No. 25-____

IN THE

Supreme Court of the United States

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,
Debtors.

DELAWARE TRUST COMPANY, AS LIEN-RELATED LITIGATION CREDITOR REPRESENTATIVE,
Petitioner,

v.

AD HOC GROUP OF SENIOR SECURED NOTEHOLDERS AND DIP LENDERS AND WILMINGTON SAVINGS FUND SOCIETY, FSB,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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August 18, 2025

QUESTION PRESENTED

Whether Section 550(a) of the U.S. Bankruptcy Code gives a bankruptcy court discretion both to order the return of transferred property to the estate and to award the estate a monetary judgment to compensate for the decline in value of the returned property since its transfer.

PARTIES TO THE PROCEEDING

Petitioner (appellant below)

- Delaware Trust Company, in its capacity as Lien-Related Litigation Creditor Representative

Respondents (appellees below)

- The Ad Hoc Group of Senior Secured Noteholders and DIP Lenders
    - Allan Gray Australia Balanced Fund
    - Allianz Fidelity Institutional Asset Management Total Bond Fund High Yield Sub Account
    - Allianz Multi-Strategy High Yield Sub Account
    - American Funds Insurance Series - American High-Income Trust
    - American Funds Multi-Sector Income Fund
    - American High-Income Trust
    - Annuity Separate Account
    - Apollo Commodities Management, L.P.
    - Capital Research and Management Company
    - Central Fund
    - Cross Ocean Global SIF (A) LP
    - Cross Ocean GSS Master Fund LP
    - Cross Ocean Partners Management LP
    - Cross Ocean USSS Fund I (A) LP

- FIAM High Yield Bond Comingled Pool
- FIAM High Yield Fund, LLC
- Fidelity Advisor Series I: Fidelity Advisor High Income Advantage Fund
- Fidelity Advisor Series II: FA Strategic High Income Sub
- Fidelity American High Yield Fund
- Fidelity Central Investment Portfolios LLC: Fidelity High Income
- Fidelity Funds SICAV / Fidelity Funds – US High Yield
- Fidelity Global High Yield Investment Trust
- Fidelity Institutional U.S. High Yield Fund – Series 1
- Fidelity Management & Research Company
- Fidelity Merrimack Street Trust: Fidelity Total Bond ETF
- Fidelity Salem Street Trust: Fidelity SAI Total Bond Fund – High Income Sub-Portfolio
- Fidelity Summer Street Trust: Fidelity Capital & Income Fund
- Fidelity Summer Street Trust: Fidelity Global High Income Fund - U.S. High Yield Sub Portfolio
- Fidelity Summer Street Trust: Fidelity High Income Fund

- Fidelity Summer Street Trust: Fidelity SAI High Income Fund (SAHI)
- Fidelity Summer Street Trust: Fidelity Short Duration High Income Fund - US High Yield Subportfolio
- Fidelity Summer Street Trust: Series High Income Fund
- Fidelity Income Fund: Total Bond High Income Sub
- Japan Trustee Services Bank, Ltd. Re: Fidelity High Yield Bond Open Mother Fund
- Japan Trustee Services Bank, Ltd. Re: Fidelity Strategic Income Fund (Mother)
- JNL/Fidelity Institutional Asset Management Total Bond Fund – High Income
- Master Trust Bank of Japan Ltd. Re: Fidelity US High Yield Mother Fund
- Northwestern Mutual Investment Management Company, LLC
- Orbis Global Balanced Fund (Australia Registered)
- Orbis Investment Management Limited
- Orbis OEIC Global Balanced Fund
- Orbis OEIC Global Cautious Fund
- Orbis SICAV Global Balanced Fund
- Orbis SICAV Global Cautious Fund

  - Pension Reserves Investment Trust (PRIT) Fund High Yield Portfolio
  - Southpaw Credit Opportunity Master Fund LP
  - Strategic Advisors Income Opportunities Fund - FIAM High Income Subportfolio
  - T-VI CO-ES LP
  - Tarpon DH, LLC
  - Tarpon DIP Holdings, L.P.
  - The Income Fund of America
  - The Northwestern Mutual Life Insurance Company
  - The Northwestern Mutual Life Insurance Company for its Group
  - Variable Insurance Products Fund: VIP High Income Portfolio
  - Variable Insurance Products Fund V: VIP Strategic High Income Sub
- Wilmington Savings Fund Society, FSB

<u>Debtors/Reorganized Debtors</u>

- Mesquite Energy, Inc. (f/k/a Sanchez Energy Corporation)
- Rockin L Ranch Company, LLC
- SN Catarina, LLC
- SN Cotulla Assets, LLC
- SN EF Maverick, LLC
- SN Marquis LLC

- SN Operating, LLC
- SN Payables, LLC
- SN Palmetto, LLC
- SN TMS, LLC
- SN UR Holdings, LLC

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Delaware Trust Company's sole shareholder is Corporation Service Company, which is a privately held company. Delaware Trust Company does not have any shareholder that is a publicly held company.

RELATED PROCEEDINGS

United States Bankruptcy Court (S.D. Tex.):

In re Sanchez Energy Corp., Nos. 4:19-BK-34508, 4:23-cv-02987 (Aug. 3, 2023)

United States Court of Appeals (5th Cir.):

In re Sanchez Energy Corp., No. 23-20557, 139 F.4th 411 (May 30, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Delaware Trust Company respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit vacating the judgment of the bankruptcy court.

INTRODUCTION

The Bankruptcy Code's "Rules of Construction" provide that "[i]n this title * * * 'or' is not exclusive." 11 U.S.C. § 102(5) (capitalization altered); *see Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 395-96 (2023) (*Lac du Flambeau*). Yet in the decision below, the Fifth Circuit held that the word "or" *is* exclusive in one of the most important provisions of the Code: Section 550(a), which provides the remedies for preferentially or fraudulently transferred estate property. That decision broke with precedential decisions of the Second, Ninth, and Tenth Circuits. And it resulted in the transfer of $700 million of value in this case alone.

Section 550(a) states that, once a bankruptcy court concludes that property has been preferentially or fraudulently transferred to a third party, "the trustee may recover, for the benefit of the estate, the property transferred, *or*, if the court so orders, the value of such property." 11 U.S.C. § 550(a) (emphasis added). In some cases, the property transferred will have lost significant value (or even all value) before it is returned to the estate—for example, a wrecked car, perishable inventory, or a machine that has reached the end of its useful life. In that situation, Section 550(a) permits a bankruptcy court both to order the return of the property to the estate and to provide a monetary award to compensate for the property's loss in value since the transfer. *See In re TransCare Corp.*, 81 F.4th 37, 58 (2d Cir. 2023); *In re Straightline Invs., Inc.*, 525 F.3d 870, 884-85 (9th Cir. 2008); *In re Trout*, 609 F.3d 1106, 1112-13 (10th Cir. 2010). The upper bound on that authority is found in Section 550(d), which limits the remedy to a "single satisfaction," thus forbidding a value award that puts the estate in a better position than before the avoided transfer was made.

The Fifth Circuit disagreed with that plain-text reading. Even though it is undisputed that the property at issue here had lost all value by the time that it was returned to the estate, the Fifth Circuit held that Section 550(a) never permits a bankruptcy court to award a monetary judgment once the property is returned to the estate, regardless of the returned property's condition. App. 14a-20a. The Fifth Circuit determined that the "context" of Section 550(a) compelled a disjunctive reading of "or," despite the contrary directive in the Code's Rules of Construction. App. 15a-16a. In particular, the Fifth Circuit rested on the unexplained premise that returning property to an estate alone necessarily results in a "single satisfaction" under Section 550(d), whether or not the property has lost significant value in the interim. App. 16a. For that reason, it held that the word "or" in Section 550(a) must be read as exclusive. App. 16a, 19a.

That holding warrants this Court's review. Not only does it ignore the plain text of the Code and create a circuit conflict, but it deprives bankruptcy estates of any effective remedy for a wide array of preferential and fraudulent transfers. The circuit conflict over the meaning of a central provision of the

Bankruptcy Code will inevitably foster forum-shopping, undermining the Constitution's mandate that Congress create a uniform federal bankruptcy system. U.S. Const., art. I, § 8, cl. 4. This Court should accordingly grant review and reverse.

OPINIONS BELOW

The decision of the Fifth Circuit vacating the judgment of the bankruptcy court (App. 1a-20a) is reported at 139 F.4th 411. The opinion of the bankruptcy court (App. 26a-89a) is not reported but is available at 2023 WL 4986394.

JURISDICTION

The decision of the Fifth Circuit vacating the judgment of the bankruptcy court was entered on May 30, 2025. App. 1a. The decision of the Fifth Circuit denying rehearing en banc and panel rehearing was entered on July 1, 2025. App. 21a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 102 of Title 11 of the U.S. Code provides in pertinent part:

Rules of construction.

In this title—

* * *

(5) "or" is not exclusive * * * .

2. Section 550 of Title 11 of the U.S. Code provides in pertinent part:

Liability of transferee of avoided transfer.

> (a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from—
>
> > (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
> >
> > (2) any immediate or mediate transferee of such initial transferee. * * *
>
> (d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

Other pertinent provisions are produced in the attached Appendix, App. 90a-108a.

STATEMENT

A. Legal Background

A company in financial distress may file a petition under Chapter 11 of the Bankruptcy Code "to reorganize its business under a court-approved plan governing the distribution of assets to creditors." *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 272 (2024) (internal quotation marks omitted). The "plan, which is primarily the product of negotiations between the debtor and creditors, govern[s] the distribution of valuable assets from the debtor's estate and often keep[s] the business operating as a going concern." *Ibid.* (alterations in original; internal quotation marks omitted). In the typical case, the company assumes the role of "debtor in possession," 11 U.S.C. § 1101(1), allowing it to exercise most of the functions and powers of a bankruptcy trustee, *id.* § 1107(a).

As relevant here, a debtor-in-possession can seek to avoid certain transfers of estate property to third parties. *See Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 583 U.S. 366, 371 (2018). Among such avoidable transfers are preferential transfers (or "preferences"), which are governed by Section 547 of the Code. That section defines preferences as transfers of estate property to creditors that (i) are made while the debtor is insolvent and within 90 days of the filing of the bankruptcy petition and (ii) permit the transferee creditor to obtain more than it would have obtained in a Chapter 7 bankruptcy liquidation. 11 U.S.C. § 547(b). The avoidance "mechanism prevents the debtor from favoring one creditor over others by transferring property shortly before filing for bankruptcy." *Begier v. I.R.S.*, 496 U.S. 53, 58 (1990); *see Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455-56 (2017).

Other provisions of the Bankruptcy Code also permit a debtor-in-possession to avoid certain transfers of property. Under Section 548, for example, a debtor-in-possession may avoid fraudulent transfers, which include transfers made within two years of the bankruptcy filing that are intended to hinder, delay, or defraud creditors. 11 U.S.C. § 548(a). And under Section 549, a debtor-in-possession may avoid post-petition transfers that are not authorized by the Code or by the bankruptcy court. *Id.* § 549(a).

Section 550 supplies the primary remedy for avoided transfers, including preferences, fraudulent transfers, and post-petition transfers, among others. Subsection (a) states that a trustee "may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property" from both the initial transferee and subsequent transferees. 11 U.S.C. § 550(a). The Bankruptcy Code's "Rules of Construction" state that "or" is "not exclusive," 11 U.S.C. § 102(5) (capitalization altered); *see Lac du Flambeau*, 599 U.S. at 395-96, and the widely recognized purpose of Section 550 is "to restore the estate to the condition it would have been in if the [avoided] transfer had never occurred," *TransCare Corp.*, 81 F.4th at 56 (internal quotation marks omitted); *see, e.g., In re DeBerry*, 945 F.3d 943, 947 (5th Cir. 2019); *In re Kingsley*, 518 F.3d 874, 877 (11th Cir. 2008) (per curiam). Three circuits have thus held that, in certain cases where the transferred property has lost value since the transfer, Section 550(a) gives a bankruptcy court discretion both to order the return of property and to award a monetary judgment to compensate for the lost value. *TransCare Corp.*, 81 F.4th at 58; *Straightline Invs., Inc.*, 525 F.3d at 884-85; *Trout*, 609 F.3d at 1112-13.

Another subsection of Section 550, however, ensures that a court may not place the estate in a better position than it occupied before the transfer. Section 550(d) states that a "trustee is entitled to only a single satisfaction under subsection (a) of this section." Under that provision, a debtor-in-possession may not recover an award of property and money that exceeds the pre-transfer value of the property. 5 COLLIER ON BANKRUPTCY ¶ 550.05 (16th ed. 2023). For example, where the property has not lost value, the trustee may not obtain a monetary award from the initial transferee while also obtaining the property itself from a subsequent transferee, as that would result in a double recovery. *See In re Belmonte*, 931 F.3d 147, 153 (2d Cir. 2019).

B. Factual and Procedural Background

1. In 2019, Sanchez Energy Corporation ("Sanchez") filed a Chapter 11 bankruptcy petition in the Southern District of Texas and became a debtor-in-possession. App. 3a. Respondents, a group of Sanchez's creditors, held the vast majority of a set of preexisting liens on oil-and-gas leases representing nearly three-quarters of Sanchez's assets. App. 2a, 36a, 78a-79a. But Sanchez contended that those liens—referred to here as the "pre-petition liens"—qualified as avoidable preferences under Section 547. That is because the Bankruptcy Code defines a "transfer" to include "the creation of a lien," 11 U.S.C. § 101(54), and Sanchez alleged that respondents had not perfected the liens until just a few weeks before Sanchez filed the bankruptcy petition, App. 3a.

Before that dispute could be resolved, however, Sanchez needed to secure financing. Respondents were intent on becoming "debtor-in-possession lenders"—commonly called "DIP lenders." App. 3a-4a. DIP lenders can obtain superpriority "DIP liens" on an estate's assets that give them precedence over any other creditors, so long as other secured creditors whose liens are subordinated to the DIP liens receive "adequate protection." 11 U.S.C. § 364(d). Becoming DIP lenders would thus allow respondents to acquire senior liens that were not at risk of avoidance, unlike their pre-petition liens, and significant leverage in the negotiations over the Chapter 11 plan. *See* App. 39a-45a.

To achieve that goal, respondents wielded their pre-petition liens to deter bids from other parties who might otherwise have served as DIP lenders. App. 3a-4a, 36a-37a. Those other parties did not want to engage in a costly "priming fight," *i.e.*, litigation about whether respondents could receive "adequate protection" for their (potentially avoidable) pre-petition liens if other parties were selected as the DIP lenders. App. 3a, 37a, 56a.

That left the bankruptcy court with no realistic choice but to name respondents the DIP lenders and thereby grant respondents first-priority DIP liens over virtually all of Sanchez's assets. App. 3a-4a, 36a-38a. But after unsecured creditors objected, respondents agreed to a key concession: Their DIP liens would not extend to Sanchez's causes of action to avoid respondents' pre-petition liens on the oil-and-gas leases. In other words, Sanchez could litigate those avoidance actions against respondents and obtain a recovery for the estate that the DIP liens would not encumber. App. 38a n.3, 47a-48a, 311a.

Sanchez then filed a complaint seeking to avoid the pre-petition liens under Section 547 and requesting as a remedy the value of the liens under Section 550(a). App. 4a, 39a, 257a-287a.

2. While that complaint was pending, the dire circumstances facing the company led all major parties to agree to a reorganization plan. App. 4a-5a, 39a-45a, 139a-256a. Under the plan, respondents, in their role as DIP lenders, would immediately receive 20% of the equity in the reorganized company, now called Mesquite Energy, Inc. ("Mesquite"). App. 5a, 44a, 154a, 183a. The remaining 80% would be allocated between respondents (again, in their role as

DIP lenders) and other creditors through a three-phase process called the "Lien-Related Litigation." App. 5a, 44a, 194a-195a. That process would allocate Mesquite's equity based principally on the "value" of the causes of actions against respondents to avoid their pre-petition liens, *i.e.*, the causes of action that were not encumbered by the DIP liens. App. 6a-7a, 160a-161a. Essentially the value of those causes of action relative to all of Mesquite's other assets would dictate how much of Mesquite's equity was awarded to unsecured creditors rather than respondents.

The bankruptcy court confirmed the plan and proceeded to oversee the Lien-Related Litigation, which pitted respondents against a "Creditor Representative" (petitioner here) representing the interests of unsecured creditors. App. 4a-7a, 109a. At Phase 1, the court reaffirmed that the DIP liens did not encumber the actions to avoid respondents' pre-petition liens. App. 6a, 47a-48a. At Phase 2, the court held that respondents had not properly perfected those liens before the 90-day avoidance period. App. 6a, 47a.

After conducting a trial at Phase 3, the court held that respondents' pre-petition liens met the requirements for avoidable preferences under Section 547; that respondents had exploited those avoidable liens to become the DIP lenders and thereby obtain superpriority liens on Sanchez's assets; and that it was necessary to award the estate the value of the pre-petition liens as of the date they were perfected (and thus preferentially transferred to respondents) in order to return the estate to its pre-transfer position. App. 6a-7a, 50a-64a.

Respondents argued that awarding that value would exceed the bankruptcy court's power under Section 550. They pointed to a general provision of the plan stating that "all * * * Liens * * * against any property of the Estates * * * shall be fully released and discharged" upon the plan's confirmation. App. 64a-66a, 239a-240a. According to respondents, that release had already "returned" their pre-petition liens to the estate. App. 66a. For that reason, they argued, awarding the estate the pre-transfer value of those liens under Section 550(a) would produce an impermissible "double recovery." App. 64a.

The bankruptcy court rejected that argument. App. 64a-68a. It held that although Section 550(d) permits only a "single satisfaction" for a successful avoidance action, awarding the transfer-date value of the pre-petition liens would not violate that limitation. App. 66a-67a. Respondents had admitted that the pre-petition liens had lost all value by the time that they were purportedly "returned" to the estate through the plan's general release. App. 66a-67a. As the court found, that was in part because respondents had used the existence of those liens to become DIP lenders, and the DIP liens now encumbered the entire value of the company, making the pre-petition liens worthless. App. 56a-67a, 63a-64a, 66a-67a. Because the pre-petition liens had lost all value between the time of the preferential transfer and their release, the court held, the only way to restore the estate to its pre-transfer position was to award the full monetary value of the liens at the time of the transfer. App. 63a-64a, 66a-67a.

Based on evidence presented at trial about the different trading prices of Sanchez's secured and unsecured debt, the bankruptcy court valued the estate's causes of action to avoid the pre-petition liens at $197 million. App. 86a. In other words, if those causes of action had been litigated to judgment, the estate would have received a $197 million value award under Section 550(a). Given the $85 million stipulated value of Mesquite's other assets, the court awarded respondents, as DIP lenders, approximately 30% of Mesquite's stock, then valued at roughly $300 million, far more than respondents' DIP loans. App. 86a. The court awarded the remaining 70% to unsecured creditors. App. 86a.

3. The Fifth Circuit authorized respondents to take a direct appeal, App. 8a; 28 U.S.C. § 158(d), and then reversed. The court held that because respondents had "returned" the liens to the estate by releasing them through the plan, the bankruptcy court lacked the power to award the pre-transfer value of the liens under Section 550(a). App. 16a. Specifically, it construed Section 550 to mean that a bankruptcy court "cannot award value under Section 550(a) when the estate has recovered its transferred property in kind," App. 19a, regardless of whether the property was rendered worthless by the time it was returned.

The Fifth Circuit acknowledged that "the Bankruptcy Code's Rule of Construction provision states that 'or' is 'not exclusive.'" App. 15a (quoting 11 U.S.C. § 102(5)). The court also noted that this rule accords with ordinary legal usage, where "'A or B' is usually 'A or B, or both.'" *Ibid.* (quoting Bryan A. Garner, DICTIONARY OF LEGAL USAGE 639 (3d ed. 2011)). But citing an earlier Fifth Circuit precedent and a dissenting opinion from another circuit, the court stated that "the Bankruptcy Code, like other statutes, does not apply the background Rule of Construction when surrounding context makes 'A and B' logically impossible or dictates otherwise." App. 15a-16a (citing *In re Williams*, 168 F.3d 845, 847-48 (5th Cir. 1999); *In re Phila. Newspapers, LLC*, 599 F.3d 298, 324 (3d Cir. 2010) (Ambro, J., dissenting)).

The Fifth Circuit then held that the surrounding context of Section 550(a)—namely, Section 550(d)'s "single satisfaction" limit—"compels the conclusion that Section 550(a) uses 'or' in its disjunctive form." App. 16a. According to the court, "it is logically impossible to 'recover' both transferred property and the 'value' of that property as a 'single satisfaction.'" App. 16a. Quoting an earlier Fifth Circuit precedent in which a value award was denied because the full amount of fraudulently transferred cash had already been returned to the estate, the court concluded that "[p]roperty that has already been returned cannot be 'recovered' in any meaningful sense." App. 16a (alteration in original) (quoting *DeBerry*, 945 F.3d at 947).

Petitioner had argued that a return of worthless property would not amount to a "single satisfaction" because it would not restore to the estate the value lost in the preferential transfer. In response, the Fifth Circuit stated that this "unapologetically purposive interpretation * * * is not only at odds with the disjunctive meaning of the text"—*i.e.*, the court's interpretation of Section 550(a) to depart from the Code's Rules of Construction—"but is also a mischievous interpretation where any preferential transfer involves a lien on a depreciating asset." App. 17a.

Based on its construction of Section 550(a), the Fifth Circuit determined that respondents were entitled to 100% of Mesquite's equity—a value of approximately $1 billion. App. 20a; Resp. C.A. Br. 2, 16. The court denied rehearing. App. 21a-22a.

REASONS FOR GRANTING THE PETITION

This Court should grant review because the Fifth Circuit's erroneous construction of Section 550(a) conflicts with published decisions of the Second, Ninth, and Tenth Circuits and presents an issue of exceptional importance to the administration of the Bankruptcy Code. Those circuits correctly interpret Section 550(a) to give a bankruptcy court the discretion to order the return of transferred property and a monetary award, so long as the estate does not receive, in total, more than the pre-transfer value of the property. That interpretation follows directly from the Bankruptcy Code's Rules of Construction, ordinary legal usage, this Court's precedent, and the basic function of Section 550(a) as a remedy for avoidable transfers.

The Fifth Circuit's contrary holding relies solely on the unexplained premise that the return of property that has lost most or all of its value necessarily qualifies as a full "satisfaction" for the avoided transfer. But that premise is indefensible: No one would say, for example, that an estate receives a full satisfaction for the preferential or fraudulent transfer of a new car if the transferee wrecks the vehicle and then returns it. Given that Section 550(a) is a frequently applied provision of the Bankruptcy Code and the obvious incentives for forum-shopping and fraudulent transfers that the decision below creates, this Court should grant review and resolve the circuit conflict by rejecting the Fifth Circuit's interpretation of Section 550(a).

I. The Fifth Circuit's Interpretation Of Section 550(a) Is Wrong

The Fifth Circuit held that bankruptcy courts "cannot award value under Section 550(a) when the estate has recovered its transferred property in kind," even where the return of the property does not put the estate in its pre-transfer position because the property has lost value. App. 19a; *see* App. 16a. That disjunctive interpretation of Section 550(a) is incorrect.

A. Section 550(a) provides that a trustee may "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property." 11 U.S.C. § 550(a). The Fifth Circuit interpreted the word "or" to be exclusive. App. 16a. Thus, in the Fifth Circuit's view, if a transferee fraudulently received a new car, promptly crashed it, and then returned the wreckage to the estate—or even to the same pre-bankruptcy management that had made the fraudulent transfer—the court would be powerless to award even a fraction of the value of a new vehicle.

"If this interpretation of the statute sounds farfetched, that is because it is." *Lac du Flambeau*, 599 U.S. at 395. And there is no sound reason to adopt it. The Bankruptcy Code's Rules of Construction dictate precisely the opposite reading: The word "or" is "not exclusive." 11 U.S.C. § 102(5). Contrary to the Fifth Circuit's view, *see* App. 15a, that rule does not merely establish a presumption or a thumb on the scale of an inclusive reading. It defines "or" for purposes of the Bankruptcy Code, including Section 550(a).

Indeed, just two years ago, this Court applied that Rule of Construction to reject a "rigid division" between two options connected by "or" in a different provision of the Bankruptcy Code. In *Lac du Flambeau*, *supra*, the question was whether the Code "unequivocally abrogates the sovereign immunity" of federally recognized Indian tribes, which depended on whether those tribes fall within the phrase "other foreign or domestic government" in Section 101(27). *See* 599 U.S. at 385-88. The Court concluded that they do. *Id.* at 388. In the course of its analysis, the Court rejected the argument that the phrase "other foreign or domestic government" excludes "governmental entities that are not purely foreign or purely domestic—like tribes." *Id.* at 395. The Court explained that "Congress has expressly instructed that the word 'or,' as used in the Code, 'is not exclusive.' 11 U.S.C. § 102(5)." 599 U.S. at 395-96. That gave the Court "serious doubts that Congress meant for § 101(27) to elicit the laser focus on 'or' that [the tribes'] reading of 'foreign or domestic' would entail." *Id.* at 396.

The question here is far easier. *Lac du Flambeau* was applying the clear-statement rule for sovereign-immunity waivers—meaning that it had to be especially clear that "or" was not exclusive in the provision at issue—but that rule is not relevant to the question presented in this case. And the question in *Lac du Flambeau* was whether a hybrid of the two nouns joined by "or" would qualify—arguably a thornier linguistic issue than simply whether both of two options can apply in a given case.

Congress's express command that "or" not be construed exclusively also reflects ordinary legal usage. As Justice Scalia and prominent legal lexicographer

Bryan Garner have explained, "the meaning of 'or' is usually inclusive," that is, "A or B, or both." Garner, DICTIONARY OF LEGAL USAGE 639; *see* Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 116 (2012).

Thus, Section 550(a) does not provide mutually exclusive alternatives. Rather, it gives a bankruptcy court flexibility to craft a remedy that includes the property, value, or a combination of the two. *See TransCare Corp.*, 81 F.4th at 58; *Trout*, 609 F.3d at 1111; *Straightline Invs., Inc.*, 525 F.3d at 883 & n.3; *see also In re Am. Way Serv. Corp.*, 229 B.R. 496, 531 (Bankr. S.D. Fla. 1999); *D.A.N. Joint Venture III, LP v. Touris*, 597 B.R. 411, 416 (N.D. Ill. 2019).

None of this is to say that Section 550(a) authorizes the estate to recover *more* than the value of the property at the time of transfer. But the limit is found in Subsection (d), which restricts recovery under Subsection (a) to a "single satisfaction." Under that provision, the estate cannot be made better off than "its pre-transfer position." *DeBerry*, 945 F.3d at 947; *accord Belmonte*, 931 F.3d at 154-55; *Freeland v. Enodis Corp.*, 540 F.3d 721, 740 (7th Cir. 2008). Where recovering a value award in addition to the property is necessary to put the estate back in its pre-transfer position, however, Section 550(d) is satisfied. *See TransCare Corp.*, 81 F.4th at 58.

B. The Fifth Circuit cast aside the Bankruptcy Code's Rules of Construction, this Court's application of those rules, and ordinary usage because, on its account, "it is logically impossible to 'recover' both transferred property and the 'value' of that property as a 'single satisfaction.'" App. 16a.

That unexplained premise lacks merit. As the Fifth Circuit itself has previously recognized, "[s]atisfaction" under Section 550(d) means the "payment in *full* of a debt" or "adequate compensation." *DeBerry*, 945 F.3d at 949 (internal quotation marks omitted; emphasis added). Where property has been returned but has substantially diminished in value or become worthless, merely returning that property provides neither "payment in full" nor "adequate compensation" for the harm caused by the transfer.

The vehicle hypothetical illustrates the point. If a creditor receives a preferential transfer of a new car worth $50,000, crashes it, and then returns the wreckage worth $5,000, has the estate received a "single satisfaction"? Under any common-sense understanding, it has not. The estate has received only a partial satisfaction through the return of the damaged property. A complete "single satisfaction" would require an additional $45,000 to restore the estate to its pre-transfer position.

Section 550's remedial scheme is designed to make the estate whole, not to provide windfalls to transferees who can deplete or devalue transferred property before returning it. Indeed, since Section 550(a) is also the remedial provision for fraudulent transfers, the Fifth Circuit's rule would allow a company's managers to fraudulently transfer assets to third parties, who could then return the property substantially diminished to the estate with no further financial exposure.

C. The Fifth Circuit dismissed the plain-text interpretation of Section 550(a) as "mischievous." App. 17a. But the opposite is true: Where an asset is avoidably transferred to a creditor, it would foster mischief to hold that the creditor may wait until the asset loses all value and then return worthless property to the estate without having to make up the difference.

The Fifth Circuit appeared to be concerned about the circumstance in which a preferential lien is avoided but the collateral underlying the lien would have depreciated in value even if the lien had never existed. App. 17a; *see Trout*, 609 F.3d at 1112-13. In that circumstance, one might argue that awarding the estate the original value of the lien—*i.e.*, the value at a time when the underlying collateral was worth more—could confer on the estate a windfall insofar as it would put the estate in a better position than if the lien had never been created.

Whatever the merits of that concern, it could not justify the Fifth Circuit's sweeping interpretation of Section 550(a), which ensnares a wide range of preferential, fraudulent, and post-petition transfers of property far beyond liens. Under a proper interpretation of Section 550(a), a bankruptcy court has ample discretion to equitably resolve lien-related preference litigation on a case-by-case basis. For example, in some cases, a trustee or debtor-in-possession may be able to establish that the existence of the lien on depreciating assets harmed the estate by encumbering assets that otherwise could have been used as collateral for other transactions. In other cases, a bankruptcy court may well conclude that awarding the pre-transfer value of such a lien would be inequitable. The discretionary language of Section 550(a) leaves that determination in the first instance to the bankruptcy court, subject to abuse-of-discretion review. *See Trout*, 609 F.3d at 1113-14.

And at any rate, the Fifth Circuit's apparent concern did not arise in the situation here. As noted, the bankruptcy court found that the pre-petition liens had lost all value between the time of their creation and the time of their release because respondents had used them to secure DIP lender status, giving them superpriority liens that made the earlier liens worthless. App. 56a-67a, 63a-64a, 66a-67a. This case therefore does not implicate a question about a lien that has lost value solely because the underlying collateral has depreciated.

II. The Fifth Circuit's Decision Creates A 3-1 Circuit Conflict

The Fifth Circuit's interpretation of Section 550(a) conflicts with precedential decisions of the Second, Ninth, and Tenth Circuits.

A. In *TransCare*, *supra*, the Second Circuit upheld an award of both property and value under Section 550(a). In that case, an ambulance-services company had filed for Chapter 7 bankruptcy. 81 F.4th at 43-44. Before filing, the debtor had fraudulently conveyed stock it owned in three of its subsidiaries, as well as contracts and physical assets, to third parties controlled by the debtor's majority owner. *Id.* at 44, 46. The third parties ultimately returned those transferred assets to the bankruptcy trustee, who liquidated them for $1.2 million, a small fraction of their original value. *Id.* at 47. After the bankruptcy court held that the transfers had been fraudulent conveyances under Section 548, it calculated a monetary judgment under Section 550(a) by subtracting the $1.2 million liquidation value of the returned assets from the "going-concern value" of the assets at the time they were conveyed ($40.4 million). *Id.* at 47-48. In other words, even though the property had been returned to the bankruptcy estate, the bankruptcy court issued an additional damages award representing the difference between the value of the assets at the time of the fraudulent transfer and their value at the time they were returned to the estate.

On appeal, the transferees argued that "awarding any damages once the [property] was returned was legal error because § 550(a) of the Bankruptcy Code permits the Trustee to recover only 'the property transferred, or [its] value'"—*i.e.*, the same interpretation of Section 550(a) adopted by the Fifth Circuit in this case. 81 F.4th at 58. But the Second Circuit squarely rejected that interpretation of the statute. Because the bankruptcy court had awarded the going-concern value of the property at the time of transfer less what the estate received from the returned property's liquidation, "there was only a single recovery"—that is, a recovery that would "restore the estate to the condition it would have been in if the transfer had never occurred." *Id.* at 56, 58 (internal quotation marks omitted). The Second Circuit found this result particularly appropriate because the property's "value" had "depreciated significantly after the fraudulent transfer." *Id.* at 58.

Judge Menashi dissented in part in *TransCare*, but he did not disagree with the majority's interpretation of Section 550(a) or its approval of combined remedies. 81 F.4th at 59-60. His discrete objection was only that the bankruptcy court had erred in including the value of an ambulance-operation certificate as part of the going-concern value of the property because, in his view, the estate had already obtained full value for that certificate through a separate liquidation, *ibid.* (an argument that the majority concluded had been forfeited, *see id.* at 58-59 (majority op.)).

In a footnote in the decision below, the Fifth Circuit erroneously stated that its categorical rule barring any monetary award under Section 550(a) once the property is returned is consistent with *TransCare*. App. 17a n.8. According to the footnote, the Second Circuit "unanimously agreed that Section 550(a) permits recovery of 'either' the transferred property or its value, and the [*TransCare*] dissent parted ways on a question of double-counting." App. 17a (citing *TransCare Corp.*, 81 F.4th at 59-60 (Menashi, J., dissenting in part)). But that is a clear misreading of the Second Circuit's decision, which held just the opposite: that Section 550(a) *did* permit an award of the property and sufficient value to return the estate to its pre-transfer position. *TransCare Corp.*, 81 F.4th at 58.

Although the Fifth Circuit put the word "either" in quotes, it did not cite any page of the *TransCare* majority opinion, and the cited pages of Judge Menashi's partial dissent do not support the Fifth Circuit's interpretation of Section 550(a). To the contrary, Judge Menashi explained that he "agree[d] with the court" that the transferees were "incorrect" in contending "that any award based on the value of the [fraudulently transferred assets] was erroneous, netted or not, because the property was returned and liquidated." 81 F.4th at 61. Like the Second Circuit majority, he therefore rejected the Fifth Circuit's categorical interpretation of Section 550(a).

B. The Ninth Circuit has adopted the same interpretation of Section 550(a) as the Second Circuit. In *Straightline Investments*, *supra*, the Chapter 11 debtor had transferred accounts receivable with a face value of $200,600 to a lender as part of an effort to secure a loan. 525 F.3d at 875-76. The lender ultimately collected $163,000 on the accounts. *Id.* at 876. The bankruptcy court avoided the transfer to the lender under Section 549 as an unauthorized post-petition transfer. *Ibid.* It entered a judgment against the lender requiring it both to pay the estate the $163,000 that it had collected and to return the remainder of the accounts receivable to the estate. *Id.* at 883.

After affirming the avoidance of the transfer, *id.* at 877-82, the Ninth Circuit affirmed the remedy under Section 550, *id.* at 883-85. It explained that by "awarding the trustee the sum of what [the lender] collected on the accounts plus the uncollected accounts, the bankruptcy court ordered a monetary recovery for part of the value of the improperly transferred property and ordered the return of the remainder of the uncollected accounts." *Id.* at 883. The Ninth Circuit indicated its approval of a district-court decision holding that "[a]lthough the statute contains the conjunction 'or,' * * * the remedies of the value of the property or the property itself are not mutually exclusive, and the bankruptcy court may award a judgment that involves both types of recovery, as long as it does not result in double recovery for the estate." *Id.* at 883 n.3 (citing *Am. Way Serv. Corp.*, 229 B.R. at 531) (citing 11 U.S.C. §§ 102(5), 550(a) and (d)). The Ninth Circuit further explained that under its longstanding precedent, "the purpose of § 550(a) is 'to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred.'" *Id.* at 883 (quoting *In re Acequia, Inc.*, 34 F.3d 800, 812 (9th Cir. 1994)).

That interpretation of Section 550(a) is irreconcilable with the Fifth Circuit's categorical holding that a bankruptcy court may never issue a monetary award if the property has been returned to the estate, regardless of how much the property has diminished in value. App. 16a, 19a.

C. The Fifth Circuit asserted that a decision of the Tenth Circuit, *Trout*, *supra*, supports its interpretation of Section 550(a), App. 17a-18a, but that is incorrect. *Trout* instead aligns with the interpretation of Section 550(a) adopted by the Second and Ninth Circuits.

Like this case, *Trout* involved preferentially transferred liens. The defendants had extended a loan to the debtors to purchase vehicles but had failed to timely perfect their liens on the vehicles. 609 F.3d at 1108. As a result, the lenders did not dispute that the liens were avoidable as preferences under Section 547. *Ibid.* The bankruptcy trustee had sought the value of the liens under Section 550(a), rather than merely their return, because the underlying collateral had depreciated in value since the transfer. *Id.* at 1112.

The bankruptcy court held that Section 550 does not apply to a "nonpossessory lien interest"—*i.e.*, a lien where the lienholder does not possess the collateral—at all. 609 F.3d at 1108. Rather, in that court's view, a neighboring section of the Code declaring that preferentially transferred property "is preserved for the benefit of the estate," 11 U.S.C. § 551, is sufficient "to place the estate in exactly the same position it would have been in, but for the granting of the lien." 609 F.3d at 1108. The bankruptcy court therefore denied a value award under Section 550(a). *Ibid.*

A bankruptcy appellate panel agreed on the outcome but not the rationale, holding that "although ordinarily lien avoidance and preservation under § 551 will be sufficient, there may be circumstances in which § 547 and § 551 will not put the estate back to its pre-transfer position, and then some recovery under § 550 could be appropriate." *Ibid.* But "on the facts of this case," the panel held that "the bankruptcy court did not abuse its discretion by determining that the avoidance/preservation remedy was sufficient." *Id.* at 1108-09.

The Tenth Circuit affirmed on the rationale of the bankruptcy appellate panel, rejecting the bankruptcy court's categorical bar on a value award when a lien is released but holding that the bankruptcy court had not abused its discretion in denying a value award. The court held that "§ 550(a) provides the bankruptcy court with flexibility to fashion a remedy so as to return the estate to its pre-transfer position." 609 F.3d at 1111. It explained that although "*ordinarily* in the case of an avoided lien the estate will be returned to its previous position by simply avoiding the preferential lien and no further recovery will be necessary, there may be circumstances where that remedy will be insufficient and recovery under § 550 [is] needed." *Ibid.* Thus, in "situations in which the avoidance of the lien will not suffice to restore the estate to a pre-transfer situation," a value award can be appropriate. *Id.* at 1112.

The Tenth Circuit, however, rejected the trustee's argument that merely because the collateral vehicles had "depreciated in value" over time—something that would have happened "even if the debtor had never transferred the security interest"—the bankruptcy court abused its discretion by declining to award "the value of the lien." *Ibid.* It noted that "the language of § 550(a) suggests that the default rule is the return of the property itself, whereas a monetary recovery is a more unusual remedy to be used only in the court's discretion." 609 F.3d at 1113. Accordingly, even "if a bankruptcy court could, in its discretion, award the value of the lien in the circumstances presented here, this does not establish that it is *required* to do so; the choice of a § 550 remedy remains in the court's discretion." *Ibid.* On the facts of the case, the Tenth Circuit concluded that "the Trustee has presented no compelling reason to deviate from the default rule of returning the transferred property itself, and the bankruptcy court did not abuse its discretion by concluding that the avoidance of the lien was sufficient and declining to order a monetary recovery." *Ibid.*

The Tenth Circuit's interpretation of Section 550(a) is irreconcilable with the Fifth Circuit's holding in this case. The Tenth Circuit held that there could be circumstances in which a value award would be appropriate even where a lien was returned to the estate—an impossibility under the Fifth Circuit's construction of the statute as foreclosing a value award upon the return of the property. *See* 609 F.3d at 1112. And it affirmed that the basic objective of relief under Section 550 is to "return the estate to its pre-transfer position," *id.* at 1111, a widely shared understanding that the Fifth Circuit disparaged as "unapologetically purposive," App. 17a.

Although the Tenth Circuit concluded that the decline in value of the underlying collateral alone was not sufficient to warrant a value award for a preferentially transferred lien (or at least to render the bankruptcy court's decision an abuse of discretion), *see* 609 F.3d at 1112-14, that holding turned on the fact that the decline in value would have happened regardless of the transfer, *see id.* at 1112-13. By contrast, here the bankruptcy court determined (in a finding undisturbed on appeal) that it was the very fact that respondents had wielded the pre-petition liens to become DIP lenders that caused those liens to lose all value—not merely an inevitable decline in the collateral's value. *See* App. 56a-67a, 63a-64a, 66a-67a; *see also* App. 18a (the Fifth Circuit declining to decide whether "this is accurate or not" but asserting that "it was not a valid basis for finding 'harm' to the estate").

The Fifth Circuit cited a one-sentence footnote in *Trout* to support its disjunctive interpretation of Section 550(a). App. 19a (citing 609 F.3d at 1108 n.2). But the cited footnote merely recounts that the trustee had acknowledged that under Section 550(d)'s single-satisfaction rule, it could not obtain "both the lien and a monetary award of the value of the lien." 609 F.3d at 1108 n.2 (emphases omitted). That made sense on the facts of the case: The liens still had some value because the underlying collateral had not become worthless, and the trustee was seeking their entire pre-transfer value, so of course it could not also receive the liens back. But that footnote does not support the view that the word "or" in Section 550(a) means that an estate could never obtain both the property and a value award sufficient to return the estate to its pre-transfer position—a view at odds with *Trout*'s central analysis. *Id.* at 1110-13.

At any rate, even if the Fifth Circuit were correct in its understanding of *Trout*, that would not diminish the need for this Court's review in light of the decisions of the Second and Ninth Circuits. A 2-2 circuit conflict on the meaning of an important provision of the Bankruptcy Code merits resolution.

III. This Case Is An Ideal Vehicle To Decide An Exceptionally Important Question

This case provides a clean vehicle for resolving whether Section 550(a)'s remedies are mutually exclusive. That question is a pure issue of statutory construction that the Fifth Circuit resolved in a published opinion. Although almost any large corporate bankruptcy entails a degree of complexity, nothing in the Fifth Circuit's statutory holding turned on the particular facts of this case or the nature of the property interest at issue. Rather, the court held categorically that once the property is returned to the estate, Section 550(a) does not permit a further monetary award. App. 16a, 19a.

Respondents may point out that they advanced other arguments below to reverse the order of the bankruptcy court, such as arguments that they had properly perfected their pre-petition liens before the 90-day preference period or that the creation of the liens otherwise did not qualify as preferences. But the Fifth Circuit did not reach those arguments. This Court could readily reverse the Fifth Circuit's construction of Section 550(a) and remand for that court to address those arguments in the first instance. *See, e.g.*, *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 76-77 (2022); *Nat'l Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999).

The importance of the question presented further supports review. Section 550 is a core bankruptcy remedy. It provides the principal mechanism for making an estate whole after preferential, fraudulent, and unauthorized post-petition transfers. Bankruptcy courts across the country routinely apply that provision to maximize estate value and ensure an equitable distribution among creditors. And consistent with the interpretations of the Second, Ninth, and Tenth Circuits, bankruptcy courts have long understood that Section 550(a) confers discretion to award both property and value in appropriate cases, subject to the single-satisfaction upper bound. But the Fifth Circuit has now injected considerable uncertainty and variability into how Section 550(a) works.

The circuit conflict will inevitably foster forum-shopping. The bankruptcy venue statute, 28 U.S.C. § 1408, establishes venue where the debtor is incorporated, has its headquarters, or holds its principal assets, or where a related entity has a currently pending bankruptcy proceeding. Many companies, therefore, can choose among multiple venues. Debtors committed to maximizing estate value will prefer to file in the Second, Ninth, or Tenth Circuits, where bankruptcy courts retain flexibility to fashion remedies that will return the estate to the position it would have occupied but for the avoided transfer. Conversely, debtors who made questionable, even fraudulent, transfers will have an incentive to file in the Fifth Circuit. Such nationwide variance on so basic a question as how to remedy avoided transfers undermines the Constitution's mandate that Congress create a "uniform" federal bankruptcy system. *Siegel v. Fitzgerald*, 596 U.S. 464, 473 (2022) (quoting U.S. Const., art. I, § 8, cl. 4).

The Fifth Circuit's holding invites abuse. Under its categorical rule, sophisticated creditors can structure their affairs to deplete the transferred assets before returning them to the estate. *See* p. 17, *supra*. The Fifth Circuit's rule is especially problematic in cases involving pre-bankruptcy management who later become trustees or debtors-in-possession. Such individuals could make preferential or fraudulent transfers of depreciating or depletable assets to insiders or entities they control, *cf. TransCare Corp.*, 81 F.4th at 43, and those transferees could then cause or allow the assets to lose value and return them to the company as a complete satisfaction—effectively immunizing themselves from meaningful recovery actions.

Finally, the question presented has substantial practical importance in this case alone. Based on its erroneous construction of Section 550(a), the Fifth Circuit directed that 100% of Mesquite's equity be granted to respondents rather than the 30% awarded by the bankruptcy court. App. 20a. Mesquite is now worth over a billion dollars, and respondents therefore reaped a $700 million windfall even though their DIP loans totaled no more than $100 million and they otherwise held only unsecured debt (once their pre-petition liens were avoided). The rest of Mesquite's unsecured creditors—collectively owed more than $2 billion—are now left with virtually nothing. Such a massive transfer of value based on a dubious interpretation of Section 550(a) warrants further review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 18, 2025

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: May 30, 2025]

No. 23-20557

IN RE SANCHEZ ENERGY CORPORATION, *et al.*

Debtors,

AD HOC GROUP OF SENIOR SECURED NOTEHOLDERS; DIP LENDERS; WILMINGTON SAVINGS FUND SOCIETY, FSB,

Appellants,

versus

DELAWARE TRUST COMPANY,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC Nos. 4:19-BK-34508,
4:23-CV-02987

Before JONES, ENGELHARDT, and OLDHAM, *Circuit Judges*.

EDITH H. JONES, *Circuit Judge*:

In 2019, Sanchez Energy Corporation petitioned for bankruptcy protection under Chapter 11. Facing a catastrophic downturn in the oil and gas industry caused by the COVID pandemic, the bankruptcy court rushed to approve in April 2020 a reorganization plan designed to compensate creditors with equity in a new entity. Disagreement arose between secured and unsecured creditors over proper allocation of the equity. The bankruptcy court sided with the unsecured creditors and awarded them a dominant stake in the new entity after the court hypothetically "valued" various avoidance actions that the reconstituted debtor preserved. We hold that the court's equity allocation contravened the Bankruptcy Code, 11 U.S.C. §§ 550(a) and (d), because it incorrectly approved more than a "single satisfaction" as a remedy for the avoided secured creditors' liens. The judgment must be VACATED and REMANDED for further proceedings.

BACKGROUND

Sanchez Energy Corporation was a Texas-based oil and gas exploration and production company. Its pre-bankruptcy liabilities included $500 million of secured notes and $1.75 billion of unsecured notes with maturity dates falling between 2021 and 2023. The appellants are a subgroup of secured noteholders (the "Ad Hoc Secured Creditors") that obtained deeds of trust on April 13, 2018, from Sanchez granting nonpossessory liens on virtually all corporate assets. They putatively perfected their liens by filing all-asset financing statements with the Texas Secretary of State or Delaware Department of State. Several of the liens covered valuable oil and gas interests that the parties refer to as the "HHK Leases." Those leases were apparently worth more than all of Sanchez's other assets combined. But the secured creditors never foreclosed on the HHK liens. Though the liens thwarted the unsecured creditors from satisfying any of their delinquent notes with corporate assets, Sanchez continued to operate its wells and to collect proceeds from the sale of processed minerals.

Sanchez stood on the verge of insolvency when it solicited proposals for debtor-in-possession ("DIP") financing in June 2019. The company received indications of interest from eighteen financial institutions in addition to interest from partial groups of its secured and unsecured creditors. Around that same time, the secured creditors realized that their deeds of trust pertaining to the HHK Leases might be insufficiently perfected. They filed correction affidavits between June 27 and July 24, 2019. To prevent the attempted perfection of the secured creditors' liens from occurring outside of the ninety-day preference period, 11 U.S.C. § 547(b), Sanchez and its affiliated debtor companies filed for Chapter 11 bankruptcy protection on August 11, 2019.

Initially, Sanchez received just one financing proposal after filing its petition. That proposal came from a group of its secured creditors. Other interested parties declined to submit proposals at least in part because the secured creditors' liens would threaten their ability to obtain a superpriority or priming lien on almost all corporate assets. Sanchez thus sought and received court approval for interim relief in the form of DIP financing from its secured creditors. A group of unsecured creditors objected and submitted their own proposal for consideration, which, as expected, sought to subordinate the senior creditors' existing liens. Sanchez preferred to avoid a priming fight, so it moved to proceed with a final DIP loan from its secured creditors. The bankruptcy court denied the motion and instructed the parties to keep negotiating. They returned soon after in agreement to adopt a modified version of the secured creditors' ("DIP

Lenders") initial proposal. The bankruptcy court approved their negotiated agreement in a Final DIP Order on January 22, 2020.

The Final DIP Order gave Sanchez access to a $200 million superpriority credit facility provided by secured creditors. It also required Sanchez to pay fees, costs, and expenses incurred by creditors involved in the DIP negotiation. The record reflects that Sanchez paid about $15 million to satisfy those obligations. But its financial condition was derailed within a few months by the COVID pandemic, which sent oil and gas prices barreling into negative territory. Sanchez defaulted on its DIP obligations. Meanwhile, Sanchez filed an adversary proceeding (the "Lien Challenge Complaint") to recover preferences pursuant to 11 U.S.C. § 547(b) and other claims against the secured creditors. Among numerous claims, the complaint asserted that the secured creditors failed to create or perfect their pre-petition liens on the HHK Leases more than ninety days before the bankruptcy. Specifically, Sanchez's prayer for relief requested a "judgment finding that all transfers . . . are avoided and the Debtors are thus entitled to recovery under § 550." But the litigation was paused nearly as quickly as it began so that Sanchez and its creditors could negotiate a reorganization plan. All major parties—including those to this appeal—consented to postponing litigation of the Lien Challenge Complaint.

With lightning speed, Sanchez filed several different reorganization proposals, and the bankruptcy court approved and confirmed a reorganization plan ("Plan") on April 30, 2020. The Plan paved the way for Sanchez to emerge from bankruptcy as a reconstituted entity named Mesquite Energy, Inc. Important for purposes of this dispute, Article VIII.E of the Plan provided that "on the Effective Date . . . all . . . Liens . . . against any property of the Estates . . . shall be fully released and discharged, and all of the right, title, and interest of any holder of such . . . Lien[s] . . . shall revert to [Mesquite.]" The releases of the DIP liens and secured creditors' liens, even though those liens were then perceived to have no value, allowed Mesquite to be reorganized with a clean balance sheet and no overhanging encumbrances.

Several other provisions of the Plan are relevant. The Plan stipulated a reconstituted enterprise value of $85 million for Mesquite. The DIP Lenders, a group comprising most of the secured creditors, were entitled to receive at least twenty percent of the stock in exchange for releasing the DIP liens. The remaining equity shares were to be divided between the secured creditors and the unsecured creditors after resolution of the Lien Challenge Complaint and other litigation (collectively, the "Lien-Related Litigation"). Specifically, the Plan prescribed three phases of litigation in the bankruptcy court. In Phase One, the bankruptcy court would decide whether the DIP liens were valid. If the court held for the DIP Lenders, their outstanding $100 million loan would swallow the entire remaining equity of Mesquite. However, if the unsecured creditors (acting through the Delaware Trust Company, as their "Creditor Representative") prevailed, then the court in Phase Two had to determine the validity and enforceability of the secured creditors' pre-petition liens. Finally, if the Creditor Representative succeeded in avoiding the secured creditors' liens, the court would assess the additional "value" to the debtors' estate of those and other claims and allocate the equity proportionally. As long as the Lien-Related Litigation remained unresolved, there was a possibility that the unsecured creditors might receive equity shares.[1]

In Phase One, the bankruptcy court had to interpret the Final DIP Order and determine whether the superpriority DIP liens were coextensive with and inherited any deficiencies of the secured creditors' pre-petition liens. Initially, the bankruptcy court held the DIP liens were unenforceable. But two years later, the court determined that it had overlooked one important issue and reopened the Phase One proceeding. Ultimately, the court held that the DIP Lenders possessed valid liens encompassing the HHK Leases.[2] This holding affirmed the DIP Lenders' entitlement to at least twenty percent of Mesquite's equity shares.

In Phase Two, the parties litigated the validity and enforceability of the secured creditors' pre-petition liens. The bankruptcy court held that, although valid under Texas law, the correction affidavits failed timely to perfect the pre-petition liens on the HHK Leases and resulted in avoidable preferential transfers pursuant to 11 U.S.C. § 547(b)'s ninety-day lookback period.

Proceeding to Phase Three, the bankruptcy court decided to place a hypothetical value on the debtors' estate of the Phase Two meritorious avoidance claims, as a predicate for allocating the remaining eighty

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[1] The DIP Lenders waived their right to deficiency claims arising from proceeds of the avoidance actions.

[2] The bankruptcy court recognized that under the Plan, the DIP Lenders agreed to receive no more than fifty percent of the first $100 million of proceeds recovered in avoidance actions filed by the Creditor Representative against parties *other than* the secured creditors. At the time of final judgment, those proceeds totaled only about $2 million.

percent of Mesquite's shares.[3] Expert witnesses testified for each side and presented several valuation theories. The bankruptcy court, however, charted its own approach and deemed the avoidance actions worth approximately $200 million. Based on its valuation, the court concluded that the augmented debtors' estate comprised the stipulated $85 million enterprise value plus the $200 million preference action's hypothetical value, plus an additional $2 million recovered from the debtors' insiders. Accordingly, the court apportioned to the Ad Hoc Secured Creditors and the DIP Lenders 30.27% of Mesquite's share, which constituted the ratio of their stipulated $85 million enterprise value (plus $1 million from the insiders' suit) to the augmented value of the estate. The unsecured creditors' share of equity was 69.73%.[4]

The Ad Hoc Secured Creditors raise an array of issues on appeal. We need not review most of them. In particular, we may assume arguendo that the prepetition HHK liens were in fact avoidable preferential transfers, although the Ad Hoc Secured Creditors raise various arguments against that conclusion. Nevertheless, it is dispositive that the bankruptcy court's valuation erroneously authorized a double recovery for avoidance of the prepetition liens. 11 U.S.C. §§ 550(a) and (d) do not permit double recovery.

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[3] The Ad Hoc Secured Creditors contended that this phase was inappropriate under the Plan and alternatively waived by the Creditor Representative, but the bankruptcy court rejected both contentions. The waiver issue is not argued on appeal.

[4] Ultimately, according to the Plan's treatment of secured creditors' claims (Class 4), the secured creditors also obtained a portion of the 69.73% shares attributable to unsecured claims. Nonetheless, well over 50% of Mesquite's shares are not controlled by the DIP Lenders or secured creditors.

DISCUSSION

This court granted direct appellate review of the bankruptcy court's orders and judgment pursuant to 28 U.S.C. § 158(d). We review the bankruptcy court's legal conclusions de novo and its findings of fact for clear error. *See In re Renaissance Hosp. Grand Prairie Inc.*, 713 F.3d 285, 294 (5th Cir. 2013).

The purpose of bankruptcy preference actions is to level the playing field among creditors so that a debtor's assets are unencumbered by debts or liens that arose shortly before a filing. *See* 7 COLLIER ON BANKRUPTCY § 1100.08 (16th ed. 2023). The general theory is full of exceptions. Stated most relevantly for this case, however, "preferential" transfers include any transfer of the debtor of an interest in property made (1) to or for the benefit of a creditor, (2) for or on account of an antecedent debt, (3) while the debtor was insolvent, (4) on or within ninety days of bankruptcy, and (5) that enables the creditor to receive more than such creditor would receive in a Chapter 7 liquidation. 11 U.S.C. § 547(b). If a preferential transfer is "avoided" by the trustee or debtor in possession, Bankruptcy Code Section 550 enables a trustee or its assignee to "recover, for the benefit of the estate, the property transferred, or if the court so orders, the value of such property." 11 U.S.C. § 550(a). Section 550(d) limits recovery under Section 550(a) to "only a single satisfaction." *Id.* § 550(d).

The parties dispute how these provisions interact, and whether they are even relevant. The Creditor Representative contends that based on the terms of the Plan, Section 550(a) did not apply. Alternatively, the Creditor Representative echoes the bankruptcy court's conclusion that Section 550(a) does not prevent a bankruptcy court from awarding "value" for liens that were worthless when returned to the debtors' estate. The Ad Hoc Secured Creditors respond that the bankruptcy court violated Sections 550(a) and (d) by failing to acknowledge the secured creditors' giving up of their liens and refusing to enforce the "single satisfaction rule." The parties' contentions raise two purely legal questions for this court to consider: (1) whether the Plan eschewed Section 550 by requiring a hypothetical valuation of the preserved avoidance actions; and (2) how the limitations embodied in Section 550 affected the preserved avoidance actions once the secured creditors returned their liens to the estate. We address each question in turn.

I.

As the bankruptcy court acknowledged, the terms of the Plan were "unusual" in several ways. Foremost, the ultimate equity ownership of Mesquite on emerging from Chapter 11 was dependent largely on the outcome of "Lien-Related Litigation." Art. I.A, Sec. 81. The Plan's Article IV.D articulated the process for handling such litigation, which consisted of the Lien Challenge Complaint Sanchez had filed against the secured creditors, together with other claims comprising the Lien-Related Litigation. On conclusion of the Lien-Related Litigation, the bankruptcy court would allocate equity shares in Mesquite among the DIP Lenders, secured creditors, and unsecured creditors. Art. III.C., Secs. 3,4, 5.

Also "unusual" was the DIP Lenders' agreement to forego enforcing their DIP liens in return for "equitizing" their position in the reorganized company. Because the stipulated $85 million enterprise value of the reconstituted debtor was far less than their DIP loans, the DIP Lenders could have chosen to foreclose, thereby shutting down the company without reorganization and retaining the underlying oil and gas properties. The secured creditors also gave up their liens in exchange for a share of the unsecured creditors' potential recovery of equity from the Lien-Related Litigation.

The Creditor Representative supports the bankruptcy court's approach as a simple question of plan interpretation. The Plan authorized the bankruptcy court to distribute eighty percent of Mesquite's stock based on, "among other things, the consideration of the value, if any, of any Causes of Action preserved by the Reorganized Debtors pursuant to the Plan." Art. IV.D. A subsequent provision, however, provided merely a standard release and discharge of liens by the secured creditors in favor of Mesquite. Art. VIII.E. To be sure, the Lien-Related Litigation was based in part on preference claims pursuant to Sections 547 and 550 of the Bankruptcy Code. But the Creditor Representative's position is that "valuing" those claims for purposes of the equity distribution was the fulcrum of the Plan. To apply the litigation provisions literally in light of the lien releases would "neuter the Plan's chief concern." For a number of reasons, we disagree that the Plan provided for "valuation" in a vacuum, irrespective of defenses that were available to the secured creditors under the same Plan.

The Plan adopts Texas law, in which interpretation begins with the words of the contract. *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 888 (Tex. 2019). This Plan permits equity-share allocation to account for the "value" of avoidance actions. Discerning the meaning of that provision requires the court to apply ordinary principles of contract interpretation. *See Compton v. Anderson*, 701 F.3d 449, 457 (5th Cir. 2012) (principles of contract interpretation clarify the meaning of the language in reorganization plans). The Plan does not provide a definition of "value," though dictionaries define the term as "[t]he monetary worth or price of something." BLACK'S LAW DICTIONARY (11th ed. 2019). The "monetary worth" of an unprosecuted avoidance action naturally depends on how that action would fare if it were litigated to a final judgment under the bankruptcy laws. Nothing in the Plan contradicts this natural understanding. In fact, it would be unnatural to hold that the Plan's express incorporation of litigation relating to Sections 547 and 550 was divorced from proper application of those provisions. And on top of that, the bankruptcy court *did* apply Section 547 faithfully both when it concluded that the DIP liens were perfected and enforceable and when it concluded that the original HHK liens were unenforceable as preferences. Application of one subsection of the law should mandate application of its companions for purposes of "valuation."

That Section 550 had to be correctly applied is underlined in the Plan itself. Throughout the Plan provisions that preserved, identified, and described the Lien-Related Litigation, there are qualifications protecting the secured creditors' defenses. The initial definition of Lien-Related Litigation states that:

> For purposes of clarification, nothing in the Plan or the Confirmation Order shall alter, amend, or otherwise limit any rights, claims, or defenses that may or could be asserted by the DIP Lenders [or secured creditors]...in connection with or in defense of the Lien-Related Litigation, irrespective of whether such rights, claims, or defenses arose before or after the Petition Date and whether provided or arising under the Final DIP

> Order, applicable agreements, applicable law, or otherwise.

Further, the classes of DIP Claims, Secured Notes Claims, and Unsecured Claims are each entitled to receive equity shares, "if any" based on the outcome of the Lien-Related Litigation. "If any" reinforces the preserved defense rights of the DIP Lenders and other defendants in the Lien-Related Litigation.

Under Art. IV, specifying Plan implementation, the post-effective date stock distribution is likewise qualified by reference to the Lien-Related Litigation and the results, "if any," in favor of the DIP Lenders, secured creditors, and unsecured creditors. Art. IV, C.2. Equally significant, the three-step process for Lien-Related Litigation, Art. IV.D., proceeds from the Phase One determination of issues surrounding the DIP liens to Phase Two, "[i]f the Bankruptcy Court determines that any additional Lien-Related litigation is necessary", and to Phase Three, "[i]f the Bankruptcy Court determines that the valuation of any Causes of Action are necessary." Each step is contingent on the outcome of the preceding step and hardly preordains the necessity of "valuation" at Phase Three irrespective of preceding phases' outcomes. Moreover, Art. IV.D. concludes by stating that, "[n]otwithstanding anything in this Plan to the contrary, in connection with determining the Lien-Related Litigation, for purposes of clarification," all rights and defenses of the DIP Lenders are preserved.

Read in totality, as they must be, the Plan's provisions evince the strong disagreement among the parties as to the enforceability of the secured creditors' liens, and they specifically preserve whatever rights, claims or defenses the secured lenders might assert. To the extent that the Plan's release of the DIP and secured liens bore legal consequences favorable to the secured creditors, those consequences must be respected. Thus, the Creditor Representative—and the bankruptcy court—err in contending that a proper application of Section 550 would be a "self-defeating" threat to dismantle the Plan and to render the "valuation" process superfluous or meaningless.[5] As has been demonstrated, any "valuation" of alleged preference claims was *contingent* on substantiating the claims. In sum, if adjudication proved the unsecured creditors' claims worthless under a proper application of Sections 547 and 550, that result did not frustrate, but implemented the terms of the Plan.

Unlike its argument in this court, the Creditor Representative tended to display its understanding at various points of the bankruptcy court proceedings that resolution of the parties' dispute would not be totally unmoored from Sections 547 and 550. For example, the Creditor Representative acknowledged that the unsecured creditors must establish "avoidance" and "value" under Section 550(a), and then the bankruptcy court must determine "whether to award . . . value synthetically or . . . to return the lien." Sanchez, after all, expressly sought relief pursuant to Section 550 as part of the Lien Challenge Complaint. The Creditor Representative likewise maintained that a decision in favor of the DIP Lenders at Phase One would leave little to litigate: adequate protection, commercial tort claims, and the value of preserved causes of action "against third parties." Consistent with those concessions, the bankruptcy court

[5] These hyperbolic complaints overlook that the Lien-Related Litigation involved additional claims and defendants separate and apart from the challenges to the secured creditors' perfection of their liens. Those disputes were not rendered "self-defeating."

seemingly accepted as a given that the terms of Section 550 applied. Accordingly, when the Creditor Representative finally raised the possibility of recovering a hypothetical value award—more than two years after the Plan became effective—the bankruptcy court requested briefing to ensure that the Creditor Representative's claim was not waived. The logical conclusion supported by the Plan's terms and the parties' longstanding interpretation precludes a hypothetical valuation process that augmented the estates' value in disregard of Sections 550(a) and (d).

Another necessary consequence of the Plan is that, when the bankruptcy court reversed course and upheld the DIP liens, not only were the Ad Hoc Secured Creditors entitled to twenty percent of the equity (the minimum specified by the Plan), but they should have been entitled to one hundred percent according to their superpriority liens that covered all of Sanchez's assets. This was ordained by the facts and the Plan. The facts were that DIP Lenders had injected over $100 million in new money to the company post-petition, while the value of the debtors' assets slid to $85 million. The Plan provided an opportunity for the unsecured creditors to recover some equity *only if* they were able to defeat the DIP liens, followed by the HHK leases' liens. The parties crafted Phase One Lien-Related Litigation precisely to adjudicate first the preeminent claim of the DIP Lenders to the debtors' assets, and thus, its equity. And the Plan in no way limited the lenders' ability to mount defenses consistent with Section 550 and other applicable law.

II.

Because the Plan and the Lien Challenge Complaint must be interpreted in light of Sections 550(a) and (d), and it is dubious in any event that the parties could agree to ignore a controlling provision of the Bankruptcy Code when seeking a preference recovery, we next apply those provisions, which state (1) that the estate may "recover . . . the property transferred, or . . . the value of such property," 11 U.S.C. § 550(a), but also (2) that recovery must be limited to "only a single satisfaction." *Id.* § 550(d).

The Creditor Representative contends that in Section 550(a), "or" must be used in its conjunctive form to mean "and." Thus, the preference recovery against the secured creditors could include, in addition to the HHK Leases' liens that were returned to the debtors' estate under the Plan, an amount necessary to "recover" the value of the liens at the date of bankruptcy. In other words, the estate could recover "the property transferred" *and* its "value." And this could be done in accord with the "single satisfaction" provision. The Ad Hoc Secured Creditors challenge these points, which we take in turn.

To begin, the Bankruptcy Code's Rule of Construction provision states that "or" is "not exclusive." 11 U.S.C. § 102(5). Courts often apply this non-exclusivity directive when interpreting "or" in other sections of the Code. *See Lac de Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 395–96 (2023) ("Congress has expressly instructed that the word 'or,' as used in the Code, 'is not exclusive.'"); *see also In re Pac. Lumber Co.*, 584 F.3d 229, 245 (5th Cir. 2009); BRYAN A. GARNER, DICTIONARY OF LEGAL USAGE 639 (3d ed. 2011) (citing SCOTT J. BURNHAM, THE CONTRACT DRAFTING GUIDEBOOK 163 (1992)) (noting that "A or B" is usually "A or B, or both"). But the Bankruptcy Code, like other statutes, does not apply the background Rule of Construction when surrounding context makes "A and B" logically impossible or dictates otherwise. *See In re Williams*, 168 F.3d 845, 847–48 (5th Cir. 1999); *In re Phila. Newspapers, LLC*, 599 F.3d 298, 324 (3d Cir. 2010) (Ambro, J., dissenting) (collecting examples of the Bankruptcy Code using a disjunctive "or" despite its conjunctive decree).

Section 550(d) furnishes the context for interpreting "or" in Section 550(a). By limiting recovery to a "single satisfaction," Section 550(d) compels the conclusion that Section 550(a) uses "or" in its disjunctive form. Indeed, it is logically impossible to "recover" both transferred property and the "value" of that property as a "single satisfaction." Reading Section 550 holistically, and treating the text as the "alpha" and "omega," this court has held that "[p]roperty that has already been returned cannot be 'recovered' in any meaningful sense." *In re DeBerry*, 945 F.3d 943, 947 (5th Cir. 2019). A trustee cannot use Section 550(a) to recover the value of property that was already returned to the estate. *See In re Provident Royalties, LLC*, 581 B.R. 185, 195 (Bankr. N.D. Tex. 2017) ("[T]he specific purpose of [S]ection 550(d) is to act as a restrictor plate on the roaring engine of recovery provided to the trustee in [S]ection 550(a)."); 2 COLLIER ON BANKRUPTCY § 102.06 n.1 (16th ed. 2023) ("While the canon . . . might, in isolation, be read to allow the trustee to recover both the property and its value, such a result is absolutely prohibited by Section 550(d) which provides that the trustee is 'entitled to only a single satisfaction under subsection (a).'"). This either/or interpretation of Section 550 should alone settle the issue before us. Pursuant to the Plan, when the secured creditors returned their liens to the debtors' estate, they effectuated the estate's "recovery" of a "single satisfaction" for the preferential transfers.

Undeterred, the unsecured creditors, echoing the bankruptcy court, contend that *both* a return of the liens plus the "value" they held at the petition date was required because "[a]ccepting the simple release of the worthless . . . HHK Liens as a recovery . . . [did] nothing to return the estate to its pre-transfer position."[6] This unapologetically purposive interpretation finds no support in various general statements that Section 550(a) is primarily concerned about returning the bankruptcy estate to its pre-transfer position.[7] Moreover, the purposive interpretation is not only at odds with the disjunctive meaning of the text, but is also a mischievous interpretation where any preferential transfer involves a lien on a depreciating asset.[8] As the court made clear in *In re Trout*, 609 F.3d 1106, 1112–13 (10th Cir. 2010), the "property" that is to be recovered under Section 550 is the "perfected security interest." *Id.* at 1112. The *Trout* court explained that when a preferential lien is returned to the bankruptcy estate, the estate retains a depreciating asset no

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[6] As has been explained above, due to the COVID pandemic's effect on the oil and gas market, the value of the leases underlying the HHK liens had declined catastrophically between the date of Sanchez's bankruptcy and the confirmation date.

[7] The bankruptcy court did not specifically discuss the disjunctive language of Section 550(a) or the single satisfaction rule in Section 550(d).

[8] Two decisions from the Second Circuit are not to the contrary. The court in *In re TransCare Corp.*, 81 F.4th 37 (2d Cir. 2023), unanimously agreed that Section 550(a) permits recovery of "either" the transferred property or its value, and the dissent parted ways on a question of double-counting. *Id.* at 59–60 (Menashi, J., dissenting). And in *In re Belmonte*, 931 F.3d 147, 154–55 (2d Cir. 2019), the court so interpreted Section 550 but held avoidance possible in regard to post-petition transfers from separate transactions.

matter what. That is the general rule, and it pertains especially here: although the HHK liens *appeared* to be worthless, the assets were still oil and gas in the ground, and the assets are still being fought over because their market value rebounded.

Even while acknowledging the discussion in *Trout*, the bankruptcy court purported to distinguish that case because "simple avoidance of the liens on the HHK Leases would not put the estate back in the pre-transfer position." According to the bankruptcy court, virtually all the secured creditors were also part of the group of lenders that obtained superpriority DIP liens. These lenders "caused" the "worthlessness" of the pre-petition liens after they had leveraged those preferential liens to enable them as DIP Lenders to secure favorable funding terms. Whether this is accurate or not as a description of the course that DIP negotiations took at the outset of the case, it was not a valid basis for finding "harm" to the estate, especially because no party objected to the Final DIP Order, and it cannot justify ignoring the text of Section 550. The court's analysis perhaps reflected its frustration that unless a trial should be held pursuant to Phase Three of the Plan, the "last few years of litigation" would be rendered "meaningless." There are obvious flaws in this reasoning. First, as demonstrated above, the Plan did not *require* three successive phases of litigation unless the contingencies in each were met. Second, extrinsic considerations cannot change the plain meaning of Section 550. Third, it is inaccurate to portray the Lien-Related Litigation as "meaningless" simply because the unsecured creditors might not receive any equity when the Plan never guaranteed that the unsecured creditors would receive anything at all.

Finally, the great weight of authority contradicts the Creditor Representative's erroneous interpretation of Section 550, which would require bankruptcy courts to calculate a value award in every case that involves the avoidable transfer of a depreciating asset, even if that asset is returned. That has never been the law. *See In re Eleva, Inc.*, 2003 WL 21516983, at *2 (B.A.P. 10th Cir. 2003) (explaining that the remedies in Section 550(a) are "mutually exclusive" even though returned property had depreciated). The Creditor Representative fails to cite any persuasive precedent supporting its position.[9]

Courts cannot award value under Section 550(a) when the estate has recovered its transferred property in kind. Of course, the provision enables a court in its discretion to select, as alternative preference recoveries, "the property transferred" or "the value of such property." But a value award cannot lie for avoiding a nonpossessory lien when, as in this case, the liens are returned to the estate. *See In re Trout,* 609 F.3d at 1108 n.2 ("[T]he Trustee appears to seek *both* the lien *and* a monetary award of the value of the lien, [but] the Trustee acknowledges on appeal that under § 550(d)—which permits only a single recovery—it . . . would have to abandon the . . . lien if it obtained a monetary award for the value of that lien under § 550."); *In re Patterson*, 2012 WL 1292642, at *3 n.4 (Bankr. N.D. Ga. 2012) ("Of course, if Trustee is allowed to recover from

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[9] The Creditor Representative cites one non-binding Florida bankruptcy decision, which held that "the Code permits the court . . . to award *both* a money judgment *and* recovery of the property in kind." *In re Am. Way Serv. Corp.*, 229 B.R. 496, 531 (Bankr. S.D. Fla. 1999). Like other courts, we view this decision as a rogue outlier. *See, e.g., In re Eleva, Inc.*, 2003 WL 21516983, at *2.

Defendant the value of the Property, under § 550(d), Defendant would retain its lien on the Property."). The bankruptcy court erred in concluding that the unsecured creditors could have their cake and eat it too without violating Section 550(a) and (d).

CONCLUSION

As a result of the foregoing discussion, the bankruptcy court was required to award the DIP Lenders one hundred percent of the equity in Mesquite, because the value of their superpriority liens exceeded the stipulated enterprise value of the reconstituted debtor. The bankruptcy court's initial wrong turn, avoiding the DIP liens, propelled the parties into subsequent stages of litigation that were unnecessary. But in any event, considering the Phases Two and Three litigation (and still assuming arguendo that the pre-petition liens were avoidable preferential transfers), the court also erred in authorizing recovery of the "value" of the pre-petition liens *in addition to* the return of the liens to the debtors' estate pursuant to the Plan.

Accordingly, we VACATE the judgment of the bankruptcy court and REMAND for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: July 1, 2025]

No. 23-20557

IN RE SANCHEZ ENERGY CORPORATION, *et al.*

Debtors,

AD HOC GROUP OF SENIOR SECURED NOTEHOLDERS; DIP LENDERS; WILMINGTON SAVINGS FUND SOCIETY, FSB,

Appellants,

versus

DELAWARE TRUST COMPANY,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-BK-34508
USDC No. 4:23-CV-02987

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before JONES, ENGELHARDT, and OLDHAM, *Circuit Judges*.*

* Judges Catharina Haynes, Don R. Willett, and James C. Ho, did not participate in the consideration of the rehearing en banc.

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Entered: August 03, 2023]

Case No: 19-34508
Chapter 11
Jointly Administered

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,

Debtors.

FINAL ORDER RESOLVING
LIEN-RELATED LITIGATION

For the reasons set forth in the Memorandum Opinion entered on this date, the Court orders:

1. Upon entry of this Order, the holders of Allowed Class 4 and 5 Claims (including their successors and assigns) are allocated 69.73% of the equity interests in the Reorganized Debtor.

2. The 69.73% of the equity interests are allocated amongst the holders of Allowed Class 4 and Allowed Class 5 Claims, their successors and assigns, pro rata. The Reorganized Debtor must pro rate the 69.73% in accordance with the guidance in the Memorandum Opinion.

3. Upon entry of this Order, the holders of the Allowed Class 3 Claims (including their successors and assigns) are allocated an additional 10.27% of the

equity interests in the Reorganized Debtor, bringing their total allocated equity interests to 30.27%.

4. The Lien-Related Litigation Creditor Representative may immediately designate a Director under Section 5.3(a)(iii) of the Shareholder's Agreement. Notwithstanding anything to the contrary in any post-Effective Date amendments, the decision-making authority and processes for the Reorganized Debtor shall be those in effect under the New Organizational Documents (as defined in the confirmed Plan) that were initially in effect on the Effective Date. Subsequent to giving effect to this Order, the Reorganized Debtor may amend the New Organizational Documents in accordance with their terms.

5. Notwithstanding the immediate effectiveness of this Final Order, any party-in-interest may seek authority pursuant to Article IV(C)(2) of the confirmed Plan to issue, ratify, or authorize the issuance of equity in the Reorganized Debtor, whether such equity issuance is by grant, the right to convert debt into equity, or otherwise. The allocations in this Order are subject to dilution only to the extent that such Court authorization is granted after entry of this Order.

6. No costs or fees are awarded against the parties to this dispute. Pursuant to Article IV(D) of the confirmed Plan, nothing in this Order restricts the ability of the Reorganized Debtors to pay the fees and expenses of the Lien-Related Litigation Creditor Representative.

7. The Reorganized Debtor is ordered to immediately reflect the allocation under this Order in its books and records. Notwithstanding the foregoing sentence, the allocations vest immediately upon entry

of this Order under FED. R. CIV. P. 70 as made applicable by FED. R. BANKR. P. 7070.

8. The Court is aware of credible allegations that the Reorganized Debtor has undertaken actions that could have had a dilutive effect on the rights of the holders of Class 4 and Class 5 Claims. Accordingly, it is appropriate that this Order have immediate effect. This Order is not stayed.

9. This Order is a final order. It is a judgment under FED. R. CIV. P. 54 as made applicable by FED. R. BANKR. P. 7054.

SIGNED 08/03/2023

/s/ Marvin Isgur
Marvin Isgur
United States Bankruptcy Judge

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Entered: August 03, 2023]

Case No: 19-34508
Chapter 11
Jointly Administered

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,

Debtors.

MEMORANDUM OPINION

Following hard-fought litigation between sophisticated parties, the Lien-Related Litigation is at an end. In Phase 3 of the Lien-Related Litigation, the Secured Ad Hoc Group (consisting of prepetition secured creditors who became DIP lenders) and the Creditor Representative (representing unsecured creditors) jockeyed for ownership of Mesquite Energy, Inc.— the reorganized Sanchez Energy Corporation.

Under the confirmed Plan, the pivotal issue respecting the allocation of ownership is the value of the Creditor Representative's Causes of Action. The Secured Ad Hoc Group argues that the Creditor Representative's Causes of Action are worthless, and the Court should allocate all the remaining allocable Mesquite stock to it. The Creditor Representative argues that its Causes of Action are worth approximately $210 million, and the Court should allocate most of Mesquite's stock to it.

Upon review of the relevant facts, the testimony of expert witnesses, and Sanchez's Plan, the Creditor Representative prevails. The Court allocates 69.73% of Mesquite's stock to the holders of Allowed Class 4 and Allowed Class 5 Claims (and their successors and assigns) and 30.27% of Mesquite's stock to the holders of Allowed Class 3 Claims (and their successors and assigns).

BACKGROUND

Sanchez Energy Corporation was an exploration and production company focused on acquiring and developing onshore oil and natural gas resources. (ECF No. 1 at 5). Sanchez and its affiliated debtors filed for bankruptcy after years of volatile oil prices. (ECF Nos. 1; 1124 at 10).

I. PREPETITION LIENS

Before filing for bankruptcy, Sanchez incurred secured and unsecured debt. Sanchez had unsecured obligations of: (i) $600 million of 7.75% Senior Unsecured Notes due June 2021 (the "7.75% Unsecured Notes"); and (ii) $1.150 billion of 6.125% Senior Unsecured Notes due January 2023 (the "6.125% Unsecured Notes"). (ECF No. 2672 at 2). In secured debt, Sanchez had: (i) a $25 million Credit Facility with Royal Bank of Canada ("RBC") as administrative agent and lender (the "Credit Facility"); and (ii) $500 million of 7.25% Senior Secured Notes due 2023 (the "Senior Secured Notes"). (ECF No. 2672 at 3). Sanchez and various of its subsidiaries[1] guaranteed these obligations (collectively, the "Guarantors").

Only the documents pertaining to the Senior Secured Notes are relevant to the Lien-Related Litigation. The principal documents are: (i) the 7.25% Senior Secured First Lien Notes Due 2023 Indenture (the "Indenture"); (ii) the Collateral Trust Agreement; (iii) the Second Amended and Restated Security and Pledge Agreement with Sanchez and the Other Debtors (the "Security Agreement"); and (iv) 18 Deeds of Trust. (ECF Nos. 1703-4; 1705; 1705-2; 1709).

Delaware Trust Company served as the original Indenture Trustee for the Senior Secured Notes. (ECF No. 2672 at 10). Wilmington Savings Fund Society, FSB ("WSFS") succeeded Delaware Trust Company as Indenture Trustee. (ECF No. 2672 at 10). Under the Collateral Trust Agreement, RBC was the original Collateral Trustee and the Controlling Priority Lien Representative. (ECF No. 2672 at 3). Under the Successor Collateral Trustee Agreement, (i) WSFS succeeded RBC as the Successor Controlling Priority Lien Representative; and (ii) Wilmington Trust, National Association succeeded RBC as Collateral Trustee of the Senior Secured Notes. (ECF No. 2540-1 at 3).

Sanchez and the Senior Secured Noteholders intended to secure the obligations under the Credit Facility and Senior Secured Notes through liens on substantially all of the Guarantors' assets. Eighteen Deeds of Trusts, including Deeds of Trust on the Hausser, Harrison, and Koenning oil and gas leases (the "HHK Leases"),

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[1] SN Palmetto, LLC ("SN Palmetto"), SN Marquis LLC, SN Cotulla Assets, LLC, SN Operating, LLC, SN TMS, LLC, SN Catarina, LLC ("SN Catarina"), Rockin L Ranch Company, LLC, SN Payables, LLC, and SN EF Maverick, LLC. (ECF No. 2672 at 2).

were intended to grant the Senior Secured Noteholders real property liens over the oil and gas leases in which the Guarantors had interests. (ECF No. 2501 at 1; Adv. Pro. No. 20-03057, ECF No. 1 at 9–10). Each Deed of Trust states that it is an "Amended and Restated Mortgage, Deed of Trust, Security Agreement, Financing Statement, and Assignment of Production." (ECF No. 1703-4 at 1). The granting clause of each Deed of Trust states that the Sanchez affiliate:

> has MORTGAGED, GRANTED, BARGAINED, SOLD, PLEDGED, ASSIGNED, CONVEYED, TRANSFERRED and SET OVER and by these presents does hereby MORTGAGE, GRANT, BARGAIN, SELL, PLEDGE, ASSIGN, CONVEY, TRANSFER and SET OVER unto Trustee and Trustee's substitutes or successors, and his and their assigns, for the benefit of the Mortgagee, *all of Grantor's right, title and interest in and to the following items of real and personal property and interests, whether now owned or hereafter acquired by Grantor under applicable Law (as defined below) or in equity (collectively, the "Mortgaged Property")*, the inclusion of certain specific types and items of property and interests in one or more of the following paragraphs is not intended in any way to limit the effect of the more general descriptions:

(ECF No. 1703-4 at 3) (emphasis added). All of Sanchez's property, both real and personal, was designated as "Mortgaged Property." Immediately following this granting clause is Paragraph A, which states:

> All those certain oil, gas and mineral leases and the estates created thereby, royalty interests, overriding royalty interests,

> production payments, net profits interests, fee interests, carried interests, reversionary interests and *all other rights, titles, interests or estates described on Exhibit A attached hereto and made a part hereof,* whether such rights, titles, interests or estates are completely and accurately described therein or not (*all of which rights, titles, interests and estates described in this Paragraph A are hereinafter, together with the rights, title, interests and estates described in the following Paragraph B, collectively referred to as the "Subject Interests*"). The terms "oil, gas and mineral leases" and "leases", as used in this instrument and in Exhibit A, each includes, in addition to oil, gas and mineral leases, oil and gas leases, oil, gas and sulphur leases, other mineral leases, co-lessor's agreements and extensions, amendments, ratifications and subleases of all or any of the foregoing, all as may be appropriate.

(ECF No. 1703-4 at 3–4) (emphasis added). Paragraph A applies to oil, gas, and mineral leases, and it explains that each Deed of Trust creates a lien on property described in Exhibit A. Paragraph B pertains to present and future unitization and pooling agreements "which include, belong or appertain to the Subject Interests." (ECF No. 1703-4 at 4). "Subject Interests" are rights, titles, interests, and estates described in Paragraphs A and B. Thus, Subject Interests are rights, titles, interests, and estates in: (i) oil, gas, and mineral leases; and (ii) unitization and pooling agreements. Of the remaining granting paragraphs, Paragraphs C and E are relevant. Paragraph C concerns hydrocarbons:

> *All present and future oil, gas, casinghead gas, condensate, drip gasoline, natural gasoline, distillate, all other liquid or gaseous hydrocarbons produced or to be produced in conjunction with the Subject Interests,* all products, by-products and all other substances derived therefrom or the processing thereof; and all other similar minerals now or hereafter accruing to, attributable to, or produced from, the Subject Interests or to which Grantor now or hereafter maybe entitled as a result of, or by virtue of, Grantor's ownership of the Subject Interests (collectively, "Hydrocarbons").

(ECF No. 1703-4 at 4) (emphasis added). Paragraph E concerns personal property and fixtures, including wells:

> *All present and future oil and gas wells*, disposal and injection wells, rigs, platforms, improvements, fixtures, machinery, pipe and other equipment, inventory and articles of personal property, now owned or hereafter acquired by Grantor *found in, on, or under any of the Subject Interests*, including, without limitation, connection apparatus and flow lines from wells to tanks, wells, pipelines, gathering lines, flow lines, compressor, dehydration and pumping equipment, pumping plants, gas plants, processing plants, pumps, dehydration units, separators, heater treaters, valves, gauges, meters, derricks, rig substructures, buildings, tanks, reservoirs, tubing, rods, liquid extractors, engines, boilers, tools, appliances, cables, wires, tubular goods, machinery, supplies and any and all other

> equipment, inventory and articles *of personal property of any kind or character whatsoever appurtenant to, or used or held for use in connection with, the production of Hydrocarbons or Other Minerals from the Subject Interests, or now or hereafter located on any of the lands (the "Lands") encumbered by any of the Subject Interests*, or used on or about the Lands in connection with the operations thereon, together with all present and future improvements or products of; accessions, attachments and other additions to, tools, parts and equipment used in connection with, and substitutes and replacements for, all or any part of the foregoing (all of the types or items of property and interests described in this Paragraph E are hereinafter collectively referred to as the "Personal Property and Fixtures").

(ECF No. 1703-4 at 4–5) (emphasis added). Following the final granting paragraph, the Deed of Trust purports to grant a:

> [F]irst and prior security interest in and to all of the Grantor's right, title, and interest in and to the following types and items of property and interests (all of which are included with the term "Mortgaged Property"): (a) all present and future Personal Property and Fixtures, Subject Contracts and Accounts; (b) all present and future Hydrocarbons, Other Minerals and as-extracted collateral insofar as the same accrue to, attribute to or are produced from the Subject Interests and consist of minerals or the like (including oil and gas) . . . .

(ECF No. 1703-4 at 6). The Deeds of Trust end with "Exhibit A." The Introduction to Exhibit A aims to provide an "explanation of the terminology, format and information contained in Exhibit A . . . ." (ECF No. 1703-4 at 23). Each Introduction states that "[t]his instrument covers the Grantor's entire interest in each of the land parcels, mineral servitudes, mineral leases, mineral royalties and other mineral rights described in Exhibit A" and that "well names and well arabic numbers [in Exhibit A] are generally for descriptive purposes." (ECF No. 1703-4 at 23).

The body of Exhibit A consists of two lists: (i) leases; and (ii) wells. (ECF No. 1703-4 at 23-47). The wells are not specifically associated with any leases despite the statement in the Introduction that "[t]he leases listed below each well or group of wells relate to one or more of such listed wells." (See ECF No. 1703-4 at 23–47).

At no time did the Senior Secured Noteholders, RBC, the Collateral Trustee, or the Indenture Trustee foreclose on any liens on the HHK Leases. (ECF No. 2672 at 4). Indeed, Sanchez: (i) operated the wells on the HHK Leases; (ii) extracted oil, gas, and other hydrocarbons from the wells on the HHK Leases; (iii) provided for the gathering, transportation, processing, and marketing of the oil, gas, and other hydrocarbons extracted from the wells on the HHK Leases; and (iv) collected the proceeds of the sale of the oil, gas, and other hydrocarbons. (ECF No. 2672 at 4).

Around June 2019, it was discovered that several Deeds of Trust, including those pertaining to the HHK Leases, were inaccurate. (ECF Nos. 2501 at 1; 2672 at 5). The Senior Secured Noteholders engaged Cinco Energy Management Group to file Correction Affidavits for those Deeds of Trust. Cinco filed the Correction Affidavits between June 27, 2019 and July

24, 2019. (ECF Nos. 1703-24 at 1; 2501 at 1–2; 2672 at 5). At the time of the filing of the Correction Affidavits, Sanchez was insolvent. (ECF No. 2672 at 5).

Beyond the Deeds of Trust purporting to grant liens on the leases, the Senior Secured Noteholders were secured by liens on all of the Guarantors' personal property under the Security Agreement. The Security Agreement states that it grants a security interest for the performance of the "Secured Obligations," which are ultimately defined by the Collateral Trust Agreement. (ECF No. 1709 at 10, 11). The Collateral Trust Agreement defines Priority Lien Obligations to include "Priority Lien Debt," which is defined as "First Out Debt and First Lien Debt." (ECF No. 1705-2 at 18, 19; 1709 at 5). First Lien Debt includes the "Initial First Lien Notes," which are defined in the Collateral Trust Agreement as the Senior Secured Notes. (ECF No. 1705-2 at 11). Thus, the Security Agreement grants a security interest for the performance of the Senior Secured Notes. Under the Security Agreement, each Guarantor granted a security interest in:

> (a) all Accounts, (b) all Documents; (c) all Equipment; (d) all General Intangibles; (e) all Governmental Approvals; (f) all Instruments; (g) all Inventory; (h) all Investment Property; (i) all Securities Collateral; (j) all rights, claims and benefits of such Debtor against any Person arising out of, relating to or in connection with Inventory or Equipment purchased by such Debtor, including any such rights, claims or benefits against any Person storing or transporting such Inventory or Equipment; (k*) **all other tangible and intangible personal property and fixtures of such Debtor**,* including all cash, products,

> rents, revenues, issues, profits, royalties, income, benefits, commercial tort claims, letter-of-credit rights, supporting obligations, accessions to, substitutions and replacements for any and all of the foregoing, any indemnity, warranty or guarantee payable by any reason of loss or damage to or otherwise with respect to any of the foregoing, and all causes of action, claims and warranties now or hereafter held by such Debtor in respect of any of the items listed above; (l) all books, correspondence, credit files, records, invoices and other papers, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Debtor or any computer bureau or service company from time to time acting for such Debtor; and (m) ***all Proceeds of the collateral described in the foregoing clauses (a) through (l).***

(ECF No. 1709 at 11–12) (emphasis added).

On February 14, 2018, the Collateral Trustee filed "all asset" UCC-1 financing statements for each of the Debtors to perfect the Senior Secured Noteholders' liens in the Guarantors' personal property. (*See* ECF Nos. 1702-2–1702-10). These were filed only with the Texas Secretary of State or the Delaware Department of State. None were filed in the Texas counties in which the leases existed.

II. BANKRUPTCY PROCEEDINGS

Sanchez and its affiliated debtors filed for bankruptcy on August 11, 2019. (ECF No. 1). Sanchez was insolvent on the Petition Date, but neither the Senior

Secured Noteholders nor the Indenture Trustee had declared an event of default. (ECF No. 2672 at 5).

A. DIP Process

The Creditor Representative alleges that the Senior Secured Noteholders were able to utilize their (apparently) fully secured position to leverage a superior position during the negotiations over Debtor-in-Possession ("DIP") financing proposals. The DIP process is relevant to those allegations.

Sanchez began a process to solicit proposals for DIP financing in June 2019. Various groups submitted indications of interest, including 18 financial institutions, the Secured Ad Hoc Group (consisting of the overwhelming majority of the Senior Secured Noteholders),[2] and a group of Sanchez's unsecured creditors (the "Unsecured Notes Ad Hoc Group"). (ECF No. 2672 at 6). The Secured Ad Hoc Group offered the opportunity to participate in DIP financing to all beneficial holders of the Senior Secured Notes. Some beneficial holders elected not to participate in the DIP financing. (ECF No. 2672 at 6). Sanchez initially received only one post-petition financing proposal. It was from the Secured Ad Hoc Group. (ECF No. 2672 at 6). The other potential financing parties did not proceed with financing proposals due to discomfort with the potential collateral package and their unwillingness to receive anything less than a superpriority or priming lien on the vast majority, if not all, of the Debtors' assets. (ECF No. 2672 at 6–7). Those parties

[2] The parties agree that "[t]he investment advisors or managers of the funds or accounts who actually became DIP Lenders also advised or managed funds or accounts beneficially holding approximately 91% of the Senior Secured Notes." (ECF No. 2672 at 6).

were similarly unwilling to engage in a priming dispute with the Senior Secured Noteholders over the priority of the Senior Secured Notes. (ECF No. 2672 at 7).

On August 13, 2019, the Unsecured Notes Ad Hoc Group objected to Sanchez's motion for DIP financing. (ECF No. 74). Two days later, the Court approved an Interim DIP Order under which Sanchez gained access to $50 million in new money. (ECF No. 2672 at 7). As indicated by the title of the Order, this was only interim relief.

On August 21, 2019, the Unsecured Notes Ad Hoc Group sent its own DIP financing term sheet to Sanchez. (ECF No. 2672 at 7). Under their DIP proposal, the Unsecured Notes Ad Hoc Group would obtain senior priming liens on all collateral securing the Senior Secured Notes (including the HHK Leases). (ECF No. 2672 at 7). RBC (as Collateral Trustee) and the Senior Secured Noteholders did not consent to this priming. (ECF No. 2672 at 7–8).

On September 12, 2019, the Unsecured Notes Ad Hoc Group again objected to Sanchez's DIP Motion (this time seeking final rather than interim relief) seeking to adopt the Secured Ad Hoc Group's proposal. (ECF No. 299). The Court held an evidentiary hearing on September 19, 2019. The Court denied the Secured Ad Hoc Group's motion for DIP financing on a final basis. (ECF No. 359 at 274–75). Although it occurs occasionally, it is unusual for a bankruptcy court to deny final approval of DIP Financing.

Stakeholders (chiefly (i) Sanchez; (ii) the Senior Secured Noteholders who declined to participate as DIP Lenders; (iii) the Secured Ad Hoc Group; and (iv) the Unsecured Notes Ad Hoc Group) then negotiated a framework for DIP financing resulting in an agreed DIP financing from the Secured Ad Hoc Group. (ECF No. 2672 at 8). After receiving no objections, the Court approved the Final DIP Order on January 22, 2020. (ECF No. 865).

Under the Final DIP Order, Sanchez obtained access to "a $200 million superpriority, priming, senior secured delayed-draw term loan credit facility including $150 million in New Money Loans and $50 million in Roll-Up Loans." (ECF Nos. 1486 at 12; 865 at 2; 2672 at 8). Sanchez borrowed $100 million of new money under the DIP Facility and rolled up $50 million of Senior Secured Notes. (ECF Nos. 865 at 19; 2672 at 9). Sanchez then paid off the balance of the $25 million credit facility with RBC using funds it received under the Final DIP Order. (ECF No. 2672 at 7).[3]

Under the Final DIP Order, Sanchez was ordered to pay the fees, costs, and expenses of the Credit Agreement Parties, the DIP Agent, and the DIP Lenders (including their professionals). (ECF No. 2672 at 9). Sanchez was also ordered to pay the fees and expenses of the counsel and advisors to the Secured Ad Hoc Group, counsel to RBC, and counsel to any Successor Collateral Trustee. (ECF No. 2672 at 9). Sanchez paid: (i) $14 million to the advisors and counsel to the Credit Agreement Parties, the DIP Agent, the DIP Lenders, and the Secured Ad Hoc Group; and (ii) $1 million to the counsel for the Unsecured Ad Hoc Group. (ECF No. 2672 at 9).

[3] The Senior Secured Noteholders consented to the priming of their prepetition liens under the Final DIP Order, and as discussed below, the Court found that the DIP Liens primed the Senior Secured Noteholders' liens. (ECF Nos. 2501 at 14; 2672 at 8).

Between January 2020 and March 2020, the COVID pandemic's effect on Sanchez was disastrous. On March 27, 2020, Sanchez defaulted under the DIP Credit Agreement, which suspended the DIP Lenders' obligation to advance the remaining $50 million in new money. (ECF No. 2672 at 9).

B. Lien Challenge Complaint

On March 10, 2020, Sanchez filed a complaint (the "Lien Challenge Complaint") in an adversary proceeding against RBC (as lender and administrative agent under the Credit Facility), WSFS (as Successor Notes Trustee), and Wilmington Trust (as Successor Collateral Trustee). (Adv. Pro. No. 20-03057, ECF No. 1). The Lien Challenge Complaint asserts that the defendants failed to create or perfect their pre-petition liens in Sanchez's property. (Adv. Pro. No. 20-03057, ECF No. 1 at 2). Among other things, Sanchez sought to avoid and recover the Correction Affidavits under 11 U.S.C. §§ 547(b) and 550 because they were transferred within 90 days of the petition date. (Adv. Pro. No. 20-03057, ECF No. 1 at 4–5, 15–16). In its prayer for relief, Sanchez seeks "a judgment finding that all transfers described in this Complaint are avoided and the Debtors are thus entitled to recovery under § 550 . . . ." (Adv. Pro. No. 20-03057, ECF No. 1 at 24).

C. Plan of Reorganization and Confirmation Order

Sanchez filed its first plan of reorganization on April 6, 2020. (ECF No. 1109). It filed the solicitation version of the plan on April 9, 2020.[4] (ECF No. 1119). Sanchez

[4] Following the April 8, 2020 hearing, Sanchez amended the voting rights of Classes 4 and 5 from "Deemed to Reject" to "Entitled to Vote." (ECF Nos. 1109 at 18; 1119 at 18; 1126 at 43–44).

filed an amended plan on April 26, and a Second Amended Plan (the "Plan") on April 30, 2020.[5] (ECF Nos. 1149; 1198; 1205). On April 30, 2020, the Court approved Sanchez's Disclosure Statement and confirmed the Plan. (ECF No. 1212).

The Plan is unusual. After the commencement of the COVID pandemic, oil and gas prices plunged. At one brief point, prices fell below $0.00. This created extreme liquidity problems for Sanchez and an environment in which assets could not be readily sold. The Plan, approved on an emergency basis, allowed Sanchez to exit the bankruptcy case and its attendant inefficiencies and expenses. Rather than resolving disputes that would normally occur prior to confirmation, the Plan deferred resolution until after Plan confirmation. All major parties consented to this unusual arrangement.

(1) Lien-Related Litigation Structure

In the process of negotiating the final version of the Plan, the principal parties agreed to abate the Lien Challenge Complaint adversary proceeding until after the April 30, 2020 confirmation hearing. (Adv. Pro. No. 20-03057, ECF No. 9). The Lien Challenge Complaint was then folded into the "Lien-Related Litigation" in Sanchez's main case:

> [L]itigation related to challenges to the allowance, priority, scope or validity of the liens and/or Claims of the Prepetition Secured

[5] Sanchez filed two Second Amended Plans on April 30, 2020. (ECF Nos. 1198; 1205). ECF No. 1205 removed provisions about the "Fee Examiner" from ECF No. 1198 and adjusted the start date of the Lien-Related Litigation. (ECF No. 1205-1 at 8–9, 17–18, 25). The Court refers to the Second Amended Plan at ECF No. 1205 as the "Plan" throughout this opinion.

> Parties (as defined in the Final DIP Order) or the priority or scope of the liens and/or Claims of the DIP Lenders, including any litigation regarding (i) the interpretation of the Final DIP Order and other matters regarding the scope of the collateral securing the DIP Claims, (ii) the amount and characterization of the DIP Claims (including the Final DIP Order's treatment of new-money DIP Claims and roll-up DIP Claims), (iii) the amount of any deficiency claim of the DIP Lenders, (iv) adequate protection claims pursuant to section 507(b) of the Bankruptcy Code (including issues regarding diminution in value, and any recharacterization or disgorgement of adequate protection payments made pursuant to the Final DIP Order, or any prior interim order), (v) the applicability of the equities of the case doctrine under section 552 of the Bankruptcy Code, (vi) ***all Causes of Action referenced and asserted in the Lien Challenge Complaint,*** (vii) the claim objections filed by the Creditors' Committee on March 10, 2020, at Docket No. 1027, (viii) ***the value of Causes of Action***, and (ix) the relative value of encumbered and unencumbered assets.

(ECF No. 1205 at 10) (emphasis added). Causes of Action are:

> [A]ny Claims, Interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or

> unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, in tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) ***claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code***;[6] and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

(ECF No. 1205 at 5–6) (emphasis added). The plaintiff in the Lien-Related Litigation is a "Lien-Related Litigation Creditor Representative" selected by the Creditors' Committee (the "Creditor Representative"). (ECF No. 1205 at 10). The Creditor Representative has standing to "pursue, prosecute and sole authority to settle all Causes of Action referenced and asserted in the Lien Challenge Complaint as of the date hereof, solely to the extent and in accordance with the process and timing set forth in the Plan." (ECF No. 1205 at 10, 27).

Under the Confirmation Order, the Lien-Related Litigation was to be adjudicated according to the procedures outlined in the Plan. (ECF No. 1212 at 7). The Confirmation Order also reaffirms that:

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[6] Exhibit D of the Plan Supplement confirms that the Lien Challenge Complaint contains Causes of Action: "For the avoidance of doubt, the Causes of Action within the scope of the Lien-Related Litigation include those set forth in the complaint filed in *Sanchez Energy Corp. et al. v. Royal Bank of Canada et al.*, Adv. Pro. No. 20-03057 (Bankr. S.D. Tex.)." (ECF No. 1148 at 10).

(i) "[a]ny and all issues regarding the proper allocation of the Post-Effective Date Equity Distribution shall be determined by this Court in connection with the Lien-Related Litigation and consistent with the Final DIP Order and the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code;" and

(ii) the allocation may include "the consideration of the value . . . of any Causes of Action preserved by the Reorganized Debtors pursuant to the Plan and whether such value should be allocated to or offset by Secured Claims or Administrative Claims."

(ECF No. 1212 at 7). In agreeing to the Plan, the Debtors, the DIP Lenders, the Creditors' Committee, and the Unsecured Noteholder Ad Hoc Group stipulated to an $85 million "Enterprise Value" of the Reorganized Debtors. (ECF No. 1212 at 3). This Enterprise Value is binding for the purposes of the Lien-Related Litigation. It excludes the value of the Debtors' Causes of Action. (ECF Nos. 1212 at 3–4; 1220 at 18). In negotiating the Plan, the DIP Lenders agreed to fully equitize their DIP claims instead of receiving payment in full in cash. (*See* ECF Nos. 1220 at 30; 2672 at 11). The Secured Ad Hoc Group and the Creditor Representative stipulated that the DIP Lenders' claims totaled at least $150 million, and at least $85 million of that $150 million was secured. (ECF No. 2672 at 11).

(2) Mesquite Stock Distribution

Under the Plan, certain parties have received or will receive shares of the Reorganized Debtors' New Common Stock in full satisfaction of their claims.[7] (ECF No. 1205 at 5, 10). The DIP Lenders received 20% of the common stock on the Effective Date. (ECF Nos. 1205 at 7; 1220 at 28). The remaining 80% (the "Post-Effective Date Equity Distribution") was to be issued to "Holders of Allowed Claims in Classes 3 [DIP claims], 4 [Secured Notes claims] and/or 5 [General Unsecured claims] as ordered by the Bankruptcy Court in connection with adjudication or other resolution of the Lien-Related Litigation."[8] (ECF No. 1205 at 11). On August 13, 2021, the Creditor Representative began an adversary proceeding alleging that the DIP Lenders impermissibly diluted the 80% of Mesquite stock that was reserved under the Plan. (Adv. Pro. No. 23862, ECF No. 1). The Court abated that adversary proceeding pending the outcome of the

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[7] Sanchez reorganized into Mesquite Energy, Inc. "New Common Stock" is the "common stock of Reorganized SN to be issued pursuant to the Plan." (ECF No. 1205 at 10). "Authorized Plan Distribution Shares" are "the shares of New Common Stock available for distribution under the Plan on account of Claims." (ECF No. 1205 at 5).

[8] The holders of DIP Claims (Class 3) received the 20% of Mesquite stock on the Effective Date and:

> 100% of the Post-Effective Date Equity Distribution less any amount of such Post-Effective Date Equity Distribution, if any, allocated to Holders of Allowed Claims in Classes 4 and/or 5 based upon the outcome of the Lien-Related Litigation, which allocation shall be consistent with, as applicable, the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code.

(ECF No. 1205 at 19).

Lien-Related Litigation.[9] (Adv. Pro. No. 23862, ECF No. 154 at 3).

III. Procedural History of The Lien-Related Litigation

The Plan outlines three phases of Lien-Related Litigation:

> *Phase 1*: The parties to the Lien-Related Litigation shall seek a final hearing date that is not more than 30 days after the Effective Date[10] to determine the interpretation of the Final DIP Order. This phase shall be initiated by a pleading filed by the DIP Lenders or DIP Agent.
>
> *Phase 2*: If the Bankruptcy Court determines that any additional Lien-Related Litigation is necessary in light of the determinations in Phase 1, ***other than as to the valuation of Causes of Action***, the relevant parties shall seek a hearing for determination of such additional issues not more than 30 days after the Bankruptcy Court's determination of issues presented in Phase 1 and in no event 60 days after the Effective Date. This phase shall be initiated by a pleading ***filed by the Lien-Related Litigation Creditor Repre-***

[9] The Secured Ad Hoc Group also commenced an adversary proceeding against the Creditor Representative concerning the source of funding for the Creditor Representative's counsel. (Adv. Pro. No. 22-3145, ECF No. 1). That adversary proceeding has not moved forward during the pendency of the Lien-Related Litigation. (Adv. Pro. No. 22-3145, ECF No. 61).

[10] The Effective Date is June 30, 2020. (ECF No. 1417).

> ***sentative*** on or before the 35th day following the Effective Date.
>
> *Phase 3*: ***If the Bankruptcy Court determines that the valuation of any Causes of Action are necessary*** as part of any Lien-Related Litigation in light of Phases 1 and 2, the relevant parties may seek a hearing for determination of such additional issues after the Bankruptcy Court's determination of issues presented in Phases 1 and 2. This phase shall be initiated by a pleading ***filed by the Lien-Related Litigation Creditor Representative*** not more than 30 days after the Bankruptcy Court's determination of issues presented in Phase 2.

(ECF No. 1205 at 24) (emphasis added). The Court may issue a final ruling allocating the Post-Effective Date Equity Distribution at the end of any of the three phases. (ECF No. 1205 at 24). In Phase 1, the parties[11] submitted questions of law seeking interpretations of the Final DIP Order.[12] The Court determined that:

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[11] "The ad hoc group . . . of certain unaffiliated funds, accounts, and/or managers of funds or accounts, as beneficial holders of Secured Notes Claims, and as lenders . . . under the DIP Credit Agreement") (the Secured Ad Hoc Group) and the Creditor Representative submitted Phase 1 briefs. (ECF Nos. 1485; 1486).

[12] In its Phase 1 brief, the Secured Ad Hoc Group argues that "[t]he Lien-Related Litigation process described in the Plan provides for the ***valuation of Causes of Action*** (which were not valued at confirmation or included in the Enterprise Value) and the final determination of certain remaining challenges to the DIP Claims and Secured Notes Claims." (ECF No. 1486 at 3–4) (emphasis added). Indeed, the Secured Ad Hoc Group interprets the Plan to grant Secured Notes and General Unsecured claimants stock "only if the ***value of Causes of Action*** (to be determined in Phase 3 of the Lien-Related Litigation) plus the

(i) the proceeds of Avoidance Actions "remain in the Creditor Representative's bundle of rights" so long as they are traceable; and (ii) the DIP Lenders gave up their rights to the proceeds of Avoidance Actions other than 50% of the first $100 million of proceeds of Avoidance Actions against parties other than the Prepetition Secured Parties. (ECF No. 1599 at 5). The Court did not precisely address the meaning of "proceeds" in Sections 9 and 10 of the Final DIP Order in the Phase 1 hearing. (*See* ECF No. 1599).

In Phase 2, the Secured Ad Hoc Group and the Creditor Representative litigated the existence, validity, perfection, and avoidance of certain liens. The Court ruled that the Senior Secured Noteholders' HHK Liens were avoidable. (ECF No. 1847 at 38). The Correction Affidavits cured the errors in the Senior Secured Noteholders' HHK Liens and brought them into compliance with the Statute of Frauds. (ECF No. 1847 at 39). However, the Correction Affidavits constituted transfers of Sanchez's property within 90 days of the Petition Date. (ECF No. 1847 at 39). The Court deferred the determination of whether the Correction Affidavits were preferential transfers to Phase 3. (ECF No. 1847 at 41).

During the Phase 3 oral argument, the Court realized that Phase 1 issues remained. On July 22, 2022, the Court reconsidered Phase 1 and ruled that the DIP Lenders held priming liens on the HHK leases under Section 10(b) of the Final DIP Order. (ECF No. 2501 at 14). The Court also ruled that the DIP Lenders'

Enterprise Value exceeds the sum of all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Statutory Fees, Other Secured Claims, Other Priority Claims, and the DIP Claims." (ECF No. 1486 at 7) (emphasis added).

superpriority claims did not have recourse to the proceeds of Avoidance Actions against the Senior Secured Noteholders,[13] which include property recovered or unencumbered by the Avoidance Actions. (ECF No. 2501 at 11, 13). Notably, the holders of DIP superpriority claims had recourse to 50% of the first $100 million of proceeds or property recovered or unencumbered by Avoidance Actions against parties other than the Senior Secured Noteholders. (ECF No. 2501 at 3). As of the date of this opinion, Avoidance Actions against parties other than the Senior Secured Noteholders have resulted in proceeds of $2 million.[14]

Following the Phase 1 Reconsideration Opinion, the Court held a hearing on August 31, 2022 and asked the parties to brief two issues: (i) does the Plan foreclose the relief the Creditor Representative seeks regarding a hypothetical valuation of the § 550 action; and (ii) did the Creditor Representative waive its claims before the Plan's effective date. (ECF No. 2535 at 126–129). The parties submitted briefs and the Court took the matter under advisement. (ECF Nos. 2539; 2540; 2542; 2543). On January 11, 2023, the Court issued an opinion finding that the Plan did not foreclose the relief the Creditor Representative seeks concerning a hypothetical valuation of the § 550 action and the Creditor Representative did not waive its claims before the Effective Date. (ECF No. 2627). The Court also clarified that the purpose of the Lien-Related

[13] The Creditor Representative's claims are Avoidance Actions. (ECF No. 1205 at 5).

[14] On September 15, 2022, the Debtors filed a motion seeking approval of a settlement that would release all claims against members of the Sanchez family and Gerald Willinger for a cash payment of $2 million. (ECF No. 2672 at 13). On February 21, 2023, the Court approved the settlement. (ECF No. 2650).

Litigation is to value Avoidance Actions so as to determine the proper allocation of the Post-Effective Date Equity Distribution. (ECF No. 2627 at 15). The purpose is not to award money damages or to augment the Reorganized Debtor under § 550.

The Phase 3 hearing spanned across March 27, March 28, and April 19, 2023. (ECF Nos. 2704; 2710; 2730). The Court heard testimony from the Creditor Representative's expert witnesses—Aaron Terry and Andrew Scruton—and from the Secured Ad Hoc Group's expert witnesses—Professor Daniel Fischel, John Young, Jr., and Dr. J.B. Heaton—concerning the value of the HHK Liens.

For the reasons explained below, it is critical to understand the impact that the Deeds of Trust had on the market value of Sanchez's secured and unsecured debt. Some of the experts focused solely on the value of the underlying collateral. Others testified about market trading value of the debt as the best proxy for value. As of the date of the Correction Affidavits, Sanchez had $500 million of secured debt and $1.750 billion of unsecured debt. Between June 27, 2019 and July 24, 2019, Sanchez's secured debt traded at approximately 78% of stated value. (ECF No. 2696-38). During the same time period, Sanchez's unsecured debt traded at approximately 5% of stated value. (ECF No. 2696-38). Sanchez's enterprise value at the time the Correction Affidavits were filed, calculated as its secured and unsecured debts multiplied by their trading values, was $477.5 million.[15]

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[15] ($500 million * 78%) + ($1.750 billion * 5%) = $390 million + $87.5 million = $477.5 million. No party alleges that Sanchez's stock had any material value.

The Court heard closing arguments on May 4, 2023 and took the matter under advisement after the parties submitted post-trial briefs on May 25, 2023. (ECF Nos. 2764; 2785; 2786).

JURISDICTION

The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(F). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

DISCUSSION

The Plan requires the Court to value the Creditor Representative's § 550 Cause of Action for the purpose of allocating the Post-Effective Date Equity Distribution. In its post-trial briefing, the Secured Ad Hoc Group advances six arguments that the Creditor Representative's § 550 Cause of Action is worthless. (*See* ECF No. 2786). If those arguments fail, the Secured Ad Hoc Group advances additional arguments that the actual value of the § 550 Cause of Action should still be sufficiently low as to allocate the majority of the Post-Effective Date Equity Distribution to the DIP Lenders. (*See* ECF No. 2786).

I. VIABILITY OF CAUSES OF ACTION

The Court first examines the six arguments, which, if decided in favor of the Secured Ad Hoc Group, would mean that the Creditor Representative's § 550 Cause of Action is worthless: (i) the HHK Liens did not enable the Senior Secured Noteholders to receive anything, so the Correction Affidavits cannot be avoidable preferences under § 547(b)(5); (ii) there was no loss to the estate, so no value can be awarded under § 550; (iii) the estate already recovered the HHK Liens, so no value can be awarded under § 550; (iv) the Senior

Secured Noteholders did not cause any depreciation, so no value can be awarded under § 550; (v) return of the HHK Liens, and not their value, is the only appropriate remedy when their value is not easily determinable; and (vi) the Creditor Representative did not assert its claims against a creditworthy defendant, so the § 550 Cause of Action is worthless.

A. 11 U.S.C. § 547(b)(5)

For the Creditor Representative's § 550 Cause of Action to have value, the Creditor Representative must first show that the transfer of the Correction Affidavits is an avoidable transfer. *See* 11 U.S.C. § 550(a) ("[T]o the extent that a transfer is avoided under section . . . 547 . . . of this title, the transfer may recover . . . the property transferred, or . . . the value of such property . . . ."). The Creditor Representative is pursuing avoidance under 11 U.S.C. § 547(b). (*See, e.g.*, ECF No. 2785 at 8). Section 547(b) has five elements:

> [T]he trustee may . . . avoid any transfer of an interest of the debtor in property—
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made—
>
> (A) on or within 90 days before the date of the filing of the petition; or
>
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). "If a trustee establishes each of the requirements of § 547(b), the transfer is a preference . . . ." *Garner v. Knoll (In re Tusa-Expo Holdings, Inc.)*, 811 F.3d 786, 791–92 (5th Cir. 2016).

The parties only contest the final element of § 547(b). The Secured Ad Hoc Group argues that "[a] lien that does not enable a creditor to receive anything on its claim cannot be an avoidable preference." (ECF No. 2786 at 11). The Senior Secured Noteholders did not receive payment on account of their claims when their liens were primed and rendered worthless by the COVID-related decline in hydrocarbon prices after the Court entered the Final DIP Order in January 2020. (ECF No. 2786 at 12). Moreover, the HHK Liens were released in the Plan. (ECF No. 2786 at 12). The Secured Ad Hoc Group bases its argument on the premise that § 547(b)(5) requires a comparison "of two values: what the transfer actually '*enables* such creditor to *receive*' and what 'such creditor *would receive if*' the case proceeded under Chapter 7 and the transfer had not occurred." (ECF No. 2786 at 12).

The Secured Ad Hoc Group's understanding of § 547(b)(5) is not consistent with Fifth Circuit precedent. In *Tusa-Expo Holdings*, the Fifth Circuit explained the typical test for the final element of § 547(b):

> The instant dispute concerns the last of the § 547(b) requirements, namely, subsection (b)(5). "This is the requirement that before a trustee in bankruptcy can avoid a preferential transfer, the trustee must establish that the transfer enabled the creditor to receive more than the creditor would have received upon liquidation under Chapter 7 of the Bankruptcy Code."
>
> To determine whether a trustee has established this requirement, a court typically uses the so-called "hypothetical Chapter 7 liquidation analysis" inherent in § 547(b)(5) itself. To do so, the court (1) constructs a hypothetical Chapter 7 liquidation in which the creditor retains the disputed transfers, *viz.*, the transfers-*retained* hypothetical, and (2) constructs another in which the creditor returns those transfers, *viz.*, the transfers-*returned* hypothetical. To establish the requirement of § 547(b)(5) under this analysis, the sum of (1) the disputed transfers and (2) the creditor's distribution in the transfers-retained hypothetical must be "more" than the creditor's distribution in the transfers-returned hypothetical.

Tusa-Expo Holdings, 811 F.3d at 792 (cleaned up). Importantly, the comparison between the transfers-retained and transfers-returned hypothetical is made as of the petition date. *Abramson v. St. Regis Paper Co. (In re Abramson)*, 715 F.2d 934, 939 n.9 (5th Cir. 1983) ("[T]he preferential effect of a payment to a creditor is to be determined from the perspective of the date of the filing of bankruptcy." (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936))); *see also Neuger v. United States (In re Tenna Corp.)*, 801 F.2d 819, 822 (6th Cir. 1986) ("*Palmer Clay* stands for no more than that a payment should be tested as of the date the petition in bankruptcy is filed.").

The Correction Affidavits perfecting the HHK Liens placed the Senior Secured Noteholders in a position to receive more in the transfers-retained hypothetical than in the transfers-returned hypothetical. At the Phase 3 trial, Mr. Young testified as an expert for the Senior Secured Noteholders. He stated that there would be between $45 million and $70 million of net distributable value in a hypothetical chapter 7 liquidation if the HHK Liens were made enforceable by leaving the Correction Affidavits intact. (ECF Nos. 2742 at 145–46; 2700-50 at 17). Mr. Young testified that all of Sanchez's value would go to the Senior Secured Noteholders, and nothing would go to unsecured noteholders. (ECF No. 2742 at 147–48). Mr. Young also testified that if the Correction Affidavits were set aside in a hypothetical chapter 7 liquidation, the Senior Secured Noteholders would receive between $36 and $53 million. (ECF No. 2742 at 148; Apr. 19, 2023 hearing at 11:55:10 a.m.–11:56:27 a.m.). The Court asked Mr. Young whether there "[i]s there any amount, any value anywhere . . . where the answer would not be that the secured creditors got more as a result of having the liens versus not having the liens?" (ECF No. 2742 at 150). Mr. Young credibly answered that he "cannot think of a scenario where that would not be true." (ECF No. 2742 at 150).

In the transfers-retained hypothetical, the Senior Secured Noteholders would hold perfected liens on substantially all of Sanchez's assets, thereby securing their $500 million Senior Secured Notes claim. There would be no DIP financing in a chapter 7 case; the Senior Secured Noteholders would have the only liens on Sanchez's assets. If Sanchez lacked property sufficient to pay the Senior Secured Noteholders claims in full, Sanchez's unsecured creditors would receive nothing.

In the transfers-returned hypothetical, the Senior Secured Noteholders' HHK Liens would be unperfected, as already determined in the Phase 2 Litigation. Because the Deeds of Trust lack reasonable certainty to satisfy the Statute of Frauds, the Senior Secured Noteholders lack sufficient documentation for their security interests in the HHK Leases. A hypothetical trustee could avoid the defective Deeds of Trust under 11 U.S.C. § 544(a)(3). *See* 5 COLLIER ON BANKRUPTCY ¶ 544.05 (16th ed. 2023) ("[T]he trustee is given the rights and powers of a bona fide purchaser of real property from the debtor if at the time of the commencement of the title 11 case a hypothetical purchaser could have obtained bona fide purchaser status, so the trustee can avoid any liens or conveyances that a bona fide purchaser could avoid."). The Senior Secured Noteholders would only share pro rata with Sanchez's unsecured creditors, meaning that the Senior Secured Noteholders would receive a higher distribution in the transfers-retained hypothetical. This is all § 547(b)(5) requires.

The Secured Ad Hoc Group's argument that there was no preferential transfer because the Senior Secured Noteholders received no payment on account of their liens is of no moment. (ECF No. 2786 at 12). This argument does not affect the hypothetical Chapter 7 liquidation analysis, but to the extent it goes to the "unenumerated" § 547(b) requirement that an avoidable transfer "must have diminished the debtor's estate," there is ample evidence that the transfer of the Correction Affidavits diminished Sanchez's estate. *See In re Tusa-Expo*, 811 F.3d at 792 n.6. For instance, the transfer hamstrung Sanchez's ability to negotiate DIP financing. As the Court stated in the DIP hearings, it is generally better to avoid priming fights: "I really do think a priming fight is usually a very bad idea, and I understand why the Debtors don't want one." (ECF No. 359 at 277). The filing of the Correction Affidavits meant that the Senior Secured Noteholders were presumed to hold perfected security interests on all of Sanchez's assets. As confirmed by Sanchez's former CFO (and Mesquite's current CEO) and Sanchez's investment banker, the specter of a priming fight or lending on a junior or unsecured basis discouraged third parties from entering into DIP financing with Sanchez. (ECF Nos. 2330-9 at 5; 2672 at 6–7; 2720 at 218–220). As of the Petition Date, Sanchez only had one DIP financing proposal: that of the Secured Notes Ad Hoc Group, which included $175 million of new money and a roll-up of $175 million of Senior Secured Notes debt. (ECF Nos. 16 at 33; 2672 at 6). After the Court approved interim DIP financing, the unsecured creditors proposed an alternative DIP financing. (ECF No. 2672 at 7). Sanchez declined to proceed with the alternative DIP financing. Yet on September 19, 2019, the Court denied Sanchez's motion to proceed on a final basis with the Secured Ad Hoc Group's DIP financing:

> At a time when there is no urgency for new money, the Debtors have chosen to make a precipitous decision to borrow with a priming lien on a loan that isn't always inferior to its alternatives. The only reason that the Debtors have given for doing that is to avoid the

> priming fight. But in every other way the Debtors have acknowledged that the alternative DIP is superior to the DIP that the Debtors choose to take. And the provisions that are substantially preferential in the alternative DIP reflect that the provisions in the DIP the Debtors have chosen to take are substantially harmful to the estate. They tie the hands of the Unsecured Creditors Committee by giving the Committee virtually no money to conduct an investigation. They limit the ability of the Unsecured Creditors Committee to investigate the first lien lender with any reasonable time frame given the complexity of the transactions. And they require the estate to give up various bankruptcy rights. The decision, however, to avoid the priming fight may still be the correct decision. I'm not saying it isn't. But the Debtors have not met their burden of proof by demonstrating it is the right decision. We are in a situation where there is no time pressure and the Debtor has not done its analysis yet.

(ECF No. 359 at 274–75). Without the Correction Affidavits, Sanchez could very well have been able to obtain superior DIP financing. Sanchez's limitation in attracting third-party DIP financing proposals due to the Correction Affidavits injured the estate.

In the end, the members of the Secured Ad Hoc Group managed to secure their position as DIP Lenders. Paragraph 19(c) of the Final DIP Order governs the interest Sanchez was to pay to the Indenture Trustee. (ECF No. 865 at 36). Sanchez paid approximately $36 million in interest to the Indenture Trustee. (ECF No. 2672 at 8). Paragraph 19(e) of the

Final DIP Order governs the fees and expenses Sanchez was to pay to the counsel and advisors to: (i) the Secured Ad Hoc Group; (ii) the Notes Trustee; (iii) RBC (in its various capacities under the Collateral Trust Agreement and Prepetition Credit Agreement). (ECF No. 865 at 37–38). Sanchez paid approximately $14 million to the advisors and counsel of the Credit Agreement Parties, DIP Agent, the DIP Lenders, and the counsel and advisors to the Secured Ad Hoc Group. (ECF No. 2672 at 9). Finally, Sanchez agreed to roll-up $50 million of Senior Secured Notes debt. (ECF No. 865 at 69). These benefits to the Secured Ad Hoc Group diminished Sanchez's estate.

The Secured Ad Hoc Group relies heavily on *In re Broumas. Koch v. Rogers (In re Broumas)*, 1998 WL 77842 (4th Cir. Feb. 24, 1998). In fact, the Secured Ad Hoc Group claims *Broumas* is the only § 547(b)(5) case on point because the alleged preferential transfer was a lien instead of cash. (ECF No. 2774 at 63; Secured Ad Hoc Group's Closing Demonstrative at 6). Yet *Broumas* is distinguishable. First, *Broumas*, an unpublished opinion, is a chapter 7 case; this is a chapter 11 case. 1998 WL 77842, at *1. Second, *Broumas* rests partly on the finding that the transferees were "no better off vis-a-vis the other creditors of the Debtors' estate than they would have been had they not received the transfers of the Deeds of Trust and waited for liquidation and distribution of the assets of the Debtors' estate." *Id.* at *4. As discussed above, the Senior Secured Noteholders greatly benefitted from the Correction Affidavits in the DIP financing process. The benefits they received exist notwithstanding that the Senior Secured Noteholders: (i) never foreclosed on the HHK Liens to satisfy the $500 million Sanchez owed; and (ii) released the HHK Liens in the Plan.[16]

The Correction Affidavits satisfy 11 U.S.C. § 547(b)(5). With no other contested elements of 11 U.S.C. § 547, the Correction Affidavits are avoidable preferential transfers under § 547.

B. Returning the Estate to the Pre-Transfer Position

Section 550 permits the Trustee to recover the property or value of property transferred and avoided under various sections of the Bankruptcy Code, including § 547. Section 550(a) is intended to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred. *Trout v.*

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[16] The Secured Ad Hoc Group contends that "[a] simple hypothetical proves" the folly of the position that "the preference determination for a lien should be made as of the transfer date without regard to what actually happens after":

> Suppose the debtor gives a creditor a second-position lien on property on the eve of bankruptcy. At the time of the transfer, the lien is worthless because the property is not valuable enough to cover the first-position lien. But the property appreciates during the bankruptcy and, when it is sold, the second-position lien is entitled to some payment. Under the [Creditor Representative's] test, the second-position lien would not be a preference because it did not entitle the lienholder to more than it would otherwise get as *of the transfer date*. This, of course, cannot be right.

(ECF No. 2786 at 14). The Court disagrees. The hypothetical chapter 7 liquidation analysis does not disregard what happens after the transfer. On the contrary, assuming the facts of the Secured Ad Hoc Group's hypothetical, the second-position lien holder receives a higher distribution in the transfers-retained hypothetical than in the transfers-returned hypothetical. The second-position lien is a preference.

Rodriguez (In re Trout), 609 F.3d 1106, 1112 (10th Cir. 2010) (quoting *Official Comm. of Unsecured Creditors v. Citicorp N. Am., Inc. (In re TOUSA, Inc.)*, 422 B.R. 783 (Bankr. S.D. Fla. 2009)); *USAA Fed. Sav. Bank v. Thacker (In re Taylor)*, 599 F.3d 880, 890 (9th Cir. 2010) (quoting *Aalfs v. Wirum* (In re Straightline Invs., Inc.), 525 F.3d 870, 883 (9th Cir. 2008)); *Bishop v. FedChex, LLC (In re Bishop),* No. 2:12-AP-01302-RK, 2017 WL 3623917, at *7 (B.A.P. 9th Cir. Aug. 23, 2017) ("Section 550's purpose 'is to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred.'" (quoting *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1111 (9th Cir. 2010))); *Parks v. Brooks (In re Brooks)*, 452 B.R. 809, 816–17 (Bankr. D. Kan. 2011) ("[Section] 550(a) does not mandate that the trustee receive the value of an avoided lien, but rather provides the bankruptcy court with the discretion to fashion relief that places the estate in the position it would have occupied had the avoided transfer not occurred."); 5 COLLIER ON BANKRUPTCY ¶ 550.02 (16th ed. 2023) (describing the goal of restoration as "putting the estate back where it would have been but for the transfer."). However, § 550(a) "does not define 'value' nor indicate at what time 'value' is to be determined." *Weinman v. Fidelity Cap. Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1266 (10th Cir. 2004) (quoting *Hirsch v. Steinberg (In re Colonial Realty Co.)*, 226 B.R. 513, 525 (Bankr. D. Conn. 1998)) (cleaned up). But in determining the value of the property at the time of the transfer, the Court "has discretion on how to value the property so as to put the estate in its pretransfer position." *Taylor*, 599 F.3d at 890 (citing *Joseph v. Madray* (*In re Brun*), 360 B.R. 669, 674 (Bankr. C.D. Cal. 2007)).

To determine how to return the estate back to the pre-transfer position, the Court must ascertain Sanchez's pre-transfer position. Before the transfer, Sanchez had various debts: a $25 million credit facility; and $500 million in secured, but unperfected, debt; and $1.750 billion of unsecured debt. If Sanchez had filed bankruptcy pre-transfer, Sanchez would have been able to avoid the Senior Secured Notes under § 544(a)(3), and the Senior Secured Noteholders would share from the unsecured creditors' recovery. In essence, Sanchez would have $2.250 billion of unsecured debt below a $25 million credit facility. But as a result of the Correction Affidavits, Sanchez had a $25 million credit facility; and $500 million of perfected secured debt; and $1.750 billion of unsecured debt. The difference between the two scenarios is plain: $500 million of debt was elevated above the $1.750 billion of unsecured debt.

The Court is mindful of the fact that the Senior Secured Noteholders did not get much in the way of benefit from their security. They agreed to release their liens in the course of negotiating the Plan. The parties agree that the Senior Secured Notes are prioritized below the DIP liens. In fact, the holders of the Senior Secured Notes have not formally participated in the Lien-Related Litigation. Yet the Secured Ad Hoc Group argues that no value can be awarded under § 550(a) without a loss to the estate. (ECF No. 2786 at 15). Pointing to the intent of § 550 as a restorative measure, the Secured Ad Hoc Group argues that the Court cannot award more than the estate lost, and here, Sanchez's estate lost nothing. (ECF No. 2786 at 15–16). Thus, no award of value is necessary to restore the estate to its pretransfer position. (ECF No. 2786 at 21).

The Court does not agree that the value to be awarded under § 550 should focus on what the estate lost; rather, the Court should determine how to put the estate back in its pre-transfer position. Restoration of the pre-transfer position includes the restoration of the relative priorities of the holders of claims against Sanchez and the Estate. The Secured Ad Hoc Group asks the Court to assume that Sanchez's "change in position" must have injured the Estate. That is not what is required. Sanchez's "change in position" artificially elevated one creditor group against another based on the change of making Sanchez liable for more secured debt. Preference recoveries are allowed when the transfer results in a "change of position" that benefits one group of creditors to the detriment of another group.

The Secured Ad Hoc Group has repeatedly requested that the Court examine the Tenth Circuit's analysis in *In re Trout*. 609 F.3d 1106. The Secured Ad Hoc Group is correct that *Trout* is somewhat similar to this case. But *Trout* makes two points of particular importance: (i) § 550 is meant to restore the estate to the financial condition that would have existed had the transfer never occurred;[17] and (ii) there may be situations in which the avoidance of the lien will not suffice to restore the estate to the pretransfer position. *Id.* at 1112.

In *Trout*, the debtors purchased a vehicle with a loan, and the lenders' failure to timely perfect their lien rendered the lien a preferential transfer. *Id.* at 1108. The Trustee sought to avoid and recover the value of the avoided lien under §§ 547 and 550(a) as well as preserve the lien for the benefit of the estate

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[17] The Court notes that *Trout* does not contain any permutation of the word "loss."

under 11 U.S.C. § 551. *Id.* The bankruptcy court granted summary judgment on the § 551 claim. *Id.* Thus, the Tenth Circuit examined whether the Trustee could also recover the value of the lien under § 550(a). *Id.* at 1111. In returning the estate to its pre-transfer position, "there may be circumstances where [avoiding the preferential lien] will be insufficient and recovery under § 550 [is necessary]." *Id.* Where the property transferred was the perfected security interest, the underlying collateral—the vehicle—was never transferred. *Id.* at 1112. The Tenth Circuit held that:

> The bankruptcy estate would have had an asset which was declining in value *regardless* of whether the debtor transferred the lien during the preference period. Rather, by virtue of the transferred security interest, a creditor obtained a leg-up over unsecured creditors in the impending bankruptcy; when that lien was avoided and preserved for the benefit of the estate, that creditor had to take its place with the general unsecured creditors, and, having obtained § 547 and § 551 relief, the Trustee gained priority over any junior liens on the same collateral.

Id. As a result of the perfected security interest, the secured creditor improved its position relative to unsecured creditors. But because the avoidance of the lien under § 551 placed that secured creditor back on equal footing with unsecured creditors, the trustee did then not need to recover the value of the perfected lien. *Id.* The Tenth Circuit ends with:

> Before the transfer of the security interest here, the estate had a depreciating asset and an obligation to an unsecured creditor. After the transfer, the estate still had the asset but

> a creditor had a secured priority interest in that asset. After avoidance of the lien, the estate once again had a depreciating asset and an unsecured obligation to the lender. Thus, as the BAP and the bankruptcy court concluded, on these facts, nothing more was required to put the estate back in its pre-transfer position.

Id. at 1114. This case differs where the simple avoidance of the liens on the HHK Leases would not put the estate back in the pre-transfer position. Indeed, the failure to award the value of the property transferred because the Senior Secured Notes were primed by the DIP liens would grant the DIP Lenders, who are largely a subset of the Senior Secured Noteholders, a windfall. This windfall would be a direct result of their own conduct—the preferential transfer resulting in the perfection of the liens. By awarding the value of the transferred property under § 550, the Court will return Sanchez's estate to its pre-transfer position.

C. Double Recovery

The Secured Ad Hoc Group contends that awarding the value of the property transferred would be an impermissible double recovery under 11 U.S.C. § 550(d). (ECF No. 2786 at 21–25). Section 550(d) simply states: "The trustee is entitled to only a single satisfaction under subsection (a) of this section." The Senior Secured Noteholders released the HHK Liens in the Plan:

> Except as otherwise specifically provided in the Plan, or in any contract, instrument, release, or other agreement or document created, assumed, or Reinstated pursuant to

the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, ***all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, to the extent securing any Claims discharged under the Plan, shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors,*** or the Debtors, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors, or any other Holder of a Secured Claim.

The DIP Agent, the Secured Notes Indenture Trustee, and the Collateral Trustee shall execute and deliver all documents reasonably requested by the Debtors or the Reorganized Debtors to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Reorganized Debtors and their designees to file UCC-3 termination statements and other release documentation (to the extent applicable) with respect thereto, at the sole expense of the Debtors or the Reorganized Debtors, as applicable. The Secured Notes Indenture Trustee or the Collateral Trustee is authorized to release such mortgages, deeds of trust, Liens, pledges, and other security interests as of any date prior to the Effective Date as they may be authorized or directed in

> accordance with the Secured Notes Indenture, the Collateral Trustee Agreement, or any other documents governing the rights of Holders of Secured Notes Claims, and such release shall be deemed to occur on such prior date.

(ECF No. 1205 at 40) (emphasis added). Because the Senior Secured Noteholders agreed to release the HHK Liens, the Secured Ad Hoc Group argues that allowing the Creditor Representative to receive the value of the HHK Liens would allow it to recover the value of property that has already been returned to the estate. (ECF No. 2786 at 22).

Section 550(d) prevents a double recovery under § 550(a). The Fifth Circuit has confirmed that trustees are only entitled to a single satisfaction for avoidable transactions. *Whitlock v. Lowe (In re DeBerry),* 945 F.3d 943, 947 (5th Cir. 2019). This single recovery is meant to ensure that the estate is placed in the pre-transfer position without receiving a windfall. *Id.* (quoting *Kapila v. SunTrust Mortg., Inc. (In re Pearlman)*, 515 B.R. 887, 896 (Bankr. M.D. Fla. 2014)). Indeed, the Fifth Circuit references the definition of "recover" ("to get back or regain in full or in equivalence") in holding that a trustee may only "recover" property transferred once. *Id.* Obtaining the duplicate of property already obtained is not a recovery; "it's getting a windfall." *Id.* To the extent avoiding a transfer places the estate back in the pre-transfer position, the trustee is not entitled to recover more.

Here, the Senior Secured Noteholders' agreement to release the HHK Liens did not put the estate back in the pre-transfer position, and the estate did not "recover" the property it transferred. The Secured Ad Hoc Group has taken the position that the Senior Secured Noteholders' HHK Liens have no value due to the priming DIP liens. (*See, e.g.,* ECF No. 2312 at 67). Accepting the simple release of the worthless Senior Secured Noteholders' HHK Liens as a recovery under § 550(a), which would preclude the Creditor Representative's Causes of Action for the value of the transferred property, does nothing to return the estate to its pre-transfer position. Indeed, allocating all of the Mesquite stock to the DIP Lenders because a group of which they are the vast majority decided to release worthless liens would be a windfall to the DIP Lenders. Moreover, the HHK Liens were released as part of the transaction that resulted in the initial distribution of the 20% interest in Mesquite. The liens were not released as an eleemosynary gesture. The Senior Secured Noteholders effectively released liens to themselves. This did not put Sanchez's estate back in the pre-transfer position.

The Plan's main focus is the Lien-Related Litigation. It expressly preserves the Creditor Representative's capacity to pursue the claims the Debtors originally made in the Lien Challenge Complaint. It makes little sense for a document which chiefly concerns the preservation of the Lien-Related Litigation to contain a mechanism simultaneously destroying the Creditor Representative's Cause of Action. The Secured Ad Hoc Group's argument would render the main point of the Plan, and the last few years of litigation, meaningless. This was not the Court's understanding when it approved the Plan, and the Court will not interpret the Plan to neuter the Plan's chief concern. *See In re Sullivan*, 234 F.3d 705 (5th Cir. 2000) ("Chapter 11 plans are construed as contracts. A court should examine an entire contract to harmonize its provisions and avoid rendering some of them meaningless.").

Releases of claims do not occur *sub rosa*[18] in a bankruptcy case. The essence of the Secured Ad Hoc Group's argument is that the release of liens effected a resolution of any claim under § 550. The Court was not informed that the transfer would result in a release or settlement. The Court did not approve a release or settlement. There was no motion to approve a release or settlement. The Court declines the opportunity to create a release and settlement based on a *sub rosa* theory.

D. Decline in Value of the HHK Leases

The Secured Ad Hoc Group next argues that the Creditor Representative cannot recover the decline in the market value of the HHK Leases between the transfer dates and the Confirmation Date. (ECF No. 2786 at 25). The decline in the value of the HHK Leases is the incorrect focus for determining the value of the property to be returned. The Senior Secured Noteholder's principal expert witness, Daniel R. Fischel, persuasively argued that the Court should evaluate the value of the lien itself; not the value of the underlying collateral to the lien.

This only makes sense. A lien holder cannot recover collateral with a value that exceeds the amount of its lien. A change in collateral value *may* affect the value of the lien, but the lienholder only received the lien; it is not entitled to collateral value that exceeds the debt secured by the lien.

In this case, the value of the lien itself can be separated from the value of the collateral. Both the secured debt and the unsecured debt Sanchez owed was traded on the public markets. With some minor

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[18] In English, "under the rose."

interest rate adjustments, the difference between the trading price of Sanchez's unsecured debts and the secured debts reflects the market's estimation of the value of the lien itself. Professor Fischel advocates this view. (ECF No. 2720 at 201–205).

The Court will value the HHK Liens on the days the Correction Affidavits were filed. It does not appear that the Creditor Representative is attempting to recover the depreciation of the HHK Leases between the transfer dates and the Confirmation Date. Instead, the Creditor Representative is attempting to recover the value of the HHK Liens as of the transfer dates, and doing so would not make the DIP Lenders or Senior Secured Noteholders "*de facto* insurers of the collateral's value." (*See* ECF No. 2786 at 28). The fact that the HHK Leases became less valuable after the transfer date because of the global shutdown at the beginning of the COVID pandemic is irrelevant to the Court's objective to value the HHK Liens as of the transfer dates.

E. Ascertainable Value of Property

The Secured Ad Hoc Group's fourth § 550(a) argument is that the Court should return the property, not the value of the property transferred, when the value of the property cannot be easily determined. (ECF No. 2786 at 28). Various courts have held that the default remedy is to return the property, and value should not be awarded if it cannot be easily or readily determined. *See, e.g., USAA Fed. Sav. Bank v. Thacker (In re Taylor),* 599 F.3d 880, 892 (9th Cir. 2010) ("Where the value of the property cannot be easily or readily determined—as is the case here—the correct remedy is to return the property, not award an estimate of the value of the property." (citing 5 COLLIER ON BANKRUPTCY ¶ 550.02(3)(a) (15th ed. re 2008))); *Island Leasing, LLC* *v. Kane*, No. CV 19-00655 LEK-WRP, 2020 WL 6326101, at *7 (D. Haw. Oct. 28, 2020); *Bishop*, 2017 WL 3623917, at *7; *Redeye II, LLC v. MorrisAnderson & Assoc. Ltd. (In re Swift Air, L.L.C.),* 624 B.R. 694, 719 (D. Ariz. 2020); *see In re Lee (Lee v. Walro)*, 567 B.R. 802, 809 (S.D. Ind. 2017) ("Ordering a return of the property itself is most appropriate when: (a) the record is devoid of evidence on the property's value, or (b) there is conflicting evidence on the value of the transferred property." (citing *Trout*, 609 F.3d at 1112)).

There are instances where it is difficult or impossible to return the property and the Court should order the return of the value of the property transferred:

> [A]llowing the Trustee to recover the pre-transfer value of the property is most appropriate when: (a) the property is unrecoverable, (b) the property's value has been diminished by conversion or depreciation since the transfer, or (c) the value of the property is readily determinable and a monetary award would work a savings for the estate.

Walro, 567 B.R. at 809. As noted above, the value of the collateral sharply declined after the Petition Date. The collateral became encumbered by the DIP lien. The collateral was included in the $85 million unencumbered value of the Estate. To pursue a § 550(a) action, the Creditor Representative's only option is to seek the value of the property. Additionally, when the value of the property is ascertainable (whether easy or not), the Court acts within its discretion to award the value of the property. In any event, as set forth below in Section II.B, the value of the transferred HHK Liens is readily ascertainable. But even if that were not true, the Court is not required order the return of the property simply because it may be difficult to ascertain the value; if value is ascertainable, nothing in § 550(a) prohibits the Court from awarding that value. It would be an injustice for the Court to shy from the labor of determining the value of the property transferred because it may not be easy.

F. Proper Defendant Preserved

The Secured Ad Hoc Group once again argues that the Creditor Representative's § 550 Cause of Action is worthless because there is no creditworthy defendant. (ECF No. 2786 at 41–43). Consistent with its previous ruling on this issue, the Court declines to follow the Secured Ad Hoc Group's reasoning. (*See* ECF No. 2627 at 18–21). The Lien-Related Litigation does not require that any party actually augment the assets to be distributed; this carefully negotiated distribution scheme only requires a valuation of the hypothetical Causes of Action. Of course, if the Creditor Representative truly could not proceed against any defendant, even hypothetically, the § 550 Cause of Action would be worth $0. But the Creditor Representative could hypothetically recover against Wilmington Trust as the Successor Collateral Trustee of the Senior Secured Notes. Settlements which the Secured Ad Hoc Group alleges the Final DIP Order authorized do not change this outcome. (ECF No. 2627 at 18–21).

Moreover, the Creditor Representative could hypothetically proceed against the Senior Secured Noteholders themselves.[19] Section 550(a) permits the trustee to

[19] The Secured Ad Hoc Group argues that the Creditor Representative cannot recover from anyone else because the Collateral Trust Agreement does not require the Senior Secured Noteholders to indemnify the Collateral Trustee for claims against the trust's assets. (ECF No. 2786 at 42). But § 550(a) does not require that the Senior Secured Noteholders be indemnitors

recover against "the entity for whose benefit such transfer was made . . . ." The Correction Affidavits were made for the benefit of the Senior Secured Noteholders. The Plan provides the Creditor Representative with the "standing to pursue, prosecute and sole authority to settle all Causes of Action referenced and asserted in the Lien Challenge Complaint . . . ." (ECF No. 1205 at 27). Causes of Action include "claims pursuant to section[] . . . 550 . . . of the Bankruptcy Code . . . ." (ECF No. 1205 at 6). Thus, the Creditor Representative has the standing to pursue a § 550 claim so long as it is "referenced and asserted in the Lien Challenge Complaint." In the Lien Challenge Complaint, the Debtors seek to "recover, for the benefit of the estates, the property transferred and avoided under sections 544, 547, and 548 from the initial transferee of such transfer or *the entity for whose benefit such transfer was made*." (Adv. Pro. No. 20-3057, ECF No. 1 at 6) (emphasis added). In the prayer for relief of the Lien Challenge Complaint, the Debtors seek "a judgment finding that all transfers described in this Complaint are avoided and the Debtors are thus entitled to recovery under § 550 . . . ." (Adv. Pro. No. 20-3057, ECF No. 1 at 6). The Creditor Representative may pursue its hypothetical § 550 claim against the Senior Secured Noteholders when the Debtors originally sought to recover from "the entity for whose benefit such transfer was made." Although the Senior Secured Noteholders are not presently named parties, the deadline for naming additional persons for a § 550 recovery is within one year of the date of the avoidance of the transfer. 11 U.S.C. § 550(f)(1). Because the

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of the Collateral Trustee; the Creditor Representative could hypothetically proceed against them directly as intended beneficiaries of the avoidable transfer.

avoidance deadline is being determined on entry of the judgment in this proceeding, the recovery against the Senior Secured Noteholders may be brought for the next year.[20]

II. VALUATION ANALYSIS

Having determined that: (i) the Creditor Representative's §§ 547 and 550 actions are viable; and (ii) it is appropriate to return the value of the property transferred, the Court must value the property transferred. The trading data of secured and unsecured notes at the time of the transfers is the best evidence of the value of the property transferred.

A. Reliability of Trading Data

As stated by the Secured Ad Hoc Group's expert, Professor Fischel, "courts should rely more heavily on market prices when resolving validation disputes than has occurred to date." Daniel R. Fischel, *Market Evidence in Corporate Law*, 69 U. CHI. L. REV. 941,

[20] In an earlier supplemental brief, the Secured Ad Hoc Group states that "the Plan and Disclosure Statement . . . approved by the Court confirm that no one could add defendants to the Lien Related Litigation . . . ." (ECF No. 2540 at 10). The Ad Hoc Group then cites to the Disclosure Statement and an earlier version of the Plan which contains language absent from the final version of the Plan. (ECF No. 2540 at 10–11). Based on this inaccurate citation, the Secured Ad Hoc Group concludes that "there is no longer any viable [value cause of action] against any [Senior Secured Notes] holder." (ECF No. 2540 at 11). The Plan's interpretation provisions clarify that the Plan controls over the Disclosure Statement, and subsequent versions of the Plan, including the version the Court references in the Confirmation Order, obviously control over earlier versions. (ECF Nos. 1205 at 15; 1212 at 1). The Plan does not enjoin the Creditor Representative from pursuing a hypothetical § 550 action against the Senior Secured Noteholders.

941 (2002) [hereinafter *Market Evidence*]. Indeed, "market prices, when observable, should be the dominant valuation approach in corporate transactions and litigation [because of the approach's] conceptual clarity, simplicity, and objectivity." *Id.* at 942.

Fair market value is "the price at which an asset would change hands in a transaction between a willing buyer and willing seller when neither is under any compulsion to buy or sell and both are reasonably informed." *Id.* Generally, this is what a market price represents so long as there is no compulsion and parties possess reasonable information. *Id.* Market prices lend further credibility through their objectivity: buyers and sellers in open markets will generally not artificially set prices too low or too high. *Id.* at 943. Market professionals with their wealth at stake create market prices, and their opinions are more reliable than the opinions of market professionals without their wealth at stake (such as expert witnesses in litigation). *Id.* at 944–45.

The parties have presented varying valuations to the Court. These valuations focus on the value of the collateral securing the HHK Liens (*i.e.*, the value of the HHK Leases themselves). But this is the wrong focus. The Court is endeavoring to value the property transferred. The HHK *Liens*, not the HHK *Leases*, were transferred via the Correction Affidavits. The market prices of the secured notes compared to the unsecured notes is the best method to value the HHK Liens. The market valuation data is what willing buyers and willing sellers, who acted without compulsion and were, by all accounts, reasonably informed, paid for owning a portion of Sanchez's secured and unsecured debts. This method of valuation avoids skewing the valuation by "eliminating, or at least greatly reducing, the role of paid experts in litigation." *Id.* at 944.

Another of the Secured Ad Hoc Group's expert witnesses—Dr. J.B. Heaton—wrote two articles in 2019 discussing the trading prices of Sanchez's debt. (ECF No. 2742 at 280–81). Dr. Heaton felt comfortable enough with the market for Sanchez's debt to utilize trading prices in concluding that Sanchez was insolvent. (ECF No. 2742 at 280–81). This further bolsters the quality of trading prices as a reliable measure of the value of the property transferred.

Mr. Scruton, an expert for the Creditor Representative, identified five days in which buyers and sellers exchanged the Senior Secured Notes between June 27, 2019 and July 24, 2019. (ECF No. 2696-38). According to Mr. Scruton, the prices for the Senior Secured Notes "were relatively stable" throughout June and July 2019. (ECF No. 2721 at 179). Indeed, the data shows that prices for the Senior Secured Notes varied from a low point of \$0.7425 per dollar of face value to \$0.8700 per dollar of face value in June and July 2019. (ECF No. 2696-38). Between June 27, 2019 and July 24, 2019, the prices varied only from \$0.7425 per dollar to \$0.8200 per dollar across 12 trades over the course of five trading days. (ECF No. 2696-38). The volume of trades during those five trading days totals approximately \$32 million. (ECF No. 2696-38). Regarding the 6.125% Unsecured Notes, prices varied from \$0.0400 per dollar to \$0.0662 per dollar across 27 trades over the course of seven trading days. (ECF No. 2696-38). The volume of trades during those seven trading days totals approximately \$29 million. (ECF No. 2696-38). Regarding the 7.75% Unsecured Notes, prices varied from \$0.0498 per dollar to \$0.0650 per dollar across 17 trades over the course of five trading days. (ECF No. 2696-38). The volume of trades during those five trading days totals approximately $11.5 million. (ECF No. 2696-38).

The Court has no evidence that the market knew of the deficiencies in the Deeds of Trust pertaining to the HHK Leases. On the contrary, Sanchez's 2018 10-K report states that the Senior Secured Notes are "secured by first-priority liens on substantially all of the Company's and any subsidiary guarantor's assets." (ECF No. 2340-10 at 132). Dr. Heaton agreed that "trades of the secured notes during the summer of 2019 were premised on the notion that the liens securing those notes were properly perfected." (ECF No. 2742 at 282–83). Professor Fischel likewise was "not surprised" about the different trading prices around the time the Correction Affidavits were filed, and he agreed that this difference was attributable to the priority the market believed the Senior Secured Noteholders had over the Guarantors' assets. (ECF No. 2720 at 185–86). The Court accepts this conclusion.

The Secured Ad Hoc Group argues the trading data analysis cannot be the basis for an award of value because it is not a reliable value of the HHK Liens. (ECF No. 2786 at 34). But at "the most basic level, the market price of an asset satisfies the willing buyer/willing seller standard and thus reflects the fair market value of the asset being traded." *Market Evidence* at 944. Here, there is no evidence that elements of the market were acting under duress or without reasonable information. Moreover, the Court is not persuaded that the market for Sanchez's debt is too illiquid to be a reasonable measure of value. (*See* ECF No. 2696-33 at 6). Indeed, it may be the case that "less liquid but more informed markets may produce more reliable market prices." *Market Evidence* at 945.

In any event, Mr. Scruton credibly testified that "there was some liquidity in that market that I could rely on." (ECF No. 2720 at 99).

B. Trading Data Value

The market valuation of Sanchez's enterprise value when the Correction Affidavits were filed was $477.5 million. This is calculated by multiplying Sanchez's debts ($500 million in secured debt and $1.750 billion in unsecured debt) by the amounts at which they traded ($0.78 per dollar and $0.05 per dollar, respectively) and adding the products together.[21]

Senior Secured Notes	$500,000,000
Unsecured Notes	$1,750,000,000
Total Debt	**$2,250,000,000**
Senior Secured Notes	$390,000,000
Unsecured Notes	$87,500,000
Implied Enterprise Value	**$477,500,000**

If all of Sanchez's secured and unsecured debt ($2.250 billion) were pari passu (which would be the effect of treating the Senior Secured Notes as unsecured following avoidance of the Correction Affidavits), Sanchez's pari passu debt would have traded at $0.2122 per dollar in June and July of 2019. At that trade amount, Sanchez's $500 million secured debt would have had a $106.10 million market value and Sanchez's $1.750 billion unsecured debt would have had a $371.35 million market value.

[21] The parties do not dispute that the Credit Facility would get paid in full in any scenario.

Enterprise Value	$477,500,000
Total Debt	$2,250,000,000
Enterprise Value to Total Debt	**21.22%**

Senior Secured Notes	$106,111,111
Unsecured Notes	$371,388,889
Pari Passu Hypothetical Market Value	**$477,500,000**

The value of the Senior Secured Noteholders' Liens is the difference between the secured debt actual value (*i.e.*, the market's expectation: the value of the Senior Secured Notes with perfected liens) and the pari passu secured debt value (the value of the Senior Secured Notes when given the same treatment as the 7.75% Unsecured Notes and the 6.125% Unsecured Notes). Thus, the value of the Senior Secured Noteholders' liens is approximately $284 million.

Historic Market Value	$390,000,000
Hypothetical Market Value	$106,111,111
Difference between Market and Hypothetical Values	**$283,888,889**

The Senior Secured Noteholders' liens cover more than just the HHK Leases. To determine the value of the of the Senior Secured Noteholders' liens on the HHK Leases, the Court multiplies the value of the Senior Secured Noteholders' liens by the percentage of the liens comprised of the HHK Leases. The Court is persuaded by Mr. Terry's thorough analysis that the HHK Leases cover 74% of the Guarantors' total assets.

(*See* ECF No. 2696-29 at 18).[22] Thus, the value of the transfer of the liens on the HHK Leases is approximately $210 million.

Difference in values	$283,888,889
HHK Lease % compared to all Leases	74.0%
Value of preferential transfer (recording Correction Affidavits)	**$210,077,778**

But the Court's analysis is not done. The Secured Ad Hoc Group argues that the $210 million figure cannot be an accurate value of the property transferred because the Senior Secured Noteholders retained liens on the wells in the HHK Leases and in the hydrocarbons once they were extracted from wells on the HHK Leases. (*See* ECF No. 2312 at 56-63). After taking those liens into account, the Secured Ad Hoc Group contends that the avoidable portion of the Senior Secured Noteholders' liens is between "5.8% and 22% of the total collateral value." (ECF No. 2786 at 36). The Senior Secured Noteholders did not have perfected liens on extracted hydrocarbons or real property liens on the wells, but they did have perfected liens on personal property (exclusive of extracted hydrocarbons) associated with the HHK Leases.

[22] Mr. Terry calculates the midpoint going concern valuation of just the HHK Leases as $326.3 million and the midpoint going concern valuation of the entire company at $440.4 million. $326.3 million / $440.4 million = 74%. (ECF No. 2696-29 at 18). Under Mr. Young's rebuttal report, he determines that the "Challenged Leases" under the "Lease Method," which assumes that "all value on the Challenged Leases is unencumbered even including wells that are accurately listed on Exhibit A," are worth 63.1% of the total enterprise value. (ECF No. 2700-50 at 6–7).

(1) Liens on Real Property

The Secured Ad Hoc Group argues that the Senior Secured Noteholders obtained real property liens on the wells located in the HHK Leases, and they maintained these unavoidable liens even if the Senior Secured Noteholders' liens on the HHK Leases themselves are avoidable. (ECF Nos. 2312 at 56–62; 2786 at 36–40). In particular, the Secured Ad Hoc Group alleges that the Deeds of Trust not only grant liens in the HHK Leases but also grant individual liens on the wells listed on Exhibit A in each Deed of Trust. (ECF Nos. 2312 at 56; 2786 at 40). The argument is fundamentally flawed. Paragraph E in each Deed of Trust is the granting paragraph associated with oil and gas wells. Paragraph E limits the grant to property "found in, on, or under any of the Subject Interests." (ECF No. 1703-4 at 4). The Subject Interests are the mineral leases. The Subject Interests are not the wells themselves as the wells cannot both be the Subject Interests and be "in, on, or under" the Subject Interests. Paragraph E, the only paragraph in the granting clauses to discuss wells, does not grant real property liens on wells that are located within the Subject Interests, especially when the liens on the Subject Interests are avoidable.

The Secured Ad Hoc Group also argues that Exhibit A grants real property liens on the wells. (ECF No. 2786 at 37–38). The Introduction to Exhibit A states that "well names and well arabic numbers are generally for descriptive purposes." (ECF No. 1703-4 at 23). This is not an express grant. *See Anderson v. Tall Timbers Corp.,* 378 S.W.2d 16, 23 (Tex. 1964). ("There was no express grant here. The only reference in the deed to the easement tract is in the metes and bounds description of the land conveyed . . . . This reference, as well as the reference in the deed to the subdivision plat, was patently for descriptive purposes only." (citing *City of Hous. v. Cyrus W. Scott Mfg. Co.*, 45 S.W.2d 270 (Tex. App.—El Paso 1931, writ ref'd))). While the Introduction states that "[t]his instrument covers the Grantor's entire interest in each of the land parcels, mineral servitudes, mineral leases, mineral royalties, and other mineral rights described in Exhibit A," this is not an express grant of real property liens on wells either. The Deeds of Trust do not grant real property liens on wells merely because they are listed in Exhibit A.

(2) Liens on Personal Property

The Secured Ad Hoc Group also argues that the Senior Secured Noteholders have liens on the Guarantors' personal property from the Deeds of Trust and the Security Agreement. (ECF No. 2312 at 56–63). If the Senior Secured Noteholders have liens on the Guarantors' personal property, including hydrocarbons extracted from the HHK Leases, the value of that personal property should not count towards the value of the property transferred under § 550. (ECF No. 2786 at 36).

At the outset, the Court rejects the Secured Ad Hoc Group's contention that the Lien Challenge Complaint does not challenge personal property liens. (ECF No. 2786 at 37). The Lien Challenge Complaint seeks to avoid transfers of "Shared Collateral": the prayer for relief requests a "finding that any purposed liens securing the Shared Collateral . . . are avoidable . . . ." (Adv. Pro. No. 20-3057, ECF No. 1 at 23). Among other things, Shared Collateral includes: (i) the Guarantors' oil and natural gas properties; and (ii) "substantially all of [the Guarantors'] other material personal property." (Adv. Pro. No. 20-3057, ECF No. 1 at 9–10).

The Creditor Representative is not barred from seeking to avoid liens on personal property because such a Cause of Action is absent from the Lien Challenge Complaint.

"In Texas, oil and gas, while in the ground, is real property, but when produced becomes personal property." *DJH Minerals, LP v. SN Catarina, LLC (In re Sanchez Energy Corp.)*, No. AP 20-03194, 2021 WL 3630000, at *6 (S.D. Tex. July 19, 2021) (quoting *Am. Nat'l Bank v. United States, (In re Hawn)*, 149 B.R. 450, 454 (Bankr. S.D. Tex. 1993), *aff'd in part sub nom. Hawn v. Am. Nat. Bank.*, No. 93-CV-102, 1996 WL 142521 (S.D. Tex. 1996)). The Texas Uniform Commercial Code generally governs rights and interests in personal property. *Id.* at *7. The UCC defines "as-extracted collateral" to be "(A) oil, gas, or other minerals that are subject to a security interest that: (i) is created by a debtor having an interest in the minerals before extraction; and (ii) attaches to the minerals as extracted; or (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction." Tex. Bus. & Com. Code § 9.102(a)(6); *see also id.* cmt. 4(c) ("Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article.").

To perfect a security interest via a UCC filing, "the office in which to file a financing statement to perfect the security interest or agricultural lien is: (1) the office designated for the filing or recording of a record of a mortgage on the related real property, if: (A) the collateral is as-extracted collateral . . . ." *Id.* at § 9.501.

Such a filing must also "provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property . . . ." *Id.* at § 9.502(b)(3). To perfect a lien on as-extracted hydrocarbons with UCC filings, the lien must be recorded in the county in which the real property is located. *See Sanchez*, 2021 WL 3630000, at *8 ("To perfect a security interest via UCC filings, Plaintiffs were required to file a financing statement in "the office designated for the filing or recording of a record of a mortgage on the related real property." 34 Tex. Bus. & Com. Code § 9.501(a)(1)(A). Here, that would have been Dimmit, Webb, and LaSalle counties in Texas."). Thus, to perfect a security interest in as-extracted collateral, perfecting documentation must have been in the counties where the HHK Leases are located and must have been sufficient to provide constructive notice of an interest in real property.

The UCC-1s do not appear to have been filed in any county, but instead with the Secretary of State of Texas and the Delaware Department of State. (*See* ECF Nos. 1702-2-1702-11). In addition, this Court already ruled in Phase 2 that a bona fide purchaser would not be on inquiry notice of the purported liens on the HHK Leases as listed in the Deeds of Trust because the HHK Leases are not sufficiently referenced in the Deeds of Trust. Neither the UCC-1s nor the Deeds of Trust give inquiry notice that the Senior Secured Noteholders had perfected liens in extracted hydrocarbons, and so the value of extracted hydrocarbons should not be excluded from the amount to be allocated to the Creditor Representative.[23]

The Creditor Representative admits that the Senior Secured Noteholders would have personal property liens on the HHK Leases, and alleges, without proof, that the value of that personal property is $13 million. (ECF Nos. 2310 at 11, 39; 2785 at 33, 36).[24] The Court is not aware what value the Secured Ad Hoc Group associates with the personal property liens excluding extracted hydrocarbons. Without evidence from the Secured Ad Hoc Group on the value of the personal property liens, the Court finds that there is no evidence of the value of the personal property. Because the Creditor Representative's position means that up to $13 million in value is undisputed, the Court deducts $13,000,000 from the $210,077,778 to be allocated to the Creditor Representative for a net of $197,077,778.

III. VALUATION CALCULATION

Having valued the Creditor Representative's § 550 Cause of Action, the Court must now allocate the Post-Effective Date Equity Distribution, which is 80% of

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[23] This outcome avoids the troubling situation in which a producer would have no incentive to bring hydrocarbons to the surface when a lienholder has rights to those hydrocarbons as soon as they are extracted although it had no rights prior to extraction. When a lien on a mineral lease is avoided and returned to the estate, the estate would assume the rights and privileges of the leaseholder.

[24] The Creditor Representative also alleges, without citation, that its experts have allocated $13 million to the DIP Lenders on account of personal property associated with the HHK Leases (apparently excluding extracted hydrocarbons). (ECF No. 2310 at 39, 45). Without demonstrating precisely how this value has been allocated, the Court will not penalize the DIP Lenders.

Mesquite's stock. The Court discussed the mechanics of the Post-Effective Date Equity Distribution in a previous opinion:

> Although the DIP Lenders have DIP Claims of at least $150 million, they stipulated to value their collateral at $85 million. The DIP Lenders have an $85 million secured claim. In determining their share of the Post-Effective Date Equity Distribution, the DIP Lenders will start with $85 million. Thus, they will receive the full value of their secured claim in the Reorganized Debtor's stock—an outcome for which they bargained. . . . At most, the DIP Lenders will get $50 million (50% of a maximum $100 million of proceeds recovered by Avoidance Actions against parties other than the Prepetition Secured Parties) of value for purposes of distributing shares on account of the $65 million of unsecured priority DIP claims. If Avoidance Actions against parties other than the Prepetition Secured Parties generate no proceeds, the DIP Lenders will receive (i) no stock on account of the unsecured portion of the priority DIP Claims; and (ii) a pro rata amount of stock on account of the $85 million Enterprise Value. The actual percentages of the Post-Effective Date Equity Distribution remain to be determined.

(ECF No. 2627 at 14–15).

The value of the Creditor Representative's § 550 Cause of Action is $197,077,778. In addition, the parties settled a claim against former Sanchez insiders for $2 million. (*See* ECF Nos. 2533 at 11; 2650). The DIP Lenders maintain an $85 million credit from the stipulated Enterprise Value. The Creditor

Representative is allocated 69.73% of Mesquite's stock. The DIP Lenders are allocated 30.27% of Mesquite's stock.

Recovery	**Allocated to Classes 4 and 5 Holders**	**Allocated to Class 3 Holders**	**Total**
Value of Section 550 Causes of Action	$197,077,778	$0	$197,077,778
Stipulated Value of Enterprise	$0	$85,000,000	$85,000,000
Value of Other Causes of Action	$1,000,000	$1,000,000	$2,000,000
Total Values	$198,077,778	$86,000,000	$284,077,778
Allocation	69.73%	30.27%	100.00%

The Court notes that the Creditor Representative represents more than the holders of the 7.75% Unsecured Notes and the 6.125% Unsecured Notes. The total of estimated Class 5 Claims in the Disclosure Statement is $1,815,300,000. This includes both the $1,750,000,000 represented by the unsecured notes and other general unsecured creditors. The difference between $1,815,300,000 and $1,750,000,000 is $65,300,000.

Although the Court does not today determine whether $65,300,000 is precisely correct, the Court utilizes that estimate to demonstrate the effect of this opinion on the holders of claims and their successors and assigns.

There are also the Class 4 Claims of the holders of the Senior Secured Notes. As set forth below, those total $463,900,000.

The holders of the Class 4 Claims filed a proof of claim seeking $500,000,000 plus interest and other fees and charges. (Claim No. 216). The Official Creditors Committee objected to that claim. (ECF No. 1027). The determination of the amount of the Allowed Class 4 Claim is part of the Lien-Related Litigation. (*See* ECF No. 1205 at 10). A significant portion of the objection concerns whether the unliquidated make-whole claims should be allowed. (*See* ECF No. 1027 at 9–13). In light of *Ultra*, that part of the claim must be disallowed as disallowed unmatured interest under § 502(b)(2). *Ultra Petroleum Corp. v. Ad Hoc Comm. Of Opco Unsecured Creditors (In re Ultra Petroleum Corp.)*, 51 F.4th 138 (5th Cir. 2022), *cert. denied sub nom. Ultra Petroleum Corp. v. Ad Hoc Comm. of Opco Unsecured Creditors*, 143 S. Ct. 2495 (2023). The Committee also seeks an offset for adequate protection payments made to the holders of Class 4 Claims. (*See* ECF No. 1027 at 13). That objection ignores the fact that the assets securing the $500,000,000 claim substantially declined in value after the Petition Date. There is no question that the adequate protection payments are not subject to disgorgement. *See* 11 U.S.C. § 507(b). But there are three adjustments that must be made to the $500,000,000 claim. First, $50,000,000 of the claim was "rolled up" into the DIP Loan. There should not be a double recovery of the rolled-up amount. Second, the claim must be increased by pre-petition contractual interest totaling $17,700,000. Finally, the claim must be decreased by $3,800,000 of unearned original issue discount. (*See* ECF No. 2348-41 at 24). That leaves an Allowed Class 4 Claim of $463,900,000:

Principal	$ 500,000,000
Unaccrued original issue discount as of the Petition Date	$ (3,800,000)
Accrued interest through Petition Date	$17,700,000
DIP roll-up	$ (50,000,000)
Senior Secured Noteholders' claim	**$ 463,900,000**

The deadline for objecting to claims has passed. (ECF No. 1205 at 6, 38). Based on the $463,900,000 of Senior Secured Noteholders Claims, the $1,750,000,000 of unsecured noteholder claims, and the $65,300,000 of estimated other general unsecured claims, any award to the holders of unsecured claims would be allocated:

Claimants	**Claim Amount**	**Percentage Allocation**
Unsecured Noteholders	$ 1,750,000,000.00	76.78%
Senior Secured Noteholders	$ 463,900,000.00	20.35%
Other Unsecured Holders	$ 65,300,000.00	2.87%
Totals	$ 2,279,200,000.00	100.00%

Although the allocation between the holders of Class 3 versus Classes 4 and 5 are fixed by this opinion, the allocations within Classes 4 and 5 will be adjusted by the Reorganized Debtor based on the actual amount of other unsecured claims. Applying these estimated prorations, the actual distribution of equity would be:

Claimants	Equity Allocation
DIP Lender Allocation	30.27%
Unsecured Noteholder Allocation	53.54%
Senior Secured Noteholder Allocation	14.19%
Other Unsecured Holder Allocation	2.00%
Totals	100.00%

CONCLUSION

A separate order will be entered.

SIGNED 08/03/2023

/s/ Marvin Isgur
Marvin Isgur
United States Bankruptcy Judge

APPENDIX E

Title 11. Bankruptcy
Chapter 5. Creditors, the Debtor, and the Estate
Subchapter III. The Estate

§ 547. Preferences

(a) In this section–

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, include-ing any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property–

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made–

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if–

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer–

(1) to the extent that such transfer was–

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the

ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was–

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor–

(A) to the extent such security interest secures new value that was–

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 30 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor–

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of–

(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600; or

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)(1) For the purposes of this section–

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made–

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of–

(i) the commencement of the case; or

(ii) 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2597 ; Pub. L. 98–353, title III, §§310, 462, July 10, 1984, 98 Stat. 355, 377; Pub. L. 99–554, title II, §283(m), Oct. 27, 1986, 100 Stat. 3117 ; Pub. L. 103–394, title II, §203, title III, §304(f), Oct. 22, 1994, 108 Stat. 4121, 4133; Pub. L. 109–8, title II, §§201(b), 217, title IV, §§403, 409, title XII, §§1213(a), 1222, Apr. 20, 2005, 119 Stat. 42, 55, 104, 106, 194, 196; Pub. L. 116–54, §3(a), Aug. 23, 2019, 133 Stat. 1085 ; Pub. L. 116–260, div. FF, title X, §1001(g)(1), (2)(A), Dec. 27, 2020, 134 Stat. 3219, 3220.)

APPENDIX F

Title 11. Bankruptcy
Chapter 5. Creditors, the Debtor, and the Estate
Subchapter III. The Estate

§ 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily–

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which–

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section–

(A) "value" means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant or financial participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;

(D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and

(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

(3) In this section, the term "charitable contribution" means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution–

(A) is made by a natural person; and

(B) consists of–

(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

(ii) cash.

(4) In this section, the term "qualified religious or charitable entity or organization" means–

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if–

(A) such transfer was made to a self–settled trust or similar device;

(B) such transfer was by the debtor;

(C) the debtor is a beneficiary of such trust or similar device; and

(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by–

(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2600 ; Pub. L. 97–222, §5, July 27, 1982, 96 Stat. 236 ; Pub. L. 98–353, title III, §§394, 463, July 10, 1984, 98 Stat. 365 , 378; Pub. L. 99–554, title II, §283(n), Oct. 27, 1986, 100 Stat. 3117 ; Pub. L. 101–311, title I, §104, title II, §204, June

25, 1990, 104 Stat. 268 , 269; Pub. L. 103–394, title V, §501(b)(5), Oct. 22,1994, 108 Stat. 4142 ; Pub. L. 105–183, §§2, 3(a), June 19, 1998, 112 Stat. 517 ; Pub. L. 109–8, title IX, §907(f), (o)(4)–(6), title XIV, §1402, Apr. 20, 2005, 119 Stat. 177 , 182, 214.)

APPENDIX G

Title 11. Bankruptcy
Chapter 5-Creditors, the Debtor, and the Estate
Subchapter III-The Estate

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate-

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of-

(1) two years after the date of the transfer sought to be avoided; or

(2) the time the case is closed or dismissed.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2601; Pub. L. 98–353, title III, §464, July 10, 1984, 98 Stat. 379; Pub. L. 99–554, title II, §283(o), Oct. 27, 1986, 100 Stat. 3117; Pub. L. 103–394, title V, §501(d)(18), Oct. 22, 1994, 108 Stat.4146; Pub. L. 109–8, title XII, §1214, Apr. 20, 2005, 119 Stat. 195.)

APPENDIX H

Title 11. Bankruptcy
Chapter 5. Creditors, the Debtor, and the Estate
Subchapter III. The Estate

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from–

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section[1] (a)(2) of this section from–

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) If a transfer made between 90 days and one year before the filing of the petition–

(1) is avoided under section 547(b) of this title; and

(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

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[1] *So in original. Probably should be "subsection".*

the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of–

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, "improvement" includes–

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of–

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2601 ; Pub. L. 98–353, title III, §465, July 10, 1984, 98 Stat. 379 ; Pub. L. 103–394, title II, §202, Oct. 22, 1994, 108 Stat. 4121.)

APPENDIX I

Title 11. Bankruptcy
Chapter 5. Creditors, the Debtor, and the Estate
Subchapter III. The Estate

§ 551. Automatic preservation of avoided transfer

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2602.)

APPENDIX J

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Entered 04/30/2020]

Case No. 19-34506 (MI)
Chapter 11
(Jointly Administered)

IN RE: SANCHEZ ENERGY CORPORATION, *et al*.,[1]

Debtors.

ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF SANCHEZ ENERGY CORPORATION AND ITS DEBTOR AFFILIATES

Upon the filing by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") of the *Second Amended Joint Chapter 11 Plan of Reorganization of Sanchez Energy Corporation and its Debtor Affiliates* [Docket No. 1205] on April 30, 2020

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sanchez Energy Corporation (0102); SN Palmetto, LLC (3696); SN Marquis LLC (0102); SN Cotulla Assets, LLC (0102); SN Operating, LLC (2143); SN TMS, LLC (0102); SN Catarina, LLC (0102); Rockin L Ranch Company, LLC (0102); SN EF Maverick, LLC (0102); SN Payables, LLC (0102); SN UR Holdings, LLC (0102). The location of the Debtors' service address is 1000 Main Street, Suite 3000, Houston, Texas 77002.

(the "Plan"),[2] a copy of which is attached as Exhibit 1, which Plan amends and replaces the previously filed plans of reorganization at Docket Nos. 1119 and 1149; and this Court previously having conditionally approved the *Disclosure Statement for the Debtors' Joint Chapter 11 Plan of Reorganization of Sanchez Energy Corporation and its Debtor Affiliates* [Docket No. 1124] (the "Disclosure Statement") and the solicitation procedures related to the Disclosure Statement and the solicitation of acceptances and rejections of the Plan, in each case pursuant to the *Order Approving Debtors' Emergency Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement; (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization; (III) Approving the Form of Ballot, and Notices in Connection Therewith; (VI) Scheduling Certain Dates With Respect Thereto, and (V) Granting Related Relief* [Docket No. 1118], entered on April 9, 2020 (the "Solicitation Procedures Order"); and the Debtors having served the Disclosure Statement, ballots for holders of Claims entitled to vote on the Plan, and all required notices in compliance with the requirements and procedures set forth in the Solicitation Procedures Order, *see Affidavit Re: Mailings for the Period from April 10, 2020 through April 16, 2020* [Docket No. 1142]; and the Debtors having filed the documents comprising the Plan Supplement on April 25, 2020 and April 29, 2020 [Docket Nos. 1148, 1194, 1196, 1197]; and this Court having considered the record in these chapter 11 cases, the creditor support for the Plan evidenced in the *Declaration of Craig Johnson of*

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[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Joint Chapter 11 Plan of Reorganization of Sanchez Energy Corporation and its Debtor Affiliates (the "Solicitation and Voting Declaration") [Docket No. 1181], filed on April 29, 2020, the compromises and settlements embodied in and contemplated by the Plan, the briefs and arguments regarding Confirmation of the Plan, and the evidence regarding Confirmation of the Plan; and this Court having found that notice and opportunity for any party in interest to object to Confirmation has been adequate and appropriate as to all parties affected by the Plan and the transactions contemplated thereby; and a hearing on Confirmation of the Plan and the adequacy of the Disclosure Statement having commenced on April 30, 2020 (the "Combined Hearing"); and this Court having considered the sworn testimony of the witnesses proffered or called at the Combined Hearing, the exhibits admitted into evidence at the Combined Hearing, the arguments of counsel and other parties-in-interest presented at the Combined Hearing, and the objections filed or asserted with respect to final approval of the Disclosure Statement and/or Confirmation of the Plan (the "Objections"); and after due deliberation, it is HEREBY FOUND AND ORDERED THAT:

1. The Disclosure Statement contains "adequate information" within the meaning of, and is approved on a final basis pursuant to, section 1125 of the Bankruptcy Code.

2. As described in and evidenced by the Solicitation and Voting Declaration, transmittal and service of the Solicitation Packages (as defined in the Solicitation Procedures Order) (collectively, the

"Solicitation") was timely, adequate, appropriate, and sufficient under the circumstances. The Solicitation (a) was conducted in good faith, and (b) complied with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Solicitation Procedures Order, and all other applicable non-bankruptcy rules, laws, and regulations applicable to the Solicitation.

3. Each of the Debtors has met the burden of proving each element of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence. The Plan, including (a) all of the modifications to the Plan filed with this Court prior to or during the Combined Hearing and (b) all documents incorporated into the Plan through the Plan Supplement (including the final forms thereof to be filed on or before the Effective Date), satisfies all of the requirements of and is confirmed pursuant to section 1129 of the Bankruptcy Code.

4. Pursuant to a settlement between the Debtors, the DIP Lenders, the Creditors' Committee and the Unsecured Noteholder Ad Hoc Group (the "Settling Parties") stated on the record at the Combined Hearing, the Settling Parties stipulate for settlement purposes only that the enterprise value of the Reorganized Debtors on a going concern basis shall be deemed to be $85 million (the "Enterprise Value") for all purposes of confirmation, including section 1129 of the Bankruptcy Code. The Enterprise Value does not include the value of Debtors' Causes of Action, and the Enterprise Value (excluding the value of such Causes of Action) shall be binding for purposes of the Lien-Related Litigation.

5. Any and all Objections to the final approval of the Disclosure Statement and/or Confirmation of the Plan that have not been withdrawn or resolved prior

to or during the Combined Hearing are hereby overruled.

6. The documents contained in the Plan Supplement are an integral part of the Plan. The Debtors and the Reorganized Debtors (in each case, as applicable) are authorized to take all actions required under the Plan and the Plan Supplement documents to effectuate the Plan, including, but not limited to, (a) the implementation of the Restructuring Transactions; (b) the selection of the directors and officers for the Reorganized Debtors; (c) the adoption of the Management Incentive Plan, if any, by the Reorganized SN Board pursuant to Article IV.L of the Plan; (d) the issuance and distribution of the New Common Stock pursuant to Article IV.C of the Plan; (e) the entry into the New Organizational Documents pursuant to Article IV.I of the Plan; (f) the entry into the New Executive Employment Agreements; (g) the retention and employment by the Reorganized Debtors of certain members of the Debtors' current workforce and the payment of severance consistent with Article IV.K of the Plan; (h) the assumption of the D&O Liability Insurance Policies; and (i) the assumption of the Indemnification Obligations to indemnify any Indemnified Parties with respect to the Exculpated Claims.

7. The terms of the Plan, the Plan Supplement, and any exhibits thereto are incorporated herein by reference, and are an integral part of this order (the "Confirmation Order"). The terms of the Plan, the Plan Supplement, any exhibits thereto, and all other relevant and necessary documents to effectuate the Plan shall be effective and binding as of the Effective Date. The failure to specifically include or refer to any particular article, section, or provision of the Plan, the

Plan Supplement, or any related document in this Confirmation Order does not diminish or impair the effectiveness or enforceability of such article, section, or provision, it being the intent of this Court that the Plan, the Plan Supplement, and the exhibits thereto be confirmed in their entirety. In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, the applicable Plan Supplement document shall control. In the event of an inconsistency between this Confirmation Order and any of the Plan, the Disclosure Statement, or the Plan Supplement, this Confirmation Order shall control.

8. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to the Plan, including (a) any dispute regarding the treatment of any Intercompany Claims and (b) the Professional Fee Settlement. The compromise and settlement of all such Claims, Interests, Causes of Action, and controversies is hereby approved and found to be in the best interests of the Debtors, their Estates, and Holders of Claims and Interests, and fair, equitable and reasonable.

9. Except to the extent expressly provided otherwise in this Confirmation Order, pursuant to Bankruptcy Rule 3020(c)(1), the following provisions in the Plan are hereby approved and shall be

immediately effective on the Effective Date without further order or action by this Court, any of the parties to such provisions, or any other Entity: (a) Exculpation (Article VIII.B); (b) Injunction (Article VIII.C); and (c) Release of Liens (Article VIII.E).

10. Exculpation. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, and without limiting in any way the Exculpation in Article VIII.B of the Plan for the benefit of the Exculpated Parties, this paragraph 10 applies. If in a proceeding against one or more of the Sanchez Parties, but for the exculpation provisions in the Plan or this Confirmation Order, applicable non-bankruptcy law would have entitled one or more of Sanchez Parties to a claim against or a credit on account of the liability of any Exculpated Party, the obligation of any Sanchez Party to satisfy a judgment shall be reduced by the amount of any such credit or claim in the amount that would have existed under applicable non-bankruptcy law.

11. Injunction. Except to the extent expressly provided otherwise in this Confirmation Order, to the extent permitted by applicable law, and for the avoidance of doubt, pursuant to the Injunction set forth in Article VIII.C of the Plan, and without limiting any other provision of the Plan, all Entities that have held, hold, or may hold Claims or Interests that (1) have been released pursuant to the Plan, (2) shall be discharged pursuant to the Plan, or (3) are subject to exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, or the Exculpated Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with

respect to any such claims or interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or interests; (iii) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Entity has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding an indication of a claim or interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests released or settled pursuant to the Plan.

12. Lien-Related Litigation. The Lien-Related Litigation shall be adjudicated following the Effective Date by this Court pursuant to and in accordance with the terms of Article IV.D of the Plan.

13. There shall be no issuance and distribution of New Common Stock pursuant to the Post-Effective Date Equity Distribution except pursuant to an order entered by this Court with respect to or following the resolution of the Lien-Related Litigation. Any and all issues regarding the proper allocation of the Post-

Effective Date Equity Distribution shall be determined by this Court in connection with the Lien-Related Litigation and consistent with the Final DIP Order and the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code, which determination regarding such allocation may include, among other things, the consideration of the value, if any, of any Causes of Action preserved by the Reorganized Debtors pursuant to the Plan and whether such value should be allocated to or offset by Secured Claims or Administrative Claims. The New Common Stock shall be issued pursuant to the Post-Effective Date Equity Distribution upon an order of this Court, which order shall designate the allocation of New Common Stock as between the Holders of Allowed DIP Claims, if any, Holders of Allowed Secured Notes Claims, if any, and Holders of Allowed General Unsecured Claims, if any.

14. Professional Fee Settlement. The Professional Fee Settlement, as set forth in Article II.B of the Plan, is approved. Upon the Effective Date, the DIP Agent shall release the Carve-Out Trigger Notice Reserves to the Reorganized Debtors, and, with such funds and other funds as necessary, the Reorganized Debtors shall immediately fund the Professional Fee Settlement Reserve with the Professional Fee Settlement Reserve Amount, solely for the unpaid Professional Fee Claims of the Participating Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors, and such funds shall be maintained in trust solely for the Participating Professionals and used to pay the amount of Professional Fee Claims owing to the Participating Professionals, as limited by the Professional Fee Settlement, within two (2) business days after such Professional Fee Claims are Allowed by an order of this Court. When all such Allowed

amounts owing to Participating Professionals have been paid in full consistent with the Professional Fee Settlement, any remaining amount in the Professional Fee Settlement Reserve shall promptly be paid to the Reorganized Debtors without any further action or order of this Court.

15. If the Effective Date does not occur within 45 days of the Confirmation Date, except to the extent a Participating Professional agrees to a later date, (a) the Professional Fee Settlement shall be withdrawn, (b) the Participating Professionals shall reserve any and all rights under the Final DIP Order, the Bankruptcy Code and otherwise, and (c) all agreements not to seek reductions or to object to any Final Fee Applications of the Participating Professionals shall be withdrawn, and all rights of all parties are reserved.

16. Notwithstanding anything to the contrary in the Plan, including in Article II.B. thereof, the following settlement among the Committee, the Participating Committee's Professionals (as defined below), the Debtors, and the Secured Ad Hoc Group is hereby approved (the "Committee Professional Fee Settlement"):

(a) The "Participating Committee Professionals" are: Milbank LLP; Locke Lord LLP; Jefferies LLC; and FTI Consulting, Inc.

(b) The Participating Committee Professionals agree to limit the aggregate payments on account of their Professional Fee Claims (including amounts paid on an interim basis to date) to $24,000,000.00 (exclusive of Committee member expenses that are submitted with Participating Committee Professionals' fee statements for convenience). Participating

Committee Professionals otherwise waive all rights to seek payment of any additional Professional Fee Claims from the Debtors or Reorganized Debtors, either as Administrative Claims or otherwise.

(c) The Participating Committee Professionals consent to the DIP Agent releasing the Carve-out Trigger Notice Reserves to the Reorganized Debtors on the Effective Date, provided that the Reorganized Debtors shall immediately fund the a reserve account (the "Committee Professional Fee Settlement Reserve") in an amount equal to $24,000,000.00 minus any amounts previously paid to the Participating Committee Professionals, solely for the unpaid Professional Fee Claims of the Participating Committee Professionals.

(d) The Committee Professional Fee Settlement Reserve shall be an interest-bearing escrow account (or a segregated account with similar protections as an escrow account, maintained in trust solely for the Participating Committee Professionals with the consent of the Participating Committee Professionals). Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. All fees and expenses of the escrow agent shall be paid from the interest accruing on funds in the Committee Professional Fee Settlement Reserve; provided that any fees and expenses due up from or in excess of the interest accruing on the funds in the Committee Professional Fee Settlement Reserve shall be paid by the Reorganized Debtors.

(e) The amount of Professional Fee Claims owing to the Participating Committee Professionals, as limited by the Committee Professional Fee Settlement, shall be paid in Cash to such Participating Committee Professionals by the Reorganized Debtors from the Committee Professional Fee Settlement Reserve within two (2) business days after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court. When all such Allowed amounts owing to Participating Professionals have been paid in full consistent with the Committee Professional Fee Settlement, any remaining amount in the Committee Professional Fee Settlement Reserve shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court.

(f) No Fee Examiner shall be appointed or shall review the Final Fee Applications of the Participating Committee Professionals. The Professional Fee Claims of any Participating Committee Professional shall be Allowed in the event that no objection to such Final Fee Application is Filed within 21 days of the filing of such Final Fee Application in accordance with the Committee Professional Fee Settlement.

(g) The Debtors, Reorganized Debtor, and the Secured Ad Hoc Group, including each of its individual members, shall not (a) seek, directly or indirectly, any further reductions, discounts or concessions of any kind from the Participating Committee Professionals or (b) object, directly or indirectly, to any Final Fee Applications of any Participating Professional.

(h) If the Effective Date does not occur within 45 days of the Confirmation Date, (a) the Committee Professional Fee Settlement shall be withdrawn, (b) the Participating Committee Professionals shall reserve any and all rights under the Final DIP Order, the Bankruptcy Code and otherwise and (c) all agreements not to seek reductions or to object to any Final Fee Applications of the Participating Committee Professionals shall be withdrawn, and all rights of all parties are reserved.

17. Executory Contracts and Unexpired Leases. Unless otherwise indicated or agreed by the Debtors and the applicable contract counterparties and except as expressly otherwise provided in paragraphs 23-25 of this Confirmation Order, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date, notwithstanding the fact that the deadline to object to assumption or rejection of an Executory Contract or Unexpired Lease is May 20, 2020 (the "Contract Objection Deadline"), which may be after the Effective Date. Any Executory Contract or Unexpired Lease that is subject to an unresolved objection to the proposed assumption or rejection of such Executory Contract or Unexpired Lease that is filed prior to the Contract Objection Deadline shall not be deemed to be assumed or rejected, as applicable, until entry of an order resolving the dispute and approving the assumption or rejection, as applicable, of such Executory Contract or Unexpired Lease or as may be agreed upon by the Debtors or the Reorganized Debtors and the counter-

party; *provided that* after the Effective Date, the Reorganized Debtors may settle any dispute regarding any Cure Claim without any further notice to any party or any action, order, or approval of this Court.

18. The Debtors or the Reorganized Debtors, as applicable, reserve the right to remove an Executory Contract or Unexpired Lease from the *Schedule of Assumed Executory Contracts and Unexpired Leases* and move it to the *Schedule of Rejected Executory Contracts and Unexpired Leases* or remove an Executory Contract or Unexpired Lease from the *Schedule of Rejected Executory Contracts and Unexpired Leases* and move it to the *Schedule of Assumed Executory Contracts and Unexpired Leases*, as applicable, until the later of (a) the Contract Objection Deadline or (b) if an objection is Filed by the Contract Objection Deadline, prior to the date of a decision by this Court with respect to such objection. Any such objection shall be heard at a date determined by this Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Claim by the Contract Objection Deadline shall be deemed to have assented to such assumption or Cure Claim.

19. A Cure Claim, if any, under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan that is undisputed or, if disputed, either resolved consensually by the Reorganized Debtors and the counterparty to such Executory Contract or Unexpired Lease or by a Final Order shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, (a) by payment in Cash as soon as reasonably practicable following the later of the Effective Date and the order authorizing assumption, or (b) as otherwise agreed by the Reorganized Debtors

and the counterparty to such Executory Contract or Unexpired Lease. For the avoidance of doubt, a Cure Claim shall not include amounts that have been incurred as of the Effective Date but are not yet due and payable. Such amounts shall be paid by the Reorganized Debtors in the ordinary course of business subsequent to the Effective Date.

20. Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Claims, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. Any liabilities reflected in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of this Court or any other Entity.

21. Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts and Unexpired Leases, if any, must be Filed with this Court by no later than forty-five (45) calendar days after the date of entry of an order of this Court (including this Confirmation Order) approving such rejection or any other order of this Court establishing the date by which such Proofs of Claim must be Filed. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that are not Filed as required by the preceding sentence shall be automatically Disallowed, forever barred from assertion, and shall not be

enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objection by the Debtors or the Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of this Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of Executory Contracts and Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

22. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, it is the intent of the Debtors to reject any Executory Contract or Unexpired Lease with SOG, SNMP, SN EF UnSub, LP, SN EF UnSub GP, LLC and SN EF UnSub Holdings, LLC that is not expressly assumed. For the avoidance of doubt, that certain Master Service Agreement between Sanchez Energy Corporation and SOG shall be deemed rejected as of the Effective Date. SOG is barred from issuing any new work orders, or taking any other action, on behalf of the Debtors or the Reorganized Debtors, as applicable.

23. Executory Contract Counterparties. Notwithstanding any other provision in this Confirmation Order or the Plan to the contrary, nothing in this Confirmation Order or the Plan (and neither the confirmation nor consummation of the Plan) shall eliminate, alter or impair (or otherwise prevent any Counterparty (as defined below) from asserting), any or all of the Counterparties' respective defenses, arguments or appellate rights to the extent relating to

(a) any proposed assumption or rejection of any Executory Contract or Unexpired Lease with such Counterparty or real property interests of such Counterparty (including rights, defenses, or arguments that such agreements or interests, as applicable, constitute covenants running with the land not subject to assumption or rejection, do not constitute Executory Contracts or Unexpired Leases under the Bankruptcy Code and the terms of the Plan, or are not otherwise subject to assumption or rejection) and (b) the vesting of any property in the Reorganized Debtors free and clear of any real property interests of such Counterparty, including any covenants that run with the land (notwithstanding anything herein to the contrary, whether the Bankruptcy Code and the United States Constitution would permit the Plan to discharge any such property interests and transfer such property free and clear of any such property interests is not being determined at this time and shall be adjudicated by the Court at a later date together with any related rejection or assumption disputes, and the rights, defenses and arguments of each party to such disputes are hereby fully preserved); *provided* that each Counterparty shall be required to assert such rights, defenses, or arguments in a written objection filed with this Court on or prior to the Contract Objection Deadline. For purposes of this Confirmation Order, "Counterparty" shall mean each of the following: (i) Occidental Petroleum Corporation, and each of its affiliates that have a contractual relationship with the Debtors, including Anadarko Petroleum Corporation, Anadarko E&P Onshore LLC, and Kerr-McGee Oil and Gas Onshore LP, (ii) Western Midstream Partners, LP, and each of its affiliates that have a contractual relationship with the Debtors, including Springfield Pipeline, LLC, (iii) GSO ST

Holdings LP, and each of its affiliates that have a contractual relationship with the Debtors, (iv) GSO ST Holdings Associates LLC, and each of its affiliates that have a contractual relationship with the Debtors, (v) SNEF UnSub GP, LLC, (vi) SN EF UnSub LP, (vii) SN EF UnSub Holdings, LLC, (viii) Catarina Midstream, LLC, (ix) Carnero G&P LLC and its affiliates, (x) Eagle Ford TX LP, (xi) Venado Oil & Gas, LLC and each of its direct and indirect subsidiaries (including, without limitation, Venado EF L.P. and its subsidiaries, (xii) Gavilan Resources, LLC and its affiliates and predecessors in interest, (xiii) Seco Pipeline, LLC, (xiv) Sanchez Midstream Partners LP, and (xv) Sanchez Midstream Partners GP LLC, (xvi) Marathon Oil EF LLC and its affiliates or subsidiaries ("Marathon"), including but not limited to, Marathon's rights as successors-in-interest/assignees of Hilcorp Energy I, L.P. ("Hilcorp") under the Joint Operating Agreement dated December 28, 2009 by and between SEP Holdings II, LLC and Hilcorp, (xvii) Archrock Partners Operating LLC and Archrock Services LP, (xviii) Plains South Texas Gathering, LLC and Plains Gas Solutions, LLC, (xix) Eagle Ford TX LP, (xx) TPL SouthTex Processing Company LP and TPL SouthTex Transmission Company LP, (xxi) Mitsui E&P Texas LP and Mitsui & Co. Energy Marketing & Services (USA), Inc., and (xxii) B.L. Stanley, Ltd., Worthey Properties, Ltd., Robert Edward Worthey Trust, Teressa Kountz Trust and Tonya Hedleston Trust in Webb County, Texas.

24. Except as agreed upon by the applicable Counterparty and the Reorganized Debtors, notwithstanding any other provision of this Order or the Plan, from the period commencing on the Effective Date through the date of the entry of an order of this Court resolving any and all disputes raised in a timely filed objection by one or more applicable Counterparties

with this Court relating to the proposed assumption or rejection of any agreement, (i) such agreement shall continue as in effect immediately prior to the Effective Date, (ii) the terms of such agreement shall continue to apply to the applicable Reorganized Debtor and Counterparty in accordance with otherwise applicable law, without alteration or modification, including without limitation the obligation to pay all amounts due thereunder as and when due, and (iii) the relative obligations of the applicable Reorganized Debtor and Counterparty arising under such agreements during such time shall not be excused, relieved or otherwise impaired by the rejection of such agreements. Upon the Effective Date, the automatic stay shall not apply to limit the respective rights or remedies of the Counterparties or the Reorganized Debtors under such agreements, and nothing in this Order or the Plan shall prevent, alter, or impair any rights of the Reorganized Debtors or the Counterparties from exercising any and all rights afforded under such agreement (including cessation of services under the agreements) in the event of non-performance or breach by the other party or parties during such period, and any disputes arising out of or relating to the same shall be heard by the Bankruptcy Court or any other court of competent jurisdiction. Notwithstanding anything to the contrary herein or in the Plan, including language in Article V.B. of the Plan, all Claims arising from the rejection of Executory Contracts and Unexpired Leases with the Counterparties shall be Allowed in accordance with applicable law and shall be classified in accordance therewith.

25. For any Executory Contract or Unexpired Lease removed from or added to the Schedule of Rejected Executory Contracts and Unexpired Leases or the Schedule of Assumed Executory Contracts and

Unexpired Leases after the date of this Confirmation Order, the Contract Objection Deadline shall be extended to the date that is twenty-one (21) days after the date of such removal or addition.

26. Retention of Defenses. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, nothing in the Plan or this Confirmation Order shall prevent Sanchez Midstream Partners LP, Catarina Midstream, LLC, Sanchez Midstream Partners GP LLC, and Carnero G&P LLC (and its affiliates) from asserting any rights, defenses, and/or counterclaims against the Debtors and/or the Reorganized Debtors in defense of any Causes of Action retained by the Debtors and the Reorganized Debtors under the Plan and pursued by or on behalf of the Debtors and the Reorganized Debtors, including, but not limited to, any retained Causes of Action relating to the *Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief* [Docket No. 1032]; *provided*, however, for purposes of clarification, this paragraph reserves such rights, defenses, and/or counterclaims solely to the extent asserted defensively, and nothing in this paragraph permits affirmative recovery from the Debtors or the Reorganized Debtors on account of any such rights, defenses, and/or counterclaims.

27. Release of Liens. Notwithstanding the language in Article VIII.E of the Plan, nothing in the Plan or this Confirmation Order shall discharge or release any valid, enforceable, and perfected Liens that constitute Permitted Liens under the DIP Order or similar Liens that arose after the Petition Date in connection with the Debtors' ordinary course operations, which Liens shall be fully preserved to the extent they continue to

exist pursuant to applicable non-bankruptcy law until they are fully paid or otherwise satisfied.

28. Notwithstanding anything to the contrary herein or in the Plan, nothing in this Confirmation Order shall alter or impair the rights of any party to seek, in accordance with applicable law, the turnover from the Debtors or Reorganized Debtors of any property that is, as of the date such turnover is sought, (i) property of such party pursuant to applicable law, (ii) in the possession and control of the Debtors or the Reorganized Debtors, and (iii) is not in any respect property of the Estates or of the Reorganized Debtors, as applicable.

29. RBC. Notwithstanding anything in the Plan or this Confirmation Order to the contrary (i) on the Effective Date, or as soon as reasonably practicable thereafter the Reorganized Debtors shall pay all reasonable accrued and unpaid expenses of Thompson & Knight LLP, as counsel to Royal Bank of Canada ("RBC"), in RBC's various capacities, in accordance with the Final DIP Order, (ii) any rights or defenses of RBC arising from or relating to the Lien-Related Litigation are preserved and not prejudiced by Confirmation of the Plan, (iii) all rights, claims and obligations in favor of RBC in respect of any First-Out Obligations (as defined in the Collateral Trust Agreement and Final DIP Order), which may include claims for indemnification by RBC pursuant to the Final DIP Order or the First Out Documents (as defined in the Collateral Trust Agreement) to the extent such indemnification claims constitute First Out Obligations, shall not be discharged by the Plan and any liens or security interests for the benefit of RBC, including liens, security interests, super-priority claims, or other elevated payment priorities granted

for the benefit of RBC under the Final DIP Order, if any, in respect of the First Out Obligations shall not be released, shall be deemed enforceable by RBC, and shall be held with the same priority and extent against the Reorganized Debtors as such liens or claims had under the Collateral Trust Agreement or the Final DIP Order, as applicable, (iv) the satisfaction and discharge of the DIP Claims or treatment of any DIP Obligations (as defined in the Final DIP Order) pursuant to the Plan shall not impair or prejudice any rights of RBC pursuant to the Final DIP Order, the Collateral Trust Agreement or this Confirmation Order in respect of any First-Out Obligations, and (v) the Collateral Trust Agreement, the Prepetition Credit Agreement (as defined in the Final DIP Order), and the Final DIP Order each shall survive for purposes of enforcing the terms of this paragraph. For the avoidance of doubt, but without limiting the foregoing, (x) nothing herein shall prejudice the right of the Reorganized Debtors to contest whether any right, claim or obligation in favor of RBC is a valid First Out Obligation entitled to the treatment provided in clause (iii) above.

30. Ongoing Royalty Audits. Notwithstanding anything in the Plan (including Article VII.G) and this Confirmation Order to the contrary, claim numbers 357, 366, 390, 402, 403, 406, 409, 412, 417, 428, 432, 442, 506, 525, 526, 528, 529, 534, 535, 536, 538, 539, 540, 542, 544, 549, 550, 551, 556, 558, 564, 565, 566, 567, 568, 582 and 583 in the estate of SN EF Maverick, LLC (19-34516), which are the subject of ongoing data exchange between the Debtor SN EF Maverick, LLC and the claimants, may be amended within forty-five (45) days from the conclusion of the ongoing royalty review and audit, solely to reflect any results or conclusions related to that review and audit.

31. Notwithstanding anything in the Plan (including Article VII.G) and this Confirmation Order to the contrary, claim number 231 in the estate of Sanchez Energy Corporation (19-34508), which is the subject of ongoing data exchange between the Debtors and the claimants, may be amended within forty-five (45) days from the conclusion of the ongoing review and audit, solely to reflect any results or conclusions related to that review and audit.

32. Dimension Litigation. For the avoidance of doubt and notwithstanding anything to the contrary in the Plan or this Confirmation Order, in the remanded state court action in the 165th Judicial District, Harris County, Texas, assigned cause number 2017-85247, styled Dimension Energy Services, LLC v. Sanchez Oil & Gas Corporation, Sanchez Energy Corporation and Sanchez Midstream Partners, LP (the "Dimension State Court Action"), none of the parties to said Dimension State Court Action are required to seek approval of any settlement or compromise of any causes of action asserted by Dimension Energy Services, LLC. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, this Court shall not retain jurisdiction over the causes of action asserted by and between the parties in the remanded Dimension State Court Action, and jurisdiction for the claims at issue in the Dimension State Court Action shall rest with the Harris County, Texas 165th Judicial District Court, or other court of competent jurisdiction.

33. Texas Attorney General; Federal Leases. Nothing in this Confirmation Order or the Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined

in 11 U.S.C. § 101(5) ("Claim"); (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to as the owner or operator of property after Confirmation; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or the Reorganized Debtors. Nor shall anything in this Confirmation Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Notwithstanding any provision of the Plan or this Confirmation Order, the United States' setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, shall be preserved and are unaffected. Nothing in this Confirmation Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Confirmation Order or the Plan or to adjudicate any defense asserted under this Confirmation Order or the Plan. Nor shall anything in the Plan (1) affect the rights of the United States (including any agencies or subagencies thereof) to assert setoff and recoupment and such rights are expressly preserved; (2) be construed as a compromise or settlement of any claim, interest or cause of action of the United States; or (3) affect the entitlement of the United States to the payment of interest on its Allowed Claims.

34. Federal Leases. Moreover, nothing in the Plan shall affect the treatment of any interest in contracts, leases, covenants, operating rights agreements, rights-of-use and easement, and rights-of-way or other interests or agreements with the federal government or involving federal land or minerals (collectively, the "Federal Lease(s)"). For the avoidance of doubt and

without limiting the foregoing, any assumption, assignment, and/or transfer of any interests in the Federal Leases will be ineffective absent the consent of the United States. Nothing in the Plan shall be interpreted to set cure amounts or require the United States to novate, approve or consent to the assumption, sale, assignment and/or transfer of any interests in the Federal Leases except pursuant to existing regulatory requirements and applicable law.

35. Moreover, nothing in the Plan shall be interpreted to release the Debtors from any reclamation, plugging and abandonment, or other operational requirement under applicable Federal law; to address or otherwise affect any decommissioning obligations and financial assurance requirements under the Federal Leases, as determined by the United States, that must be met by the Debtors or their successors and assigns on the Federal Leases going forward; or to impair audit rights. In addition, nothing in the Plan nullifies the United States' right to assert, against the Debtors and their estates, any decommissioning liability and/or claim arising from the Debtors' interest in any Federal Lease not assumed by the Debtors. Notwithstanding any provision to the contrary in the Plan, the United States will retain and have the right to audit and/or perform any compliance review and, if appropriate, collect from the Debtors and/or their successor(s) and assign(s) in full any additional monies owed by the Debtors prior to the assumption and/or assignment of the Federal Leases without those rights being adversely affected by these bankruptcy cases; and such rights shall be preserved in full as if this bankruptcy had not occurred. The Debtors and their successors and assigns will retain all defenses and/or rights, other than defenses and/or rights arising from these bankruptcy cases, to challenge any

such determination: *provided, however*, that any such challenge, including any challenge associated with these bankruptcy cases, must be raised in the United States' administrative review process leading to a final agency determination by the Department of the Interior. The audit and/or compliance review period shall remain open for the full statute of limitations period established by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, 30 U.S.C. § 1702, et seq. Nothing in the Plan or this Confirmation Order shall cause or otherwise be deemed to require any Holders of Claims receiving New Common Stock to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operations or management of the Debtors within the meaning of 42 U.S.C. § 9601(20)(F).

36. Texas Taxing Authorities. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, any and all tax liens securing the property tax claims of Dimmit County, Maverick County, La Pryor Independent School District, Atascosa County, Bee County, Cameron County LaSalle County, Cotulla ISD, Dewitt County, Dilley ISD, Duval County, Eagle Pass ISD, Freer ISD, Frio Hospital District, Goliad County, Goliad ISD Gonzales County, Harris County, Hidalgo County, Jackson County, Jim Wells CAD, Kenedy County, Lasara ISD, Matagorda County, Pearsall ISD, City of Pleasanton, Raymondville ISD, Roma ISD, Smith County, Jim Wells CAD, Starr County, Willacy County and Zavala County (the "Texas Taxing Authorities") for the 2020 tax year are retained. The Reorganized Debtors shall pay the 2020 tax claims of the Texas Taxing Authorities in the ordinary course of business and prior to delinquency under Texas law. In the event the 2020 taxes are not

paid prior to delinquency as required under Texas law, penalties and interest shall accrue as provided under Texas law and the Texas Taxing Authorities are authorized to immediately commence any and all collection actions authorized under Texas law, in state court without further order of this Court. The Debtors or the Reorganized Debtors, as applicable, shall maintain any of their rights under Texas law to contest, protest, or appeal the 2020 tax claims of the Texas Taxing Authorities.

37. Zavala CAD. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the Reorganized Debtors shall pay the pre-petition tax claim of Zavala CAD in a manner consistent with 11 U.S.C. §1129(a)(9)(D) with applicable statutory interest pursuant to 11 U.S.C. §§506(b) and 511. The pre-petition tax lien shall be retained until said taxes are paid in full. In the event the Zavala CAD pre-petition claim is not paid consistent with this provision, penalties and interest shall accrue as provided under Texas law and Zavala CAD is authorized to immediately commence any and all collection actions authorized under Texas law in state court without further order of this Court. The Debtors or the Reorganized Debtors, as applicable, shall maintain any of their rights under Texas law to contest, protest, or appeal the tax claims of Zavala CAD.

38. Harrison and Cathexis. Nothing in the Plan or this Confirmation Order, including, without limitation, the provisions within Articles V and VIII of the Plan, shall reduce, expand, amend, or supplement the rights, obligations, claims, and defenses, of (i) DJH Minerals, LP, DJH Ranching, LP, Cathexis Royalties & Minerals, LP, and Cat HIL Piloncillo, LLC, or any of the foregoing's successors or assignees (collectively, the

"Catarina Lessors") or (ii) the Debtors, the Reorganized Debtors, or their successors or assignees under the Catarina Agreements (as defined below); *provided further* that to the extent, as of the Petition Date, a Catarina Lessor held a validly perfected and unavoidable lien, encumbrance or interest arising under a Catarina Agreement—including reversionary interests—such lien, encumbrance or interest shall not be modified or otherwise altered by anything in the Plan or Confirmation Order. Any Cure Claims under the Catarina Agreements shall be resolved in accordance with the Plan; *provided, however*, that nothing in this Confirmation Order or the Plan shall be construed as making a determination that any Catarina Agreement is or is not an Executory Contract, and all parties expressly reserve their rights with respect to such determination. For purposes of this paragraph, the term "Catarina Agreements" means each of the following agreements, in each case, as amended, supplemented and in effect on the date hereof: (i) the Oil and Gas Lease, dated as of May 12, 2010 (as amended), by and between DJH Minerals, LP, DJH Ranching, LP, Cathexis Royalties & Minerals, LP, Cat HIL Piloncillo, LLC, and SN Catarina, LLC (the "Lease"); (ii) that certain First Amended and Restated Water Injection Agreement, dated as of December 1, 2015, by and between DJH Ranching, LP, Cat HIL Piloncillo, LLC, and SN Catarina, LLC; (iii) those certain Voluntary Pooling Agreements related to the Lease; (iv) that certain Guaranty, dated as of June 30, 2014, with Sanchez Energy Corporation; (v) that certain Guaranty, dated as of June 30, 2014, with SN Operating, LLC; (vi) that Mineral Deed, dated as of May 12, 2010, with P Ranch Working Interest, LLC; and (vii) that certain Conveyance of Non-Participating

Royalty Interest, dated as of May 12, 2010, with P Ranch Royalty Interest, LLC.

39. Amendment of New Organizational Documents. At the Effective Date, the Reorganized Debtors and the Reorganized SN Board are authorized and directed to amend, restate, and file with the applicable Secretaries of State and/or other applicable authorities in their respective states of incorporation or formation the Reorganized Debtors' respective New Organizational Documents and, as necessary, other constituent documents, including, without limitation, the organizational documents governing non-Debtor subsidiaries, as permitted by the laws of their respective states of incorporation, the New Organizational Documents, and the organizational documents of the non-Debtor subsidiaries, as applicable.

40. Abandonment. All of the rights of the Debtors or the Reorganized Debtors, as applicable, to abandon property prior to or after the Effective Date pursuant to section 554 of the Bankruptcy Code are preserved, and the Debtors or the Reorganized Debtors, as applicable, may seek to abandon any such property on or after the Effective Date.

41. Notwithstanding Bankruptcy Rule 3020(e), the terms and conditions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

42. The Debtors and the Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted in this Confirmation Order in accordance with the Plan.

43. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the

implementation, interpretation, and enforcement of this Confirmation Order.

Signed April 30, 2020

/s/ Marvin Isgur
Marvin Isgur
United States Bankruptcy Judge

Exhibit 1

Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Case No. 19-34508 (MI)

Chapter 11

Jointly Administered

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,[1]

Debtors.

SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF SANCHEZ ENERGY CORPORATION AND ITS DEBTOR AFFILIATES

JACKSON WALKER L.L.P.
Matthew D. Cavenaugh (TX Bar No. 24062656)
Elizabeth Freeman (TX Bar No. 24009222)
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4284

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sanchez Energy Corporation (0102); SN Palmetto, LLC (3696); SN Marquis LLC (0102); SN Cotulla Assets, LLC (0102); SN Operating, LLC (2143); SN TMS, LLC (0102); SN Catarina, LLC (0102); Rockin L Ranch Company, LLC (0102); SN EF Maverick, LLC (0102); SN Payables, LLC (0102); and SN UR Holdings, LLC (0102). The location of the Debtors' service address is 1000 Main Street, Suite 3000, Houston, Texas 77002.

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Counsel for the Debtors and Debtors in Possession

Dated: April 30, 2020

INTRODUCTION

Sanchez Energy Corporation and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases propose this amended joint chapter 11 plan of reorganization pursuant to chapter 11 of title 11 of the United States Code. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof. Although proposed jointly for administrative purposes, the Plan constitutes a separate plan for each of the foregoing entities and each of the foregoing entities is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the accompanying *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Sanchez Energy Corporation and Its Debtor Affiliates* for a discussion of the Debtors' history, business, properties and operations, valuation, projections, risk factors, a summary and analysis of the Plan and the transactions contemplated thereby, and certain related matters.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below.

1. "*2020 Non-Executive Bonus Program*" means the employee bonus program for 2020.

2. "*2021 Unsecured Notes Indenture*" means that certain Indenture, dated as of June 13, 2013, among SN, the guarantors party thereto and Delaware Trust Company, as successor trustee, for 7.75% senior notes due June 15, 2021.

3. "*2023 Unsecured Notes Indenture*" means that certain Indenture, dated as of June 27, 2014, among SN, the guarantors party thereto and Delaware Trust Company, as successor trustee, for 6.125% senior notes due January 15, 2023.

4. "*Administrative Claim*" means a Claim incurred by the Debtors on or after the Petition Date and before the Effective Date constituting a cost or expense of administration of the Chapter 11 Cases of a kind specified under section 503(b) and entitled to priority under sections 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) Allowed Professional Fee Claims; (c) any Allowed Claim of Royal Bank of Canada as predecessor collateral trustee under the Collateral Trust

Agreement in the amount of any reasonable documented fees and expenses for services rendered in connection with outstanding First-Out Obligations (as defined in the Final DIP Order) and solely to the extent provided for in the Collateral Trust Agreement; and (d) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

5. "*Administrative Claims Bar Date*" means the deadline for Filing requests for payment of Administrative Claims, which: (i) with respect to Administrative Claims other than Professional Fee Claims, shall be 30 days after the Effective Date; and (ii) with respect to Professional Fee Claims, shall be 60 days after the Effective Date.

6. "*Affiliate*" means, with respect to any Person, all Persons that would fall within the definition assigned to such term in section 101(2) of the Bankruptcy Code, if such Person was a debtor in a case under the Bankruptcy Code.

7. "*Allowed*" means with respect to any Claim or Interest: (a) a Claim or Interest as to which no objection has been filed within the applicable time period fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court and that is evidenced by a Proof of Claim or Interest, as applicable, timely filed by the applicable Bar Date, or that is not required to be evidenced by a filed Proof of Claim or Interest, as applicable, under the Plan, the Bankruptcy Code, or a Final Order; (b) a Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and as for which no Proof of Claim or Interest, as applicable, has been timely filed; or (c) a Claim or Interest that is Allowed (i) pursuant to the Plan or Final Order, (ii) in

any stipulation that is approved by the Bankruptcy Court, or (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith. Except as otherwise specified in the Plan or any Final Order, the amount of an Allowed Claim shall not include interest or other charges on such Claim from and after the Petition Date. No Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as applicable.

8. "*Authorized Plan Distribution Shares*" means the shares of New Common Stock available for distribution under the Plan on account of Claims, which shares shall be authorized on the Effective Date and issued in accordance with the Plan.

9. "*Avoidance Actions*" means any and all avoidance, recovery, subordination, or other Claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under chapter 5 of the Bankruptcy Code or related applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

10. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time as applicable to these Chapter 11 Cases.

11. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Southern District of Texas, having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of reference under 28 U.S.C. § 157 and/or the General Order of the District

Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Southern District of Texas.

12. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of title 28 of the United States Code, and the general, local, and chambers rules of the Bankruptcy Court as applicable to these Chapter 11 Cases.

13. "*Bar Date*" means the date established by the Bankruptcy Court by which Proofs of Claim must be filed pursuant to the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9); (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date; (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests; and (IV) Approving Notice of Bar Dates* [Docket No. 617] (the "Bar Date Order"), which is January 10, 2020 at 5:00 p.m., prevailing Central Time for all Holders of Claims except for (i) governmental units, for which the Bar Date is February 7, 2020 at 5:00 p.m., prevailing Central Time and (ii) certain other exceptions as set forth in the Bar Date Order.

14. "*Carve-Out Trigger Notice Reserves*" means the Pre-Carve-Out Trigger Notice Reserve and the Post-Carve-Out Trigger Notice Reserve.

15. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

16. "*Causes of Action*" means any Claims, Interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known or

unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, in tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

17. "*Certificate*" means any instrument evidencing a Claim or an Interest.

18. "*Chapter 11 Cases*" means when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and when used with reference to more than one Debtor, the procedurally consolidated and jointly administered chapter 11 cases pending for all such Debtors in the Bankruptcy Court.

19. "*Claim*" has the meaning set forth in section 101(5) of the Bankruptcy Code.

20. "*Claims, Noticing and Solicitation Agent*" means Prime Clerk, LLC, the claims, noticing and solicitation agent retained by the Debtors in the Chapter 11 Cases.

21. "*Claims Objection Bar Date*" means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Reorganized Debtors, as applicable, or by an order of the Bankruptcy Court for objecting to Claims.

22. "*Claims Register*" means the official register of Claims maintained by the Claims, Noticing and Solicitation Agent or the Bankruptcy Court.

23. "*Class*" means a category of Holders of Claims or Interests pursuant to section 1122(a) of the Bankruptcy Code.

24. "*Collateral Trust Agreement*" means the Collateral Trust Agreement, dated as of February 14, 2018, among SN, the grantors and guarantors from time to time party hereto, the First-Out Representative (as defined in the Collateral Trust Agreement), the First Lien Representative (as defined in the Collateral Trust Agreement), the other Priority Lien Representatives (as defined in the Collateral Trust Agreement) and the Collateral Trustee.

25. "*Collateral Trustee*" means Wilmington Trust, N.A., in its capacity as successor collateral trustee under the Collateral Trust Agreement.

26. "*Confirmation*" means entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to the conditions set forth in the Plan.

27. "*Confirmation Date*" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

28. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

29. "*Confirmation Order*" means an order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

30. "*Consummation*" means the occurrence of the Effective Date, subject to the conditions set forth in the Plan.

31. "*Creditor*" has the meaning set forth in section 101(10) of the Bankruptcy Code.

32. "*Creditors' Committee*" means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

33. "*CRO*" means the Debtors' chief restructuring officer, Mohsin Y. Meghji.

34. "*Cure Claim*" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtors' default(s) prior to the Effective Date under an Executory Contract or an Unexpired Lease assumed, or assumed and assigned, by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365 of the Bankruptcy Code.

35. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") of any of the Debtors for liability of any current or former directors, managers, officers, and members.

36. "*Debtors*" means SN and its direct and indirect subsidiaries that filed petitions under chapter 11 on the Petition Date.

37. "*DIP Agent*" means Wilmington Savings Fund Society, FSB, or any successor thereto, as administrative agent and collateral agent under the DIP Credit Agreement, solely in its capacity as such.

38. "*DIP Agent Fees and Expenses*" means the reasonable and documented compensation, fees, expenses, disbursements, and indemnity claims incurred by the DIP Agent, including, without

limitation, attorneys' and agents' fees, expenses, and disbursements incurred by the DIP Agent, to the extent payable or reimbursable under the DIP Credit Agreement. For the avoidance of doubt, the DIP Agent Fees and Expenses shall include, but are not limited to, the reasonable and documented fees, expenses, and disbursements of counsel.

39. "*DIP Claims*" means all Claims held by the DIP Lenders or the DIP Agent in the amount of $150,000,000 plus (a) all amounts previously paid pursuant to the Final DIP Order, and (b) all accrued and unpaid interest, fees, costs, expenses and other amounts due and owing under the Final DIP Order, the DIP Credit Agreement, or otherwise. The DIP Claims are hereby Allowed Secured Claims and/or Administrative Claims in an amount no less than the value of the DIP Equity Distribution.

40. "*DIP Credit Agreement*" means that certain Amended and Restated Senior Secured Debtor-in-Possession Term Loan Credit Agreement, dated as of January 28, 2020, by and among SN, as borrower, each of the other applicable Debtors, as guarantors, each of the lenders from time to time party thereto, and the DIP Agent, with any permitted amendments, modifications, or supplements thereto.

41. "*DIP Equity Distribution*" means 20% of the Authorized Plan Distribution Shares, which shall constitute 100% of the shares of New Common Stock issued by the Reorganized Debtors on the Effective Date.

42. "*DIP Fee Claims*" means (a) the DIP Agent Fees and Expenses, (b) the Secured Trustees Fees and Expenses and (c) the Secured Ad Hoc Group Fees.

43. "*DIP Lenders*" means lenders under the DIP Credit Agreement, solely in their capacity as such.

44. "*Disallowed*" means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is listed in the Schedules as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court or the Claims, Noticing and Solicitation Agent pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (c) is not listed in the Schedules and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court or the Claims, Noticing and Solicitation Agent pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (d) has been withdrawn by agreement of the applicable Debtor and the Holder thereof; or (e) has been withdrawn by the Holder thereof.

45. "*Disbursing Agent*" means the Debtors or the Reorganized Debtors, as applicable, or the Entity or Entities selected by the Debtors or the Reorganized Debtors to make or facilitate distributions contemplated under the Plan.

46. "*Disclosure Statement*" means the disclosure statement for the Plan, as supplemented from time to time, including all exhibits, supplements, modifications, amendments, annexes, attachments, and schedules thereto.

47. "*Disclosure Statement Order*" means the order entered by the Bankruptcy Court conditionally approving the Disclosure Statement, entered on April 9, 2020 [Docket No. 1118].

48. "*Disputed*" means, with respect to any Claim, any Claim that is neither Allowed nor Disallowed.

49. "*Distribution Date*" means, except as otherwise set forth herein and except with respect to distributions to holders of securities held through DTC, the date or dates determined by the Debtors or Reorganized Debtors, as applicable, on or after the Effective Date, upon which the Disbursing Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

50. "*DTC*" means Depository Trust Company.

51. "*Effective Date*" means, with respect to the Plan, the date that is a Business Day selected by the Debtors on which: (a) no stay of the Confirmation Order is in effect; (b) all conditions precedent specified in Article IX. hereof have been satisfied or waived (in accordance with Article IX.C); and (c) the Plan is declared effective by the Debtors.

52. "*Entity*" means as defined in section 101(15) of the Bankruptcy Code.

53. "*Estate*" means as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

54. "*Exculpated Parties*" means collectively, and in each case in its capacity as such: (a) the Debtors and the Reorganized Debtors; (b) the Creditors' Committee and its current and former members; and (c) with respect to each of the foregoing Entities in clauses (a) and (b), each of their respective current and former

directors, officers, members, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, investment bankers, and other professional advisors, in each case, solely in their capacity as such. For the avoidance of doubt, the Exculpated Parties shall not include the Sanchez Parties, SOG, SNMP or direct or indirect non-Debtor subsidiaries of SN.

55. "*Exculpation Claims*" has the meaning set forth in Article VIII.B.

56. "*Executory Contract*" means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

57. "*Existing Interests*" means, collectively, (a) the Existing SN Preferred Interests and (b) the Existing SN Common Interests.

58. "*Existing SN Common Interests*" means Interests in SN arising from or related to the Existing SN Common Stock.

59. "*Existing SN Common Stock*" means the shares of common stock issued by SN.

60. "*Existing SN Preferred Interests* means Interests in SN arising from or related to the Existing SN Preferred Stock.

61. "*Existing SN Preferred Stock*" means the shares of (a) 4.875% Convertible Perpetual Preferred Stock, Series A and (b) 6.500% Convertible Perpetual Preferred Stock, Series B, each with a par value of $0.01 per share.

62. "*File*," "*Filed*," and "*Filing*" means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy

Court, or, with respect to the filing of a Proof Claim or proof of Interest, the Claims, Noticing and Solicitation Agent.

63. "*Final DIP Order*" means the *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §§ 363 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b)* [Docket No. 865].

64."*Final Fee Application*" means an application for final request for payment of Professional Fee Claims.

65. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought; *provided* that the possibility that a request for relief under Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court or applicable non-bankruptcy law may be filed relating to such order shall not prevent such order from being a Final Order.

66. "*Final Shared Services Order*" means the *Final Order Authorizing Debtors to Continue Performance of*

Obligations Under the Shared Services Arrangements [Docket No. 733].

67. "*Gavilan*" means Gavilan Resources, LLC.

68. "*Gavilan Proceeding*" means the adversary proceeding commenced against SN EF Maverick, LLC, et al., by Gavilan (Adv. Pro. No. 20-03021).

69. "*General Unsecured Claim*" means any Claims other than: (a) an Administrative Claim; (b) an Other Secured Claim; (c) an Other Priority Claim; (d) a Priority Tax Claim; (e) a Secured Notes Claim; (f) an Intercompany Claim; (g) a Section 510(b) Claim; or (h) a DIP Claim.

70. "*Holder*" means an entity holding a Claim or Interest, as applicable.

71. "*Impaired*" means with respect to any Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

72. "*Indentures*" means, collectively, the Secured Notes Indenture, the 2021 Unsecured Notes Indenture and the 2023 Unsecured Notes Indenture.

73. "*Indenture Trustees*" means the Secured Notes Indenture Trustee and the Unsecured Notes Indenture Trustee.

74. "*Indemnified Parties*" means the following Exculpated Parties in their capacities as such: (i) members of the Debtors' current workforce who are employed by the Reorganized Debtors after the Effective Date; (ii) Mohsin Y. Meghji; (iii) Eugene I. Davis; (iv) Adam C. Zylman; (v) Cameron W. George; and (vi) Gregory B. Kopel.

75. "*Indemnification Obligations*" means each of the Debtors' existing indemnification provisions in place and effect as of the Effective Date, whether in the Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, management or indemnification agreements, employment contracts, or otherwise, for the current and former directors, officers, managers, attorneys, accountants, investment bankers, and other professionals, advisors and agents of the Debtors, as applicable.

76. "*Intercompany Claim*" means a Claim held by a Debtor against another Debtor.

77. "*Intercompany Interest*" means an Interest in any Debtor other than SN.

78. "*Interest*" means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including issued, unissued, authorized, or outstanding shares of stock, together with any warrants, options or rights to purchase or acquire such interests at any time.

79. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

80. "*Lien Challenge Complaint*" means the complaint filed by the Debtors on March 10, 2020 in the adversary proceeding titled Sanchez Energy Corporation, et al. v. Royal Bank of Canada, Wilmington Savings Fund Society, FSB and Wilmington Trust, National Association (Adv. Pro. No. 20-03057).

81. "*Lien-Related Litigation*" means all litigation related to challenges to the allowance, priority, scope or validity of the liens and/or Claims of the Prepetition Secured Parties (as defined in the Final DIP Order) or the priority or scope of the liens and/or Claims of the

DIP Lenders, including any litigation regarding (i) the interpretation of the Final DIP Order and other matters regarding the scope of the collateral securing the DIP Claims, (ii) the amount and characterization of the DIP Claims (including the Final DIP Order's treatment of new-money DIP Claims and roll-up DIP Claims), (iii) the amount of any deficiency claim of the DIP Lenders, (iv) adequate protection claims pursuant to section 507(b) of the Bankruptcy Code (including issues regarding diminution in value, and any recharacterization or disgorgement of adequate protection payments made pursuant to the Final DIP Order, or any prior interim order), (v) the applicability of the equities of the case doctrine under section 552 of the Bankruptcy Code, (vi) all Causes of Action referenced and asserted in the Lien Challenge Complaint, (vii) the claim objections filed by the Creditors' Committee on March 10, 2020, at Docket No. 1027, (viii) the value of Causes of Action, and (ix) the relative value of encumbered and unencumbered assets. For purposes of clarification, nothing in the Plan or the Confirmation Order shall alter, amend, or otherwise limit any rights, claims, or defenses that may or could be asserted by the DIP Lenders, DIP Agent, Collateral Trustee, Secured Notes Indenture Trustee, or any Holders of DIP Claims or Senior Notes Claims in connection with or in defense of the Lien-Related Litigation, irrespective of whether such rights, claims, or defenses arose before or after the Petition Date and whether provided or arising under the Final DIP Order, applicable agreements, applicable law, or otherwise.

82. "*Lien-Related Litigation Creditor Representative*" means a representative, as selected by the Creditors' Committee, of general unsecured creditors in the Lien-Related Litigation.

83. "*Management Incentive Plan*" means a post-Effective Date management incentive plan for the directors and officers of the Reorganized Debtors, which shall be implemented in accordance with Article IV of the Plan.

84. "*New Common Stock*" means the common stock of Reorganized SN to be issued pursuant to the Plan.

85. "*New Executive Employment Agreements*" means the new employment agreements, dated as of the Effective Date, to employ (a) Cameron W. George and (b) Gregory B. Kopel.

86. "*New Organizational Documents*" means the form of the certificates or articles of incorporation, certificates of designation, bylaws, or such other applicable formation documents, of each of the Reorganized Debtors, including the New Stockholders' Agreement, if any.

87. "*New Stockholders' Agreement*" means the stockholder or similar agreement, if any, with respect to the New Common Stock.

88. "*Non-Participating Professional*" means any Professional that is not a Participating Professional on or before the Confirmation Date.

89. "*Notice of Assumption*" means a notice to be sent to each applicable counterparty identified in the Schedule of Assumed Executory Contracts and Unexpired Leases as set forth in Article VI.C.

90. "*Notice of Rejection*" means a notice to be sent to each applicable counterparty identified in the Schedule of Rejected Executory Contracts and Unexpired Leases as set forth in Article VI.B.

91. "*Other Priority Claim*" means any Claim entitled to priority in right of payment under section 507(a) of

the Bankruptcy Code, to the extent such Claim has not already been paid during the Chapter 11 Cases, other than an Administrative Claim or a Priority Tax Claim.

92. "*Other Secured Claim*" means any Secured Claim other than the DIP Claims and the Secured Notes Claims.

93. "*Participating Professionals*" means all Professionals that have elected to participate in the Professional Fee Settlement on or before the Confirmation Date, specifically: Akin Gump Strauss Hauer & Feld LLP, Alvarez & Marsal North America, LLC, Gibbs & Bruns LLP, Jackson Walker LLP, KPMG LLP, M-III Advisory Partners LP, Moelis & Company LLC, Prime Clerk LLC, Ropes & Gray LLP, and Richards Layton & Finger, P.A. No Participating Professionals may be added to this list without the consent of the Requisite DIP Lenders.

94. "*Person*" means an individual, corporation, partnership, limited liability company, joint venture, trust, estate, unincorporated association, governmental entity, or political subdivision thereof, or any other Entity.

95. "*Petition Date*" means the date on which the Debtors commenced the Chapter 11 Cases.

96. "*Plan*" means this amended joint chapter 11 plan (as it may be amended or supplemented from time to time, including all exhibits, schedules, supplements, appendices, annexes and attachments hereto).

97. "*Plan Supplement*" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed by the Debtors as soon as reasonably practicable prior to the Confirmation Hearing, or such later date as may be approved by the

Bankruptcy Court on notice to parties in interest, and any additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement shall include the following (a) the New Organizational Documents; (b) the Schedule of Rejected Executory Contracts and Unexpired Leases; (c) the Schedule of Assumed Executory Contracts and Unexpired Leases; (d) a schedule of retained Causes of Action; (e) a disclosure of the members of the Reorganized SN Board; and (f) the New Executive Employment Agreements and the identities of the officers of Reorganized SN.

98. "*Post-Carve-Out Trigger Notice Reserve*" has the meaning ascribed to it in the Final DIP Order.

99. "*Post-Effective Date Equity Distribution*" means 80% of the Authorized Plan Distribution Shares, which shall be issued and distributed to Holders of Allowed Claims in Classes 3, 4 and/or 5 as ordered by the Bankruptcy Court in connection with adjudication or other resolution of the Lien-Related Litigation.

100. "*Pre-Carve-Out Trigger Notice Reserve*" has the meaning ascribed to it in the Final DIP Order.

101. "*Priority Tax Claims*" means Claims of governmental units of the type described in section 507(a)(8) of the Bankruptcy Code.

102. "*Pro Rata*" means (a) when referring to Claims or Interests within a single Class, the proportion that an Allowed Claim or Interest in such Class bears to the aggregate amount of the Allowed Claims or Interests in that Class, or (b) when referring to Claims or Interests within more than one Class, the proportion that an Allowed Claim or Interest bears to the aggregate amount of the Allowed Claims or Interests within all applicable Classes.

103. "*Professional*" means an entity employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the confirmation date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

104. "*Professional Fee Claims*" means all Administrative Claims for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals through and including the Effective Date.

105. "*Professional Fee Settlement*" means the settlement between and among the Participating Professionals, the Debtors and the Secured Ad Hoc Group set forth in Article II.B.

106."*Professional Fee Settlement Reserve*" means an interest bearing escrow account to hold the amounts set forth in Article II.B pursuant to the Professional Fee Settlement, which escrow account shall be funded on the Effective Date and maintained at a financial institution selected by the Debtors, with the consent of the Participating Professionals, solely for the purpose of paying all Allowed and unpaid Professional Fee Claims of Participating Professionals consistent with the Professional Fee Settlement. All fees and expenses of the escrow agent shall be paid from the interest accruing on funds in the Professional Fee Settlement Reserve; *provided that* any fees and expenses due up front or in excess of the interest accruing on the funds in the Professional Fee Settlement Reserve shall be paid by the Reorganized Debtors. The Professional Fee Settlement Reserve may be a segregated account, with similar protections as an escrow account, maintained by the Reorganized Debtors in trust solely for the

Participating Professionals with the consent of the Participating Professionals.

107. "*Professional Fee Settlement Reserve Amount*" means $22.9 million, which shall be adjusted solely to the extent additional Professionals become Participating Professionals.

108. "*Proof of Claim*" means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases, if applicable, by the applicable Bar Date.

109. "*Reinstated*" or "*Reinstatement*" means with respect to any Claim or Interest, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

110. "*Reorganized Boards*" means the initial board of directors of members, or managers, as applicable of each Reorganized Debtor.

111. "*Reorganized Debtors*" means the Debtors, as reorganized pursuant to and under the Restructuring Transactions or any successor thereto, including Reorganized SN.

112. "*Reorganized SN*" means SN, as reorganized pursuant to and under the Restructuring Transactions or any successor thereto.

113. "*Reorganized SN Board*" means the initial board of directors of Reorganized SN.

114. "*Requisite DIP Lenders*" means DIP Lenders holding at least 50.01% of the outstanding principal amount of loan issued under the DIP Credit Agreement.

115. "*Restructuring Fee*" has the meaning ascribed to it in the engagement letter between SN and Moelis & Company LLC, attached as Exhibit 1 to the *Debtors'*

Application for Entry of an Order (I) Authorizing the Retention and Employment of Moelis & Company LLC as Financial Advisor and Investment Banker for the Debtors, Nunc Pro Tunc to the Petition Date; (II) Waiving Certain Time-Keeping Requirements; and (III) Granting Related Relief [Docket No. 271].

116. "*Restructuring Transactions*" means those mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, sales, dispositions, liquidations, dissolutions, or other corporate transactions necessary or appropriate to implement the Plan.

117. "*Sanchez Parties*" means (i) A.R. Sanchez, Jr., Antonio R. Sanchez, III, and Patricio D. Sanchez, and any other individual related to Antonio R. Sanchez, III by consanguinity or marriage, (ii) any trusts or similar Entities of which Sanchez Parties are individually or in the aggregate the majority direct or indirect beneficiaries, and (iii) any other Entities (other than SOG) for which the Sanchez Parties own, control or hold 50.01% or more of the voting interests. For the avoidance of doubt, the Sanchez Parties shall not include SOG or SNMP.

118. "*Schedule of Assumed Executory Contracts and Unexpired Leases*" means the schedule (including any modifications or amendments thereto) of certain Executory Contracts and Unexpired Leases, to be identified by the Secured Ad Hoc Group, to be assumed by the Debtors pursuant to the Plan, as set forth in the Plan Supplement, as amended at the direction of the Secured Ad Hoc Group from time to time, prior to the Confirmation Date or otherwise, in accordance with the Plan.

119. "*Schedule of Rejected Executory Contracts and Unexpired Leases*" means the schedule (including any amendments or modifications thereto) of the Executory Contracts and Unexpired Leases, to be identified by the Secured Ad Hoc Group, to be rejected by the Debtors pursuant to the Plan, as set forth in the Plan Supplement, as amended at the direction of the Secured Ad Hoc Group from time to time, prior to the Confirmation Date or otherwise, in accordance with the Plan.

120. "*Schedules*" means, collectively, the schedules of assets and liabilities and statements of financial affairs Filed by the Debtors.

121. "*Section 510(b) Claim*" means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

122. "*Secured*" means when referring to a Claim: (a) secured by a lien on property in which any of Debtors has an interest, which lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Debtors' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court (including the Final DIP Order), as a secured claim.

123. "*Secured Ad Hoc Group*" means the ad hoc group of unaffiliated funds, accounts, and advisors of funds or accounts, as Holders of Secured Notes Claims and DIP Claims.

124. "*Secured Ad Hoc Group Fees*" means all unpaid fees and expenses, including professional fees and expenses, due and payable to the Secured Ad Hoc Group's advisors and professionals, including fees and expenses payable under the Final DIP Order.

125. "*Secured Notes*" means the 7.25% Senior Secured First Lien Notes due 2023 issued pursuant to the Secured Notes Indenture.

126. "*Secured Notes Claim*" means any Secured Claim against the Debtors under, with respect to, on account of, arising from, based upon, or in connection with, the Secured Notes Indenture, the Secured Notes, or the Final DIP Order, including any Claim for principal amounts outstanding, unpaid interest, fees or expenses.

127. "*Secured Notes Indenture*" means that certain Indenture, dated February 14, 2018, among SN, the guarantors party thereto, Delaware Trust Company, as trustee, and Wilmington Trust, NA., in its capacity as successor collateral trustee, for the 7.25% senior secured first lien notes due February 15, 2023.

128. "*Secured Notes Indenture Trustee*" means WSFS, and any successor thereto, as trustee under the Secured Notes Indenture.

129. "*Security*" means a security as defined in section 2(a)(1) of the Securities Act.

130. "*Secured Trustees Fees and Expenses*" means the reasonable and documented compensation, fees, expenses, disbursements, and indemnity claims incurred by WSFS, solely in its capacity as the Secured Notes Indenture Trustee, and the Collateral Trustee, including, without limitation, attorneys' and agents' fees, expenses, and disbursements incurred by WSFS,

solely in its capacity as the Secured Notes Indenture Trustee, and the Collateral Trustee, to the extent payable or reimbursable under the Secured Notes Indenture or Collateral Trust Agreement, as applicable. For the avoidance of doubt, the Secured Trustees Fees and Expenses shall include, but are not limited to, the reasonable and documented fees, expenses, and disbursements of counsel.

131. "*Securities Act*" means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, together with the rules and regulations promulgated thereunder, as amended from time to time.

132. "*Servicer*" means an agent or other authorized representative of Holders of Claims or Interests.

133. "*SN*" means Sanchez Energy Corporation.

134. "*SNMP*" means Sanchez Midstream Partners LP and its subsidiaries and affiliates, including Catarina Midstream, LLC.

135. "*SOG*" means Sanchez Oil & Gas Corporation.

136. "*Unclaimed Distribution*" means any distribution under the Plan on account of an Allowed Claim to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular distribution; (c) responded to requests of the Debtors or the Reorganized Debtors, as applicable, for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

137. "*Unexpired Lease*" means a lease to which one or more of the Debtors is a party that is subject to

assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

138. "*Unimpaired*" means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Impaired.

139. "*Unsecured Notes Claim*" means any Claim against the Debtors arising from or based upon the 2021 Unsecured Notes Indenture or the 2023 Unsecured Notes Indenture.

140. "*Unsecured Notes Indentures*" means, collectively, the 2021 Unsecured Notes Indenture and the 2023 Unsecured Notes Indenture.

141. "*Unsecured Notes Indenture Trustee*" means the Delaware Trust Company, and any successor thereto, as trustee under the 2021 Unsecured Notes Indenture and the 2023 Unsecured Notes Indenture, respectively.

142. "*U.S. Trustee*" Means the Office of the United States Trustee for the Southern District of Texas.

143. "*WSFS*" means Wilmington Savings Fund Society, FSB.

B. *Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, hereof or hereto; (5) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (6) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (7) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (8) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (9) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (10) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time; (11) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (12) the words "include" and "including" and variations thereof shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation," and (13) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the

Plan and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a business day, then such transaction shall instead occur on the next succeeding business day.

D. *Governing Law*

Except to the extent a rule of law or procedure is supplied by federal law (including the Bankruptcy Code or Bankruptcy Rules), and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to conflict of laws principles.

E. *Reference to Monetary Figures*

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

D. *Reference to the Debtors or the Reorganized Debtors*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

G. *Controlling Document*

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, the applicable Plan Supplement document shall control. In the event of an inconsistency between the Confirmation Order and any of the Plan, the Disclosure Statement, or the Plan Supplement, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

A. *Administrative Claims*

Except as otherwise provided in this Article II.A and except with respect to claims pursuant to 28 U.S.C. § 1930 and Administrative Claims that are Professional Fee Claims, DIP Claims, or subject to 11 U.S.C. § 503(b)(1)(D), or otherwise allowed by a Final Order, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such

Administrative Claims shall be deemed discharged as of the Effective Date.

Except with respect to Administrative Claims that are Professional Fee Claims or DIP Claims (but excluding DIP Fee Claims), and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in exchange for its Claim, payment in full in Cash on the Effective Date or as soon as reasonably practicable thereafter.

The DIP Claims that are not DIP Fee Claims shall receive the treatment set forth in Article III.C.3. DIP Agent Fees and Expenses shall receive payment in accordance with Article IV.R. The parties entitled to (a) Secured Trustees Fees and Expenses and (b) Secured Ad Hoc Group Fees have agreed that the Administrative Claims relating to such amounts may be paid following the outcome of the applicable Lien-Related Litigation.

B. *Professional Fee Claims*

1. Professional Fee Settlement

Pursuant to the Professional Fee Settlement, (a) Participating Professionals agree to (i) limit the payment on account of their unpaid Professional Fee Claims (except as provided in clauses (b) and (c)) to 90% of the amount of such Participating Professional's accrued and unpaid fees and 100% of the amount of such Participating Professional's unpaid expenses, in each case, through March 27, 2020, plus an additional $5 million to Moelis & Company LLC on account of its Restructuring Fee and (ii) reduce the amount of unpaid Allowed Professional Fee Claims payable upon approval of their respective Final Fee Application by an amount equal to 10% of fees paid to such Participating Professional since the Petition Date, excluding the Professional Fee Claims in (i) above which already account for the 10% reduction of fees; (b) $1 million (in addition to the amounts in (a) above) shall be available exclusively for Professional Fee Claims of Professionals of the Debtors in connection with filing, prosecuting, confirming and consummating the Plan incurred after March 27, 2020; (c) $100,000 (in addition to any amounts in (a) and (b) above), shall be made available exclusively for KPMG for fees incurred after March 27, 2020, and (d) Participating Professionals otherwise waive all rights to seek payment of any additional Professional Fee Claims, either as an Administrative Claim or otherwise. For purposes of clarification, the aggregate amount identified in this paragraph shall not exceed the Professional Fee Settlement Reserve Amount.

As part of the Professional Fee Settlement, upon the Effective Date, the DIP Agent shall release the Carve-Out Trigger Notice Reserves to the Reorganized Debtors, and the Reorganized Debtors shall immediately fund the Professional Fee Settlement Reserve with the Professional Fee Settlement Reserve Amount, solely for the unpaid Professional Fee Claims of the Participating Professionals. The Professional Fee Settlement Reserve shall be an escrow account or segregated account, with similar protections as an escrow account, maintained in trust solely for the Participating Professionals with the consent of the Participating Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. The amount of Professional Fee Claims owing to the Participating Professionals, as limited by the Professional Fee Settlement, shall be paid in Cash to such Participating Professionals by the Reorganized Debtors from the Professional Fee Settlement Reserve within two (2) business days after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court. When all such Allowed amounts owing to Participating Professionals have been paid in full consistent with the Professional Fee Settlement, any remaining amount in the Professional Fee Settlement Reserve shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court.

Finally, as part of the Professional Fee Settlement, the Debtors, Reorganized Debtors and the Secured Ad Hoc Group, including each of its individual members, shall not (a) seek, directly or indirectly, any further reductions, discounts or concessions of any kind from the Participating Professionals or (b) object, directly or indirectly, to any Final Fee Applications of any Participating Professional.

If the Effective Date does not occur within 45 days of the Confirmation Date, (a) the Professional Fee Settlement shall be withdrawn, (b) the Participating Professionals shall reserve any and all rights under the Final DIP Order, the Bankruptcy Code and otherwise and (c) all agreements not to seek reductions or to object to any Final Fee Applications of the Participating Professionals shall be withdrawn, and all rights of all parties are reserved.

2. Final Fee Applications

All Professionals shall file Final Fee Applications no later than 60 days after the Effective Date. The Professional Fee Claims of any Participating Professional shall be Allowed in the event that no objection to such Final Fee Application is Filed within 21 days of the filing of such Final Fee Application in accordance with the Professional Fee Settlement.

C. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim and the Debtor against which such Allowed Priority Tax Claim is asserted agree to a less favorable treatment for such Holder, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive, at the Debtors' election, (1) payment in full in Cash of its Allowed Priority Tax Claim or (2) treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code and, for the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code.

D. *Statutory Fees*

All fees due and payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors shall pay any and all such fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each Debtor shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

ARTICLE III.
CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

A. *Formation of Debtor Group for Convenience Purposes Only*

The Plan (including, but not limited to, Article II and Article III of the Plan) groups the Debtors together solely for the purpose of describing treatment under the Plan and distributions to be made in respect of Claims against and Interests in the Debtors under the Plan. Such groupings shall not affect each Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger of consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan, or otherwise.

The Plan constitutes a separate chapter 11 plan of reorganization for each Debtor within the meaning of section 1121 of the Bankruptcy Code, and the classifications set forth in Classes 1 through 10 shall be deemed to apply to each Debtor in accordance with section 1122 of the Bankruptcy Code, except where a Debtor does not have any Claim or Interest qualifying within a particular class. For voting purposes, each Class of Claims against or Interests in the Debtors shall be deemed to constitute separate sub-Classes of Claims against and Interests in each of the Debtors, as applicable. Each such sub-Class shall vote as a single separate Class for each of the Debtors, as applicable;

provided that any Class that does not contain any Allowed Claims or Existing Interests with respect to a particular Debtor will be treated in accordance with Article III.E below.

B. *Classification of Claims and Interests*

Class	Claim or Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Presumed to Accept
2	Other Priority Claims	Unimpaired	Presumed to Accept
3	DIP Claims	Impaired	Entitled to Vote
4	Secured Notes Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Unimpaired/Impaired	Not Entitled to Vote
7	Intercompany Interests	Unimpaired	Presumed to Accept
8	Existing SN Preferred Interests	Impaired	Deemed to Reject
9	Existing SN Common Interests	Impaired	Deemed to Reject
10	Section 510(b) Claims	Impaired	Deemed to Reject

C. *Treatment of Classes of Claims and Interests*

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. The Debtors will not agree to different treatment of any Allowed Claim or Allowed Interest prior to the Effective Date without the consent of the Requisite DIP Lenders. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such Holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

1. Class 1 — Other Secured Claims

    a. *Classification*: Class 1 consists of all Other Secured Claims against the Debtors.

    b. *Treatment*: In full and final satisfaction of each Allowed Other Secured Claim against the Debtors, each Holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor:

        i. payment in full in Cash;

        ii. delivery of the collateral securing any such Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

        iii. Reinstatement of such Other Secured Claim; or

iv. other treatment rendering such Claim Unimpaired.

c. *Voting*: Class 1 is Unimpaired. Holders of Allowed Other Secured Claims in Class 1 are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

a. *Classification*: Class 2 consists of all Other Priority Claims against the Debtors.

b. *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor against which such Allowed Other Priority Claim is asserted agree to less favorable treatment for such Holder, in full and final satisfaction of each Allowed Other Priority Claim against the Debtors, each Holder of an Allowed Other Priority Claim shall receive either:

i. Cash in an amount equal to such Allowed Other Priority Claim; or

ii. such other treatment rendering such Other Priority Claim Unimpaired.

c. *Voting*: Class 2 is Unimpaired. Holders of Allowed Other Priority Claims in Class 2 are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims in Class 2 are not entitled to vote to accept or reject the Plan.

3. Class 3 – DIP Claims

   a. *Classification*: Class 3 consists of all DIP Claims (other than DIP Fee Claims) against the Debtors.

   b. *Treatment*: In full and final satisfaction of each Allowed DIP Claim (other than DIP Fee Claims), each Holder of an Allowed DIP Claim (other than DIP Fee Claims) shall receive its Pro Rata share of:

      i. the DIP Equity Distribution on the Effective Date; and

      ii. 100% of the Post-Effective Date Equity Distribution less any amount of such Post-Effective Date Equity Distribution, if any, allocated to Holders of Allowed Claims in Classes 4 and/or 5 based upon the outcome of the Lien-Related Litigation, which allocation shall be consistent with, as applicable, the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code.

   c. *Voting*: Class 3 is Impaired. Holders of DIP Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4 — Secured Notes Claims

   a. *Classification*: Class 4 consists of all Secured Notes Claims against the Debtors.

   b. *Treatment*: In full and final satisfaction of each Allowed Secured Notes Claim (other than DIP Fee Claims), each Holder of an Allowed Secured Notes Claim (other than

DIP Fee Claims) shall receive its Pro Rata share of the Post-Effective Date Equity Distribution, if any, allocated to the Secured Notes Claims based upon the outcome of the Lien-Related Litigation, which allocation shall be consistent with, as applicable, the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code.

c. *Voting*: Class 4 is Impaired. Holders of Secured Notes Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. Class 5 — General Unsecured Claims

   a. *Classification*: Class 5 consists of all General Unsecured Claims against the Debtors.

   b. *Treatment*: In full and final satisfaction of each Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Post-Effective Date Equity Distribution, if any, allocated to the General Unsecured Claims based upon the outcome of the Lien-Related Litigation, which allocation shall be consistent with, as applicable, the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code.

   c. *Voting*: Class 5 is Impaired. Holders of General Unsecured Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. Class 6 — Intercompany Claims
    a. *Classification*: Class 6 consists of any Intercompany Claims.
    b. *Treatment*: On the Effective Date, Intercompany Claims shall be, at the election of the Debtors:
        i. Reinstated;
        ii. compromised;
        iii. released; or
        iv. offset, contributed, and/or distributed to the applicable Debtor.
    c. *Voting*: Class 6 is either Unimpaired or Impaired. Holders of Allowed Intercompany Claims in Class 6 are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code or conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Intercompany Claims in Class 6 are not entitled to vote to accept or reject the Plan.
7. Class 7 — Intercompany Interests
    a. *Classification*: Class 7 consists of all Intercompany Interests.
    b. *Treatment*: On the Effective Date, Intercompany Interests shall receive no recovery or distributions and be Reinstated or contributed to the applicable Debtor solely to maintain the Debtors' corporate structure.

c. *Voting*: Class 7 is Unimpaired. Holders of Allowed Intercompany Interests in Class 7 are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Intercompany Claims in Class 7 are not entitled to vote to accept or reject the Plan.

8. Class 8 — Existing SN Preferred Interests

   a. *Classification*: Class 8 consists of all Existing SN Preferred Interests.

   b. *Treatment*: On the Effective Date, each Existing SN Preferred Interest shall be cancelled, released and extinguished and shall be of no further force and effect. No Holder of any Existing SN Preferred Interest shall be entitled to any recovery or distribution under the Plan on account of such Interest.

   c. *Voting*: Class 8 is Impaired. Holders of Existing SN Preferred Interests in Class 8 are conclusively deemed to have rejected the Plan under section 1126(f) of the Bankruptcy Code. Holders of Existing SN Preferred Interests in Class 8 are not entitled to vote to accept or reject the Plan.

9. Class 9 — Existing SN Common Interests

   a. *Classification*: Class 9 consists of all Existing SN Common Interests.

   b. *Treatment*: On the Effective Date, each Existing SN Common Interest shall be cancelled, released and extinguished and shall be of no further force and effect. No Holder of any Existing SN Common

Interest shall be entitled to any recovery or distribution under the Plan on account of such Interest.

c. *Voting*: Class 9 is Impaired. Holders of Existing Common Interests in Class 9 are conclusively deemed to have rejected the Plan under section 1126(f) of the Bankruptcy Code. Holders of Existing SN Common Interests in Class 9 are not entitled to vote to accept or reject the Plan.

10. Class 10 – Section 510(b) Claims

a. *Classification*: Class 10 consists of all Section 510(b) Claims.

b. *Treatment*: On the Effective Date, each Section 510(b) Claim will be cancelled, released and extinguished and shall be of no further force and effect. No Holder of any Section 510(b) Claim shall be entitled to any recovery or distribution under the Plan on account of such Claim.

c. *Voting*: Class 10 is Impaired. Holders of Section 510(b) Claims in Class 10 are conclusively deemed to have rejected the Plan under section 1126(f) of the Bankruptcy Code. Holders of Section 510(b) Claims in Class 10 are not entitled to vote to accept or reject the Plan.

D. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claim.

E. *Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Interest, or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims eligible to vote on the Plan and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.

G. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class(es) of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or

Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

H. *Intercompany Interests*

To the extent Reinstated under the Plan, the Intercompany Interests shall be Reinstated for the ultimate benefit of the Holders of Claims that receive New Common Stock under the Plan, and shall receive no recovery or distribution. For the avoidance of doubt, to the extent Reinstated pursuant to the Plan, on and after the Effective Date, all Intercompany Interests shall be owned by the same Reorganized Debtor that corresponds with the Debtor that owned such Intercompany Interests prior to the Effective Date (subject to the Restructuring Transactions).

I. *Subordinated Claims and Interests*

The allowance, classification, and treatment of all Allowed Claims and Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or Reorganized Debtors, as applicable, reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV.

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

A. *General Settlement of Claims, Interests, and Causes of Action*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to the Plan, including any dispute regarding the treatment of any Intercompany Claims. The Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies, including the Professional Fee Settlement, pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement, including the Professional Fee Settlement, is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable and reasonable.

B. *Restructuring Transactions*

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors shall consummate the Restructuring Transactions and take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree, including, but not limited to the documents comprising the Plan Supplement and the New Organizational Documents, as applicable; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities may agree; (3) the execution, delivery and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law, including any applicable New Organizational Documents; (4) such other transactions that are required to effectuate the Restructuring Transactions; and (5) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

C. *Sources of Consideration for Plan of Reorganization Distributions*

The Reorganized Debtors will fund distributions under the Plan with Cash on hand on the Effective Date and the New Common Stock.

1. Issuance and Distribution of New Common Stock

On the Effective Date, or as soon as reasonably practicable thereafter, the Reorganized Debtors shall issue the New Common Stock to fund distributions to Holders of Allowed Claims in accordance with Article III of the Plan; *provided that* New Common Stock issued on account of the Post-Effective Date Equity Distribution shall occur in accordance with Article IV.C.2. The issuance of New Common Stock, as well as options, or other equity awards of interests in the Reorganized Debtors, if any, reserved under the Management Incentive Plan, is duly authorized without the need for any further corporate action and without any further action by the Debtors or Reorganized Debtors or the Holders of Claims. All shares of New Common Stock issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable.

The Secured Ad Hoc Group shall prepare a New Stockholders' Agreement as part of the Plan Supplement. Each Entity intended to become a Holder of New Common Stock, as a condition to receiving such New Common Stock, shall be required to deliver an executed signature page to the New Stockholders' Agreement. Each Holder of New Common Stock shall be deemed a party to the New Stockholders' Agreement, without regard to whether such signature page is actually delivered. On the Effective Date, the Reorganized Debtors shall enter into and deliver the New Stockholders' Agreement to each known Entity that is intended to be a party thereto at such time, and such New Stockholders' Agreement shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each Holder of New Common Stock shall be bound thereby.

2. Distribution of Post-Effective Date Equity Distribution

The shares of New Common Stock comprising the Post-Effective Date Equity Distribution shall remain authorized but unissued pending the outcome of all or a portion of the Lien-Related Litigation, which shall occur following the Effective Date. Upon adjudication or other resolution of all or a portion of the Lien-Related Litigation, the Reorganized Debtors shall issue the Post-Effective Date Equity Distribution in the amount of New Common Stock allocated to Class 3, 4 and/or 5 Claims, to the extent such Claims are entitled to receive New Common Stock, pursuant to an order of the Bankruptcy Court. No shares of New Common Stock shall be issued on account of the Post-Effective Date Equity Distribution except as provided in an order of the Bankruptcy Court with respect to the Lien-Related Litigation, which order shall designate the allocation of New Common Stock as between the Holders of Allowed DIP Claims, if any, Holders of Allowed Secured Notes Claims, if any, and Holders of Allowed General Unsecured Claims, if any. Upon such order of allocation from the Bankruptcy Court, to the extent the New Stockholders' Agreement is not terminated in accordance with its terms, each proposed Holder of New Common Stock under such order shall, as a condition to receiving such New Common Stock, be required to deliver an executed signature page to the New Stockholders' Agreement. Each Holder shall be deemed a party to the New Stockholders' Agreement, if any, without regard to whether an executed signature pages is actually delivered.

D. *Lien-Related Litigation*

The Lien-Related Litigation shall be adjudicated following the Confirmation Date by the Bankruptcy Court according to the following timeline:

- *Phase 1:* The parties to the Lien-Related Litigation shall seek a final hearing date that is not more than 30 days after the Effective Date to determine the interpretation of the Final DIP Order. This phase shall be initiated by a pleading filed by the DIP Lenders or DIP Agent.

- *Phase 2:* If the Bankruptcy Court determines that any additional Lien-Related Litigation is necessary in light of the determinations in Phase 1, other than as to the valuation of Causes of Action, the relevant parties shall seek a hearing for determination of such additional issues not more than 30 days after the Bankruptcy Court's determination of issues presented in Phase 1 and in no event 60 days after the Effective Date. This phase shall be initiated by a pleading filed by the Lien-Related Litigation Creditor Representative on or before the 35th day following the Effective Date.

- *Phase 3:* If the Bankruptcy Court determines that the valuation of any Causes of Action are necessary as part of any Lien-Related Litigation in light of Phases 1 and 2, the relevant parties may seek a hearing for determination of such additional issues after the Bankruptcy Court's determination of issues presented in Phases 1 and 2. This phase shall be initiated by a pleading filed by the Lien-Related Litigation Creditor Representative not more than 30 days after the

Bankruptcy Court's determination of issues presented in Phase 2.

- *Post-Effective Date Equity Distribution Allocations:* The Bankruptcy Court may, in its discretion, issue a final ruling as to the allocation of all or a part of the Post-Effective Date Equity Distribution at the conclusion of any of the three phases.

Discovery shall not occur except to the extent permitted and deemed necessary by the Bankruptcy Court. Expert reports, if any, shall be exchanged 14 days prior to any hearing. Any and all claims, objections, or challenges within the definition Lien-Related Litigation shall be dismissed with prejudice, released, and forever barred if not asserted and determined in accordance with the foregoing schedule and otherwise in accordance with the provisions of the Plan. The liquidation and valuation findings and conclusions in the Confirmation Order and in connection with Confirmation shall have preclusive effect in the Lien-Related Litigation, provided, however, such preclusive effect shall not apply to the valuation of the Debtors' Causes of Action, which shall be subject to valuation, if at all, in accordance with Phase 3 of the Lien-Related Litigation described in this section.

The parties to the Lien-Related Litigation shall use all reasonable efforts to minimize the costs of such litigation. All costs of prosecuting the Lien-Related Litigation shall be borne by the respective parties to the litigation, and no costs shall be borne by the Reorganized Debtors or payable by one group of parties to the other; *provided that* in the event that (i) the DIP Lenders retain at least 50.01% of the New Common Stock following the Post-Effective Date Equity Distribution, nothing herein shall restrict the ability of the Reorganized Debtors to pay the fees and expenses of the DIP Lenders or Secured Ad Hoc Group at any time following the Effective Date or (ii) the holders of General Unsecured Claims hold at least 50.01% of the New Common Stock following the Post-Effective Date Equity Distribution, nothing herein shall restrict the ability of the Reorganized Debtors to pay the fees and expenses of the Lien-Related Litigation Creditor Representative at any time following the Effective Date. Notwithstanding the foregoing, nothing in this paragraph shall alter the rights of the DIP Lenders or DIP Agent to repayment or reimbursement to the extent provided under the Final DIP Order or DIP Credit Agreement. Notwithstanding anything in this Plan to the contrary, in connection with determining the Lien-Related Litigation, for purposes of clarification, all rights, claims, and defenses of the Holders of the DIP Claims, including all rights under sections 1129(a)(9)(A) and 726 of the Bankruptcy Code shall be deemed preserved. Without limiting the foregoing, for purposes of clarification, nothing herein restricts the ability of the Lien-Related Litigation Creditor Representative to employ professionals and seek or secure funding or financing to pay for the reasonable fees and expenses incurred in connection with the Lien-Related Litigation to the extent permitted by otherwise applicable law.

There shall be no issuance and distribution of New Common Stock pursuant to the Post-Effective Date Equity Distribution except pursuant to an order entered by the Bankruptcy Court with respect to or following the resolution of the Lien-Related Litigation. Any and all issues regarding the proper allocation of the Post-Effective Date Equity Distribution shall be determined by the Bankruptcy Court in connection with the Lien-Related Litigation and consistent with the Final DIP Order and the priorities set forth in sections 1129(b) and 726 of the Bankruptcy Code, which determination regarding such allocation may include, among other things, the consideration of the value, if any, of any Causes of Action preserved by the Reorganized Debtors pursuant to the Plan and whether such value should be allocated to or offset by Secured Claims or Administrative Claims. The New Common Stock shall be issued pursuant to the Post-Effective Date Equity Distribution upon an order of the Bankruptcy Court, which order shall designate the allocation of New Common Stock as between the Holders of Allowed DIP Claims, if any, Holders of Allowed Secured Notes Claims, if any, and Holders of Allowed General Unsecured Claims, if any.

Reorganized SN shall not declare, pay, or make any dividend or other similar distribution on account of the New Common Stock or make any similar transfer with respect to the New Common Stock until the Post-Effective Date Equity Distribution has occurred. Prior to the earlier of (i) the resolution of the Lien-Related Litigation and (ii) the distribution of all New Common Stock comprising the Post-Effective Date Equity Distribution, the Reorganized Debtors will seek approval of any settlement or compromise of any Causes of Action against the Sanchez Parties, SOG, SNMP, or their respective transferees (within the meaning of section 550 of the Bankruptcy Code) or Lien-Related Litigation, following consultation with the Lien-Related Litigation Creditor Representative, pursuant to Bankruptcy Rule 9019, after notice and opportunity for a hearing.

E. *Continuation of Gavilan Proceeding*

The Gavilan Proceeding shall be litigated or compromised after the Effective Date exclusively by the Reorganized Debtors.

F. *Corporate Existence*

Except as otherwise provided in the Plan, the New Organizational Documents, or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, each Debtor shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other analogous formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

G. *Vesting of Assets in the Reorganized Debtors*

Except as otherwise provided in the Plan, the Confirmation Order, or any agreement, instrument, or other document incorporated herein or therein, or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the

Debtors, including interests held by the Debtors in their respective non-Debtor subsidiaries, shall vest in each applicable Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

H. *Corporate Action*

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all actions contemplated by the Plan shall be deemed authorized and approved by the Bankruptcy Court in all respects, including, as applicable: (1) the implementation of the Restructuring Transactions; (2) the selection of the directors and officers for the Reorganized Debtors; (3) the adoption of the Management Incentive Plan, if any, by the Reorganized SN Board; (4) the issuance and distribution of the New Common Stock; and (5) all other actions contemplated under or necessary to implement the Plan (whether to occur before, on, or after the Effective Date). Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtors, and any corporate action required by the Debtors, or the Reorganized Debtors in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of the Debtors, or the Reorganized Debtors. On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, and any and all other agreements, documents, securities, and instruments relating to the foregoing, to the extent not previously authorized by the Bankruptcy Court. The authorizations and approvals contemplated by this Article IV.H shall be effective notwithstanding any requirements under non-bankruptcy law.

I. *New Organizational Documents*

Prior to the Effective Date, the Secured Ad Hoc Group shall prepare the form of New Organizational Documents, which shall be included in the Plan Supplement. On the Effective Date, to the extent legally required, each of the Reorganized Debtors will file its New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in its respective state of incorporation or formation in accordance with the applicable laws of the respective state of incorporation or formation. The New Organizational Documents shall be consistent with section 1123(a)(6) of the Bankruptcy Code. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents will prohibit the issuance of non-voting equity securities. After the Effective Date, the Reorganized Debtors may amend and restate their respective New Organizational Documents and other constituent documents as permitted by the laws of their respective states of incorporation and their respective New Organizational Documents. Neither the preparation nor the filing of the New Organizational Documents shall be deemed to create a new corporate or other legal entity, and the New Organizational Documents shall be deemed amendments to or amendments and restatements of applicable organizational documents for purposes of any change of control determination.

J. *Directors and Officers of Reorganized SN*

The composition and membership of the Reorganized SN Board shall be determined prior to the Effective Date by the Secured Ad Hoc Group and included in the Plan Supplement. Thereafter, the members of the Reorganized SN Board shall be elected in accordance with the New Organizational Documents. Provisions regarding the removal, appointment, and replacement of members of the Reorganized SN Board in subsequent terms will be disclosed in the New Organizational Documents.

If the Secured Ad Hoc Group, the CRO and each applicable executive reach an agreement with respect to the terms and form of the New Executive Agreements, such agreement shall be included in the Plan Supplement and, on the Effective Date, the Reorganized Debtors shall enter into the New Executive Employment Agreements.

K. *Retention of Current Workforce by Reorganized SN; Severance Payments*

The CRO and the Secured Ad Hoc Group shall agree upon the members of the Debtors' current workforce that shall be retained and employed by the Reorganized Debtors as of the Effective Date. Such individuals shall be offered employment as soon as practicable. The continuation of SN's obligations by Reorganized SN under the 2020 Non-Executive Bonus Program for such retained employees will be set forth in the Plan Supplement.

Severance consisting of up to six (6) weeks' severance pay up to an aggregate amount of up to $1.4 million shall be provided to all members of the Debtors' current workforce who are SOG employees that provide services to the Debtors, other than the Sanchez Parties, that are not offered employment with the Reorganized Debtors, provided such member of the Debtors' workforce has not been paid severance by SOG. All such payments will be subject to any customary or required withholdings and other requirements of law.

L. *Management Incentive Plan*

The Reorganized SN Board shall be authorized to implement the Management Incentive Plan on terms to be determined by the Reorganized SN Board.

M. *Effectuating Documents; Further Transactions*

On and after the Effective Date, the Reorganized Debtors, their officers, and the members of the Reorganized Boards are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, including the New Common Stock, in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization, or consents.

N. *Preservation of Causes of Action*

Unless expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action (including all Avoidance Actions), whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and such rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or pursuant to a Bankruptcy Court order, the Reorganized Debtors, as applicable, expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. In accordance with section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided herein, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors.

The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, as applicable. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to, or action, order, or approval of, the Bankruptcy Court.

Notwithstanding the foregoing, the Lien-Related Litigation Creditor Representative shall have standing to pursue, prosecute and sole authority to settle all Causes of Action referenced and asserted in the Lien Challenge Complaint as of the date hereof, solely to the extent and in accordance with the process and timing set forth in the Plan. The Bankruptcy Court shall retain exclusive jurisdiction to resolve all Causes of Action.

O. *Exemption from Registration Requirements*

The authorization, issuance, and distribution of all New Common Stock pursuant to the Plan, including the shares of New Common Stock issued pursuant to the DIP Equity Distribution and the Post-Effective Date Equity Distribution, regardless of whether issued on or as soon as reasonably practicable after the Effective Date or following the outcome of the Lien-Related Litigation, will be exempt from the registration requirements of section 5 of the Securities Act and any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code or, only to the extent such exemption under section 1145 of the Bankruptcy Code is not available, any other available exemption from registration under the Securities Act and such similar federal, state and local laws.

All New Common Stock authorized, issued and distributed pursuant to the Plan in reliance upon the exemption from registration provided in section 1145 of the Bankruptcy Code may be resold without registration under the Securities Act by the recipients thereof that are not "underwriters" (as defined in section 2(a)(11) of the Securities Act and in the Bankruptcy Code) pursuant to the Plan, subject to: (1) compliance with any applicable state and foreign securities laws and obtaining any other applicable regulatory approval; and (2) the transfer restrictions set forth in the New Organizational Documents, if any. For the avoidance of doubt, if any shares of New Common Stock are issued pursuant to the exemption from registration in section 4(a)(2) of the Securities Act, such shares of New Common Stock will be considered "restricted securities" and may not be resold by the recipients thereof except pursuant to an effective registration statement under the Securities Act or an available exemption thereunder. Reorganized SN will not be a public reporting company as of the Effective Date.

P. *Cancellation of Instruments, Certificates, and Other Documents*

Except for the purpose of evidencing a right to and allowing Holders of Claims to receive a distribution under the Plan and except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, all notes, instruments, Certificates, and other documents evidencing Claims or Interests, and any other credit agreements and indentures evidencing or creating a prepetition Claim or Interest, shall be terminated and canceled, and the obligations of the Debtors thereunder or in any way related thereto shall be discharged. Notwithstanding the foregoing, DIP Credit Agreement, Indentures, and the Collateral Trust Agreement, as applicable, shall continue in effect solely to the extent necessary to: (i) allow the DIP Agent, a disbursing agent, or the Indenture Trustees to make distributions to the Holders of DIP Claims, Secured Notes Claims and Unsecured Notes Claims, as applicable; (ii) permit the DIP Agent, the Indenture Trustees, and the Collateral Trustee to assert their charging liens; and (iii) allow the DIP Agent, the Indenture Trustees, Holders of Secured and Unsecured Notes, and the Collateral Trustee to maintain any right of indemnification, contribution, subrogation or any other claim or entitlement they may have under the DIP Credit Agreement, the Indentures, or the Collateral Trust Agreement, as applicable, with respect to any party other than the Debtors or Reorganized Debtors. The provisions of the DIP Credit Agreement, the Indentures, and the Collateral Trust Agreement governing the relationships of each of the DIP Agent, the DIP Lenders, the Indenture Trustees, the respective Holders of Secured Notes and Unsecured Notes, and the Collateral Trustee shall not be affected by the Plan, Confirmation, or Effective Date. Notwithstanding confirmation or consummation of this Plan (and for the avoidance of doubt), the Unsecured Notes Indentures and any agreement that governs the rights of the Holders of Unsecured Notes Claims shall continue in effect (and the Unsecured Notes Indenture Trustee shall remain as trustee, register and paying agent) for the purposes of: (1) preserving any rights of the Unsecured Notes Indenture Trustee to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under the relevant Indenture, including any rights to priority of payment and/or to exercise charging liens; (2) permitting the Unsecured Notes Indenture Trustee to enforce any obligations owed to it under the Plan; and (3) permitting the Unsecured Notes Indenture Trustee to appear in the case or any proceeding in the case in which it is or may become a party.

Q. *Section 1146(a) Exemption*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan (including the Restructuring Transactions) or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity Security, or other interest in the Debtors or the Reorganized Debtors; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan (including the Restructuring Transactions), shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

R. *DIP Agent Fees and Expenses*

On the Effective Date, the Debtors or the Reorganized Debtors, as applicable, shall pay in Cash all DIP Agent Fees and Expenses without the need for the DIP Agent to file fee applications or any other applications or motions with the Bankruptcy Court, and from and after the Effective Date, the Reorganized Debtors shall pay in Cash all DIP Agent Fees and Expenses incurred. For the avoidance of doubt, nothing herein shall be deemed to impair, waive, discharge, or negatively impact or affect the rights of the DIP Agent to exercise its charging liens pursuant to the terms of the DIP Credit Agreement.

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. *Assumption or Rejection of Executory Contracts and Unexpired Leases*

Except as otherwise provided in the Plan or otherwise agreed to by the Debtors and the counterparty to an Executory Contract or Unexpired Lease, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected in the Chapter 11 Cases, shall be assumed by the Reorganized Debtors, effective as of the Effective Date, in accordance with the requirements of sections 365 and 1123 of the Bankruptcy Code and regardless of whether such Executory Contract or Unexpired Lease is set forth on the Schedule of Assumed Executory Contracts and Unexpired Leases, other than: (1) those that are identified on the Schedule of Rejected Executory Contracts and Unexpired Leases; (2) those that have been previously rejected by a Final Order; (3) those that are the subject of a motion to reject Executory Contracts or Unexpired Leases that is pending on the Confirmation Date; or (4) those that are subject to a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date. Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, the Schedule of Assumed Executory Contracts and Unexpired Leases, or the Schedule of Rejected Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order. Unless otherwise indicated or agreed by the Debtors and the applicable contract counterparties, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date, notwithstanding the fact that the deadline to object to assumption or rejection of an Executory Contract or Unexpired Lease may be after the Effective Date.

Each Executory Contract or Unexpired Lease assumed by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law or as otherwise agreed by the Debtors and the applicable counterparty to the Executory Contract or Unexpired Lease. Notwithstanding anything to the contrary in this Article V, the New Executive Employment Agreements shall be deemed to be entered into or assumed, as applicable, on the Effective Date.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Prior to the Confirmation Hearing, the Secured Ad Hoc Group will identify the Executory Contracts and Unexpired Leases to be included in the Schedule of Rejected Executory Contracts and Unexpired Leases, and the Debtors shall cause Notices of Rejection to be sent to the applicable counterparties in the Schedule of Rejected Executory Contracts and Unexpired Leases setting forth the date by which objections to the proposed rejection, if any, must be Filed. The Debtors or the Reorganized Debtors, as applicable, reserve the right to remove an Executory Contract or Unexpired Lease from the Schedule of Rejected Executory Contracts and Unexpired Leases until the later of (a) the date by which objections to the proposed rejection must be Filed or (b) if such objection is Filed, prior to the date of a decision by the Bankruptcy Court with respect to such objection. Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts and Unexpired Leases, if any, must be Filed with the Bankruptcy Court by no later than the date provided in the Notice of Rejection, Confirmation Order or any other order of the Bankruptcy Court establishing the date by which such Proofs of Claim must be Filed. Any and all negotiation, litigation (including of any objection to rejection), dispute resolution or any other matters regarding the rejection of Executory Contracts and Unexpired Leases shall be carried out by the Reorganized Debtors after the Effective Date.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that are not Filed within such time set in the Notice of Rejection or by the Bankruptcy Court in the Confirmation Order will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objection by the Debtors or Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts and Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

C. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any Cure Claims under each Executory Contract and Unexpired Lease to be assumed shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash as soon as reasonably practicable, subject to the limitations described below, by the Reorganized Debtors or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Claim, (2) the ability of the Reorganized Debtors or any assignee, as applicable, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall only be paid following the entry of a Final Order resolving the dispute and approving the assumption.

Prior to the Confirmation Hearing, the Secured Ad Hoc Group will identify the Executory Contracts and Unexpired Leases to be included in the Schedule of Assumed Executory Contracts and Unexpired Leases, and the Debtors shall cause Notices of Assumption to be sent to applicable counterparties. Any objection to the proposed assumption or cure amount by such counterparty must be Filed by no later than the date provided in the Notice of Assumption, Confirmation Order or any other order of the Bankruptcy Court establishing the date by which such objections must be Filed. The Debtors or the Reorganized Debtors, as applicable, reserve the right to remove an Executory Contract or Unexpired Lease from the Schedule of Assumed Executory Contracts and Unexpired Leases and move it to the Schedule of Rejected Executory Contracts and Unexpired Leases until the later of (a) the date by which objections to the proposed assumption must be Filed or (b) if such objection is Filed, prior to the date of a decision by the Bankruptcy

Court with respect to such objection. Any such objection shall be heard after the Confirmation Date at a date determined by the Bankruptcy Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Claim. Any and all negotiation, litigation (including of any objection to assumption), dispute resolution or any other matters regarding the assumption of Executory Contracts and Unexpired Leases shall be carried out by the Reorganized Debtors after the Effective Date

Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Claims, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. Any liabilities reflected in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

D. *Indemnification Obligations*

On and as of the Effective Date, the Indemnification Obligations to indemnify any Indemnified Parties with respect to the Exculpation Claims (i) will be assumed; (ii) will survive the effectiveness of the Plan; (iii) will not be discharged, impaired, or otherwise affected in any way, including by the Plan, the Plan Supplement, the Confirmation Order or the New Organizational Documents; (iv) will not be limited, reduced, or terminated after the Effective Date; and (v) will survive unimpaired and unaffected. Any payment of Indemnification Obligations by the Reorganized Debtors shall be sought first to the extent of any available coverage under existing insurance policies.

E. *Insurance Policies*

Notwithstanding anything in the Plan to the contrary, unless otherwise listed on the Schedule of Rejected Executory Contracts and Unexpired Leases (provided that no D&O Liability Insurance Policies shall be rejected), all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto to which a Debtor is a party, named insured or beneficiary as of the Effective Date are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, pursuant to section 365(a) of the Bankruptcy Code, the Reorganized Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto, including all D&O Liability Insurance Policies (including tail coverage liability insurance). Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' assumption of all such insurance policies, including the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of insurance policies, including the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory

Contract that has been assumed by the Reorganized Debtors under the Plan as to which no Proof of Claim or Cure Claim need be Filed, and shall survive the Effective Date.

F. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

G. *Contracts and Leases After the Petition Date*

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the

Plan shall survive and remain unaffected by entry of the Confirmation Order.

H. *Reservation of Rights*

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding (1) whether a contract or lease is or was executory or unexpired at the time of assumption, (2) the amount of any Cure Claim, (3) the ability of the Reorganized Debtors or any assignee, as applicable, to provide adequate assurance of future performance (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (4) any other matter pertaining to assumption, the Reorganized Debtors shall have 45 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. *Distributions on Account of Claims Allowed as of the Effective Date*

Except with respect to the New Common Stock subject to the Post-Effective Date Equity Distribution, or except as provided in a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the Holder of the applicable Claim or Interest, on the first Distribution Date, the Disbursing Agent shall make initial distributions under the Plan on account of Claims Allowed on or before the Effective Date; *provided*, *however*, that (1)

Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (2) Allowed Priority Tax Claims shall be paid in accordance with Article II.C. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the Holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. Except as may be provided by an order of the Bankruptcy Court for the release of the New Common Stock subject to the Post-Effective Date Equity Distribution, which New Common Stock shall be released as soon as practicable following the entry of such order, a Distribution Date shall occur no more frequently than once in every 90-day period after the Effective Date, as necessary, in the sole discretion of the Reorganized Debtors.

B. *Rights and Powers of the Disbursing Agent*

1. Powers of Disbursing Agent

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

C. *Special Rules for Distributions to Holders of Disputed Claims*

Except as otherwise agreed by the relevant parties: (1) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order; and (2) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order for the Claims have been Allowed or expunged. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim in such Class that becomes an Allowed Claim after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims in such Class.

D. *Delivery of Distributions*

1. Record Date for Distributions

Except for distributions to holders of public securities, three (3) business days before the Effective Date, the Claims Register and the various transfer registers for each Class of Claims as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims. The Disbursing Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after three (3) business days before the Effective Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount. For the avoidance of doubt, no record date for distributions shall apply to holders of public securities.

2. Distribution Process

The Disbursing Agent shall make all distributions required under the Plan, except with respect to distributions to Holders of Allowed DIP Claims, Allowed Secured Notes Claims and Allowed Unsecured Notes Claims, as set forth herein, and shall exercise commercially reasonable efforts to implement appropriate mechanics governing such distributions in accordance with the Plan and the terms of the relevant governing agreement. Except as otherwise provided herein, and notwithstanding any authority to the contrary, distributions to Holders of Allowed Claims, including Claims that become Allowed after the Effective Date, shall be made to Holders of record or their respective designees as of three (3) business days before the Effective Date: (a) to the address of such Holder or designee as set forth in the Debtors' books and records, provided that the address of such Holder shall be deemed to be the address set forth in any Proof of Claim filed by such Holder (or if the appropriate notice has been provided pursuant to the governing agreement in writing, on or before the date that is ten (10) calendar days before the Effective Date, of a change of address or an identification of designee, to the changed address or to such designee, as applicable); or (b) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the applicable register or the Debtors' books and records, no Proof of Claim has been Filed, and the Disbursing Agent has not received a written notice of a change of address on or before the date that is ten (10) calendar days before the Effective Date. The Debtors, the Reorganized Debtors, and the Disbursing Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

3. Delivery of Distributions to Holders of Allowed DIP Claims

Except as otherwise provided in the Plan or reasonably requested by the DIP Agent, all distributions to Holders of Allowed DIP Claims shall be deemed completed when made to (or with the consent of) the DIP Agent, which shall be deemed to be the Holder of all Allowed DIP Claims for purposes of distributions to be made hereunder. The DIP Agent shall hold or direct such distributions for the benefit of the Holders of Allowed DIP Claims, as applicable. As soon as practicable in accordance with the requirements set forth in this Article VI, the DIP Agent shall arrange to deliver such distributions to or on behalf of such Holders of Allowed DIP Claims, at the sole expense of the Debtors or the Reorganized Debtors, as applicable. The DIP Agent shall not incur any liability on account of any distributions under the Plan.

4. Delivery of Distributions to Holders of Allowed Secured Notes Claims

Except as otherwise provided in the Plan or reasonably requested by the Secured Notes Indenture Trustee, all distributions to Holders of Allowed Secured Notes Claims shall be deemed completed when made to (or with the consent of) the Secured Notes Indenture Trustee, which shall be deemed to be the Holder of all Allowed Secured Notes Claims for purposes of distributions to be made hereunder. The Secured Notes Indenture Trustee shall hold or direct such distributions for the benefit of the Holders of Allowed Secured Notes Claims, as applicable. As soon as practicable in accordance with the requirements set forth in this Article VI, the Secured Notes Indenture Trustee shall arrange to deliver such distributions to or on behalf of such Holders of Allowed Secured Notes Claims, at the sole expense of the Debtors or the Reorganized Debtors, as applicable. Notwithstanding anything to the contrary in the Plan, the Secured Notes Indenture Trustee may transfer or direct that the distribution be made to the holders of the Secured Notes directly on the books and records of the

Reorganized SN's transfer agent or through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) consistent with the customary practices of DTC. Such distributions shall be subject in all respects to the right of the Secured Notes Indenture Trustee or Collateral Trustee, as applicable, to assert its applicable charging liens against such distributions. The Reorganized Debtors reserve the right to issue New Common Stock to Holders of Allowed Secured Notes Claims directly on the books and records of the transfer agent or to seek to make the New Common Stock eligible to be distributed through the facilities of DTC and as provided for under the Secured Notes Indenture. The Secured Notes Indenture Trustee shall not incur any liability on account of any distributions under the Plan.

5. Delivery of Distributions to Holders of Allowed Unsecured Notes Claims

Except as otherwise provided in the Plan or reasonably requested by the Unsecured Notes Indenture Trustee, all distributions to Holders of Allowed Unsecured Notes Claims shall be deemed completed when made to (or with the consent of) the Unsecured Notes Indenture Trustee, which shall be deemed to be the Holder of all Allowed Unsecured Notes Claims for purposes of distributions to be made hereunder. The Unsecured Notes Indenture Trustee shall hold or direct such distributions for the benefit of the Holders of Allowed Unsecured Notes Claims, as applicable. As soon as practicable in accordance with the requirements set forth in this Article VI, the Unsecured Notes Indenture Trustee shall arrange to deliver such distributions to or on behalf of such Holders of Allowed Unsecured Notes Claims.

Notwithstanding anything to the contrary in the Plan, the Unsecured Notes Indenture Trustee may transfer or direct that the distribution be made to the holders of the Unsecured Notes directly on the books and records of the Reorganized SN's transfer agent or through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) consistent with the customary practices of DTC. Such distributions shall be subject in all respects to the right of the Unsecured Notes Indenture Trustee to assert its applicable charging liens against such distributions. The Reorganized Debtors reserve the right to issue New Common Stock to Holders of Allowed Unsecured Notes Claims directly on the books and records of the transfer agent or to seek to make the New Common Stock eligible to be distributed through the facilities of DTC and as provided for under the 2021 Unsecured Notes Indentures and the 2023 Unsecured Notes Indenture. The Unsecured Notes Indenture Trustee shall not incur any liability on account of any distributions under the Plan.

6. Compliance Matters

In connection with the Plan, to the extent applicable, the Reorganized Debtors or the Disbursing Agent, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors or the Disbursing Agent, as applicable, shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, or withholding distributions pending receipt of information necessary to facilitate such distributions. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

7. Foreign Currency Exchange Rate

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal, National Edition*, on the Effective Date.

8. Fractional, Undeliverable, and Unclaimed Distributions

   a. *Fractional Distributions*. Whenever any distribution of fractional shares of New Common Stock or Cash would otherwise be required pursuant to the Plan, the actual distribution shall reflect a rounding of such fraction down to the nearest whole interest or share or dollar, as applicable. The total number of authorized shares of New Common Stock to be distributed pursuant to the Plan shall be adjusted as necessary to account for the foregoing rounding.

   b. *Minimum Distributions*. Holders of Allowed Claims entitled to distributions of less than $50 in the aggregate (whether Cash or otherwise) shall not receive distributions, and each such Claims shall be discharged pursuant to Article VIII and their Holders are forever barred pursuant to Article VIII from asserting such Claims against the Debtors, the Reorganized Debtors or their property.

c. *Undeliverable Distributions*. If any distribution to a Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable, no further distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such Holder on the next Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes deliverable, or such distribution reverts to the Reorganized Debtors or is canceled pursuant to Article VI.D.7.d of the Plan, and shall not be supplemented with any interest, dividends, or other accruals of any kind. Shares of New Common Stock that are un-issuable or un-registerable because the prospective recipient fails to provide the Debtors with the information needed to issue or register such New Common Stock shall be treated as undeliverable and Unclaimed Distributions.

d. *Reversion*. Any distribution under the Plan that is an Unclaimed Distribution for a period of 6 months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revest in the applicable Reorganized Debtor, and, to the extent such Unclaimed Distribution is comprised of New Common Stock, they shall be deemed canceled and/or remain unissued, as applicable, with no further action by any person or Entity. Upon such reverting or revesting, the Claim of the Holder or its successors with respect to such property shall be canceled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

9. Surrender of Canceled Instruments or Securities

On the Effective Date, each Holder of a Certificate shall be deemed to have surrendered such Certificate to the Disbursing Agent or a Servicer (to the extent the relevant Claim is governed by an agreement and administered by a Servicer). Such Certificate shall be canceled solely with respect to the Debtors, and such cancelation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate. Notwithstanding the foregoing, this provision shall not apply to any Claims and Interests Reinstated pursuant to the terms of the Plan.

E. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

A Claim shall be correspondingly reduced, and the applicable portion of such Claim shall be Disallowed without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives a payment on account of such Claim from a party that is not a Debtor or a Reorganized Debtor; *provided* that the Debtors or the Reorganized Debtors, as applicable, shall provide 21 calendar days' notice to the Holder prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on behalf of the Debtors on account of such Claim, such Holder shall, within 14 calendar days of receipt thereof, repay or return the distribution to the Reorganized Debtors to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Reorganized Debtors annualized interest at the Federal Judgment Rate on such amount owed for each business day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance Carriers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that the Debtors or the Reorganized Debtors, as applicable, shall provide 21 calendar days' notice to the Holder of such Claim prior to any disallowance of such Claim during which period the Holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary contained herein (including Article VIII), nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any other Entity may hold against any other Entity, including insurers, under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

F. *Setoffs*

Except as otherwise expressly provided for herein and for purposes of clarification, excluding the DIP Equity Distribution to be made on the Effective Date, each Debtor or Reorganized Debtor, as applicable, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided*, *however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Debtor or Reorganized Debtor of any such claims, rights, and Causes of Action that such Debtor or Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims be entitled to set off any such Claim against any claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

G. *Allocation Between Principal and Accrued Interest*

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed Claims, to any portion of such Claims for accrued but unpaid interest.

H. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, the Confirmation Order, or documents executed as required by the Plan, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim. Notwithstanding the foregoing, all interest, fees, costs, charges, and other amounts due under the DIP Credit Agreement and the Final DIP Order with respect to the DIP Claims shall continue to accrue until the resolution of the Lien-Related Litigation.

ARTICLE VII.
PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. *Allowance of Claims*

After the Effective Date, each of the Reorganized Debtors shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

B. *Claims Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Reorganized Debtors shall have the sole authority to File and prosecute objections to Claims, and the Reorganized Debtors shall have the sole authority to (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. On and after the Effective Date, the Reorganized Debtors will use commercially reasonable efforts to advance the claims resolution process through estimation or otherwise. For the avoidance of doubt, no claims administration shall occur prior to the Effective Date.

C. *Estimation of Claims*

On or after the Effective Date, the Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including, without limitation, pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings, and the Debtors or Reorganized Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim is estimated. Each of the foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. *Adjustment to Claims Without Objection*

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors or the Reorganized Debtors, as applicable, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. *Time to File Objections to Claims*

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

F. *Disallowance of Claims*

Except as otherwise provided in the Plan, any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Reorganized Debtors, as applicable. All Proofs of Claim Filed on account of an Indemnification Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court. For purposes of clarification, this paragraph shall not apply to the DIP Equity Distribution on the Effective Date.

Except as otherwise provided herein or as agreed to by the Reorganized Debtors any and all Proofs of Claim Filed after the Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

G. *Amendments to Claims*

On or after the Effective Date, except as otherwise expressly provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

H. *No Distributions Pending Allowance*

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim, unless otherwise determined by the Reorganized Debtors. For the avoidance of doubt, the foregoing shall not apply to a DIP Claim with respect to the DIP Equity Distribution.

I. *Distributions After Allowance*

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order (or, if applicable, upon the Post-Effective Date Equity Distribution), the Reorganized Debtors shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in the Plan.

ARTICLE VIII.
EFFECT OF CONFIRMATION OF THE PLAN

A. *Discharge of Claims and Termination of Interests*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

B. *Exculpation*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any claim related to any act or omission (including acts or omissions prior to the Petition Date) in connection with, relating to, or arising out of the Chapter 11 Cases, the preparation and filing of the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or termination of the Disclosure Statement, the Plan, or any other documents relating to the Plan and the Chapter 11 Cases or any Restructuring Transaction, contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the preparation for and filing of the Chapter 11 Cases, administration of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a final order to have constituted actual fraud, gross negligence, or willful misconduct (collectively, the "Exculpation Claims"), but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

C. *Injunction*

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims or Interests that (1) have been released pursuant to the Plan, (2) shall be discharged pursuant to the Plan, or (3) are subject to exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, or the Exculpated Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or interests; (iii) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Entity has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding an indication of a claim or interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests released or settled pursuant to the Plan.

D. *Protection Against Discriminatory Treatment*

In accordance with section 525 of the Bankruptcy Code, and consistent with Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

E. *Release of Liens*

Except as otherwise specifically provided in the Plan, or in any contract, instrument, release, or other agreement or document created, assumed, or Reinstated pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, to the extent securing any Claims discharged under the Plan, shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors, or the Debtors, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors, or any other Holder of a Secured Claim.

The DIP Agent, the Secured Notes Indenture Trustee, and the Collateral Trustee shall execute and deliver all documents reasonably requested by the Debtors or the Reorganized Debtors to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Reorganized Debtors and their designees to file UCC-3 termination statements and other release documentation (to the extent applicable) with respect thereto, at the sole expense of the Debtors or the Reorganized Debtors, as applicable. The Secured Notes Indenture Trustee or the Collateral Trustee is authorized to release such mortgages, deeds of trust, Liens, pledges, and other security interests as of any date prior to the Effective Date as they may be authorized or directed in accordance with the Secured Notes Indenture, the Collateral Trustee Agreement, or any other documents governing the rights of Holders of Secured Notes Claims, and such release shall be deemed to occur on such prior date.

F. *Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever Disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as non-contingent, or (2) the relevant Holder of a Claim has Filed a non-contingent

Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

G. *Recoupment*

In no event shall any Holder of a Claim be entitled to recoup such Claim against any claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

H. *Subordination Rights*

The allowance, classification, and treatment of all Allowed Claims and Interests, and the respective distributions and treatments under the Plan take into account and conform to the relative priorities and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination rights.

ARTICLE IX.

DEADLINE FOR EFFECTIVE DATE; CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

A. *Deadline for Occurrence of the Effective Date*

The Effective Date shall occur as soon as practicable after the Confirmation Date, but in no event later than 45 days after the Confirmation Date; *provided* that the Debtors and the Requisite DIP Lenders may agree to extend the occurrence of the Effective Date.

B. *Conditions Precedent to the Effective Date of the Plan*

It shall be a condition to the occurrence of the Effective Date that the following shall have been satisfied or waived pursuant to the provisions of Article IX.C of the Plan:

1. the Confirmation Order shall have been entered by the Bankruptcy Court in form and substance acceptable to the Requisite DIP Lenders;

2. the Plan and the applicable documents in the Plan Supplement, including any exhibits, schedules, documents, amendments, modifications, or supplements thereto, and inclusive of any modifications, amendments, or supplements made after the Confirmation Date but before the Effective Date, shall have been filed, in form and substance reasonably acceptable to the Requisite DIP Lenders;

3. the Requisite DIP Lenders shall be satisfied, in an exercise of their sole discretion, that the 13-week forecast and the monthly cash flow forecast for the next 12 months as of the Effective Date, which shall be prepared in good faith by the CRO, reflects that the Reorganized Debtors will have sufficient liquidity to

operate in the ordinary course of business after the Effective Date;

4. the DIP Agent shall have released the Carve-Out Trigger Notice Reserves to the Reorganized Debtors;

5. the Reorganized Debtors shall have funded the Professional Fee Settlement Reserve;

6. the New Organizational Documents shall be in full force and effect, in form and substance acceptable to the Requisite DIP Lenders; and

7. the New Executive Employment Agreements shall be in full force and effect, in form and substance acceptable to the Requisite DIP Lenders.

C. *Waiver of Conditions*

The conditions to the Confirmation and Effective Date of the Plan set forth in Article IX of the Plan may be waived by the Debtors, with the reasonable consent of the Requisite DIP Lenders, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

D. *Effect of Non-Occurrence of Conditions to Consummation*

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

E. *Substantial Consummation*

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. *Modification of Plan*

Effective as of the date hereof: (1) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (2) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein; *provided* that no amendment or modification may be made by the Debtors without the consent, not to be unreasonably withheld, of the Requisite DIP Lenders.

B. *Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation of votes thereon pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. *Revocation or Withdrawal of Plan*

The Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim against a Debtor, including the resolution of any request for payment of any Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims; *provided* that

the Bankruptcy Court's jurisdiction with respect to the foregoing shall be on a non-exclusive basis;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtors or the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to the Plan, any Executory Contracts or Unexpired Leases set forth in the Schedule of Assumed Executory Contracts and Unexpired Leases or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any

applications involving a Debtor or the Estates that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigation matters, including the Lien-Related Litigation and any other matters involving the Sanchez Entities, SOG, SNMP, subsequent transferees of the foregoing, or current or former directors or officers of the Debtors or of any of the foregoing;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by a Final Order in the Chapter 11 Cases, and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

8. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. enforce or resolve disputes regarding the Professional Fee Settlement;

10. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

12. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter

11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim for amounts not timely repaid pursuant to Article VI.E.1 of the Plan; (b) with respect to the exculpation, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such exculpation, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

13. enter and enforce any order for the sale of property pursuant to section 363, 1123, or 1146(a) of the Bankruptcy Code;

14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

16. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

17. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

18. enforce all orders previously entered by the Bankruptcy Court;

19. hear and determine disputes involving all matters the implementation of the Plan; and

20. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

A. *Immediate Binding Effect*

Subject to Article IX hereof, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Holders of Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

B. *Additional Documents*

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and the Reorganized Debtors, as applicable, and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. *Dissolution of the Creditors' Committee*

On the Effective Date, the Creditors' Committee shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code, except for the limited purpose of (i) prosecuting requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date by the Creditors' Committee and its Professionals and objecting to requests for payment of Professional Fee Claims, (ii) transitioning management of the Lien-Related Litigation to the Lien-Related Litigation Creditor Representative, (iii) transitioning management of any other Causes of Action (including against SOG, SNMP, and the Sanchez Entities) to the Reorganized Debtors or other appropriate litigant), and (iv) appoint the Lien-Related Litigation Creditor Representative. The Debtors shall not be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee after the Effective Date, except that (a) the Reorganized Debtors may, subject to Article IV.D. hereof, agree to pay for activities within the scope of clauses (ii) and (iv) as expenses of the Lien-Related Litigation Creditor Representative and (b) the Reorganized Debtors may agree to pay for activities within the scope of clause (iii).

The Lien-Related Litigation Creditor Representative and its professional advisors shall be entitled to become parties to the *Stipulated Protective Order* entered at Docket No. 306, which shall remain in effect following the Effective Date, subject to the provisions of this Plan and the Confirmation Order. The Creditors' Committee and its professional advisors shall be authorized to transition the management of the Lien-Related Litigation to the Lien-Related Litigation Creditor Representative and its advisors, and the Creditors' Committee and its professional advisors shall be authorized to transition the management of other litigation (including against SOG, SNMP, and the Sanchez Entities) to the Reorganized Debtors or other appropriate litigant and its advisors. In each case, the Creditors' Committee shall be deemed to share a common interest with the applicable successor litigant, and, pursuant to Rule 502(d) of the Federal Rules of Evidence, the transmission to the successor litigant of material protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection shall not result in a waiver or forfeiture of any such privilege or protection held by the Creditors' Committee.

D. *Payment of Statutory Fees*

All fees payable pursuant to 28 U.S.C. § 1930(a) prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors shall pay any and all such fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each Debtor and Reorganized Debtor shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of that particular Debtor's or Reorganized Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code; *provided* that upon the occurrence of the Effective Date, the Reorganized Debtors shall be permitted to close all of the Chapter 11 Cases except for the Chapter 11 Case of SN, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of SN.

E. *Reservation of Rights*

The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

F. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. *Service of Documents*

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

Reorganized Debtors

Sanchez Energy Corporation
1000 Main Street, Suite
3000 Houston, Texas 77002
Attn: Gregory Kopel

with copies to:

Counsel to Debtors

JACKSON WALKER L.L.P
Matthew D. Cavenaugh Elizabeth Freeman
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-and-

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-and-

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Telephone: (202) 887-4000
Facsimile: (202) 887-4288
jsavin@akingump.com

H. *Term of Injunctions or Stays*

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

I. *Entire Agreement*

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

J. *Plan Supplement*

After any of such documents included in the Plan Supplement are Filed, copies of such documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Claims, Noticing and Solicitation Agent's website at https://cases.primeclerk.com/sanchezenergy or the Bankruptcy Court's website at https://www.pacer.gov/.

K. *Non-Severability*

If, prior to Confirmation, the Bankruptcy Court holds any term or provision of the Plan to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (3) non-severable and mutually dependent.

L. *Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, equity holders (regardless of whether such interests are held directly or indirectly), officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, neither any of such parties or individuals or the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

M. *Closing of Chapter 11 Cases*

After the full administration of the Chapter 11 Cases, the Reorganized Debtors shall File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

N. *Waiver or Estoppel*

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

Dated: April 30, 2020

SANCHEZ ENERGY CORPORATION
on behalf of itself and all other Debtors

/s/ Mohsin Y. Meghji
Name: Mohsin Y. Meghji
Title: Chief Restructuring Officer
Sanchez Energy Corporation

APPENDIX K

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Jointly Administered)
Case No. 19-34508
Chapter 11

In re: SANCHEZ ENERGY CORPORATION, *et al.*,[1]

Debtors.

SANCHEZ ENERGY CORPORATION, *et al.*,

v.

ROYAL BANK OF CANADA, WILMINGTON SAVINGS FUND SOCIETY, FSB and WILMINGTON TRUST, NATIONAL ASSOCIATION

ADV. PRO. NO.

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sanchez Energy Corporation (0102); SN Palmetto, LLC (3696); SN Marquis LLC (0102); SN Cotulla Assets, LLC (0102); SN Operating, LLC (2143); SN TMS, LLC (0102); SN Catarina, LLC (0102); Rockin L Ranch Company, LLC (0102); SN EF Maverick, LLC (0102); SN Payables, LLC (0102); and SN UR Holdings, LLC (0102). The location of the Debtors' service address is 1000 Main Street, Suite 3000, Houston, Texas 77002.

COMPLAINT

Sanchez Energy Corporation ("SN") and its debtor affiliates (collectively, the "Debtors") respectfully submit this Complaint against (1) Royal Bank of Canada ("RBC") in its capacities as (a) sole lender under the Revolving Credit Facility (defined below), and (b) administrative agent under the Revolving Credit Facility, (2) Wilmington Savings Fund Society, FBS ("WSFS") in its capacity as successor notes trustee under the 7.25% Notes, and (3) Wilmington Trust, National Association ("WTNA" and together with WSFS and RBC, the "Defendants") in its capacity as successor collateral trustee. Debtors allege:

STATEMENT OF THE CASE

1. The Defendants provided financing to Debtors, but failed to create or perfect liens in certain property of the Debtors. The Defendants made material errors and omissions in preparing and filing deeds of trust (that they apparently intended to create liens on the Debtors' properties); thus, no liens attached. *See* Tex. Prop. Code § 13.001(a) (". . . a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.").

2. Shortly before these bankruptcy cases were filed, certain holders of the 7.25% Notes (the "1L Ad Hoc Group") apparently realized that they are unsecured with respect to certain properties. In an effort to fix the problems in the original instruments, Cinco Energy Management Group ("Cinco") unilaterally filed Correction Instruments (defined below)

on behalf of and at the direction of the 1L Ad Hoc Group. In June 2019, Cinco filed a Notice of Correction to address the problems, which their agent acknowledged arose from "clerical and/or inadvertent errors and/or ambiguities" in the real property records with respect to certain properties. But even that notice was flawed. In July 2019, Cinco acknowledged the certain of the June 2019 correct-ions attached an "incorrect" deed of trust. So, in July 2019, Cinco tried for a third time to perfect Defendants' liens by filing a new Notice of Correction[2] to address the recording errors and to replace the "incorrect" deed of trust. In that new deed of trust, Cinco unilaterally crossed out certain leases and added new descriptions of leases and recording information. Despite their efforts, these Correction Instruments do not perfect a lien. Even if they were sufficient, they are avoidable.

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[2] For example on page six of Exhibit A to Exhibit A to the Defendants' July 2019 Notice of Correction, Cinco struck out many of the original leases.

~~T0616001~~	~~HARRISON INTERESTS, LTD.~~	~~P RANCH WORKING~~ INTEREST, LLC	~~5/12/2010~~	~~5/12/2015~~	~~2943~~	~~264~~	~~1072067~~	~~Dimmit~~	~~TX~~
T0474008-001	SHACKELFORD, WILLIAM C., ET AL	SN COTULLA ASSETS, LLC	10/7/2014	10/7/2017	169	925	0142076	Frio	TX
T0474010	BANRICH, INC.	SN COTULLA ASSETS, LLC	11/6/2014	11/6/2017	179	673	0143195	Frio	TX
T0474011-001	ROCKIN S FLP, LTD	SN COTULLA ASSETS, LLC	1/25/2016	1/25/2019	198	904	0145972	Frio	TX
~~T0474005~~	~~HAUSSER, ROBERT JR, ET AL~~	~~SEP HOLDINGS II LLC~~	~~6/7/2010~~	~~6/9/2013~~	~~914~~	~~120~~	~~0126770~~	~~Frio~~	~~TX~~
T0463006	SANDIES CREEK, LTD.	SEP HOLDINGS II LLC	8/25/2008	8/25/2013	989	129	237573	Gonzales	TX
~~T0463009~~	~~PILGRIM LAKE, LTD.~~	~~SEP HOLDINGS II LLC~~	~~6/25/2008~~	~~8/25/2013~~	~~980~~	~~143~~	~~237576~~	~~Gonzales~~	~~TX~~

After removing these leases from the exhibit, Cinco added new lines—without seeking or obtaining the Debtors' approval—that purportedly reflect liens on Debtors' leases. The new lines unilaterally added by Cinco at the behest of the 1L Ad Hoc Group appear to concern the Debtors' oil and gas leases but changed the lease expiration date, book, page, instrument number, and county of recording.

3. The Defendants retain the burden to establish which—if any—of the Debtors' property is subject to a valid perfected lien, and the Debtors file this action to seek a determination under Rule 7001(2) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") of that issue.[3] Debtors seek rulings that: (i) certain property of the Debtors is unencumbered by any encumbrance or lien in favor of the Defendants, and, if such property is encumbered, determine the nature, extent, priority, validity, and enforceability of encumbrances against such property; (ii) certain liens or encumbrances did not create or perfect any liens on the Shared Collateral (defined below) and that such liens or encumbrances should be avoided; (iii) avoid certain Correction Instrument Transfers (defined below) and Correction Instrument Transfers (defined below) pursuant to sections 544, 547, 548, and 550 of the Bankruptcy Code; and (iv) avoid certain Correction Instrument Transfers pursuant to sections 547 and 550.

4. First, the Debtors seek to avoid the Correction Instrument Transfers pursuant to section 547(b) of the Bankruptcy Code. The Correction Instrument Transfers were made within the Preference Period and are avoidable.

5. Second, the Debtors seek a determination that the Correction Instruments made material changes to the Deeds of Trust (defined below) and were not executed by each party to the original recorded instrument. *See* Tex. Prop. Code § 5.029(b) ("each party to the recorded original instrument" must sign

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[3] The Debtors' Complaint and each of its claims are brought notwithstanding and without waiving the applicable burdens of proof.

a correction instrument that makes any material correction to the original instrument). And further that the Correction Instruments also made non-material changes to the Deeds of Trust, but were filed by a person without the requisite personal knowledge of the facts relevant to the correction. *See* Tex. Prop. Code § 5.028(a-1) ("A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from an inadvertent error. . ."); Tex. Prop. Code § 5.028(c) ("A person who executes a correction instrument under this section shall disclose in the instrument the basis for the person's personal knowledge of the facts relevant to the correction of the recorded original instrument of conveyance."). Thus, the Correction Instruments are invalid and did not create or perfect any liens on the oil and gas leases ("Leases") identified in Schedule A and any liens allegedly perfected thereby are avoided.

6. Third, to the extent the Correction Instruments are avoided, the Debtors seek a declaration that the underlying Deeds of Trust with respect to the Leases identified on Schedule A did not create or perfect any liens on the Leases.

7. Fourth, the Debtors seek to avoid the underlying Deeds of Trust purporting to encumber the Leases identified on Schedule A pursuant to Bankruptcy Code section 544(a) and Texas Property Code § 13.001 because, as the 1L Ad Hoc Group conceded by directing the filing of the Correction Instruments and in the Correction Instruments themselves, the underlying Deeds of Trust did not provide the requisite notice to a *bona fide* purchaser within the meaning of Bankruptcy Code section 544(a)(3).

8. Fifth, the Debtors seek to avoid the Correction Instrument Transfers which were all made on or within two years of the Petition Date and are avoidable pursuant to sections 548 and 550 of the Bankruptcy Code.

9. Sixth, the Debtors seek to avoid any purported liens on the properties set forth in Schedule D pursuant to Bankruptcy Code section 544(a) because such properties are not the subject of any recorded mortgage, deed of trust, or other lien document as of the Petition Date (the "Unencumbered Properties"). The Unencumbered Properties are not subject to any valid lien under Texas Property Code §§ 13.001 and 13.002 and other applicable law and are, therefore, unencumbered by the claims of the Defendants or any other creditor.

10. Seventh, the Debtors seek a declaration that the Unencumbered Properties are not subject to any valid lien under Texas Property Code §§ 13.001 and 13.002 and other applicable law and are, therefore, unencumbered by the claims of the Defendants or any other creditor.

11. Eighth, the Debtors seek a declaration that the Defendants do not have a lien on any proceeds in the Debtors' deposit accounts, or, alternatively avoiding under section 9.315(b)(2) of the Uniform Commercial Code any lien on proceeds from encumbered assets in deposit accounts that are commingled with other cash to the extent that Defendants fail to identify the proceeds by a method of tracing that is permitted under applicable law.

12. Ninth, the Debtors seek a declaration that the Defendants did not create or perfect any liens on the

State Court Action (defined below) and that as a result, the State Court Action is unencumbered.

13. Tenth, the Debtors seek to recover, for the benefit of the estates, the property transferred and avoided under sections 544, 547, and 548 from the initial transferee of such transfer or the entity for whose benefit such transfer was made.

14. Finally, to the extent that any of the Defendants asserts any claim(s) against any of the Debtors, such claim(s) should be disallowed in conformity with section 502(d) of the Bankruptcy Code.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. § 1334 because this is a civil proceeding arising in or related to the Debtors' chapter 11 cases. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2).

16. This Court has jurisdiction to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §2201(a), which grants the Court "the power to declare the rights and other legal relations of any interested party seeking such declaration." *Sommers v. Aguirre* (*In re Santoyo*), 540 B.R. 284, 289 (Bankr. S.D. Tex. 2015).

17. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

18. Pursuant to Local Bankruptcy Rule 7008-1, the Debtors consent to the entry of final orders or a judgment by the Bankruptcy Court in this adversary proceeding.

PROCEDURAL BACKGROUND

19. On August 11, 2019 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").[4] The chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

20. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in these chapter 11 cases.

21. On August 26, 2019, the Office of the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee").[5]

PARTIES

A. The Debtors

22. Sanchez Energy Corporation is a publicly-owned Delaware corporation headquartered in Houston, Texas. SN and its Debtor subsidiaries and affiliates, acquire and develop oil and natural gas resources in onshore basins in the United States. The Debtors' primary assets are located in the Eagle Ford basin in South Texas. In addition to their assets in the Eagle Ford basin, the Debtors, along with certain

[4] Case No. 18-30155 (MI), Docket No. 1, Chapter 11 Voluntary Petition. All references to the Docket will be to the main bankruptcy case, which is Case No. 18-30155, unless otherwise specified.

[5] *See* Docket No. 228, Notice of Appointment of Creditors Committee. On August 30, 2019, the Committee was reconstituted. *See* Docket No. 240, Notice of Reconstituted Committee of Unsecured Creditors.

of their non-Debtor subsidiaries, also hold certain other producing properties and undeveloped acreage, including in the Tuscaloosa Marine Shale in Mississippi and Louisiana, as well as other locations in Louisiana and Texas. The Debtors operate most of their oil and natural gas assets.

B. The Defendants

23. Defendant Royal Bank of Canada is the (i) sole lender under the Revolving Credit Facility (the "Lender"), and (ii) administrative agent under the Revolving Credit Facility (the "Administrative Agent"). RBC is a Toronto, Canada based entity with its principal place of business at 200 Bay Street, Toronto, Ontario Canada M5J 2J5.

24. Defendant Wilmington Savings Fund Society, FBS is the successor notes trustee under the 7.25% Notes (the "Notes Trustee"). WSFS is a Delaware entity with its principal place of business at 500 Delaware Avenue, Wilmington, Delaware 19801. WSFS is named as a defendant solely in its capacity as Notes Trustee and not in its individual corporate capacity.

25. Defendant Wilmington Trust, National Association is the successor collateral trustee under the 7.25% Notes (the "Collateral Trustee"). WTNA is a Delaware entity with its principal place of business at 1110 North Market Street, Wilmington, Delaware 19890. WTNA is named as a defendant solely in its capacity as Collateral Trustee and not in its individual corporate capacity.

FACTUAL ALLEGATIONS[6]

[6] The allegations made in this Complaint are made on information and belief based on the pleadings and discovery

26. As of the Petition Date, the Debtors' alleged secured debt obligations consist of: (i) borrowings of approximately $7.9 million in principal amount and a $17.1 million issued and undrawn standby letter of credit outstanding under the Revolving Credit Facility, and (ii) $500 million in principal amount of 7.25% Notes.

A. The Revolving Credit Facility

27. As of the Petition Date, SN, as borrower, and certain of the Debtor entities that constitute restricted subsidiaries (the "Restricted Subsidiaries")[7] under the Credit Agreement (as defined below), as guarantors, borrowed approximately $7.9 million in principal amount and a $17.1 million issued and undrawn standby letter of credit, under a $25 million working capital and letter of credit facility (the "Revolving Credit Facility"). The Revolving Credit Facility was provided to Debtors pursuant to the Third Amended and Restated Credit Agreement (the "Credit Agreement") dated February 14, 2018. RBC is the administrative agent and, presently, the sole lender under the Revolving Credit Facility. The

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available at the time of filing, the investigation of Debtors' counsel, documents and information in the public record, and inferences drawn from such sources.

[7] The term "Restricted Subsidiaries" refers to Debtors SN Catarina, LLC; SN Cotulla Assets, LLC; SN EF Maverick, LLC; SN Marquis LLC; SN Operating, LLC; SN Palmetto, LLC; SN Payables, LLC; SN TMS, LLC; and Rockin L Ranch Company, LLC. The unrestricted subsidiaries (collectively, the "Unrestricted Subsidiaries") consist of Debtor SN UR Holdings, and non-Debtors SN EF UnSub GP, LLC; SN EF UnSub Holdings; SN EF UnSub, LP; SR Acquisition I, LLC; SR Acquisition III, LLC; SN Capital, LLC; SN Comanche Manager, LLC; SN Midstream, LLC; Sanchez Resources, LLC; SN Services, LLC; SN Terminal, LLC; and SR TMS, LLC.

Revolving Credit Facility is allegedly secured by a first-priority lien on the Shared Collateral (as defined below).

B. The 7.25% Notes

28. On February 14, 2018, SN issued $500 million in principal amount of 7.25% notes due February 2023 (the "7.25% Notes") under an indenture among SN, as issuer, the guarantors party, WSFS, as presumptive successor trustee (the "Notes Trustee"), and RBC, as collateral trustee (as supplemented by a First Supplemental Indenture dated as of April 3, 2018, the "7.25% Notes Indenture," and together with the Revolving Credit Facility, the "Prepetition Secured Debt"). The Restricted Subsidiaries are guarantors of the 7.25% Notes.

29. Pursuant to the terms of the applicable debt documents, the 7.25% Notes and the guarantees thereto are allegedly secured on a first-priority basis on most of the assets of SN and the Restricted Subsidiaries. However, pursuant to a collateral trust agreement among SN, RBC, as the first-out representative and collateral trustee, and the Notes Trustee, dated as of February 14, 2018 (the "CTA"), the 7.25% Notes' first-priority liens have a "second-out" collateral proceeds priority and, therefore, are effectively junior to the "first-out" obligations under the Credit Agreement and certain hedging and cash management arrangements permitted under the Credit Agreement with respect to, and to the extent of the value of, shared collateral (the "Shared Collateral").

30. The Shared Collateral consists of: (i) SN's and the other Restricted Subsidiaries' oil and natural gas properties (which liens were required to cover not

less than 85% of such properties with proved reserves); (ii) 100% of the equity interests of the Restricted Subsidiaries and any of their future direct material subsidiaries that qualify as Restricted Subsidiaries; and (iii) substantially all of SN's and the Restricted Subsidiaries' other material personal property, but in each case excluding, among other things, deposit accounts, oil and natural gas properties with no proved reserves, equity interests in SN UnSub, and other existing and future subsidiaries designated as "Unrestricted Subsidiaries" (as defined in the applicable debt documents). The 7.25% Notes are allegedly senior to all unsecured obligations of SN and the Restricted Subsidiaries to the extent of the value of the collateral securing the 7.25% Notes and the guarantees.

C. Failure to Perfect Shared Collateral

i. The Leases

31. In connection with the Prepetition Secured Debt, in April 2018, the Collateral Trustee, acting through a designee, agent, or other individual so instructed, on behalf of the Defendants, recorded a series of Amended and Restated Mortgages, Deeds of Trust, Security Agreements, Financing Statements, and Assignments of Production (the "Deeds of Trust") with respect to the Shared Collateral.

32. The Collateral Trustee's agent made material errors and omissions in preparing and filing the Deeds of Trust. Many of these Deeds of Trust contained material omissions and errors, including in describing the lease and the county, book numbers, page numbers, and instrument numbers in official county records.

33. Because of their omissions and errors, the Deeds of Trust did not provide adequate notice to third parties of the underlying security interest. Therefore, they are insufficient under Texas Property Code §§ 13.001 and 13.002 to perfect the Defendants' security interests in the Shared Collateral. *See* Tex. Prop. Code § 13.001(a) (". . . a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law."); Tex. Prop. Code § 13.002 (if an instrument is properly recorded, it provides notice to all persons).

34. Shortly before these bankruptcy cases were filed (*i.e.* in August 2019), the 1L Ad Hoc Group apparently realized that they are unsecured with respect to certain properties, and they caused Cinco to unilaterally file Correction Instruments in an effort to fix the problems in the original instruments. In June 2019 and in July 2019 (within the preference period), Cinco, on behalf of the 1L Ad Hoc Group, recorded affidavits (the "Correction Instruments") in at least nine counties in Texas in an attempt to remedy the deficiencies in the Deeds of Trust and perfect the Defendants' interests in the Shared Collateral.

35. The initial June 2019 filing acknowledged problems in the Deeds of Trust, which arose from "clerical and/or inadvertent errors and/or ambiguities." However, even that notice was flawed by Cinco and the 1L Ad Hoc Group's own acknowledgement. In July 2019, Cinco and the 1L Ad Hoc Group acknowledged that certain of the June 2019 corrections attached an "incorrect" form of the corrected deed of trust. So, in July 2019, Cinco tried

for a third time to perfect Defendants' liens by filing a new Notice of Correction to address the recording errors and to replace the "incorrect" deed of trust. In that new filing, the 1L Ad Hoc Group (through Cinco) unilaterally crossed out certain leases and added new descriptions of leases and recording information. For example, the Correction Instrument recorded with respect to the Harrison Lease corrected the reference to the location of the Harrison Lease from Dimmit County to Webb County (attempting to perfect a previously unperfected lien), and added the recording location in Dimmit County and La Salle County:[8]

E. On page 6 of 7 of Exhibit A of the Original Instrument, the legal description for Lease No. T0615001 reads:

			Lease Date	Lease Expiration	Book	Page	Instrument	County	State
T0615001	HARRISON INTERESTS, LTD.	P RANCH WORKING INTEREST, LLC	5/12/2010	5/12/2013	2943	294	1072987	Dimmit	TX

The foregoing legal description for Lease No. T0615001 is hereby changed to read:

			Lease Date	Lease Expiration	Book	Page	Instrument	County	State
T0615001	HARRISON INTERESTS, LTD.	P RANCH WORKING INTEREST, LLC	5/12/2010	5/12/2013	2943 386 505	294 510 161	1072987 15055 86051	Webb Dimmit La Salle	TX

36. However, despite these efforts, the Correction Instruments do not perfect a lien, and even if they were sufficient, they are avoidable. Pursuant to Texas Property Code § 5.028, Cinco made certain allegedly nonmaterial corrections to the original Deeds of Trust, including to add, correct, or clarify the recording data for instruments referenced in the Correction Instrument. Additionally, Cinco also made material corrections to, among other things, correct land descriptions and add new land descriptions to certain conveyances. Section 5.029 states that, "A correction instrument under this section [i.e. a correction instrument that makes a material

[8] The headings in this illustrative graphic were added for ease of reference only. They do not appear in the original Correction Instruments.

correction] *must be*: (1) executed by each party to the recorded original instrument of conveyance. . ." Tex. Prop. Code § 5.029(b) (emphasis added).[9] It is undisputed that the Correction Instruments were not executed by the Debtors. Finally, Cinco's affidavits in support of the Correction Instruments assert that Cinco's representatives had "personal knowledge" of the execution of the Deeds of Trust, despite having none. Per the Correction Instruments, Cinco's purported personal knowledge stemmed from their review of "the pertinent documents related to the transaction and the public records associated with the [Deeds of Trust]." Upon information and belief, Cinco's representatives lacked personal knowledge of the execution of the Deeds of Trust and the intent of the original parties thereto. Accordingly, the Correction Instruments are invalid as a matter of law.

37. The Correction Instruments are transfers within the meaning of Bankruptcy Code section 101(54). Thus, even if the Correction Instruments had the effect of perfecting the Defendants' otherwise unperfected liens in the Shared Collateral, the Correction Instruments are avoidable transfers under 11 U.S.C. §§ 544(a)(3) and 547.

38. For purposes of illustration, the documents relating to the Harrison Lease are attached for reference. A true and correct copy of the Memorandum of Oil and Gas Lease dated May 12, 2010

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[9] The requirement that each party to the recorded original instrument execute the correction deed is "essential to fulfilling the Legislature's standard for permitting a material correction" under section 5.029. *See Tanya L. McCabe Trust v. Ranger Energy LLC*, 531 S.W.3d 783, 794 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

between Harrison Interests, Ltd. and P Ranch Working Interest, LLC (the "Harrison Lease") is attached as Schedule B-1, true and correct copies of the Deeds of Trust purporting to encumber the Harrison Lease are attached as Schedule B-2, and true and correct copies of the Correction Instruments with respect to the Harrison Lease Deeds of Trust are attached as Schedule B-3. Snippets of the Correction Instruments versus the underlying Deeds of Trust filed with respect to certain of the Leases at issue here are attached as Schedule C to the Complaint.

ii. Deposit Accounts

39. SN maintains a master deposit account at JP Morgan which is SN's concentration account (the "SN Master Account"). *See* Docket No. 11 at 5. As of the Petition Date, the SN Master Account had a balance of $4.2 million. *Id.*

40. SN EF Maverick, LLC ("SN Maverick") maintains a deposit account at JPMorgan which serves as SN Maverick's concentration account (the "SN Maverick Master Account"). *See* Docket No. 11 at 6. As of the Petition Date, the SN Maverick Master Account had a balance of $23.3 million. *Id.*

41. SN Payables, LLC ("SN Payables") maintains a deposit account at JP Morgan (the "SN Payables Master Account," and together with the SN Master Account and SN Maverick Master Account, the "Deposit Accounts"). *See* Docket No. 11 at 8. As of the Petition Date, the SN Payables Master Account had a balance of $3.6 million. *Id.* The SN Payables Master Account is funded by the SN Master Account and the SN Maverick Master Account. *Id.*

42. The Deeds of Trust state "[n]otwithstanding any provision in this Mortgage or any other

agreement or instrument to the contrary, the Grantor does not grant any security interest or lien hereunder in, [. . .] any Excluded Asset (as defined in that certain Second Amended and Restated Security and Pledge Agreement [(the "Security Agreement")], dated as of February 14, 2018 among the Borrower, the guarantors party thereto from time to time and the Collateral Trustee as amended, amended and restated, supplemented or otherwise modified from time to time)".

43. The Security Agreement defines "Excluded Asset," as, among other things, "deposit accounts, securities accounts and all assets therein, and securities entitlements." *See* Security Agreement Art. I § 1.01, attached hereto as Exhibit A.

44. The Deposit Accounts are not subject to control agreements.

45. Accordingly, the Defendants do not have a lien on any of the Debtors' deposit accounts, including, but not limited to, the Deposit Accounts. The Defendants also do not have a lien on the funds in any deposit accounts, including, but not limited to, any proceeds from encumbered assets ("Deposit Proceeds").

46. Even if the Defendants were able to establish that some of the net revenues in the Deposit Accounts are encumbered, the Deposit Proceeds would not be subject to a lien because the Deposit Proceeds have been commingled with other cash in the relevant accounts, including proceeds from unencumbered assets.

47. Pursuant to § 9-315(b)(2) of Article 9 of the Uniform Commercial Code, a party is secured in the proceeds of an encumbered asset that has been

commingled with unencumbered proceeds only to the extent that the party can identify the encumbered proceeds through a method of tracing, including application of equitable principles, that is permitted under other law with respect to commingled cash.

48. Thus, to the extent that Defendants cannot trace the Deposit Proceeds to encumbered assets through the application of equitable principles, the Defendants are unsecured with regard to such Deposit Proceeds.

COUNT I
PREFERENCE
(11 U.S.C. § 547)

49. In June 2019 and again in July 2019, Cinco filed the Correction Instruments.

50. Cinco filed the Correction Instruments for the purpose of attempting to perfect the Defendants' liens on the Shared Collateral (the "Correction Instrument Transfers").

51. Cinco made the Correction Instrument Transfers for the benefit of the Defendants.

52. Cinco made the Correction Instrument Transfers for or on account of an antecedent debt, *i.e.*, the Prepetition Secured Debt, owed by the Debtors before the Correction Instrument Transfers were made.

53. At the time Cinco made the Correction Instrument Transfers, the Debtors' liabilities exceeded the fair value of their assets and the Debtors were insolvent.

54. Cinco made the Correction Instrument Transfers within the 90-day period before the Petition Date (the "Preference Period").

55. The Correction Instrument Transfers enabled the Defendants to receive more than they would receive if the cases were proceeding under Chapter 7, the Correction Instrument Transfers had not been made, and the Defendants received payment of such debt to the extent provided by the provisions of title 11.

56. Based on the foregoing, the Correction Instrument Transfers are avoidable pursuant to 11 U.S.C. § 547.

COUNT II
DECLARATORY JUDGMENT AVOIDING CORRECTION INSTRUMENTS
(28 U.S.C. § 2201; 11 U.S.C. §§ 541(a)(1) and 544(a)(3);
Tex. Prop. §§ 5.028, 5.029, 5.030, and 13.001)

57. Under Texas Property Code § 5.029, a correction instrument that makes a material change to the recorded original instrument of conveyance must be executed by each party to the original recorded instrument.

58. As described in this Complaint, the Correction Instruments made material changes to the Deeds of Trust, which include, but are not limited to, revisions to add or remove counties with regard to the descriptions of certain Leases.

59. The Correction Instruments were not executed by each party to the original recorded instrument.

60. Further, the affiant that executed the Correction Instruments lacked personal knowledge of the Deeds of Trust and the intent of the original parties thereto such that the Correction Instruments did not comply with section 5.028(c).

61. Thus, the Correction Instruments did not comply with Texas Property Code §§ 5.028 or 5.029, and are ineffective under section Texas Property Code § 5.030.

62. Accordingly, the Debtors are entitled to a declaration that the filing of the Correction Instruments did not create or perfect any liens on the Leases described in Schedule A, and that the liens allegedly perfected by the Correction Instruments are avoided under 11 U.S.C. § 544; *Tanya L. McCabe Trust v. Ranger Energy LLC*, 531 S.W.3d 783, 799 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (holding correction instruments that did not comply with section 5.029 to be invalid as a matter of law).

COUNT III
DECLARATORY JUDGMENT AVOIDING UNDERLYING
INVALID DEEDS OF TRUST AND LIENS
(28 U.S.C. § 2201; 11 U.S.C. §§ 541(a)(1) and 544(a)(3); Tex. Prop. § 13.001)

63. To the extent the Correction Instrument Transfers are avoided, the underlying liens that Cinco sought to create or perfect through the filing of the Correction Instrument Transfers should also be avoided pursuant to 11 U.S.C. § 544(a)(3).

64. The underlying liens securing the Prepetition Secured Debt did not attach to the Leases identified on Schedule A because the Deeds of Trust failed to describe those Leases with reasonable certainty[10] and

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[10] *See* Tex. Bus. & Com. Code § 26.01(b)(4); *AIC Mgmt. v. Crews*, 246 S.W.3d 640, 645 (Tex. 2008) ("To be valid, a conveyance of real property must contain a sufficient description of the property to be conveyed. A property description is sufficient if the writing furnishes within itself, or by reference to

the Deeds of Trust do not provide the requisite notice, and thus did not create or perfect any liens on such Leases.

65. Accordingly, the Debtors are entitled to a declaration that the Deeds of Trust did not create or perfect any liens on the Leases identified on Schedule A and are avoidable by a *bona fide* purchaser within the meaning of section 544(a)(3).

COUNT IV
LIEN AVOIDANCE IN FAVOR OF DEBTORS AS BONA FIDE PURCHASER AND HYPOTHETICAL LIEN CREDITOR –
UNDERLYING INVALID DEEDS OF TRUST AND LIENS
(11 U.S.C. §§ 541 and 544(a); Tex. Prop. § 13.001)

66. For the sole purpose of illustration and without shifting the burden the proof, upon information and belief, the Defendants either hold no security interests or failed to perfect their security interests in the Leases subject to the Correction Instruments.

67. Under the Uniform Commercial Code and applicable state lien recording statutes, to create and perfect their security interests in the Debtors' oil and gas real property, the Collateral Trustee needed to record a valid mortgage or deed of trust in the official land records office in the county or parish where each parcel of real property is located, in accordance with each state's specific requirements.

68. The Deeds of Trust do not describe the Leases identified on Schedule A with reasonable certainty

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some other existing writing, the means or data by which the particular land to be conveyed may be identified with reasonable certainty.")

and do not provide the requisite notice under Texas Property Code § 13.001.

69. As a result, pursuant to applicable law, such transfers are avoidable by a *bona fide* purchaser within the meaning of 11 U.S.C. §§ 541(a)(1), 541(a)(2), and 544(a)(3).

COUNT V
CONSTRUCTIVE FRAUDULENT TRANSFER
(11 U.S.C. §§ 544, 548(A)(1)(b) and 550; Tex. Bus. & Com. Code § 24.006)

70. All of the Correction Instrument Transfers were made on or after August 11, 2017, within two years of the Petition Date.

71. The Debtors did not receive reasonably equivalent value or fair consideration in exchange for the Correction Instrument Transfers.

72. At the time of the Correction Instrument Transfers, the Debtors (i) were insolvent or became insolvent as a result of the Correction Instrument Transfers; (ii) were engaged in business or a transaction, or were about to engage in business or a transaction for which any property remaining with the Debtors was unreasonably small capital; or (iii) intended to incur, or believed or reasonably should have believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

73. At all times relevant hereto, there were actual creditors of the Debtors holding unsecured claims allowable within the meaning of 11 U.S.C. §§ 502 and 544(b).

74. The Correction Instrument Transfers should be avoided and recovered pursuant 11 U.S.C. §§ 544,

548(a)(1)(B), and 550 and applicable state fraudulent transfer law.

75. The Debtors request an award of costs and reasonable attorney's fees as are equitable and just pursuant to Tex. Bus. & Com. Code § 24.013.

COUNT VI
LIEN AVOIDANCE IN FAVOR OF DEBTORS AS BONA FIDE PURCHASER AND HYPOTHETICAL LIEN CREDITOR – UNENCUMBERED PROPERTY
(11 U.S.C. §§ 541 and 544(a); Tex. Prop. § 13.001)

76. The burden is on the Defendants, as creditors, to establish their liens and the Debtors demand strict proof from the Defendants establishing any lien claim superior to the rights of the estates under section 544 of the Bankruptcy Code.

77. Notwithstanding the foregoing, for the sole purpose of illustration and without shifting the burden the proof, upon information and belief, the Defendants either hold no security interests or failed to perfect their security interests in certain of the Debtors' Unencumbered Properties, as set forth in greater detail in Schedule D.

78. Under the Uniform Commercial Code and applicable state lien recording statutes, to create and perfect their security interests in the Unencumbered Properties, the Collateral Trustee needed to record a valid mortgage or deed of trust in the official land records office in the county or parish where each parcel of real property is located, in accordance with each state's specific requirements.

79. At a minimum, the Collateral Trustee did not do so for the real property identified as Unencumbered Properties on Schedule D.

80. As a result, pursuant to applicable law, such transfers are avoidable by a *bona fide* purchaser within the meaning of 11 U.S.C. §§ 541(a)(1), 541(a)(2), and 544(a)(3).

COUNT VII
DECLARATORY JUDGMENT WITH RESPECT TO UNENCUMBERED PROPERTY
(28 U.S.C. § 2201)

81. The Defendants did not timely or properly record liens on portions of the Shared Collateral.

82. Without waiving the applicable burdens of proof, as of the Petition Date, no recorded mortgages, deeds of trust, or other lien documents have been filed against the Unencumbered Properties set forth in Schedule D.

83. Accordingly, pursuant to Bankruptcy Rule 7001(2), the Court should declare that the Unencumbered Properties are unencumbered by valid, perfected liens.

COUNT VIII
DECLARATORY JUDGMENT WITH RESPECT TO DEPOSIT ACCOUNTS
(28 U.S.C. § 2201)

84. The Deeds of Trust and the Security Agreement provide that all of the Debtors' deposit accounts, including the Deposit Accounts, and the assets therein, are Excluded Assets (as defined in the Security Agreement), and are not subject to a lien.

85. Thus, the Debtors are entitled to a declaratory judgment that the Defendants do not have a lien on

the Debtors' Deposit Accounts or any other deposit accounts belonging to the Debtors.

86. Alternatively, the Deposit Accounts have commingled encumbered proceeds with cash and proceeds from unencumbered oil and gas assets.

87. Pursuant to § 9-315(b)(2) of Article 9 of the Uniform Commercial Code, a party is secured in commingled funds only to the extent that it can identify the funds as collateral through a method of tracing, including application of equitable principles, that is permitted under other law with respect to commingled property.

88. As such, the Defendants do not have a lien on any proceeds in any deposit account unless the Defendants can trace the proceeds to an encumbered asset by a method permitted under applicable law. Thus, the Debtors seek a declaration under § 9-315(b)(2) of Article 9 of the Uniform Commercial Code that the proceeds in the Deposit Accounts and any other deposit accounts belonging to the Debtors that the Defendants cannot trace to an encumbered asset by a method permitted under applicable law are unencumbered.

COUNT IX
DECLARATORY JUDGMENT WITH RESPECT TO TERRA COMMERCIAL TORT CLAIM
(28 U.S.C. § 2201; 11 U.S.C. § 544)

89. On March 24, 2016, SN and non-Debtors Sanchez Oil & Gas Corporation and Sanchez Production Partners LP (collectively, the "Tort Plaintiffs") filed a petition in Harris County District Court (the "State Court"), Cause No. 2016-18909 (the "State Court Action"). The Tort Plaintiffs' Second Amended Petition, filed on July 20, 2019, alleges

causes of action against Terra Energy Partners LLC ("Terra"), Benjamin "B.J." Reynolds, Mark Mewshaw, and Wes Hobbs (collectively, "Individual Defendants," and together with Terra, the "Tort Defendants") for misappropriation of trade secrets, breach of fiduciary duties, aiding and abetting breach of fiduciary duties, and breach of contract concerning former employees wrongfully downloading and taking the Tort Plaintiffs' trade secrets and highly confidential information to their new employer, Terra.

90. The Tort Plaintiffs' claims in the State Court Action include commercial tort claims. Commercial tort claims include any "claim arising in tort with respect to which . . . the claimant is an organization." UCC § 9-102(a)(13)(A).

91. A security interest in a commercial tort claim is perfected only by filing a financing statement, which must specifically identify the claims subject to the security interest. *See* U.C.C. § 9-108(e)(1); *City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.)*, No. 10-2284, 2011 U.S. App. LEXIS 18115 (1st Cir. Aug. 31, 2011). For commercial tort claims, the security agreement must also specifically identify the claims subject to the security interest. *See* UCCC § 9-203(b)(3)(A).

92. The Defendants' financing statements do not specifically identify the State Court Action.

93. The Security Agreement does not specifically identify the State Court Action.

94. Thus, the Defendants' security interest in the State Court Action, if any, is not perfected against the State Court Action.

95. Accordingly, the Debtors seek a declaration that the Defendants did not create or perfect any liens on the State Court Action, or alternatively, that any such liens are avoidable by a bona fide purchaser within the meaning of section 544(a)(3), and that as a result, the State Court Action is unencumbered.

COUNT X
RECOVERY OF AVOIDED TRANSFERS
(Pursuant to 11 U.S.C. § 550)

96. Section 550 of the Bankruptcy Code allows the Debtors as debtor-in-possession to recover, for the benefit of the estates, the property transferred and avoided under sections 544, 547, and 548 from the initial transferee of such transfer or the entity for whose benefit such transfer was made. *See* 11 U.S.C. § 550(a).

97. The Debtors are thus entitled to avoid the Correction Instruments, Correction Instrument Transfers, and underlying invalid liens described in this Complaint pursuant to sections 544, 547(b), and 548 as set forth in this Complaint; thus the Debtors are entitled to recovery under section 550.

COUNT XI
DISALLOWANCE OF CLAIMS
(Pursuant to 11 U.S.C. § 502(d))

98. To the extent that the Defendants assert any claim(s) against the Debtors, such claims should be disallowed unless and until the Defendants pay to the Debtors the value of any transfers avoided pursuant to this Complaint.

ATTORNEYS FEES, PREJUDGMENT INTEREST, POST JUDGMENT INTEREST, AND COSTS

99. To the extent allowable by applicable law, the Debtors request that the Court award reasonable attorney's fees and costs, prejudgment interest accruing from the date of filing this Complaint, and post judgment interest.

RESERVATION OF RIGHTS

100. The Debtors reserve the right to bring additional claims, including, without limitation, additional claims that the Debtors discern from their ongoing review of the Defendants' liens.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, the Debtors request that the Court grant the following relief:

a. On Count I:

iii. entering a judgment finding that the Correction Instrument Transfers constitute preferential transfers pursuant to 11 U.S.C. § 547;

iv. avoiding the Correction Instrument Transfers pursuant to 11 U.S.C. §§ 547 and 550;

v. finding that any purported liens securing the Shared Collateral granted under the Prepetition Secured Debt which rely on the Correction Instruments are avoidable by a *bona fide* purchaser within the meaning of 11 U.S.C. § 544(a)(3); and

vi. preserving such avoided transfers or liens for the benefit of the estates pursuant to 11 U.S.C. § 551;

b. On Count II, entering a judgment declaring that the filing of the Correction Instruments did not create or perfect any liens on the Leases described in Schedule A;

c. On Count III, entering a judgment in connection with any avoided Correction Instrument Transfers declaring that the underlying liens securing the Prepetition Secured Debt did not attach to the Leases described in Schedule A;

d. On Count IV, entering a judgment avoiding the underlying liens on the Leases described in Schedule A allegedly perfected by the Correction Instruments under 11 U.S.C. §§ 544 and 550;

e. On Count V:

    i. entering a judgment finding that all Correction Instrument Transfers constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 548 and under applicable state fraudulent transfer law;

    ii. pursuant to 11 U.S.C. §§ 544 and 548 and applicable state fraudulent transfer law, avoiding all Correction Instrument Transfers;

    iii. pursuant to 11 U.S.C. § 550 and under applicable state fraudulent transfer law, allowing the Debtors to recover, for the benefit of their estates, the amount of the avoided transfers; and

    iv. preserving such avoided transfers or liens for the benefit of the estates pursuant to 11 U.S.C. § 551;

f. On Count VI, entering a judgment finding that any unperfected or unrecorded liens on the Unencumbered Properties, as set forth on Schedule D, are avoided pursuant to 11 U.S.C. §§ 544(a)(3) and 550 for the benefit of the estates under 11 U.S.C. § 551;

g. On Count VII: entering a judgment declaring that the Debtors' Unencumbered Properties set forth on Schedule D are unencumbered;

h. On Count VIII, entering a judgment declaring that the Deposit Accounts and any other deposit accounts belonging to the Debtors are unencumbered by liens in favor of the Defendants or any other creditor, or alternatively avoiding any purported liens to the extent the Defendants cannot trace the proceeds to an encumbered asset by a method permitted under applicable law;

i. On Count IX, entering a judgment that the Defendants did not create or perfect any liens on the State Court Action, or alternatively, that any such liens are avoidable by a bona fide purchaser within the meaning of section 544(a)(3), and that as a result, the State Court Action is unencumbered;

j. On Count X, entering a judgment finding that all transfers described in this Complaint are avoided and the Debtors are thus entitled to recovery under § 550; and

k. On Count XI, entering a judgment disallowing any of the Defendants' claims unless and until each such entity pays to the Debtors the value of any transfer avoided pursuant to this Complaint pursuant to 11 U.S.C. § 502(d).

Houston, Texas
Dated: March 10, 2020

/s/ *Matthew D. Cavenaugh*

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APPENDIX L

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Entered: 01/22/2020]

Case No. 19-34508 (MI)

Chapter 11

(Jointly Administered)

Re: Docket Nos. 26, 144

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,[1]

Debtors.

FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507(b)

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sanchez Energy Corporation (0102); SN Palmetto, LLC (3696); SN Marquis LLC (0102); SN Cotulla Assets, LLC (0102); SN Operating, LLC (2143); SN TMS, LLC (0102); SN Catarina, LLC (0102); Rockin L Ranch Company, LLC (0102); SN EF Maverick, LLC (0102); SN Payables, LLC (0102); and SN UR Holdings, LLC (0102). The location of the Debtors' service address is 1000 Main Street, Suite 3000, Houston, Texas 77002.

Upon the motion (the "Motion")[2] of Sanchez Energy Corporation (the "Borrower") and its affiliated debtors, each as a debtor and debtor-in-possession (collectively, the "Debtors") in the above captioned cases (the "Cases"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Bankruptcy Rules for the Southern District of Texas (the "Local Bankruptcy Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas (the "Court"), seeking, among other things:

A. authorization for the Borrower to obtain secured postpetition financing (the "DIP Financing") and for certain subsidiaries of the Borrower (each, a "Guarantor", and collectively, the "Guarantors"; the Guarantors collectively with the Borrower, the "Loan Parties") to unconditionally guarantee, on a joint and several basis, the Borrower's obligations in connection with the DIP Financing, consisting of a superpriority, priming, senior secured delayed-draw term loan credit facility (the "DIP Facility", and the loans thereunder, the "DIP Loans"), in an aggregate principal amount not to exceed $200,000,000, consisting of: (i) a new money facility in the aggregate principal amount of $150,000,000 (the "New Money Facility", and the loans thereunder, the "New Money Loans") in commitments from the DIP Lenders (the "DIP Commitments"),

[2] Capitalized terms used throughout have the meanings ascribed to them in the Motion [Docket No. 15].

which the Borrower shall be permitted to draw subject to the terms set forth in the DIP Documents (as defined below), and (ii) upon entry of this final order (the "Final Order") and subject to paragraphs 23 and 24 of this Final Order, $50,000,000 (the "Roll-Up Loans") to roll up the principal Obligations (as defined in the Secured Notes Indenture (as defined below)) held by the Secured Noteholders (as defined below) that become DIP Lenders (as defined below), or held by funds or accounts managed or held by or under common management with such Secured Noteholders, under the Secured Notes Indenture (the holders of such Roll-Up Loans as identified in the DIP Credit Agreement, the "Roll-Up DIP Lenders"), pursuant to the terms and conditions set forth in this Final Order and the DIP Documents, and pursuant to which DIP Facility the Borrower is authorized, on a final basis, to borrow from the DIP Lenders, an aggregate principal amount not to exceed $100,000,000 of New Money Loans in two borrowings not to exceed $50,000,000 each (collectively, the "Final DIP Draw" or "DIP Draws") on or after the Final Facility Effective Date (as defined in the DIP Credit Agreement (as defined below)) in addition to the $50,000,000 of New Money Loans borrowed in accordance with the Interim Order (as defined below);

B. authorization for the Loan Parties to execute and enter into the Amended and Restated Senior Secured Debtor-in-Possession Term Loan Credit Agreement among the Borrower, the lenders from time to time party thereto (collectively, the "DIP Lenders") and Wilmington Savings Fund Society, FSB as administrative agent and collateral agent (in such capacities, the "DIP Agent"; the DIP Agent together with the DIP Lenders, the "DIP Secured Parties"), substantially in the form attached to this Final Order as Exhibit 1 (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP Credit Agreement", and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, each to be dated as of the Interim Facility Effective Date, the "DIP Documents") and to perform all such other and further acts as may be required in connection with the DIP Documents;

C. authorization for the Loan Parties to grant adequate protection to the Collateral Trustee under that certain Collateral Trust Agreement dated as of February 14, 2018, among Sanchez Energy Corporation, the Grantors and Guarantors from time to time party thereto, Royal Bank of Canada, as the First Out Representative, Delaware Trust Company as the First Lien Representative, the other Priority Lien Representatives from time to time party thereto and Royal Bank of Canada, as Collateral Trustee (as amended from time to time, the "Collateral Trust Agreement") for the benefit of the Prepetition Secured Parties (as defined below) including holders (the "Secured Noteholders") of the notes (the "Secured Notes") under or in connection with that certain Indenture for the issuance of 7.25% Senior Secured First Lien Notes, dated as of February 14, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "Secured Notes Indenture"), among the Borrower, the guarantors party thereto (the "Prepetition Debtor Guarantors"), Wilmington Savings Fund Society, FSB, as successor trustee to Delaware Trust Company (the "Notes Trustee"), and Royal Bank of Canada, as collateral trustee (together with any successor collateral trustee under the Collateral Trust Agreement, the "Collateral

Trustee" and, together with Notes Trustee and their respective successors and assigns, the "Trustees," and together with the Secured Noteholders, the "Secured Notes Parties");

D. authorization for actions to be taken to effect a Discharge of First-Out Obligations as defined in the Collateral Trust Agreement (a "Discharge of First-Out Obligations"), including: (i) the Royal Bank of Canada terminating all commitments to extend loans, other debt financing or further financial accommodations that would constitute First-Out Obligations (as defined in the Collateral Trust Agreement, the "First-Out Obligations"); (ii) the Loan Parties using the proceeds of the $50,000,000 of New Money Loans borrowed in accordance with the Interim Order and other Cash Collateral to repay in full in cash all amounts due and owing that constitute First-Out Obligations under the First-Out Documents (as defined in the Collateral Trust Agreement, the "First-Out Documents"); and (iii) granting adequate protection to the Prepetition Secured Parties (as defined below), including protections to the Hedging Counterparties (as defined below) on account of the First-Out Hedging Obligations (as defined below);

E. subject to the restrictions set forth in the DIP Documents and this Final Order, authorization for the Loan Parties to continue to use Cash Collateral (as defined below) and all other collateral securing the Secured Notes Obligations, Credit Agreement Obligations (each as defined below), and First-Out Obligations (collectively, the "Prepetition Collateral") in which any of the Prepetition Secured Parties (as defined below) may have an interest, and the granting of adequate protection to the Prepetition Secured Parties with respect to, inter alia, such use of any such Cash Collateral and the Prepetition Collateral;

F. approval of the Challenge Period (as defined below) with respect to the Credit Agreement Obligations, to the extent set forth in paragraph 23 of this Final Order, and the Secured Notes Obligations;

G. the grant of superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Secured Parties;

H. the grant of liens pursuant to section 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on, (i) with respect to the New Money Loans, all prepetition and postpetition property of the Loan Parties' estates and all proceeds thereof, except as expressly set forth otherwise in this Final Order and (ii) with respect to the Roll-Up Loans, the Prepetition Collateral, in each case subject only to the Carve-Out and valid, perfected, enforceable, and unavoidable Permitted Liens (as defined in the DIP Credit Agreement) that were senior to the Prepetition Liens (as defined below) as of the Petition Date and the First-Out Obligations;

I. the waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;

J. modification of the automatic stay to the extent set forth herein and in the DIP Documents;

The interim hearing on the Motion (the "Interim Hearing") having been held by this Court on August 13, 2019 and the final hearing on the Motion having been held by this Court on January 22, 2020 (the

“Final Hearing”) pursuant to Bankruptcy Rules 2002, 4001(b)(2), and 4001(c)(2), and all applicable Local Rules; and an order approving the Motion on an interim basis [Docket No. 144] (the “Interim Order”) having been entered on August 15, 2019; due and appropriate notice of the Motion, entry of the Interim Order, and the Final Hearing having been provided; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and all evidence submitted and arguments made at the Interim Hearing and Final Hearing; and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties-in-interest in these Cases; and the Court having determined that the relief requested in the Motion is fair and reasonable and essential for the continued operation of the Debtors’ businesses; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the declarations filed in support thereof, the First Day Declaration, and at the Interim Hearing and Final Hearing; and after due deliberation and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Disposition. The relief requested in the Motion is granted on a final basis in accordance with the terms of this Final Order. The objections to the Motion, with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of right included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. Jurisdiction. This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Notice. Proper, timely, adequate, and sufficient notice of the Final Hearing and the relief requested in the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Complex Case Rules, and no other or further notice of the relief requested in the Motion or the entry of this Final Order shall be required.

4. The Debtors Prepetition Secured Indebtedness.

(a) As of the Petition Date, the Borrower and the Debtors, other than Debtor SN UR Holdings, LLC ("SN UR"), pursuant to that certain Third Amended and Restated Credit Agreement dated as of February 14, 2018 (the "Prepetition Credit Agreement"), with Royal Bank of Canada, as administrative agent (in its capacity as such, the "Administrative Agent"), Royal Bank of Canada as collateral agent (in its capacity as such, the "Collateral Agent" and, in its capacity as the Administrative Agent and the Collateral Agent, the "Credit Agreement Agent") and the lenders party thereto (the "Credit Agreement Lenders" and together with the Credit Agreement Agent, the "Credit Agreement Parties" and, together with the Hedging Counterparties (as defined below), the Secured Notes Parties and Royal Bank of Canada, in any and all of Royal Bank of Canada's capacities under any of the First-Out Documents, the "Prepetition Secured

Parties") have certain indebtedness defined in the Collateral Trust Agreement as the First-Out Obligations including, among other things, borrowings of approximately $7.9 million in principal amount and approximately $17.1 million of reimbursement obligations in connection with that certain letter of credit issued by Royal Bank of Canada, which was drawn by the beneficiary thereof following the Petition Date (the "Prepetition L/C"), (the obligations thereunder, the "Credit Agreement Obligations") pursuant to the Prepetition Credit Agreement and the Collateral Trust Agreement. The First-Out Obligations also include certain swap obligations as of the Petition Date pursuant to swap agreements (each as defined in the Collateral Trust Agreement, and, hereinafter, the "First-Out Hedging Obligations") with certain hedging counterparties (the "Hedging Counterparties"), which are secured on a pari passu basis with the other Credit Agreement Obligations.

(b) Prior to the Petition Date, pursuant to the Secured Notes Indenture, the Borrower issued, and the Prepetition Debtor Guarantors guaranteed, $500,000,000 in principal amount of Secured Notes (together with any accrued and unpaid interest and fees, all other Obligations (as that term is defined in the Secured Notes Indenture) under the Secured Notes Indenture or any of the other Note Documents (as defined in the Secured Notes Indenture), the "Secured Notes Obligations"), all of which was outstanding as of the Petition Date.

(c) As of the Petition Date, the terms of the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture and the other Note Documents, and the Prepetition Credit Agreement, as applicable, provide that the Credit Agreement

Obligations, the First-Out Hedging Obligations and the Secured Notes Obligations, as applicable, are secured by first-priority liens and security interests on the Prepetition Collateral (the "Prepetition Liens").

(d) the Prepetition Secured Parties contend that all cash proceeds of the Prepetition Collateral (including cash on deposit at the Debtors' depository institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral, but excluding, for the avoidance of doubt, any cash held by SN UR on the Petition Date) are "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

5. Findings Regarding the DIP Financing and Cash Collateral.

(a) Good and sufficient cause has been shown for the entry of this Final Order.

(b) The Loan Parties have an immediate need to continue to use the Prepetition Collateral (including the Cash Collateral) to preserve their estates, including (i) for the orderly continuation of the operation of their businesses, (ii) to preserve business relationships with vendors, suppliers, employees, and customers, and (iii) to satisfy other working capital and operational needs. The Loan Parties have an immediate need to have available the DIP Facility in case the Prepetition Collateral (including Cash Collateral) is insufficient to meet their capital and liquidity needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the

DIP Documents, and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful reorganization of the Loan Parties.

(c) The Loan Parties have been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Loan Parties granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out and First-Out Obligations, the DIP Liens and the DIP Superpriority Claims (each as defined below) and granting the Adequate Protection (as defined below), in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.

(d) The Roll-Up Loans as provided for under the DIP Facility and this Final Order are appropriate and the DIP Agent and the DIP Lenders would not be willing to provide the New Money Facility or extend credit to the Debtors thereunder without the inclusion of the Roll-Up Loans within the DIP Facility (subject to the terms of this Final Order, including paragraphs 23 and 24).

(e) Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the DIP Financing, the terms of the Adequate Protection granted to the Prepetition Secured Parties, and the terms on which the Loan

Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Final Order and the DIP Documents are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

(f) Upon the terms and conditions set forth herein, the Prepetition Secured Parties have consented and/or are deemed to have consented to the use of Cash Collateral and the other Prepetition Collateral, the Debtors' entry into the DIP Documents and, as applicable the priming of the Prepetition Liens granted to the Secured Notes Parties pursuant to section 364(d)(1) of the Bankruptcy Code, except as specifically set forth herein.

(g) The DIP Financing, the use of Cash Collateral and the other Prepetition Collateral, and the terms of the Adequate Protection and the Adequate Protection Liens (each as defined below) have been negotiated in good faith and at arm's length among the Loan Parties, the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) the DIP Loans made to and guarantees issued by the Loan Parties pursuant to the DIP Documents and (ii) any Loan Obligations (as defined in the DIP Credit Agreement) of the Loan Parties owing to the DIP Agent, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Agent or the DIP Lenders and to pay any fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents), amounts, charges, costs, indemnities and other obligations that are chargeable or reimbursable under the Interim Order, this Final Order or the DIP Documents (the foregoing in clauses (i) and (ii) collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision thereof or hereof is vacated, reversed or modified, on appeal or otherwise. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision thereof or hereof is vacated, reversed or modified, on appeal or otherwise.

(h) The Prepetition Secured Parties are entitled to the Adequate Protection as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including any Cash Collateral) are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); provided that nothing in the Interim Order, this Final Order, or the other DIP Documents shall (x) be construed as the affirmative consent by any of Prepetition Secured Parties for the use of any Cash Collateral, other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by this Final Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of any applicable intercreditor agreements, including the Collateral Trust Agreement, and upon a change in circumstances, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(i) The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. For the reasons set forth in the Motion and declarations filed in connection therewith, absent granting the relief set forth in this Final Order, the Loan Parties' estates would face (i) significant business disruptions in the event of the loss of, or limited, access to Cash Collateral, (ii) exposure to significant liquidity uncertainty in the current commodities market, and (iii) loss of confidence regarding the Debtors' financial wherewithal by stakeholders. Consummation of the DIP Financing and the use of Prepetition Collateral, including any Cash Collateral, in accordance with this Final Order and the DIP Documents are therefore in the best interests of the Loan Parties' estates and consistent with the Loan Parties' exercise of their fiduciary duties.

6. Authorization of the DIP Financing and the DIP Documents.

(a) The Loan Parties are hereby authorized to execute, enter into, and perform all obligations under the DIP Documents. The Borrower is hereby authorized to forthwith borrow the New Money Loans pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized, to guaranty the Borrower's obligations with respect to such borrowings in an aggregate principal or face amount not to exceed $150,000,000 under the DIP Facility (plus interest, fees, expenses (including reasonable and documented professional fees and expenses) and other amounts, in each case, as provided for in the DIP Documents), subject to any limitations on borrowing under the DIP Documents. The Borrower is authorized, directed, and ordered to take all actions necessary to effect a Discharge of First-Out Obligations. The Loan Parties are also authorized to convert to DIP Obligations constituting Roll-Up Loans under the DIP Documents each Roll-Up DIP Lender's ratable share of $50,000,000 of Roll-Up Loans based on each Roll-Up DIP Lender's Roll-Up Loan Amount (as defined in the DIP Credit Agreement), and the Guarantors are hereby authorized to guaranty the Borrower's obligations with respect to the Roll-Up Loans, subject to any limitations on borrowing under the DIP

Documents. The Borrower shall use the proceeds of the DIP Loans for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein), including to effect a Discharge of First-Out Obligations, and for other general corporate purposes and working capital purposes, including to (i) pay required debt service on the DIP Loans, (ii) pay the fees, costs, and expenses of the Credit Agreement Parties, DIP Agent and the DIP Lenders, (iii) pay the fees and expenses of professionals associated with the Cases, and (iv) provide Adequate Protection as provided in paragraph 19 of this Final Order.

(b) In furtherance of the foregoing and without further approval of this Court, each of the Debtors is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents, including, without limitation, the execution or recordation of security agreements, mortgages, and financing statements, (to the extent such execution and delivery were authorized by the Interim Order and have already occurred, such execution and delivery are hereby ratified) and to pay all fees that may be reasonably required or necessary for the Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent, and the Required Lenders (as defined in the DIP Credit Agreement) may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest, fees or other amounts payable thereunder;

(iii) the non-refundable payment to the DIP Agent and the DIP Lenders, as the case may be, of all fees, including, without limitation, any commitment fee, Backstop Fee (as defined in the DIP Credit Agreement),[3] exit fee, or agency fee (which fees shall be, and shall be deemed to have been, approved upon entry of the Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise), and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement or DIP Documents and the costs and expenses as may be due from time to time,

[3] The Backstop Fee referenced herein or any part thereof payable pursuant to the DIP Credit Agreement is fully-earned, shall not be refundable under any circumstances, will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute the Borrower may have, and shall be paid free and clear of, and without deduction for, any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto.

including, without limitation, reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and the DIP Lenders (including, without limitation, the reasonable and documented fees and expenses of (a) Morrison & Foerster, LLP, as counsel to the DIP Lenders, (b) Foley & Lardner, LLP, as local counsel to the DIP Lenders, (c) Evercore Group L.L.C., as financial advisor to the DIP Lenders, (d) Opportune LLP, as G&A advisor to the DIP Lenders, (e) Arnold & Porter Kaye Scholer LLP, as primary counsel to the DIP Agent, and (f) Cole Schotz, P.C., as local counsel to the DIP Agent, in each case without the need to file retention motions or fee applications, but subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e) of this Final Order;

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and the DIP Superpriority Claims and perfection of the DIP Liens and the DIP Superpriority Claims as permitted herein and therein; and

(v) the payment as soon as practicable of up to $1,000,000 of fees and expenses of Quinn Emanuel Urquhart & Sullivan, LLP, as counsel to the Unsecured Ad Hoc Group (defined below), without the need to file retention motions or fee applications, but subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e) of this Final Order; provided, however, that (x) such fees and expenses of Quinn Emanuel Urquhart & Sullivan, LLP, shall be payable solely from funds of SN UR in excess of any allowed or allowable claims against SN UR, its assets, or such funds at the time of such payment, (y) the Debtors are authorized and directed to pay such fees and expenses without regard to any analysis of the extent of such excess funds or allowed or allowable claims that has been conducted or that could be conducted by the Debtors or any other party in interest prior to making such payment, and (z) such payment shall not prejudice the rights of any party in interest to later challenge at any time the actual amount of excess funds available at the time when such payment was made, all of which rights are hereby reserved.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Final Order to the DIP Agent or the DIP Lenders shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim.

7. Discharge of First-Out Obligations. All commitments under the Prepetition Credit Agreement to extend loans, other debt financing or financial accommodations, and/or letters of credit that would constitute First-Out Obligations are terminated. The Debtors are authorized, directed, and ordered to use the proceeds of the DIP Draws and/or other

Borrowings available under the DIP Credit Agreement to effect a Discharge of First-Out Obligations, including (i) repaying in full in cash all amounts due and owing as of the date of the Final Order that constitute First-Out Obligations and (ii) through this Final Order providing that, notwithstanding anything to the contrary in the DIP Documents, the Interim Order, and/or this Final Order, the First-Out Hedging Obligations shall remain as part of the First-Out Obligations, shall not be primed and shall be secured by the Prepetition Collateral under applicable non-bankruptcy law, and shall otherwise remain unaffected by this Final Order. The Discharge of First-Out Obligations shall occur as soon as reasonably practicable after entry of this Final Order, but no later than ten (10) business days after entry of this Final Order. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order, (i) any and all security for any and all outstanding and/or continuing First-Out Obligations (including, but not limited to, the First-Out Hedging Obligations and indemnity obligations contained in the Collateral Trust Agreement and the First-Out Documents), shall maintain its priority under applicable non-bankruptcy law and shall be unaffected by the rights and obligations granted to the DIP Lenders and the DIP Secured Parties and (ii) the priority and extent of the Prepetition Liens to the extent of the First-Out Hedging Obligations shall be unaffected by the DIP Facility or the rights and obligations granted to the DIP Lenders and DIP Secured Parties, and the First-Out Hedging Obligations shall be secured by the Prepetition Liens pursuant to this Final Order. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order, no liens or security interests provided in the DIP Documents, the

Interim Order, or this Final Order shall prime any valid, perfected lien or security interest securing a First-Out Obligation. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order to the contrary, any provision or condition of this Final Order or the DIP Credit Agreement regarding payment or discharge of First Out Obligations may be waived, amended, terminated or otherwise deemed to have occurred in the sole and absolute discretion of the holder of the applicable First Out Obligation, or upon the mutual agreement of such holder and the other applicable Prepetition Secured Party in accordance with their respective rights under, this Final Order, the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture and the other Note Documents. Upon the occurrence of the Discharge of First-Out Obligations pursuant to this Final Order, (w) the Discharge of First-Out Obligations shall be deemed effective as of the entry of this Final Order, (x) the Controlling Priority Lien Representative (as defined in the Collateral Trust Agreement) shall be deemed to remove Royal Bank of Canada as Collateral Trustee and thereupon deemed to appoint Wilmington Trust N.A. as the Collateral Trustee under the Collateral Trust Agreement, (y) the Controlling Priority Lien Representative shall be deemed to have instructed the Collateral Trustee to consent to the entry of this Final Order, and (z) Royal Bank of Canada shall be the "predecessor Collateral Trustee" under the Collateral Trust Agreement and remain entitled to enforce all rights and privileges relating thereto including the immunities granted to it in Article 5 and the provisions of Sections 7.8 and 7.9 of the Collateral Trust Agreement, as well as the provisions of the Interim Order and this Final Order. The Debtors are authorized to execute any documents or agreements, and pay any fees, required to effectuate the foregoing.

8. Refinancing of Certain Secured Notes Obligations.

(a) Each Roll-Up DIP Lender's Roll-Up Amount of the outstanding principal amount of the Secured Notes will be immediately, automatically, and irrevocably deemed to have been converted into Roll-Up DIP Obligations (as defined below) and, except as otherwise provided in this Final Order and the DIP Credit Agreement, shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Final Order and the DIP Documents (subject to the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order, which paragraphs apply in accordance with their terms to the fullest extent to Roll-Up DIP Loans, Roll-Up DIP Obligations, DIP Superpriority Claims with respect to such loans and obligations, and DIP Liens securing such loans and obligations notwithstanding anything else in this Final Order). The conversion of the Roll-Up DIP Obligations as described in this paragraph 8 shall be authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the Roll-Up DIP Lenders to fund amounts under the New Money Facility and not as payments under, adequate protection for, or otherwise on account of, any Secured Notes Obligations. As used herein, the term "Roll-Up DIP Obligations" shall mean the Roll-Up Loans and all interest accrued and accruing thereon after the conversion into Roll-Up DIP Obligations and all other amounts owing by the respective Debtors in respect thereof after the conversion into the Roll-Up DIP Obligations.

(b) For the avoidance of doubt, (i) all parties' rights are reserved with respect to whether any Make Whole Premium or other premium would be payable under the Secured Notes Indenture and applicable law, and whether any such premium should be an allowed claim against the Debtors, (ii) notwithstanding anything to the contrary herein, the right of the Debtors and other parties in interest to object to the assertion of the Make Whole Premium or other premium as part of any claim under the Secured Notes Indenture shall not be subject to the restrictions set forth in paragraphs 11(f), 23 and 24 of this Final Order, and (iii) any allowable Make Whole Premium or other allowable premium shall be treated for purposes of allowance and distribution as prepetition Secured Notes Obligations without the benefit of the DIP Superpriority Claims (as defined below) or the DIP Liens (as defined below).

9. DIP Superpriority Claims.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, subject to the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order solely with respect to Roll-Up DIP Loans and Roll-Up DIP Obligations, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proofs of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising (except for the First-Out Obligations), of any kind whatsoever, including, without limitation, any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "DIP Superpriority Claims") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Loan Parties and all proceeds thereof; provided, however, that the DIP Superpriority Claims shall be subordinated and subject only to payment of the Carve-Out and First-Out Obligations; and provided, further, that the DIP Superpriority Claims with respect to Roll-Up DIP Obligations shall not be payable from any portion of the Available Avoidance Proceeds (defined below). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision thereof or hereof is vacated, reversed or modified on appeal or otherwise.

(b) Notwithstanding anything in paragraph 9(a) to the contrary (but, for the avoidance of doubt, without limiting the payment priority of the First-Out Obligations), the DIP Superpriority Claims shall have no recourse to the Loan Parties' claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions (collectively, "Avoidance Actions") or the proceeds thereof, except that the DIP Superpriority Claims shall have recourse (subject to paragraph 14 and solely with respect to New Money Loans) to up to fifty percent (50%) of each dollar of the first $100 million of proceeds or property recovered or unencumbered by Avoidance Actions against parties other than the Prepetition Secured Parties (in their capacities as such) (such amount of proceeds or property, the "Available Avoidance Proceeds").

(c) Notwithstanding anything in this Final Order to the contrary, the Roll-Up Loans and the Roll-Up DIP Obligations shall not constitute DIP Superpriority Claims except to the extent that the underlying obligations were valid and unavoidable Secured Notes Obligations as of the Petition Date and were secured by valid, perfected and unavoidable liens and security interests in Prepetition Collateral as of the Petition Date.

10. DIP Liens. As security for the DIP Obligations, effective and perfected as of the date of the Interim Order and without the necessity of the execution, recordation of filings by the Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "DIP Collateral"), and subject to the payment of the Carve-Out and First-Out Obligations (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order, this Final Order, and the DIP Documents, the "DIP Liens"):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to either (x) valid, perfected and non-avoidable liens as of the Petition Date, or (y) valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code (collectively, the "Unencumbered Property"), in each case other than the Avoidance Actions and proceeds thereof (except, with respect to New Money Loans, the Available Avoidance Proceeds).

(b) Lien Priming Certain Prepetition Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected senior priming security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, whether existing on the Petition Date or thereafter acquired, that secure the obligations of the Loan Parties under the Secured Notes Indenture (the "Primed Liens"), provided that such DIP Liens shall be junior to (i) the First-Out Obligations, (ii) valid and perfected Permitted Liens that were senior to the Prepetition Liens as of the Petition Date, and (iii) valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code.

(c) Lien Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, other than the property described in clauses (a) and (b) of this paragraph 10 (as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses (a) and (b)), whether now existing or hereafter acquired, that is subject to either (x) valid, perfected, and non-avoidable liens in existence immediately prior to the Petition Date (other than the Primed Liens) or (y) valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Avoidance Actions and the proceeds thereof (except for, with respect to New Money Loans, the Available Avoidance Proceeds), which security interests in favor of the DIP Agent shall be junior and subordinate to such valid, perfected, and unavoidable liens, including liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, provided that except as to the First-Out Obligations nothing in the foregoing clauses shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and

(d) Lien Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be (i) subject or subordinate to or made pari passu with (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Loan Parties, or (C) any intercompany liens or security interests of the Loan Parties against other Loan Parties; or (ii) subordinated to or made pari passu with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Notwithstanding anything in this Final Order to the contrary, the Roll-Up Loans and the Roll-Up DIP Obligations shall not be granted a lien, mortgage or security interest pursuant to clause (a) of this paragraph in any Unencumbered Property, and the DIP Liens securing the Roll-Up Loans and the Roll-Up DIP Obligations shall only extend to Prepetition Collateral that is subject to valid, perfected and unavoidable liens and security interests securing the Secured Notes Obligations as of the Petition Date.

11. Carve Out

(a) As used in this Final Order, the "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (the "U.S. Trustee") under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $100,000 incurred by any chapter 7 trustee under Bankruptcy Code section 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise, all paid and earned and accrued and unpaid fees and expenses (the "Allowed Professional Fees") incurred after the Petition Date by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") or the Creditors' Committee (as defined below) pursuant to Bankruptcy Code section 328 or 1103 (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional

Persons") at any time before delivery by the DIP Agent or the Required Lenders of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $5,000,000 incurred after the first business day following delivery by the DIP Agent or the Required Lenders of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (acting at the direction of the Required Lenders) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee providing that a Termination Event (as defined below) has occurred and stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Carve-Out Reserves. On the day on which a Carve-Out Trigger Notice is given by the DIP Agent or the Required Lenders to the Debtors with a copy to counsel to the Creditors' Committee (the "Termination Declaration Date"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve-Out Trigger Notice Reserve") prior to the use of such reserve to pay any other claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the "Post-Carve-Out Trigger Notice Reserve" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "Carve-Out Reserves") prior to the use of such reserve to pay any other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the "Pre-Carve-Out Amounts"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of itself and the DIP Lenders. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the "Post-Carve-Out Amounts"), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of itself and the DIP Lenders. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 11, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 11, prior to making any payments to the DIP Agent. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final

Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent and the Secured Notes Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded following a reasonable period (which period shall be no less than 5 business days) for each Professional Person to notify the Debtors of its expected amount of Allowed Professional Fees, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents and this Final Order. Further, notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP Obligations, or constitute additional DIP Loans (unless, for the avoidance of doubt, additional DIP Loans are used to fund the Carve-Out Reserves), (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap or the Carve-Out Reserves, or any of the foregoing, be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors to the Debtor Professionals. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Facility or in any Prepetition Credit Document, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, any 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Secured Notes Obligations.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(d) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

(f) Carve-Out Limits. Notwithstanding anything in this Final Order to the contrary, except for and solely to the extent as set forth in paragraph 24 below, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation, or assertions of any defense or counterclaim, against any of the DIP Lenders, the DIP Agent, or the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens, mortgages, and security interests granted in connection with the DIP Documents, the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, or the Note Documents, including, in each case, without limitation, for lender liability or pursuant to sections 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lenders, the DIP Agent or the Prepetition Secured Parties; or (c) attempts to prevent, hinder or otherwise delay any of the DIP Lenders' or the DIP Agent's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default (as defined in the DIP Credit Agreement) has not occurred or is not continuing. Further, notwithstanding anything to the contrary in this Final Order, the failure of the Carve-Out Account to satisfy in full the Professional Fees shall not affect the priority of the

Carve-Out. For the avoidance of doubt, nothing in this paragraph shall be construed to impair (x) the right of the Professional Persons to seek payment of any fees and expenses incurred in connection with the foregoing as an administrative claim to the extent such fees and expenses are not payable from the Carve-Out or (y) the ability of any party to object to the allowance of fees, expenses, reimbursement or compensation of any Professional Persons on any other grounds.

12. Protection of DIP Lenders’ Rights.

(a) Upon the occurrence of a Termination Event and following the giving of not less than five (5) business days’ prior written notice (the “Enforcement Notice”) via email to counsel to the Debtors, the U.S. Trustee, counsel to the Trustees, counsel to Royal Bank of Canada, and counsel to the Creditors’ Committee, and the filing of such notice on the docket for these chapter 11 cases, which notice shall run concurrently with any notice required to be provided under the DIP Documents (the “Notice Period”), the DIP Agent (acting at the direction of the Required Lenders, as applicable) and the DIP Lenders may (i) terminate, reduce or restrict any further DIP Commitments to the extent any such DIP Commitments remains, (ii) declare all DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, (iii) withdraw consent to the Loan Parties’ continued use of Cash Collateral, and (iv) exercise all other rights and remedies provided for in the DIP Documents and under applicable law. During the Notice Period, the Debtors, the DIP Agent and the DIP Lenders consent to a hearing on an expedited basis for the sole purpose of (x) contesting whether a Termination Event has occurred and is continuing and (y) arguing for continued imposition of the automatic stay; provided, that if a hearing to consider the foregoing is requested to be heard before the end of the Notice Period but is scheduled for a later date by the Court, the Notice Period shall be automatically extended to the date of the conclusion of such hearing. Notwithstanding anything in this paragraph to the contrary, during the Notice Period, the DIP Lenders shall have no obligation to provide and the Loan Parties shall have no right to request any New Money Loans.

** The DIP Lenders may not request, demand or otherwise discuss with the Debtors or their professionals the imposition of any fee for any extension of the maturity date of the DIP loan for the period between May 11, 2020 and June 30, 2020.

(b) Following the conclusion of the Notice Period (as may be extended as set forth above), unless prior to such time the Court determines that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the DIP Agent is hereby granted relief from the automatic stay, without further notice, hearing, motion, order, or other action of any kind, to foreclose on, or otherwise realize on, its DIP Liens on all or any portion of the DIP Collateral.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Loan Parties' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Loan Parties' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation (other than as any such order or stipulation relates to the First-Out Obligations) related to the Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party other than the Prepetition Secured Parties.

13. Limitation on Charging Expenses Against Collateral. Except to the extent of the Carve-Out and the payment of First-Out Obligations, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting at the direction of the Required Lenders), or the Prepetition Secured Parties, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties and nothing contained in this Final Order shall be deemed to be a consent by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to any charge, lien, assessment or claim against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise.

14. No Marshaling. Except as provided in the immediately succeeding two sentences, in no event shall the DIP Agent, the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral. The DIP Lenders may seek payment from

the Available Avoidance Proceeds to the extent otherwise permitted in this Final Order (and subject to the payment of the First-Out Obligations) only after seeking payment from all other DIP Collateral and only with respect to the New Money Loans. Notwithstanding anything in this Final Order to the contrary, in the event that the Roll-Up Loans and up to $12.5 million of the DIP Loan the proceeds of which were used to satisfy First-Out Obligations are indefeasibly paid in full in cash or are otherwise satisfied with the consent of the holders of such obligations other than in cash, the determination of secured status of the Secured Notes Obligations pursuant to section 506 of the Bankruptcy Code shall be determined as if the cash or the value of such other consideration paying such Roll-Up Loans and up to $12.5 million of the DIP Loans the proceeds of which were used to satisfy First-Out Obligations was paid from the Prepetition Collateral prior to such determination.

15. Section 552(b). The Prepetition Secured Parties or the DIP Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code; provided that the "equities of the case" exception shall not be impaired by entry of this Final Order and the rights of all parties in interest are reserved with respect to the application of the "equities of the case" exception. Unless the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders, in their sole discretion, expressly consent in writing otherwise, expressly referencing this provision, any and all of Debtors' payments of costs or expenses and investments with respect to Prepetition Collateral (including, as appropriate, general and administrative costs of the Debtors and their estates, Adequate Protection payments, and

payments of DIP Obligations) shall be deemed solely for purposes of the Debtors' accounting to be made first with proceeds, products, offspring, or profits of and cash that, in each case, constitute Prepetition Collateral and thereafter with proceeds of DIP Loans, and thereafter, only to the extent funds are otherwise unavailable, with products, proceeds, and offspring of and cash that, in each case, constitute DIP Collateral that is not Prepetition Collateral.

16. Payments Free and Clear. Subject only to the Carve-Out, the First-Out Obligations, and the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order, this Final Order, or the DIP Documents shall be received, except as to Roll-Up DIP Obligations that are subject to any Challenge filed in accordance with paragraph 23, free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code, whether asserted or assessed by, through or on behalf of the Debtors

17. Application of Proceeds. The DIP Secured Parties and the Prepetition Secured Parties, as applicable, shall have the right, in their sole discretion (but in the case of (x) the Secured Notes Parties, subject to the rights of the DIP Secured Parties and payment of the First-Out Obligations and (y) the DIP Secured Parties, subject to the rights and obligations of the Collateral Trustee to pay the First-Out Obligations), to apply any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties or the Collateral Trustee on behalf of the Prepetition Secured

Parties, pursuant to the provisions of this Final Order, or the DIP Documents (i) to the repayment of any portion of the obligations under the DIP Facility to or from any portion of the DIP Collateral securing such obligations and/or the DIP Superpriority Claims, and (ii) solely to the extent of any Adequate Protection Claims, to or from any portion of the 507(b) Claims and/or Adequate Protection Liens.

18. Use of Cash Collateral. The Loan Parties are hereby authorized, subject to the terms and conditions of this Final Order, to use Cash Collateral, provided that (i) the Prepetition Secured Parties are granted the Adequate Protection and (ii) except on the terms and conditions of this Final Order, the Loan Parties shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court. Unless otherwise ordered by the Court, the Loan Parties' right to use the Cash Collateral pursuant to this Final Order shall terminate without further notice or court proceeding at the end of the Notice Period (as may be extended pursuant to paragraph 12 of this Final Order) following the occurrence of a Termination Event. The Court hereby authorizes the use of Cash Collateral solely and exclusively for the disbursements set forth in the DIP Budget attached hereto as Exhibit 2 and each subsequent Approved Budget (each as defined in the DIP Credit Agreement), including but not limited to, the use of Cash Collateral to effect a Discharge of First-Out Obligations as provided in this Final Order. The Loan Parties shall adhere to the DIP Budget and each Approved Budget, as applicable, in effect at such time pursuant to the terms of the DIP Credit Agreement, with respect to operating disbursements (excluding fees and expenses paid or payable to Professional Persons and fees and expenses paid or

payable pursuant to paragraphs 6(iii), 7 and 19(e) hereof) subject to the Permitted Variances (as defined in the DIP Credit Agreement). The DIP Agent may (at the direction of the Required Lenders) agree in writing to the use of Cash Collateral in a manner or amount which does not conform to the DIP Budget or any Approved Budget, and if such written agreement is provided by the DIP Agent, the Loan Parties shall be authorized pursuant to this Final Order to use Cash Collateral for such nonconforming use without further Court approval, and the DIP Lenders and Prepetition Secured Parties shall be entitled to all of the protections in this Final Order for use of such Cash Collateral.

19. Adequate Protection of Prepetition Secured Parties. Subject to the Carve-Out, the Prepetition Secured Parties are granted, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, solely to the extent of the decrease, if any, in the value of the Prepetition Secured Parties' interests (within the meaning of section 361 of the Bankruptcy Code) in the Prepetition Collateral, including the Cash Collateral, from and after the Petition Date, for any reason provided for under the Bankruptcy Code, such as any decrease resulting from the sale, lease or use by the Loan Parties of the Prepetition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (any such decrease, the "Adequate Protection Claims"). In consideration of the foregoing, the Prepetition Secured Parties are hereby granted, in each case effective as of the date of the Interim Order, the following (collectively, the "Adequate Protection"):

(a) Prepetition Secured Parties' Adequate Protection Liens. To secure any Adequate Protection Claims, the Collateral Trustee, for the benefit of the Prepetition Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), valid, perfected replacement security interests in and liens upon all of the DIP Collateral including, without limitation, Unencumbered Property, in each case subject and subordinate only to the DIP Liens, the Carve-Out, the First-Out Obligations and liens and security interests securing same, and the Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code (the "Adequate Protection Liens").

(b) Prepetition Secured Parties' 507(b) Claims. The Prepetition Secured Parties are hereby granted, effective as of the date of the Interim Order, subject to the Carve-Out, allowed superpriority administrative expense claims as provided for in section 507(b) of the Bankruptcy Code for and to the extent of any Adequate Protection Claims with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "507(b) Claims"), which 507(b) Claims shall have recourse to and be payable from all of the DIP Collateral, excluding Avoidance Actions and the proceeds thereof. The 507(b) Claims shall be subject and subordinate only to the First-Out Obligations, Carve-Out and the DIP Superpriority Claims.

(c) Interest. The Trustee under the Secured Notes Indenture, for the benefit of the Secured Noteholders, shall receive from the Debtors cash payment equal to the amount of all accrued and unpaid interest on the Secured Notes at the non-default rate provided for in the Secured Notes Indenture on each Interest Payment Date (as defined in the Secured Notes Indenture) or as soon as practicable thereafter if the applicable Interest Payment Date has passed, subject to the right of the Debtors or any other party in interest, through appropriate proceedings in these Cases, to seek to recharacterize such interest pursuant to 11 U.S.C. § 502(b) as payment of principal or seek other appropriate relief, including disgorgement. For purposes of clarification, the accrued and unpaid interest as of the Petition Date with respect to Secured Notes to be converted into Roll-Up Loans will not be rolled into such Roll-Up Loans but shall be paid to the holders of such Secured Notes pursuant to this paragraph.

(d) First-Out Hedging Obligations. Without limiting the rights of the Hedging Counterparties, subject to the terms and conditions set forth in this Final Order, the Debtors are hereby permitted to use Cash Collateral and the proceeds of the DIP Financing to continue performing their obligations to the applicable Hedging Counterparties with respect to the First-Out Hedging Obligations in the ordinary course of business, including the authority, but not the direction, to repay any unwound First-Out Hedging Obligations; provided that the Hedging Counterparties rights to: (i) to liquidate, terminate, or accelerate any underlying swap agreements between such Hedging

Counterparties and the Debtors; and (ii) to take such action as necessary to effect the liquidation, termination, or acceleration of such swap agreements in the ordinary course of business, shall be subject to and governed by Sections 555-557 and 559 562 of the Bankruptcy Code, as applicable.

(e) Fees and Expenses. The Debtors shall pay in full, in cash and in immediately available funds all reasonable and documented accrued and unpaid fees and expenses of: (i) Morrison & Foerster, LLP, as counsel to the ad hoc group of Secured Noteholders ("Secured Ad Hoc Group"), (ii) Foley & Lardner, LLP, as local counsel to the Secured Ad Hoc Group, (iii) Evercore Group LLC., as financial advisor to the Secured Ad Hoc Group, (iv) Opportune LLP, as G&A advisor to the Secured Ad Hoc Group, (v) the Notes Trustee, including Arnold & Porter Kaye Scholer LLP, as primary counsel to the Notes Trustee and Cole Schotz, P.C., as local counsel to the Notes Trustee, (vi) Thompson & Knight, LLP as counsel to Royal Bank of Canada, in its capacities under the Collateral Trust Agreement, and as Collateral Agent, Administrative Agent, and Lender under the Prepetition Credit Agreement, and (vii) any designated successor Collateral Trustee under the Collateral Trust Agreement, including one primary and one local counsel without the need to file retention motions or fee applications.[4] The applicable professional shall

[4] Subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e), the Debtors shall also pay in full, in cash all reasonable and documented accrued and unpaid fees and expenses of Carl Marks Advisory Group, LLC ("Carl Marks"), as financial advisor to Royal Bank of Canada, for all services performed prior to the date of the entry of this Final Order. To the extent Royal Bank of Canada incurs fees and expenses to Carl Marks following the date of the entry of this

serve copies of the invoices supporting such fees and expenses on counsel to the Debtors, the U.S. Trustee and Milbank LLP as counsel to the Creditors' Committee, and any such fees and expenses shall be subject to prior ten (10) day review by the Debtors, the U.S. Trustee and the Creditors' Committee, and in the event the Debtors, the U.S. Trustee or the Creditors' Committee shall file with this Court an objection to any such invoice, the portion of such invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten (10) day review period, such invoice shall be paid without further order of the Court and shall not be subject to any further review, challenge or disgorgement. The Debtors shall also pay the annual and other administrative fees of the Collateral Trustee and the Notes Trustee, including any successors thereto.

20. Reservation of Rights of Prepetition Secured Parties. Under the circumstances and given that the Adequate Protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the Adequate Protection and other rights provided under this Final Order are reasonable and sufficient to protect the interests of the Prepetition Secured Parties and any other parties holding interests that are secured by Prepetition Liens; provided that any of the Prepetition Secured Parties, upon a change in circumstances, may request further or different adequate protection. In addition, the Trustees and counsel for the Secured Ad Hoc

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Final Order, Carl Marks shall not be entitled to payment of such fees and expenses pursuant to paragraph 19(e), but Royal Bank of Canada shall maintain all rights relating to payment of such fees as First-Out Obligations.

Group will be entitled to copies of the reporting information provided to the DIP Agent or DIP Lenders under sections 5.01, 5.19-5.22 of the DIP Credit Agreement as and when it is delivered in accordance with the DIP Agreement. In the event that the Debtors are no longer bound by the reporting requirements set forth in the DIP Credit Agreement in accordance with the terms thereof, the Debtors will instead provide the Secured Notes Parties with the reports set forth in section 4.03(a)(iii) of the Secured Notes Indenture in accordance with the terms thereof.

21. Perfection of DIP Liens and Adequate Protection Liens.

(a) The DIP Agent and the Collateral Trustee are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, for the benefit of the DIP Secured Parties, or the Collateral Trustee, for the benefit of the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the reasonable request of the DIP Agent, each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized to take, execute, deliver, and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens, and such parties shall provide reasonable cooperation to the DIP Agent with respect to such matters. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent or the Collateral Trustee, as the case may be, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent or the Collateral Trustee, as the case may be, to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

22. Preservation of Rights Granted Under This Final Order.

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Final Order (including, for the avoidance of doubt, Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date, and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, and the First-Out Obligations and the valid, perfected, liens and security interests securing same), no claim or lien having a priority superior to or pari passu with those granted by this Final Order to the DIP Agent and the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Claims remain outstanding, and, except with respect to Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date, and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, or as otherwise expressly provided herein, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made pari passu with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made pari passu with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Loan Parties; or (iv) subject or junior to any intercompany liens or security interests of the Loan Parties against other Loan Parties.

(b) Unless waived in writing by the Required Lenders or the DIP Agent (at the direction of the Required Lenders), the occurrence of any "Event of

Default" under the DIP Credit Agreement shall constitute a termination event under this Final Order (each, a "Termination Event").

(c) Notwithstanding any order that may be entered dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Claims shall have been indefeasibly paid in full in cash (and such DIP Superpriority Claims, 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the other rights granted by this Final Order shall not be affected; and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in this paragraph and otherwise in this Final Order.

(d) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection incurred prior to the actual receipt of written notice by the DIP Agent or the Trustees, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection or Adequate Protection Liens incurred by the Loan

Parties to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent or the Trustees, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits granted in section 364(e) of the Bankruptcy Code, the Interim Order, this Final Order, and the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations, and the Adequate Protection.

(e) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order, and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of the Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection. The terms and provisions of the Interim Order, this Final Order, and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order, and the DIP Documents shall continue in full force and effect until the DIP Obligations and Adequate Protection Claims, as applicable, are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

23. Challenge Period.

(a) To the extent the Debtors, the official committee of unsecured creditors appointed in these Cases (the "Creditors' Committee") or any other party in interest, in each case, with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) (i) objects to or challenges the amount, validity, perfection, enforceability, priority, allowance or extent of the Credit Agreement Obligations, the Secured Notes Obligations (including the Roll-Up DIP Obligations) or the Prepetition Liens or (ii) otherwise seeks to assert or prosecute any action for preferences, fraudulent transfers, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Challenges") against the Prepetition Secured Parties or their respective subsidiaries and each of their former, current or future officers, partners, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "Representative" and, collectively, the "Representatives") in connection with matters related to the Credit Agreement Obligations, the Prepetition Credit Agreement, the Secured Notes Indenture, the Note Documents, the First-Out Documents, the Secured Notes Obligations, the Prepetition Liens, and/or the Prepetition Collateral, such Challenge must be commenced by a timely filed adversary proceeding or contested matter by (x) for the Creditors' Committee, the ad hoc group of unsecured noteholders represented by Quinn Emanuel Urquhart & Sullivan, LLP (the "Unsecured Ad Hoc Group"), and the respective indenture trustees under the 7.75% Senior Notes Indenture and the 6.125% Senior Notes Indenture (each as defined in the First Day Declaration), no later than thirty (30) days after entry of this Final Order, (y) for the Debtors, no later than (30) calendar days after entry of this Final Order, and (z) for all other parties in interest, no later than seventy-five (75) days after entry of the Interim Order (the "Challenge Period") (subject to the limitations contained herein, including, inter alia, in this paragraph 23); provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred; provided, further, that if prior to the termination of the Challenge Period, a party in interest files a motion seeking standing to pursue a Challenge that attaches a complaint that specifies the allegations of the Challenge, then the Challenge Period for such party shall be extended until the date that is two (2) business days after the Court rules on such request. For the avoidance of doubt, any payments made pursuant to this Final Order relating to the Discharge of First-Out Obligations shall not be subject to Challenges.

(b) To the extent no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding in a final non-appealable order, then, automatically and irrevocably, to the extent not subject to such Challenge:

(i) the obligations of the Loan Parties under the Prepetition Credit Agreement, the Collateral Trust Agreement, the Secured Notes Indenture, Note Documents, and the First-Out Documents, including the Credit Agreement Obligations and the Secured Notes Obligations (including but not limited to the Secured Notes issued in the aggregate principal amount outstanding as of the Petition Date of $500,000,000), in each case as in effect immediately prior to the Petition Date, shall constitute and be deemed legal, valid, and binding obligations of, and allowed claims against, the Borrower and the Prepetition Debtor Guarantors not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes, including but not limited to in the Cases and any subsequent chapter 7 case(s);

(ii) the Credit Agreement Obligations and the Secured Notes Obligations, as applicable, or any payments made, applied to, or paid on account of the obligations owing under the Prepetition Credit Agreement, Collateral Trust Agreement, or the Secured Notes Indenture, as applicable, prior to the Petition Date will not be subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(iii) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, enforceable, and perfected security interests and liens, not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law;

(iv) the Credit Agreement Obligations, the Secured Notes Obligations and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any statutory or non-statutory committee appointed or formed in the Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), and any defenses, claims, causes of action, counterclaims, and offsets by any statutory or non-statutory committee appointed or formed in the Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Credit Agreement Parties, Prepetition Secured Parties, the Secured Notes Parties and their Representatives arising out of or relating to the

Prepetition Credit Agreement, the First-Out Documents, Collateral Trust Agreement, the Note Documents, and the Secured Notes Indenture, as applicable, shall be deemed forever waived, released, and barred;

(v) by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Agreement, First-Out Documents, Collateral Trust Agreement, the Note Documents, or the Secured Notes Indenture, none of the Credit Agreement Parties, Prepetition Secured Parties, or the Secured Notes Parties shall be deemed to be in control of the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted, or are control persons or insiders of the Debtors; and

(vi) the Debtors, for themselves and on behalf of their respective estates, will be deemed to absolutely and unconditionally release and forever discharge and acquit the Credit Agreement Parties, the Prepetition Secured Parties, the Secured Note Parties and their respective Representatives (collectively, the "Released Parties") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened (collectively, the "Released Claims") including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof relating to the Prepetition Credit Agreement, the First-Out Documents, Collateral Trust Agreement, the Note Documents, or the Secured Notes Indenture, or the transactions contemplated thereunder, the negotiation thereof and of the deal reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order, whether such Released Claims are matured or unmatured or known or unknown.

(c) For the avoidance of doubt, the terms of this paragraph 23, including the Challenge Period, and any Challenges commenced pursuant to this paragraph 23, shall apply to the Roll-Up Loans and the Roll-Up DIP Obligations, in each case to the fullest extent that such loans and obligations were subject to Challenge as of the Petition Date as though the Roll-Up DIP Obligations had not been converted into Roll-Up Loans. If the amount of valid and unavoidable Secured Notes Obligations as of the Petition Date that were secured by valid, perfected and unavoidable liens in Prepetition Collateral as of the Petition Date is less than the amount of Roll-Up DIP Obligations, then the Roll-Up DIP Obligations converted into Roll-Up Loans shall be treated for purposes of allowance and distribution as if they had not been converted into Roll-Up Loans to the extent of such deficiency, and any interest, fees or other amounts paid with respect to such Roll-Up DIP Obligations or the corresponding Roll-Up Loans shall be recharacterized as principal payments on the Roll-Up DIP Obligations and subject to disgorgement.

(d) Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committee appointed or formed in the Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Agreement, the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture, the Note Documents, the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations or the Prepetition Liens. For purposes of clarification, nothing in this Final Order is intended to or shall be deemed to release, discharge, or waive any claims, causes of action, or defenses, under law or equity, that the Secured Noteholders, Prepetition Secured Parties, or DIP Lenders have or may have arising under or relating to the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, the Note Documents, the Prepetition Collateral, or the Prepetition Liens. Moreover, the rights of the Prepetition Secured Parties, the Secured Noteholders, and the Collateral Trustee vis-à-vis each other, under the Collateral Trust Agreement and otherwise applicable law, are expressly reserved and unaffected by the terms of this Final Order

24. Limitation on Use of DIP Financing Proceeds and Collateral.

(a) Notwithstanding any other provision of this Final Order or any other order entered by the Court, subject to the immediately succeeding sentence in this paragraph, no DIP Loans, DIP Collateral, Prepetition

Collateral or any portion of the Carve-Out may be used directly or indirectly by any Debtor, any official committee appointed in the Cases, or any trustee appointed in the Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (A) against any of the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Prepetition Secured Parties, or the Secured Notes Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Credit Agreement Obligations, First-Out Obligations, the Secured Notes Obligations, liens on the Prepetition Collateral, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims and/or the Adequate Protection, the Adequate Protection Liens, and superpriority administrative claims granted to the Secured Notes Parties under this Final Order, as applicable, or (B) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations, the DIP Obligations, and/or the liens, claims, rights, or security interests granted under this Final Order, the Interim Order, the DIP Documents, the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, or the Note Documents including, in each case, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Credit Agreement Parties', the Prepetition Secured Parties', the DIP

Agent's or the DIP Lenders', as applicable, enforcement or realization on the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations, the Prepetition Collateral, the DIP Obligations, the DIP Collateral, and the liens, claims and rights granted to such parties under this Final Order, each in accordance with the DIP Documents, the Prepetition Credit Agreement, the First-Out Obligations, the Collateral Trust Agreement, the Note Documents or this Final Order; (iii) to seek to modify any of the rights and remedies granted to the Credit Agreement Parties, the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under this Final Order, the Interim Order, the Prepetition Credit Agreement, the First-Out Documents, the Collateral Trust Agreement, the Note Documents, or the DIP Documents, as applicable, without the consent of the applicable party; or (iv) to apply to the Court for authority to approve superpriority claims (subject to the Carve-Out) or grant liens (other than Permitted Liens) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the 507(b) Claims, unless all DIP Obligations, First-Out Obligations, Adequate Protection, and claims granted to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties under this Final Order have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Lenders. Without limiting the generality of the foregoing, (x) up to $250,000 in the aggregate of proceeds of any Cash Collateral or any proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral may be used to pay any allowed fees of the Creditors' Committee, if any, or their respective professionals, to the extent incurred in connection with investigating and, if appropriate, prosecuting the foregoing matters described in the clauses (i) and (ii) of this paragraph (the "Investigation Budget") and (y) there shall be no cap on the amount of proceeds of any Cash Collateral or any proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral that may be used to pay the Allowed Professional Fees of the Debtor Professionals in connection with the investigation only of the foregoing matters described in such clauses.

(b) For the avoidance of doubt, nothing herein shall modify or limit the rights of the Loan Parties set forth in second paragraph of Section 7.02 of the DIP Credit Agreement or limit their use of the Carve-Out in connection with such rights.

25. Loss or Damage to Collateral. Nothing in this Final Order, the DIP Documents, or any other documents related to the transactions set forth in this Final Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any DIP Lender or any of the Credit Agreement Parties or Prepetition Secured Parties of any liability for any claims arising from the pre-petition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the

value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Loan Parties.

26. Additional Reporting. The Debtors shall use their commercially reasonable efforts to provide the Secured Ad Hoc Group, the Creditors' Committee, and the Unsecured Ad Hoc Group (defined below) (through their respective counsel or other advisors) information and reports as each of them may from time to time reasonably request, including but not limited to information regarding (a) each material contract and other agreements of any of the Debtors; (b) the rates, fees, expenses, and other costs under each material contract and other agreements of the Debtors; (c) the rates, fees, expenses, and other costs paid by any or on behalf of any of the Debtors with respect to all goods and services provided by SOG to or on behalf of each of the Debtors, Sanchez Midstream Partners LP, SN EF UnSub, LP, Gavilan Resources, LLC, or other persons or entities; and (d) the potential costs of assuming or rejecting any material executory contract and/or unexpired lease.

27. Final Order Governs. In the event of any inconsistency between the provisions of this Final Order and the DIP Documents or any other order entered by this Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP

Documents, including, without limitation, the Approved Budget.

28. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Secured Notes Parties, any statutory or non-statutory committees appointed or formed in the Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Secured Notes Parties, and the Debtors and their respective successors and assigns, provided that the DIP Agent, the DIP Lenders, and the Credit Agreements Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

29. Limitation of Liability. In determining to make any loan or other extension of credit under the DIP Credit Agreement, permit the use of Cash Collateral or exercise any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order, or the DIP Documents, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not

(a) be deemed to be in "control" of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and/or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

30. Master Proof of Claim. The Trustees shall not be required to file proofs of claim in the Cases or any successor case in order to assert claims on behalf of itself and the Secured Noteholders for payment of the Secured Notes Obligations arising under the Secure Notes Indenture. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, the Trustees are authorized to file in the Debtors' lead chapter 11 case Sanchez Energy Corporation, Case No. 19-34508, a single, master proof of claim on behalf of the relevant Secured Notes Parties on account of any and all of their respective claims arising under the Secured Notes Indenture and hereunder (each, a "Master Proof of Claim") against each of the Debtors party to the Secured Notes Indenture. Upon the filing of a Master Proof of Claim against each such Debtor, the Secured Notes Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each such Debtor of any type or nature whatsoever with respect to the Secured Notes Indenture, and the claim of each Secured Notes Party (and each of its respective successors and assigns) named in a Master Proof of Claim shall be treated as

if such entity had filed a separate proof of claim in each of the Cases. The Master Proofs of Claim shall not be required to identify whether any Secured Notes Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 30 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Secured Notes Party (or its successors in interest) to vote separately on any chapter 11 plan proposed in the Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Secured Notes Party, which instruments, agreements or other documents will be provided upon written request to counsel to the Trustees, respectively.

31. Insurance. To the extent that the Trustees are listed as loss payee under the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee for the Secured Notes Parties under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and second, to the payment of the portion of the Secured Notes Obligations owed to the Secured Notes Parties.

32. Effectiveness. This Final Order shall constitute findings of fact and conclusions of law and shall take

effect and be fully enforceable nunc pro tunc to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

33. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

34. Credit Bidding. Subject to paragraphs 23 and 24 of this Final Order, as applicable, and the inclusion of a cash component sufficient to fund the Carve-Out and the payment of First-Out Obligations, (a) the DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral, and (b) subject to the rights of the DIP Agent, the Secured Notes Parties and/or the Collateral Trustee shall have the right to credit bid up to the full amount of (i) the Secured Notes Obligations under the Secured Notes Indenture in any sale of the Prepetition Collateral and (ii) the Adequate Protection Claims, including the 507(b) Claims, in any sale of the DIP Collateral, in each case to the fullest extent provided in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(b) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

35. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the

extent applicable, are satisfied by the contents of the Motion.

36. Necessary Action. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Final Order.

37. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

38. Reservation of Rights of Holders of Permitted and Other Liens. Subject only to the Carve-Out, and the Discharge of First-Out Obligations, (i) nothing in this Final Order is intended to change or otherwise modify the prepetition priorities of creditors holding valid, perfected, enforceable, and unavoidable Permitted Liens as of the Petition Date, including (x) any operators or non-operators lien or recoupment rights to the extent their liens or rights are valid, enforceable, non-avoidable and perfected, and (y) without regard to the definition of "Permitted Liens," any claims of the Lienholders (as defined below) or any other mechanic or materialman or mineral state lien claimants to the extent their liens are valid, enforceable, non-avoidable and perfected as of the Petition Date or perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, and (ii) nothing in this Final Order, including the granting of DIP Liens, DIP Superpriority Claims, adequate protection claims or adequate protection liens, shall be deemed to have changed or modified such prepetition priorities, all of which are hereby

expressly preserved. Without limiting the foregoing, for purposes of this Final Order only, "Permitted Liens" shall include, without limitation, liens arising under Tex. Bus. & Com. Code § 9.343, the liens described in clauses (x) and (y) above and the valid, perfected, enforceable and unavoidable liens and security interests in any and all property of SN EF Maverick, LLC ("SN Maverick"), held by or otherwise granted to SN EF UnSub LP, as owner of working interests (the "Maverick Working Interest Owner") in and attributable to oil, gas, and other hydrocarbons produced from Maverick, Dimmit, Webb, and La Salle Counties, Texas (the "Working Interest Hydrocarbons"), including but not limited to all proceeds resulting from the resale of the Working Interest Hydrocarbons, and all accounts receivable on account of such Working Interest Hydrocarbons (the "Maverick Working Interest Collateral").

39. Lienholders.

(a) Notwithstanding anything in this Final Order to the contrary, to the extent that Archrock Partners Operating LLC, Archrock Services LP, the Maverick Working Interest Owner, and/or Tulsa Inspection Resources LLC (collectively, the "Lienholders" and individually, a "Lienholder") has a valid, perfected, enforceable and unavoidable prepetition lien or security interest on any tangible or intangible property of the Debtors as of the Petition Date including valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code (the "Lienholder Collateral"), such interest shall be entitled to adequate protection, solely to secure payment of an amount equal to the decrease, if any, in the value of such Lienholder's interests in such Lienholder Collateral, from and after the Petition Date, for any reason provided under the Bankruptcy Code, in each case as follows: (i) postpetition replacement liens against such Lienholder's Lienholder Collateral (and the proceeds thereof), and (ii) superpriority adequate protection claims (the "Lienholder Adequate Protection Claims") solely against the applicable Debtor that owns the assets upon which such Lienholder's prepetition lien attaches, subject in each case to (x) the Carve-Out, (y) the Discharge of First-Out Obligations, and (z) the relative priorities of all adequate protection liens and adequate protection claims among the Prepetition Secured Parties and each Lienholder shall be the same as the relative priorities among such parties that existed prior to the Petition Date. As additional adequate protection to any Lienholder that has a valid, enforceable, non-avoidable and perfected security interest or lien as of the Petition Date, including valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, the Debtors shall pay in cash to such Lienholder the reasonable and documented professional fees, expenses and disbursements solely to the extent such fees, expenses and disbursements are allowed by the Court under section 506(b) of the Bankruptcy Code. Notwithstanding anything in this Final Order to the contrary, each Lienholder reserves its rights to seek other adequate protection or relief in the future, and nothing in this Final Order shall preclude the exercise of such rights.

(b) Nothing contained herein or in the Interim Order shall (i) operate to expand, reduce, or alter any interests of the Debtors with respect to their Oil and Gas Properties (as defined in the DIP Credit Agreement), except with respect to the DIP Liens, or (ii) prime or otherwise alter any valid reversionary interests related to any of the Debtors' Oil and Gas Properties.

(c) Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved thereby or hereby, any statutory liens on account of ad valorem property taxes (collectively, the "Tax Liens") of Atascosa County, Cameron County, City of Pleasanton, Cotulla Independent School District, Dewitt County, Dilley Independent School District, Duval County, Eagle Pass Independent School District, Freer Independent School District, Frio Hospital District, Goliad County, Goliad Independent School District, Gonzales County, Harris County, Hidalgo County, Jackson County, Jim Wells CAD, Kenedy County, La Salle County, Lasara Independent School District, Matagorda County, Pearsall Independent School District, Roma Independent School District, Smith County, Starr County, Willacy County, Zavala County, and other similarly situated taxing entities (the "Texas Taxing Jurisdictions"), shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved.

40. Interim Order. Except as specifically amended, supplemented, or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order. In the event of any inconsistency between the terms of this Final Order and the terms of the Interim Order, the terms of this Final Order shall govern.

41. Successor CRO. The Debtors shall, within 15 business days of any vacancy in the CRO position as a result of the termination of the retention of the CRO initially approved by the Bankruptcy Court, seek to appoint as successor CRO a person who is (i) reasonably acceptable to each of the Secured Ad Hoc Group, the Creditors' Committee, and the ad hoc group of unsecured noteholders represented by Quinn Emanuel Urquhart & Sullivan, LLP (the "Unsecured Ad Hoc Group" and, collectively with the Ad Hoc group and the Creditors' Committee, the "Successor CRO Approval Parties") and (ii) not related to Antonio R. Sanchez, Jr. (by consanguinity or affinity) and is not a current advisor, employee, officer, director, consultant, counsel, accountant, or other agent, in each case, of any Debtor or affiliate of any Debtor, provided, however, the Debtors may propose a current, third-party advisor or consultant as CRO with the consent of each of the Successor CRO Approval Parties.

Signed: January: 22, 2020

/s/ Marvin Isgur
Marvin Isgur
United States Bankruptcy Judge