IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Quicksilver Resources Inc., et al.,[1]	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION AND OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR QUICKSILVER RESOURCES INC. AND ITS AFFILIATED DEBTORS

AKIN GUMP STRAUSS HAUER & FELD LLP
Charles R. Gibbs (admitted *pro hac vice*)
Sarah Link Schultz (admitted *pro hac vice*)
Sarah J. Crow (admitted *pro hac vice*)
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201
Telephone: (214) 969-2800
Facsimile: (214) 969-4343

RICHARDS, LAYTON & FINGER, P.A.
Paul N. Heath (DE 3704)
Amanda R. Steele (DE 5530)
Rachel L. Biblo (DE 6012)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

Counsel to the Debtors and Debtors in Possession

Dated: August 9, 2016

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Quicksilver Resources Inc. ("Quicksilver") [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors' address is 801 Cherry Street, Suite 4000, Unit 19, Fort Worth, Texas 76102.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

RULES

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this memorandum of law (the "Memorandum") in support of entry of an order (the "Confirmation Order") confirming the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, dated July 5, 2016 [D.I. 1525] (as may be altered, modified or supplemented from time to time in accordance with the terms thereof, the Bankruptcy Code, and the Bankruptcy Rules and including the Plan Supplement, the "Amended Plan"),[2] and in opposition to the objections filed by (i) Richard J. Matthews and the United States to the Plan (collectively, the "Objections"). In support of Confirmation of the Plan, the Debtors respectfully submit the *Declaration of Vanessa Gomez LaGatta in Support of Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors* (the "LaGatta Declaration"), attached hereto as **Exhibit A**, and respectfully represent as follows:

I. PRELIMINARY STATEMENT

1. The Plan, which has been approved by an overwhelming majority of creditors, is the culmination of the Debtors' thorough efforts over the last sixteen months to bring these chapter 11 cases to a value-maximizing close. The support of the Amended Plan by all of the Debtors' key stakeholders is the result of a highly successful sales process followed by extensive good-faith, arm's-length negotiations with the Ad Hoc Group of Second Lienholders, the Committee, and numerous additional parties in interest and effectuates the Debtors' goal to maximize value for its creditors.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan. The rules of interpretation set forth in Section 1.2 of the Plan shall apply to this Memorandum.

2. As described in detail in the accompanying Disclosure Statement, the Plan provides for: (i) the liquidation of the Debtors' remaining Assets; (ii) satisfaction in full of all Allowed Administrative Expense Claims, Adequate Protection Claims, Fee Claims, Priority Tax Claims, U.S. Trustee Fees, Other Priority Claims, Other Secured Claims, and First Lien Claims; (iii) distributions to holders of Second Lien Secured Claims from the Second Lien Plan Consideration on a *pro rata* basis; (iv) distributions to holders of General Unsecured Claims from the Unsecured Plan Consideration on a *pro rata* basis; (v) distributions to holders of Subordinated Notes Claims from the Unsecured Plan Consideration on a *pro rata* basis; (vi) the establishment of the Liquidation Trust; (vii) releases, exculpations and limitations of liability; and (viii) the wind-down and dissolution of the Debtors.

3. The Debtors received only two formal objections to the Amended Plan. The first was filed by an alleged bondholder, Richard J. Matthews [D.I. 1590]. Styled as a response to the Debtors' objection to Mr. Matthews's claim, the Debtors are treating the response as an objection to the Amended Plan out of an abundance of caution, because the letter includes commentary regarding voting instructions and the voting deadline. The second was filed by the United States on behalf of the Internal Revenue Service (the "IRS") and the Department of the Interior (the "DOI") [D.I. 1591]. The Debtors are in discussions with the United States and hope to resolve this objection in advance of the Confirmation Hearing. Nevertheless, each of these objections is addressed further herein. In addition, the Debtors received three informal objections, each of which has been resolved.

4. The Debtors submit that the Amended Plan complies with all applicable provisions of the Bankruptcy Code and respectfully request that the Court confirm the Amended Plan.

II. BACKGROUND

5. On March 17, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1. No request for the appointment of a trustee has been made in these chapter 11 cases. On March 25, 2015, the Acting United States Trustee, Region 3 (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee") [D.I. 119].

A. The Debtors' Plans and Disclosure Statements

6. On May 18, 2016, the Debtors filed the *Debtors' Joint Chapter 11 Plan of Reorganization* [D.I. 1416] (the "Original Plan") and the disclosure statement therefor [D.I. 1417] (the "Original Disclosure Statement").

7. On August 27, 2016, the Debtors filed the Amended Plan, which incorporated the modifications agreed to by the Debtors, the Ad Hoc Group of Second Lienholders, and the Committee, and the disclosure statement therefor [D.I. 1488 & 1489] (the "Amended Disclosure Statement"). As a result of the modifications incorporated in the Amended Plan, the Debtors have secured the support of each of their key constituents for confirmation of the Amended Plan.[3] On June 29, 2016, the Court entered the *Order Approving the Disclosure Statement, Voting Procedures, and Confirmation Procedures* [D.I. 1505] (the "Disclosure Statement

[3] On August 5, 2016, the Debtors filed the *Debtors' Motion for an Order Approving the Stipulation among the Debtors, the Second Lien Parties, the Committee, and Silver Point Capital* [D.I. 1598] (the "Stipulation"). By the settlement embodied in the Stipulation, Silver Point agreed to support the Amended Plan on the condition that the stipulation was approved by the Court. The Stipulation has not been approved as of the date hereof.

Order"). On July 5, 2016, the Debtors filed solicitation versions of the Amended Disclosure Statement [D.I. 1526] and the Amended Plan [D.I. 1525]. In accordance with the Disclosure Statement Order, the Garden City Group, LLC ("GCG" or the "Balloting Agent") executed the solicitation mailing by July 1, 2016.[4] On July 26, 2016, the Debtors filed the various documents comprising the Plan Supplement [D.I. 1580], as may be altered, modified or supplemented from time to time. The Court has scheduled the Confirmation Hearing on the Amended Plan for August 15, 2016, at 10:00 a.m. ET.

B. Voting Results

8. The deadline for all Holders of Claims entitled to vote on the Amended Plan to cast their Ballots was August 2, 2016, at 5:00 p.m. ET (the "Voting Deadline").[5] On August 9, 2016, the Debtors filed the *Declaration of Craig E. Johnson of Garden City Group, LLC, Certifying the Methodology for the Tabulation of Votes and Results of Voting with Respect to the First Amended Joint Chapter 11 Plan of Liquidation of Quicksilver Resources Inc. and Its Affiliated Debtors* (the "Voting Certification").

9. The following table summarizes the voting rights of each Class under the Amended Plan:

Class	Claims	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Presumed to Accept

[4] On July 11, 2016 [Docket No. 1541] GCG filed an affidavit of service detailing its service of the solicitation materials on behalf of the Debtors. On July 19, 2016, GCG caused true and correct copies of the Customized Voting Package to be served by overnight on nine members of Class 5 (General Unsecured Claims) who filed Proofs of Claim with respect to General Unsecured Claims after the Bar Date but on or before the Record Date for whom GCG did not previously serve a Customized Voting Package. On August 1, 2016, [Docket No. 1588] GCG filed an affidavit of service detailing its supplemental service of the solicitation materials on behalf of the Debtors.

[5] To facilitate negotiations regarding the Stipulation, the Debtors extended the Voting Deadline for Silver Point Capital, L.P. to August 3, 2016, at 5:00 p.m. ET.

Class	Claims	Status	Voting Rights
Class 2	Other Secured Claims	Unimpaired	Presumed to Accept
Class 3	First Lien Claims	Unimpaired	Presumed to Accept
Class 4	Second Lien Secured Claims	Impaired	Entitled to Vote
Class 5	General Unsecured Claims	Impaired	Entitled to Vote
Class 6	Subordinated Notes Claims	Impaired	Entitled to Vote
Class 7	510 Claims	Impaired	Presumed to Reject
Class 8	Intercompany Interests	Impaired	Presumed to Reject
Class 9	Non-Intercompany Interests	Impaired	Presumed to Reject

10. As set forth in the Voting Certification, the Amended Plan has been accepted by Class 4 (Second Lien Secured Claims) and Class 5 (General Unsecured Claims) with respect to each of the Debtors.

11. The Holders of Class 4 Second Lien Secured Claims voted unanimously to accept the Amended Plan. Over 82% in number and 95% in amount of Class 5 General Unsecured Claims that voted, voted to accept the Amended Plan. As of the date hereof, Holders in Class 6 have voted to reject the Amended Plan by dollar amount.[6]

C. Objections

12. The deadline to file objections to the Amended Plan was August 2, 2016, at 5:00 p.m. ET (as extended by the Debtors for certain parties in interest, the "Plan Objection Deadline"). As of the Plan Objection Deadline, the Debtors received two formal objections with respect to the Amended Plan and several informal inquiries and/or requests for clarifications.

[6] Notably, however, more than 75% in number of Holders of Subordinated Notes Claims that voted on the Amended Plan, have voted to accept the Amended Plan. One particularly large Holder voted to reject the Amended Plan, which resulted in an overall rejection by Class 6. *See* Voting Certification ¶ 54, Ex. A.

The Debtors have been working with various parties to address their respective concerns, and, as a result, a substantial amount of the pending objections have been—or will be—resolved in advance of the Confirmation Hearing through the inclusion of language in the proposed Confirmation Order. As of the date hereof, one of the formal and all three of the informal Objections have been resolved, leaving only one unresolved formal objection to be decided at the Confirmation Hearing. The Debtors will update the Court regarding the status of all Objections prior to or at the Confirmation Hearing.

III. ARGUMENT

A. The Amended Plan Complies with the Applicable Provisions of Bankruptcy Code Section 1129(a)

(i) The Amended Plan Complies with the Applicable Provisions of Bankruptcy Code Section 1129(a)(1)

13. Bankruptcy Code section 1129(a)(1) requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. The legislative history relating to this provision explains that Bankruptcy Code section 1129(a)(1) encompasses and incorporates the requirements of Bankruptcy Code sections 1122 and 1123, which govern classification of claims and interests and the contents of a plan, respectively.[7]

14. Bankruptcy Code section 1129(a)(1) provides that a plan may be confirmed only if it "complies with the applicable provisions of" the Bankruptcy Code. As demonstrated below, the Amended Plan fully complies with all of the applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 1122 and 1123.

[7] S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.A 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977*), reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *In re S & W Enters.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [Bankruptcy Code section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was more directly aimed at were Sections 1122 and 1123.").

(ii) The Amended Plan Satisfies the Classification Requirements of Bankruptcy Code Section 1122

15. Bankruptcy Code section 1122 provides, in pertinent part, that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."[8] Bankruptcy Code section 1122 does not require that all substantially similar claims or interests must be grouped in the same class, but rather, that all claims or interests designated to a particular class be substantially similar to each other.[9] The United States Court of Appeals for the Third Circuit, among others, has recognized that plan proponents have significant flexibility in placing similar claims and interests into different classes, provided there is a rational basis to do so.[10]

16. The Amended Plan classifies Claims and Interests into nine Classes, namely: Class 1 – Other Priority Claims; Class 2 – Other Secured Claims; Class 3 – First Lien Claims; Class 4 – Second Lien Secured Claims; Class 5 – General Unsecured Claims; Class 6 – Subordinated Notes Claims; Class 7 – 510 Claims; Class 8 – Intercompany Interests; and Class 9 – Non-Intercompany Interests.[11]

17. Each Class comprises only Claims or Interests that are substantially similar to one another, and the Classes themselves are all based on valid business, factual, or legal considerations. Secured claims are classified separately from unsecured claims. Secured claims are placed in separate classifications based on the nature and priority of such secured claims.

---

8 11 U.S.C. § 1122(a).

9 *In re Armstrong World Indus*., 348 B.R. 111, 159 (D. Del. 2006).

10 *See John Hancock Mut. Life Ins. Co.* v. *Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158-59 (3d Cir. 1993) (holding that as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (allowing a plan proponent to group similar claims in different classes, but recognizing that separate classes of claims must be reasonable).

11 Amended Plan § 3.2

Intercompany and Non-Intercompany Interests each occupy their own Classes. Accordingly, the Amended Plan satisfies the classification requirements of Bankruptcy Code section 1122.

(iii) The Amended Plan Satisfies the Seven Mandatory Plan Requirements of Bankruptcy Code Section 1123(a)(1)-(7)

18. The Plan meets the seven mandatory requirements of Bankruptcy Code section 1123(a).[12] Specifically:

- as required by Bankruptcy Code section 1123(a)(1), Section 3.2 of the Amended Plan designates nine Classes of Claims and Interests;
- as required by Bankruptcy Code section 1123(a)(2), Section 3.2 of the Amended Plan designates Classes 1, 2, and 3 as Unimpaired under the Plan;
- as required by Bankruptcy Code section 1123(a)(3), Section 3.2 of the Amended Plan designates Classes 4, 5, 6, 7, 8, and 9 as Impaired under the Amended Plan;
- as required by Bankruptcy Code section 1123(a)(4), Section 3.3 of the Amended Plan provides that all Holders of Allowed Claims or Interests will receive the same rights and treatment as other Holders of Allowed Claims or Interests in the same Class;
- as required by Bankruptcy Code section 1123(a)(5), Article 5 of the Amended Plan provides adequate means for the Amended Plan's implementation;
- Bankruptcy Code section 1123(a)(6) is not applicable, because the Amended Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtors are being dissolved either on the Effective Date or will be dissolved by the Liquidating Trustee following the Effective Date; and
- as required by Bankruptcy Code section 1123(a)(7), the Debtors' boards of directors will dissolve as of the Effective Date. The identity of the Liquidation Trustee, Eugene I. Davis, Chairman & CEO, Pirinate Consulting Group, LLC, was disclosed in the Plan Supplement. The Liquidation Trustee will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement.

[12] 11 U.S.C. § 1123(a)(1)

(iv) The Discretionary Contents of the Amended Plan, Including the Release and Exculpation Provisions, Are Appropriate and Should Be Approved

19. Bankruptcy Code section 1123(b) sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, Bankruptcy Code section 1123(b) provides that a plan may (i) impair or leave unimpaired any class of claims or interests; (ii) provide for the assumption or rejection of executory contracts and unexpired leases; (iii) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates; and (iv) include any other appropriate provision not inconsistent with the applicable provisions of the Bankruptcy Code.[13]

20. Consistent with Bankruptcy Code section 1123(b), (i) the Amended Plan impairs certain Claims and Interests (specifically, those in Classes 4, 5, 6, 7, 8, and 9); (ii) the Amended Plan leaves unimpaired other Claims and Interests (specifically, those in Classes 1, 2, and 3); and (iii) Article 8 of the Amended Plan provides for the rejection of all executory contracts and unexpired leases under Bankruptcy Code section 365, other than those designated for assumption in the Schedule of Assumed Contracts and Leases included in the Plan Supplement, those designated for neither assumption or rejection in the Schedule of Contracts and Leases Neither Assumed Nor Rejected in the Plan Supplement, or those previously assumed by order of the Court. In addition, the Amended Plan contains provisions implementing certain releases and exculpations, discharging Claims and Interests and permanently enjoining certain causes of action (the "Injunction").[14] As described below, each of the foregoing provisions is proper and in compliance with the Bankruptcy Code.

[13] 11 U.S.C. § 1123(b)(1)-(3)(A), (6).

[14] *See* Amended Plan, Article 11.

(a) The Debtor Releases Are Appropriate

21. When considering a debtor's proposed release of a non-debtor, courts in this District consider the five factors set forth in *In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999) and *In re Wash. Mut., Inc.*, 442 B.R. 314, 347 (Bankr. D. Del. 2011):

- whether there is an identity of interest between the debtor and the third party, such that a suit against the third party is, in essence, a suit against the debtor or will deplete assets of the estate;
- the substantial contribution by the third party to the plan;
- the essential nature of the release to the debtor's plan;
- whether there is an agreement by a substantial majority of creditors and interest holders to support the plan and the release; and
- the provision in the plan for payment of all or substantially all of the claims of the creditors and interest holders under the plan.

No single *Zenith* factor is dispositive, nor is a plan proponent required to establish each factor for the release to be approved; rather the factors are intended to provide guidance to the Court in determining the fairness of the proposed releases.[15]

22. The Debtors submit that each *Zenith* factor supports the proposed Debtor release set forth in Section 11.3 (the "Debtor Release"). As to the first factor, there is an identity of interest of the Released Parties with the Debtors insofar as the parties being released include, among others, the Debtors' current and former employees, officers and directors, the Debtors' advisors, and the Debtors' key constituencies, including the Committee, each First Lien Lender, each Second Lien Lender, each Second Lien Noteholder, the Ad Hoc Group of Second Lienholders and each of its members, each Agent, and each of these parties' affiliates and advisors. Most, if not all of these parties, would be entitled to indemnification from the Debtors'

[15] *See In re Wash. Mut., Inc.*, 442 B.R. at 346; *In re Indianapolis Downs, LLC*, 486 B.R. 286, 304 (Bankr. D. Del. 2013) (approving the debtors' releases despite not meeting the third and fifth *Zenith* factors).

Estates, whether through the corporate charter, indemnification agreements,[16] the Cash Collateral Order, or Court-approved retention agreements. Thus, litigation undertaken against the parties otherwise benefitting from the Debtor Release will unquestionably reduce assets available for distribution under the Amended Plan, with little to no benefit accreting to any of the Debtors' stakeholders.

23. As to the second factor, the Debtor Releases are predicated on substantial contributions by each of the Released Parties. Such release includes persons or entities (i) who are integral to the operation of the Debtors' business (i.e., officers and directors) and (ii) whose cooperation was absolutely necessary to allow the Debtors to reorganize through the granting of consensual use of cash collateral and support for the Amended Plan (i.e., the Debtors' key constituencies).

24. As to the third factor, the Debtor Releases are essential to the Amended Plan itself, because the releases are a key component of this consensual plan process. Indeed, the Debtors believe that certain of the Released Parties may not have agreed to the global settlement embodied in the Amended Plan without the benefit of the Debtor Release. Moreover, the Debtors do not believe that there are any valuable claims against the Released Parties, and no party has objected to the Debtor Releases.

25. As to the fourth and fifth factors, the Amended Plan reflects a settlement with the Creditors Committee and Ad Hoc Group of Second Lienholders, each of which supports the Debtors' release of the Released Parties. In addition, all of the Debtors' other main constituencies support the Plan, and there were only two formal objections to the Amended Plan, neither of which objected to the Debtor Releases. Thus, the Debtor Releases reflect a proper

[16] Section 5.11 of the Amended Plan provides for the assumption and assignment of many of the Debtors' indemnification obligations, including those between the Debtors and their officers, directors and certain other insider employees.

exercise of the Debtors' business judgment and are in the best interests of the Debtors' estates and should be approved.

26. These modifications to the Amended Plan do not adversely change the treatment of the Claims of any creditor or Interest of any equity security holder within the meaning of Bankruptcy Rule 3019.[17] Therefore, no further solicitation of votes or voting is required.

(b) The Consensual Third-Party Releases Are Appropriate

27. The third-party release in Section 11.4 (the "Third-Party Release") similarly should be approved. As a threshold matter, the Third-Party Releases are voluntary in nature and may therefore be approved on the basis that they are premised upon the releasing party's consent.[18] Here, each Holder of a Claim who (i) voted to accept the Amended Plan, (ii) was entitled to vote to accept the Amended Plan and elected not to do so, or (iii) voted to reject the Amended Plan and did not elect to opt-out of the Third-Party Release on its Ballot, has consented to the Third-Party Release.[19]

28. Courts have found that a release of a non-debtor is consensual where the voting party in interest was given the opportunity to "opt-out" of the release (as is the case here) but failed to do so.[20] Thus, by returning a ballot voting in favor of the Amended Plan or voting to reject the Amended Plan without opting out of a release, the creditor may be deemed to consent

---

17 *See In re G-I Holdings Inc.*, 420 B.R. 216, 256 (D.N.J. 2009) ("The best test [of whether a plan modification is material] is whether the modification so affects any creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance.").

18 *See Indianapolis Downs*, 486 B.R. at 306; *U.S. Bank Nat'l Ass'n v. Wilmington Trust Co. (In re Spansion, Inc.)*, 426 B.R. 114, 144 (Bankr. D. Del. 2010); *In re Genco Shipping & Trading Ltd.*, No. 14-11108, slip op. at 58 (Bankr. S.D.N.Y. July 2, 2014).

19 Amended Plan § 1.1.92.

20 *See Indianapolis Downs*, 486 B.R. at 306 ("[T]he record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots. Under these circumstances, the [t]hird [p]arty [r]eleases may be properly characterized as consensual and will be approved."); *Spansion*, 426 B.R. at 144; *In re Genco Shipping & Trading Ltd.*, No. 14-11108, slip op. at 58 (Bankr. S.D.N.Y. July 2, 2014).

to the release. In any event, as demonstrated above, the Consensual Third-Party Releases are an integral part of the Plan, are necessary parts of the global settlement, and otherwise satisfy the five-part *Zenith* test.

29. Furthermore, as noted above, each of the non-Debtor Released Parties has made significant contributions to the chapter 11 cases, and their inclusion, in certain instances, in the Consensual Third-Party Releases was a material inducement for their participation, negotiation, and ultimate resolution of Claims and Interests through the settlements among the Debtors, the Creditors Committee, and the Ad Hoc Group of Senior Lienholders. Indeed, consensual third-party releases such as those proposed here are commonly approved in this District.[21] Accordingly, the Consensual Third Party Releases should be approved.

(c) The Exculpation Provision Is Appropriate and Should Be Approved

30. Section 11.5 of the Amended Plan provides an exculpation of the Exculpated Parties with respect to the Debtors' restructuring, subject to an exclusion for gross negligence and willful misconduct (the "Exculpation"). Courts evaluate the appropriateness of exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations.[22]

---

[21] *See, e.g.*, *In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del. March 20, 2013), Docket No. 1767; *In re Perkins & Marie Callender's Inc.*, Case No. 11-11795 (KG) (Bankr. D. Del. Nov. 1, 2011), Docket No. 1287; *In re Buffets Holdings, Inc.*, Case No. 08-10141(MFW) (Bankr. D. Del Apr. 17, 2009), Docket No. 321.

[22] *See, e.g.*, *Upstream Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 503 (S.D.N.Y. 2005) (evaluating the exculpation clause based on the manner in which the clause was made a part of the agreement, the necessity of the limited liability to the plan negotiations, and whether those who participated in proposing the plan did so in good faith). *See also In re PWS Holding Corp.*, 228 F.3d 224, 247 (3d Cir. 2000) (citing *Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 214 (3d Cir. 2000) (identifying "fairness, necessity to the reorganization, and specific factual findings to support these conclusions" as the "hallmarks of permissible non-consensual releases.")

31. The Exculpation in Section 11.5 of the Amended Plan is appropriate and vital under the circumstances of the chapter 11 cases. First, the Exculpated Parties played a critical role in formulating the Amended Plan, the Amended Disclosure Statement, and related documents in furtherance of the transactions contemplated and settlement embodied in the Amended Plan. These negotiations were extensive and the resulting agreements were implemented in good faith and with a high degree of transparency. Second, the scope of the Exculpation is appropriately limited to the Exculpated Parties' acts or omissions in connection with the chapter 11 cases, and the Exculpation does not protect the Exculpated Parties from liability resulting from gross negligence or willful misconduct. Third, the Exculpation is necessary and appropriate to protect parties who have made substantial contributions to the Debtors' reorganization from future collateral attacks related to actions taken in good faith in connection with the Debtors' restructuring. Fourth, the Amended Plan, including the Exculpation, is supported by all Classes of Claims entitled to vote on the Amended Plan. Exculpation provisions similar to the Exculpation of the Amended Plan are customarily approved by courts in this District, particularly where, as here, the provisions contain carve-outs for gross negligence, willful misconduct or similar behavior. Indeed, it is well established that exculpation is appropriate for fiduciaries of a bankruptcy estate, including the debtor, its directors, officers, and professionals, and the creditors' committee, and its members and professionals.[23] Accordingly, the Exculpation should be approved.

(d) The Injunction Is Narrowly Tailored and Should Be Approved

32. The Injunction provided by Section 11.6 of the Amended Plan is necessary to effectuate and implement the Debtors' Amended Plan after the Effective Date. Any such

[23] *In re PWS Holding Corp.*, 228 F.3d 224, 245–47 (3d Cir. 2000).

litigation would hinder the efforts of the Debtors and the Liquidation Trustee to effectively fulfill his responsibilities as contemplated in the Amended Plan and thereby undermine efforts to maximize value for all of the Debtors' stakeholders.[24] Additionally, the Injunction is narrowly tailored to achieve such purpose, and similar injunctions have been approved by other courts in this District.[25] Accordingly, to enable the Debtors and the Liquidating Trustee to comply with their respective post-confirmation obligations under the Amended Plan, and applicable related documents, the Debtors respectfully request that the Court approve the Injunction contained in Section 11.6 of the Amended Plan.

(e) The Executory Contract Assumption and Rejection Provisions Are Appropriate

33. Courts routinely approve a debtor's assumption, assumption and assignment, or rejection of executory contracts or unexpired leases where such decision is made in the exercise of such debtor's sound business judgment and benefits its estate.[26] The business judgment standard requires that the court approve the debtor's business decision unless that judgment is the product of bad faith, whim, or caprice.[27] The Debtors' decisions regarding the assumption, assumption and assignment, and rejection of executory contracts and unexpired leases are the

[24] *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (court may enjoin creditor from suing third party, provided injunction plays important part in debtor's reorganization plan).

[25] *See In re RS Legacy Corp.*, Case No. 15-10197 (BLS) (Bankr. D. Del. Aug. 12, 2015), Docket No. 2786; *In re Phoenix Payment Systems, Inc.*, Case No. 14-11848 (MFW) (Bankr. D. Del. Jan. 30, 2015), Docket No. 545; *In re Overseas Shipholding Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. Del. July 22, 2014), Docket No. 3701.

[26] *See, e.g.*, *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *see also N.L.R.B. v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, 465 U.S. 513 (1984); *In re ANCRental Corp., Inc.*, 278 B.R. 714, 723 (Bankr. D. Del. 2002).

[27] *See In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); *see also Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985).

result of the exercise of the Debtors' sound business judgment in consultation with the Consultation Parties, and should therefore be approved.[28]

(v) The Amended Plan Complies with Bankruptcy Code Section 1123(d)

34. Bankruptcy Code section 1123(d) states that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law."[29] Section 8.4 of the Amended Plan provides for the satisfaction of monetary defaults, if any, under each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Amended Plan, by payment of the cure amount in Cash on the Effective Date. Accordingly, the Amended Plan complies with Bankruptcy Code section 1123(d).

B. The Amended Plan Complies with Bankruptcy Code Section 1129(a)(2)

35. The principal purpose of Bankruptcy Code section 1129(a)(2) is to ensure that a plan proponent has complied with the requirements of the Bankruptcy Code regarding solicitation of acceptances of the plan.[30] Pursuant to the Disclosure Statement Order, the Court approved, among other things, (a) the Amended Disclosure Statement as containing adequate information within the meaning of Bankruptcy Code section 1125, (b) the other solicitation materials transmitted to creditors and interest holders entitled to vote on the Amended Plan, (c) the timing and method of delivery of such materials and (d) the rules for tabulating votes on the Amended Plan.

---

[28] LaGatta Decl. ¶ 20.

[29] 11 U.S.C. § 1123(d).

[30] *See In re Lapworth*, No. 97-34529 (DWS), 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); H.R. Rep. No. 95-595, at 412; S. Rep. No. 95-989, at 126.

36. Consistent therewith, the Debtors, with the assistance of their Balloting Agent, served notices, Ballots, election forms, and associated documents on all Holders of Claims and Interests in the Debtors, each and to the extent applicable, as follows: (i) for all parties in Classes 1, 2, 3, 7, 8, and 9, a Confirmation Hearing Notice and Notice of Non-Voting Status (each as defined in the Disclosure Statement Order); and (ii) for all parties in Classes 4A-4N, 5A-5N, and 6A-6N[31] entitled to vote under the Amended Plan, a Confirmation Hearing Notice and customized instructions for voting on the Debtors' online voting portal.[32] As set forth in detail in the Voting Certification, the Holders of Claims based on publicly traded securities were served through The Depository Trust Company as well as with the nominees' mailing agents, Broadridge Financial Solutions, Inc., Mediant Communications Inc., and INVeSHARE.[33]

37. Additionally, a copy of the Confirmation Hearing Notice was mailed to all known creditors and parties in interest, including counterparties to the assumed executory contracts and unexpired leases, and other parties in interest entitled to receive such notice under the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order.[34] The Debtors also caused the Confirmation Hearing Notice to be published in the Fort Worth *Star-Telegram* and *The New York Times* in accordance with the Disclosure Statement Order. *See Affidavits of Publication* [D.I. 1549 & 1550]. GCG also posted the Disclosure Statement Order, Confirmation Hearing Notice, and Notice of Non-Voting Status to the Debtors' restructuring website. Accordingly, the Amended Plan fully complies with and satisfies all of the requirements of Bankruptcy Code section 1129(a)(2).

---

[31] The Amended Plan constitutes a separate plan of liquidation for each of the Debtors. Accordingly, Voting Creditors were permitted to vote for or against the Plan of the particular Debtor(s) against which their Claims were held.

[32] *See generally* Voting Certification.

[33] Voting Certification ¶ 11.

[34] Voting Certification ¶ 13.

C. The Amended Plan Has Been Proposed in Good Faith Pursuant to Bankruptcy Code Section 1129(a)(3)

38. The Third Circuit has held that the "touchstone" of a good faith inquiry under Bankruptcy Code section 1129(a)(3) is whether the plan will "achieve a result consistent with the objectives and purposes of the Bankruptcy Code."[35] The factors that a Court should consider in making a determination of good faith are: (i) whether the plan fosters a result consistent with the Bankruptcy Code's objectives; (ii) whether the plan has been proposed with honesty and good intentions and with a basis for expecting that reorganization can be effected; and (iii) whether the plan exhibited fundamental fairness in dealing with the creditors.[36]

39. The Amended Plan satisfies each of these standards. "The determination of good faith must be based on the totality of the circumstances."[37] The Amended Plan is the result of months of extensive, good-faith, arm's length negotiations among the Debtors, the Ad Hoc Group of Second Lienholders, the Creditors Committee, and a number of other parties in interest in the chapter 11 cases. In crafting and negotiating the terms of the Amended Plan, and at all times during these chapter 11 cases, the Debtors (a) conducted themselves honestly, with good intentions, and with a desire to effectuate the reorganization of the business while maximizing recoveries to all stakeholders and (b) have upheld their fiduciary duties to stakeholders.[38] Significantly, the Amended Plan is supported by each of the Debtors' key economic stakeholders, including the Ad Hoc Group of Second Lienholders and the Creditors Committee. Accordingly,

---

35 *See In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012), *aff'd* 729 F.3d 332 (3d Cir. 2013) (internal citations omitted).

36 *See In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 609 (Bankr. D. Del. 2001) (citations omitted); *see also In re W.R. Grace*, 475 B.R. at 87.

37 *In re Genesis Health Ventures, Inc.*, 266 B.R. at 609.

38 LaGatta Decl. ¶ 28.

the Amended Plan fully complies with and satisfies all of the requirements of Bankruptcy Code section 1129(a)(3).

D. The Amended Plan Provides for Bankruptcy Court Approval of Payments for Services or Costs and Expenses Pursuant to Bankruptcy Code Section 1129(a)(4)

40. As required by Bankruptcy Code section 1129(a)(4), all payments promised or received, made or to be made, by the Debtors in connection with services provided or for costs or expenses incurred in connection with the chapter 11 cases, including for professionals, are subject to review by and approval of the Court.[39]

41. The Amended Plan provides that all payments made or to be made by the Debtors for services or for costs or expenses in connection with the chapter 11 cases, including all Fee Claims, have been approved by, or remain subject to approval of, the Court.[40] Accordingly, the Amended Plan ensures that any Fee Claims may be reviewed by the Bankruptcy Court and thereby complies with the requirements of Bankruptcy Code section 1129(a)(4).

E. All Necessary Information Regarding Directors, Officers, and Insiders Has Been Disclosed Pursuant to Bankruptcy Code section 1129(a)(5)

42. Bankruptcy Code section 1129(a)(5) requires that a plan of reorganization disclose the identity and affiliations of those individuals who will serve as a director, officer or voting trustee of the reorganized debtor, the identity of any insider to be employed or retained and the nature of the compensation proposed to be paid to such insider.[41]

43. Section 5.1 of the Amended Plan provides that, on the Effective Date, to the extent not used in the transfer of Liquidation Trust Assets and not completed prior to the Effective Date, the Debtors (and their respective boards of directors) will dissolve as of the

[39] 11 U.S.C. § 1129(a)(4).

[40] Amended Plan § 2.3.

[41] 11 U.S.C. § 1129(a)(5).

Effective Date, and are authorized to dissolve or terminate the existence of wholly owned non-Debtor subsidiaries following the Effective Date as well as any remaining health, welfare or benefit plans. Once all assets of a Debtor have been transferred to the Liquidation Trust, the applicable Debtor or the Liquidation Trustee, as applicable, will take all necessary steps to dissolve such Debtor.[42] The identity of the Liquidation Trustee was disclosed in the Plan Supplement along with the Liquidation Trust Agreement. The appointment of the Liquidation Trustee is consistent with the interests of the Debtors' creditors and public policy. While the Liquidation Trustee may have engaged certain insiders on an hourly basis to assist him, as of the filing of this brief, such arrangements have not been finalized. To the extent that such arrangements are finalized prior to the Confirmation Hearing, such arrangements, if any, will be disclosed at or prior to the Confirmation Hearing. Accordingly, the requirements of Bankruptcy Code section 1129(a)(5) have been satisfied.

F. The Amended Plan Does Not Require Governmental Regulatory Approval Pursuant to Bankruptcy Code Section 1129(a)(6)

44. Bankruptcy Code section 1129(a)(6) permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan.[43] The Amended Plan does not provide for rate changes by the Debtors subject to the jurisdiction of any governmental regulatory commission and will not require governmental regulatory approval.

G. The Amended Plan Satisfies the Best Interest of Creditors and Interest Holders Test Pursuant to Bankruptcy Code Section 1129(a)(7)

45. The "best interests of creditors" test of Bankruptcy Code section 1129(a)(7)(A), requires that with respect to each impaired class of claims or interests, each individual holder of

[42] Amended Plan § 5.1.2.

[43] 11 U.S.C. § 1129(a)(6).

a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time.[44]

46. The "best interests" test applies to individual dissenting creditors or interest holders, rather than classes of claims and interests, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical liquidation of that debtor's estate under chapter 7 of the Bankruptcy Code against the estimated recoveries under that debtor's chapter 11 plan.[45]

47. The first step in meeting the best interests test is to determine the proceeds that the hypothetical liquidation of a debtor's assets and properties would generate in the context of a liquidation under chapter 7 of the Bankruptcy Code. The gross amount available would be the sum of the proceeds from liquidating the debtor's assets plus the cash held by the debtor at the time of commencement of the hypothetical case under chapter 7 of the Bankruptcy Code. The amount of any claims secured by these assets, the costs and expenses of the liquidation, and any additional administrative expenses and priority claims that may result from the termination of the debtor's business and the use of chapter 7 of the Bankruptcy Code for the purposes of a hypothetical liquidation would reduce the amount of these proceeds. Any remaining net cash would be allocated to creditors and equity interest holders in strict priority in accordance with Bankruptcy Code section 726.

---

44 11 U.S.C. § 1129(a)(7)(A).

45 *See Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) (explaining that "[t]he 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan"); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (explaining that Bankruptcy Code section 1129(a)(7) is satisfied when impaired holder of claim would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation").

48. The Debtors believe that liquidation under chapter 7 of the Bankruptcy Code would result in smaller distributions to Holders of Claims and Interests than those provided for in the Amended Plan because of (a) the likelihood that the Debtors' assets would have to be sold or otherwise disposed of in a less orderly fashion over a shorter period of time, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) the inability of a chapter 7 trustee to maximize the return to the Estates to the same degree as provided by the Amended Plan.[46]

49. Specifically, as described in the hypothetical liquidation analysis appended to the Amended Disclosure Statement as Exhibit 2 (the "Liquidation Analysis"), the Debtors assume that any liquidation of their remaining assets would be accomplished through conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code on or about July 31, 2016.[47] On the hypothetical conversion date, it is assumed that the Bankruptcy Court would appoint a chapter 7 trustee to oversee the liquidation of the Debtors' Estates, during which time all of the Debtors' major assets would be sold, distributed, or surrendered to the respective lien holders, and the Cash proceeds, net of liquidation-related costs, would then be distributed to creditors in accordance with relevant law.[48] There could be no assurance that the liquidation would be completed in a limited time frame, nor is there any assurance that the recoveries assigned to the assets would in fact be realized.

50. Additionally, the costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable

---

[46] *See* LaGatta Decl. ¶ 36; *see also* Declaration of Adam Dunayer in Support of Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan for Quicksilver Resources Inc. and its Affiliated Debtors.

[47] *See* Liquidation Analysis at 2.

[48] *See id.*

to attorneys and other professionals that such trustee would engage.[49] Moreover, the conversion would be likely to trigger certain Claims that otherwise would not exist under the Amended Plan, including Claims as have been expressly compromised pursuant to the Bankruptcy Rule 9019 settlement among the Committee, the Second Lien Parties and the Debtors (the "Settlement") such as the Second Lien Deficiency Claim, Adequate Protection Claim, and Second Lien Diminution Claim. Other examples of these kinds of additional Claims that may arise include various potential employee Claims, tax liabilities, Claims related to the rejection of unexpired leases and executory contracts, and other potential Allowed Claims. These additional Claims could be significant and some would be entitled to priority in payment over General Unsecured Claims.[50] The foregoing types of claims and other claims that might arise in a chapter 7 liquidation case (including claims from potentially redundant activities that could be engaged in by a chapter 7 trustee) or result from the pending chapter 11 cases, including any unpaid expenses incurred by the Debtors and the Creditors Committee during the chapter 11 cases such as compensation for attorneys, financial advisors, and accountants, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available for distribution to Holders of General Unsecured Claims.

51. After considering the effects that a liquidation under chapter 7 of the Bankruptcy Code would have on the ultimate proceeds available for distribution to the Holders of Claims and Interests in the chapter 11 cases, including (a) the decrease in value caused by an accelerated liquidation of the Debtors' remaining assets, (b) the increased costs and expenses of a liquidation under chapter 7 of the Bankruptcy Code arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, and (c) the costs of a corporate wind-down of operations,

[49] *See id.* at 3.

[50] *See id.* at 2-3.

the Debtors assert that Confirmation of the Amended Plan will provide each Holder of a Claim with a recovery that is not less than what such Holder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.[51] Indeed, no party has objected to Confirmation under the "best interests" test. Thus, the Debtors submit that they have satisfied the requirements of Bankruptcy Code section 1129(a)(7).

H. Bankruptcy Code Section 1129(a)(8)

52. Bankruptcy Code section 1129(a)(8) requires acceptance by each class of claim or interests that is impaired by the Amended Plan.[52] Pursuant to Bankruptcy Code section 1126(c), a class of claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the allowed claims in that class vote to accept the plan.[53] Pursuant to Bankruptcy Code section 1126(d), a class of interests accepts a plan if at least two-thirds in amount of allowed interests in that class vote to accept the plan.[54]

53. As set forth above, Holders of Claims in Classes 1 through 3 are unimpaired under the Amended Plan and, pursuant to Bankruptcy Code section 1126(f), are conclusively presumed to have voted to accept the Amended Plan. Thus the requirements of section 1129(a)(8) have been satisfied as to each of Classes 1 through 3.

54. As set forth above and as reflected in the Voting Certification, Classes 4 and 5 voted overwhelmingly to accept the Amended Plan.[55] Thus, as to those impaired and accepting Classes 4 and 5, the requirements of section 1129(a)(8) likewise have been satisfied.

---

51 *See* Liquidation Analysis at 4.

52 11 U.S.C. § 1129(a)(8).

53 11 U.S.C. § 1126(c).

54 11 U.S.C. § 1126(d).

55 *See supra* ¶ **Error! Reference source not found.**; Voting Certification ¶ 54.

55. Holders of Claims in Class 6 (Subordinated Notes Claims) voted to reject the Amended Plan. Holders of Claims in Class 7 (510 Claims) and Holders of Equity Interests in Class 8 (Intercompany Interests) and Class 9 (Non-Intercompany Interests) are not entitled to receive or retain any property under the Amended Plan on account of their Claims and Equity Interests and, therefore, are deemed not to have accepted the Plan pursuant to Bankruptcy Code section 1126(g).[56] The Amended Plan nonetheless may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code, as discussed below.

I. The Amended Plan Provides for Payment in Full of All Allowed Priority Claims Pursuant to Bankruptcy Code Section 1129(a)(9)

56. Bankruptcy Code section 1129(a)(9) generally requires that the Amended Plan satisfy administrative and priority tax claims in full and in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim.[57]

57. As required by Bankruptcy Code section 1129(a)(9), Article 2 of the Amended Plan provides for payment in full in Cash of Allowed Administrative Expense Claims, Adequate Protection Claims under the Cash Collateral Order, Fee Claims, and Priority Tax Claims.[58] Therefore, the Amended Plan complies with Bankruptcy Code section 1129(a)(9).

J. At Least One Impaired Class of Claims that Is Entitled to Vote on the Amended Plan Has Accepted the Amended Plan, Satisfying Bankruptcy Code Section 1129(a)(10)

58. Bankruptcy Code section 1129(a)(10) provides that, to the extent there is an impaired class of claims under a plan, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider."[59] As set forth in the Voting

---

56 *See* 11 U.S.C. § 1126(g).

57 *See* 11 U.S.C. §§ 1126(g), 1129(a)(9).

58 Amended Plan §§ 2.1-4.

59 11 U.S.C. § 1129(a)(10).

Certification, at least one class of Claims has voted to accept the Amended Plan.[60] Indeed, as noted above, Impaired Classes 4 and 5 have voted overwhelmingly to accept the Amended Plan. Accordingly, the Amended Plan satisfies Bankruptcy Code section 1129(a)(10).

K. The Amended Plan Is Feasible Pursuant to Bankruptcy Code Section 1129(a)(11)

59. Bankruptcy Code section 1129(a)(11) requires that the Court find that "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."[61] This finding regarding the "feasibility" of the chapter 11 plan does not require a guarantee of success by the debtor.[62] Rather, a debtor must demonstrate only a reasonable assurance of success.[63]

60. The Amended Plan has a reasonable assurance of success. Article 5 of the Amended Plan provides for a liquidation of the Debtors' remaining assets and a distribution of the Cash proceeds to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Amended Plan. The ability to make distributions described in the Amended Plan therefore does not depend on future earnings or operations of the Debtors, but only on the orderly liquidation of the Debtors' remaining assets. In addition, because the Plan proposes a liquidation of all of the Debtors' assets, for purposes of this test the Debtors have analyzed the ability of the Liquidation Trust to meet its obligations under the Amended Plan. Based on the Debtors' analysis, the Liquidation Trust will have sufficient assets to accomplish its tasks under

---

60 Voting Certification ¶ 54, Ex. A.

61 11 U.S.C. § 1129(a)(11).

62 *See United States* v. *Energy Res. Co.*, 495 U.S. 545, 549 (1990); *IRS* v. *Kaplan (In re Kaplan)*, 104 F.3d 589, 597 (3d Cir. 1997); *see also In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

63 *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988).

the Amended Plan. Therefore, the Debtors believe that their liquidation pursuant to the Amended Plan meets the feasibility requirements of the Bankruptcy Code. Accordingly, the Amended Plan satisfies the feasibility standard of Bankruptcy Code section 1129(a)(11).

L. The Amended Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 Pursuant to Bankruptcy Code Section 1129(a)(12)

61. Bankruptcy Code section 1129(a)(12) requires that certain fees listed in 28 U.S.C. § 1930, determined by the court at the hearing on confirmation of a plan, be paid or that provisions be made for their payment.[64] Section 2.5 of the Amended Plan states that all such fees shall be paid.[65] Thus, the Amended Plan satisfies the requirements of Bankruptcy Code section 1129(a)(12).

M. Bankruptcy Code Sections 1129(a)(13)-(16) Are Inapplicable

62. Bankruptcy Code section 1129(a)(13) requires that a plan provide for the continuation, after the plan's effective date, of all retiree benefits at the level established by agreement or by court order pursuant to Bankruptcy Code section 1114 at any time prior to confirmation of the plan, for the duration of the period to which the debtor has obligated itself.[66] The Debtors are not seeking to modify retiree benefits pursuant to Bankruptcy Code section 1114, because they do not have any such benefit plans.[67] Accordingly, the Amended Plan does not implicate Bankruptcy Code section 1129(a)(13).

63. Bankruptcy Code section 1129(a)(14) requires domestic support obligations to be paid, if required by judicial or administrative order or statute, which first become payable after

---

64 *See* 11 U.S.C. § 1129(a)(12).

65 Amended Plan § 2.5.

66 *See* 11 U.S.C. § 1129(a)(13).

67 *See* LaGatta Decl. ¶ 45

the date of filing the petition.[68] The Debtors do not owe any domestic support obligations. Therefore, the Amended Plan need not comply with Bankruptcy Code section 1129(a)(14).

64. Bankruptcy Code section 1129(a)(15) requires that an individual Chapter 11 debtor, in a case in which the holder of an allowed unsecured claim objects to plan confirmation, either pay all unsecured claims in full or that the debtor's plan devote an amount equal to five years' worth of the debtor's disposable income to unsecured creditors.[69] The Debtors are not an "individual" as contemplated by this section of the Bankruptcy Code. Therefore, the Amended Plan need not comply with Bankruptcy Code section 1129(a)(15).

65. Bankruptcy Code section 1129(a)(16) conditions confirmation of a plan on the fact that all transfers under the plan will be made in accordance with applicable provisions of "nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."[70] None of the Debtors is a nonprofit corporation or trust as contemplated by this section of the Bankruptcy Code. Therefore, the Amended Plan need not comply with Bankruptcy Code section 1129(a)(16).

N. Bankruptcy Code Section 1129(b)

66. Bankruptcy Code section 1129(b)(1) allows for confirmation of a plan in cases where all requirements of Bankruptcy Code section 1129(a) are met other than section 1129(a)(8) (i.e., the plan has not been accepted by all impaired classes of claims or interest), by allowing a court to "cram down" the plan notwithstanding objections or deemed rejections as long as the

68 *See* 11 U.S.C. § 1129(a)(14).

69 *See* 11 U.S.C. § 1129(a)(15).

70 11 U.S.C. § 1129(a)(16).

court determines that the plan is "fair and equitable" and does not "discriminate unfairly" with respect to the rejecting classes.[71]

67. The Debtors meet the "cram down" requirements of Bankruptcy Code section 1129(b) to confirm the Amended Plan over the deemed rejection by Classes 7, 8, and 9, because the Amended Plan is fair and equitable and does not discriminate unfairly with respect to Holders of 510 Claims, Intercompany Interests, or Non-Intercompany interests.

(i) The Amended Plan Is Fair and Equitable with Respect to the Impaired Rejecting Classes

68. Bankruptcy Code section 1129(b)(2) provides that a plan is fair and equitable with respect to a class of unsecured claims or interests if the plan provides that the holder of any claim or interest that is junior to the claims of such class will not receive or retain any property under the plan on account of such junior claim or interest.[72]

69. The Amended Plan does not provide any recovery for any claims or interests junior to Subordinated Notes Claims. Accordingly, the Amended Plan is fair and equitable with respect to Holders of 510 Claims, Intercompany Interests, or Non-Intercompany interests.

(ii) The Amended Plan does not Discriminate Unfairly with Respect to the Impaired Rejecting Classes

70. Although the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists, courts typically examine the facts and circumstances of the particular case to determine whether unfair discrimination exists.[73] In general, courts have held

---

71 11 U.S.C. § 1129(b)(1).

72 *See* 11 U.S.C. § 1129(b)(2)(B)(ii), (C)(ii).

73 *See In re 203 N. LaSalle*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a chapter 11 plan" and that "the limits of fairness in this context have not been established"); *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) ("[W]hether or not a particular plan does so [unfairly] discriminate is to be determined on a case-by-case basis."); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all

that a plan unfairly discriminates in violation of Bankruptcy Code section 1129(b) only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.[74] A threshold inquiry in assessing whether a proposed plan of reorganization unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to the class allegedly receiving more favorable treatment.[75]

71. The Subordinated Notes Claims are all Claims arising from or based upon the Subordinated Notes, including accrued, unpaid prepetition interest, costs, and fees. The 510 Claims are based on Claims against any of the Debtors that are subordinated pursuant to Bankruptcy Code section 510(b) or (c). The Intercompany Interests are based any the equity security interests held by a Debtor in another Debtor. The Non-Intercompany Interests are based on any equity security interest that is not an Intercompany Interest. The Amended Plan provides for the same treatment of all Holders of Claims and Interests within each of these four Classes. Thus, the Amended Plan does not discriminate unfairly with respect to Holders of Class 6 (Subordinated Notes Claims), Class 7 (510 Claims), Class 8 (Intercompany Interests), or Class 9 (Non-Intercompany Interests). Accordingly, the Amended Plan should be confirmed even if these Classes are deemed to reject the Amended Plan.

---

aspects of the case and the totality of all the circumstances"). *See also Armstrong World Indus.*, 348 B.R. at 121-22 (relying heavily on the facts of the case to determine whether the plan unfairly discriminated against certain classes).

[74] *See, e.g.*, *In re Coram Healthcare Corp.*, 315 B.R. 321, 349 (Bankr. D. Del. 2004) (citing cases and noting that separate classification and treatment of claims is acceptable if the separate classification is justified because such claims are essential to a reorganized debtor's ongoing business); *In re Lernout & Hauspie Speech Prods., N.V.*, 301 B.R. 651, 661 (Bankr. D. Del. 2003) (permitting different treatment of two classes of similarly situated creditors upon a determination that the debtors showed a legitimate basis for such discrimination); *Liberty Nat'l Enters. V. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship)*, 115 F.3d 650, 655-56 (9th Cir. 1997) (same); *In re Aztec Co.*, 107 B.R. 585, 589-91 (Bankr. M.D. Tenn. 1989) (stating that plan which preserved assets for insiders at the expense of other creditors unfairly discriminated); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) (stating that interests of objecting class were not similar or comparable to those of any other class and thus there was no unfair discrimination).

[75] See *In re Aleris Int'l, Inc.*, No. 09-10478, 2010 WL 3492664, at *31 (Bankr. D. Del. May 13, 2010) (citing *Armstrong World Indus.*, 348 B.R. at 121).

O. Bankruptcy Code Section 1129(c) Is Satisfied

72. Bankruptcy Code section 1129(c) provides that the bankruptcy court may confirm only one plan.[76] Because the Amended Plan is the only plan before the Court, Bankruptcy Code section 1129(c) is satisfied.

P. The Amended Plan Complies with Bankruptcy Code Section 1129(d) Because It Is Not an Attempt to Avoid Tax Obligations or the Requirements of Section 5 of the Securities Act

73. Bankruptcy Code section 1129(d) provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of Section 5 of the Securities Act of 1933. The Amended Plan satisfies these requirements because, as discussed above, the Amended Plan was proposed in good faith and not for the avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, nor has there been any filing by any governmental agency asserting such avoidance.

74. Based on the foregoing, the Amended Plan satisfies all of the confirmation requirements of the Bankruptcy Code, the Bankruptcy Rules, and other applicable laws. Accordingly, the Amended Plan should be confirmed.

IV. RESPONSES TO FORMAL OBJECTIONS

A. Response to Matthews Objection [D.I. 1590]

75. Styled as a response to the Debtors' objection to Mr. Matthews's claim, the Debtors are treating this filing as an objection to the Amended Plan out of an abundance of caution, because the letter includes commentary regarding voting instructions and the voting deadline. On August 8, 2016, Sarah J. Crow, counsel for the Debtors, contacted Mr. Matthews via telephone to confer with him regarding this filing. During the conversation, Mr. Matthews stated that he does not have an objection to the Amended Plan. As a result, the Debtors submit

[76] *See* 11 U.S.C. § 1129(c).

that the Court should deem any objection by Mr. Matthews to the Amended Plan withdrawn. To the extent that the Court does not deem this objection withdrawn, however, the Debtors submit that it should be overruled for the reasons that follow.

76. The Matthews objection alleges that Mr. Matthews "received voting instructions for Debtor's Plan via FedEx on 07/22/2016 with a voting deadline of 08/02/2016. That left little time to coordinate with the brokerage company holding my bonds so that it could vote on my behalf."

77. The Debtors believe that Mr. Matthews was served in accordance with the Disclosure Statement Order. Pursuant to the Disclosure Statement Order, the Court established June 23, 2016 at 5:00 p.m. (ET) (the "Record Date") as the record date for purposes of determining which creditors and equity security holders are entitled to receive solicitation materials and, where applicable, vote on the Plan.[77] As detailed in the Voting Certification, on July 1, 2016, GCG caused an appropriate number of true and correct copies of the Second Lien Notes Solicitation Package (as defined in the Voting Certification) to be served by first class mail on the nominees for beneficial owners of the Second Lien Notes as of the Record Date, together with an instructional memorandum directing the nominees to distribute or otherwise convey the information in the Second Lien Notes Solicitation Package to the beneficial owners of the Second Lien Notes as of the Record Date.

78. As set forth in the Voting Certification, the identities of the vast majority of underlying beneficial owners of the Debtors' publicly traded securities are concealed by the broker/client relationship.[78] As a result, the Debtors are unable to independently verify whether and when Mr. Matthews may have received documents from his nominee. Nevertheless, if Mr.

[77] Voting Certification ¶ 10.

[78] Voting Certification ¶ 15.

Matthews was a holder of publicly traded securities entitled to vote as of the Record Date, the Debtors have no reason to believe that Mr. Matthews was not served in accordance with the Disclosure Statement Order on account of any Second Lien Secured Claim or Subordinated Notes Claim that he may have held as of the Record Date.

79. Mr. Matthews, however, was also served on account of a Claim that he has asserted against the Debtors. As set forth on the Affidavit of Service [D.I. 1588], GCG caused a copy of the Confirmation Hearing Notice and instructions for voting on the Debtors' Amended Plan on July 19, 2016. As set forth above, if Mr. Matthews was a Holder as of the Record Date, he may have been served with two separate solicitation packages. In any event, Mr. Matthews does not allege that he was not able to vote on the Amended Plan. Therefore, the Debtors submit that the Matthews objection should be overruled.

B. Response to U.S. Objection

80. The United States, on behalf of the Department of Interior (the "***DOI***") and the Internal Revenue Service (the "***IRS***") asserts the Plan is unconfirmable, because: (a) the Amended Plan has been filed prior to the Debtors filing their 2015 federal income tax return; (b) Article 11 contains nonconsensual third-party releases that are not justified here; (c) the Amended Plan fails to preserve the timely asserted setoff and recoupment rights of the United States; (d) Article 7 fails to provide for payment of interest on behalf of any Administrative Expense Claim of the United States; (e) Article 2 calls for the payment over five years of priority tax claims, notwithstanding that the Amended Plan is a plan of liquidation and there may be no available assets to satisfy those claims in five years; (f) Articles 2 and 7 do not provide for the payment of an adequate rate of interest for the priority claims (to the extent they are to be paid out over five years); (g) the Amended Plan provides the Debtors with prospective tax relief; (h) Article 2 sets an administrative claims bar date for taxes described in Bankruptcy Code

sections 503(b)(1)(B) and (C); (i) Section 6.22 bars amendments to timely filed proofs of claim; (j) Article 5 treats the claims of the United States under a Bankruptcy Rule 9019 settlement to which the United States does not consent; (k) Section 9.10.5 allows the Liquidation Trustee to request an expedited determination of taxes of the Liquidation Trust under Bankruptcy Code section 505(b); and (l) Article 8 does not treat federal contracts and unexpired federal leases in conformity with applicable non bankruptcy law.

81. The Debtors have been in discussions with the U.S. Attorney regarding this objection, and have proposed to add the following language to the Confirmation Order, which the Debtors believe will address the substance of the IRS's objection:

> Notwithstanding any provision to the contrary in this Order or in any Plan Documents, nothing shall: (a) affect the ability of the IRS to pursue any non-debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Estates; (b) affect the rights of the United States to assert setoff and recoupment and such rights are expressly preserved; (c) cause IRS penalties to be automatically disallowed and such penalties shall be treated, assessed and collected in accordance with applicable federal law; or (d) require the IRS to file an administrative claim in order to receive payment for any liability described in sections 503(b)(1)(B) and (C). To the extent that Allowed Priority Tax Claims held by the IRS (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code), if any, are not paid in full in cash on the Effective Date, such Allowed Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate and method set forth in 26 U.S.C. Sections 6621 and 6622. IRS Administrative Expense Claims that are Allowed pursuant to section 503 of the Bankruptcy Code shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. Moreover, nothing in this Order or the Plan Documents shall: (a) effect a release, discharge or otherwise preclude any Claim whatsoever against any Debtor by or on behalf of the IRS relating to any liability arising out of any unfiled pre-petition tax return or any pending audit or audit which may be performed with respect to any pre-petition tax return; and (b) nothing shall enjoin the IRS from amending any claim against any Debtor with respect to any tax liability arising as a result of the filing of an unfiled return or a pending audit or audit that may be performed with respect to any pre-petition or administrative tax return. Further, any liability arising as a result of an unfiled return or final resolution of a pending audit or audit that may be performed with respect to any pre-petition tax return shall be paid in accordance with sections 1129(a)(9)(A) and (C) to the extent required thereunder.

82. The Debtors believe that this protective language, or substantially similar language, will resolve the issues raised by the IRS. However, as of the date hereof, the United States has not notified the Debtors that it will withdraw its objection. As the protective language proposed by the Debtors in the proposed Confirmation Order appropriately addresses the IRS's concerns, the U.S. Objection should be overruled.[79]

C. Resolution of Objections

83. As noted herein, the Debtors have worked with certain parties in interest to include language in the proposed Confirmation Order to resolve their potential or informal objections to the Amended Plan. Additionally, the Debtors anticipate that they will continue to work with the Objecting Parties to attempt to resolve the remaining Objections. To the extent that the Debtors resolve such Objections, they will seek to adjust language in the proposed Confirmation Order in advance of Confirmation. To the extent that the inclusion of any language in the Confirmation Order is deemed to alter the Amended Plan, or to the extent that the Debtors seek to resolve an Objection by modifying the Amended Plan, the Debtors submit that such modifications do not adversely change the treatment of the Claims of any creditor or Interest of any equity security holder within the meaning of Bankruptcy Rule 3019 without the consent of such party.[80] Therefore, no further solicitation of votes or voting is required.

---

[79] The Debtors understand that the U.S. Attorney's Office intends to propose language for addition to the Confirmation Order to resolve any remaining issues raised by the DOI. The Debtors reserve the right to respond to the objection of the United States on any basis to the extent that it is not resolved in advance of the Confirmation Hearing.

[80] In re G-I *Holdings* Inc., 420 B.R.at 256 ("The best test [of whether a plan modification is material] is whether the modification so affects any creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance.").

V. THE CONFIRMATION ORDER SHOULD BE EFFECTIVE IMMEDIATELY

84. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of fourteen (14) days after the entry of the order, unless the court orders otherwise."[81] The notes of the Advisory Committee on Rules of Bankruptcy to Bankruptcy Rule 3020(e) state that "the court may, *in its discretion*, order that Bankruptcy Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately."[82] Courts in this District frequently grant waivers of the stay upon a showing of cause.[83]

85. The Debtors respectfully submit that good cause exists for waiving and eliminating any stay of the entry of this Confirmation Order so that this Confirmation Order will be effective immediately upon its entry. As noted above, the chapter 11 cases and the related restructuring transactions have been negotiated and implemented in good faith and with a high degree of transparency and cooperation among the Debtors and their stakeholders.[84] Importantly, Classes 4 and 5 have overwhelmingly voted to accept the Amended Plan. Although Class 6 voted the reject the Amended Plan by dollar amount, more than 75% in number of Holders voted in favor of the Amended Plan. Furthermore, each day the Debtors remain in chapter 11, they incur significant administrative and professional expenses, which the

---

81 *See* Fed. R. Bankr. P. 3020(e).

82 *Id*. (emphasis added).

83 *See, e.g.*, *In re Physiotherapy Holdings, Inc.*, No. 13-12965 (KG) (Bankr. D. Del. Dec. 23, 2013), Docket No. 197 (waiving stay of confirmation order and causing it to be effective and enforceable immediately upon its entry by the court); *In re Maxcom Telecomunicaciones, S.A.B. de C.V.*, No. 13-11839 (PJW) (Bankr. D. Del. Sept. 10, 2013), Docket No. 148 (same); *In re Dex One Corp.*, No. 13-10533 (KG) (Bankr. D. Del. Apr. 29, 2013), Docket No. 192 (same); *In re Amicus Wind Down Corp. (f/k/a Friendly Ice Cream Corp.)*, No. 11-13167 (KG) (Bankr. D. Del. June 5, 2012), Docket No. 1123 (same); *In re Local Insight Media Holdings, Inc.*, No. 10-13677 (KG) (Bankr. D. Del. Nov. 3, 2011), Docket No. 1037 (same); *In re Majestic Star Casino, LLC*, No. 09-14136 (KG) (Bankr. D. Del. Mar. 10, 2011), Docket No. 1059 (same); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Apr. 14, 2011), Docket No. 649 (same); *In re Source Interlink Cos.*, No. 09-11424 (KG) (Bankr. D. Del. May 28, 2009), Docket No. 237 (same).

84 LaGatta Decl. ¶ 53; *see also supra* note 83.

Debtors can ill afford. Accordingly, the Debtors believe that the sooner the transactions contemplated by the Amended Plan are implemented, the less costs their estates will be forced to incur, which is in the best interests of the Debtors, their Estates and Holders of Claims, and will not prejudice any parties in interest. Therefore, the Debtors request a waiver of any stay imposed by Bankruptcy Rule 3020(e) so that the Confirmation Order may be effective immediately upon its entry.

CONCLUSION

For the reasons set forth in this Memorandum, the Debtors request that the Court enter an order, in a form substantially similar to the proposed Confirmation Order filed simultaneously herewith, (i) confirming the Amended Plan; (ii) waiving the 14-day stay of the Confirmation Order; and (iii) granting such other and further relief as may be just, proper and equitable.

Wilmington, Delaware
Date: August 9, 2016

/s/ Amanda R. Steele
RICHARDS, LAYTON & FINGER, P.A.
Paul N. Heath (DE 3704)
Amanda R. Steele (DE 5530)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

– and –

AKIN GUMP STRAUSS HAUER & FELD LLP
Charles R. Gibbs (admitted *pro hac vice*)
Sarah Link Schultz (admitted *pro hac vice*)
Sarah J. Crow (admitted *pro hac vice*)
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201
Telephone: (214) 969-2800
Facsimile: (214) 969-4343

EXHIBIT A

LaGatta Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Quicksilver Resources Inc., et al.,[1]	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered

DECLARATION OF VANESSA GOMEZ LAGATTA IN SUPPORT OF DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION AND OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN FOR QUICKSILVER RESOURCES INC. AND ITS AFFILIATED DEBTORS

I, Vanessa Gomez LaGatta, declare as follows under penalty of perjury:

1. I am Senior Vice President, Chief Financial Officer and Treasurer of Quicksilver Resources Inc. ("QRI"), a corporation organized under the laws of the State of Delaware and one of the above-captioned debtors and debtors in possession (collectively, the "Debtors"). Based on my positions with the Debtors, I am familiar with the Debtors' day-to-day operations, business and affairs.

2. I am duly authorized to make this declaration (the "Declaration") and submit this Declaration on behalf of the Debtors. I have supervised the Debtors' chapter 11 cases and participated in the strategic planning and the formulation of the Amended Plan (as defined below). Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, belief and understanding upon my review of applicable books and records

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Quicksilver Resources Inc. ("Quicksilver") [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors' address is 801 Cherry Street, Suite 4000, Unit 19, Fort Worth, Texas 76102.

and other information made available to me, including discussions with the Debtors' advisors and agents, as well as my familiarity and experience with and knowledge of the Debtors' business, operations and financial affairs. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth herein.

3. I submit this Declaration in support of the Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors (the "Memorandum"), filed contemporaneously herewith, and in support of confirmation of the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, dated July 5, 2016 [D.I. 1525] (as may be altered, modified or supplemented from time to time in accordance with the terms thereof, the Bankruptcy Code, the Bankruptcy Rules, and including the Plan Supplement, the "Amended Plan"),[2] pursuant to section 1129 of title 11 of the United States Code, (the "Bankruptcy Code").

A. The Amended Plan Satisfies Each Requirement for Confirmation Under Bankruptcy Code Section 1129

4. I believe, based on knowledge and advice from the other members of QRI management and the Debtors' advisors that the Amended Plan complies with all applicable provisions of Bankruptcy Code section 1129.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Memorandum or the Amended Plan, as applicable.

(i) The Amended Plan Complies with the Applicable Provisions of Bankruptcy Code Sections 1129(a)(1), 1122, and 1123

(a) The Amended Plan Complies with the Applicable Provisions of Bankruptcy Code Section 1122

5. I understand and am advised that Bankruptcy Code section 1122 provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

6. I have been advised and it is my understanding that the Amended Plan classifies Claims and Interests into nine Classes, namely: (a) Class 1 – Other Priority Claims; (b) Class 2 – Other Secured Claims; (c) Class 3 – First Lien Claims; (d) Class 4 – Second Lien Secured Claims; (e) Class 5 – General Unsecured Claims; (f) Class 6 – Subordinated Notes Claims; (g) Class 7 – 510 Claims; (h) Class 8 – Intercompany Interests; and (i) Class 9 – Non-Intercompany Interests.[3] It is also my understanding that each Class comprises only Claims or Interests that are substantially similar to one another, and the Classes themselves are all based on valid business, factual, or legal considerations. Secured claims are classified separately from unsecured claims. Secured claims are placed in separate classifications based on the nature and priority of such secured claims. Intercompany and Non-Intercompany Interests each occupy their own Classes. Accordingly, I believe that the Amended Plan satisfies the classification requirements of Bankruptcy Code section 1122.

(b) The Amended Plan Complies with the Seven Mandatory Plan Requirements of Bankruptcy Code Section 1123(a)(1)-(7)

7. Based on knowledge and advice, I believe the Amended Plan satisfies the seven mandatory requirements of Bankruptcy Code section 1123(a). Specifically:

- as required by Bankruptcy Code section 1123(a)(1), Section 3.2 of the Amended Plan designates nine Classes of Claims and Interests;

[3] Amended Plan § 3.2

- as required by Bankruptcy Code section 1123(a)(2), Section 3.2 of the Amended Plan designates Classes 1, 2, and 3 as Unimpaired under the Plan;

- as required by Bankruptcy Code section 1123(a)(3), Section 3.2 of the Amended Plan designates Classes 4, 5, 6, 7, 8, and 9 as Impaired under the Amended Plan;

- as required by Bankruptcy Code section 1123(a)(4), Sections 3.2 and 3.3 of the Amended Plan provide that all Holders of Allowed Claims or Interests will receive the same rights and treatment as other Holders of Allowed Claims or Interests in the same Class;

- as required by Bankruptcy Code section 1123(a)(5), Article 5 of the Amended Plan provides adequate means for the Amended Plan's implementation;

- Bankruptcy Code section 1123(a)(6) is not applicable, because the Amended Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtors are being dissolved either on the Effective Date or will be dissolved by the Liquidating Trustee following the Effective Date; and

- as required by Bankruptcy Code section 1123(a)(7): the Debtors' boards of directors will dissolve as of the Effective Date; Eugene I. Davis, Chairman & CEO, Pirinate Consulting Group, LLC, will serve as the Liquidation Trustee; disclosure of the identity of the Liquidation Trustee was included in the Plan Supplement and the Liquidation Trustee will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement.

(c) <u>The Amended Plan Complies with the Discretionary Provisions of Bankruptcy Code Section 1123(b)</u>

8. I understand and am advised that the Amended Plan employs various provisions in accordance with the discretionary authority provided to Debtors by Bankruptcy Code section 1123(b).

9. Specifically, I understand and am advised that (i) the Amended Plan impairs certain Claims and Interests (specifically, those in Classes 4, 5, 6, 7, 8, and 9); (ii) the Amended Plan leaves unimpaired other Claims and Interests (specifically, those in Classes 1, 2, and 3); and (iii) Article 8 of the Amended Plan provides for the rejection of all executory contracts and

unexpired leases under Bankruptcy Code section 365, other than those designated for assumption in the Schedule of Assumed Contracts and Unexpired Leases included in the Plan Supplement or previously assumed by order of the Court.

10. In addition, I understand and am advised that the Amended Plan contains provisions implementing certain releases and exculpations, discharging Claims and Interests and permanently enjoining certain causes of action (the "Injunction").[4] As described below, I believe that each of the foregoing provisions is proper.

i. The Debtor Releases are Appropriate

11. Based on knowledge and advice, I believe that multiple factors weigh in favor of the proposed Debtor releases (the "Debtor Releases"). First, I understand that there is an identity of interest of the Released Parties with the Debtors insofar as the parties being released include, among others, each Debtor, the Debtors' current and former employees, officers and directors, the Debtors' advisors, and the Debtors' key constituencies, including the Committee, each First Lien Lender, each Second Lien Lender, each Second Lien Noteholder, the Ad Hoc Group of Second Lienholders and each of its members, each Agent, and each of these parties' affiliates and advisors. Most, if not all of these parties, would be entitled to indemnification from the Debtors' Estates, whether through the corporate charter, indemnification agreements,[5] the Cash Collateral Order, or Court-approved retention agreements. Thus, I am advised that litigation undertaken against the parties otherwise benefitting from the Debtor Release will likely reduce assets available for distribution under the Amended Plan, with little to no benefit accreting to any of the Debtors' stakeholders.

---

4 *See* Amended Plan §§ 11.3-6.

5 Section 5.11 of the Amended Plan provides for the assumption and assignment of many of the Debtors' indemnification obligations, including those between the Debtors and their officers, directors and certain other insider employees.

12. Second, I understand and am advised that the Debtor Releases are predicated on substantial contributions by each of the Released Parties. Such release includes persons or entities who are integral to the operation of the Debtors' business (i.e., officers and directors) and whose cooperation was absolutely necessary to allow the Debtors to resolve the chapter 11 cases through the granting of consensual use of cash collateral and support for the Amended Plan (i.e., the Debtors' key constituencies).

13. Third, I am advised and believe that the Debtor Releases are essential to the Amended Plan itself, because the releases are a key component of this consensual plan process. Indeed, I believe that certain of the Released Parties may not have agreed to the global settlement embodied in the Amended Plan without the benefit of the Debtor Release. Moreover, I am advised and do not believe that there are any valuable claims against the Released Parties. Indeed, no party has objected to the Debtor Releases.

14. Fourth and Fifth, I understand and am advised that the Amended Plan reflects a settlement with the Creditors Committee and Ad Hoc Group of Second Lienholders, each of which support the Debtors' release of the Released Parties. In addition, I understand and am advised that all of the Debtors' other main constituencies support the Plan, and there were only two formal objections to the Amended Plan neither of which objected to the Debtor Releases.

ii. The Consensual Third Party Releases are Appropriate

15. Based on knowledge and advice, I believe that the consensual third party releases (the "Third Party Releases") are also appropriate. I understand and am advised that the Third Party Releases are voluntary in nature, and each Holder of a Claim or Interest who (i) voted to accept the Amended Plan, (ii) was entitled to vote to accept the Amended Plan and elected not to do so, or (iii) voted to reject the Amended Plan and did not elect to opt-out of the Third Party Release on its Ballot, has consented to the Third Party Release.

16. Furthermore, as noted above, I believe that each of the non-Debtor Released Parties has made significant contributions to the chapter 11 cases, and their inclusion in the Third Party Releases was also a material inducement for their participation, negotiation, and ultimate resolution of Claims and Interests through the settlements among the Debtors, the Creditors Committee, and the Ad Hoc Group of Senior Lienholders.

iii. The Exculpation Provision is Appropriate

17. I understand and am advised that Section 11.5 of the Amended Plan provides an exculpation of the Exculpated Parties with respect to the Debtors' restructuring, subject to an exclusion for gross negligence and willful misconduct (the "Exculpation").

18. Upon knowledge and advice, I believe that the Exculpation in Article 11.5 of the Amended Plan is appropriate and vital under the circumstances of the chapter 11 cases. First, the Exculpated Parties played a critical role in formulating the Amended Plan, the Amended Disclosure Statement and related documents in furtherance of the transactions contemplated and settlement embodied in the Amended Plan. These negotiations were extensive and the resulting agreements were implemented in good faith and with a high degree of transparency. Second, the scope of the Exculpation is limited to the Exculpated Parties' acts or omissions in connection with the chapter 11 cases, and the Exculpation does not protect the Exculpated Parties from liability resulting from gross negligence or willful misconduct. Third, the Exculpation is necessary and appropriate to protect parties who have made substantial contributions to the Debtors' reorganization from future collateral attacks related to actions taken in good faith in connection with the Debtors' restructuring. Fourth, the Amended Plan, including the Exculpation is supported by all Classes of Claims entitled to vote on the Amended Plan.

iv. The Injunction Provision is Appropriate

19. Upon knowledge and advice, I believe that the Injunction provided by Section 11.6 of the Amended Plan is necessary to effectuate and implement the Debtors' Amended Plan after the Effective Date. It is my opinion that any such litigation would hinder the efforts of the Debtors and the Liquidation Trustee to effectively fulfill his responsibilities as contemplated in the Amended Plan and thereby undermine efforts to maximize value for all of the Debtors' stakeholders. Additionally, I understand and am advised that the Injunction is narrowly tailored to achieve such purpose.

v. The Executory Contract Assumption, Assumption and Assignment and Rejection Provisions are Appropriate

20. Based on knowledge and advice, I believe that the Debtors' decisions regarding the assumption, assumption and assignment, and rejection of executory contracts and unexpired leases and their determination to neither assume nor reject certain executory contracts are the result of the exercise of the Debtors' sound business judgment.

(d) The Amended Plan Complies with Bankruptcy Code Section 1123(d)

21. I understand and am advised that Bankruptcy Code section 1123(d) states that if a plan proposes to cure a default, the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

22. Based on advice of counsel, I understand that the Amended Plan satisfies Bankruptcy Code section 1123(d) because Section 8.4 of the Amended Plan provides for the satisfaction of monetary defaults, if any, under each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Amended Plan, by payment of the cure amount in Cash on the Effective Date.

(ii) The Amended Plan Complies with Bankruptcy Code Section 1129(a)(2)

23. Based on knowledge and advice of counsel, I believe that the Debtors have complied with all applicable disclosure and solicitation requirements of Bankruptcy Code sections 1125 and 1126, as required by Bankruptcy Code section 1129(a)(2). I understand that the Court has approved (a) the Amended Disclosure Statement as containing adequate information within the meaning of Bankruptcy Code section 1125, (b) the other solicitation materials transmitted to creditors and interest holders entitled to vote on the Amended Plan, (c) the timing and method of delivery of such materials and (d) the rules for tabulating votes on the Amended Plan.

24. I understand and am advised that the Debtors, with the assistance of their balloting agent, Garden City Group, LLC ("GCG" or the "Balloting Agent"), served notices, Ballots, election forms, and associated documents on all Holders of Claims and Interests in the Debtors, each and to the extent applicable, as follows: (i) for all parties in Classes 1, 2, 3, 7, 8, and 9, a Confirmation Hearing Notice and Notice of Non-Voting Status (each as defined in the Disclosure Statement Order); and (ii) for all parties in Classes 4A-4N, 5A-5N, and 6A-6N[6] entitled to vote under the Amended Plan, a Confirmation Hearing Notice and customized instructions for voting on the Debtors' online voting portal. Further, Holders of Claims based on publicly traded securities were served through The Depository Trust Company as well as through the nominees' mailing agents, Broadridge Financial Solutions, Inc., Mediant Communications Inc., and INVeSHARE.

25. Additionally, I understand and am advised that a copy of the Confirmation Hearing Notice was mailed to all known creditors and parties in interest, including counterparties

[6] I understand and am advised that the Amended Plan constitutes a separate plan of liquidation for each of the Debtors. Accordingly, Voting Creditors were permitted to vote for or against the Plan of the particular Debtor(s) against which their Claims were held.

to the assumed executory contracts and unexpired leases, and other parties in interest entitled to receive such notice under the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. I also understand that the Debtors caused the Confirmation Hearing Notice to be published in in the *Fort Worth Star-Telegram* and *The New York Times* in accordance with the Disclosure Statement Order. Accordingly, I believe that the Amended Plan fully complies with and satisfies all of the requirements of Bankruptcy Code section 1129(a)(2).

(iii) The Amended Plan Has Been Proposed in Good Faith Pursuant to Bankruptcy Code Section 1129(a)(3)

26. Based upon knowledge and advice, I believe that the Amended Plan was proposed in good faith, as required by Bankruptcy Code section 1129(a)(3), with the legitimate and honest purpose of maximizing stakeholder recoveries.

27. The Amended Plan is the result of months of extensive, good-faith, arm's -length negotiations among the Debtors, the Ad Hoc Group of Second Lienholders, the Creditors Committee, and a number of other parties in interest in the chapter 11 cases.

28. Moreover, I believe that in crafting and negotiating the terms of the Amended Plan, and at all times during these chapter 11 cases, the Debtors (a) conducted themselves honestly, with good intentions, and with a desire to maximize recoveries to all stakeholders and (b) have upheld their fiduciary duties to stakeholders. Significantly, the Amended Plan is supported by each of the Debtors' key economic stakeholders including the Ad Hoc Group of Second Lienholders and the Creditors Committee. Accordingly, I believe that the Amended Plan fully complies with and satisfies all of the requirements of Bankruptcy Code section 1129(a)(3).

(iv) The Amended Plan Provides for Bankruptcy Court Approval of Payments for Services or Costs and Expenses Pursuant to Bankruptcy Code Section 1129(a)(4)

29. I understand and am advised that under Bankruptcy Code section 1129(a)(4), all payments promised or received, made or to be made, by the Debtors in connection with services provided or for costs or expenses incurred in connection with the chapter 11 cases, including for professionals, are subject to review by and approval of the Court.

30. Moreover, I understand and am advised that the Amended Plan provides that all payments made or to be made by the Debtors for services or for costs or expenses in connection with the chapter 11 cases, including all Fee Claims, have been approved by, or remain subject to approval of, the Court.[7] Accordingly, I believe that the Amended Plan ensures that any Fee Claims may be reviewed by the Bankruptcy Court and thereby complies with the requirements of Bankruptcy Code section 1129(a)(4).

(v) All Necessary Information Regarding the Directors and Officers Has Been Disclosed Pursuant to Bankruptcy Code Section 1129(a)(5)

31. Pursuant to Section 5.1 of the Amended Plan, on the Effective Date, to the extent not used in the transfer of Liquidation Trust Assets and not completed prior to the Effective Date, the Debtors (and their respective boards of directors) will dissolve, and are authorized to dissolve or terminate the existence of wholly owned non-Debtor subsidiaries following the Effective Date as well as any remaining health, welfare or benefit plans. Once all assets of a Debtor have been transferred to the Liquidation Trust, the Debtor or the Liquidation Trustee, as applicable, will take all necessary steps to dissolve such Debtor. The identity of Liquidation Trustee, Eugene I. Davis, was disclosed in the Plan Supplement along with the Liquidation Trust Agreement. Upon knowledge and advice, I believe that the appointment of the Liquidation Trustee is consistent with the interests of the Debtors' creditors and public policy. In addition,

[7] Amended Plan Art. 2.2.

while the Liquidation Trustee may engage certain insiders on an hourly basis to assist him, such arrangements have not been finalized as of the filing of this Declaration. To the extent that such arrangements are finalized prior to the Confirmation Hearing, such arrangements, if any, will be disclosed at or prior to the Confirmation Hearing.

32. Accordingly, I believe that the Amended Plan complies with the requirements of Bankruptcy Code section 1129(a)(5).

(vi) The Amended Plan Does Not Require Governmental Regulatory Commission Pursuant to Bankruptcy Code Section 1129(a)(6)

33. I understand and am advised that Bankruptcy Code section 1129(a)(6) permits confirmation only if any governmental regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan.

34. I am advised and understand that the Amended Plan does not provide for rate charges by the Debtors subject to the jurisdiction of any governmental regulatory commission and will not require governmental regulatory commission approval.

(vii) The Amended Plan Satisfies the Best Interest of Creditors and Interest Holders Test Pursuant to Bankruptcy Code Section 1129(a)(7)

35. I understand and am advised that to satisfy Bankruptcy Code section 1129(a)(7), the Debtors must demonstrate that with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time.

36. With the assistance of their financial and other advisors, the Debtors' prepared the hypothetical Liquidation Analysis attached as Exhibit 2 to the Amended Disclosure Statement. I am generally familiar with the Liquidation Analysis and the underlying financial data and

assumptions upon which the Liquidation Analysis is based, which are accurately described in the Liquidation Analysis and notes thereto. I believe that the estimated liquidation values set forth in the Liquidation Analysis are fair and reasonable estimates of the value of the Debtors' assets based on the assumptions set forth therein. I believe that the estimates as to the ultimate amount of allowed claims against, and expenses of, the hypothetical chapter 7 estates are fair and reasonable and, based on those estimates, combined with the estimated liquidation values of assets, that each Class of Claims under the Amended Plan will receive at least as much as that class would receive in a hypothetical chapter 7 liquidation.

(viii) Bankruptcy Code Section 1129(a)(8)

37. I understand and am advised that Bankruptcy Code section 1129(a)(8) requires acceptance by each class of claim or interests that is impaired by the Amended Plan. I am advised that Classes 1 through 3 are unimpaired under the Amended Plan and are presumed to have voted to accept the Plan. Additionally, I am advised and understand that Classes 4 and 5 voted overwhelming to accept the Amended Plan, but that Class 6 voted to reject the Amended Plan. Finally, I am advised that Holders of Claims in Class 7 (510 Claims), Holders of Equity Interests in Class 8 (Intercompany Interests) and Class 9 (Non-Intercompany Interests) are not entitled to receive or retain any property under the Amended Plan on account of their Claims and Equity Interests and, therefore, are deemed not to have accepted the Plan pursuant to Bankruptcy Code section 1126(g). I further understand that, nonetheless, the Amended Plan may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code, as discussed below.

(ix) The Amended Plan Provides for Payment in Full of All Allowed Priority Claims Pursuant to Bankruptcy Code Section 1129(a)(9)

38. I understand and am advised that Bankruptcy Code section 1129(a)(9) requires that the Amended Plan satisfy administrative and priority tax claims in full and in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim.

39. I am advised and understand that Article 2 of the Amended Plan provides for payment in full in Cash of Allowed Administrative Expense Claims, Adequate Protection Claims under the Cash Collateral Order, Fee Claims, and Priority Tax Claims. Therefore, I believe that the Amended Plan complies with Bankruptcy Code section 1129(a)(9).

(x) At Least One Impaired Class of Claims that is Entitled to Vote has Accepted the Amended Plan, Pursuant to Bankruptcy Code Section 1129(a)(10)

40. I understand and am advised that Bankruptcy Code section 1129(a)(10) provides that, to the extent there is an impaired class of claims under a plan, at least one impaired class of claims must accept the plan, without including any acceptance of the plan by any insider.

41. I am advised and understand that at least one class of Claims has voted to accept the Amended Plan. Impaired Classes 4 and 5 have voted overwhelmingly to accept the Amended Plan. Accordingly, I believe that the Amended Plan satisfies Bankruptcy Code section 1129(a)(10).

(xi) The Amended Plan is Feasible Pursuant to Bankruptcy Code Section 1129(a)(11)

42. I understand and am advised that to satisfy the feasibility requirement of Bankruptcy Code section 1129(a)(11), a debtor must demonstrate that confirmation of a plan of reorganization is not likely to be followed by the liquidation, or the need for further financial reorganization, of a debtor or any successor to such debtor. Upon knowledge and advice, I believe that the Debtors have satisfied this requirement.

43. I believe that the Amended Plan has a reasonable assurance of success. Article 5 of the Amended Plan provides for a liquidation of the Debtors' remaining assets and a distribution of the Cash proceeds to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Amended Plan. I understand that the ability to make distributions described in the Amended Plan therefore does not depend on future earnings or operations of the Debtors, but only on the orderly liquidation of the Debtors' remaining assets. In addition, because the Plan proposes a liquidation of all of the Debtors' assets, for purposes of this test the Debtors have analyzed the ability of the Liquidation Trust to meet its obligations under the Amended Plan. I believe that based on the Debtors' analysis, the Liquidation Trust will have sufficient assets to accomplish its tasks under the Amended Plan. Accordingly, I believe that the Amended Plan satisfies the feasibility standard of Bankruptcy Code section 1129(a)(11).

(xii) The Amended Plan Provides for the Payment of All Fees under 28 U.S.C. § 1930 Pursuant to Bankruptcy Code Section 1129(a)(12)

44. I understand and am advised that Bankruptcy Code section 1129(a)(12) requires that certain fees listed in 28 U.S.C. § 1930, determined by the court at the hearing on confirmation of a plan, be paid or that provisions be made for their payment. I further understand that Section 2.5 of the Amended Plan states that all such fees shall be paid. Thus, I believe that the Amended Plan satisfies the requirements of Bankruptcy Code section 1129(a)(12).

(xiii) Bankruptcy Code Sections 1129(a)(13) – (16) Are Inapplicable

45. I understand and am advised that Bankruptcy Code section 1129(a)(13) requires that a plan provide for the continuation, after the plan's effective date, of all retiree benefits at the level established by agreement or by court order pursuant to Bankruptcy Code section 1114

at any time prior to confirmation of the plan, for the duration of the period to which the debtor has obligated itself. The Debtors are not seeking to modify retiree benefits pursuant to Bankruptcy Code section 1114, because they do not have any such benefit plans. Therefore, it is my belief that the Amended Plan does not implicate Bankruptcy Code section 1129(a)(13).

46. I am advised by counsel that Bankruptcy Code sections 1129(a)(14) through 1129(a)(16) are also inapplicable to the Amended Plan.

(xiv) Bankruptcy Code Section 1129(b)

47. I understand and am advised that Bankruptcy Code section 1129(b)(1) allows for confirmation of a plan in cases where all the requirements of Bankruptcy Code section 1129(a) are met other than section 1129(a)(8) (i.e., the plan has not been accepted by all impaired classes of claims or interests), by allowing a court to "cram down" the plan notwithstanding objections or deemed rejections as long as the court determines that the plan is "fair and equitable" and does not "discriminate unfairly" with respect to the rejecting classes.

48. Upon knowledge and advice, I believe that the Debtors meet the "cram down" requirements of Bankruptcy Code section 1129(b) to confirm the Amended Plan over the deemed rejection of Classes 6, 7, 8 and 9, because the Amended Plan is fair and equitable and does not discriminate unfairly with respect to Holders of Subordinated Notes Claims, 510 Claims, Intercompany Interests, or Non-Intercompany Interests.

(a) The Amended Plan is Fair and Equitable with Respect to the Impaired Rejecting Classes

49. I understand and am advised that Bankruptcy Code section 1129(b)(2) provides that a plan is fair and equitable with respect to a class of unsecured claims or interests if the plan provides that the holder of any claim or interest that is junior to the claims of such class will not receive or retain any property under the plan on account of such junior claim or interest.

50. I am advised that the Amended Plan does not provide any recovery for any claims or interests junior to Subordinated Note Claims.

(b) The Amended Plan Does not Discriminate Unfairly with Respect to the Impaired Rejecting Classes

51. I am advised and understand that the Subordinated Notes Claims all arise from or are based upon the Subordinated Notes, including accrued, unpaid prepetition interest, costs, and fees. I am advised and understand that the 510 Claims are all based on the purchase or sale of equity securities and that they therefore have the same priority as equity securities. In addition, I am advised that the Intercompany Interests are based on any equity security interests held by a Debtor in another Debtor and the Non-Intercompany Interests are based on any equity security interest that is not an Intercompany Interest. The Amended Plan provides for the same treatment of all Holders of Claims and Interests within each of these four Classes. Thus, I believe that the Amended Plan does not discriminate unfairly with respect to Holders of Class 6 (Subordinated Notes Claims), Class 7 (510 Claims), Class 8 (Intercompany Interests), or Class 9 (Non-Intercompany Interests). Accordingly, I am advised that the Amended Plan should be confirmed even if these Classes rejected or are deemed to reject the Amended Plan.

(xv) Bankruptcy Code Section 1129(c)

52. I understand and am advised that Bankruptcy Code section 1129(c) provides that a bankruptcy court may confirm only one plan. I understand that the Amended Plan is the only plan before the Court.

(xvi) The Amended Plan Complies with Bankruptcy Code Section 1129(d) Because it is Not an Attempt to Avoid Tax Obligations or the Requirements of Section 5 of the Securities Act

53. I understand and am advised that Bankruptcy Code section 1129(d) provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of Section 5 of the Securities Act of 1933.

54. As discussed above, the Amended Plan was proposed in good faith and not for the avoidance of taxes or the requirements of Section 5 of the Securities Act of 1933, nor has there been any filing by any governmental agency asserting such avoidance. Accordingly, I believe that the Amended Plan satisfies the requirements of Bankruptcy Code section 1129(d).

B. The Confirmation Order Should be Effective Immediately upon Its Entry

55. I am advised and understand that Bankruptcy Rule 3020(e) provides courts with flexibility to order that a confirmation order is not stayed through the fourteen-day (14-day) day period after confirmation and that courts within this District frequently grant this relief upon a showing of "cause."

56. I believe that good cause exists for waiving and eliminating any stay of the entry of the Confirmation Order so that the Confirmation Order will be effective immediately upon its entry. I believe that the chapter 11 cases and the related restructuring transactions have been negotiated and implemented in good faith and with a high degree of transparency and cooperation among the Debtors and their stakeholders. Furthermore, each day the Debtors remain in chapter 11 they incur significant administrative and professional costs, which the Debtors can ill afford. Accordingly, I believe that the sooner the transactions contemplated by the Amended Plan are implemented, the fewer costs that their estates will be forced to incur, which I believe is in the best interests of the Debtors, their Estates and Holders of Claims, and will not prejudice any parties in interest.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Date: August 9, 2016

/s/ *Vanessa Gomez LaGatta*
Vanessa Gomez LaGatta

Title: Senior Vice President, Chief Financial Officer and Treasurer of Quicksilver Resources Inc.