirement. All classes of claims designated in the Plan are claims other than those specified in Sections 507(a)(2), 507(a)(3), and 507(a)(8). *See* Plan, Art. II, §§ D.1-D.3. The Plan also designates a class of interests (Class 5). *See* Plan, Art. II § D.4.

(b) Section 1123(a)(2): The Plan Specifies the Classes that are Not Impaired

Section 1123(a)(2) requires a plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Section 1124(1) of the Bankruptcy Code provides that "a class of claims or interests is impaired under a plan unless . . . the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1124(1). The Ninth Circuit holds that, when determining impairment under Section 1124, "[t]he narrow question that thus arises is whether . . . 'legal, equitable, [or] contractual rights' were changed by the Plan[.]." *See In re L & J Anaheim Assocs.*, 995 F.2d 940, 943 (9th Cir. 1993). Courts have held that Section 1123(a)(1) is satisfied when the plan includes a statement of whether each class of claims is impaired or unimpaired. In this case, in satisfaction of Section

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1123(a)(2), the Plan expressly states, on a class by class basis, which classes are impaired and which are unimpaired. *See* Art. II §§ D.1. – D.4.

(c) Section 1123(a)(3): The Plan Adequately Specifies the Treatment of Impaired Classes

Section 1123(a)(3) requires a plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). Article II of the Plan specifies the treatment of all claims and interests that are impaired under the Plan. Since the Plan properly identifies the impaired classes and specifies the treatment of such classes, the Plan satisfies Section 1123(a)(3).

(d) Section 1123(a)(4): The Plan Provides the Same Treatment for Each Claim or Interest in a Particular Class

Section 1123(a)(4) requires a plan provide "the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). This provision provides creditors of the same class with a right to equality of treatment. Article II of the Plan provides for equality of treatment for each claim or interest within a particular class. The Plan, therefore, complies with Section 1123(a)(4).

(e) Section 1123(a)(5): The Plan Provides Appropriate Means of Implementation

The Plan also satisfies Section 1123(a)(5). That subsection requires that the plan "provide adequate means for the plan's implementation[.]" 11 U.S.C. § 1123(a)(5). The Plan sets forth the implementation and means of execution of the Plan. In particular, the Plan provides that it will be funded by the Reorganized Debtors' business operations and capital contributions from Pedro Jimenez described in the Disclosure Statement. As the Debtors' cash flow projections demonstrate, the Debtors project that there will be sufficient cash generated from the Reorganized Debtors' business operations to pay all claims as required to be paid under the Plan following the Effective Date. Moreover, the projections demonstrate that the Debtors will be in an improved cash position as each year passes for the first three years of the Plan, and the Debtors anticipate that this trend will continue well into the

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future. Based on the foregoing, the Debtors and Reorganized Debtors will have sufficient funds available to satisfy all operating expenses as well as all of the scheduled payments under the Plan.

(f) Section 1123(a)(6) is Not Applicable

Section 1123(a)(6) requires the "inclusion in the charter of the debtor, if the debtor is a corporation . . . of any provision prohibiting the issuance of nonvoting equity securities" and other similar or related provisions. 11 U.S.C. § 1123(a)(6). This provisions of the Code requires that a plan of reorganization provide for appropriate distribution of power among all voting equity classes. Section 1123(a)(6) does not apply to the Plan as the Debtors only have one equity class (common stock which is held entirely by Pedro Jimenez), and the Plan does not contemplate the issuance of new equity or the distribution of power or equity in the Reorganized Debtors to different classes.

(g) Section 1123(a)(7): The Plan is Consistent With the Interests of Creditors, Equity Holders, and Public Policy

Section 1123(a)(7) states that a plan shall "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). Section 1129(a)(5), which is discussed below, augments Section 1123(a)(7), and requires, as a condition of confirmation, that the proponent of a plan disclose the identity and affiliation of any individuals proposed to serve, after confirmation of the plan, as directors, officers, or voting trustees of the debtor, or of an affiliate of the debtor participating in a joint plan with the debtor, or of a successor to the debtor under the plan. In addition, Section 1129(a)(5)(A)(ii) requires that the appointment or continuance of any director, officer or voting trustee be consistent with "the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5).

Under the Plan, the Debtors' equity interests will remain intact and Pedro Jimenez will own all of the equity interests in the Reorganized Debtors. Before and following confirmation, the Debtors will continue to be managed by Pedro Jimenez. Pedro Jimenez is the individual most familiar with the Debtors' operation, as he has served as their sole owner, officer, and director since their inception. Under these circumstances, the continuing management of the Reorganized Debtors by the Debtors'

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existing management is consistent with the interests of creditors, the equity security holder and with public policy.

Based on these and related provisions of the Plan, the Debtors respectfully submit that Section 1123(a) of the Code has been satisfied.

(h) Section 1123(a)(8) is Not Applicable

Section 1123(a)(8) applies only "to a case in which the debtor is an individual." Because the Debtors are not individuals, Section 1123(a)(8) is inapplicable to the Plan.

c. Section 1123(b): Permissive Plan Provisions

Section 1123(b) sets forth the permissive provisions that may be incorporated into a chapter 11 plan, including any "provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). Several of these discretionary provisions are contained in the Plan.

First, section 1123(b)(1) of the Code provides that a plan of reorganization may impair or leave any class of claims, whether secured or unsecured, or of interests unimpaired under the plan. As set forth in the Plan, Classes 1, 3, and 4 are impaired under the Plan, and Classes 2 and 5 are unimpaired under the Plan.

Section 1123(b)(2) of the Code specifies that, subject to Section 365 of the Code, a plan of reorganization may provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected. With regard to contracts and leases, the contract between Aladdin Glass & Mirror and Benchmark Post will be assumed and the Confirmation Order, subject to the occurrence of the Effective Date, will constitute a Court order approving this assumption. No contracts and leases will be rejected through the Plan.

Section 1123(b)(3) of the Code specifies that a plan of reorganization may provide for "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any [claim or interest belonging to the debtor]." The Plan provides for the Reorganized Debtors to retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff and other legal or equitable defenses which it had immediately prior to the commencement of the case.

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Section 1123(b)(5) of the Code specifies that a plan of reorganization may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." The Plan modifies the rights of holders of secured claims and unsecured claims in accordance with the terms and conditions set forth in the Plan. However, the Plan does not modify the rights of holders of a claim secured only by a security interest in real property that is the debtor's principal residence, as no such claim exists in the Chapter 11 cases.

As set forth above, the Plan complies with all of the provisions of Section 1122 and 1123 of the Code and, therefore, complies with Section 1129(a)(1) of the Code.

2. Section 1129(a)(2): The Plan Proponent Complies With the Provisions of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires "the proponent of a plan [to] compl[y] with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). The inquiry under this section is whether the plan proponent has complied with the disclosure and solicitation requirements under Section 1125. *See In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000); *In re Brotby*, 303 B.R. 177, 192-93 (B.A.P. 9th Cir. 2003) (focusing analysis under Section 1129(a)(2) on adequacy of disclosure of plan); *In re Sierra-Cal*, 210 B.R. 168,176 (Bankr. E.D. Cal. 1997).

The principal purpose of Section 1129(a)(2) is to require, as a condition of confirmation, that the court ascertain whether the proponent of the plan under consideration has complied with the requirements of Section 1125 in the solicitation of acceptances of the plan. *See Tenn-Fla Partners v. First Union Nat'l Bank of Fla.*, 229 B.R. 720, 732 (Bankr. W.D. Tenn. 1999); *In re Trans World Airlines, Inc.*, 185 B.R. 302, 313 (Bankr. E.D. Mo. 1995). Section 1125 precludes the post-petition solicitation of a plan from any holder of a claim:

> unless, at that time or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and hearing, by the Court as containing adequate information.

11 U.S.C. § 1125. Here, the Debtors, as plan co-proponents, have compiled with Section 1125.

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At a hearing held on April 3, 2018, the Court approved the Disclosure Statement relating to the Plan, and found that the Disclosure Statement contained adequate information pursuant to Section 1125(b) of the Code. The Court entered a written order accordingly on April 12, 2018. As evidenced by the Declaration of Service filed with the Court on April 17, 2018, a copy of the Plan, the Disclosure Statement, a notice regarding the hearing on confirmation of the Plan and the deadlines established by the Court relating thereto, and a ballot (the "Solicitation Package") were sent to each known creditor and party in interest in the Debtors' Chapter 11 cases. The Debtors did not commence soliciting acceptances to the Plan until after the Solicitation Package was served. The Debtors have acted in good faith and have complied with the provisions of Section 1125 of the Code. The requirements of Section 1129(a)(2) are satisfied.

3. Section 1129(a)(3): The Plan is Proposed in Good Faith

Section 1129(a)(3) requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Ninth Circuit has held that, although the Bankruptcy Code does not define "good faith," "[a] plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code." *In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1074 (9th Cir. 2002) (citing *In re Corey*, 892 F.2d 829, 835 (9th Cir. 1989)). "[F]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *Sylmar Plaza*, 314 F.3d at 1074 (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1994)). The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan. *Sylmar Plaza*, 314 F.3d at 1074. As noted by the court in *In re Stolrow's, Inc.*, 84 B.R. 167 (B.A.P. 9th Cir. 1988):

> Good faith in proposing a Plan of Reorganization is assessed by the Bankruptcy Judge and viewed under the totality of the circumstances. *(Jorgensen v. Federal Land Bank of Spokane) In re Jorgensen,* 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986). Good faith requires . . . a fundamental fairness in dealing with one's creditors. Id. at 109. The Bankruptcy Judge is in the best position to assess the good faith of the parties.

Id. at 172.

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Here, the Debtors have filed the Plan in good faith, and no party has objected to the good faith of the Debtors in proposing the Plan. The Debtor is proposing to pay all allowed claims in full over time. The Plan incorporates terms that were negotiated with the Debtors' primary creditor, JPMorgan, at arms' length and through counsel. There was no collusion of any kind involving the Debtors or any insider of the Debtors with regard to the Plan or any Plan terms. As a result, the proposal of the Plan is consistent with the objectives and purposes of the Bankruptcy Code and was made with honesty and good intentions and with a basis for expecting that, under the circumstances, it is the best means for maximizing the recovery by creditors of the Debtors. *See In re Leslie Fay Cos.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) (quoting *In re Texaco, Inc.*, 84 B.R. 893, 907 (Bankr. S.D.N.Y.) *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. 1988)). Moreover, the Debtors have complied with all court orders. Courts have held compliance with court orders as determinative on whether a plan was proposed in good faith. *See In re Coastal Equities, Inc., 33 B.R. 848* (Bankr. S.D. Cal. 1983); *In re Victory Const. Co.*, 9 B.R. 549 (Bankr. C.D. Cal. 1981).

Based on the foregoing, the Plan has been proposed in good faith, not by any means forbidden by law, and complies with Section 1129(a)(3).

4. Section 1129(a)(4): The Plan Provides That Payments to Estate Professionals Are Subject to Court Approval

Section 1129(a)(4) requires that:

> [a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4). The Plan satisfies this requirement.

Section 1129(a)(4) of the Code provides that a court may confirm a plan only if "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable." Here, none of the professionals employed in the Debtors' Chapter 11 Cases will be paid its outstanding post-petition pre-Effective Date fees and expenses until

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such fees and expenses have been approved by the Court. This procedure for review and ultimate determination by the Court of the professional fees and expenses to be paid by the Debtors satisfies the requirement of Section 1129(a)(4). *See In re Sound Radio, Inc.*, 93 B.R. at 854; *Texaco Inc.*, 84 B.R. at 908; *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988). "Court approval of payments for services and expenses is governed by various Code provisions -- e.g., §§ 328, 329, 330, 331 and 503(b) -- and need not be explicitly provided for in a Chapter 11 plan." *Future Energy*, 83 B.R. at 488.

A final hearing on the professional fees incurred prior to the confirmation of the Plan will be scheduled for a date after the confirmation hearing. The professionals involved will be filing appropriate final fee applications to be heard at a final fee hearing. The Estates will only pay the fees and expenses of professionals employed in this case as approved by the court. Thus the provisions of Section 1129(a)(4) are met.

5. Section 1129(a)(5): The Plan Identifies the Parties to Serve Post-Confirmation

Section 1129(a)(5) requires the following:

> (A) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor . . .; and
>
> (ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and
>
> (B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

11 U.S.C. § 1129(a)(5).

This section augments Section 1123(a)(7) (discussed above). These requirements are satisfied.

The Disclosure Statement discloses that the post-confirmation management of the Reorganized Debtors will continue to be handled by the Debtors' existing management, Pedro Jimenez, who is the Debtors' founder and sole owner, officer, and director. Disclosure Statement Art. II § C and Art. III § D. This is consistent with the interests of creditors and public policy, and is otherwise appropriate. The Debtors have no reason to believe that the continuing management of the Reorganized Debtors by

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Pedro Jimenez, who is not only the founder of the Debtors but also has served as their sole officer and director since their inception, will not be consistent with public policy. Mr. Jimenez is highly qualified, financially motivated, and personally invested in the continued success of the Benchmark enterprise. Since he has always been the sole owner, director, and officer of each of the Debtors, there is no individual more familiar with the Debtors' finances, business operations, and commercial relationships. The continuing services of Mr. Jimenez are critical to the efficient administration of the Debtors' Estates, the implementation and consummation of the Plan, and are therefore consistent with the best interests of creditors and with public policy.

Based on the foregoing, the Plan satisfies the requirements of Section 1129(a)(5) of the Code.

6. Section 1129(a)(6) is Not Applicable

Section 1129(a)(6) requires the approval of any "rate changes" provided under the plan from the relevant governmental regulatory commission. See 11 U.S.C. § 1129(a)(6). There are no such rate changes provided under the Plan and no such governmental agency with jurisdiction over the Debtors. This section, therefore, does not apply to the Plan. *See Sound Radio*, 93 B.R. at 854; *Texaco, Inc*., 84 B.R. at 908.

7. Section 1129(a)(7): The Plan is in the Best Interests of Creditors

Section 1129(a)(7) requires the following:

> With respect to each impaired class of claims or interests-
>
> (A) each holder of a claim or interest of such class-
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date[.]

11 U.S.C. § 1129(a)(7).

This section - referred to as the "best interests of creditors" test - focuses on individual dissenting creditors, rather than on classes of claims or interests. *See Bank of America Nat'l Trust & Savings Ass'n v. 203 N. LaSalle St. Partnership*, 526 U.S. 434, 442 n.13, 119 S. Ct. 1411, 143 L. Ed. 2d 607 (1999). Under the best interest of creditors test, with respect to classes impaired under the

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plan, creditors and equity holders who do not accept a plan are to receive at least as much under the plan as they would receive under a Chapter 7 liquidation. (Class 2 and Class 5 are unimpaired under the Plan and are therefore deemed to accept the Plan. Accordingly, the "best interest of creditors test" need not be applied to Class 2 and Class 5.)

In a Chapter 7 case, the debtor's assets are usually sold by a Chapter 7 trustee. Secured creditors are paid first from the sales proceeds of the assets in which the secured creditor has a security interest or lien. Administrative claims are paid next. After that, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, equity interest holders, according to their rights of priority, receive the balance that remains after all creditors are paid in full, if any.

Here, the Plan satisfies this section. While the Debtors anticipate that the requisite holders of claims in Classes 1, 3, and 4 who vote on the Plan will vote in favor of the Plan (thereby eliminating the need to apply the "best interest of creditors test" to such Classes), the Debtors submit that, even if not every holder of a claim in such Classes votes in favor of the Plan, the "best interest of creditors test" can nevertheless be satisfied with respect to those members in Classes 1, 3, and 4 which do not vote to accept the Plan.

In a Chapter 7 liquidation, the Debtors would cease business operations and, aside from cash on hand, the only significant assets the Estate would have would be equipment, receivables, and a $100,000 security deposit. The equipment and a significant portion of the receivables would be encumbered by liens in favor of JPMorgan and unavailable for distribution by a Chapter 7 trustee. Furthermore, to the extent that the Chapter 7 trustee was able to administer free and clear assets, he would be entitled to a statutory fee at a higher priority than general unsecured creditors. Moreover, any professionals that the Chapter 7 trustee engages would also be entitled to payment prior to unsecured creditors. Simply put, in a Chapter 7 liquidation all creditors (including JPMorgan, which holds a significant unsecured deficiency claim) would receive far less than the value of their claims.

The Plan, on the other hand, provides for payment of all allowed claims in full. Since creditors will be paid in full under the Plan, they are far better off under the Plan than they would be in a

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Chapter 7 liquidation. The Plan therefore meets the "best interest of creditors test" and satisfies Section 1129(a)(7).

8. Section 1129(a)(8): All Classes Will Have Either Accepted the Plan or Are Treated in a Manner Consistent With Section 1129(b)

Section 1129(a)(8) requires that "each class of claims or interests . . . has accepted the plan; or . . . is not impaired under the plan." 11 U.S.C. § 1129(a)(8). Section 1126(c) and (d) govern whether or not a class has accepted a plan:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan.
>
> (d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests . . . that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests . . . that have accepted or rejected such plan.

11 U.S.C. § 1126(c), (d).

A plan may be confirmed even if a class has neither accepted the plan nor designated as unimpaired under the plan. Rather, in such instance, the plan may be confirmed so long as it complies with Section 1129(b) as to that particular class of claims or interests (and the plan otherwise complies with the other applicable subsections of Section 1129(a)). As Section 1129(b) provides:

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

11 U.S.C. § 1129(b)(1).

As discussed below, the classes in the Plan will have either accepted the Plan or will be treated in accordance with Section 1129(b).

As noted earlier, the Plan contains five classes. Class 2 and Class 5 are unimpaired under the Plan and are therefore conclusively deemed to have accepted the Plan under Section 1126(f) of the Plan, and solicitation of acceptances with respect to such classes from the holders of claims or interests of such classes is not required. Classes 1, 3, and 4 are impaired under the Plan and are

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anticipated to vote to accept the Plan. The Debtors will submit a detailed analysis of the ballots voting on the Plan by May 29, 2018, in compliance with the Court's order approving the Disclosure Statement.

Based on the foregoing, the Debtors respectfully submit that the Plan satisfies (or will satisfy) the requirements of Section 1129(a)(8) or, if applicable, Section 1129(b) of the Code.

9. Section 1129(a)(9): The Plan Provides for Payment in Full of All Administrative and Other Priority Claims

Section 1129(a)(9) of the Code states the rules applicable to payment of those unsecured claims entitled to priority in distribution in chapter 11 cases. *See* 11 U.S.C. § 1129(a)(9). It requires that persons holding allowed claims entitled to priority under Section 507(a) receive certain specified treatment. The Plan satisfies the applicable provisions of this section.

Subparagraph (A) of Section 1129(a)(9) addresses the treatment of administrative claims and expenses entitled to priority under Section 507(a)(2) or 507(a)(3). It provides that "on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim," unless "the holder of [such] particular claim has agreed to a different treatment of such claim." 11 U.S.C. § 1129(a)(9)(A). The Plan satisfies this provision, as it provides that professional fees and expenses that are allowed under Section 507(a)(2) will be paid as agreed to by the holders of such claims, i.e., in installments commencing on the later of the Effective Date or the entry of an order allowing such claims, and court fees and outstanding U.S. Trustee fees (if any) will be paid in full on the Effective Date. *See* Plan, Art. II, § C.1. There are no Section 507(a)(3) claims in this case and, in turn, the provisions relating to Section 507(a)(3) claims is not applicable.

Subparagraph (B) of Section 1129(a)(9) addresses the treatment of claims of a kind specified in Sections 507(a)(1), (a)(4), (a)(5), (a)(6) and (a)(7). *See* 11 U.S.C. § 1129(a)(9)(B). The Debtors are not aware of any claims that fall within any these categories in this case (Benchmark Sound previously paid its prepetition employee claims pursuant to the Court's May 22, 2017 order granting Benchmark Sound's "first day" motion on the matter) and, therefore, this subparagraph is not applicable.

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Subparagraph (C) and (D) of Section 1129(a) address the treatment of claims of a kind specific in Section 507(a)(8) (whether the claim is unsecured or secured). It provides that "with respect to a claim of a kind specified in section 507(a)(8) of this title" or "a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of the claim":

> [e]xcept to the extent that the holder of a particular claim has agreed to a different treatment of such claim . . . the holder of such claim will receive on account of such claim regular installment payments in cash –
>
> (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
>
> (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
>
> (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan[.]

11 U.S.C. § 1129(a)(9)(C), (D).

The Plan satisfies this subparagraph. Under the Plan, there are 3 holders of allowed priority tax claims (i.e., claims arising under Section 507(a)(8) of the Code – i.e., the claims of the LATTC and two claims of the PBGC. The PBGC is not presently owed anything since its claims are contingent and unliquidated and the contingencies that would trigger those claims have not occurred. As to the LATTC , its will be paid in full, plus interest, over a period of eight (8) months in accordance with the Court-approved stipulation it entered into with Benchmark Post. This is a period not exceeding five (5) years after the Petition Date and in a manner not less favorable than the most favored non-priority unsecured claim provided for by the Plan. Based upon the foregoing, the Plan satisfies the requirements of Section 1129(a)(9) of the Code.

10. <u>Section 1129(a)(10): At Least One Impaired Class will have Accepted the Plan</u>

Section 1129(a)(10) of the Code provides that a court may confirm a plan only if "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider." Section 1126(c) of the Code provides that "[a] class of claims has accepted a plan if such plan has been accepted by creditors … that hold at least two-thirds in

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amount and more than one-half in number of the allowed claims of such class held by creditors … that have accepted or rejected such plan."

The Debtors anticipate that at least one class of claims that is impaired under the Plan (*i.e.*, Classes 1, 3, and 4) will vote to accept the Plan, as determined without including acceptances of the Plan by any insider. However, the Debtors will not be able to confirm the foregoing until ballots on the Plan have been returned on or before the current deadline of May 15, 2018. The Debtors will submit a detailed analysis of the ballots voting on the Plan by May 29, 2018, in compliance with the Court's order approving the Disclosure Statement.

Based on the foregoing, the Debtors respectfully submit that the Plan satisfies (or will satisfy) the requirements of Section 1129(a)(10) of the Code.

11. Section 1129(a)(11) of the Code: The Plan is Feasible

a. Standard

Section 1129(a)(11) requires the plan proponent to establish that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . ." 11 U.S.C. § 1129(a)(11). This requirement is often referred to as the "feasibility" requirement, and is satisfied by a showing that the reorganized debtor has a "reasonable probability" of satisfying its obligations under a plan. *See In re Acequia, Inc.*, 787 F.2d 1352, 1364 (9th Cir. 1986).

The feasibility test in Section 1129(a)(11) requires the court to determine whether the plan is workable and has a reasonable likelihood of success. *See U.S. v. Energy Res. Co.. Inc.*, 495 U.S. 545, 549, 110 S. Ct. 2139, 109 L. Ed. 2d 580 (1990). A plan has a reasonable likelihood of viability if it is much more than a mere "visionary scheme" and, therefore, satisfies the feasibility requirement of Section 1129(a)(11). *Acequia*, 787 F.2d at 1365 (citing *In re Pizza of Hawaii*, 761 F.2d 1382 (9th Cir. 1985) ("The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation")). See also *In re Sagewood Manor Assoc. Ltd. P'ship*, 223 B.R. 756, 762-63 (Bankr. D. Nev. 1998) ("While a reviewing court must examine 'the totality of the circumstances' in order to determine whether the plan fulfills the requirements of section 1129(a)(11) . . . only a

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relatively low threshold of proof is necessary to satisfy the feasibility requirement"). The Bankruptcy Appellate Panel for the Ninth Circuit summarized the feasibility requirement as follows:

> To demonstrate that a plan is feasible, a debtor need only show a reasonable probability of success. The Code does not require the debtor to prove that success is inevitable, *and a relatively low threshold of proof will satisfy § 1129(a)(11), so long as adequate evidence supports a finding of feasibility.*

Brotby, 303 B.R. at 191-92 (emphasis added).

The two primary aspects of feasibility are: (i) that the plan proponent will have sufficient cash on hand to make the payments required on the effective date; and (ii) that the plan proponent will have sufficient cash over the life of the plan to make the required plan payments. As discussed below, both aspects are satisfied.

b. <u>A Reasonable Probability Exists That Sufficient Cash Will Be Available to Make All Required Effective Date Payments</u>

The Debtors maintain that this aspect of feasibility is satisfied. The Effective Date of the Plan is 15 days after entry of the order confirming the Plan. Assuming the order is entered shortly after the June 12, 2018 confirmation hearing and no appeals are filed, the Effective Date of the Plan will fall somewhere around July 1, 2018. The Debtors anticipate having sufficient cash to pay all Effective Date payments that would be due on that day. Detailed cash flow projections for 2018-2020 are attached to the Disclosure Statement as Exhibit J, and they demonstrate that the Debtors will have enough cash on hand to make any payments due on the Effective Date. Presuming an Effective date of July 1, 2018, the Debtors anticipate that they will have over $400,000 in cash after payment of operating expenses, initial plan payments to JPMorgan, and the first installment of approved professional fees (the latter of which will likely not even be due on the Effective Date because the Debtors do not anticipate that its professionals will file fee applications until after the Plan has been confirmed). The Plan satisfies the first aspect of feasibility.

c. <u>A Reasonable Probability Exists That Sufficient Cash Will Be Available to Make All Required Future Payments</u>

The second aspect considers whether the Reorganized Debtors will have enough cash over the life of the Plan to make the required payments. Attached as Exhibit J to the Disclosure Statement are

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cash flow projections prepared on an annual basis for a period of three (3) years which not only demonstrate the ability of the Reorganized Debtors to make all of the Plan payments which are required to be made over that period but also show that the Reorganized Debtors' cash position will continue to improve. The cash flow projections do not extend beyond that three year period because the Debtors believe they would be increasingly speculative, however, the cash flow projections to the Disclosure Statement show that the Reorganized Debtors will be in a substantially improved cash position by the end of 2020. As stated in the Disclosure Statement, following the Effective Date, the Debtors expect to repurpose stage 1 for additional dialogue replacement (ADR) work, rather than sound mixing as originally intended, so that the stage may begin to generate revenue without the substantial remaining buildout that would have been needed if the stage were to remain dedicated to sound mixing. The Debtors anticipate that they will take out a small equipment loan to assist with the acquisition of the equipment and improvements that would be required to repurpose stage 1. This will lead to increased sales which, coupled with capital contributions from Pedro Jimenez, will permit the Reorganized Debtors to grow, hire new employees, and generate more revenue which will, in turn, enable them to make all of the Plan payments which are required to be made over the life of the Plan. In sum, the Plan is far more than a mere visionary scheme; it was developed based on both the Debtors' understanding of their business and their review of projected financial documents for the next three years. It satisfies the threshold for the finding of feasibility, and it therefore satisfies Section 1129(a)(11).

12. Section 1129(a)(12): All Statutory Fees Have Been or Will Be Paid

Section 1129(a)(12) requires that "[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 expressly provides for the payment of all such fees on or before the Effective Date. See Plan, Art. II, § C.1. As a result, the Plan complies with this section.

13. Section 1129(a)(13) is Not Applicable

Section 1129(a)(13) of the Code provides that a court may confirm a plan only if "[t]he plan provides for the continuation after its effective date of all retiree benefits … for the duration of the

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period the debtor has obligated itself to provide such benefits." There are no retiree benefits required to be paid under the Plan and this provision is therefore inapplicable.

14. Section 1129(a)(14) is Not Applicable

Section 1129(a)(14) requires the payment of domestic support obligations "[i]f the debtor is required by a judicial or administrative order, or by statute," to make such payments. 11 U.S.C. § 1129(a)(14). The provisions of this subsection do not apply to these corporate cases.

15. Section 1129(a)(15) is Not Applicable

Section 1129(a)(15) expressly applies only to "a case in which the debtor is an individual[.]" 11 U.S.C. § 1129(a)(15). Therefore, this subsection does not apply to this case.

16. Section 1129(a)(16) is Not Applicable

Section 1129(a)(16) relates to transfers of property by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). This provision has been construed only to apply to non-profit entities. *See In re Eastern 1996D Limited Partnership*, 2014 Bankr. LEXIS 5085 (Bankr. N.D. Tex. 2014) (Section 1129(a)(16) is only applicable if debtor is a non-profit corporation or trust); 7-1129 *Collier on Bankruptcy*, ¶ 1129.02[16] (16th ed. 2017). Neither of the Debtors is a non-profit entity; therefore, the requirements of this subsection do not apply in these cases.

C. 11 U.S.C. § 1129(b): The Plan Satisfies the Requirements for Confirmation Over the Objection of Non-Consenting Classes

As noted above, Classes 2 and 5 are unimpaired under the Plan (and therefore deemed to have accepted the Plan). Classes 1, 3, and 4 are impaired under the Plan. The Debtors anticipate that Classes 1, 3, and 4 will be voting to accept the Plan, so they anticipate that they will not need to invoke the "cramdown" requirements of Section 1129(b) of the Code with respect to these classes. However, as discussed below, as long as any one of the impaired classes votes to accept the Plan, the "cramdown" requirements will be met with regard to any nonconsenting impaired class(es).

Section 1129(b)(1) provides:

> [I]f all applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court . . . shall confirm the plan notwithstanding the requirements of such

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> paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims . . . that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

As set forth above, a plan may be confirmed despite not satisfying Section 1129(a)(8) if, with respect to the class of claims that did not accept the plan, the plan: (i) does not discriminate unfairly; and (ii) provides fair and equitable treatment.

1. The Plan Does Not "Unfairly Discriminate" Against any Classes

The term "discriminate unfairly" is not defined in the Bankruptcy Code. This term has been interpreted generally to require a plan to provide for "fair allocation of reorganization value among claimants with equal nonbankruptcy liquidation priorities[.]" 7-1129 *Collier on Bankruptcy*, ¶ 1129.03[3][a] (16th ed. 2015). It requires that a dissenting class receive "treatment which allocates value to the [dissenting] class in a manner consistent with the treatment afforded to other classes with similar legal claims against the debtor" (*In re Mcorp Financial, Inc.*, 137 B.R. 219, 234 (Bankr. S.D. Tex. 1992)), so that such class "will receive relative value equal to the value given to all other similarly situated classes" (*In the Matter of Johns-Manville Corporation*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986)). Notably, "[b]y including the 'unfair discrimination' test, Congress made it clear that such a reorganization surplus did not have to be allocated to creditors on the basis of liquidation preferences. There can be 'discrimination,' so long as it is not 'unfair.'" 7-1129 Collier on Bankruptcy, ¶ 1129.03[3] (16th ed. 2015).

The Plan does not unfairly discriminate against any classes. Class 1 is comprised solely of JPMorgan's secured claim. Since this claim is the only secured claim asserted against the Estates, it is properly classified separately from other, unsecured creditors. Class 3 is comprised solely of JPMorgan's unsecured deficiency claim. This claim is the only unsecured claim for which the creditor has recourse against third party guarantors. For this reason it is appropriately classified separately from the other unsecured creditors who may only look to one or both of the Debtors for collection. Classes 1 and 3 derive from the same two loans, and the claims in those classes will be repaid in full according to the same payment schedule and with the same interest rate. Class 4 claims, which are comprised of all other general unsecured claims, will also be paid in full over time. JPMorgan will

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receive final payment on its Class 1 and 3 claims in April 2025. Class 4 members will receive their last installment on December 2025. In short, the Plan treats creditors fairly and does not unfairly discriminate against any class of impaired claims. This prong of the "cramdown" test is therefore satisfied.

2. The Plan is "Fair and Equitable" as to All Classes

Whether a plan is "fair and equitable" varies based on whether the non-accepting class is a class of secured claims or class of unsecured claims. *See* 11 U.S.C. § 1129(b)(2)(A), (B). Notably, Section 1129(B)(2) is a non-exclusive list of treatments that satisfy the "fair and equitable" requirement. *See* 7-1129 *Collier on Bankruptcy*, ¶ 1129.04[1] (16th ed. 2017).

With respect to a class of secured claims, a plan is "fair and equitable" when the plan provides such class with one of three alternative forms of treatment. First, the plan may provide that secured creditors: (i) "retain the liens securing such claims . . . to the extent of the allowed amount of such claims; and (ii) "receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property." 11 U.S.C. § 1129(b)(2)(A)(i). Second, the plan may provide "for the sale . . . of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale." 11 U.S.C. § 1129(b)(2)(A)(ii). Finally, a plan may provide "for the realization by such holders of the indubitable equivalent of such claims." 11 U.S.C. § 1129(b)(2)(A)(iii). In these cases, JPMorgan is the only secured creditor and its claim constitutes the entirety of Class 1. The Plan does not contemplate the elimination or reduction of JPMorgan's lien rights. Consequently, the Plan is fair and equitable as to Class 1.

With respect to a class of unsecured claims, a plan is "fair and equitable" when the plan provides such class with one of two alternative forms of treatment. First, the plan may provide that holders of unsecured claims "receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim." 11 U.S.C. § 1129(b)(2)(B)(i). Alternatively, the Plan will be fair and equitable to unsecured creditors if "the holder of any interest that is junior to the claims of such class will not receive or retain under the plan on account of such

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junior claim or interest any property…" 11 U.S.C. § 1126(b)(2)(B)(ii). Plainly stated, this means that a plan will be fair and equitable to unsecured creditors so long as equityholders, which are junior to unsecured creditors, receive or retain nothing on account of their existing investments.

The Plan is fair and equitable to unsecured creditors because Pedro Jimenez, the Debtors' sole equityholder, will not receive or retain anything on account of his *existing* equity holdings. He will, on the other hand, retain his equity interests on account of the *new* value that he will provide to the Debtors through his future capital contributions. Courts in the Ninth Circuit recognize the importance of this "new value" exception to the absolute priority rule. *See In re Bonner Mall P'ship*, 2 F.3d 899, 915-16 (9th Cir. 1993) ("By permitting prior stockholders to contribute new money in exchange for participation in the reorganized company, the debtor is given an additional source of capital. The new contribution increases the amount available for the estate to use both in its reorganization and in funding the plan and paying creditors. ... All parties involved, including creditors, benefit from an increase in the assets of the estate."). Since Pedro Jimenez will retain equity on account of the "new value" that he will provide to the Debtors (rather than his existing interests), and no other equityholders exist, no holder of any interest junior to unsecured creditors will receive or retain anything on account of their interests. The Plan is therefore fair and equitable to Classes 3 and 4.

As set forth above, the Plan does not discriminate unfairly and is fair and equitable as to each of the impaired classes (Classes 1, 3, and 4). Consequently, it meets the requirements of Bankruptcy Code section 1129(b) and make be confirmed over the objection of an impaired dissenting class.

IV.

CONCLUSION

The Plan complies with and satisfies the requirements of Section 1129 of the Bankruptcy Code. Accordingly, the Debtors request that the Court enter an order confirming the Plan and granting such other and further relief as is just and appropriate under the circumstances.

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DATED: April 24, 2018

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: _____

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DECLARATION OF PEDRO JIMENEZ

I, Pedro Jimenez, declare as follows:

1. Unless otherwise set forth herein, I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto. I am the sole officer, director, and owner of Benchmark Post, Inc. ("Benchmark Post") and Benchmark Sound Services, Inc. ("Benchmark Sound" and, together with Benchmark Post, "Benchmark" or the "Debtors").

2. I make this declaration in support of the foregoing motion (the "Motion") for confirmation of the First Amended Plan Of Reorganization Proposed Jointly Benchmark Post, Inc. And Benchmark Sound Services, Inc. (the "Plan"). All capitalized terms not specifically identified herein shall have the meanings ascribed to them in the Plan or the disclosure statement describing the Plan (the "Disclosure Statement").

3. To the best of my knowledge, information, and belief, all of the information contained in the Motion is truthful and accurate.

4. In 2008, I founded Benchmark Sound Services, LLC, the predecessor to Benchmark Sound (which was set up as a corporation in 2012). Initially, Benchmark Sound had no permanent facility, but would rather rent space or facilities as necessary depending on the size of the project and the location of the client. In 2010, Benchmark Sound entered into an agreement with Universal Studio's Sound Department ("Universal") and operated out of Universal's lot until December 2015. Following the completion of Comcast's acquisition of NBC Universal in 2013, Universal extended its agreement with Benchmark Sound and agreed to construct and provide additional facilities for Benchmark Sound to be able to expand its business on the Universal lot. By mid-2014, however, Universal backed out of its agreement to build and deliver additional facilities to Benchmark Sound.

5. By 2014, Benchmark Sound's business was growing and there was no available space to expand at the Universal lot. Accordingly, Benchmark Sound looked outside the studio's lot for expansion and, in October 2014, leased its current space at 2901 West Alameda Avenue, Suite 100, Burbank, California (the "Burbank Facility"). Benchmark Post was formed in October 2014, and it

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was originally intended that Benchmark Post would handle non-Universal business while Benchmark Sound continued servicing Universal.

6. The initial plan and goal was for the Burbank Facility to serve as an overflow facility for Benchmark Sound while it continued to primarily operate out of the Universal Studio's lot. In December 2015, however, Benchmark Sound's relationship with Universal terminated. At that time, Universal constituted approximately 60% of Benchmark's revenue. In December 2015, Benchmark departed from the Universal lot and has since not worked with Universal.

7. After taking possession of the Burbank Facility in October 2014, Benchmark discovered that the mixing stages at the facility had numerous acoustic problems, could not be used as they had been delivered to Benchmark, and had to be torn down. As a result, Benchmark embarked on a major remodel project. In June 2015, Benchmark signed an agreement with an architect for the work and, in November 2015, entered into a contract with the general contractor for the project named KipJoe Inc. dba Steiner Construction ("Steiner").

8. Benchmark's secured lender, JPMorgan Chase Bank, NA ("JP Morgan" or the "Bank"), entered into an equipment loan with Benchmark Post in May 2015. Benchmark Sound guaranteed the equipment loan. The Bank also entered into a tenant improvement loan with Benchmark Post in December 2015 to fund the construction project, which Benchmark Sound guaranteed as well. Moreover, these loans were guaranteed by me, both in my individual capacity and as trustee of my personal trust, as well as by Marquee Soundworks, Inc. ("Marquee").

9. The original construction contract with Steiner contemplated completion in three phases and was expected to cost approximately $1.7 million. Phase 1 was a smaller build-out of kitchen and equipment/server room areas; phase 2 included edit rooms, food prep area, central machine room and mix stage-1, while phase 3 was to include mix stages 2 & 3. Construction began in February 2016. Unfortunately, numerous delays ensued, which had a severe negative impact on Benchmark's business. Further, the newly remodeled mixing stage-1 was constructed in an inadequate, deficient, and negligent manner resulting in major acoustic problems that limited the types of projects and clients that can work in the room, which in turn negatively impacted Benchmark's original revenue projections.

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10. Because of the delays, and the need to get a second stage up and running, all attention was devoted to completing phase 2, which included mix stage 1. As August 2016 approached, Steiner was nowhere close to completing phase 2, even though the original projections contemplated that all three phases would be completed by September 2016.

11. In August 2016, the Bank became concerned at the apparent lack of progress in the construction project and refused to release any further funds under both the equipment loan and the tenant improvement loan. Steiner then walked off the job in September. Subsequently, Steiner and two subcontractors, Renegade Flooring and Trendex Corporation, recorded mechanics liens against the premises. In connection with its mechanics' lien, Steiner asserted a claim in the sum of approximately $458,000 against Benchmark. Benchmark Post disputed Steiner's claim. In February 2017, Steiner filed a complaint against Benchmark Post and CF Burbank Office, L.P., the owner of the Burbank Facility, in the California Superior Court for alleged breach of contract, foreclosure of mechanics' liens, and quantum meruit.

12. In February 2017, JPMorgan and Benchmark reached agreement on and executed modified tenant improvement/construction and equipment loan documents. However, the Bank declined to fund the loans until the litigation brought by Steiner was resolved. Benchmark tried to engage Steiner in discussions to resolve its litigation, but Steiner rebuffed all efforts to settle the matter.

13. Simply put, in the 3 years leading up to the Petition Date, Benchmark experienced dramatic changes and severe challenges that have seriously impacted its financial results. It went from generating $3.8 million in 2014 and operating a mixing studio inside the Universal lot to generating approximately half that amount in 2015 and 2016. (This figure includes approximately $900,000 from Marquee, which used to be part of the Benchmark enterprise but has been dormant since 2015.) Notwithstanding these negative turns of events, the company has continued to provide first class post-production sound services.

14. On May 5, 2017, in an effort to reorganize their debts and emerge on a viable ongoing basis, Benchmark Sound and Benchmark Post both filed voluntary petitions under Chapter 11 of the United States Bankruptcy Court.

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15. I am advised and believe that on May 5, 2017, the Debtors also filed various "first day" motions, including motions respecting (i) use of cash collateral, (ii) utilities, (iii) employee wages, (iv) limiting notice, (v) joint consolidation, and (vi) an extension of the deadline to file schedules and related papers. On May 11, 2017, the Court held a hearing on the "first day" motions and granted the motions relating to cash collateral (on an interim basis with final approval to follow), utilities, employee wages, and an extension of the deadline to file schedules and related papers. The Court denied the motions to limit notice and jointly administer the Debtors' cases.

16. I am advised and believe that on May 11, 2017, the Court entered a scheduling order setting July 25, 2017 as the deadline for the Debtors to file a disclosure statement and plan of reorganization, and that the scheduling order further set August 8, 2017 as the date for a preliminary hearing on the adequacy of the Debtors' plan and disclosure statement.

17. I am advised and believe that on May 12, 2017, the Debtors submitted their 7-Day Packages to the Office of the United States Trustee. They have amended the 7-Day Packages from time to time as appropriate.

18. On May 24, 2017, I and the Debtors' bankruptcy counsel attended the Initial Debtor Interview (the "IDI") at the Office of the United States Trustee (the "OUST"). At the IDI, the OUST analyst request that the Debtors provide a minimal amount of supplemental documentation relating to administrative compliance matters. The Debtors subsequently submitted this documentation to the OUST.

19. I am advised and believe that on May 26, 2017, the Debtors filed their applications to employ SulmeyerKupetz, A Professional Corporation ("SK"), as their general bankruptcy counsel, and that the Court entered orders approving these applications on June 26, 2017.

20. I am advised and believe that on May 30, 2017, the Court held a final hearing the cash collateral motion and authorized use of cash collateral on a final basis.

21. I am advised and believe that on June 6, 2017, the Debtors filed motions for the establishment of a claims bar date, and that these motions were granted on June 7, 2017 and a claims bar date of August 15, 2017 was set. I am further advised and believe that the Debtors gave notice of the claims bar date to all parties in interest on June 29, 2017.

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22. On June 12, 2017, I and the Debtors' bankruptcy counsel attended the 341(a) meetings of creditors for these cases.

23. I am advised and believe that on June 27, 2017, Benchmark Post filed motions to assume executory contracts with Dolby Laboratories, Inc. and Audio Intervisual Design, and that the Court entered orders granting these motions on July 21, 2017.

24. I am advised and believe that on June 28, 2017, the Debtors filed their initial monthly operating reports to the OUST. The Debtors have thereafter continued to file monthly operating reports and, as far as they are aware, remain in full compliance with the requirements of the OUST.

25. I am advised and believe that on June 30, 2017, the Debtors filed applications to employ Winningham Becker & Company, LLP as their accountants nunc pro tunc as of the petition date, and that the Court entered orders approving these applications on July 28, 2017.

26. I am advised and believe that on July 6, 2017, the Debtors filed applications to employ Hymes, Schreiber & Knox, LLP as their special business counsel, and that the Court entered orders approving these applications on August 3, 2017.

27. I am advised and believe that on July 13, 2017, the Debtors filed ex parte motions requesting that the Court continue the July 25, 2017 deadline for the Debtors to file their plan of reorganization and disclosure statement, and that the Court entered orders on July 14, 2017 vacating the July 25, 2017 deadline and setting the August 8, 2017 hearing as a status conference.

28. I am advised and believe that on July 25, 2017, the Debtors filed status reports in advance of the scheduled August 8, 2017 status conference.

29. I am advised and believe that on August 1, 2017, the Debtors filed motions to extend the exclusivity period for filing a plan of reorganization to December 1, 2017.

30. I am advised and believe that on August 1, 2017, the Debtors filed motions to extend the deadline to assume or reject their nonresidential commercial lease at the Burbank Facility to December 1, 2017.

31. On August 16, 2017, I attended a status conference (which had been originally set for August 8, 2017), at which the Court set a hearing on the adequacy of the Debtors' disclosure statement for November 21, 2017 at 10:00 a.m. The Court ordered the Debtors to timely file their plan and

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disclosure statement and provide notice thereof to all creditors in accordance with the Local Bankruptcy rules (i.e., no less than 42 days prior to the hearing).

32. I am advised and believe that on August 22, 2017, the Court granted the Debtors' motions to extend the exclusivity period and the deadline to assume or reject the lease at the Burbank Facility to December 1, 2017.

33. I am advised and believe that on October 10, 2017, the Debtors filed their initial jointly proposed plan, the disclosure statement describing that plan, and a motion to approve that disclosure statement. The hearing to approve the initial disclosure statement was set for November 21, 2017.

34. I am advised and believe that on November 7, 2017, the Debtors filed status reports in advance of the November 21, 2017 hearing on their initial disclosure statement. In the status report, the Debtors indicated that they were in the process of discussing potential modifications to the proposed plan with certain creditors that contacted the Debtors to request clarifications and/or or modifications.

35. I am advised and believe that on November 20, 2017, Benchmark Post filed a stipulation into which it entered with the Los Angeles County Treasurer and Tax Collector (the "LATTC") the regarding the treatment of the LATTC's claim, and that the order approving that stipulation was entered on November 27, 2017.

36. On November 21, 2017, I attended a hearing on the Debtors' motion to approve the initial disclosure statement, at which hearing the Debtors, through counsel, informed the Court that they were currently in discussions with creditor JPMorgan regarding modifications to the plan that would ensure that JPMorgan would support the Plan and that they anticipated submitting an amended plan and disclosure statement memorializing the results of those discussions.

37. I am advised and believe that on November 30, 2017, the Debtors filed motions to assume their nonresidential commercial lease for the Burbank Facility, and that the Court entered its orders approving these motions on January 3, 2018. The Debtors thereafter made the requisite cure payment to their commercial landlord and have assumed and are performing under the commercial lease.

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38. I am advised and believe that on February 12, 2018, the Debtors filed the Plan and Disclosure Statement.

39. On April 3, 2018, I attended a hearing at which the Court approved the Disclosure Statement and set the confirmation hearing on the Plan as well as certain deadlines related to confirmation of the Plan.

40. I am advised and believe that on April 17, 2018, the Debtors served the Disclosure Statement, the Plan, notice of the confirmation hearing and related deadlines, and a ballot for voting (the "Solicitation Package") to all creditors and interested parties.

41. The Plan is an operating plan of reorganization, pursuant to which the Debtors will continue operating the Benchmark enterprise and utilize the earnings from the same to pay creditors as contemplated under the Plan. The effective date of the Plan is 15 days after entry of the order confirming the Plan (the "Effective Date"). (The Debtors after the Effective Date are referred to herein as the "Reorganized Debtors.") The Plan provides for payment in full of all allowed claims over time.

42. The Plan will be funded by the Reorganized Debtors' ongoing operations and capital contributions from me. Cash flow statements describing the projected revenue (including my capital contributions) and expenses of the combined Benchmark enterprise for 2018-2020, the first three years of the Plan, are attached to the Disclosure Statement as Exhibit J. I believe that the Debtors' cash position will be vastly improved by the end of 2020, and I further believe that the Debtors' ongoing operations will continue to flourish beyond 2020 and through the life of the Plan.

43. Moreover, as the Debtors' cash flow projections demonstrate, the Debtors project that there will be sufficient cash generated from the Reorganized Debtors' business operations to pay all claims as required to be paid under the Plan following the Effective Date. The Effective Date of the Plan is 15 days after entry of the order confirming the Plan. Assuming the order is entered shortly after the June 12, 2018 confirmation hearing and no appeals are filed, the Effective Date of the Plan will fall somewhere around July 1, 2018. I anticipate that the Debtors will have sufficient cash to pay all Effective Date payments that would be due on that day. Detailed cash flow projections for 2018-2020 are attached to the Disclosure Statement as Exhibit J, and they demonstrate that the Debtors will

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have enough cash on hand to make any payments due on the Effective Date. Presuming an Effective date of July 1, 2018, I anticipate that the Debtors will have over $400,000 in cash after payment of operating expenses, initial plan payments to JPMorgan, and the first installment of approved professional fees (the latter of which will likely not even be due on the Effective Date because the Debtors do not anticipate that its professionals will file fee applications until after the Plan has been confirmed).

44. Additionally, I believe that the Reorganized Debtors will have enough cash over the life of the Plan to make the required payments. The cash flow projections attached as Exhibit J to the Disclosure Statement not only demonstrate the ability of the Reorganized Debtors to make all of the Plan payments which are required to be made over that period but also show that the Reorganized Debtors' cash position will continue to improve. The cash flow projections do not extend beyond that three year period because I believe such projections would be increasingly speculative, however, the cash flow projections to the Disclosure Statement show that the Reorganized Debtors will be in a substantially improved cash position by the end of 2020. As stated in the Disclosure Statement, following the Effective Date, I expect that the Debtors will repurpose stage 1 for additional dialogue replacement (ADR) work, rather than sound mixing as originally intended, so that the stage may begin to generate revenue without the substantial remaining buildout that would have been needed if the stage were to remain dedicated to sound mixing. I also anticipate that one or more of the Debtors will take out a small equipment loan to assist with the acquisition of the equipment and improvements that would be required to repurpose stage 1. I believe that this will lead to increased sales which, coupled with my capital contributions, will permit the Reorganized Debtors to grow, hire new employees, and generate more revenue which will, in turn, enable them to make all of the Plan payments which are required to be made over the life of the Plan. In sum, the Plan is far more than a mere visionary scheme; it was developed based on both my understanding of the Benchmark Enterprise and my review of projected financial documents for the next three years.

45. Under the Plan, the Debtors' equity interests will remain intact and I will own all of the equity interests in the Reorganized Debtors. Before and following confirmation, the Debtors will continue to be managed by me. I believe I am the individual most familiar with the Benchmark

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operation, as I has served as the Debtors' sole owner, officer, and director since their inception. I believe that I am highly qualified, financially motivated, and personally invested in the continued success of the Benchmark enterprise, and that since I have always been the sole owner, director, and officer of each of the Debtors, no other individual is more familiar than me with the Debtors' finances, business operations, and commercial relationships. I believe that my continuing management of the Debtors and Reorganized Debtors is consistent with the interests of creditors and public policy.

46. I believe that the Debtors have filed the Plan in good faith. In fact, the Plan incorporates terms that were negotiated with the Debtors' primary creditor, JPMorgan, at arms' length and through counsel. To the best of my knowledge, there was no collusion of any kind involving the Debtors or any insider of the Debtors with regard to the Plan or any Plan terms. As a result, I believe that the proposal of the Plan is consistent with the objectives and purposes of the Bankruptcy Code and was made with honesty and good intentions and with a basis for expecting that, under the circumstances, it is the best means for maximizing the recovery by creditors of the Debtors. Additionally, the Debtors did not commence soliciting acceptances to the Plan until after the Disclosure Statement was approved and the Solicitation Package was served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 24 day of April, 2018, at Los Vegas, Nevada

Pedro Jimenez

SulmeyerKupetz, A Professional Corporation
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, CA 90071-1406.

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION PROPOSED JOINTLY BY BENCHMARK POST, INC. AND BENCHMARK SOUND SERVICES, INC.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PEDRO JIMENEZ IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 24, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Jason Balitzer on behalf of Debtor Benchmark Post, Inc - jbalitzer@sulmeyerlaw.com, jbalitzer@ecf.inforuptcy.com; dwalker@ecf.inforuptcy.com; kmccamey@sulmeyerlaw.com
- Lori A Butler on behalf of Creditor Pension Benefit Guaranty Corporation - butler.lori@pbgc.gov, efile@pbgc.gov
- Martin F Goldman on behalf of Creditor Superior Alarm Systems - marty@martylaw.com
- William E Ireland on behalf of Debtor Benchmark Post, Inc. - wireland@hbblaw.com, cdraper@hbblaw.com
- Cameo M Kaisler on behalf of Creditor Pension Benefit Guaranty Corporation - salembier.cameo@pbgc.gov, efile@pbgc.gov
- David S Kupetz on behalf of Debtor Benchmark Post, Inc. - dkupetz@sulmeyerlaw.com, dperez@sulmeyerlaw.com; dperez@ecf.inforuptcy.com; dkupetz@ecf.inforuptcy.com
- Elan S Levey on behalf of Creditor Pension Benefit Guaranty Corporation - elan.levey@usdoj.gov, louisa.lin@usdoj.gov
- Ron Maroko on behalf of United States Trustee (LA) - ron.maroko@usdoj.gov
- Daniel J McCarthy on behalf of Creditor CF Burbank Office, L.P. - dmccarthy@hillfarrer.com, spadilla@hillfarrer.com; docket@hillfarrer.com
- United States Trustee (LA) - ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:
On (*date*) April 24, 2018 , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) April 24, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street
Los Angeles, CA 90012 - Bin outside of Suite 1660

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 24, 2018	Andrea Gonzalez	*/s/ Andrea Gonzalez*
Date	*Printed Name*	*Signature*

2. SERVED BY UNITED STATES MAIL (Cont'd):

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Interested Party
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Perkins Coie LLP
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Los Angeles, CA 90067

Secured Creditors
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Post Office Box 29550, AZ1-1025
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JPMorgan Chase Bank, NA
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Bankruptcy Group MIC 92E
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Sacramento CA 94280-0001

Franchise Tax Board
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Sacramento CA 95812-2952

Internal Revenue Service
300 North Los Angeles Street MS: 5022
Los Angeles, CA 90012

Los Angeles County Tax Collector
P.O. Box 54110
Los Angeles CA 90054-0110

State Board of Equalization
Account Information Group, MIC: 29
P.O. Box 942879
Sacramento CA 94279-0029

Administrative Creditors
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21333 Oxnard Street 1st Floor
Woodland Hills, CA 91367

Winningham Becker & Company
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