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

In re:	§	Case No. 21-30427 (DRJ)
SEADRILL LIMITED, *et al.*,	§	Chapter 11
	§	(Jointly Administered)
Debtors.[1]	§	

THE SVP PARTIES' OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING ENTRY INTO THE BACKSTOP COMMITMENT AGREEMENT, (II) APPROVING THE PAYMENT OF FEES AND EXPENSES RELATED THERETO, AND (III) GRANTING RELATED RELIEF
(Relates To ECF No. 864)

[1] A complete list of the debtors in these chapter 11 cases (the "Debtors") may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/SeadrillLimited. The location of Debtor Seadrill Americas, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 11025 Equity Drive, Suite 150, Houston, Texas 77041.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutory Authorities

Additional Authorities

The SVP Parties, lenders holding in excess of $176 million against various Debtors[2] hereby file this objection to the *Debtors' Motion for Entry of an Order (I) Authorizing Entry into the Backstop Commitment Agreement, (II) Approving the Payment of Fees and Expenses Related Thereto, and (III) Granting Related Relief* [ECF No. 864] (the "**Backstop Motion**"),[3] and respectfully state as follows:[4]

PRELIMINARY STATEMENT

1. On July 24, 2021, the Debtors filed the Backstop Motion, requesting that this Court approve, in advance of confirmation, a backstop commitment letter (the "**Backstop Letter**") pursuant to which eight prepetition lenders (the "**Backstop Creditors**") (out of over 40 secured lenders to all Debtors) would receive $22.5 million in cash (payable immediately) (the "**Commitment Premium**") and a minimum of 4.25% (the "**Equity Premium**") in reorganized company equity ("**Reorganized Equity**"), worth approximately $61 million.[5] In exchange, the Backstop Creditors agree to "backstop" a first lien secured exit facility, comprising a $175 million term loan and a $125 million revolving credit facility (the "**Exit Facility**") that itself has stapled to it another 12.5% of the Reorganized Equity to be distributed to lenders who participate in the Exit Facility.

2. This Court must deny the Backstop Motion for numerous, independently dispositive reasons. First, it is clear that the Commitment Premium and the Equity Premium

---

[2] The SVP Parties hold claims that are classified in Classes 4-c and 4-d under the Debtors' proposed plan of reorganization (the "**Plan**").

[3] All terms not otherwise defined herein have the same meanings as defined in the *Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Seadrill Limited and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "**Disclosure Statement**") [ECF No. 861]. Filed concurrently herewith is the SVP Parties' objection to the adequacy of the Disclosure Statement. To avoid duplication, this objection has a much longer discussion of the factual background.

[4] Filed concurrently herewith is the SVP Parties' *Appendix in Support of (i) Objections to the Backstop Motion and Disclosure Statement Motion and (ii) Derivative Standing Reply* (the "**Appendix**").

[5] Based on the Debtors' midpoint $1.508 billion equity value as set forth in the Disclosure Statement, net of dilution for the Hemen Convertible Bond but prior to dilution of any equity awarded to management.

constitute payment on account of prepetition claims to induce the Backstop Creditors to vote in favor of the Plan, which courts consistently have held cannot be the basis for approving a backstop because it violates Bankruptcy Code section 1123(a)(4) and cannot satisfy the "good faith" test. The Backstop Letter is integral to the Plan, Disclosure Statement, the Hemen Convertible Bond, the PSA, and multiple documents all executed at the same time. But for the Backstop Letter's exclusive economic benefits, it is obvious that the Backstop Creditors would not "support" (i.e., vote in favor of) the Plan, [redacted] The SVP Parties have proven this by offering a significantly cheaper backstop, available to all lenders, and isolating every variable (the "**SVP Updated Backstop Offer**") such that the only difference between the Backstop Letter and the SVP Backstop Offer is Plan "support." Plan "support" in this case can only mean Plan voting.

3. Second, the consideration provided to the Backstop Creditors is not rationally related to the risks of the investment itself. Discovery has shown that no Backstop Creditor views its Backstop Letter commitment as a risky investment at all but instead simply a mechanism to siphon value to themselves that they will then cash in on when the Debtors embark [redacted]

4. Third, to the extent that the "business judgment" standard applies (which, as discussed below, it does not) the Debtors fail it because the key estate fiduciaries—including the Chief Restructuring Officer, the Debtors' lead investment banker,[6] and members of the Board of Directors of the NADL Debtors, were deprived of a material fact—[redacted]

[6] The Debtors have indicated that their lead investment banker is currently their only witness they intend to call to testify as to the process regarding the Backstop Letter and the reasonableness of the consideration provided to the Backstop Creditors. The fact that the Debtors are not affirmatively calling any principal, let alone the NADL Independent Directors, is telling.

[redacted]

5. Fourth, the Debtors [redacted]—but the lucrative consideration provided to Backstop Creditors will effectively chill any bidding. Applying well-settled precedents regarding 'stalking horse' bid protections, this Court must deny the Backstop Motion.

6. Finally, even if this Court does not deny the Backstop Motion outright, because the Backstop Letter is so closely tied to the Plan, including the Plan valuation and allocation of value across the Debtors' silos, there is no reason for this Court's hands to be tied by approving the Backstop Motion in advance of confirmation. This is particularly true given that if this Court grants the Backstop Motion but ultimately denies confirmation of the Plan, or the Debtors are forced to pivot towards a "Superior Restructuring Proposal" under the PSA, the Backstop Creditors will get to keep their $22.5 million Commitment Premium. There is no reason to gift this amount when the record is plainly insufficient to justify it.

* * *

7. The Backstop Creditors are in an exclusive club—the Debtors did not offer membership to the club to all lenders but only to a select few that the Debtors believe can deliver them a large portion (but not all) of the votes necessary to confirm the Debtors' favored plan—a "single silo" stand-alone reorganization that nonetheless positions the Debtors to be merged post-confirmation after locking in rich rewards for the Backstop Creditors and insiders.

8. And while the Debtors tout that they have garnered Plan support from 57.8% of all secured lenders (the "**<u>PSA Consenting Lenders</u>**"), what they have not explained is that over 80%

of the PSA Consenting Lenders are the Backstop Creditors themselves, and they have an unequivocal ability to block any vote to terminate the PSA. And despite the Debtors' filing of the proposed Plan, since July 24, as of the date of this Opposition, not a single additional lender has signed the PSA. [redacted] and even the CoCom Lenders—*who signed the PSA*—have not adopted the Debtors' fresh Plan valuation. *See* ECF No. 870 at 4 n.6.

9. Courts in recent years have wrestled with the propriety of backstop payments to prepetition creditors or equity security holders. They are not illegal *per se*, *see In re Peabody Energy Corp.*, 933 F.3d 918 (8th Cir. 2019), because such arrangements can be approved if creditors providing backstop commitments are providing legitimate rights or contributions distinct from their claims. *Peabody*, 933 F.3d at 925. But backstop commitments also can be abused if used by debtors to curry favor with creditors having outsize influence. *In re Pac. Drilling S.A.*, No. 17-13193 (MEW), 2018 Bankr. LEXIS 3024 *1, *6-7 (Bankr. S.D.N.Y. Oct. 1, 2018). Courts have noted that if the consideration given is, in substance, on account of a claim, then a backstop should not be approved unless it is made available to all creditors. *Cf. id.* at *7-8.[7] That is the case here—the Backstop Letter gives consideration to favored prepetition lenders on account of their claims so that they will vote for the Plan (and have the ability to block others from taking any other course).

10. This Court has previously heard, and likely will continue to hear, that the SVP Parties are "lone creditors," holding only 13% of the NADL Debtors' secured debt (and an overall smaller percentage against all Debtors), who have been a thorn in the side throughout these cases. The Debtors have not refrained from attacking the bona fides of the SVP Parties, *see* ECF No. 849,

[7] For an in-depth survey of the case law, *see* "Backstop and Private Placement Agreements: Commitment or Plan Treatment?", 30 No. 2 Norton J. Bankr. L. & Prac., Art. 4 (April 2021).

even though there are multiple creditors [redacted] and the Ad Hoc Group (previously) and the CoCom Lenders (currently) have publicly stated positions that are similar to the positions the SVP Parties have taken in these cases—that there needs to be some kind of a robust, transparent and open market check, including access to diligence, in order to ensure that value has been maximized.[8] *See* ECF Nos. 288, 646, 759, 870. The Debtors have nevertheless consistently demonstrated they are not going to pursue anything other than their "single silo" approach and to this day have refused to [redacted]

11. While it is questionable that the SVP Parties are in fact "lone creditors" fighting against the Debtors' preferred Plan, it is also irrelevant. Bankruptcy principles trump a debtor's business desires, even when it is a single creditor raising the alarm and even when the Debtors and their empire of advisors are sophisticated, well-funded and can always try to default to "business judgment." And unlike any precedent the Backstop Motion cites, the SVP Parties have done something (twice) that typically does not happen when courts confront disputes over backstop commitments: on June 15, 2021, the SVP Parties offered an undisputedly less expensive backstop option, available to all lenders, that only had as a condition a "market check" that was to be mutually agreeable to the Debtors, the NADL Independent Directors and all parties participating in the backstop (the "**SVP Initial Backstop Offer**"). Then after further developments in these cases, on August 18th the SVP Parties proposed the even more favorable and unconditional backstop (the "**SVP Updated Backstop Offer**") and again invited the Debtors, the Ad Hoc Group,

[8] Indeed, as discussed below, the CoCom Lenders (of which six members, four are Backstop Creditors) recently filed an objection to the SVP Parties' Derivative Standing Motion but acknowledged the SVP Parties' legitimate concerns and validated the SVP Parties' efforts. ECF No. 870.

and the CoCom Lenders to engage.[9] The Debtors have not accepted the SVP Updated Backstop Offer, requiring the filing of this Objection.

12. In each SVP Backstop Offer, the SVP Parties were unambiguous to the Debtors, Ad Hoc Group and CoCom Lenders—that the SVP Parties would commit to backstopping the whole Exit Facility in order to provide the liquidity the Debtors claim they need if this Court confirmed their Plan, even if the SVP Parties disagreed with Plan valuation, allocation of value among debtors, or whether a particular bid was better than the treatment offered under the Debtors' proposed Plan.[10] This ensured no possible accusation of "vote buying" and placed every lender on an equal playing field.

13. When the Debtors filed their Disclosure Statement on the same day that they filed their Backstop Motion, the SVP Parties saw that the Debtors had asserted that the mid-point of their newly appraised total enterprise value ("**TEV**") projected at emergence is approximately $2.1 billion and their equity value is $1.508 billion. As explained below, the fresh TEV figure is no doubt inflated and has the perverse effect of making it less attractive for any third-party bidder to seek to overbid. And while the PSA Consenting Lenders ostensibly have the right to terminate the PSA if the "market check" process is not properly conducted, the Backstop Parties can block that termination through the way the PSA voting is set up. Finally, although the Debtors pay lip service to the notion of a 'fiduciary out,' they cannot explain from whose grip they actually need to escape from—unlike a typical 'fiduciary out,' which involves an arm's-length negotiation with third parties, this is the very stand-alone "single silo" restructuring the Debtors themselves hatched.

[9] Copies of both Backstop Proposals are attached as Appendix "Exhibit A" and "Exhibit B".

[10] As discussed below, through discovery the SVP Parties learned that [redacted]

There should be no self-imposed limits on shopping for and accepting a better offer from third parties.

14. The Commitment Premium and Equity Premium are supposed to compensate the Backstop Creditors for the risk associated with capital they have to commit and therefore should be commensurate with that risk. Here, as discussed in detail below, the risk to the Backstop Creditors is *de minimis*. The net effect is that the Backstop Creditors are being 'compensated' based on a $300 million Exit Facility when the 'market' (as demonstrated by the comparable but cheaper SVP Updated Backstop Offer) shows that the consideration being provided is not commensurate with the risks being undertaken by the Backstop Creditors.

15. The PSA that was attached to the Disclosure Statement cannot be terminated by consenting lenders absent 75% of PSA signatories agreeing to terminate. Adding insult to injury, since the Backstop Creditors themselves constitute more than 80% of such lenders and therefore can easily block termination of the PSA. In other words, there is zero chance the PSA would ever be terminated, even if an objectively better bid for any of the Debtors silos, including the NADL Debtors, was presented—unless that bid exceeded the disproportionate value being paid to the Backstop Creditors plus any anticipated value they expect post-emergence when they could cash in on their privately negotiated allocation of value across the silos.

16. Indeed, the SVP Parties ran the numbers. Looking just at the Backstop Creditors, in order for each of them to receive more on account of their prepetition claims than they would as Backstop Creditors, a bidder would need to offer at least more than $772 million, which is $245 million more than the $526.9 million[11] that the Debtors say is the value of the NADL Debtors'

[11] Calculated using the Disclosure Statement's midpoint TEV. These figures assume (a) AOD lenders accept the cash-out option.

assets provided to NADL Lenders.[12] That minimum excess is required due to the value that the Debtors are uniquely giving to the Backstop Creditors in exchange for their Plan support.

17. The Backstop Motion should not be approved because it provides for the transfer of an indefensible amount of estate value to a small number of preferred lenders, with whom the Debtors privately negotiated for several months, all while deterring clear and unambiguous interest from third parties who were interested in bidding for all of the Debtors' assets. The Backstop Letter consideration (i) is not commensurate with any legitimate risk the Backstop Creditors face, (ii) cannot overcome the indisputably less expensive SVP Updated Backstop Offer that is made available to all lenders, and (iii) does not reflect any effort to maximize value of the Debtors' estates. This Court should deny the Backstop Motion.

RELEVANT FACTUAL BACKGROUND

A. The Debtors' Structure Lands Them In Chapter 22

18. The Debtors primarily consist of two sets of companies. The first set are twelve separate "silos" that have their own rigs, operations and credit facilities. The second set are the entities that effectively serve as corporate management.

19. This is the Debtors' second trip into bankruptcy before this Court. In late 2017, the Debtors commenced chapter 11 cases and emerged in July 2018. That restructuring was largely consensual, but it left the Debtors with substantial secured debt. Nonetheless, in connection with the 2018 restructuring, the Debtors' management prepared projections, which the Debtors' investment banking firm adopted, showing that the company could service the debt. The Debtors dramatically underperformed on their projections, including well before the onset of the COVID-

[12] If this Court factors in the benefit the Backstop Parties also receive under the Exit Facility, and for certain Backstop Parties, benefit as AOD Debtor lenders, it takes substantially more for a bidder to overbid, entirely disconnected with the value of the Debtors' assets.

19 pandemic and the Russia-Saudi Arabia oil price dispute. Rather than seek a second opinion, several of the same officers, and the same investment banking team, prepared the projections supporting the Plan here.

20. While the Debtors have several thousand employees, they have relatively few corporate officers. One is Stuart Jackson, who is the Chief Executive Officer and who also sits as a director on several "silo" boards, including the NADL Debtors' Board. Another officer is Grant Creed, who is the Debtors' Chief Restructuring Officer (and recently was also appointed as Chief Financial Officer). Mr. Creed is a longtime employee of the Debtors [redacted] The Debtors have also maintained a Restructuring Steering Committee, but it is in no way structured to address conflicts among the Debtors.

21. It is the SVP Parties' understanding that except for the NADL Debtors, every other director of any Debtor is either affiliated with, or nominally independent but appointed by, Hemen Holdings Ltd. ("**<u>Hemen</u>**"). Hemen is the single largest shareholder of the Debtors and has special corporate governance rights, including the ability to appoint "independent" directors. Hemen also has ownership stakes in several entities that arguably compete with, or are contract counterparties with, the Debtors. One such competitor/counterparty is Northern Ocean Ltd. ("**<u>Northern Ocean</u>**"), which the Debtors have had disputes with that the Debtors are seeking Court approval to settle per a motion filed shortly after the filing of the Backstop Motion. Not coincidentally, Hemen is a PSA signatory and, unlike any creditor, has been given the PSA opportunity to acquire a $50 million bond that is convertible into 5% of the reorganized company stock—which, if the Debtors' Plan valuation is to be believed, has a Day 1 value of over $75 million.

B. The Commencement of these Chapter 11 Cases and Chronology of Events Leading Up to April 30, 2021

22. On February 7, 2021, in response to fears that their lenders would exercise remedies, the AOD Debtors commenced their chapter 11 cases. The AOD Debtors own several rigs located in the Middle East. Of the Backstop Creditors, two hold $49 million in claims against the AOD Debtors, comprising of a blocking position for any AOD Debtor class acceptance. Another important PSA Consenting Lender is a larger AOD Debtor creditor. Under the Plan, the AOD Debtor's creditors are supposed to be unimpaired, but they receive special and very favorable treatment. The SVP Parties are not lenders to the AOD Debtors.

23. A few days after the AOD Debtors filed their cases, the remaining Debtors filed their chapter 11 cases. These Debtors included the NADL Debtors, which at the time owned five harsh environment rigs, two of which were on contract and the remaining three set for scrapping. Early on, several parties explained that the assets of the AOD Debtors and the NADL Debtors were the "crown jewels" of the Debtors, even though they comprise a relatively small portion of the Debtors' fleet. *See* ECF No. 195 (Hr'g Tr. at 24:1–3 (Feb. 12, 2021)).

24. This fact led to an early division. On the one hand, the Debtors and the CoCom Lenders did not want to see the NADL Debtors and the AOD Debtors separately marketed, either because a separate track potentially threatened the value of all of the other Debtors[13] or, more cynically, any possibility of a third-party bidder threatened the economic benefits enjoyed by the Debtors' existing senior management and Hemen. On the other hand, the Ad Hoc Group, which at the time included the SVP Parties, expressly favored a dual-track process—meaning that while

[13] The need for a "holistic" solution has been the publicly stated position of the CoCom Lenders throughout this case. The SVP Parties submit that if it results in a better recovery for a silo's creditors for a single silo to be marketed than in a holistic solution, then the fiduciaries for that debtor silo must pursue such marketing: no one has sought to substantively consolidate the Debtors. That being said, while the SVP Parties have not always agreed with the CoCom Lenders on all aspects, they have had common ground with the CoCom Lenders on the need for a "market check" of some sort.

they did not oppose consideration of a "single silo" reorganization, there needed to be a market check, which could be served by soliciting bids from third parties. *See* ECF No. 646 at ¶ 4. The Ad Hoc Group also advocated for the appointment of an independent director at the NADL Debtors. As discussed below, the Ad Hoc Group subsequently switched sides and became the strongest creditor advocates against a market check.

25. The SVP Parties hold $119 million in secured claims against the NADL Debtors. In every filing with this Court, in distinct contexts, they have advocated for a marketing process (or at least a market check) of at least the NADL Debtors (if not all the Debtors). They are, by far, the largest secured lender "weighted" towards the NADL Debtors. *See* ECF 820 at App. "1". In other words, while they are not the single largest NADL lender and do not have a class acceptance blocking position, the SVP Parties have been economically incentivized to see the value of the NADL Debtors' assets be maximized, regardless of the other Debtors. No other creditor can say this.

26. On March 29, 2021, the Debtors publicly filed a notice that attached a "comprehensive restructuring proposal" (the "**<u>March 29 Proposal</u>**"). The March 29 Proposal made clear that the Debtors desired to pursue only a "single silo" reorganization, where all lenders across all silos would receive "take back" secured debt and equity in a reorganized company. The March 29 Proposal also contemplated the Debtors raising $300 million in super-senior secured "new money," which would mean that the reorganized company would have more than $1 billion in secured debt. The asserted midpoint TEV Debtors ascribed to themselves at the time was $1.5 billion, meaning that the equity value of the reorganized company under this construct was approximately $850 million. At the time, the Debtors indicated that NADL Lenders would recover 51% on their claims based on the midpoint $1.5 billion TEV.

27. On April 15, 2021, this Court approved the appointment of the NADL Independent Directors. The SVP Parties expected that the NADL Independent Directors would advocate for the most value to the NADL Debtors, regardless of how it impacted other Debtors, and regardless of what conflicted lenders (even if a majority of NADL lenders) wanted. The SVP Parties also urged the NADL Independent Directors to hire counsel and a financial advisor. The NADL Independent Directors took weeks to file an application to employ US-based counsel, *see* ECF No. 698, and then nearly two months later filed an application to employ a financial advisor on July 19, 2021. ECF No. 847. While they are directors of a Bermuda company, to this day they have not engaged their own Bermuda counsel.

C. [redacted] Original Backstop Proposal and the Involvement of the "G4" Lenders

28. According to the Backstop Motion, the Debtors solicited only from the Ad Hoc Group and the CoCom proposals for a $300 million "new money" exit facility for the Debtors' "single silo" plan, requesting responses by April 30, 2021. The SVP Parties believe that the solicitation was by letter dated April 12, 2021, with attachments, and was sent only to advisors to the Ad Hoc Group and the CoCom Lenders. The Debtors had no interest in shopping the "new money" to others and instead were focused on the creditors the Debtors believed would then be convinced to support their "single silo" plan. This initial solicitation made clear that the Debtors did not want to pursue any path by which third parties could bid for specific silos, but the entire purpose was to pursue the "single silo" approach.

29. Notably, in their solicitation materials the Debtors asserted that [redacted]

[redacted]

30. According to the Backstop Motion, the Debtors received two proposals – one from the CoCom and one from a member of the Ad Hoc Group. The Backstop Motion does not provide any details of either proposal, [redacted] The CoCom Lender proposal was similar. Neither proposal had an Equity Premium component.

31. Because aspects of the [redacted] were unclear, on May 6, 2021, the Debtors' investment banker posed various questions [redacted] Thereafter, the Debtors' management and advisors engaged with [redacted] as well as three other lenders who became known as the "G4" [redacted] All four G4 lenders hold claims against other debtors, far in excess of what they hold against the NADL Debtors.

32. Shortly after May 6, on or about May 10, [redacted]

[14] *See* Appendix "Exhibit C".

[redacted] It appears that within a short period of time the terms of the $300 million "new money" first lien exit facility would include a sizeable allocation of reorganized company equity and would be made available to all lenders. But the backstop component was made exclusive to [redacted] and it not only included the Commitment Premium but also included an Equity Premium.

33. The backstop component was no doubt very lucrative to those permitted to participate, but it was conditioned on agreeing with the Debtors "single silo" approach. That means that for the Debtors' prepetition lenders who were not Backstop Creditors, they had the choice of participating in the attractive Exit Facility or not, but they were otherwise subject to dilution of value in favor of the (a) Backstop Creditors, (b) whatever was given the senior management under the MIP, and eventually (c) Hemen. Further, lenders to the AOD Debtors would have the option of being cashed out at 100% of their allowed claims or could even receive more than 100% of their claims.

34. Last, [redacted] But not during the chapter 11 cases.[15]

35. This was the Debtors' trade-off to the Backstop Creditors – vote for the "single silo" Plan and get the benefits of the Backstop Letter's consideration [redacted]

[15] By the time of these negotiations between the Debtors and the G4 lenders [redacted] All third-party bids are discussed below.

[redacted] keep fighting for a dual-track process. Not surprisingly, the favored Backstop Creditors leaped at the chance. As a result, by mid-May 2021, the tables had turned. The Ad Hoc Group kicked out the SVP Parties on May 17, 2021 and no longer publicly advocated for any marketing process.

36. As confirmed in discovery, the NADL Independent Directors were not involved in these discussions. [redacted][16] The SVP Parties were of course very worried that this exact dynamic might occur, and thus in May 2021 the SVP Parties repeatedly sought an audience with the NADL Independent Directors to convince the directors to advocate for the NADL Debtors' estates. After weeks of trying, they finally had on May 24, 2021 a one-on-one telephone meeting with the NADL Independent Directors and their counsel. In advance, they delivered a lengthy written presentation that demonstrated <u>both</u> third party bids ([redacted] and Dolphin) were attractive for the NADL Debtors relative to the Debtors' "single silo" plan. They also fully disclosed to the NADL Independent Directors that Dolphin was a portfolio company, but the SVP Parties only wanted to see the best bid, by whomever, succeed, and desired to see the NADL Independent Directors advocate for a marketing process that would allow that to occur.

37. The NADL Independent Directors did not provide to the SVP Parties any analysis, valuations, or recommendations during this meeting.[17] As far as the SVP Parties are aware, they never requested, and the Debtors never provided, a valuation of the NADL Debtors on a stand-alone basis. For months the NADL Independent Directors never advocated for the NADL Debtors

[16] The SVP Parties requested discovery from the Debtors, two of the four G4 members, and the NADL Independent Directors. There were extraordinary few examples of e-mail communications between advisors for the NADL Independent Directors and others, and virtually none involving the NADL Independent Directors themselves.

[17] When it ended, counsel for the SVP Parties requested a follow-up and had to send a letter on June 1. On June 3, counsel for the NADL Independent Directors responded; among other things, the letter expressly "appreciated hearing your client's views, input and perspective on NADL, and we look forward to continuing to engage with you in a constructive manner." *See* Appendix "<u>Exhibit E</u>".

to actively solicit third party bids or to permit bidders to have access to non-public diligence. Discovery has shown that [redacted]

38. Indeed, one of the most disheartening events learned through discovery, is that the SVP Parties have seen dozens of e-mails containing drafts of [redacted]

D. The June 15 SVP Initial Backstop Offer and the Debtors' Related Conduct

39. On June 11, 2021, in an all-lender call, it was revealed that the Debtors had reached agreement with several lenders to serve as Backstop Creditors. The economic terms of the backstop disclosed during the June 11 call are nearly [redacted][19]

[18] [redacted] *See* Appendix "Exhibit P".

See Appendix "Exhibit G"

40. When it became apparent that as of June 11, 2021, the Debtors had cut a deal with favored lenders who would backstop the "single silo" plan, the SVP Parties knew that absent a dramatic change, they would never convince the Debtors and the backstop lenders to ever permit a realistic marketing process for any of the Debtors, at minimum to serve as a market check. Based on the [redacted] the Backstop Creditors stood to obtain in excess of $[redacted] million in additional consideration for underwriting $300 million in first lien secured debt.[20] The Backstop Creditors would never vote against a Plan containing the lucrative backstop terms, even if another bid for the Debtors' assets exceeded $1.67 billion TEV, unless a bid exceeded both the TEV <u>and</u> the economic incentives to the Backstop Creditors.

41. So, on June 15, 2021, the SVP Parties proposed their own backstop commitment. *See* Appendix "<u>Exhibit A</u>". Matching identically the proposed $300 million Exit Facility and accepting that the Debtors would still be able to pursue their "single silo" plan, the SVP Parties offered materially better economic terms to the Debtors. Specifically:

TERM	**6/11 DEBTOR PROPOSAL**	**SVP INITIAL BACKSTOP OFFER**	**ECONOMIC DIFFERENCE**
Commitment Premium	[redacted]% of $300 million	5.0% of $300 million	[redacted] million savings
Equity Commitment Premium	[redacted] of stock	3.0% of stock	[redacted] million (based on TEV of $[redacted] billion)

42. The SVP Parties made clear that they were not <u>imposing</u> any particular valuation of any of the Debtors or any allocation of value among the Debtors; regardless of how this Court ultimately determined Plan value and allocation, if the Plan were confirmed, even if over the SVP

[20] At the time, the SVP Parties had not seen the Debtors' projected cash needs, and thus assumed that the Debtors actually needed a $125 million revolving loan facility. According to the Disclosure Statement, the Debtors believe that they do not need to borrow under any revolving loan facility for the next five years. *See* Disclosure Statement at 365.

Parties' objection, the SVP Parties agreed to be committed to the backstop of the entire $300 million Exit Facility on the same exact terms. Equally important, the SVP Initial Backstop Offer was made available to all lenders. There could be no possible argument that the SVP Parties were seeking to exclude any creditor for their own benefit or force the Debtors to only consider selling assets for the SVP Parties' benefit. There could also be no argument that the SVP Parties were offering the backstop in exchange for a vote on the Plan.

43. The SVP Initial Backstop Offer had one condition – that the Debtors agree to a market check (not a marketing process).[21] The market check was not something only acceptable to the SVP Parties, but would require agreement by the Debtors, the NADL Independent Directors, and the Backstop Creditors (which easily could be many lenders other than the SVP Parties). In other words, the proposed market check in the SVP Initial Backstop Offer was not a specific sale process dictated by the SVP Parties but would be agreed to by many important constituencies. The Backstop Motion fails to mention this fact.

44. The SVP Initial Backstop Offer was sent to counsel to the Debtors, the NADL Independent Directors, the Ad Hoc Group, the CoCom Lenders, and DNB as agent. Only the Debtors responded, asking eight questions on June 17, 2021.[22] The SVP Parties responded within 24 hours, making clear that by agreeing to backstop the Exit Facility regardless of the outcome of valuation, a market check, and allocation, and regardless whether they voted in favor of the plan in this way, the SVP Parties actually *supported* the Plan process. This ensured that the SVP Initial

[21] The Backstop Motion is misleading in this respect. [redacted] here is a difference between a "marketing process" and a "market check" and that the SVP Initial Backstop Offer involves only a "market check."

[22] The Debtors did not in any way disagree with the SVP Parties' statement that the Debtors had represented their TEV was approximately $1.6 billion.

Backstop Offer was in no way tied to the SVP Parties' status as a creditor and no one could accuse the SVP Parties of vote buying.[23] After June 17, no one responded.

45. Even though no one was engaging with the SVP Parties regarding the SVP Initial Backstop Offer,[24] the Debtors were scurrying internally, and with the NADL Independent Directors, the Ad Hoc Group and the CoCom Lenders, to address the obvious fact that the SVP Initial Backstop Offer was economically superior for the Debtors' estates.

46. Discovery has revealed that on [redacted]

Unbeknownst to the SVP Parties, and not disclosed in the Backstop Motion, [redacted][5]

47. [redacted]

---

[23] *See* Appendix "Exhibit K".

[24] Weeks later, on July 11, 2021, counsel for the NADL Independent Directors wrote to counsel for the SVP Parties, stating that the NADL Independent Directors would take no view on the SVP Initial Backstop Offer because "it is a proposal to backstop exit financing for all of the Debtors and thus is for the Debtors to consider. We will reach out to Debtors' counsel to ensure you receive a prompt response." Appendix "Exhibit N". That "prompt response" never occurred. As discussed below, it is also remarkably inconsistent with the chronology of events and does not explain why the NADL Independent Directors vote in favor of the Backstop Letter.

[25] *See* Appendix "I".

[redacted] the Debtors ***never*** informed the SVP Parties [redacted]

48. [redacted]

49. What is particularly troubling is what the Debtors did with the [redacted] Discovery reveals that on [redacted]

50. [redacted]

---

[26] *See* Appendix "Exhibit J".

[27] *See* Appendix "Exhibit K".

[redacted]

51. [redacted]

52. [redacted]

53. [redacted]

---

[28] At this time, the NADL Independent Directors still had not engaged a financial advisor

[29] *See* Appendix "Exhibit M" [redacted]

[redacted]

54. [redacted]

55. [redacted]

[30] This too was acknowledged through deposition testimony.

[redacted]

E. The Derivative Standing Motion and Events Leading Up to the Filing of the Backstop Motion

56. With effectively no response to the SVP Initial Backstop Offer or any indication that the Debtors would ever pursue a market check, on June 22, 2021, the SVP Parties made a formal demand on the NADL Independent Directors to cause the NADL Debtors to pursue a marketing process. They refused. On June 30, the SVP Parties filed their derivative standing motion to compel a marketing process for the NADL Debtors (which could be done for all of the Debtors), which expressly stated could be done on a dual-track with any plan confirmation process and could be conducted by the Debtors' investment banker (the "**Derivative Standing Motion**") [ECF No. 820]. To be clear, had the Debtors revealed to the SVP Parties on June 28 or June 29 the existence of the [redacted] the SVP Parties would have deferred seeking the relief sought in the Derivative Standing Motion to negotiate with the CoCom Lenders.

57. On July 20, 2021, the Debtors opposed the Derivative Standing Motion, which the NADL Independent Directors joined [ECF No. 850]. Neither the Debtors nor the NADL Independent Directors mentioned in their respective pleadings the existence of the SVP Initial Backstop Offer [redacted]

58. On July 25, 2021, the CoCom Lenders filed its objection, but unlike the Debtors and the NADL Independent Directors, the CoCom Lenders expressed agreement with the SVP

[31] It is unclear whether the financial advisors to the Ad Hoc Group and the CoCom Lenders stand to be paid success fees if the Plan is confirmed. The Debtors' investment banker could receive a sizeable fee if the Plan is confirmed but, due to the SVP Parties' efforts, also can earn a success fee if there is a sale of some or all of the Debtors' assets.

Parties on several key issues, including the need for a market check and the fact that the CoCom Lenders ***had not yet accepted*** the Debtors' valuation. *See* ECF No. 870 at 4 n.6. In other words, even though the CoCom Lenders signed the PSA and several of them were Backstop Creditors, they did not exclusively support the Plan as proposed and reserved rights and expressly supported a market check that would look for higher ***or*** better proposals for all creditors across all silos.[32]

59. From June 30, 2021 to the filing of the PSA on July 24, the Debtors worked feverishly with the Ad Hoc Group and the CoCom Lenders to finalize the Plan, Disclosure Statement, Backstop Letter, and PSA. The SVP Parties have received through discovery [redacted]

60. During this period, the percentage of reorganized company equity being allocated to the NADL Debtors' lenders had remained relatively constant. [redacted]

61. Based on discovery produced, among the open issues between June 30 and July 24 were three issues directly bearing on the Backstop Motion. First, there were negotiations over a market check process. [redacted]

---

[32] Despite their clear hostility to the SVP Initial Backstop Offer, the Ad Hoc Group did ***not*** file anything in response to the Derivative Standing Motion. Even after the PSA was signed, the Ad Hoc Group still never filed anything (and never disclosed to the SVP Parties any objections).

[33] *See* Appendix "Exhibit D".

[redacted][34] The Ad Hoc Group – which had previously publicly favored a formal dual-track process – was now firmly against any market check; the likely difference was the Backstop Creditors' economics considerations and the favorable option given to the AOD Lenders. The CoCom Lenders, however, wanted a market check, but it had to be one that provided a holistic solution (i.e., all Debtors would be covered in a single bid or consortium bid) and they were concerned with delay.

62. Another significant issue was the MIP. [redacted]

63. Finally, Hemen inserted itself [redacted] Hemen was given the opportunity to invest in the reorganized company, in the form of a $50 million convertible bond that had the right to convert into 5% of the reorganized debtor's equity (the "**Hemen Convertible Bond**"). Based on the Debtors' own midpoint TEV, Hemen would be investing $50 million in exchange for value worth $75.4 million. Hemen then became a signatory to the PSA.

---

[34] *See* Appendix "Exhibit F".

64. It is striking how little the Debtors have disclosed about disputes involving Hemen and its affiliates, including Northern Ocean.[35] [redacted] Yet publicly filed monthly fee statements of the Debtors' professionals in May and June reveal dozens of time entries on issues involving Hemen, including [redacted] for seeking a restraining order against Hemen relating to its corporate governance rights.[36] Moreover, discovery suggests that [redacted][37]

F. The Disclosure Statement, PSA, and Backstop Motion

65. On July 24, 2021, the Debtors filed their proposed Disclosure Statement and Plan. The Plan divides the Debtors' silos' secured claims into separate classes, but then lumps together all general unsecured claims, including unsecured deficiency claims, into a single class, which do receive a small percentage recovery. *See* Plan at § III.B.17. In addition, the Debtors' equity security holders also receive a recovery. *See* Plan at § III.B.20.

66. The Debtors represent to this Court that the Plan "has the support of an overwhelming majority of the Debtors' secured lenders." Backstop Motion at ¶ 16. According to the Debtors, secured lenders holding 57.8% of all secured claims have signed the PSA. While one can quibble with whether 57.8% constitutes an "overwhelming majority,"[38] one cannot quibble that 80% of this alleged "overwhelming majority" of 57.8% of all secured lender claims constitutes

---

[35] After filing the Disclosure Statement, on August 9, 2021, the Debtors filed a motion seeking approval of a settlement with Northern Ocean. ECF No. 890. This motion only raises numerous questions. In their objection to the Disclosure Statement, the SVP Parties are requesting that the Disclosure Statement provide substantially more detail regarding Hemen.

[36] Appendix "Exhibit U" is a list of relevant time entries based on publicly filed monthly fee statements.

[37] *See* Appendix "Exhibit Q".

[38] For example, 57.8% of the amount of claims held by creditors voting in a class does not satisfy the class acceptance requirements under Bankruptcy Code section 1126.

the holdings of the Backstop Creditors, meaning that the Plan support is a bit illusory. If one subtracts the Backstop Creditors from the PSA, at least as of July 25, 2021, less than a majority of secured lenders have signed on to support the Plan.

67. In the case of the NADL Debtors, the Debtors indicate approximately 75% of lenders to the NADL Debtors are signatories to the PSA. Of this amount, approximately 90% are Backstop Creditors. Despite having a class controlling position, every single Backstop Party that is a NADL Lenders is weighted more to other Debtors than they are to the NADL Debtors. Even though it is appropriate to examine the motivations of a creditor with cross holdings or relationships with Hemen, discovery shows that [redacted]

68. The Disclosure Statement states that, according to the Debtors' investment banker, the Debtors' total enterprise value has a range between $1.795 billion and $2.396 billion, with a midpoint TEV of $2.095 billion. The Disclosure Statement then discloses what each silo is expected to receive, net of the Backstop Creditors' consideration and assuming the Hemen Convertible Bond converts into equity. *See* Disclosure Statement at 6-11.

69. The table below shows what is the recovery for each silo according to the Disclosure Statement, and what it would be if there were no sweeteners that the Debtors agreed to give to garner support for the single-silo Plan (but otherwise using the Debtors' asserted valuation). It demonstrates that that the Backstop Consideration and the Hemen Convertible Bond harms every silo other than the AOD Debtors.[39]

[39] This table utilizes the midpoint TEV of $2.095 billion, the AOD lender cash-out, 4.25% Equity Commitment Premium dilution by the Backstop Parties, and 5% dilution by the Hemen Convertible Bond.

DEBTOR SILO	RECOVERY (including dilution from (a) Backstop fees; (b) Hemen Convertible Bond; and (c) Exit Facility	RECOVERY (excludes Backstop fees)	RECOVERY (excludes Backstop fees and Hemen Convertible Bond)
Class 4-a (AOD SILO)	100.0%	100.%	100%
Class 4-b (EMINENCE SILO)	11.1%	11.9%	12.0%
Class 4-c NADL SILO	57.6%	58.9%	59.3%
Class 4-d ($1.35 BILLION SILO)	22.1%	23.5%	23.9%
Class 4-e ($950 MILLION SILO)	27.2%	29.1%%	29.6%
Class 4-f (ECA SILO)	47.6%	50.5%	51.2%
Class 4g ($1.5 BILLION SILO)	37.3%	39.1%%	39.6%
Class 4-h ($1.75 BILLION SILO)	10.9%	11.4%	11.5%
Class 4-i ($450 MILLION NORDEA SILO)	17.2%	17.8%	18.0%
Class 4-j ($300 MILLION SILO)	96.9%	99.1%	99.8%
Class 4-k ($440 MILLION SILO)	105.3%	109.2%	110.3%
Class 4-l ($400 MILLION SILO)	55.2%	58.6%	59.5%

70. The key to the Plan is the PSA, which is attached as an exhibit to the Disclosure Statement. It provides that all signing lenders, including the Backstop Creditors, commit to vote in favor of the Plan.

71. With respect to a market check, pursuant to the PSA, for the first time the Debtors obligate themselves to consider, facilitate and develop alternative bids. *See* PSA § 7.02. However, the Debtors' obligations in this regard are limited; they only must consider alternative bids if reasonably likely to lead to a "Superior Alternative Bid," which is a bid for substantially all of the Debtors' assets. *See* PSA at § 7.02. Moreover, even if the Debtors breach this obligation, it takes 75% of all signing lenders to the PSA to terminate the PSA. *See id.* at p. 12 (definition of "Required Consenting Lenders"); § 12.01. Given that the Backstop Creditors constitute 80% of the signing lenders, it merely takes a small number of them to block the termination of the PSA even if the Debtors fail to fulfill their contractual obligations.

72. The PSA has a "fiduciary out," but even this "fiduciary out" is problematic. [redacted] the three conflicted directors can outvote the two NADL Independent Directors. For every other Debtor, there are no independent directors who would examine only that silo without regard to the effect on other Debtors.

73. Also on July 24 the Debtors filed the Backstop Motion. Just as the PSA is key to the Plan, approval of the Backstop Motion is key to the PSA. Indeed, the Debtors admit it because the "Backstop Commitments are integral to the contemplated restructuring set forth in the Plan Support Agreement and the Plan . . . ." Backstop Motion at ¶ 16. Even though it is integral to the PSA, which PSA is not up for approval, the Debtors nonetheless ask this Court to approve the

Backstop Motion now. If approved, the Debtors will be obligated to $22.5 million in cash to the Backstop Creditors, regardless of what happens to the Plan.

74. The Backstop Motion did not attach the SVP Initial Backstop Offer, or disclose its terms, but does offer a narrative why the Debtors contend the SVP Initial Backstop Offer is somehow inferior. At paragraph 19, the Backstop Motion concedes that the SVP Initial Backstop Offer "contemplates a lower cash commitment fee compared to the Backstop Commitment and contemplated that the opportunity to backstop the financing would be open to all lenders." Backstop Motion at ¶ 19. But then it purports to explain why the Debtors turned it down. As discussed below, each "explanation" makes no sense.

75. The Debtors did not have the benefit of the SVP Updated Backstop Offer when they filed their Backstop Motion. But it is even more favorable for the Debtors and their creditors not invited to the Backstop Party exclusive club. As of the date of this Objection, the Debtors have not agreed to the SVP Updated Backstop Offer.

G. The Alternative Bids

76. The Disclosure Statement discloses that the Debtors have received multiple bids for all the Debtors' assets. The SVP Parties are aware of two. Both bids provided a comprehensive solution, addressing a concern that the CoCom Lenders had raised before this Court. First, in May, Competitor 1 submitted bids for all the Debtors' assets, and repeatedly amended its bid, including in early July.

77. Second, in early July 2021, Dolphin, Transocean, and a third bidder jointly submitted for all of the Debtors' assets (the "**Initial Joint Bid**"). The participants to the Joint Bid have different focuses and no doubt believe that their Joint Bid would maximize the aggregate value. Indeed, in August the three bidders made an updated joint bid (the "**Updated Joint Bid**") that allocated more value to specific silos.

78. Despite their contractual obligation in the PSA to consider in good faith, facilitate and develop bids from third party bidders, it is clear that the Debtors have no appetite to actually see third party bidders have reasonable due diligence in order to make binding bids. For example, [redacted] Competitor 1 expressly told the Debtors [redacted] Similarly, the parties to the Joint Bid have had no access to non-public diligence. Given that there is a short window (from July 24 to September 2) for third party bidders to even have a chance to convince lenders to the PSA to exercise termination rights, every day of delay by the Debtors is inexcusable.

79. As compared to the Debtors' TEV reported to lenders on June 11, 2021, the SVP Parties submit both Competitor 1's bid and the Joint Bid are significantly better in terms of overall risk, liquidity, expected trading performance and market value of securities received relative to the Debtors "single silo" approach, which provides more than reasonable justification that each should be allowed access to reasonable diligence and be encouraged to bid their highest and best bids for the Debtors' assets. Among other things, in each bid the Debtors' lenders would not see their recoveries unnecessarily diluted.

80. [redacted] it is bizarre that, if they wanted to maximize value for all creditors, parties to the PSA would not desire to see the Debtors pursue pre-emergence M&A Activity. Doing so would capture pre-emergence any anticipated "synergies," avoid any dilution by a MIP, could do away with unnecessary Backstop consideration, and avoid paying two sets of transaction fees to professionals. The Debtors have not provided any discovery to suggest that the

[redacted]

H. The Changing of Plan Value Over Time and the Interplay with Backstop Party Economic Incentives

81. As noted above, the Disclosure Statement states that the midpoint of the Debtors' total enterprise value is $2.095 billion. While it is for another day whether this asserted value is accurate, it is an extraordinary and unexplained increase in a short period of time. The Exit Facility itself was sized based on projections the Debtors had prepared [redacted] For months, the Debtors' TEV had been largely unchanged since March 29, 2021, when they publicly filed a "single silo" plan structure. *See* ECF No. 294.

82. Yet while at the same time that they were negotiating the Backstop consideration, the Plan, and the PSA to garner support from members of the Ad Hoc Group and the CoCom Lenders, somehow the Debtors have seen their purported TEV increase by over $400 million. This dramatic increase, which is not discussed at all in the Disclosure Statement, directly relates to three key aspects of the Backstop Motion. First, if the valuation is to be believed, the transfer of value given to the Backstop Creditors is even greater than when the SVP Parties made their SVP Initial Backstop Offer and the "risks" allegedly facing the Backstop Creditors by backstopping a first lien $300 million Exit Facility are even smaller.

83. But there is a second problematic aspect to the inflated Plan valuation. In order for any bidder to have a hope of convincing the Backstop Creditors to favor termination of the PSA (given the Backstop Creditors have an effective blocking right), bidders must offer enough to convince a requisite number of Backstop Creditors that it is in their unique economic interests to go with the alternative. In other words, bidders are not bidding to maximize the value of the assets

of the Debtors, but to maximize the return to the Backstop Creditors. [redacted]

84. The end result is that each Backstop Creditor will recover a sizeable premium to its claim recoveries. Based on documents obtained in discovery,[40] it appears that all but one Backstop Creditor will receive a double-digit percentage increase as a function of total recoveries. The table below shows how this works:[41]

BACKSTOP PARTY	AGGREGATE RECOVERY AS LENDERS	INCREMENTAL RECOVERY AS BACKSTOP CREDITORS
Deutsche Bank[42]	[redacted]	
Ironshield		
Bybrook		
SEB		
Nordea		
DNB		
GIEK		
JP Morgan		

85. The math does not lie. There is a perverse incentive to discourage third party bidders not bid for the Debtors' assets, created by the Backstop economics that the Debtors ask this Court to approve. In order to convince a Backstop Creditor to vote to terminate the PSA (who have the ability to block terminate), any bidder is going to have to bid more than the value of the

40 In discovery, the SVP Parties received from the Debtors a document that reported [redacted] The claim amounts are not identical to those reported in the Rule 2019 Statements filed by the Ad Hoc Group and the CoCom Lenders. The chart uses the claim amounts as reported in the Debtors' document.

41 The table assumes the Exit Facility is fully subscribed. But to the extent it is not, the Backstop Creditors can receive substantial additional value through funding more than their pro rata share of the Exit Facility. This is because the Exit Facility staples 12.5% of the reorganized company equity and gives an arrangement fee.

42 [redacted] The same individual signed the PSA for both entities.

Debtors' assets by needing to exceed the value of the Backstop Creditors' economic benefits. The Backstop Creditors are incentivized to discourage any third party bid that represents value accretive to prepetition claims but less than the value of the Backstop Creditors' economic benefits. Notably, the SVP Updated Backstop Offer largely eliminates this incentive.

OBJECTION

86. As reflected in the Introduction, backstop commitments can be helpful for restructurings when debtors need to raise capital and must incentivize third parties to guarantee access to such capital, but they are not without potential for abuse. In 2018, in *Pacific Drilling*, the court provide a cautionary tale – "back stop" commitments negotiated between a debtor and favored creditors can easily be abused and courts must have healthy skepticism towards being asked to approve of them. *Pac. Drilling*, 2018 Bankr. LEXIS 3024 at *2, *14. Even though in *Pacific Drilling* the court ultimately approved the backstop motion because there were no objections to the motion (despite prior admonitions from the court and several modifications), and parties had engaged in mediation prior to the debtors' request for approval, the court did so "but not without a great deal of misgivings," *id.*, which the detailed decision went on to explain.[43]

87. Among *Pacific Drilling*'s misgivings was the fact that favored lenders who were participating in the backstop had "ample economic incentive" to participate, and that because the opportunity to participate was not presented to all, it raised "the possibility again that the backstop fee is really just an extra payment and an extra recovery rather than a reasonable, stand-alone financing term." *Id.* at *15. The court was clearly expressing the concern of a creditor getting extra consideration to support a plan, or, stated more bluntly, vote buying.

[43] To avoid any efforts by the Debtors to undermine the SVP Parties' position today, an SVP Party was a beneficiary of the backstop that was approved in *Pacific Drilling*.

88. Another misgiving expressed in *Pacific Drilling* is that because backstop consideration often is in the form of stock of a reorganized debtor, "they have no real practical effect on the debtors themselves. The real effect is on other creditors, because the issue of the added shares dilutes the value of the shares that those other creditors will receive." *Id.* at *14.

89. The *Pacific Drilling* court also expressed concern that debtors will typically point to business judgment to defend their request but ignore bankruptcy principles: "the principle to be guarded here is one that requires equal treatment of similarly situated creditors, which is more a matter of bankruptcy philosophy than it is a matter of business judgment. As I said last week, as a business matter the Debtors just want to get out of bankruptcy. They can agree to reasonable fees as part of a financing, but it is for the courts to decide whether fees are reasonable or not and to decide whether, in effect, some larger creditors are really being given an unequal and preferential treatment that is disguised as a financing term." *Id.* In making this statement, the court in *Pacific Drilling* was particularly concerned with a majority of creditors taking advantage of their majority status to acquire more consideration for themselves, at the expense of a minority of creditors, including even a lone creditor making itself heard. *Id.* at *6.

90. Finally, the court noted that despite its repeated concerns, at the end of the day, "not one of the relevant indenture trustees and not a single holder of any of the relative debts has come forward to complain about the proposed terms." *Id.* at *15. Despite this, Judge Wiles stated "I hope that in the future when these structures are presented, the parties will explore in more detail the issues and concerns that I have raised. But this is the wrong case in which to make rulings, particularly based only on skepticism." *Id.* at *16.

91. Every misgiving expressed in *Pacific Drilling* exists here. The Debtors, in their desire to exit chapter 11 while keeping their existing management team in place and forcing their

disparate assets to stay together, negotiated with a small number of lenders, who hold less than 50% of all of claims but have outsized influence on the organized groups who have appeared in these cases, to "support" (in the form of voting in favor of) their proposed Plan, with exceptionally lucrative consideration for that support. In doing so, the Debtors have refused to make the backstop consideration available to all lenders, and have designed the PSA to make all but impossible for anyone to terminate their plan support—the backstop is simply too rich to say no.

A. This Court Must Deny the Backstop Motion Because the Terms Do Not Benefit the Debtors' Estates and Result in Impermissible "Vote Buying"

1. The SVP Updated Backstop Offer is Objectively Less Expensive

92. Regardless of anything else, this Court must deny the Backstop Motion because the SVP Updated Backstop Offer is simply less expensive, by tens of millions of dollars. No one can dispute this, irrespective of the TEV that is ultimately proven. Case law is firm: the Debtors cannot justify any of the compensation offered exclusively to Backstop Creditors on the basis that they attempted to but could not obtain backstop commitments on more favorable terms. *See In re Bidermann Industries U.S.A., Inc.*, 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997) ("How the debtors could have determined to proceed with this offer without knowing what else may be available defies … explanation[.]").

93. The Backstop Motion was filed before the SVP Parties made their SVP Updated Backstop Offer, and thus the Debtors did not have the benefit of it, and as of today they have not indicated that they will accept the SVP Updated Backstop Offer. But they did attack the SVP Initial Backstop offer, which was also objectively economically less expensive. [redacted][44]

---

[44] *See* Appendix "Exhibit L".

94. The Backstop Motion provides four "reasons" why the Debtors purportedly turned down the SVP Initial Backstop Offer, even though they undisputedly never mentioned this to the SVP Parties prior to filing the Backstop Motion. Each lacks merit.

95. ***First,*** the Debtors say the SVP Parties did not indicate that they would support the Plan but would object to the Plan. While misleading—the SVP Parties unconditionally agreed to bound by whatever Plan was confirmed, even if they disagreed—the Debtors seemed to suggest that the SVP Parties should have conditioned their SVP Initial Backstop Offer by agreeing to vote YES for the Plan. That would be impermissible vote buying and premature solicitation of votes—tying backstop consideration to voting on a plan is precisely what *Pacific Drilling* suggested was improper. But even if this Court credits the argument that the SVP Parties reserving the right to object to the Plan detracts from the obvious benefits of their proposal, the Debtors cannot show that the SVP Parties' reservation of rights costs the Debtors more than the savings their own investment banker projected, especially when even under the PSA less than 66.66% of all lenders (by claim amount) have signed up to the PSA.

96. ***Two***, the Debtors alleged that the SVP Parties did not indicate whether any other creditors would support. This was a strange reason because it makes no difference. If no other creditors desired to support backstopping the Exit Facility on the terms provided in the SVP Initial Backstop Offer, the SVP Parties would ***back stop*** the entire amount (by definition). If creditors believed it was too expensive, then *a fortiori* the Backstop Letter's consideration is way too expensive. Further, even if the Debtors were correct in their assertion that the SVP Parties' reservation of rights would increase costs, those costs would exist regardless.

97. Moreover, the Debtors omitted a critical fact [redacted]

[redacted]

98. ***Three***, the Debtors claim that the SVP Parties expressly required a marketing process. That is not accurate. The SVP Parties advocated for a "market check," and it required mutual consent of the Debtors and all Backstop Creditors. [redacted] there is a difference between a marketing process and a market check [redacted] SVP Parties were acknowledging the need for mutual agreement on the form of market check. But aside from this, the PSA itself has a market check obligation. It cannot be the case that this was an actual reason to reject the SVP Initial Backstop Offer.

99. ***Fourth***, the Debtors assert that the SVP Initial Backstop Offer "would likely delay the timeline on which the Debtors would emerge from chapter 11". Backstop Motion at ¶ 20. This too makes no sense. Putting aside the fact that the SVP Initial Backstop Offer was made nearly six weeks before the Debtors filed their Backstop Motion, the SVP Parties expressly stated that they believed the Debtors could easily exit chapter 11 on the same time frame as the Debtors had envisioned on June 11 and indicated a 60-day market check period would suffice. Had the Debtors accepted the SVP Initial backstop Offer on June 15, even assuming it took a few weeks to document, the 60-day period would have still ended before September 2, which is when the Debtors' own "market check" period ends.

2. Backstop Creditor Consideration Will Result In Unequal Treatment Of Claims In The Same Class In Violation Of Section 1123(a)(4)

100. The Debtors acknowledge that approval of the Backstop Letter is integral to the PSA. They further admit that they turned down the SVP Initial Backstop Offer because the SVP

Parties did not commit to support their Plan, even though the SVP Initial Backstop Offer was made available to all lenders, ensuring no risk to unequal treatment or any accusations of vote buying. There is also evidence that [redacted] These facts indicate that tying the Backstop Letter to the PSA renders the Plan unconfirmable. For this reason, the Court should either outright deny the Backstop Motion.[45]

101. Any plan proposed in accordance with the Backstop Letter cannot comply with Bankruptcy Code section 1123(a)(4), which requires that a plan "provide the same treatment for each claim or interest of a particular class," unless the holder of such claim or interest agrees to a less favorable treatment. 11 U.S.C. § 1123(a)(4). The Debtors and the Backstop Creditors undoubtedly will argue that the consideration they are given is consideration for the Backstop Creditors' commitments under the Backstop Letter, and do not constitute treatment on account of their claims. They are wrong.

102. While it is true "the requirements of section 1123(a)(4) apply only to a plan's treatment on account of particular claims or interests in a specific class—not the treatment that members of the class may separately receive under a plan on account of the class members' other rights or contributions[,]" *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 249-50 (Bankr. S.D.N.Y. 2007), "all claimants in a class must have the same opportunity for recovery." *In re WR Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) (internal quotation marks omitted).

103. *First*, unlike other cases where the objecting creditors had the opportunity to participate in the private placement, all lenders other than the hand-picked Backstop Creditors

[45] Doing so will avoid the bizarre circumstance of the Debtors be liable to pay $22.5 million to the Backstop Creditors and yet the Plan not being confirmed or the Debtors' fiduciaries exercising their fiduciary outs because a better proposal has emerged.

lenders are excluded from participating as Backstop Creditors. *See Peabody Energy*, 933 F.3d at 926. "The problem with allocations in rights offerings . . . or big backstop fees that are paid to the bigger creditors who sat at the negotiating table but that are not even open to other creditors (and in particular to other creditors in the same class), is that it is far too easy for the people who sit at the negotiating table to use those tools primarily to take for themselves a bigger recovery than smaller creditors in the same classes will get." *Pacific Drilling*, 2018 LEXIS 3024, at *6. And that is exactly what is happening here.

104. *Second*, for the reasons discussed below, the Backstop Letter's consideration is too rich to truly have been intended to compensate the Backstop Creditors for any purported risk they have incurred a result of their Backstop commitments; rather, the Backstop Letter provides an additional means of funneling value to the creditors the Debtors believe will support their preferred plan process. *See id.* at * 6-*7 (explaining that the "Bankruptcy Code does not permit the unequal treatment of creditors in the same class; it also does not permit the payment of extra compensation to large creditors in exchange for their commitment to vote for a plan." and "[t]he Code allows for reasonable financing terms but they must be reasonable, and they cannot just be a disguised means of giving bigger creditors a preferential recovery.").

105. *Third*, the integrated negotiation and concurrent execution of the Backstop Letter and PSA further undercut any argument that the Backstop consideration is being provided on account of anything other than the Backstop Creditors' prepetition claims. Indeed, the Debtors tout that 57.8% of all lenders are signatories to the PSA. But more than 80% of the PSA Consenting Lenders are Backstop Creditors. Simply put, it is the fact that the Backstop Creditors are lenders, with the right to vote on the Plan, that drove why the Debtors sought them out. That

the SVP Updated Backstop Offer isolates "plan support" as the only independent variable further supports this point.

3. A Plan Premised on the Backstop Commitments Will Constitute Impermissible Vote Buying

106. Bankruptcy Code section 1129(a)(3) requires that a plan "has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "Good faith" is not defined in the Bankruptcy Code, but, in general, a plan is considered to be proposed in good faith "if there is a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Madison Hotel Associates*, 749 F.2d 410, 415 (7th Cir. 1984). These standards include serving Bankruptcy Code objectives, including the maximization of the value of estate property, equality of creditor treatment, discouraging debtor misconduct, and achieving fundamental fairness and justice. *See WR Grace*, 729 F.3d at 346. Moreover, courts should look as much to the development process of the plan as it does to the content of the plan. *See, e.g., In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 261 (Bankr. S.D.N.Y. 2014) (citing cases). As explained above, a plan cannot satisfy section 1129(a)(3) if it results in violations of non-bankruptcy fiduciary duties. *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 108 (Bankr. D. Del. 1999); *In re Coram Healthcare Corp.*, 271 B.R. 228, 240 (Bankr. D. Del. 2001).

107. Here, the Plan that has been proposed requires approval of the Backstop, because the Backstop Letter is a condition to the PSA, and the Debtors will not move forward with the Plan absent the PSA. Accordingly, the Debtors will not be able to satisfy the "good faith" requirement under Bankruptcy Code section 1129(a)(3). The significant benefits afforded to the Backstop Creditors through the Backstop Letter compared to the *de minimis* risks the Backstop Creditors are incurring in connection with their purported Backstop commitments raise the specter of

impermissible "vote buying" through the provision of disproportionate benefits to the Backstop Creditors in exchange for their entry into the PSA and support of the resulting Plan.

108. [redacted] They did this because they knew that backstops can afford disproportionate sweeteners in creditor recoveries and these two creditor groups would be critical to voting in favor of the Debtors' "single silo" Plan approach. [redacted]

109. The Debtors' own discussion of the SVP Initial Backstop Offer all but proves that the only "benefit" to the Debtors is locking up the votes of the Backstop Creditors. The SVP Initial Backstop Offer eliminated any prospect of vote buying because it was expressly open to all lenders and is on the same exact terms as the Exit Facility. It was also objectively less expensive. *See Pacific Drilling*, 2018 Bankr. LEXIS 3024 at *7 ("the parties would need to convince me that the terms were reasonable as a financing matter and were better than other options."). The Debtors turned this down, and have expressly admitted that one reason they did so is that even though the SVP Parties were committed to the SVP Initial Backstop Offer regardless of whether the Plan was confirmed, the SVP Parties reserved the right to object to the Plan. [redacted]

110. In any event, even if the "market check" condition in the SVP Initial Backstop Offer was a legitimate reason to fail to engage (which it was not), the SVP Updated Backstop Offer eliminates this condition. The only differences now between the Backstop Letter and the SVP

Updated Backstop Offer are the SVP Updated Backstop Offer is less expensive and the SVP Parties reserve the right to vote no and object to the Plan. The only reasonable inference is that Plan voting is what the Debtors care most about. Paying someone for their vote is impermissible.

4. The Cash Consideration and Equity Consideration Do Not Reflect The (Lack Of) Risk Undertaken by the Backstop Creditors and Are Primarily Driven by Voting in Favor of the Debtors' Proposed Plan

111. An independent reason to deny the Backstop Motion is that the economics in no way tie to the risks the Backstop Creditors face. "[B]ackstop fees [for rights offerings] can be appropriate when real risks are taken, and when the fees are proportionate to those risks[.]" *Pacific Drilling*, 2018 Bankr. LEXIS 3024 at *15. This is not such a case.

112. Each Backstop Creditor is an existing secured creditor of the Debtors; in this way, they are not outside investors incurring the risk of investing in a new enterprise. Nearly all of the Backstop Creditors also at one time or another supported a dual-track process, meaning that they were open to a market check *without* a backstop requirement. *See In re Gulf Coast Oil Corp.*, 404 B.R. 407, 424 (Bankr. S.D. Tex. 2009) (noting that marketing in the context of a section 363(b) sale "assures that the estate will receive maximum benefit").

113. The Backstop and the TEV set forth in the Disclosure Statement also create a perverse incentive for the Backstop Creditors to turn down any alternative bid, even if such bid was for *more* than that what the Debtors assert is the TEV or what each silo will receive. Because the TEV is $2.1 billion and each silo is allocated a specific amount of consideration, even if another bid *exceeded* the $2.1 billion, or exceeded the value for a particular silo, that is not good enough because the Backstop Creditors, which control the ability to terminate the PSA, have no economic incentive to terminate the PSA unless the alternative bids exceed what they would receive inclusive of the Backstop consideration. In other words, their incentive is not tied the value of the Debtors'

assets, but to their specific recoveries. That does not satisfy the risk assessments courts undertake when considering whether to approve backstop motions.

114. [redacted]

115. In addition, the risks they face are negligible and they are being paid for backstopping the funding of the $300 million Exit Facility when they are not exposed to a meaningful risk of having to backstop that full amount. Under the PSA, 58% of the rights offering is already subscribed by the Backstop Creditors themselves, meaning the backstop the Backstop Creditors are providing is only on account of the differential between the $300 million and the currently committed amount. Further, the Disclosure Statement indicates that the Debtors expect the $125 million revolving credit facility of the $300 million Exit Facility to never be drawn. While having an unused but available revolving credit facility places some risk on lenders,[46] the risk associated with the Exit Facility – according to the Debtors' own financial projections – is negligible.

116. Further, as explained to the extent that there was any legitimate risk to the Backstop Creditors, each SVP Backstop Offer removed that risk altogether. The SVP Parties were willing to shoulder all of the risk of backstopping the identical $300 million "new money" investment, at a cheaper price, and would share with all other lenders the opportunity. There is no risk that justifies the Backstop Letter.

[46] Presumably this risk is compensated by commitment fee provided to participating lenders. *See* Disclosure Statement at 255 (referencing "Committee Fee" equal to "40% of Applicable Margin" that "accrues on the aggregate of all undrawn amounts of the Revolving Facility . . . .").

5. Payment of the Cash Consideration and Equity Consideration Do Not Reflect a Reasonable Exercise of the Debtors' Business Judgment

117. While the Debtors ask the Court to approve the Backstop Letter as an exercise of their business judgment, "to the extent this premium is paid in stock, such payment will have no practical effect on the Debtors themselves[;]" rather, "[t]he real effect is on other creditors, because the issue of those added shares dilutes the value of the shares that those creditors will receive." *Pac. Drilling*, 2018 LEXIS 3024, at *14. In other words, the correct analysis is not whether the Debtors have exercised business judgment, but whether approval of the Backstop Letter maximizes value as required by the Bankruptcy Code.

118. Moreover, the "articulated business judgment" standard should not apply here because the Backstop is part and parcel with the PSA, and a material element of the PSA is the division of value among the Debtors as well as issuance of the Hemen Convertible Bond. The Debtors are distinct silos with separate sets of creditors and yet are competing for the same "pot" of value in the form of "take back" debt and equity in the reorganized Debtor. The Debtors' management purports to represent all Debtors, despite the inherent conflicts among the Debtors, and have been negotiating for a MIP and assumption of their management contracts as part of the PSA. Hemen is an insider of the Debtors and yet pursuant to the PSA is receiving the right to 5% of the reorganized Debtors' equity, which has a plan value of $75 million, in exchange for a $50 million unsecured bond that the Debtors have not articulated why they even need.

119. These facts support imposition of much greater scrutiny than business judgment. Indeed, the standard should be satisfaction of fiduciary duties imposed by the Bankruptcy Code <u>and</u> Bermuda fiduciary duty law; in other words, if the Backstop Letter does not satisfy both sets of fiduciary duties, this Court should not approve it even if it might satisfy the "business judgment" rule. *Cf. Zenith Elecs.*, 241 B.R. at 108 (in analyzing "good faith" under Bankruptcy Code section

1129(a)(3), court held the section incorporated non-bankruptcy law such as state corporate law, as well as principles of bankruptcy law); *Coram Healthcare*, 271 B.R. at 240 (court denied confirmation of plan due to CEO's violations of fiduciary duties).

120. In any event, the "articulated business judgment" is a mechanism for judging whether a debtor's estate has fulfilled its fiduciary duty to maximize value – "business judgment" may be deferential, but it does not change the fact that a debtor has fiduciary duties to maximize value.[47] Indeed, it is well settled that even after a debtor's estate, in the exercise of its business judgment, agrees to sell an asset but then becomes aware of a higher and better bid, the estate's fiduciary duties compels the estate to consider and even advocate for the higher bid.[48] [redacted]

121. Regardless of the standard of review, the Debtors' proposed payment is not an exercise of sound business judgment. The most obvious reason is that the Debtors' fiduciaries, [redacted] did not have all of the material facts necessary to exercise their business judgment. [redacted]

---

[47] *See Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 246 (5th Cir. 1988) (a debtor in possession must fulfill the duties of a trustee, including "the duty to maximize the value of the estate"); *In re Texas Standard Oil Co.*, 2008 WL 5479114 (Bankr. S.D. Tex. 2008) ("Because the Debtor is in bankruptcy, it has fiduciary duties to its creditors to maximize the value of its bankruptcy estate.").

[48] *See, e.g., In re Black*, No. CIV.A. 2:11-CV-258, 2015 WL 363495, at *9 (S.D. Tex. Jan. 27, 2015), *aff'd sub nom. In re BNP Petroleum Corp.*, 642 F. App'x 429 (5th Cir. 2016) ("Under these Fifth Circuit guidelines, and reviewing the record as a whole, the Court agrees with the Bankruptcy Court's assessment that the Trustee had a duty to entertain Shor's offer, which precludes treating the Black Settlement as final or exclusive. The Trustee further had the duty to advocate the offer that he deemed to be the highest and best offer."); *In re Moore*, 608 F.3d 253, 256 (5th Cir. 2010) ("The proposed settlement was a disposition of estate assets, and Cadle's overbid required the court to consider the appropriateness of an auction and § 363 sale procedures. Its failure to consider those alternatives was also an abuse of discretion."); *In re Family Christian, LLC*, 533 B.R. 600, 627 (Bankr. W.D. Mich., 2015) (concluding that the debtors "have not, overall, articulated a sound business justification for seeking to sell substantially all of their assets to Acquisition on the terms in the Acquisition APA.").

[redacted] Given purported lack of creditor support was an alleged reason to turn down the backstop proposed by the SVP Parties, there cannot be informed business judgment.

122. As already argued above, given the SVP Initial Backstop Offer, the Debtors cannot justify any of the compensation offered exclusively to Backstop Creditors on the basis that they attempted to but could not obtain backstop commitments on more favorable terms. The SVP Updated Backstop Offer is undeniably better economically. The Debtors' agreement to proceed with the Backstop Letter cannot be the result of their sound business judgment.

123. The Debtors trumpet the fact that the judges of this District have often approved various flavors of backstop commitments in the recent past. *See* Backstop Motion at ¶ 31. Of course, not one of those cases involved any remotely like the facts here, including any party offered a less expensive, inclusive, backstop. In *In re Noble Corp.*, Case No. 20-33826 (DRJ) (Bankr. S.D. Tex. Oct. 9, 2020) [Docket No. 542], the backstop opportunity was made available to "all qualified noteholders" in "an effort to ensure the broadest possible consensus." *In re Noble Corp.* (Bankr. S.D. Tex. Sep. 24, 2020) [Docket No. 244].

6. *Peabody* Demonstrates Why this Court Should Deny the Backstop Motion

124. The Debtors may cite *Peabody Energy*, but the facts are materially different than the facts in *Peabody Energy Corp*. In *Peabody Energy*, the bankruptcy court confirmed a plan following a mediation among the debtors, secured creditors and unsecured creditors regarding the extent to which the debtors' assets served as collateral. The debtors had commenced an adversary proceeding seeking declaratory judgment on the matter. 933 F.3d at 921. The plan provided for the debtors to raise $1.5 billion through a sale of common stock at a discount and an exclusive sale of preferred stock. Purchasers of the preferred stock had to commit to backstop the sales of both the preferred stock and common stock and support the plan confirmation process. The amount of preferred stock depended on the amount of prepetition debt held and whether the creditors were

qualifying creditors. Any creditor who took the steps to qualify could participate in all aspects other than the first 22.5% of preferred stock. *Id.* at 922. Creditors who participated also could receive additional consideration in the form of backstop commitments, in the form of common stock. *Id.* at 922-23. Proposed participates were co-plan proponents. *Id.* at 922.

125. The party who objected and appealed was an ad hoc group of creditors who could have participated but elected not to do so. Instead, they offered alternative proposals. Both the Debtors and the Official Committee of Unsecured Creditors found the proposals economically inferior. *See id.* at 923. By the time of confirmation, every class had voted to accept the plan, with over 95% of the debtors' unsecured creditors agreeing to participate in the backstop. *Id.* The ad hoc group appealed, arguing the plan had not been proposed in good faith and violated Bankruptcy Code section 1123(a)(4). The Eighth Circuit affirmed.

126. On section 1123(a)(4), the court held that the plan complied with the Bankruptcy Code because the "Ad Hoc Committee was not excluded from any opportunity like the creditors in *LaSalle* were." *Id.* at 926. While the court stated that the backstop creditors gave up something of value (by agreeing to support the plan, buy preferred stock and backstop the common stock), the court also held that alternative proposals were inferior and did not resolve the security interest litigation. Perhaps most significantly, the unsecured creditors' committee independently found the proposals inferior. *Id.* at 926-27.

127. On good faith, the court explained that there had been a mediation to resolve a major dispute, that the ad hoc committee could have participated in the mediation, and that the plan garnered true overwhelming support from every class and 95% of unsecured creditors agreed to participate in the backstop. *Id.* at 927.

128. None of the material facts in *Peabody* is present here. There has been no mediation of any of the major disputes, and at least valuation remains unresolved with the CoCom Lenders. ECF No. 870. The PSA does not demonstrate class-acceptance level support for every Debtor. The Backstop Letter opportunity has not been made available to all lenders, but only a select number, who collectively hold less than 50% of all secured claims. There is no creditors' committee to act as an independent check. And the SVP Initial and Updated Backstop Offers each were not only significantly cheaper for the Debtors, the SVP Parties agreed to backstop *regardless* of whether their concerns over value and allocation were accepted or rejected by this Court – meaning that the "plan support" argument that *Peabody* noted is inapplicable here.

CONCLUSION

129. For the foregoing reasons, the SVP Parties respectfully requests that the Court deny the Backstop Motion.

Dated: August 23, 2021

Respectfully submitted,

By: */s/ Devin van der Hahn*

Devin van der Hahn
(TX Bar No. 24104047)
Quinn Emanuel Urquhart & Sullivan LLP
711 Louisiana Street, Suite 500
Houston, TX 77002
713-221-7000 telephone
713-221-7100 facsimile

Benjamin I. Finestone (admitted *pro hac vice*)
Quinn Emanuel Urquhart & Sullivan LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Eric D. Winston (admitted *pro hac vice*)
Quinn Emanuel Urquhart & Sullivan LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
213-443-3000 telephone
213-443-3100 facsimile

ATTORNEYS FOR THE SVP PARTIES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 23, 2021, true and correct copies of the foregoing were served by email upon the parties that receive electronic notices in these cases pursuant to the Court's ECF filing system.

/s/ Devin van der Hahn
Devin van der Hahn