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

In re:	§	**Chapter 11**
GAVILAN RESOURCES, LLC,	§	**Case No. 20-32656 (DRJ)**
Debtors.[1]	§	**(Joint Administration Requested)**

DECLARATION OF DAVID E. ROBERTS, JR. IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY RELIEF

I, David E. Roberts, Jr., pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer of Gavilan Resources, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**" or "**Gavilan**").

2. I have over 36 years of experience in the oil and gas industry. As Chief Executive Officer and member of the Board, I am responsible for the overall success and strategic direction of the company. Before joining Gavilan, I served as Chief Executive Officer, President and Director at Penn West Petroleum. Prior to that, I served as Chief Operating Officer and Executive Vice President of Marathon Oil. I have served in various senior leadership roles at BG and Texaco. I am a distinguished alumnus and Petroleum Engineering graduate from the University of Alabama.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Gavilan Resources, LLC (6688); Gavilan Resources HoldCo, LLC (6425); Gavilan Resources Holdings, LLC (4496); and Gavilan Resources Management Services, LLC (3961). The Debtors' mailing address is 920 Memorial City Way, Suite 1400, Houston, Texas 77024.

3. On the date hereof (the "**Petition Date**"), the Debtors commenced in this Court voluntary cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). In my capacity as Chief Executive Officer, I am knowledgeable about, and familiar with, the Debtors' day-to-day operations, books and records, and businesses and financial affairs as well as the circumstances leading to the commencement of these Chapter 11 Cases. I submit this declaration (this "**Declaration**") in support of the Debtors' voluntary petitions for relief and the motions and applications that the Debtors filed with this Court, including the "first-day" pleadings filed concurrently herewith (the "**First Day Pleadings**"). I am authorized to submit this Declaration on behalf of the Debtors.

4. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors, my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and financial condition, or my discussions with Gavilan's restructuring and other advisors – Weil, Gotshal & Manges LLP ("**Weil**"), Vinson & Elkins LLP ("**V&E**"), Lazard, Frères & Co. LLC ("**Lazard**"), and Huron Consulting Services LLC ("**Huron**") (collectively, the "**Advisors**"). If called upon to testify, I would testify competently to the facts set forth in this Declaration.

5. This Declaration is organized into three sections. Section I provides an overview of the Debtors, the Debtors' business and the events leading to the commencement of the Chapter 11 Cases. Section II provides background information on the Debtors' organizational and capital structure. Section III summarizes the relief requested in, and the legal and factual bases supporting, the First Day Pleadings.

I. Overview

A. Debtors' Background and Business

6. Formed in early 2017 by funds managed by Blackstone Energy Partners L.P. ("**Blackstone**"), Gavilan is a private company in the business of acquiring, developing, and producing oil and natural gas assets in the Eagle Ford shale play in south Texas. In March 2017, Gavilan Resources, LLC ("**Resources**"), along with non-Debtors SN EF UnSub LP ("**UnSub**") and SN EF Maverick, LLC (together with Sanchez Energy Corporation, "**Sanchez**")[2], purchased certain assets in the Eagle Ford shale, known as the Comanche assets (the "**Comanche Assets**"), for approximately $2.3 billion from Anadarko Petroleum ("**Anadarko**"). Gavilan owns approximately 77,000 net acres of oil and gas leasehold interests. Gavilan paid Anadarko 50% of the purchase price, roughly $1.13 billion, and acquired 50% of all of Anadarko's interest in the Comanche Assets. UnSub paid Anadarko $744 million for the other 50% of Anadarko's proved developed producing ("**PDP**") assets, and 20% of Anadarko's proved developed non-producing ("**PDNP**") assets and proved undeveloped ("**PUD**") assets. SN Maverick paid Anadarko $394 million for the remaining 30% of Anadarko's PDNP and PUD assets.

7. Gavilan, Sanchez, and UnSub, either as part of the transaction with Anadarko or immediately thereafter, became party to a number of agreements related to the operations and management of the Comanche Assets. First, Gavilan, Sanchez, and UnSub became party to various joint operating agreements ("**JOAs**") – under which JOAs the Comanche Assets are pooled for operating purposes. As of the date hereof, Sanchez continues wrongfully to operate the Comanche Assets under the JOAs.

[2] Sanchez and certain of its affiliates are debtors-in-possession in their own chapter 11 cases. *In re Sanchez Energy Corporation*, Case No. 19-34508 (MI) (Bankr. S.D. Tex.)

8. Second, Gavilan, Sanchez, and UnSub entered into a Joint Development Agreement (the "**JDA**") on March 1, 2017 to govern the management and operations of the Comanche Assets. The heavily negotiated JDA sits atop the numerous JOAs and sets a unique framework to jointly manage and operate the Comanche Assets through a six-member "Operating Committee," "Budgets and Work Plans," and a right, by either Gavilan or SN Maverick, to divide operatorship after two years "for any reason." The JDA also provides for the appointment of an Operator to implement the programs considered and approved by the Operating Committee. Sanchez was appointed as the initial Operator under the JDA, and its status as such is subject to pending litigation in the Operatorship Dispute (defined below). Under the JDA, Sanchez sends to Gavilan a monthly capital call for payment, in advance, of the fees, expenses, and capital costs expected to be incurred and/or paid by Sanchez in the following month with respect to operations on the Comanche Assets. Sanchez has moved to reject the JDA in its bankruptcy proceeding.

9. Third, Gavilan, Sanchez, and UnSub entered into a Development Agreement with Anadarko under which Gavilan, Sanchez, and UnSub collectively agreed to complete and equip sixty (60) gross wells per year for five (5) years commencing in March 2017.

10. Fourth, Gavilan and Sanchez each entered into gathering agreements with Springfield Pipeline LLC ("**Springfield**") – UnSub's production is covered by Sanchez's gathering agreement. Oil, natural gas, and natural gas liquids (collectively, the "**Production**") produced with respect to Gavilan's working interests are gathered in-field by Springfield pursuant to two separate gathering agreements – one for gas and natural gas liquids ("**NGLs**"), and one for oil.

11. Lastly, Sanchez picks up from the Springfield gathering system and markets Gavilan's Production through three separate marketing agreements, one each for oil, natural gas, and NGLs. At the end of the process, Sanchez remits to Gavilan Gavilan's share of revenues net of severance taxes. Sanchez has also moved to reject the marketing agreements in its bankruptcy.

B. Events Leading to the Commencement of these Chapter 11 Cases

12. The precipitous decline in oil prices from the combined effect of the COVID-19 pandemic and the flooding of oil markets by warring international producers forced Gavilan into these chapter 11 proceedings. Since the fall of 2018, however, Gavilan has been entangled in, first, an increasingly unworkable relationship with Sanchez brought on by, among other things, Sanchez's own financial difficulties; second, arbitration (and litigation) stemming from Sanchez's defaults under the JDA (the "**Operatorship Dispute**"); and, ultimately, Sanchez's own chapter 11 cases filed in August 2019.

13. Gavilan enters these chapter 11 proceedings with a plan to market its business and assets while continuing its pursuit of operatorship of the Comanche Assets via the Operatorship Dispute.

i. Operatorship Dispute

14. As referenced above, Gavilan, Sanchez, and UnSub are parties to the JDA. Sanchez was in Default, for two independent reasons, under the JDA for months – before Sanchez filed its own chapter 11 cases. Sanchez disputed the Defaults, forcing Gavilan to confirm the Defaults through a contractually mandated arbitration process. Gavilan started arbitration proceedings in February 2019 before Judge Susan Soussan (*Gavilan Resources, LLC v. SN EF Maverick, LLC, et al.*, No. 01-19-0000-5228, American Arbitration Association).

15. Following the commencement of Sanchez's chapter 11 proceedings, Gavilan sought relief from the automatic stay to continue the arbitration. Respectful of the stay and the breathing room it affords debtors, Gavilan waited for progress to be made on Sanchez's own restructuring before prosecuting its motion to lift stay. In December 2019 and January 2020, as the continued uncertainty weighed on Gavilan's own business, Gavilan agreed with Sanchez to move the arbitration proceedings to Sanchez's chapter 11 cases so that the Operatorship Dispute could finally be resolved.[3] Trial on the Operatorship Dispute commenced on March 9, 2020 but was adjourned at the Court's suggestion so the parties could continue negotiations. After multiple delays due to circumstances of Sanchez's chapter 11 cases, trial is set to continue on May 22 and 26, 2020.

16. On April 30, 2020, the Bankruptcy Court confirmed the chapter 11 plan proposed by Sanchez in its chapter 11 cases. As indicated, Sanchez has moved to reject the JDA and assume the JOAs in connection with its plan of reorganization. Sanchez's plan has not yet become effective and it is unclear when Sanchez's plan will go effective.

17. The right to operatorship of the Comanche Assets is a valuable asset of the Debtors' estates and Gavilan intends to vigorously pursue those rights as part of its own sales and restructuring efforts. In fact, the timing of this filing was made sufficiently in advance of the continued hearings on the Operatorship Dispute so as not to jeopardize the trial dates and to protect Gavilan from any potential efforts by Sanchez to further delay the resolution of this matter.

[3] *See In re Sanchez Energy Corporation, et. al., Stipulation and Agreed Order Consensually Resolving Gavilan's Motion to Modify Automatic Stay*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Jan. 27, 2020) [ECF No. 885]. The Operatorship Dispute is styled as *Gavilan Resources, LLC v. SN EF Maverick, LLC, et. al.*, Adv. Proc. No. 20-03021.

ii. Gavilan's Prepetition Lender Negotiations

18. As further described below, Gavilan has two tranches of secured debt – an RBL and a second lien term loan. One of Gavilan's Second Lien Lenders is also the largest DIP lender and prepetition first lien lender to Sanchez. Gavilan has been in discussions with its lenders throughout the prepetition period and commenced discussions with its RBL lenders in March 2020 regarding potential defaults under the RBL credit agreement. Gavilan, certain of the RBL lenders, and secured hedge counterparties entered into a forbearance agreement on March 31, 2020 and a subsequent forbearance on May 1, 2020.

19. Gavilan had further discussions regarding its operations and potential paths forward with the RBL and negotiated the consensual use of cash collateral in support of these Chapter 11 Cases. *See, infra, Section III.D.*

II. Corporate and Capital Structure

A. Corporate Structure

20. Gavilan is a privately owned company with no publicly traded equity or debt. An organizational chart reflecting Gavilan's ownership is attached hereto as **Exhibit A**. Gavilan Resources Holdings, LLC ("**Holdings**") is a Debtor and the direct, or indirect, majority-owner of each other Debtor. Holdings is majority-owned by Gavilan Resources Intermediate Aggregator LLC, a non-debtor, which, in turn, is indirectly majority-owned by funds managed by Blackstone. SN Comanche Manager, LLC, a subsidiary of Sanchez, holds a small profits interest in Debtor Gavilan Resources HoldCo, LLC. Certain of Gavilan's employees also own profits interests in Holdings.

B. Directors and Officers

21. The board of managers of Holdings (the "**Board**"), consists of eight (8) members:

Mr. Angelo Acconcia
Mr. DJ (Jan) Baker
Mr. Neal Goldman
Mr. Al Hirshberg
Mr. John Lee
Mr. David Roberts
Mr. John Schopp
Mr. Mark Zhu

22. Messrs. Baker and Goldman were appointed as Special Independent Managers of Holdings' Board in December 2019.

23. The board of managers of Gavilan Resources HoldCo, LLC consists of three (3) members:

Mr. Angelo Acconcia
Mr. John Lee
Mr. Mark Zhu

24. The sole member of Resources is Gavilan Resources HoldCo, LLC and the sole member of Gavilan Resources Management Services, LLC is Holdings. Resources and GRMS are member managed and have no separate board.

25. The Debtors have the same senior management team, consisting of the following individuals:

Name	Position
David Roberts	Chief Executive Officer
Joseph Ketzner	Chief Operating Officer
Jeffrey Mobley	Chief Financial Officer

26. The Debtors currently lease corporate office space in Houston, Texas.

C. Debtors' Capital Structure

27. The Debtors enter chapter 11 with approximately $552 million in outstanding prepetition secured debt.

i. RBL Credit Agreement

28. As of the Petition Date, pursuant to that certain Credit Agreement, dated as of March 1, 2017 (as amended, modified, restated, amended and restated, and/or supplemented from time to time, the "**RBL Credit Agreement**"), by and between Resources, as borrower, the lenders from time to time party thereto (the "**RBL Lenders**"), JPMorgan Chase Bank, N.A., as administrative agent and as collateral agent (in such capacities, collectively, the "**RBL Agent**"), and the lending institutions from time to time parties as lenders thereto (the "**RBL Lenders**" and, together with the RBL Agent, the "**Prepetition RBL Secured Parties**"), the Borrower was indebted and liable to the Prepetition RBL Secured Parties in the approximate aggregate principal amount of $102 million, plus unpaid interest, fees, expenses, costs, and all other obligations payable under the RBL Documents (collectively, the "**Prepetition RBL Obligations**"). Obligations under the RBL Credit Agreement are secured by a first priority lien on substantially all of the Debtors' assets, including the Debtors' working interests in its oil and gas properties.

ii. Second Lien Credit Agreement

29. As of the Petition Date, pursuant to that certain Credit Agreement, dated as of March 1, 2017 (as amended, modified, restated, amended and restated, and/or supplemented from time to time, the "**Second Lien Credit Agreement**"), by and between Resources, as borrower, the lenders from time to time party thereto (the "**Second Lien Lenders**"), Wilmington Trust, N.A., as administrative agent (in such capacities, collectively, the "**Second Lien Agent**"), and the lending institutions from time to time parties as lenders

thereto (the "**Second Lien Lenders**" and, together with the Second Lien Agent, the "**Prepetition Second Lien Secured Parties**" and, together with the Prepetition RBL Secured Parties, the "**Prepetition Secured Parties**"), the Borrower was indebted and liable to the Prepetition Second Lien Secured Parties in the aggregate principal amount of $450 million, plus unpaid interest (before and after the Petition Date), fees, expenses (before and after the Petition Date), costs, and all other obligations payable under the Second Lien Documents (collectively, the "**Prepetition Second Lien Obligations**"). Obligations under the Second Lien Credit Agreement are secured by a second priority lien on substantially all of the Debtors' assets, including the Debtors' working interests in its oil and gas properties.

iii. Intercreditor Agreement

30. The relative contractual rights of the RBL Lenders, on the one hand, and the Second Lien Lenders, on the other hand, are governed by that certain Intercreditor Agreement, dated as of March 1, 2017 (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"). The Intercreditor Agreement controls the rights and obligations of holders of the Debtors' obligations outstanding under the RBL Credit Agreement and the Second Lien Credit Agreement with respect to, among other things, priority of security over collateral, matters of debtor-in-possession financing, the use of cash collateral, and adequate protection.

III. The First Day Pleadings

31. The First Day Pleadings seek relief to allow the Debtors to meet necessary obligations and fulfill their duties as debtors in possession. I am familiar with the contents of each First Day Pleading and believe that the relief sought in each First Day Pleading is necessary to enable the Debtors to operate in chapter 11 with minimal disruption or loss of productivity and value, constitutes a critical element in achieving a successful reorganization of the Debtors,

and best serves the Debtors' estates and creditors' interests. The facts set forth in each First Day Pleading are incorporated herein by reference. Capitalized terms used but not otherwise defined in this section of this Declaration shall have the meanings ascribed to them in the relevant First Day Pleadings. Below is an overview of each of the First Day Pleadings.

A. Joint Administration Motion

32. Pursuant to the *Emergency Motion of Debtors Pursuant to Fed. R. Bankr. P. 1015(b) and Local Rule 1015-1 for Order Directing Joint Administration of Chapter 11 Cases* filed concurrently herewith, the Debtors request entry of an order directing consolidation of these chapter 11 cases for procedural purposes only. There are four Debtors, and I have been informed that there are more than fifty creditors and other parties in interest in these cases. I believe that joint administration of these cases would save the Debtors and their estates substantial time and expense because it would remove the need to prepare, replicate, file, and serve duplicative notices, applications, motions, and orders. Further, I believe that joint administration would relieve the Court of entering duplicative orders and maintaining duplicative files and dockets. The United States Trustee for Region 7 (the "**U.S. Trustee**") and other parties in interest would similarly benefit from joint administration of these cases, sparing them the time and effort of reviewing duplicative pleadings and papers.

33. I believe that joint administration would not adversely affect any creditors' rights because the Debtors' motion requests only the administrative consolidation of these cases for procedural purposes. It does not seek substantive consolidation of the Debtors' estates. Accordingly, I believe that joint administration of these chapter 11 cases is in the best interests of the Debtors, their estates, and all other parties in interest and should be granted in all respects.

B. Creditor List Motion

34. Pursuant to the *Emergency Motion of Debtors Pursuant to 11 U.S.C. § 107(c)(1)(A) and Fed. R. Bankr. P. 1007(a)(1) and (d) and for an Order (I) Authorizing Debtors to File a Consolidated Creditor Matrix and a Consolidated List of 30 Largest Unsecured Creditors; and (II) Approving Form and Manner of Notifying Creditors of Commencement of Chapter 11 Cases and Other Information; and (III) Granting Related Relief* ("the **Creditor List Motion**"), the Debtors request entry of an order (i) authorizing Debtors to file a consolidated creditor matrix (the "**Consolidated Creditor Matrix**") and a consolidated list of the Debtors' 30 largest unsecured creditors (the "**Consolidated Top 30 Creditors List**"); (ii) approving the form and manner of notifying creditors of the commencement of the chapter 11 cases and other information; and (iii) granting related relief.

35. I understand that, although a list of creditors is usually filed on a debtor-by-debtor basis, in a complex chapter 11 bankruptcy case involving more than one debtor, the debtors may file a Consolidated Creditor Matrix because the preparation of separate lists of creditors for each Debtor would be unduly expensive, time consuming, and administratively burdensome. The Debtors request authority to file a single Consolidated Creditor Matrix for all Debtors.

36. Because a large number of potential creditors may have claims against multiple Debtors, the Debtors request authority to file a single, consolidated list of the top 30 unsecured creditors for all Debtors collectively. The Consolidated Top 30 Creditors List will help alleviate undue administrative burdens, costs, and the possibility of duplicative service.

37. I believe that serving a single Notice of Commencement (as defined in the Creditor List Motion) on the Consolidated Creditor Matrix will preserve judicial resources and prevent creditor confusion. Additionally, given the location of the Debtors' operations in

Houston, Texas, I believe that publishing a notice in the *Houston Chronicle* is the most practical method by which to notify creditors and other parties in interest who do not receive the Notice of Commencement by mail of these chapter 11 cases.

C. Cash Management Motion

38. Pursuant to the *Emergency Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 345(b), 363(b), 363(c), 364(a) and 503(b) and Fed. R. Bankr. P. 6003 and 6004 for Interim and Final Orders (I) Authorizing Debtors to (A) Continue Existing Cash Management System, (B) Honor Certain Related Obligations, (C) Continue Intercompany Transactions, (D) Maintain Existing Bank Accounts and Business Forms, and (E) Continue Using Corporate Credit Cards; and (II) Granting Related Relief* (the "**Cash Management Motion**"), the Debtors request (i) authority to (a) continue operating their existing cash management system (the "**Cash Management System**"), as described in the Cash Management Motion, including through the continued maintenance of existing bank accounts (the "**Bank Accounts**") at the existing banks (the "**Banks**") consistent with the Debtors' prepetition practices, (b) honor certain prepetition obligations related to the Cash Management System, (c) provide postpetition intercompany claims with administrative expense priority, (d) maintain existing bank accounts and business forms, and (e) continue using corporate credit cards; and (ii) related relief.

39. The Debtors support their business operations by using the Cash Management System to collect, concentrate, and disburse funds generated by the sale of hydrocarbons attributable to Debtors' non-operating working interests in certain oil and gas leases. The Cash Management System enables the Debtors to efficiently (i) fund their operations and pay their financial obligations, (ii) monitor and forecast their cash needs, (iii) track the collection and disbursement of funds, and (iv) maintain control over the administration of their Bank Accounts.

40. The Cash Management System is comprised of four Bank Accounts maintained by JPMorgan Chase Bank, N.A. ("**JP Morgan**").

41. The Debtors' cash receipts consist of revenues from the sale of oil, natural gas, and natural gas liquids. The Debtors' receipts enter the Cash Management System via check, wire transfer, and automated clearinghouse ("**ACH**") transfers.

42. The Debtors' collections are generally deposited into the operating account (Account No. XXXXXX4095) (the "**Resources Account**"), which is maintained by JP Morgan in the name of Resources and functions as a centralized repository of cash in the Cash Management System. In the past, the Debtors also received cash from hedging settlements and draws on their RBL Facility, which were also deposited into the Resources Account. The Resources Account holds cash until it is needed for disbursement, at which point the Debtors either (i) make such disbursements directly from the Resources Account or (ii) transfer cash from the Resources Account to the Management Account (as defined below) and make disbursements from there. As of the Petition Date, the Resources Account had an aggregate cash balance of approximately $31,453,711.50.

43. I understand that the majority of payments made from the Cash Management System are made directly from the Resources Account, including, but not limited to: (i) payments pursuant to Resources' obligations under the Joint Development Agreement associated with the Comanche Assets; (ii) payments under a gathering agreement for in-field gathering of production from Resources' oil and gas leases; (iii) payments on account of the Debtors' funded indebtedness, such as principal and interest payments and administrative fees; (iv) payment of professional fees; and (v) payments to the Management Account (defined below) for payment of certain administrative expenses, described below.

44. The Debtors maintain a separate account for disbursements (Account No. XXXXXX1625) (the "**Management Account**") related to, among other things (i) employee obligations, (ii) insurance expenses, (iii) third-party vendor and contractor expenses, (iv) taxes and regulatory fees, and (vi) the Debtors' office lease. The Management Account is held by Debtor Gavilan Resources Management Services, LLC ("**GRMS**"). The most significant disbursement from the Management Account is in satisfaction of the Debtors' obligations to their employees. With respect to such obligations, GRMS wires or transfers funds via ACH to a third-party payroll processor, Automatic Data Processing, Inc. ("**ADP**"), and ADP remits those funds to the Debtors' employees via direct deposit. The Debtors also pay various other expenses directly from the Management Account including payments on account of the Corporate Credit Card Program (as defined below). Transfers from the Resources Account to the Management Account are typically made monthly, in one lump sum payment. As of the Petition Date, the Management Account had an aggregate cash balance of $671,258.29.

45. The third account that the Debtors maintain is an idle account that rarely, if ever, receives funds from, or disburses funds to, any of the other Bank Accounts (Account No. XXXXXX2347) (the "**Idle Account**"). The Idle Account is maintained by JP Morgan in the name of Gavilan Resources HoldCo, LLC. As of the Petition Date, the Idle Account had an aggregate cash balance of $100.079.00.

46. I understand that, in the ordinary course of business, GRMS and Resources maintain a business relationship whereby GMRS provides employees, insurance, and office space, among other things, and Resources makes monthly, lump sum payments to fund GRMS. This relationship generates intercompany receivables and payables (the "**Intercompany Claims**") resulting from such intercompany transactions (the "**Intercompany Transactions**").

The Intercompany Claims are generally tracked on a net basis through the Debtors' intercompany accounts. Although some balances created by an Intercompany Transaction between one Debtor and another Debtor are cash settled, such as the payments made to GRMS for the provided services, other Intercompany Claims are netted out.

47. The Debtors' disbursement methods and resulting Intercompany Transactions and Intercompany Claims are efficient and well established. I believe that any disruption of this system at this time would unnecessarily distract the Debtors and their management team from other pending matters critical to these chapter 11 cases.

48. The Debtors also provide certain employees with access to corporate credit cards issued by JP Morgan (the "**Corporate Credit Cards**," and the Debtors' program relating to such cards, the "**Corporate Credit Card Program**"). There are two cash secured Corporate Credit Cards, which are utilized by the Debtors' Employees to pay for expenses or supplies, including cellular telephone service, incurred on behalf of the Debtors in the ordinary course of business. The Corporate Credit Cards are also used for travel-related expenses associated with the Debtors' business. The Debtors pay all costs incurred from the use of the Corporate Credit Cards directly to JP Morgan. The Credit Card Program has a credit limit of $7,500.

49. Resources maintains a separate money market demand account (Account No. XXXXXX1029) (the "**Credit Card Cash Collateral Account**") to secure payment on the Corporate Credit Cards. The Bank has first priority lien on all cash in the Credit Card Cash Collateral Account to secure the Debtors' obligations in respect of its Corporate Credit Cards. To the extent the Debtors fail to pay any obligations under the Corporate Credit Cards as and when due, the Bank may exercise remedies against the cash in the Credit Card Cash Collateral Account in respect of such unpaid obligations upon no less than five (5) business days' prior

notice to the Court and the Debtors, including by set-off. As of the Petition Date, the Credit Card Cash Collateral Account has an aggregate cash balance of $7,875.00.

50. In addition, in the ordinary course of business, the Debtors incur and pay, honor, or allow to be deducted from the appropriate Bank Accounts, certain service charges and other related fees, costs, and expenses charged by the Banks. The Debtors pay between approximately $1,000 and $2,000 per month on account of Bank Fees. As of the Petition Date, the Debtors estimate they owe approximately $1,000 in unpaid Bank Fees.

51. In the ordinary course of business, the Debtors use a variety of correspondence and business forms, including checks (collectively, the "**Business Forms**"). I believe that the Debtors' requested relief to continue using their Business Forms substantially in the forms used immediately prior to the Petition Date is critical to minimizing the expense to the Debtors' estates associated with developing and/or purchasing entirely new forms, the delay in conducting business prior to obtaining such forms, and the resulting confusion caused for suppliers and other vendors.

52. I believe any disruption to the Cash Management System would significantly interfere with the Debtors' business and impede a successful reorganization. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates and all parties in interest and should be granted.

D. Cash Collateral Motion

53. Pursuant to the *Emergency Motion of Debtors Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 503, and 507 and Fed. R. Bankr. P. 2002, 4001, 6004, and 9014 (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Scheduling A Final Hearing; and (IV) Granting Related Relief*

(the "**Cash Collateral Motion**"), filed concurrently herewith, the Debtors seek entry of an interim order (the "**Interim Cash Collateral Order**") providing, among other things:

a. authority for the Debtors to use Cash Collateral (as such term is defined in section 363(a) of the Bankruptcy Code) of the Prepetition Secured Parties in accordance with the terms and conditions set forth in the Interim Order;

b. granting superpriority claims and the grant of automatically perfected liens, security interests, and other adequate protection to the Administrative Agent with respect to its interests in the Adequate Protection Collateral;

c. modification of the automatic stay of section 362 of the Bankruptcy Code (the "**Automatic Stay**") to the extent provided in the Cash Collateral Motion;

d. a waiver of any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order and providing for the immediate effectiveness of the Interim Order; and

e. scheduling a final hearing (the "**Final Hearing**") within thirty (30) days of the Petition Date and approving notice with respect thereto in accordance with Bankruptcy Rules 4001(b) and (d).

54. The Debtors commenced these chapter 11 cases to conduct a sale process for their assets. The Debtors require access to liquidity and Cash Collateral to fund the ongoing sale process and to maximize value for the Debtors' assets. Substantially all of the Debtors' total cash on hand as of the Petition Date, approximately $32 million, is subject to the liens of the Prepetition Secured Parties and thus constitutes Cash Collateral. The Debtors have determined that this existing cash, together with cash generated from operations, will be sufficient to enable the Debtors to continue paying operating expenses and to fund the sales process.

55. It is my belief that, without a prompt grant of authority to use their cash according to these terms, the Debtors will be unable to satisfy trade payables, implement the sales process to maximize the value of their assets, and administer these chapter 11 cases, which would cause immediate and irreparable harm to the value of the Debtors' estates to the detriment

of all stakeholders. Conversely, immediate access to Cash Collateral will permit the Debtors to continue to operate as a going concern. Accordingly, the use of Cash Collateral in accordance with the terms of the Interim Order is essential to the Debtors' ability to minimize disruptions and maximize value for their estates and parties in interest through the sales process.

56. The Debtors have agreed to use Cash Collateral in accordance with the Budget (subject to any Permitted Variances). The Budget includes all reasonable and foreseeable expenses to be incurred by the Debtors for the applicable period, and is designed to provide the Debtors with adequate liquidity over such period.

57. To protect the Prepetition Secured Parties from Diminution in Value of their interests in the Prepetition Collateral during the chapter 11 cases, the Debtors have agreed to provide adequate protection to the Administrative Agents, including in the form of (i) Adequate Protection Liens and Adequate Protection Claims (in each case, solely to the extent of any diminution in value of the Prepetition Collateral), (ii) payment of all reasonable fees, costs, and expenses, including reasonable attorneys' fees and out-of-pocket expenses and reasonable financial advisors' fees and out-of-pocket expenses (limited to one counsel to the RBL Administrative Agent, one financial advisor to the RBL Administrative Agent, and one local counsel to the RBL Administrative Agent), of the Administrative Agent, (iii) payment of interest and other fees to the RBL Administrative Agent in accordance with the terms of the RBL Credit Agreement; and (iv) and certain reporting obligations to the Administrative Agents set forth in the Interim Order. I believe that such terms are reasonable in light of the fact that, through the use of cash, there will almost certainly be Diminution in Value, and the only way to provide the Prepetition Secured Parties adequate protection is through the Adequate Protection Obligations and Adequate Protection Liens. Moreover, I believe that the RBL Administrative

Agent and RBL Lenders would only consent to the Debtors' use of Cash Collateral if the Interim Cash Collateral Order included the Adequate Protection Obligations.

58. I believe the arrangements for the consensual use of Cash Collateral authorized under the Interim Cash Collateral Order represent a flexible, interim solution to the Debtors' near-term liquidity needs. I believe that the agreement with the Prepetition RBL Secured Parties was negotiated and struck in good faith and at arm's length and preserves the status quo while providing the Debtors with sufficient liquidity to fund their business and to conduct the sale process. I further believe that the use of Cash Collateral on the terms set forth in the Interim Cash Collateral Order is unquestionably the Debtors' best postpetition financing option available and should be approved by the Court.

59. Moreover, in consenting to the use of Cash Collateral, the Prepetition RBL Secured Parties have agreed to subordinate the Adequate Protection Liens and the Adequate Protection Claims to certain fees and expenses (the "**Carve-Out**"), including (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all Allowed Professional Fees incurred by the Professionals and (iv) Allowed Professional Fees of Professionals in an aggregate amount not to exceed $2,000,000 incurred after the first business day following delivery by the RBL Administrative Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise. Without the Carve Out, the Debtors' estates and other parties in interest may be deprived of possible rights

and powers because all of the Debtors' assets would be subject to prior security interests. The Carve Out also protects against the possibility of administrative insolvency by ensuring that assets remain available for the payment of statutory and professional fees. My understanding based on discussions with counsel is that the Carve-Out is similar to other similar arrangements made for professional fees that have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. Therefore, I believe that the Carve-Out is fair and reasonable.

60. In addition, the Interim Cash Collateral Order provides for a modification of the automatic stay to permit the Debtors and each of the Prepetition Secured Parties to perform the transactions and actions contemplated or permitted by the Interim Cash Collateral Order. I believe that such provisions are a reasonable exercise of the Debtors' business judgment, are appropriate under the present circumstances, and, accordingly, should be approved.

61. It is my belief that an orderly transition into chapter 11 is critical to preserve the value and the viability of the Debtors' business operations. Any delay in granting the relief requested in the Cash Collateral Motion could hinder the Debtors' business operations, cause immediate, irreparable harm to the Debtors' estates, and thereby threaten the Debtors' ability to reorganize successfully.

62. Accordingly, I believe that the relief requested in the Cash Collateral Motion is in the best interests of the Debtors, their estates, and all other parties in interest and should be granted in all respects.

E. Wages Motion

63. *Pursuant to the Emergency Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 507 and Fed. R. Bankr. P. 6003 and 6004 for Final Order (I) Authorizing*

Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation and (B) Maintain Employee Benefit Programs; and (II) Granting Related Relief (the "**Wages Motion**"), the Debtors request authority to, in their sole discretion: (a) pay Employee Obligations (as defined is the Wages Motion), related expenses, and fees and costs incident to the foregoing, including amounts owed to third-party service providers, administrators, and taxing authorities, and (b) maintain, continue to honor, and pay amounts with respect to the Debtors' business practices, programs, and policies for their employees as such were in effect as of the Petition Date and as such may be modified or supplemented from time to time in the ordinary course of business. The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests related to such obligations.

64. As described more fully in the Wages Motion, compensation of the Debtors' 24 employees (each, an "**Employee**") is critical to the Debtors' continued chapter 11 process. All of the Debtors' Employees are located in Texas and are employed by Debtor Gavilan Resources Management Services, LLC. The Employees perform a wide variety of critical services for the Debtors, including management, engineering, geological and geophysical assessment, accounting, finance, treasury, planning and business development, safety training, logistics, tax and governmental compliance, legal and administration. The Employees' skills and knowledge of the Debtors' business operations are essential to the continued operation of the Debtors' businesses. I believe that without the Employees' continued, uninterrupted services, a successful chapter 11 process for the Debtors will not be possible.

65. The Employees are crucial to the Debtors' businesses. I believe that any delay in paying or failure to pay prepetition Employee Obligations could irreparably impair the morale of the Debtors' workforce at the time when their dedication, confidence, retention, and cooperation are essential to the stability of the Debtors' business. Failure to pay the Employee Obligations could also inflict a significant financial hardship on the Employees' families. The Debtors cannot risk such a substantial disruption to their business operations, and it is inequitable to put Employees at risk of such hardship.

66. I believe that payment of the Employee Obligations in the ordinary course of business would enable the Debtors to focus on completing a successful chapter 11 process, which would benefit all parties in interest. Recognizing how essential their Employees are to their continued operations, the Debtors have been proactive in taking steps to ensure current Employees remain at the Company.

67. In the ordinary course of business, the Debtors incur and pay obligations relating to salaries. The Debtors pay all of their Employees on a semi-monthly schedule, for a total of 24 payments per year. Rather than paying their employees directly, the Debtors transfer funds sufficient to cover Employees' salaries to Automatic Data Processing, Inc. ("**ADP**") and, in turn, ADP pays all of the of the Employees the compensation that they are owed. On average, the Debtors pay approximately $418,210 per month to ADP on account of Employees' gross pay. As of the Petition Date, the Debtors are current with respect to payments of Employee salaries.

68. In the ordinary course of business, the Debtors reimburse certain of their Employees for reasonable and customary expenses incurred in the scope of their employment (collectively, "**Reimbursable Expenses**," and the related obligations of the Debtors, the

"**Reimbursement Obligations**"). Reimbursable Expenses include reasonable and necessary travel expenses, including the costs of transportation, meals, and lodging, incurred by Employees in the course of their employment with the Debtors. Employees pay for the Reimbursable Expenses directly and submit such expenditures to the Debtors for reimbursement in accordance with the Debtors' expense reimbursement policies.

69. Although there are not currently any Reimbursable Expenses outstanding, I believe that payment of prepetition Reimbursable Expenses (as defined in the Wages Motion) is necessary because any other treatment of Employees would be highly inequitable and risk alienation of the Debtors' workforce. Employees who have incurred Reimbursable Expenses should not be forced personally to bear the cost, especially because those Employees incurred those expenses for the Debtors' benefit, in the course of their employment by the Debtors, and with the understanding that they would be reimbursed for doing so.

70. In addition to the Deductions, certain laws require the Debtors to withhold amounts from the Employees' gross pay related to federal, state, and local income taxes, Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authority (collectively, the "**Withholdings Taxes**"), which the Debtors must match, from their own funds, amounts for Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (collectively with the Withholding Taxes, the "**Payroll Taxes**"). I believe that disbursement of the Deductions and payment of the Payroll Taxes would not prejudice other creditors because I have been informed by counsel that such obligations generally give rise to priority claims under section 507(a) of the Bankruptcy Code.

71. The Debtors' current average liabilities each month for Withholding Taxes and Employer Payroll Taxes total approximately $89,354 and $8,029, respectively. The Debtors estimate that, as of the Petition Date, they hold Withholding Taxes in the approximate amount of $44,677 on Employees' behalf and owe Employer Payroll Taxes in the approximate amount of $4,104, for an aggregate amount of $48,781 in Payroll Taxes.

72. The Debtors maintain a severance program for full-time Employees, who work at least 30 hours per week (the "**Eligible Employees**"), in which the Debtors provide Eligible Employees with lump-sum severance payments upon termination (such practice, the "**Severance Program**" and the related payment obligations, the "**Severance Obligations**"). The Severance Program is available in the event of involuntary termination due to a reduction in workforce/downsizing, change in company direction, or job elimination. The Severance Program does not apply to terminations for cause. Severance Obligations are calculated using base pay and duration of employment, plus two (2) months COBRA insurance. Pursuant to the Severance Program, the Debtors pay[4] Eligible Employees up to two weeks of base pay for each completed year of service working for the Debtors, with a minimum of four weeks and a maximum of fifty-two weeks. The Debtors do not have any Eligible Employees currently entitled to more than ten (10) weeks of severance. As of the Petition Date, the Debtors do not owe any amounts on account of accrued prepetition Severance Obligations.

73. As described in the Wages Motion, the Debtors pay fees to third-party administrators and servicers of Employee Compensations Obligations and the Employee Benefit Plans. Third-party administrators assist the Debtors with, among other things, servicing the

[4] Payment of Severance Obligations is contingent upon the Employee's execution of a release agreement satisfactory to the Debtors.

Health and Welfare Benefits (as defined in the Wages Motion) and also assist with payroll processing, tax computation, payment preparation, payroll transfer administration, and various administrative services in connection with Employee Obligations. I believe that continued payment to third-party administrators is necessary, and without the continued service of these administrators, the Debtors will be unable to continue honoring their obligations to Employees in an efficient and cost-effective manner.

74. To efficiently manage the processing and payment of the various obligations described above (the "**Payroll Maintenance Fees**"), the Debtors rely on ADP to provide payroll processing, tax computation, payment preparation, payroll transfer administration, and various administrative services. Each payroll period, 24 to 48 hours before payroll is due, the Debtors make an automated clearing house ("**ACH**") transfer to ADP in an amount necessary to satisfy the Debtors' payroll obligations. ADP then processes direct deposit transfers to the Employees on the payroll date. The services that ADP provides are critical to the smooth functioning of the Debtors' payroll system. ADP is responsible for ensuring that (i) Employees are paid on time, (ii) appropriate deductions are made, (iii) payroll reporting is accurate, and (iv) appropriate amounts are remitted to the applicable taxing authorities and other payees. The Debtors pay ADP approximately $3,517 per month for the aforementioned services, plus a one-time yearly fee of approximately $800. As of the Petition Date, the Debtors owe ADP approximately $3,000 on account of prepetition Payroll Maintenance Fees.

75. In the ordinary course of business, the Debtors also make various benefit plans available to their Employees. These benefit plans fall within the following categories: (i) paid time off, including vacation and other leave (together, the "**Employee Leave Benefits**"); (ii) medical, prescription drug, dental, and vision benefits ("**Medical Benefits**"); (iii) life

insurance, accidental death and dismemberment ("**AD&D**") insurance, supplemental insurance, short-term disability, and long-term disability benefits (the "**Insurance Benefits**" and, together with the Medical Benefits, the "**Health and Welfare Benefits**"); and (iv) 401(k) plan benefits (the "**Retirement Benefits**") (each of (i)-(iv), an "**Employee Benefit**" and the plans related thereto, the "**Employee Benefit Plans**"). Although the Debtors maintain some Employee Benefit Plans themselves, certain other Employee Benefit Plans are maintained by third parties.

76. The Employee Leave Benefits are administered by the Debtors. Employees accrue paid time off and related benefits for (i) vacation, (ii) payment in lieu of leave, and (iii) other paid time off, as described below:

77. Vacation Leave. Eligible Employees are eligible for paid vacation leave. Eligible Employees receive between 20 and 30 vacation days per year, based on their years of prior work experience (with a "day" of time off equaling eight hours). Vacation leave is awarded on the first scheduled workday of the new calendar year[5] and accrues each pay period, though Eligible Employees are permitted to take up to ten (10) days of vacation time in advance of accrual each year, as long as the applicable Eligible Employee receives approval from a supervisor. Eligible Employees can carry over up to ten (10) vacation days to a subsequent year.

78. Other Paid Time Off. Eligible Employees are eligible for various other types of paid time off, including (i) paid sick leave, for up to 40 hours per year, (ii) paid holiday leave on each of the 13 annual holidays observed by the Debtors,[6] (iii) paid bereavement leave for up to five (5) days, (iv) paid caregiver leave of up to five (5) days, and (v) paid maternity

[5] Each new Employee receives a pro-rated allotment of vacation leave for the remainder of the calendar year, based upon his or her date of hire.

[6] Full-Time Employees who have completed at least six (6) consecutive months of employment with the Debtors as of December 31st of the previous year will also receive two (2) floating holidays per calendar year. New Employees will receive one (1) floating holiday, as long as the Employee is hired prior to June 30th.

leave for up to six (6) weeks.[7] All Employees are eligible for (i) paid jury duty leave for up to one month per year and (ii) military leave consistent with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994. As of the Petition Date, no Employees are receiving paid time off, other than in accordance with the programs described above.

79. Payment In Lieu of Leave. The Debtors do not provide for payments in lieu of leave, except in the case of vacation leave, and, in that case, only upon (i) voluntary resignation by an Eligible Employee and if the Eligible Employee provides the Debtors with a minimum of two weeks' written notice[8] or (ii) involuntary termination of an Eligible Employee for reasons other than for cause. Under these circumstances, the Debtors will pay the Eligible Employee for up to a maximum of ten (10) days of accrued and unused vacation, including any accruals that occur during the Eligible Employee's remaining two weeks of employment, pursuant to the normal accrual calculation.

80. Only amounts relating to Vacation Leave are payable upon termination. As of the Petition Date, Employees have accrued approximately $193,019.23 on account of Vacation Leave, which represents the total amount of Employee Leave Benefits that are accrued. The Debtors do not currently owe any amounts on account of Employee Leave Benefits.

81. The Debtors offer the following Health and Welfare Benefits to Eligible Employees: (i) Medical and Prescription Drug Plan, (ii) Dental Plan, (iii) Vision Plan, (iv) Health Savings Account,

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[7] To be eligible for paid maternity leave, the Employee must qualify for pregnancy-related benefits under the Short-Term Disability Plan (defined below). The paid leave will be comprised of income received from the Short-term Disability Plan (paid at 60% of base salary) and up to 96 hours of paid leave directly from the Debtors, depending on the Employee's length of employment and calculated at the Employee's regular rate of pay.

[8] For the purpose of meeting the two-week notice requirement, Employees may not count any paid or unpaid time off.

82. Medical and Prescription Drug Plan. The Debtors offer Eligible Employees medical care and prescription drug coverage (the "**Medical and Prescription Drug Plan**") through BlueCross BlueShield of Texas ("**BCBS**").[9] As of the Petition Date, the Debtors estimate that the Medical and Prescription Drug Plan has approximately 24 program participants, including under the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**"). The Medical and Prescription Drug Plan is fully insured. The Debtors pay approximately $45,825 in premiums per month, which are payable on the last day of the month for the following month. The Debtors pay 100% of participating Employees' premiums to BCBS. As of the Petition Date, the Debtors are current with respect to payments on account of the Medical and Prescription Drug Plan.

83. Dental Plan. The Debtors offer Eligible Employees dental coverage (the "**Dental Plan**") through Ameritas Life Insurance Corp. ("**Ameritas**"). As of the Petition Date, the Debtors estimate that the Dental Plan has approximately 24 program participants. The Dental Plan is fully insured. The Debtors pay approximately $2,259 in premiums per month, which are payable in the last week of the month for the following month. The Debtors pay 100% of participating Employees' premiums to Ameritas. As of the Petition Date, the Debtors are current with respect to payments on account of the Dental Plan.

84. Vision Plan. The Debtors offer Eligible Employees vision coverage (the "**Vision Plan**") through Vision Services Plan ("**VSP**"). As of the Petition Date, the Debtors estimate that the Vision Plan has approximately 24 program participants. The Vision Plan is

[9] The Debtors offer their Employees two Medical and Prescription Drug Plan options through BCBS: (i) the "Traditional Plan" and (ii) the "High Deductible Health Plan" ("**BCBS HDHP**") with the option to enroll in the Health Savings Account ("**HSA**") Program. Under the Traditional Plan, the network deductibles for Employees and family care are $1,250 and $3,750, respectively. Under the HDHP, the network deductibles for Employees and family care are $3,000 and $9,000, respectively.

fully insured. The Debtors pay approximately $381 in premiums per month, which are payable in the first week of the month for the current month. The Debtors pay 100% of participating Employees' premiums to VSP. As of the Petition Date, the Debtors are current with respect to payments on account of the Vision Plan.

85. Health Savings Accounts. The Debtors provide the option for Eligible Employees to use their pre-tax compensation to pay for qualified health, dental, and vision expenses through a health savings account (the "**HSA Program**") administered by HSA Bank. Only employees enrolled in the BCBS HDHP Medical and Prescription Drug Plan are eligible to participate in the HSA Program. Under the HSA Program, participating Employees may contribute up to a maximum of $3,550 per year for Employee-only coverage and up to $7,100 per year for family health coverage, subject to limitations under applicable law. Participating Employees aged 55 years or older may contribute an additional $1,000 as a 'catch-up' contribution. Under the HSA Program, a participating Employee's pre-tax contributions are withheld from the Employee's paycheck on a semi-monthly basis by ADP. The Debtors coordinate with ADP to have such withheld amounts transmitted to HSA Bank and HSA Bank deposits the withheld amounts into the Employees' accounts established at HSA Bank.

86. The Debtors pay HSA Bank $25 per month on account of administrative fees. As of the Petition Date, the Debtors estimate that the amounts for administrative costs owed to HSA Bank under the HSA Program total approximately $25.

87. Furthermore, under the HSA Program, the Debtors contribute $1,750 per plan, per year, to participating Employee-only accounts and $4,000 per plan, per year, to participating Employee family accounts.[10] The Debtors pay these amounts as a lump sum on or

[10] These amounts are prorated based on the date of enrollment.

around July 15th of each year following the July 1st start of the benefits plan year. As of the Petition Date, the Debtors owe approximately $41,250 in employer contributions to the HSA Program on or around July 1, 2020.

88. The Debtors offer the following Insurance Benefit programs through Lincoln Financial and FOCUS 10 LIFE, Inc.:

89. Basic Life and AD&D Insurance Plans. The Debtors provide all Eligible Employees with basic life and AD&D insurance coverage ("**Basic Life and AD&D Insurance Plans**"), which is fully insured by Lincoln Financial. The Basic Life and AD&D Insurance Plans provide coverage equal to two times an employee's annual base pay rounded up to the nearest $1,000 (up to a maximum of $320,000). The Debtors pay approximately $2,737 in premiums per month, which are payable on the first of the month for the current month. The Debtors pay 100% of participating Employees' premiums. As of the Petition Date, the Debtors are current with respect to payments on account of the Basic Life and AD&D Insurance Plans.

90. Individual Life Insurance Plan. The Debtors provide individual life insurance policies (the "**Individual Life Insurance Plan**") to a subset of Eligible Employees. The Individual Life Insurance Plan is underwritten by Ameritas and administered by FOCUS 10 LIFE, Inc. The Debtors pay approximately $3,893 in premiums per month, which are payable in the first week of the month for the current month. The Debtors pay 100% of participating Employees' premiums. As of the Petition Date, the Debtors are current with respect to payments on account of the Individual Life Insurance Plan.

91. Supplemental Insurance Plans. Eligible Employees can elect to purchase insurance coverage for their spouses and/or children, as well as purchase additional insurance coverage for themselves (collectively, the "**Supplemental Insurance Plans**"), at their own

expense. The Supplemental Insurance Plans include additional life and AD&D coverage provided by Lincoln Financial. Each month, the Debtors pay Lincoln Financial, in advance, for amounts owed on account of the Supplemental Insurance Plans. Then, the Employee premiums for the Supplemental Insurance Plans are deducted from program participants' payroll each pay period.

92. The Debtors pay approximately $292 per month in Employee deductions to Lincoln Financial in connection with the Supplemental Insurance Plans. As of the Petition Date, the Debtors estimate that they are current with respect to amounts owed to Lincoln Financial on account of the Supplemental Insurance Plans.

93. Long-Term Disability Plan. The Debtors provide all Eligible Employees with long-term disability coverage (the "**Long-Term Disability Plan**"), which is fully insured by Lincoln Financial. The Long-Term Disability Plan provides coverage up to 60% of a participating Employee's monthly income (with a maximum benefit of $10,000 per month). The Debtors pay approximately $1,245 in premiums per month, which are payable on the first of the month for the current month. The Debtors pay 100% of participating Employees' premiums. As of the Petition Date, the Debtors are current with respect to amounts owed on account of the Long-Term Disability Plan.

94. Short-Term Disability Plan. The Debtors provide all Eligible Employees with short-term disability coverage (the "**Short-Term Disability Plan**"), which is fully insured by Lincoln Financial. The Short-Term Disability Plan provides coverage up to 60% of a participating Employee's weekly salary (with a maximum benefit of $2,300 per week) for up to 13 weeks. The Debtors pay approximately $838 in premiums per month, which are payable on the first of the month for the current month. As of the Petition Date, the Debtors are current

with respect to amounts owed to Lincoln Financial on account of the Short-Term Disability Plan.

95. The Debtors also provide retirement benefits to their employees. The Debtors maintain a defined contribution plan for the benefit of all Employees[11] meeting the requirements of sections 401(a) and 401(k) of the Internal Revenue Code (the "**401(k) Savings Plan**"). Each Employee participant in the 401(k) Plan may contribute (subject to limitations under applicable law) up to 90% of the Employees' eligible earnings, in any combination of pre-tax and Roth contributions.[12] The 401(k) Savings Plan is managed by ADP Retirement Services. As of the Petition Date, 24 Employees have account balances in the 401(k) Savings Plan.[13] The 401(k) Savings Plan is primarily funded with withholdings from Employee salaries, which are withheld on a per payroll basis by ADP WorkforceNow Payroll from employee gross wages, each time a contributing Employee's payroll is processed. ADP transfers these funds directly to ADP Retirement Services for further deposit in the Employees' accounts. Each month, approximately $12,727 is withheld from participating Employees' paychecks on account of the 401(k) Savings Plan (the "**401(k) Savings Plan Withholdings**").

96. The Debtors currently have a matching program pursuant to which they match up to 6% of participating Employees' 401(k) Savings Plan contributions on a dollar-for-dollar basis (not to exceed the lesser of the Internal Revenue Service contribution limits and $56,000). Contributions by the Debtor under the matching program are typically paid by the

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[11] Subject to the following limitation: employees must be at least 18 years of age and have completed two months of service as an Employee to be eligible for the Debtors' 401(k) plan.

[12] The annual contribution limit for 2020 is $19,500 for individuals under fifty years of age, and $26,000 for those aged fifty and older.

[13] In addition, former Employees who maintain a sufficient balance in the 401(k) Savings Plan are entitled to retain their account. As of the Petition Date, the Debtors believe that 3 former Employees and qualified beneficiaries have 401(k) Savings Plan Accounts.

Debtors to ADP Retirement Services, per payroll, 48 hours after payroll is paid. The Debtors estimate that they pay approximately $8,750 per month in matching contributions under the 401(k) Savings Plan and approximately $4,375 per payroll. As of the Petition Date, the Debtors estimate that they are current with respect to amounts owed to ADP Retirement Services on account of contributions to the 401(k) Savings Plan.

97. In connection with the 401(k) Savings Plan, the Debtors pay ADP Retirement Services a monthly fee of approximately $548 for administrative recordkeeping and third party fiduciary services. As of the Petition Date, the Debtors owe a total of approximately $548 to ADP Retirement Services on account of such fees.

98. Similarly, the Debtors pay Merrill Lynch for fiduciary advisory, education, and plan services, in connection with the 401(k) Savings Plan. The Debtors estimate that they pay approximately $1,455 per quarter to Merrill Lynch for such services. As of the Petition Date, the Debtors estimate that they are current with respect to amounts owed to Merill Lynch for the aforementioned services.

99. The Debtors do not seek to alter their compensation, severance, vacation, or other benefit policies at this time. The Motion is intended only to permit the Debtors, in their discretion, to (i) make payments consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and (ii) honor their practices, programs, and policies with respect to their Employees, as such practices programs, and policies were in effect as of the Petition Date.

100. I believe that no Employees are currently owed prepetition amounts exceeding the $13,650 cap imposed by section 507(a)(4) of the Bankruptcy Code and that,

accordingly, the Debtors are not seeking relief to pay prepetition Employee Obligations to any individual Employee in excess of such cap. I also believe that the total amount sought to be paid by the Wages Motion is modest compared to the magnitude of the Debtors' overall business. Accordingly, I believe the relief requested in the Wages Motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors, their estates, and all parties in interest.

F. Extension of Time to File Schedules, Statements, and List of Equity Security Holders

101. Pursuant to the *Emergency Motion of Debtors Pursuant to 11 U.S.C. §§ 521 and Fed. R. Bankr. P. 1007(a)(3), 1007(c), and 9006 For An Order Extending Time to File Schedules and Statements and List of Equity Security Holders*, the Debtors request an extension of the deadlines by which the Debtors must file (i) schedules of assets and liabilities, (ii) schedules of current income and current expenditures, (iii) statements of financial affairs (collectively, the "**Schedules and Statements**"), and (iv) a list of equity security holders, through and including July 14, 2020, for a total of 60 days from the Petition Date, without prejudice to the Debtors' ability to request additional extensions for cause shown.

102. To prepare their Schedules and Statements and list of equity holders, the Debtors will have to compile information from books, records, and documents relating to a substantial number of parties, claims, assets, and contracts for each Debtor entity. Collection of the necessary information will require a significant expenditure of time and effort on the part of the Debtors and the Debtors' employees. This process has been made more difficult given the ongoing pandemic. Many of the Debtors' employees are working remotely, which has hindered their ability to access and compile the materials necessary to prepare the Debtors' Schedules and Statements and list of equity holders.

103. Furthermore, in the days leading up to the Petition Date, the Debtors' primary focus has been preparing for these chapter 11 cases. Focusing the attention of key personnel on critical operational and chapter 11 compliance issues during the early days of these chapter 11 cases will facilitate the Debtors' smooth transition into chapter 11, thereby maximizing value for their estates, their creditors, and other parties in interest. Although the Debtors have commenced the task of gathering the information necessary for preparing and finalizing the Schedules and Statements and list of equity holders, the Debtors' resources are strained and limited. Given the amount of work involved in completing the Schedules and Statements and list of equity holders, and the demands on the Debtors and their professionals to maintain business operations in the current environment and while working remotely, the Debtors anticipate that they will require 60 days from the Petition Date to complete and file the Schedules and Statements and list of equity holders.

G. Insurance Motion

104. Pursuant to the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 6003, and 6004 for Order (I) Authorizing Debtors to Continue Insurance Policies and Pay All Obligations With Respect Thereto; and (II) Granting Related Relief* (the "**Insurance Motion**") the Debtors request authority to (a) continue all the Insurance Policies (as defined below) in accordance with the applicable insurance policies and to perform with respect thereto in the ordinary course of business; (b) pay any prepetition obligations arising under the Insurance Programs; and (ii) related relief.

105. In the ordinary course of business, the Debtors maintain approximately six insurance programs (collectively, the "**Insurance Policies**"), including (i) coverage of workers' compensation and employer's liability (the "**Worker's Compensation Program**"); (ii) coverage for liabilities relating to, among other things, general commercial claims, property damage,

pollution, collision and other auto claims, and other property-related and general liabilities (collectively, the "**General Liability and Property Insurance Programs**"); (iii) coverage for claims by employees arising from or related to alleged discrimination, wrongful termination, harassment, and other defined employment-related acts against the Debtors, and claims of mismanagement of the Debtors' employee benefit plans (collectively, the "**Employment Practices and Fiduciary Liability Programs**"); (iv) coverage of the Debtors' vehicles (the "**Automobile Program**"); (v) five insurance policies covering liabilities of directors and officers for alleged wrongful acts that cannot be indemnified by the Company, and covering the Company where it has indemnified the Debtors' directors and officers for liability arising from alleged wrongful acts (the "**D&O Insurance Programs**"); and (vi) umbrella and excess coverage (the "**Umbrella Program**"). The Debtors incur certain obligations to pay premiums and other obligations related thereto, including, but not limited to, any broker or advisor fees, taxes, other fees, and deductibles, through several insurance carriers (each, an "**Insurance Carrier**").

106. Worker's Compensation Program. The Debtors maintain the Worker's Compensation Program with a policy provided by Travelers Casualty & Surety Company of America ("**Travelers**"), which also provides coverage for employer liability arising from Workers' Compensation Claims. The Workers' Compensation Program covers liability up to $1 million or the applicable statutory limit. Pursuant to the Workers' Compensation Program, for the current coverage period ending April 1, 2021, the Debtors have paid the full premium amount of $8,800. As of the Petition Date, the Debtors are not aware of any outstanding premiums or prepetition amounts owed under the Workers' Compensation Program. The Debtors anticipate that premium adjustments as a result of an ongoing audit may become due after the first 21 days

of these chapter 11 cases. The Debtors seek relief to pay any such premium adjustments up to $25,000 that become due during these chapter 11 cases.

107. General Liability and Property Insurance Programs. The Debtors maintain the General Liability and Property Insurance Programs through policies with Travelers. The General Liability and Property Insurance Programs cover liabilities up to $2 million for general liability claims and up to $3,528,000 for property insurance claims. For the property insurance programs only, the Debtors must pay a per occurrence deductible of $1,000. Pursuant to the General Liability and Property Insurance Programs, for the current coverage period ending April 1, 2021, the Debtors paid the full aggregate premium amount of $15,300. As of the Petition Date, the Debtors are not aware of any outstanding premiums or prepetition amounts owed under the General Liability and Property Insurance Programs.

108. Employment Practices and Fiduciary Liability Programs. The Debtors maintain the Employment Practices and Fiduciary Liability Programs through policies with Illinois National Insurance Company ("**Illinois National**") and cover liabilities up to $1 million for employment practices claims and up to $500,000 for fiduciary liability claims. The Debtors are responsible for a $25,000 retention prior to disbursement under the employment practices liability program. There is no retention for disbursements under the fiduciary liability program. The premiums owed under the Employment Practice and Fiduciary Liability Programs are included in the premiums for the D&O Insurance Programs (as defined below). As of the Petition Date, the Debtors are not aware of any outstanding prepetition amounts owed under the Employment Practices and Fiduciary Liability Programs.

109. Automobile Program. The Debtors maintain the Automobile Program through a policy with Travelers and covers liability up to $1 million. Pursuant to the Automobile

Program, for the current coverage period ending April 1, 2021, the Debtors paid the full premium amount of $590. As of the Petition Date, the Debtors are not aware of any outstanding premiums or prepetition amounts owed under the Automobile Program.

110. D&O Insurance Programs. The Debtors maintain five insurance policies, each as a layer of coverage, that provide the Debtors with insurance for their directors and officers for liabilities arising from alleged wrongful acts that cannot be indemnified by the Company, and for the Company where it has indemnified the Debtors' directors and officers for liability arising from alleged wrongful acts (the "**D&O Insurance Programs**"). The Debtors incur premiums under the D&O Insurance Programs based upon fixed rates established and billed by the applicable Insurance Carriers, in addition to various deductibles. The first four layers of the D&O Insurance Programs each provide for Side A (non-indemnifiable claims), Side B (corporate reimbursement for indemnifiable claims), and Side C (enterprise liability claims) coverage. The first layer of D&O Insurance Programs covers liability up to $10 million. The Debtors are responsible for a $250,000 retention prior to disbursement of Side B or Side C claim coverage, but are not responsible for any retention prior to disbursement of Side A claim coverage. The second, third, and fourth layers each provide for an additional $10 million of coverage in excess of the coverage in the layer proceeding it, for a total of $40 million coverage. The fifth layer provides solely for an additional $5 million of Side A, non-indemnifiable claim coverage in excess of the previous layers. The Debtors are not responsible for any retention prior to disbursement under the second, third, fourth, or fifth layers of coverage. The D&O Insurance Programs include an automatic pre-paid conversion to six-year run-off upon certain change-in-control events, as defined in the polices, for any liabilities that arise from alleged wrongful acts alleged to have occurred prior to a change-in-control event. Pursuant to the D&O Insurance

Programs, for the current coverage period ending April 30, 2021, the Debtors paid an aggregate premium of approximately $3 million. As of the Petition Date, the Debtors are not aware of any outstanding premiums or prepetition amounts owed under the D&O Insurance Programs.

111. Umbrella Program. The Umbrella Program is provided by Travelers covers liabilities up to $5 million in excess of the coverage provided by the general liability program, the employment practices program and the Automobile Program. In the limited event the Umbrella Program becomes the first layer of coverage, the Debtors are responsible for a $10,000 deductible. Pursuant to the Umbrella Program, for the current coverage period ending April 1, 2021, the Debtors paid the full premium amount of $5,000. As of the Petition Date, the Debtors are not aware of any outstanding premiums or prepetition amounts owed under the Umbrella Program.

112. The Debtors utilize Marsh & McLennan Companies ("**Marsh**") as their insurance agent and broker to assist with the procurement and negotiation of certain Insurance Programs and, in most circumstances, to remit premium payments to the Insurance Carriers on behalf of the Debtors for the current policy periods. In exchange for its services, the Debtors pay Marsh certain fees (the "**Broker's Fees**") that are paid on a commission basis by the Insurance Carriers, with such commissions being earned upon inception of the applicable policy term. As of the Petition Date, the Debtors do not believe that they have any outstanding obligations owed to Marsh for Broker's Fees.

113. I believe the Insurance Programs are essential to the Debtors' operations, as the Debtors would be exposed to significant liability if the Insurance Programs were allowed to lapse or terminate, which exposure could detrimentally impact the Debtors' ability to reorganize successfully. I also understand that some of the Insurance Programs are required by

certain regulations, laws, and contracts that govern the Debtors' commercial activities, and that the U.S. Trustee's operating guidelines require maintenance of certain of the Insurance Programs. It is similarly critical that the Debtors have the authority to supplement, amend, extend, renew, or replace their Insurance Programs as needed, in their business judgement. Based on the foregoing, I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors, their estates, and all parties in interest and should be approved.

H. Utilities Motion

114. Pursuant to the *Emergency Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 366 and Fed. R. Bankr. P. 6003 and 6004 for an Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Companies, (II) Establishing Procedures for Resolving Objections by Utility Companies, , (III) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief*, filed concurrently herewith (the "**Utilities Motion**"), the Debtors request (i) approval of the Debtors' proposed form of adequate assurance of payment to the Utility Companies (as defined herein), (ii) establishment of procedures for resolving objections by the Utility Companies relating to the adequacy of the proposed adequate assurance, (iii) prohibition of the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or outstanding prepetition invoices, and (iv) related relief.

115. As more fully described in the Utilities Motion, the Debtors obtain telecommunications, information technology services, and other utility services (collectively, the "**Utility Services**") from a number of utility companies (collectively, the "**Utility Companies**"). I believe that uninterrupted Utility Services are essential to the Debtors' ongoing operations and the success of these chapter 11 cases. Should any Utility Company alter, refuse, or discontinue

service, even briefly, the Debtors' business operations could be severely disrupted. I believe that any such disruption would jeopardize the Debtors' ability to manage their reorganization efforts. As a result, it is essential that the Utility Services continue uninterrupted during the chapter 11 cases.

116. I believe that there are no material defaults or significant arrearages with respect to the undisputed invoices for prepetition Utility Services. Based on a monthly average for the twelve months prior to the Petition Date, the Debtors estimate that their aggregate cost of Utility Services for the next 30 days will be approximately $3,280.

117. I believe and am advised that the Debtors intend to pay postpetition obligations owed to the Utility Companies in a timely manner and will have sufficient funds to do so. To provide the Utility Companies with adequate assurance pursuant to section 366 of the Bankruptcy Code, the Debtors propose to deposit cash in an amount equal to two weeks' cost of Utility Services (the "**Adequate Assurance Deposit**"), calculated using the 12-month average historical average for such payments prior to the Petition Date, into a newly created, segregated account for the benefit of the Utility Companies (the "**Utility Deposit Account**"). The Adequate Assurance Deposit will be placed into the Utility Deposit Account within 20 days after the Petition Date. The Adequate Assurance Deposit will be held by the Debtors in the Utility Deposit Account for the benefit of the Utility Companies on the Utility Services List during the pendency of these chapter 11 cases. The Debtors may adjust the Adequate Assurance Deposit if the Debtors terminate any of the Utility Services provided by a Utility Company, make other arrangements with certain Utility Companies for adequate assurance of payment, determine that an entity listed on the Utility Services List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Services List to include additional Utility Companies. Based on

the foregoing, the Debtors estimate that the total amount of the Adequate Assurance Deposit will be approximately $1,640. No liens will encumber the Adequate Assurance Deposit or the Utility Deposit Account.

118. I believe and am advised that the Adequate Assurance Procedures are necessary to the success of the Debtors' chapter 11 cases because if such procedures are not approved, the Debtors could be forced to address numerous requests by Utility Companies for adequate assurance in a disorganized manner during the critical first weeks of the chapter 11 cases. Discontinuation of Utility Service could disrupt operations and jeopardize the Debtors' reorganization efforts and, ultimately, the value of the Debtors' estates and stakeholders' recoveries.

119. Based on the foregoing, I believe that the relief requested in the Utilities Motion would ensure the continuation of the Debtors' businesses at this critical juncture as the Debtors transition into chapter 11. Furthermore, I believe that the relief requested provides the Utility Companies with a fair and orderly procedure for determining requests for additional adequate assurance. Accordingly, I believe that the relief requested in the Utilities Motion should be granted in all respects.

I. Claims Agent Retention Application

120. Pursuant to the *Emergency Application of Debtors Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. §§ 105(a), 327, and 503(b), Fed. R. Bankr. P. 2002(f), 2014(a), and 2016, and Bankruptcy Local Rule 2014-1 Authorizing Appointment of Epiq Corporate Restructuring, LLC as Claims, Noticing, and Solicitation Agent* (the "**Claims Agent Retention Application**"), the Debtors request entry of an order appointing Epiq Corporate Restructuring, LLC ("**Epiq**") as the claims, noticing, and solicitation agent ("**Claims and Noticing Agent**") for the Debtors in their chapter 11 cases, effective as of the Petition Date.

121. As more fully described in the Claims Agent Retention Application, the Claims and Noticing Agent will provide the following services:

a. Assisting the Debtors with the preparation and distribution of all required notices in these chapter 11 cases including: (i) notice of the commencement of the cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar dates, to the extent ordered by the Court, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notice of any hearings or combined hearing on chapter 11 plan(s) and disclosure statement(s) filed in these chapter 11 cases, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of the chapter 11 plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors may deem necessary or appropriate for an orderly administration of these cases;

b. Maintaining (i) a list of all potential creditors, equity holders, and other parties in interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002 and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010;

c. Assisting the Debtors with the preparation of the Debtors' Schedules of Assets and Liabilities ("Schedules") and Statements of Financial Affairs ("SOFAs") (as needed);

d. Maintaining a post office box or address for the purpose of receiving correspondence, proofs of claim, ballots, and returned mail and processing all mail received;

e. For all notices, motions, orders or other pleadings or documents served, preparing and filing or causing to be filed with the Clerk an affidavit or certificate of service no more frequently than every seven days that includes (i) either a copy of each notice served for the proceeding seven days or the docket number(s) and title(s) of the pleading(s) served during such period, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;

f. Receiving and processing all proofs of claim received, including those received by the Clerk, check said processing for accuracy, and maintaining any original proofs of claim received in a secure area; if a proof of claim is filed with the Clerk, Epiq will cause any such proof of claim to be copied into an official claims register (the "Claims Register");

g. Providing an electronic interface for filing proofs of claim;

h. If a claims bar date is established, maintaining the Claims Register fully accessible via Epiq's website, which register shall include all claims filed either with the Clerk or otherwise with Epiq, and specifying therein the following information for each claim docketed: (i) any claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the address for payment, if different from the notice address; (v) the amount asserted, (vi) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), and (vii) any disposition of the claim;

i. Recording all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);

j. Implementing necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of any original claims;

k. Monitoring the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;

l. Assisting in the dissemination of information to the public and responding to requests for administrative information regarding the cases, as directed by the Debtors and/or the Court, including through the use of a case website and/or call center;

m. Complying with all applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders, and other requirements;

n. If these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contacting the Clerk's office within three days of notice to Epiq of entry of the order converting the cases;

o. Within seven days of notice to Epiq of entry of an order closing these chapter 11 cases, providing to the Court the final version of the Claims Register as of the date immediately before the close of these chapter 11 cases;

p. At the close of these chapter 11 cases, (i) boxing and transporting all original documents, in proper format, as provided by the Clerk's office, to (A) the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154 or (B) any other location requested by the Clerk's office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims;

q. Assisting with solicitation, balloting, and tabulation of votes in connection with any chapter 11 plan proposed, and in connection with such services, processing requests for documents from any parties in interest;

r. Preparing the certification of votes of any proposed chapter 11 plan submitted in connection with these chapter 11 cases in accordance with any solicitation order to be issued by the Court and testifying in support of such certification;

s. Attending related hearings, as may be requested by the Debtors or their counsel;

t. Managing any distribution pursuant to any confirmed plan prior to the effective date of such plan; and

u. Providing such other processing solicitation, balloting, and other administrative services described in the Engagement Agreement that may be requested from time to time by the Debtors, the Court or the Clerk's office.

122. The appointment of Epiq as the Claims and Noticing Agent will provide the most effective and efficient means of providing that notice, as well as soliciting and tabulating votes on the proposed plan of reorganization, thereby relieving the Debtors of the administrative burden associated with all of these necessary tasks. In addition, by appointing Epiq as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices will be expedited, and the Office of the Clerk of the Bankruptcy Court will be relieved of the administrative burden of noticing. Accordingly, I believe the Claims Agent Retention Application should be granted in all respects.

J. Automatic Stay Motion

123. Pursuant to the *Emergency Motion of Debtors to Lift the Automatic Stay Solely to the Extent Necessary to Proceed with the Gavilan Adversary Proceeding*, to the extent the automatic stay applies to the proceeding, *Gavilan Resources, LLC, v. SN EF Maverick, LLC, et al., Adv. Proc. No. 20-03021* (the "**Gavilan Adversary Proceeding**"), the Debtors seek relief from the automatic stay for the limited purpose of continuing the Gavilan Adversary Proceeding. As explained above, in the Gavilan Adversary Proceeding, Gavilan asserts that due to SN Maverick's Defaults[14] under the JDA, SN Maverick lost its right to serve as the Operator of the Comanche Assets, and operatorship under the JDA transferred to Gavilan immediately upon the occurrence of SN Maverick's Default.

[14] The term "**Default**" shall have the meaning ascribed to it in the JDA. The JDA defines "Default" as the "failure by [any] party . . . to remedy, within thirty (30) days of receipt of a Default Notice from any other Party, the material non-performance or material non-compliance with a material provision of [the JDA]." JDA Annex I, at A-4.

124. As explained previously, Gavilan maintains that SN Maverick has been in Default under the JDA for two reasons. First, SN Maverick materially breached the JDA by failing to adhere to the Operating Committee's 2018 Budget and Work Plan by unilaterally and significantly deviating from well completion plans for at least 20 wells over a period of several months. Second, after the parties were unable to agree on a Subsequent Budget and Work Plan (as defined in the JDA), SN Maverick materially breached the JDA by refusing to honor Gavilan's contractual right, pursuant to the JDA, to elect to divide operatorship. The JDA allows either party to elect to divide operatorship "for any reason." JDA § 3.8(e).[15]

125. The JDA provides, "[e]ffective immediately upon" a Default by SN Maverick, "the operatorship of the applicable [Comanche] Assets . . . and the right to serve as, or to designate, the operator of such Assets under the applicable Operating Agreement(s) shall, subject to the terms of such Operating Agreement(s), be transferred to [Gavilan] . . . ." JDA § 3.8(f). The parties further emphasized the immediate nature of the transfer of operatorship: "[f]or the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the transfer of operatorship and the rights related thereto described in this section 3.8(f) shall be triggered automatically upon the occurrence of an Operator Default Even . . ." *Id.*

126. SN Maverick refuses to acknowledge the occurrence of either Default (which occurred on February 16, 2019 and June 22, 2019 with respect to the default for deviating from the 2018 Budget and Work Plan and for failing to divide operatorship, respectively).[16]

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[15] In the event that either party elects to cause a division of operatorship, the rights to operatorship of the wellpads "shall be divided between [Gavilan] and [Sanchez] on a geographic Wellpad-by-Wellpad basis approximating an alternating, checkerboard pattern (or such other pattern as may be mutually agreed by [Sanchez] and [Gavilan]." JDA §3.8(e)(i).

[16] Gavilan sent SN Maverick Notices on January 16, 2019 (for the deviations from the 2018 Budget and Work Pan) and May 22, 2019 (for the failure to divide operatorship).

127. In February 2019, pursuant to section 7.12(c) of the JDA, Gavilan commenced arbitration proceedings against SN Maverick, before Judge Susan Soussan.[17] Following the commencement of Sanchez's chapter 11 proceedings, Gavilan sought relief from the automatic stay in the Sanchez cases to continue the arbitration.[18]

128. Respectful of the stay and the breathing room it affords debtors, Gavilan waited for progress to be made on Sanchez's own restructuring before prosecuting its motion to lift stay. In December 2019 and January 2020, as the continued uncertainty weighed on Gavilan's own business, Gavilan agreed with Sanchez to move the arbitration proceedings to Sanchez's chapter 11 cases so that the Operatorship Dispute could finally be resolved by the bankruptcy court.[19] Through a joint stipulation and order, the Court commenced the Gavilan Adversary Proceeding.

129. When the Gavilan Adversary Proceeding was initiated, Gavilan and Sanchez had already obtained substantial discovery, taken depositions and disclosed expert reports during the arbitration process. The substantive pleadings from the arbitration were filed in the Gavilan Adversary Proceeding.[20] Similarly, the parties' disclosures and document productions were deemed to have been served and depositions deemed to have been taken in the Gavilan Adversary Proceeding.

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17 *Gavilan Resources, LLC v. SN EF Maverick, LLC, et al.*, No. 01-19-0000-5228, American Arbitration Association.

18 *See In re Sanchez Energy Corporation, et. al., Gavilan Resources, LLC's Motion for Relief From the Automatic Stay to Allow Completion of Arbitration*, Case No. 19-34508 (MI) (Bankr. S.D. Aug. 23, 2019) [ECF No. 222].

19 *See In re Sanchez Energy Corporation, et. al., Stipulation and Agreed Order Consensually Resolving Gavilan's Motion to Modify Automatic Stay*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Jan. 27, 2020) [ECF No. 885].

20 *See Gavilan Resources, LLC, v. SN EF Maverick, LLC, et al.*, Adv. Proc. No. 20-03021 (Bankr. S.D. Tex. Jan. 27, 2020) [ECF No. 1].

130. Trial on the Gavilan Adversary Proceeding commenced on March 9, 2020. The trial was adjourned after one day of testimony, at the Court's suggestion, so the parties could continue negotiations, but no resolution has been reached to date. After multiple delays due to circumstances of Sanchez's chapter 11 cases, the trial is set to continue on May 22, 2020. The parties anticipate eleven or fewer hours of testimony to conclude the trial.

131. The Debtors enter these chapter 11 proceedings with a plan to market their business and assets through a sale process (the "**Sale Process**"). The right to operatorship of the Comanche Assets is a valuable asset of the Debtors' estates and I understand that the Debtors intend to vigorously pursue those rights as part of their own sales and restructuring efforts.

132. I believe the outcome of the Operatorship Dispute will impact the value of the Debtors' assets. If the Debtors are successful in obtaining operatorship, the structure of the Debtors' business will change.

133. Moreover, operatorship rights are typically accorded a premium over non-operating, working interests. Consequently, the success of the Debtors' marketing and sale process and any value obtained by the Debtors as part of the Sale Process may depend on resolving the Operatorship Dispute.

134. Additionally, irrespective of how the dispute is ultimately resolved, I believe that the overhang of the litigation on the Debtors may dissuade bidders from bidding on the Debtors' assets. In Sanchez's chapter 11 cases, Sanchez submitted evidence that the pendency of the Operatorship Dispute negatively affected Sanchez's ability to obtain bids for financing from other potential financing parties.[21] Specifically, one reason potential financing

[21] *See In re Sanchez Energy Corporation, et. al.*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Aug. 12, 2019) [ECF No. 26-3].

counterparties declined to participate in debtor in possession financing was the "potential complications and uncertainties related to [Sanchez's] organizational and capital structure . . . including a pending operatorship dispute between SN Maverick and Gavilan Resources, LLC."[22] This possibility further complicates any attempt by potential bidders to value the Debtors' assets.

135. I believe that a final decision on the Operatorship Dispute is essential to develop an accurate understanding and valuation of the Debtors' assets for purposes of the sale process, and ultimately, the Debtors' reorganization options.

Conclusion

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 15, 2020
Houston, Texas

/s/ David E. Roberts, Jr.
Name: David E. Roberts, Jr.
Title: Chief Executive Officer

[22] *Id.*

Certificate of Service

I hereby certify that on March 15, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed claims, noticing, and solicitation agent.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

Exhibit A

GAVILAN RESOURCES

Organizational Structure