IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FAH LIQUIDATING CORP., et al., [1] (f/k/a FISKER AUTOMOTIVE HOLDINGS, INC.)	)	Case No. 13-13087 (KG)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 16, 128, 829**

NOTICE OF FILING OF BLACKLINE OF DISCLOSURE STATEMENT FOR THE DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on November 24, 2013, the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") filed the *Disclosure Statement for the Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 16] (the "Disclosure Statement").

PLEASE TAKE FURTHER NOTICE that on December 10, 2013, the Debtors filed a revised version of the Disclosure Statement [Docket No. 128] (the "First Amended Disclosure Statement").

PLEASE TAKE FURTHER NOTICE that on April 30, 2014, the Debtors filed the *Disclosure Statement for the Debtors' Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 829] (the "Second Amended Disclosure

[1] The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.) (9678); and FA Liquidating Corp. (f/k/a Fisker Automotive, Inc.) (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 3080 Airway Avenue, Costa Mesa, California 92626.

Statement").

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit 1 is a blackline copy of the Second Amended Disclosure Statement, which reflects changes from the First Amended Disclosure Statement filed on December 10, 2013.

PLEASE TAKE FURTHER NOTICE that the Second Amended Disclosure Statement remains subject to ongoing review and comment by Hybrid and the Committee (each as defined in the Second Amended Disclosure Statement), and has not been approved by Hybrid or the Committee at this time.

Dated: April 30, 2014
Wilmington, Delaware

/s/ Peter J. Keane

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Attorneys for the
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EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
~~FISKER AUTOMOTIVE HOLDINGS, INC.,~~FAH LIQUIDATING CORP., et al.,[1] (f/k/a FISKER AUTOMOTIVE HOLDINGS, INC.)	)	Case No. 13-13087 (KG)
~~———~~ Debtors.	)	(Jointly Administered)

DISCLOSURE STATEMENT FOR THE DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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~~*Proposed* Counsel to the Debtors~~
and Debtors in Possession

Dated: ~~December 10, 2013~~April 30, 2014

[1] The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc~~.~~.) (9678); and FA Liquidating Corp. (f/k/a Fisker ~~-~~ Automotive, Inc~~.~~.) (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: ~~5515 E. La Palma Ave., Anaheim~~3080 Airway Avenue, Costa Mesa, California ~~92807~~92626.

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VIII HEREIN.

THE DEBTORS URGE EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND ALL OF THE ACTIONS NECESSARY TO EFFECTUATE THE PLAN. FURTHERMORE, THE BANKRUPTCY COURT'S ~~PROVISIONAL~~ APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES, AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT MAY BE ATTACHED HERETO AND ARE INCORPORATED BY REFERENCE HEREIN. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(B) AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.

THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAVE PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF SECTION 27A AND SECTION 21E OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). SUCH STATEMENTS MAY CONTAIN WORDS SUCH AS "MAY," "WILL," "MIGHT," "EXPECT," "BELIEVE," "ANTICIPATE," "COULD," "WOULD," "ESTIMATE," "CONTINUE," "PURSUE," OR THE NEGATIVE THEREOF OR COMPARABLE TERMINOLOGY, AND MAY INCLUDE, WITHOUT LIMITATION, INFORMATION REGARDING THE DEBTORS' EXPECTATIONS WITH RESPECT TO FUTURE EVENTS. FORWARD-LOOKING STATEMENTS ARE INHERENTLY UNCERTAIN AND ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER FROM THOSE EXPRESSED OR IMPLIED IN THIS DISCLOSURE STATEMENT AND THE FORWARD-LOOKING STATEMENTS CONTAINED HEREIN. MAKING INVESTMENT DECISIONS BASED ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND/OR THE PLAN IS, THEREFORE, SPECULATIVE.

IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THEIR BOOKS AND RECORDS OR THAT WAS OTHERWISE MADE AVAILABLE TO THEM AT THE TIME OF SUCH PREPARATION AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH FINANCIAL INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTORS AS OF THE DATE HEREOF AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT REASONABLE BUSINESS JUDGMENTS, NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES AND THEIR FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER. THE DEBTORS OR THE ~~LIQUIDATOR~~LIQUIDATION TRUSTEE MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO, AND EXPRESSLY DISCLAIM ANY DUTY TO PUBLICLY UPDATE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS FILED. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED PLAN AND RELATED AMENDED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN.

CONFIRMATION AND CONSUMMATION OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED IN ARTICLE IX OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED OR, IF CONFIRMED, THAT SUCH MATERIAL CONDITIONS PRECEDENT WILL BE SATISFIED OR WAIVED. YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING BUT NOT LIMITED TO THE PLAN AND ARTICLE VIII OF THIS DISCLOSURE STATEMENT ENTITLED "RISK FACTORS," BEFORE SUBMITTING YOUR BALLOT TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS OR INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND ANY TRANSACTIONS CONTEMPLATED THEREBY.

THE DEBTORS AND THE COMMITTEE SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.

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EXHIBITS

EXHIBIT A	Debtors' Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code.
EXHIBIT B	Debtors' Corporate Structure as of the Petition Date.
EXHIBIT C	Asset Purchase Agreement by and Among Fisker Automotive Holdings, Inc. and Fisker Automotive, Inc. as Sellers and ~~Hybrid Tech Holdings, LLC~~Wanxiang America Corporation as Buyer~~.~~ (as amended by Amendment No. 1 to Asset Purchase Agreement and Amendment No. 2 to Asset Purchase Agreement)
EXHIBIT D	Limited Liability Company Agreement for Wanxiang Automotive Acquisition Company LLC
EXHIBIT E	Plan Settlement Term Sheet

ARTICLE I.
INTRODUCTION

This disclosure statement (this "Disclosure Statement") provides information regarding the *Debtors' Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), which the Debtors are seeking to have confirmed by the Bankruptcy Court.[1] A copy of the Plan is attached hereto as **Exhibit A**. The rules of interpretation set forth in Article I.B of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtors' board of directors has approved the Plan and believes the Plan is in the best interests of the Debtors' Estates. As such, the Debtors recommend that all Holders of Claims entitled to vote accept the Plan by returning their ballots (each, a "Ballot") so as to be actually received by the Notice and Claims Agent no later than ~~December 30, 2013~~[ ], 2014, at ~~5~~4:00 p.m~~.,~~ , (prevailing Eastern Time~~.~~). Assuming the requisite acceptances to the Plan are obtained, the Debtors will seek the Bankruptcy Court's approval of the Plan at the Confirmation Hearing.

The Debtors are a privately held enterprise. The Debtors were founded in 2007 with the goal of designing, assembling, and manufacturing premium plug-in hybrid electric vehicles ("PHEVs"). In April 2010, to facilitate these efforts, the Debtors entered into the Senior Loan Agreement with the United States Department of Energy ("DOE"), whereby DOE arranged for the Federal Financing Bank to make loans to the Debtors in an aggregate amount of up to approximately $530 million pursuant to the Advanced Technology Vehicles Manufacturing Incentive Program.[2] Before the Petition Date, the Debtors drew a total of approximately $192 million pursuant to the Senior Loan Agreement, of which approximately $168.5 million remain~~s~~ed outstanding as of the Petition Date. As described more fully below, on November 22, 2013, ~~an~~Hybrid Technology, LLC (together with its affiliate ~~of~~ Hybrid Tech Holdings, LLC, "Hybrid") purchased DOE's interest in this Senior Loan (the "Senior Loan Purchase") and succeeded to DOE's position as the Debtors' ~~Senior Secured Lender~~senior secured lender.

~~As a result of events~~As more fully described below, the Debtors Filed for bankruptcy protection on the Petition Date. At the same time, the Debtors ~~also~~ Filed a motion [Docket No. 13] (the "Sale Motion") seeking, among other things, entry of an order ~~(the "Sale Order")~~ by the Bankruptcy Court approving the ~~Sale Transaction~~ sale of the Acquired Assets to Hybrid ~~Tech Holdings, LLC, in its capacity as purchaser~~ on the terms and conditions set forth in a purchase agreement annexed as Exhibit 1 to Exhibit B to the Sale Motion. Following a hearing before the Bankruptcy Court on January 10, 2014, the Debtors undertook a sale and auction process for the Acquired Assets and the Bankruptcy Court entered an order [Docket No. 508] (the "Bidding Procedures Order") authorizing the Debtors to proceed with that process. See Jan. 10, 2014 Hr'g Tr. 135–138; see also Bidding Procedures Order ¶¶ 7, 25; Memorandum Opinion [Docket No. 483].

The Bidding Procedures Order established both Hybrid and Wanxiang America Corporation ("Wanxiang" or the "Purchaser") as stalking horse bidders and established certain procedures to govern the Debtors' bidding, auction, and sale process (the "Bidding Procedures"). The Debtors conducted an auction (the "Auction") of the Acquired Assets from February 12, 2014 through February 14, 2014. At the conclusion of the Auction, the Debtors and the Committee jointly determined, in accordance with the Bidding Procedures Order, that the transaction contemplated by Wanxiang's final bid was the highest and best bid at the Auction proposing a transaction valued at approximately $149.2 million. The Debtors and Wanxiang memorialized the terms of Wanxiang's successful bid in the Purchase Agreement attached hereto as **Exhibit C**, which consists of, among other things, (a) $126.2 million in cash; (b) $8 million of assumed liabilities arising from Administrative and Priority Claims against the Debtors'

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1 Unless otherwise specified herein, all capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Plan.

2 The Advanced Technology Vehicles Manufacturing Incentive Program was promulgated under section 136 of the Energy Independence and Security Act of 2007, Pub. L. 110–140, 121 Stat. 1492, 42 U.S.C. § 17013.

estates other than Claims arising from the Hybrid DIP Facility; and (c) Wanxiang's contribution of a 20% equity interest in a Wanxiang affiliate ultimately designated to acquire the Debtors' assets on the terms and conditions set forth in the LLC Agreement attached hereto as **Exhibit D**.

On February 18, 2014, the Bankruptcy Court held a hearing (the "Sale Hearing") to consider the Debtors' proposed sale of the Acquired Assets to Wanxiang. On February 19, 2014, the Bankruptcy Court entered an order [Docket No. 653] (the "Sale Order") approving the Sale Transaction pursuant to the ~~Purchase Agreement (together with its successors and permitted assigns, the "Purchaser"). The~~ terms of the Purchase Agreement ~~is attached hereto as **Exhibit C**. After the closing of the~~ . The Debtors and Wanxiang diligently worked to close the Sale Transaction, ~~the Debtors~~ and the Sale Transaction was consummated on March 24, 2014 [Docket No. 739].

At that time, the allocation of proceeds from the sale transaction was subject to material dispute among the Debtors, Hybrid, and the Committee. In particular, the parties had substantial disagreement with respect to the validity and perfection of liens securing certain inventory located outside the United States, the validity and perfection of liens securing intellectual property registered outside of the United States, and the value associated with such assets, as well as rights to adequate protection arising from the Hybrid DIP Order. Following the Sale Transaction, the Debtors therefore faced the material prospect of substantial litigation—with its associated expense, cost, and risk—among the Committee and Hybrid concerning the allocation of the Sale Proceeds.

The Debtors, the Committee, and Hybrid subsequently engaged in extensive, good-faith, arm's-length negotiations to resolve their respective positions. These efforts were ultimately a success, and were initially memorialized in the Plan Settlement Term Sheet executed on April 11, 2014 and filed with the Bankruptcy Court at [Docket No. 774], attached hereto as **Exhibit E**. The Plan Settlement Term Sheet has been implemented through the Debtors' Plan that the Debtors have now filed for approval and confirmation by the Bankruptcy Court with the support of both the Committee and Hybrid. Among other things, the terms of the Debtors' settlement with the Committee and Hybrid, as more fully set forth in the Plan, include: (1) the contribution of $20 million and 100% of the Equity Consideration to the Liquidating Trust for the benefit of the Debtors' general unsecured creditors;[3] (2) Hybrid's commitment to fund, from its recovery, any Administrative and Priority Claims to the extent they exceed the $8 million that Wanxiang paid to satisfy such claims as part of the Sale Transaction; provided that if Administrative and Priority Claims are less than $8 million, Hybrid's recovery will ~~retain possession of~~be increased by the ~~Remaining Assets.~~ difference; and (3) mutual releases among the parties.

The Debtors believe that the ~~Sale Transaction will maximize the value of their assets for the benefit of all creditors and clear the way for the Debtors to expeditiously complete their chapter 11 Plan process~~Plan is in the best interest of the Debtors' Estates, and therefore seek to confirm the Plan. The Plan provides for the implementation of the Liquidating Trust that will undertake the liquidation of the Debtors' Estates and administer the distribution of the Debtors' remaining assets and Sale Proceeds to the Debtors' creditors and stakeholders. Additionally, the Plan implements the Debtors' global compromise and settlement with Hybrid and the Committee. Accordingly, confirmation of the Plan will avoid the lengthy delay and significant cost—both of which would likely result in reduced stakeholder recoveries—that the Debtors believe litigation among Hybrid and the Committee would entail. Additionally, in the event that Hybrid prevailed, such litigation also posed significant risk to the potential recoveries of the Debtors' General Unsecured Creditors and the successful resolution of these chapter 11 cases. Specifically, if Hybrid were successful, General Unsecured Creditors would likely receive no recovery on account of their Claims, and the Debtors' Estates would likely be rendered administratively insolvent.

[3] Hybrid will not receive any distribution from these assets on account of any Senior Loan Claims or Related Party Note Claims that it holds. Additionally, while the Debtors believe Hybrid's agreement to cause the Equity Consideration to be contributed to the Liquidating Trust is a material component of the global settlement and compromise, the value of such Equity Consideration is necessarily speculative, and the Debtors believe it could potentially be zero. Accordingly, the calculations of estimated recoveries set forth in the table in Article II hereof do not reflect the value, if any, that may be attributable to the Equity Consideration.

~~The Debtors seek to confirm the Plan, which shall, among other things more fully set forth below and in the Plan, appoint a Liquidator that will govern the liquidation of the Debtors' Estates and the distribution of the Debtors' Remaining Assets, and any proceeds from the Sale Transaction to the Debtors' creditors and stakeholders.~~ Before soliciting acceptances of a proposed plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a chapter 11 plan. ~~This~~The Debtors submit this Disclosure Statement~~ is being submitted~~ in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors' corporate history and corporate structure, prior business operations, and prepetition capital structure and indebtedness (Article IV hereof);
- the events leading to the Chapter 11 Cases (Article IV hereof);
- the significant pleadings Filed in the Chapter 11 Cases~~, or that the Debtors contemplate Filing shortly after the date hereof, including the Sale Motion and DIP Motion (each as defined herein),~~ and certain relief granted by the Bankruptcy Court in connection therewith (Article V hereof);
- the classification and treatment of Claims and Interests under the Plan, including the Holders of Claims entitled to vote and the procedures for voting on the Plan (Article VI hereof);
- the method of distribution of any recoveries that may be available to certain Holders of Claims pursuant to the Plan, the process for resolving Disputed Claims, and other significant aspects of the Plan (Article VI hereof);
- the releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (Article VI hereof);
- the statutory requirements for confirming the Plan (Article VII hereof);
- certain risk factors that Holders of Claims should consider before voting to accept or reject the Plan and information regarding alternatives to Confirmation of the Plan (Article VIII hereof); and
- certain United States federal income tax consequences of the Plan (Article IX hereof).

In light of the foregoing, the Debtors believe this Disclosure Statement contains "adequate information" to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

The Plan and all documents to be executed, delivered, assumed, and/or performed in connection with the Consummation of the Plan, including the documents to be included in the Plan Supplement, are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan).

ARTICLE II.
TREATMENT OF CLAIMS AND INTERESTS

As set forth in Article~~–~~ III of the Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, all Claims and Interests (other than Administrative Claims, Priority Tax Claims, DIP Facility Claims, and Professional Fee Claims, which are unclassified Claims under the Plan) are classified into Classes for all purposes, including voting, Confirmation, and distributions pursuant to the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The table below summarizes the treatment of all unclassified Claims under the Plan. The treatment and the projected recoveries of unclassified Claims are described in summary form below for illustrative purposes only. To the extent that any inconsistency exists between the summary contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.

Unclassified Claim	Plan Treatment	Estimated Allowed Claims	Estimated Percent Recovery Under the Plan
Administrative Claims	Unimpaired	~~$3,585,915~~$50,000–$250,000	100%
Priority Tax Claims	Unimpaired	~~$1,366,186.32~~$350,000–$500,000	100%
DIP Facility Claims[4]	Unimpaired	$~~8,140,000~~0	~~0%~~N/A[5]
Professional Fee Claims[6]	Unimpaired	~~$3,345,000~~$[To Come]	100%

The table below summarizes the classification and treatment of all classified Claims and Interests against each Debtor (as applicable) under the Plan. The classification, treatment, and the projected recoveries of classified Claims are described in summary form below for illustrative purposes only, and are subject to material change. ~~**In particular**~~In particular, and as discussed in greater detail herein, the calculation of the estimated recoveries in the table below do not reflect the value, if any, that may be attributable to the Equity Consideration. **Additionally, recoveries available to the Holders of General Unsecured Claims are estimates and actual recoveries may materially differ based on, among other things, whether the amount of Claims actually Allowed against the applicable Debtor exceed the estimates provided below. In such an instance, the recoveries available to the Holders of General Unsecured Claims could be materially lower when compared to the estimates provided below. To the extent that any inconsistency exists between the summaries contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.**

Class	Type of Claim or Interest	Plan Treatment	Estimated Allowed Claims or Interests	Estimated Percent Recovery Under the Plan
1 (all Debtors)	Other Priority Claims	Unimpaired	~~$457,838.50~~$600,000–$750,000[7]	100~~%, unless otherwise agreed.~~[8]%
2 (all Debtors)	Senior Loan Claims	Impaired	$168,485,144.99	~~TBD~~[9]60%–66%

~~4 On November 24, 2013, the Debtors Filed the DIP Motion seeking authority to obtain secured postpetition financing. The Holders of the DIP Facility Claims have agreed to waive any such DIP Facility Claims in accordance with the terms of the Purchase Agreement and the Plan, subject to the satisfaction of certain conditions as set forth therein.~~

5 Each of the Debtors' DIP Facilities were paid in full upon consummation of the Debtors' Sale Transaction with Wanxiang and in accordance with applicable orders of the Court. The Debtors have continued to separately classify DIP Facility Claims pursuant to the Plan out of an abundance of caution.

6 The Professional Fee Claims set forth herein and in the Plan constitute the estimated unpaid Professional Fee Claims as of a hypothetical ~~February 14~~June 15, 2014 Effective Date, and this estimate ~~remains~~is nonbinding and is subject to material revision.

7 As discussed in greater detail in Article V.D hereof, the plaintiffs in the WARN Adversary Proceeding assert claims of $3,772,526, and assert that a certain portion of such claims are entitled to priority status. Because the Debtors believe such claims are without merit, the Debtors have ascribed zero value to such claims for purposes of the estimates set forth herein.

~~8 Article II.D of the Plan provides in full: "Notwithstanding anything to the contrary in the Plan, the failure to object to Confirmation of this Plan by a Holder of an Administrative Expense Claim, Priority Tax Claim, or Other Priority Claim against any Debtor shall be deemed to be such Holder's agreement to receive treatment for such Claim (to the extent such Claim is Allowed) that is different from that set forth in 28 U.S.C. § 1129(a)(9)."~~

~~9 Article III.C.2(c) of the Plan provides that: "Each Allowed Class 2 Claim shall be satisfied, compromised, settled, and released in full in exchange for the Purchaser Credit Bid."~~

Class	Type of Claim or Interest	Plan Treatment	Estimated Allowed Claims or Interests	Estimated Percent Recovery Under the Plan
3 (all Debtors)	Other Secured Claims	Unimpaired	~~UNKNOWN~~$0[10]	100%~~[11]~~
4 (all Debtors)	SVB Loan Secured Claims	Impaired	$~~6,595,762.89~~350,000	~~3~~100%
5A (Holdings)	General Unsecured Claims against Holdings	Impaired	~~$20,246,734.58~~$0	~~1%~~N/A
5B (Fisker Automotive)	General Unsecured Claims against Fisker Automotive	Impaired	~~$298,510,713.14~~$75,000,000–$250,000,000	~~1~~8%–26.7%
6 (all Debtors)	Warranty Claims	Impaired	$8,000,000	8%–26.7%
~~6~~7 (all Debtors)	Intercompany Claims	Impaired	N/A	0%
~~7~~8 (all Debtors)	Section 510(b) Claims	Impaired	N/A	0%
~~8~~9 (all Debtors)	Intercompany Interests	Impaired	N/A	0%
~~9~~10 (all Debtors)	Holdings Interests	Impaired	N/A	0%

ARTICLE III.
SOLICITATION AND VOTING PROCEDURES

A. *Solicitation Packages.*

On ~~November 25, 2013~~April [ ], 2014, the Debtors Filed a motion seeking entry of a proposed Disclosure Statement Order. For purposes of this Article III hereof, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Disclosure Statement Order. Pursuant to the Disclosure Statement Order, Holders of Claims who are entitled to vote to accept or reject the Plan as of ~~December 10, 2013~~[ ], 2014 (the "Voting Record Date~~")~~"), will receive appropriate solicitation materials (the "Solicitation Package"). The Solicitation Package may also be obtained: (a) from the Notice and Claims Agent by (i) visiting http://www.omnimgt.com/fiskerautomotive; (ii) writing to FA Liquidating Corp. (f/k/a Fisker Automotive, Inc~~.~~,), c/o Rust Consulting/Omni Bankruptcy, 5955 DeSoto Ave., Suite 100, Woodland Hills, ~~CA~~ California 91367; or (iii) calling 1.866.989.3043; or (b) for a fee via PACER (except for Ballots) at http://www.deb.uscourts.gov.

Pursuant to the Disclosure Statement Order, the Solicitation Package will include the following materials:

[10] Pursuant to the Sale Transaction, substantially all of the Debtors' assets were sold to the Purchaser subject to existing security interests that were senior to liens securing the Senior Loan. Therefore, prepetition creditors may no longer have recourse to the Debtors' assets with respect to such Claims, and therefore do not hold Other Secured Claims. In the event that the collateral securing any Other Secured Claim is still owned by the Debtors, in all likelihood the Liquidating Trust will surrender such collateral in full satisfaction of such Other Secured Claim.

~~[11] Article III.C.3(b) of the Plan provides that: "Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 3 Claim, each such Holder shall receive, at the Debtors' election: (i) payment in full in Cash of such Holder's Allowed Other Secured Claim with proceeds from the Senior Claims Assets; (ii) the Collateral securing such Holder's Allowed Other Secured Claim; or (iii) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired."~~

- the Disclosure Statement, as ~~provisionally~~ approved by the Bankruptcy Court (with all exhibits thereto, including the Plan and the exhibits to the Plan, if any);
- the Solicitation Procedures;
- notice of the Confirmation Hearing (the "Confirmation Hearing Notice");
- ~~the appropriate Ballot with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope;~~
- a cover letter from the Debtors: (a) describing the contents of the Solicitation Package; and (b) urging the Holders of Claims in each of the Voting Classes (as defined herein) to vote to accept the Plan;
- a ~~preliminary~~ letter from the Committee to Holders of General Unsecured Claims, substantially in the form attached as Exhibit ~~10~~3-B to the Disclosure Statement Order;
- the appropriate Ballot with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope;
- with respect to each Solicitation Package to be distributed to a Holder of Claims in Class 6, a Warranty Claimants Election Form; and
- any supplemental documents the Debtors may File with the Bankruptcy Court or that the Bankruptcy Court orders to be made available.

Certain Holders of Claims may not be entitled to vote because they are Unimpaired or are otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code. In addition, certain Holders of Claims may be Impaired but are receiving no distribution under the Plan, and are therefore deemed to reject the Plan and are not entitled to vote. Such Holders will receive only the Confirmation Hearing Notice and a non-voting status notice.

B. *Voting Rights.*

The Disclosure Statement Order ~~would~~ also established the Voting Record Date for purposes of determining, among other things, which Holders of Claims and Interests are eligible to vote on the Plan. The Debtors are only distributing a Solicitation Package, including this Disclosure Statement and a Ballot to be used for voting to accept or reject the Plan, to the Holders of Claims or Interests entitled to vote to accept or reject the Plan as of the Voting Record Date. If, as of the Voting Record Date, you are a Holder of a Claim in Class 2 (Senior Loan Claims), Class 4 (SVB Loan Secured Claims), Class 5A (General Unsecured Claims against Holdings), ~~or~~ Class 5B (General Unsecured Claims against Fisker Automotive), or Class 6 (Warranty Claims) (collectively, the "Voting Classes"), you may vote to accept or reject the Plan in accordance with the Solicitation Procedures by completing the Ballot and returning it in the envelopes provided. If your Claim or Interest is not included in one of these Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package.

~~Notwithstanding the immediately preceding paragraph, any Holder of a Claim in a Voting Class, including any Holder of a Claim in a Voting Class that the Debtors listed in their Schedules as holding a contingent, unliquidated, and/or disputed Claim, that Files a Proof of Claim before 5:00 p.m., prevailing Eastern Time, on the date that is seven calendar days before the Voting Deadline shall receive a Solicitation Package and be entitled to vote on the Plan on account of such Claim subject, further, to the Debtors' rights to dispute such Claim as provided in the Solicitation Procedures. The Debtors' Schedules (which may be amended from time to time) [Docket Nos. 93–96] as well as a proof of claim form may be obtained free of charge: from the Notice and Claims Agent by (a) visiting http://www.omnimgt.com/fiskerautomotive; (b) writing to Fisker Automotive, Inc., c/o Rust Consulting/Omni Bankruptcy, 5955 DeSoto Ave., Suite 100, Woodland Hills, CA 91367; or (c) calling 1.866.989.3043.~~

Each Class of Claims entitled to vote on the Plan will have accepted the Plan if: (a) the Holders of at least two-thirds in dollar amount of the Allowed Claims actually voting in each Class for each Debtor, as applicable, vote to accept the Plan; and (b) the Holders of more than one-half in number of the Allowed Claims actually voting in each Class for each Debtor, as applicable, vote to accept the Plan.

C. *Voting Deadline.*

The Disclosure Statement Order establishesd a deadline to vote on the Plan of ~~December 30, 2013~~[____], 2014, at ~~5~~4:00 p.m., prevailing Eastern Time (the "Voting Deadline"). To be counted as a vote to accept or reject the Plan, a Ballot must be properly executed, completed, and delivered, whether by first~~-~~ class mail, overnight delivery, or personal delivery, so that the Ballot is **actually received** by the Notice and Claims Agent no later than the Voting Deadline.

D. *Voting Procedures.*

The Debtors have retained Rust Consulting/Omni Bankruptcy to serve as the Notice and Claims Agent. The Notice and Claims Agent is available to answer questions, provide additional copies of all materials, oversee the voting process, and process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan.

BALLOTS
To be counted, all Ballots must be **actually received** by the Notice and Claims Agent by the Voting Deadline, which is ~~December 30, 2013~~[_____], 2014, at ~~5~~4:00 p.m., prevailing Eastern Time, at the following address: **FA Liquidating Corp. (f/k/a Fisker~~-~~ Automotive, Inc~~.~~ ~~-~~)** c/o Rust Consulting/Omni Bankruptcy 5955 DeSoto Ave., Suite 100 Woodland Hills, ~~CA~~California 91367 If you have any questions on the procedure for voting on the Plan, please call the Debtors' restructuring hotline maintained by the Notice and Claims Agent at: 1.866.989.3043

More detailed instructions regarding the procedures for voting on the Plan are contained on the Ballots distributed to Holders of Claims that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first~~-~~ class mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, so that the Ballots are **actually received** by the Notice and Claims Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Any Ballot that is properly executed by the Holder of a Claim entitled to vote that does not clearly indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted. Ballots received by facsimile or by electronic means will not be counted.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one Ballot for each Claim held by such Holder. By signing and returning a Ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other Ballots with respect to such Claim have been cast or, if any other Ballots have been cast with respect to such Claim, such earlier Ballots are superseded and revoked.

All Ballots will be accompanied by postage prepaid return envelopes. It is important to follow the specific instructions provided on each Ballot, as failing to do so may result in your Ballot not being counted.

E. *Plan Objection Deadline.*

The Disclosure Statement Order established ~~December 30, 2013~~[_____], 2014, at 4:00 p.m., prevailing Eastern Time, as the deadline to object to the Confirmation of the Plan (the "Plan Objection Deadline"). All objections to the Plan must be Filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Disclosure Statement Order and Solicitation Procedures so that they are **actually received** on or before the Plan Objection Deadline. The Debtors believe that the Plan Objection Deadline affords the Bankruptcy Court, the Debtors, and other parties in interest reasonable time to consider any objections to the Plan before the Confirmation Hearing.

F. *Confirmation Hearing.*

Assuming the requisite acceptances are obtained for the Plan, the Debtors intend to seek Confirmation of the Plan at the Confirmation Hearing. The Disclosure Statement Order scheduled the Confirmation Hearing to commence on ~~January 3,~~[_____], 2014, at ~~9:30 a.~~[_]:[_]0 [_].m., prevailing Eastern Time, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom No. 3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment Filed with the Bankruptcy Court and served on the entities who have Filed objections to the Plan, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, before, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

ARTICLE IV.
THE DEBTORS' BACKGROUND

A. *Overview of the Debtors' Corporate History and Business Operations.*

1. The Debtors' History and Operations.

The Debtors were formed in 2007 with the goal of designing, engineering, and manufacturing premium plug-in hybrid electric vehicles ("PHEVs"). To this end, the Debtors developed an electric vehicle with extended range, which they trademarked as "EVer." The Debtors established an international reputation as a leading developer of premium extended range PHEVs. The Debtors' Karma sedan is the world's first environmentally responsible luxury PHEV, and was developed by a highly skilled team of automotive designers and engineers located in the United States. The Karma sedan was also the centerpiece of the Debtors' operations and won awards for excellence, innovation, and environmental responsibility from Time magazine (identifying the Karma as one of the "Green Design 100" in 2009), Top Gear Magazine (identifying the Karma as "Luxury Car of the Year" in 2011), and Automobile Magazine (identifying the Karma as "Design of the Year" in 2012).

The Karma sedans were formerly assembled by Valmet Automotive, Inc. ("Valmet") in Uusikaupunki, Finland. The Debtors planned, however, to build future vehicles at a company-owned and -operated assembly facility in the United States to improve volumes and to leverage their design, engineering, and technical expertise.

To that end, in July 2010, the Debtors acquired a manufacturing facility covering approximately 3.2 million square feet located on approximately 142 acres at 801 Boxwood Road, Wilmington, Delaware (the "Delaware Facility"). The Debtors purchased the Delaware Facility through the General Motors bankruptcy proceedings for a cash purchase price of approximately $21 million. The Delaware Facility is equipped with a number of technical and utility systems for automotive manufacturing, including a paint facility, powerhouse capability, a conveyor system, a wastewater treatment facility, and an emissions abatement system. Due to the events and circumstances described herein, the Debtors never conducted active operations at the Delaware Facility.

The Debtors formerly obtained components and systems for the Karma's assembly through a number of third-party supply relationships. For example, the Debtors had a licensing and tool use agreement with a General Motors affiliate. Through this relationship, the Debtors were able to purchase parts and components directly from suppliers that also sold to General Motors and use General Motors tooling to manufacture other parts or components. In addition, the Debtors relied on a number of "single source" suppliers for particular components. One such "single source" supplier was A123 Systems, Inc.[12] ("A123"), with whom the Debtors contracted in January 2010, to act as the exclusive manufacturer of the Karma sedan's high-voltage battery pack, as discussed more fully below.

The Debtors began delivering the Karma sedan for sale to the general public in October 2011. This milestone was the culmination of the Debtors' four-year effort to bring the Karma sedan from design, to concept car, to finished product ready for the showroom floor. The Karma sedan retailed for approximately $100,000 to $120,000, subject to consumer specifications and corresponding purchase price adjustments. The Debtors assembled approximately 2,700 Karma sedans, and, as of the Petition Date, approximately 1,800 Karma sedans had been sold to individual customers.

Prior to the Debtors' suspension of active operations, the Debtors also planned to develop and produce another platform, the "N" or "Nina Platform," which included their prototype Atlantic sedan. The Debtors made significant progress towards developing the N Platform, including entering into a number of additional supply and service agreements with third-party vendors and suppliers. These agreements included an engine purchase, supply, and development agreement with Bayerische Motoren Werke Aktiengesellschaft, or BMW. The Debtors first unveiled the Atlantic sedan at the April 2012 New York Auto Show, but, for the reasons discussed herein, never engaged in active production of the Atlantic sedan or other N Platform derivatives.

As discussed in greater detail below, the Debtors were ultimately unable to achieve their operational and financial goals due to a combination of factors, including supply chain disruptions, design delays associated with Karma development, and the Debtors' inability to access additional or incremental liquidity. The Debtors ceased Karma production indefinitely following a previously scheduled seasonal shutdown that began in July 2012. Since that time, the Debtors have been obliged to contract both their operational footprint and workforce given, among other reasons, the Debtors' inability to access sufficient liquidity to maintain operations at a normalized level. The Debtors have not conducted active operations since the cessation of Karma production in 2012 and their limited access to liquidity since early 2013. Since that time, the Debtors have conducted only the limited business operations necessary to preserve the value of their Estates while they worked to pursue a viable restructuring strategy.

2. The Debtors' Sales Network and Customers.

During prior, normal-course operations, the Debtors sold the Karma sedan in the United States and Canada through a network of independent retailers located throughout the United States and Canada (each, a "Retailer"). In addition, the Debtors sold the Karma sedan in Europe, the Middle East, and China through local, independent distributors (each, a "Distributor"). Typically, Retailers and Distributors would purchase vehicles from the Debtors and then hold the vehicles for sale to the general public. A "Retail Agreement" or "Distributorship Agreement" typically governed each relationship among the parties.

The Retail Agreements and Distributorship Agreements generally provided that the Retailers and Distributors would purchase vehicles directly from the Debtors and then hold those vehicles for sale in an assigned geographic territory. In certain circumstances, these Retailers and Distributors hold the right to compel the Debtors to repurchase their vehicles. Additionally, while the Retailers and Distributors bear primary responsibility for performing warranty repairs associated with sold vehicles, these warranty repairs may be subject to reimbursement

[12] A123 Systems, Inc. has since changed its name to B456 Systems, Inc.

from the Debtors. ~~The Debtors estimate that as of the Petition Date, such warranty claims exceed $50 million in the aggregate, and the actual balance of such claims may be substantially in excess of such estimate~~Parties in interest timely Filed Proofs of Claim in the Debtors' chapter 11 cases claiming in the aggregate approximately $8 million on account of such warranty claims, and the Debtors are continuing to review these Proofs of Claim to determine whether any such warranty Claims should be Allowed Claims, and if so in what amount.

~~Due to~~In connection with the cessation of their normal-course operations since the Debtors ceased Karma production in 2012~~ and their lack of resources~~, the Debtors have been unable to continue supporting their dealer network.~~ Accordingly, the Debtors no longer have an active, operating network of independent Retailers and Distributors.~~

3. The Debtors' Employees.

As of the Petition Date, the Debtors employed approximately 21 full-time, non-union employees, located primarily at the Debtors' ~~Anaheim,~~ California location. These employees are primarily tasked with engineering, product development, financial, and reporting functions. The Debtors' current staffing level reflects significant reductions in force and voluntary attrition that occurred in the spring of 2013 and in the months preceding the Petition Date.

Specifically, the Debtors' largest reduction in force took place on approximately April 5, 2013, when the Debtors were obliged to make the difficult decision to eliminate approximately 160 U.S. employee positions. The Debtors made this difficult choice only after carefully considering their available liquidity and strategic alternatives, including with respect to the effect of issuing ~~WARN notices~~notices under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. and the California Labor Code § 1400 et seq. amidst their ongoing marketing and financing processes. The April 5 reduction in force and all subsequent reductions in force were largely driven by the Debtors' limited available liquidity and acute cash needs. The Debtors carefully implemented their reductions in force to minimize the impact on affected employees while maintaining the essential human capital necessary to preserve value and facilitate the orderly administration of these Chapter 11 Cases.

Nevertheless, shortly after the April 5 reduction in force, certain complaints were filed alleging that the Debtors violated U.S. and California law by providing deficient WARN notices, which were subsequently consolidated into a class action lawsuit against the Debtors captioned Etzelsberger, et al. v. Fisker Automotive, Inc., Case No. 13-00540 CJC (RNB) (C.D. Cal.) (the "WARN Litigation"). On August 15, 2013, the court certified the class of approximately 160 former Fisker employees. On December 3, 2013, the Debtors filed a Suggestion of Bankruptcy informing the district court in California that the case was stayed pursuant section 362(a) of the Bankruptcy Code. The WARN Litigation was pending as of the Petition Date.[13] Additionally, on November 26, 2013, a class action adversary proceeding complaint was filed against the Debtors captioned Etzelsberger, et al. v. Fisker Automotive Holdings, Inc., Adv. Proc. No. 13-52517 (KG) (Bankr. D. Del.) (the "WARN Adversary Proceeding"). The WARN Adversary Proceeding ~~—~~ filed by the same plaintiff's attorneys as the WARN Litigation — alleges similar violations as the WARN Litigation and seeks, among other things, general and priority unsecured claims against the Debtors' Estates. The WARN Adversary Proceeding is addressed at length below.

4. Fisker GmbH.

Fisker Automotive GmbH ("Fisker GmbH"), a non-Debtor in these cases, is a wholly owned subsidiary of Fisker Automotive, Inc. organized under the laws of Germany. Fisker GmbH's office was located in Munich, Germany, and provided international sales and marketing services to the Debtors. Fisker GmbH employed approximately five individuals in its Munich office. In the months leading up to the Chapter 11 Cases,

[13] The Debtors have asserted various defenses in the WARN Litigation, including, among other things, the faltering company exception. The Debtors reserve all rights with respect to the WARN Litigation, the WARN Adversary Proceeding (as defined herein) and any Claims Filed in relation to either the WARN Litigation or the WARN Adversary Proceeding.

Fisker GmbH's operations were wound down, and, as of the Petition Date, Fisker GmbH had no active operations. On April 16, 2014, the Debtors filed a motion [Docket No. 796] seeking authority from the Bankruptcy Court to take steps to authorize the dissolution of Fisker GmbH.

5. The Debtors' Prepetition Corporate Structure.

The Debtors are privately held. FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.), which owns 100 percent of the equity interests of FA Liquidating Corp. (f/k/a Fisker Automotive, Inc.), is owned by a diverse group of venture capital, private equity, and sovereign wealth funds, as well as private individuals. The equity capital of FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.) consists of common stock and seven series of convertible preferred stock. A diagram of the Debtors' prepetition corporate structure is attached hereto as **Exhibit B**.

B. *Overview of the Debtors' Prepetition Capital Structure.*

As of the Petition Date, the Debtors had approximately $203.2 million in indebtedness and related obligations outstanding, consisting of the Senior Loan, the SVB Working Capital Facility, the DEDA Loan, and the Related Party Notes. As of the Petition Date, the obligations outstanding under these facilities, excluding accrued interest, can be summarized as follows:

	$ millions
Senior Loan	$168.5
SVB Working Capital Facility	$6.6
DEDA Loan	$12.5
Related Party Notes	$15.6
	Total $203.2

In addition, the Debtors have obligations under a number of contractual and vendor related agreements, including with respect to various prepetition supply and assembly agreements. These obligations are discussed in turn.

1. The Senior Loan.

The Debtors and DOE (as predecessor in interest to Hybrid with respect to the Senior ~~Secured Lender~~Loan) are parties to the Senior Loan Agreement, which arranged for the Debtors to receive loans from the federal government in the aggregate amount of up to approximately $530 million, of which the Debtors ultimately borrowed approximately $192.3 million.[14] Obligations arising under the Senior Loan Agreement are secured by a first priority lien on ~~substantially all~~certain of the Debtors' assets, including, among other things, a first priority security interest in a debt service reserve account (the "Debt Service Reserve Account") established pursuant to the Senior Loan Agreement, which ~~is~~was controlled by ~~the Senior Lender~~DOE and which formerly held approximately $20 million in restricted cash. As set forth more fully below, the Debtors and DOE engaged in substantial, good-faith negotiations during the spring of 2013 regarding the Debtors' access to funds held in the Debt Service Reserve Account following certain defaults by the Debtors under their lending arrangement with DOE. However, and despite significant, good-faith efforts by the parties, these negotiations were ultimately unsuccessful, and in March 2013, DOE applied the funds held in the Debt Service Reserve Account to principal outstanding under the Senior Loan. As of the Petition Date, approximately $168.5 million in principal remained outstanding on the Senior Loan, and funding is no longer being provided under the Senior Loan Agreement.

[14] The Senior Loan Agreement was entered into pursuant to the Advanced Technology Vehicles Manufacturing Incentive program, as set forth at section 136 of the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (codified as 42 U.S.C. § 17013).

As discussed below, DOE subsequently conducted a marketing process for the purchase of DOE's interests in the Senior Loan and held a competitive auction for such interests on October 11, 2013. ~~An affiliate of the Purchaser emerged as~~Hybrid was the winning bidder at th~~e~~at auction, and the sale of DOE's interest in the Senior Loan Agreement ultimately closed on November 22, 2013, at which time ~~the Purchaser's affiliate~~Hybrid succeeded to DOE's position as the Debtors' ~~Senior Secured Lender~~senior secured lender.

2. The SVB Loan.

Fisker Automotive~~, Inc.~~ as borrower, ~~Fisker Automotive~~ Holdings~~, Inc.~~ as obligor, and SVB as lender, are parties to the SVB Loan Agreement, a term loan and asset-based revolving credit facility in the aggregate amount of $21.0 million. As of the Petition Date, a term loan of approximately $6.6 million remained outstanding pursuant to the SVB Loan Agreement, and SVB is no longer providing the Debtors funding under the SVB Loan Agreement. Obligations arising under the SVB Loan Agreement are also secured by a lien on substantially all of the Debtors' personal property, subject to certain exceptions. ~~As more fully described in the DIP Motion, the respective rights, obligations, and priorities held by the Senior Secured Lender and SVB with respect to the collateral securing the obligations under both the Senior Loan Agreement and the SVB Loan Agreement are set forth in a collateral agency agreement among the parties.~~

3. The DEDA Agreements.

The Debtors and the Delaware Economic Development Authority ("DEDA"), a body corporate and politic constituted as an instrumentality of the State of Delaware, are parties to the DEDA Loan Agreement, which provided for a $12.5 million interest-free loan to the Debtors, the proceeds of which were to be used to fund the Debtors' infrastructure improvements and upgrades at the Delaware Facility. As of the Petition Date, approximately $12.5 million remained outstanding pursuant to the DEDA Loan Agreement. Obligations arising under the DEDA Loan Agreement are secured by a security interest in substantially all of the Debtors' personal and real property, including the Delaware Facility, subject to certain exceptions. Pursuant to an intercreditor agreement, DEDA's security interest is subordinate to that of ~~DOE~~Hybrid and SVB.

Fisker Automotive~~, Inc.~~ and DEDA are also parties to the DEDA Grant Agreement, pursuant to which DEDA granted up to $9.0 million to Fisker Automotive~~, Inc.~~ to be used to offset utility costs incurred while the Debtors renovated and upgraded the Delaware Facility. DEDA provided approximately $7.5 million in funding pursuant to the DEDA Grant, but is no longer providing the Debtors with additional funding. All or a portion of the DEDA Grant will convert to an interest-free loan upon the occurrence of certain conditions, including the Debtors' failure to employ at least 1,495 fulltime employees at the Delaware Facility on March 1, 2015, or upon the occurrence of an event of default under the DEDA Loan Agreement.

4. Related Party Notes.

As described above, without access to additional funding under the Senior Loan Agreement and following the Debtors' inability to obtain DOE's consent to use cash held in the Debt Service Reserve Account, the Debtors had an immediate and critical need for liquidity. To address their urgent operating cash requirements, the Debtors entered into a series of unsecured loans totaling approximately $15.6 million, in the aggregate (exclusive of accrued interest), evidenced ~~-~~by various promissory notes (the "Related Party Notes") in favor of the Related Party Lenders. The Related Party Lenders include FAH Loan Purchase Fund, LLC, an affiliate of ~~the Purchaser.~~Hybrid. The Debtors used proceeds from the Related Party Notes for prepetition general corporate purposes while the Debtors pursued a restructuring strategy to preserve and maximize value.

5. Other Secured Claims.

The Debtors' prepetition capital structure also included certain claims that may be secured by either security agreements or statutory or possessory liens. For example, Valmet h~~o~~eld~~s~~ certain work in progress and other inventory formerly owned by the Debtors and has asserted its right to liquidate this inventory to satisfy claims that may be owing to Valmet. Certain warehousemen and other parties have also asserted rights to foreclose on

possessory or statutory liens with respect to goods in their possession or control. Certain of these parties, including Valmet, began exercising allegedly available remedies against the Debtors before the Petition Date.

Pursuant to the Sale Transaction, substantially all of the Debtors' assets were sold to the Purchaser subject to existing security interests that were senior to liens securing the Senior Loan. Therefore, prepetition creditors may no longer have recourse to the Debtors' assets with respect to such Claims, and therefore do not hold Other Secured Claims. In the event that the collateral securing any Other Secured Claim is still owned by the Debtors, in all likelihood the Liquidating Trust will surrender such collateral in full satisfaction of such Other Secured Claim.[15]

C. *Pending Litigation Proceedings.*

The Debtors are parties to a significant number of lawsuits, legal proceedings, collection proceedings, and claims arising out of their business operations. As of the Petition Date, many of these proceedings are in various stages of default or pending default as the Debtors ha~~ve~~d a limited ability to defend such actions due to, among other things, their limited financial resources.

In October 2013, a qui tam proceeding was filed against the Debtors by a private citizen on behalf of the United States, captioned United States, ex rel. Wiedner v. Fisker Automotive, Inc., Case No. 12-07847 (S.D.N.Y.). The qui tam complaint alleges, among other things, claims arising under the False Claims Act, 31 U.S.C. § 3729 et seq., in connection with the Senior Loan. ~~The Debtors understand that the United States Department of Justice decided not to prosecute this action, and it is unclear whether the private citizen will prosecute the action himself. The Debtors reserve all rights with respect to the allegations and assertions set forth in the *qui tam* complaint~~This action was voluntarily dismissed without prejudice on December 10, 2013.

Lastly, as discussed above, the Debtors are ~~subject~~parties to the pending WARN~~–~~ Litigation and the WARN~~-~~ Adversary Proceeding relating to the Debtors' reduction in force that occurred in April 2013.

D. *The Debtors' Board of Directors and Executives.*

Set forth below are the names, positions, and biographical information of the Debtors' board of directors, as well as the Debtors' current key executive officers, in each case as of the Petition Date. The board of directors oversees the business and affairs of the Debtors.

Name	Position
Barry W. Huff	Director
Bernard L. Zuroff	Director
Marc Beilinson	Chief Restructuring Officer

Barry W. Huff. Mr. Huff brings to the Board four decades of international financial experience with a deep understanding and development of thought leadership of Deloitte LLP. As Vice Chairman from 1995 to 2008, he oversaw and directed accounts for the multi-billion dollar accounting firm's largest clients. Mr. Huff's extensive automotive auditing experience as Deloitte's Lead Client Service Partner and Advisory Partner to General Motors and Advisory Partner for tier-one automotive suppliers PPG Industries and Meritor.

Bernard L. Zuroff. Mr. Zuroff brings to the Board nearly thirty years of professional experience, including significant leadership and management experience relating to financial restructurings and other distressed situations. Mr. Zuroff previously served on the Board of Trustees and the Independent Committee of the Board of Trustees for

[15] Parties have filed proofs of claim asserting Other Secured Claims totaling approximately $12.6 million.

Inn~~K~~keepers USA, Inc. during its chapter 11 reorganization. Mr. Zuroff also previously served as the Group Vice President, General Counsel, and Secretary of McLeod USA Inc. from August 2006 to February 2008 where he, among other things, negotiated and completed a $120 million debt restructuring. Mr. Zuroff has also served in management and legal roles at ICG Communications, Inc., Resolution Trust Corporation, and Gorsuch, Kirgis LLC.

Marc Beilinson. Mr. Beilinson is the Managing Partner of Beilinson Advisory Group, LLC, a financial restructuring and hospitality advisory group that specializes in assisting distressed companies. Mr. Beilinson has more than 30 years of experience advising clients with respect to corporate reorganizations and restructurings, including experience in both the legal and financial-advisory space. Mr. Beilinson previously served as the Chief Restructuring Officer/CEO of Eagle Hospitality and Innkeepers USA. Mr. Beilinson also currently serves on the Board of Directors and Audit Committees of Athene Annuity, MF Global Assurance Company, and Caesars Acquisition Company, and has previously served on the Board of Directors of Wyndham Hotels, Apollo Real Estate Commercial Mortgage Inc., Innkeepers USA, and the University of California Davis School of Law. Mr. Beilinson previously practiced law as a restructuring professional for over 25~~–~~ years and was previously a shareholder at Pachulski, Stang, Ziehl & Jones.

E. *Events Leading to the Chapter 11 Cases.*

Since their inception, the Debtors pursued a strategy committed to the design, development, engineering, and production of high performance and environmentally responsible PHEVs. This strategy was reflected by the Debtors' loan agreements, through which the Debtors were obliged to, among other things, achieve sales in excess of 11,000 vehicles less than five years from their initial inception and to employ approximately 1,500 full-time employees in automobile manufacturing in the United States. The Debtors' ability to achieve their original sales and production goals, however, was limited by a combination of negative press, lingering effects of the global financial recession, unforeseen business disruptions, and liquidity shortfalls, among other factors.

1. Challenging Operating Environment.

The Debtors, like most OEMs, were responsible for the overall engineering, design, and development of the Karma sedan. In this process, the Debtors leveraged the expertise of a wide range of suppliers and service providers to complete the engineering work and to manufacture the thousands of parts and components necessary to complete each Karma sedan. In addition, and as noted above, Karma assembly was contracted to Valmet—although, the Debtors' business plan contemplated that assembly operations could ultimately be brought "in house" to the Delaware Facility. As a result, Karma production remained dependent on the seamless interaction of suppliers located across North America, Europe, and Asia.

Building the Fisker platform, supply chain, and network of Retailers and Distributors from scratch ultimately delayed the initial Karma launch from 2009 until 2011. This delay created significant challenges with respect to the Debtors' February 2012 deadline to sell more than 11,000 Karma sedans at an average selling price of $87,900, as required by the Senior Loan Agreement.[16] The Debtors further believe that sales were adversely affected by negative press with respect to Karma performance, the Debtors' existing liquidity position, and the A123 battery recall.

In particular, these challenges were exacerbated by severe complications arising from the Debtors' relationship with A123. As noted above, A123 was formerly the exclusive high-voltage battery pack manufacturer for the Karma sedan. The Debtors encountered a number of issues with the performance of the A123 battery packs, and, among other things, had to initiate a voluntary safety recall almost immediately following the Karma's launch. A123 later suspended its production of Karma battery backs and sought bankruptcy protection in October 2012. During the course of the bankruptcy, A123 rejected its battery pack supply agreement with the Debtors, leaving the

16 As noted above, as of the Petition Date approximately 1,800 Karma sedans have been sold to individual customers.

Debtors without a supplier of high-voltage battery packs. Facing these challenges, the Debtors have not restarted Karma production following a previously scheduled seasonal shutdown that began in July 2012.

The Debtors suffered an additional loss on October 29, 2012, when Hurricane Sandy and its related windstorms, storm surges, and floods, destroyed approximately 338 Karma sedans located at the port in Newark, New Jersey. These vehicles represented substantially all of Fisker's then-available Karma inventory in the United States. The Debtors' insurance carriers denied coverage for the loss. After filing suit, the Debtors settled their coverage claims for an amount far less than the approximately $30 million wholesale value of the destroyed vehicles in order to avoid the risk and cost of protracted litigation with their insurance carriers.

2. Prepetition Covenant Defaults and Capital-Raising Efforts.

As noted above, the Senior Loan Agreement requires the Debtors to achieve various performance milestones, including the Debtors' obligation to sell 11,000 Karma sedans by February 29, 2012. Fisker did not achieve certain of these milestones in light of, among other things, the performance challenges discussed above. The Debtors' operating position was further complicated in 2011 when DOE informed the Debtors that it would not honor future disbursement requests pursuant to the Senior Loan Agreement, and since that time all funding under the Senior Loan ceased. The Debtors subsequently engaged in good-faith negotiations with DOE regarding modification or waiver of certain conditions imposed by the Senior Loan Agreement, through which the Debtors agreed to raise additional equity capital to fund operations and improve the Debtors' overall capitalization. Since DOE suspended its funding commitments in 2011, the Debtors raised approximately $500 million of new capital in three separate equity raises while continuing negotiations with DOE.

3. Prepetition Restructuring Efforts.

Commencing in early 2012, the Debtors began exploring strategic alternatives with respect to their business and operations. To facilitate this process, the Debtors retained Evercore Group L.L.C. ("Evercore") on two separate occasions to explore strategic alliances, junior equity investment opportunities, or, potentially, a going-concern sale transaction with one or more parties with respect to the Debtors' business. Evercore's initial efforts led to the exchange of several letters of intent between the Debtors and a major automotive OEM with respect to a potential strategic alliance. Despite substantial negotiations, including meetings with the Debtors' management, however, the parties were ultimately unable to agree to a transaction and terminated further discussions in July 2012.

The Debtors then reengaged Evercore in December 2012 to search more broadly, and in early 2013 Evercore engaged a worldwide universe of more than 50 prospective strategic and financial investors through a structured process designed to publicize the opportunity and induce interest in a transaction. Again, management was actively involved with discussions with potentially interested parties, and approximately thirteen parties executed non-disclosure agreements and accessed an extensive electronic data room. Of these parties, two submitted preliminary non-binding proposals; however, the Debtors were again unable to reach definitive agreements with any of the potential purchasers, due to, among other things, the Debtors' inability to~~, among other things~~: (a) secure additional financing from DOE, the Debtors' ~~Senior Secured Lender~~senior secured lender at the time, to finance a potential sale transaction; (b) reach an agreement with DOE regarding the consensual use of cash collateral to fund a potential chapter 11 case; or (c) secure third-party financing to fund a potential chapter 11 sale process.

The Debtors then sought to market their assets for sale in three discrete groups, with the goal of reaching agreements with one or more bidders that would serve as stalking horses for a sale process in chapter 11 that would be funded by either DOE or third parties. Based on information gleaned from their interactions in the prior processes, Evercore re-solicited interest on this basis from fifteen parties. Again, however, the Debtors were unable to reach definitive agreements with any parties, again, largely due to funding issues.

In addition to these efforts to locate a transaction partner, the Debtors also took substantial additional steps to address their liquidity position and preserve operational stability as much as reasonably possible. The Debtors engaged restructuring advisors to facilitate the Debtors' efforts to preserve liquidity and explore various restructuring options, while permitting executive management to continue to focus on the Debtors' overall business

plan and strategic alternatives. The Debtors' management team, restructuring advisors, and Evercore also continued to negotiate with DOE to provide the Debtors with continued access to liquidity on a prepetition basis.

Despite their extensive efforts to preserve cash and execute on a restructuring transaction outside a chapter 11 process, no transaction with investors or purchasers materialized, and the Debtors' liquidity position continued to deteriorate. As a result, the Debtors made the difficult decision to implement nonpaid employee furloughs and a series of headcount reductions beginning during the spring of 2013. Simultaneously, the Debtors engaged in negotiations with DOE regarding the use of DOE's cash collateral to fund a restructuring process. However, and as noted above, these efforts were unsuccessful despite good-faith efforts by the parties, and DOE ultimately applied the cash held in the Debt Service Reserve Account to principal outstanding on the Senior Loan. This left the Debtors with less than $100,000 in cash.

Since that time, and prior to the Petition Date, the Debtors primarily subsisted on the limited, week-to-week funding from the Related Party Notes. Faced with such limited resources, the Debtors were forced to effectively hibernate their business in order to preserve cash and cut expenditures. While the Debtors continued to explore viable restructuring alternatives that would maximize the value of the Debtors' Estates, including actively seeking and negotiating with potential stalking horse partners, the Debtors' efforts were ultimately unsuccessful due to, among other things, the Debtors' inability to obtain funding.

Meanwhile, DOE conducted a public marketing and auction process for the purchase of its interests in the Senior Loan. The DOE marketing and auction process commenced on September 17, 2013, when DOE publicized its plan to sell its interests through a competitive auction. The Debtors actively facilitated diligence and engaged with DOE throughout this process, and DOE received over twenty written expressions of interest in performing due diligence and participating in the auction process. ~~Those expressing interest were contacted by DOE's financial advisor, Houlihan Lokey Capital, Inc. ("Houlihan"), and over half of the potentially interested parties executed non-disclosure agreements with DOE and the Debtors. Approximately half of these potentially interested parties that executed non-disclosure agreements ultimately submitted binding bids before the October 7, 2013 bid deadline, and Houlihan conducted the final, live phase of the auction on October 11, 2013. An affiliate of the Purchaser was the successful bidder~~Ultimately, Hybrid emerged as the successful bidder during the final, live phase of the auction held on October 11, 2013, and the parties closed the loan purchase on November 22, 2013.

~~Recognizing that the Senior Loan Purchase would provide the Debtors with an opportunity to move forward with their restructuring process, the Debtors entered into extensive arm's-length discussions with the Purchaser regarding the Purchaser's potential acquisition of certain of the Debtors' assets through a credit bid of all or part of the Senior Loan. These discussions were led by the Debtors' Chief Restructuring Officer and restructuring professionals, and were subject to the oversight of the Debtors' independent director. These discussions were productive and culminated in the parties' entry into the Purchase Agreement, which is more fully described below.~~

ARTICLE V.
EVENTS OF THE CHAPTER 11 CASES

A. *First Day Pleadings and Other Case Matters.*

1. First and Second Day Pleadings.

~~To minimize the adverse effects of the commencement of the Chapter 11 Cases on the Debtors' ability to timely effectuate the Sale Transaction and Plan process, as well as any other actions related thereto, the~~The Debtors Filed on, or shortly after, the Petition Date certain motions and applications requesting various types of relief summarized below. ~~The Debtors believe that the~~The relief sought in these "first day" and "second day" pleadings ~~is necessary to enable~~enabled the Debtors to preserve value and efficiently ~~implement the Sale Transaction and Plan process, as well as any other actions related thereto with minimal disruption and delay~~administer these chapter 11 cases. The Filed first and second day pleadings include the following:

- Hybrid DIP Facility and Cash Collateral. By this motion (the "Hybrid DIP Motion"), the Debtors requested interim and final authorization to enter into the Hybrid DIP ~~Agreement~~Facility by and

among Fisker Automotive as borrower, Holdings as guarantor, and ~~an affiliate of the Purchaser~~Hybrid (in such capacity, the "Hybrid DIP Lender"). The ~~DIP Lender has agreed to provide the DIP Facility of up to an aggregate principal amount of $1.7 million, on an interim basis, and increasing to $8.14 million on a final basis of DIP Loans subject to the terms and conditions of the DIP Agreement. On November 26, 2013, the~~ Bankruptcy Court granted ~~interim~~the relief ~~to enter into the DIP Facility, authorized the Debtors to borrow up to an aggregate principal amount of $1.7 million of DIP Loans, and scheduled a final hearing related thereto~~requested by the Hybrid DIP Motion on a final basis on January 24, 2014 [Docket No. ~~67~~521] (the "~~Interim~~Hybrid DIP Order"). ~~The proceeds from the DIP Facility will be used by the Debtors during the Chapter 11 Cases in accordance with the budget attached to the DIP Motion, including to fund the Sale Transaction and Plan process, and to pay certain fees and expenses. In addition, the Interim DIP Order authorized the Debtors to use cash collateral pursuant to certain terms and conditions in the Interim DIP Order.~~

- Cash Management. By this motion, the Debtors ~~requested~~obtained entry of an a final order [Docket No. 149] authorizing the Debtors to continue using their existing cash management system, bank accounts, and business forms. ~~This relief would allow the Debtors to avoid administrative inefficiencies and expenses by authorizing the Debtors to maintain and continue using their prepetition bank accounts and cash management system in the same manner and with the same account numbers, styles, and document forms as those employed prior to the Petition Date. On November 26, 2013, the Bankruptcy Court granted such relief on an interim basis and scheduled a final hearing related thereto [Docket No. 55].~~

- ~~Insurance. The Debtors maintain a variety of insurance policies in the ordinary course of their business.~~Insurance. In order to avoid any potential lapse of coverage and the expense of acquiring new coverage, the Debtors requested authority to continue their insurance and pay prepetition premiums necessary to maintain insurance coverage. On November 26, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 57].

- Taxes. The Debtors believe that, in some cases, certain taxing authorities have the ability to exercise rights that would be detrimental to the Sale Transaction and Plan process, as well as any other actions related thereto if the Debtors failed to meet the obligations imposed upon them to remit certain taxes and fees. ~~Therefore, the Debtors believed that it was in their best interests to eliminate the possibility of any unnecessary distractions. Accordingly, the Debtors requested authority, but not direction, to pay certain fees and taxes, including certain prepetition Claims related to, among other things, sales, use, and franchise taxes.~~ On November 26, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 56].

- Utilities. By this motion, the Debtors ~~are seeking~~sought approval of procedures for, among other things, determining adequate assurance for utility providers, prohibiting utility providers from altering, refusing, or discontinuing services, and determining that the Debtors are not required to provide additional adequate assurance except as set forth in the procedures related thereto. ~~Uninterrupted utility services are essential to enable the Debtors' efficient facilitation of the Sale Transaction and Plan process, as well as any other actions related thereto.~~ On ~~November 26~~December 16, 2013, the Bankruptcy Court granted such relief on ~~an interim basis and scheduled~~ a final ~~hearing related thereto~~ basis [Docket No. ~~60~~ 163].

- Wages. By this motion, the Debtors requested authority to pay employees' wage Claims and related obligations in the ordinary course of business. Additionally, among other things, the Debtors requested authority to continue all of their prepetition benefit programs, including, among others, the medical, dental, and 401(k) plans. ~~The Debtors believe that this relief would limit workforce instability and attrition, which is critical to effectively facilitate the Sale Transaction and Plan process, as well as any other actions related thereto, especially given the Debtors' already limited available personnel.~~ On November 26, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 58].

2. Procedural and Administrative Motions.

To facilitate the efficient administration of the Chapter 11 Cases and to reduce the administrative burden associated therewith, the Debtors also Filed~~, or intend to File,~~ motions seeking authorization to implement certain procedural and administrative relief:

- Joint Administration. By this motion, the Debtors requested authorization for the joint administration of the Chapter 11 Cases. On November 26, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 52].
- Mailing Matrix. By th~~e~~is motion, the Debtors requested authorization to prepare and File a consolidated list of creditors in lieu of submitting separate mailing matrices for each Debtor. On November 26, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 54].
- Equity Trading. By this motion, the Debtors ~~are seeking~~sought approval of procedures allowing the Debtors to monitor, and possibly object to, certain changes in ownership of the Debtors' common stock to enable the Debtors to preserve the value of their net operating losses and other tax attributes. On November 26, 2013, the Bankruptcy Court granted such relief on an interim basis and scheduled a final hearing related thereto [Docket No. ~~52~~59], and on December 13, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 151].
- ~~Interim Compensation [Docket No. 114]. By this motion, the Debtors are seeking approval of certain procedures for the interim compensation and reimbursement of retained Professionals in the Chapter 11 Cases. This motion is pending as of the date hereof.~~

3. Retention of Chapter 11 Professionals.

The Debtors also Filed~~, or intend to File,~~ several applications to obtain authority to retain various professionals to assist the Debtors in carrying out their duties under the Bankruptcy Code during the Chapter 11 Cases. ~~These professionals include: (a) Kirkland & Ellis LLP, as co-counsel to the Debtors; (b) Pachulski Stang Ziehl & Jones LLP, as co-counsel to the Debtors; (c) Beilinson Advisory Group as restructuring advisors to the Debtors; and (d) Rust Consulting/Omni Bankruptcy, as the Notice and Claims Agent and administrative advisor for the Debtors. On November 26, 2013, the Bankruptcy Court approved the Debtors application to retain Rust Consulting/Omni Bankruptcy as the Debtors' Notice and Claims Agent [Docket No. 61].~~These professionals include:

- Rust Consulting/Omni Bankruptcy, as the Notice and Claims Agent for the Debtors, which retention was approved by the Bankruptcy Court on November 26, 2013 [Docket No. 61];
- Rust Consulting/Omni Bankruptcy, as administrative advisor for the Debtors, which retention was approved by the Bankruptcy Court on December 13, 2013 [Docket No. 150]; and
- Kirkland & Ellis LLP, as co-counsel to the Debtors, which retention was approved by the Bankruptcy Court on January 10, 2014 [Docket No. 427];
- Pachulski Stang Ziehl & Jones LLP, as co-counsel to the Debtors, which retention was approved by the Bankruptcy Court on January 10, 2014 [Docket No. 428];
- Beilinson Advisory Group as restructuring advisors to the Debtors, which retention was approved by the Bankruptcy Court on January 24, 2014 [Docket No. 522];
- Evercore, as investment banker for the Debtors, which retention was approved by the Bankruptcy Court on March 31, 2014 [Docket No. 756].
- AlixPartners, LLP, to provide intellectual property valuation services for the Debtors, which retention was approved by the Bankruptcy Court on April 15, 2014 [Docket No. 786].

4. Appointment of ~~Any Statutory Committees~~Official Committee of Unsecured Creditors.

On December 5, 2013, the U.S. Trustee appointed the Committee in these Chapter 11 Cases [Docket No. 102]. The Committee is comprised of (a) Magna E-Car USA, LLC; (b) Supercars & More SRL; (c) Kuster Automotive Door Systems GmbH; (d) TK Holdings Inc.; (e) Sven Etzelsberger; and (f) David M. Cohen, Esq.

The Committee Filed several applications to obtain authority to retain various professionals to assist the Committee in carrying out their duties under the Bankruptcy Code during the Chapter 11 Cases. These professionals include:

- Emerald Capital Advisors, as financial advisors to the Committee, which retention was approved by the Bankruptcy Court on January 24, 2014 [Docket No. 551].
- Brown Rudnick LLP, as co-counsel to the Committee, which retention was approved by the Bankruptcy Court on January 31, 2014 [Docket No. 570];
- Saul Ewing LLP, as co-counsel to the Committee, which retention was approved by the Bankruptcy Court on January 31, 2014 [Docket No. 571]; and
- 284 Partners, LLC, as intellectual property valuation expert for the Committee, which retention was approved by the Bankruptcy Court on April 15, 2014 [Docket No. 785].

B. *Claims Bar Date.*

On December 3, 2013, the Debtors Filed their Schedules with the Bankruptcy Court pursuant to section 521 of the Bankruptcy Code. The Bankruptcy Code allows a bankruptcy court to fix the time within which Proofs of Claim must be Filed in a chapter 11 case. Any creditor whose Claim is not scheduled in the Debtors' Schedules or whose Claim is scheduled as disputed, contingent, or unliquidated must File a Proof of Claim.

On December 9, 2013, the Debtors Filed a motion requesting the Bankruptcy Court to enter an order approving, among other things: (a) January 27, 201~~3~~4, at ~~-~~5:00 p.m. prevailing Eastern Time (the "General Claims Bar Date") as the deadline for all non-Governmental Units to File Claims in the Chapter 11 Cases; (b) May 21, 201~~3~~4, at 5:00 p.m. prevailing Eastern Time as the deadline for all Governmental Units to File Claims in the Chapter 11 Cases; (c) procedures for Filing Proofs of Claim; and (d) the form and manner of notice of the bar dates [Docket No. ~~113] (the "Bar Date Motion"). The Bar Date Motion is pending as of the date hereof.~~113], and on December 30, 2013, the Bankruptcy Court granted such relief on a final basis [Docket No. 252].

As of the General Claims Bar Date, approximately 543 Proofs of Claim were timely filed in these Chapter 11 Cases asserting a total of approximately $980 million. The Debtors are currently reviewing these Proofs of Claim to determine whether the asserted Claims should be Allowed, and if so, in what amount and priority. In that respect, the Debtors filed two omnibus objections to certain Proofs of Claim [Docket Nos. 706 and 707] (the "Omnibus Objections"), objecting to a total of approximately 171 claims that assert amounts totaling in the aggregate approximately $45 million. On April 17, 2014, the Court entered orders [Docket Nos. 800 and 801] granting the relief sought in the Omnibus Objections, except with respect to the Debtors' objections to approximately 22 claims, which objections were consensually adjourned and remain pending as of the date hereof.

In the ordinary course of business, the Debtors incurred potential Warranty Claims pursuant to certain of the Debtors' Warranty Agreements that provided for customary limited warranty programs. Holders of these Warranty Claims may include the Debtors' former Retailers and Distributors, as well as Persons that own or formerly owned the Debtors' vehicles. Parties in interest timely filed Proofs of Claim in the Debtors' chapter 11 cases claiming in the aggregate approximately $8 million on account of such Warranty Claims. The Debtors are continuing to review these Proofs of Claim to determine whether any such warranty Claims should be Allowed Claims, and if so in what amount. Additionally, and as described in greater detail below, Wanxiang has agreed to implement a Warranty Program, which holders of Allowed Warranty Claims will be automatically enrolled in unless

such holders of Warranty Claims opt out of the Warranty Program, in which case such holders will receive a beneficial interest in its Pro Rata share of of the Liquidating Trust Assets.

C. *Pending Litigation Proceedings.*

As discussed above, the Debtors are parties to a significant number of lawsuits, legal proceedings, collection proceedings, and claims arising out of their business operations. The Debtors cannot predict with certainty the outcome of these lawsuits, legal proceedings, and claims.

With certain exceptions, the Filing of the Chapter 11 Cases operates as a stay with respect to the commencement or continuation of litigation against the Debtors that was or could have been commenced before the commencement of the Chapter 11 Cases. In addition, the Debtors' liability with respect to litigation stayed by the commencement of the Chapter 11 Cases is generally subject to discharge, settlement, and release upon confirmation of a plan under chapter 11, with certain exceptions. Therefore, certain litigation Claims against the Debtors may be subject to discharge, settlement, or release in connection with the Chapter 11 Cases.

~~D. *The Debtors' Proposed Sale Transaction.*~~

~~On the Petition Date, the Debtors Filed the Sale Motion seeking authorization of the sale of the Acquired Assets, representing substantially all of the Debtors' assets, to the Purchaser free and clear of all claims, liens, and other encumbrances pursuant to section 363 of the Bankruptcy Code in exchange for, among other things: (a) approximately $75 million in the form of a credit bid of Claims owned by the Purchaser under the Senior Loan; (b) the Purchaser's agreement to waive approximately $4 million of DIP Facility Claims held by the Purchaser or its affiliates under the Debtors' proposed postpetition financing;[17] and (c) the assumption of customary liabilities in accordance with the Purchase Agreement. In addition, the Purchaser has committed to support the Debtors' proposed chapter 11 plan by, among other things, funding up to approximately $725,000 in creditor distributions pursuant to the Plan, each as set forth more fully in the Purchase Agreement. In addition, the Debtors' DIP lender, an affiliate of the Purchaser, has agreed to contribute $500,000 in Cash to fund wind down expenses for the Estates and to fund all restructuring expenses provided for under the Debtors' DIP budget, which are estimated to be approximately $3,583,000.~~

~~In evaluating the benefits and issues associated with another marketing process, the Debtors determined that a sale to a third party other than the Purchaser was highly unlikely to generate greater value than the Debtors' proposed Sale Transaction or advisable under the facts and circumstances of these Chapter 11 Cases. Specifically, as the Debtors' Senior Secured Lender, the Purchaser holds approximately $168.5 million in Claims secured by substantially all of the Debtors' assets. As a result, the Debtors believe the Purchaser holds an overwhelming advantage in any prospective sale process. Thus, given that a competitive auction process or pursuing a potential transaction with an entity other than the Purchaser would be highly unlikely to increase value for the Debtors' Estates – particularly given the extensive prepetition marketing efforts conducted by both the Debtors and DOE prior to the date hereof – the Sale Motion seeks approval of a private sale. The Debtors believe that a private sale will maximize value for the benefit of all creditors and clear the way for the Debtors to expeditiously complete the Chapter 11 Cases.~~

~~The Bankruptcy Court scheduled a hearing to consider the relief requested in the Sale Motion for January 3, 2013, at 9:30 a.m., prevailing Eastern Time [Docket No. 69].~~

~~[17] As set forth more fully herein and in the DIP Motion, the Purchaser is also an affiliate of the Debtors' proposed DIP lender.~~

~~E.~~D. *WARN Proceeding.*

As noted above, the WARN Adversary Proceeding was filed on November~~–~~ 26, 2013.~~–~~ Per the filed complaint, the plaintiffs ~~to the WARN Adversary Proceeding are asserting~~assert claims arising under the federal Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., ("WARN Act") and related state law claims~~, and~~. Plaintiffs also assert that such claims are entitled to priority pursuant to sections 507(a)(4) and/or 507(a)(5) of the Bankruptcy Code on account of a reduction in force occurring on April~~–~~ 5, 2013.~~–~~ In particular, the ~~Debtors understand that such~~ plaintiffs ~~are asserting~~assert that the April 5, 2013 reduction in force occurred within 180 days before the "cessation of the [Debtors'] business," as that term is used by the priority provisions of the Bankruptcy Code. ~~See 11 U.S.C. §§ 507(a)(4), (5). If Claims asserted pursuant to the WARN Adversary Proceeding are entitled to priority pursuant to section 507(a)(4) or (5) of the Bankruptcy Code, the Debtors could be unable to pay such claims in full in Cash. See 11 U.S.C. § 1129(a)(9).~~ See 11 U.S.C. §§ 507(a)(4), (5).

The Debtors believe ~~there is no merit to~~ the claims asserted pursuant to the WARN Adversary Proceeding—including with respect to the priority asserted therein— ~~for a number of reasons.~~ are meritless. Among other things, the Debtors believe that any Claims arising on account of their April 5, 2013 reduction in force are not entitled to priority status under the Bankruptcy Code because such events did not occur within 180 days prior to a "cessation of [the Debtors'] business."~~.~~ Moreover, the Debtors believe that any ~~C~~claims arising from their April 5, 2013 reduction in force are subject to a complete defense under the ~~so-called "faltering company" exception provided under federal and state law. As set forth at Article IV.E hereof, the Debtors undertook extensive marketing efforts to obtain new capital or to enter into a transaction to maximize value. During this time, the Debtors believed that giving notice of a prospective termination could have precluded their efforts in this regard. The Debtors undertook the April 5, 2013 reduction in force only after extensive efforts to secure additional capital failed.~~ faltering company and unforeseen business exceptions provided under federal law as well as the the faltering company exception under California state law, among others. The Debtors reserve all rights with respect to the Claims asserted pursuant to the WARN Adversary Proceeding.

E. *The ~~Debtors may therefore seek an expedited estimation or determination of~~ Committee's Standing Motion.*

On December 30, 2013, the ~~Claims asserted pursuant to the WARN Adversary Proceeding to avoid undue delay to the administration of these chapter 11 estates~~Committee filed a motion [Docket No. 267] (the "Committee Standing Motion"), seeking standing to commence and ~~also to avoid a corresponding loss of value,~~prosecute certain causes of action on behalf of the Debtors' Estates against the Debtors' former directors and ~~the Debtors reserve all rights~~ officers, prepetition lenders, and their affiliates or related parties for, among other things, (a) breaches of fiduciary duties and aiding and abetting such breaches; (b) avoidance actions with respect to liens securing the Senior Loan; and (c) disallowance, subordination, and recharacterization of certain Claims. The Committee Standing Motion remains pending as of the date hereof and, pursuant to the Plan Settlement Term Sheet, the Committee Standing Motion will not be set for hearing until May 31, 2014. Subject to confirmation of the Plan and occurrence of the Effective Date, the relief requested by the Committee Standing Motion shall be moot.

F. *The Debtors' Prior Solicitation Process.*

In connection with the Debtors' originally proposed sale of the Acquired Assets to Hybrid and related Plan process, on November 25, 2013, the Debtors filed a motion seeking approval of the adequacy of the Disclosure Statement and approving solicitation and notice procedures with respect to confirmation of the Debtors' proposed Plan. At a hearing on December 10, 2013, the Bankruptcy Court provisionally approved the adequacy of the Disclosure Statement, and on December 12, 2013, the Debtors caused Solicitation Packages to be mailed to Holders of Claims ~~asserted~~ that were entitled to vote to accept or reject the Plan.

In light of, among other things, the modifications implemented by the Debtors with respect to the prior version of the Plan, the Debtors have elected to resolicit votes on their Plan, **and votes cast with respect to the prior version of the Plan will not be counted.**

G. *Credit Bid Decision and Appeal.*

On the Petition Date, the Debtors Filed the Sale Motion seeking authorization of the sale of the Acquired Assets, representing substantially all of the Debtors' assets, to Hybrid free and clear of all claims, liens, and other encumbrances pursuant to ~~the WARN Adversary Proceeding~~section 363 of the Bankruptcy Code. At a hearing held by the Bankruptcy Court on January 10, 2014, the Bankruptcy Court, pursuant to section 363(k) of the Bankruptcy Code, limited Hybrid's right to credit bid on account of the Senior Loan to no more than $25 million, and on January 23, 2014 entered the Bidding Procedures Order authorizing the Debtors to proceed with an auction for the sale of the Acquired Assets. See Jan. 10, 2014 Hr'g Tr. 135–138; see also Bidding Procedures Order ¶¶ 7, 25; Memorandum Opinion [Docket No. 483].

While Hybrid subsequently sought leave to appeal the Bankruptcy Court's credit bid decision prior to entry of the Sale Order, such leave was not granted, and Hybrid ultimately elected not to pursue an appeal of the Bankruptcy Court's credit bid decision after entry of the Sale Order.

H. *The Sale and Auction Process.*

The Bidding Procedures Order authorized the Debtors to enter into stalking horse purchase agreements with both Hybrid and Wanxiang. To assist them with the Auction and sale process, on January 24, 2014, the Debtors retained Evercore as their investment banker [Docket No. 527]. As of that date, Evercore became fully involved with the Auction and sale process, including the pre-Auction marketing process, advising with respect to the Auction, coordinating and engaging with the Committee's professionals, Hybrid, and Wanxiang, and engaging other potentially interested parties.

Ultimately, no additional bidders emerged, and the Debtors proceeded with the Auction with the two stalking horse bidders—Wanxiang and Hybrid. Over the course of a three-day auction commencing February 12, 2014, and that included 19 rounds of bidding, the value of the highest or otherwise best bid rose approximately $90 million before Wanxiang submitted the successful bid for the Acquired Assets. The Debtors and the Committee jointly valued Wanxiang's successful bid at approximately $149.2 million. Wanxiang's successful bid consisted of, among other things, (a) $126.2 million in cash; (b) $8 million of assumed liabilities arising from Administrative and Priority Claims against the Debtors' estates, other than Claims arising from the Hybrid DIP Facility; and (c) Wanxiang's contribution of the Equity Consideration, generally consisting a 20% common equity interest in a Wanxiang affiliate designated to acquire the Debtors' assets.[18] Additionally, Wanxiang will contribute certain causes of action to the Liquidating Trust, subject to a specified sharing of the proceeds from such causes of action between the Liquidating Trust and Wanxiang, as set forth in greater detail in section 7.4 of the Purchase Agreement.

I. *The Wanxiang DIP Facility; Sale Transaction Closing*

The Bankruptcy Court approved the Debtors' proposed sale to Wanxiang pursuant to the Sale Order entered February 19, 2014. Subsequent to the entry of the Sale Order, the Debtors and Wanxiang diligently worked to close the Sale Transaction.

To provide the Debtors with funding through the closing of the Sale Transaction and the confirmation of this Plan, on February 28, 2014, the Debtors filed a motion [Docket No. 671] (the "Wanxiang DIP Motion") seeking interim and final authorization to enter into the Wanxiang DIP Facility by and among Fisker Automotive as borrower, Holdings as guarantor, and Wanxiang (in such capacity, the "Wanxiang DIP Lender"). The Wanxiang DIP Lender agreed to provide the Wanxiang DIP Facility subject to the terms and conditions of the Wanxiang DIP Agreement. On March 20, 2014, the Bankruptcy Court granted the Debtors final relief to enter into the Wanxiang

[18] The terms and conditions of the Equity Consideration are set forth more fully in the LLC Agreement.

DIP Agreement and authorized the Debtors to borrow in an aggregate principal amount not to exceed $10.5 million (of which approximately $3.7 million was ultimately borrowed) [Docket No. 722] (the "Final Wanxiang DIP Order").

The Closing Date (as defined in the Purchase Agreement) occurred on March 24, 2014, and the Debtors repaid the balance of the Hybrid DIP Facility and the Wanxiang DIP Facility at that time. After the closing, the Debtors retained ownership of the Excluded Assets as well as the Sale Proceeds, which will be liquidated and distributed to the Debtors' creditors in accordance with the terms of the Plan.

J. *Debtors' Investigation; Global Settlement.*

As discussed above, certain of the Debtors' key stakeholders held divergent opinions regarding the appropriate allocation of the Sale Proceeds among the Debtors' stakeholders. Specifically, while Hybrid claimed that it was entitled to virtually all of the Sale Proceeds due to its asserted liens on substantially all the Debtors' assets, the Committee challenged the extent, validity, and perfection of these liens. Additionally, the Committee also asserted that all or part of Hybrid's Claims were subject to subordination, reclassification, or disallowance—regardless of whether such Claims are secured. Moreover, the Sale Order (1) provided no finding or holding with respect to the perfection and allocation issues discussed above; (2) reserved all rights of the Debtors, the Committee, and Hybrid in respect thereto; and (3) preserved certain rights Hybrid may have with respect to both the cash and non-cash Sale Proceeds. Accordingly, despite the successful outcome of the Auction, the Debtors faced a material probability of litigation with the Committee and Hybrid concerning the allocation of the Sale Proceeds among the Debtors' stakeholders. Such litigation would likely pose material risk to Hybrid, the Committee, and the Debtors' Estates—particularly when compared with the recoveries available under the Plan. In addition, the Debtors believe such litigation would prolong these chapter 11 cases and entail significant costs on the Debtors' Estates resulting in reductions to stakeholder recoveries.

Beginning in March 2014, the Debtors, with the assistance of their advisors, undertook a supplemental investigation to assess whether it could be in the best interests of the Debtors' Estates to grant standing to the Committee as requested by the Committee Standing Motion, including by reviewing the factual allegations and legal claims asserted by the Committee against certain of the Debtors' former directors and officers (including David Manion, Richard Li, and Bernhard Koehler) and Hybrid and its related entities, as set forth in the Committee Standing Motion. During the course of the investigation, the Debtors interviewed key personnel, including former and current directors, officers, and advisors. The Debtors also reviewed several types of documents and communications, including Board of Directors meeting minutes and materials, relevant pleadings, emails, deposition transcripts, and publicly available information. After developing the factual record and conducting a legal analysis, the Debtors were able to provide a preliminary assessment of the merit of both the legal issues and factual predicates underlying the various assertions advanced by both Hybrid and the Committee. Additionally, the Debtors analyzed the legal and factual bases relevant to Hybrid's assertions that it may be entitled to approximately $13 million in superpriority administrative expense claims purportedly arising from diminution in value attributable to the Debtors' DIP Facilities.

In an effort to resolve the parties' differences and avoid costly litigation, the Debtors sought to develop a plan structure that reflected the diverse interests of the Debtors' many stakeholders in a fair and balanced manner and that also had the Committee's and Hybrid's support. Therefore, the Debtors worked with the Committee and Hybrid in an effort to reach a settlement among them that was also acceptable to the Debtors. After several weeks of good-faith negotiations, the parties' efforts culminated in a day-long negotiating session in early April 2014 that led to an agreement in principle among the Debtors, Hybrid, and the Committee. Over the next several days, the parties worked to finalize the deal, and develop the presently proposed Plan, which the Debtors believe is in the best interests of all their stakeholders.

ARTICLE VI.
SUMMARY OF THE PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions of the Plan or documents referred to therein.

The Plan controls the actual treatment of Claims against, and Interests in, the Debtors under the Plan, and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors and the Debtors' Estates, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan or any other operative document, the terms of the Plan and/or such other operative document shall control.

A. *Administrative Claims, Priority Tax Claims, DIP Facility Claims, and Professional Fee Claims.*

1. Administrative Claims and Priority Tax Claims.

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim or Allowed Priority Tax Claim, as applicable, and the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, to the extent an Allowed Administrative Claim or Allowed Priority Tax Claim, as applicable, has not already been paid in full during the Chapter 11 Cases, ~~each Holder of an Administrative Claim or a Priority Tax Claim (to the extent such Claim is Allowed) will receive in exchange for full and final satisfaction, settlement, release, and compromise (subject to Article VIII of the Plan) of its Claim its Pro Rata share of the Senior Claims Assets in accordance with the priorities set forth in sections 503 and 507 of the Bankruptcy Code~~Allowed Administrative Claims and Allowed Priority Tax Claims shall be satisfied in full with a Cash distribution from the Priority Claims Reserve.

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order) or as provided by Article II.B of the Plan, unless previously Filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order.

Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by the Administrative Claims Objection Bar Date.

2. DIP Facility Claims.

~~As of the Effective Date, the DIP Facility Claims will be deemed waived, and the Holders thereof shall be deemed to have waived any such DIP Facility Claims, in each instance in accordance with the terms of the Purchase Agreement. Notwithstanding anything herein to the contrary, all Liens, Claims, and encumbrances supporting the Carve-Out shall remain in full force and effect and shall be senior to all other Claims otherwise junior to the Carve-Out until all obligations benefitting from the Carve-Out (as defined in the DIP Orders) have been paid in full.~~

(a) Wanxiang DIP Facility Claims

Except to the extent that a Holder of an Allowed Wanxiang DIP Facility Claim agrees to a less favorable treatment, to the extent that any Allowed Wanxiang DIP Facility Claim remain unpaid as of the Effective Date, such Allowed Wanxiang DIP Facility Claim shall be paid in full with a distribution from the Priority Claims Reserve on the Effective Date in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Wanxiang DIP Facility Claim.

(b) Hybrid DIP Facility Claims

Subject to the occurrence of each of the SVB Cash Distribution and the Hybrid Cash Distribution and the occurrence of the Effective Date, to the extent that any Hybrid DIP Facility Claims remains unpaid as of the Effective Date, such Hybrid DIP Facility Claims shall be waived and deemed to have been waived as of the Effective Date.

3. Professional Fee Claims.

(a) Professional Fee Escrow

~~In accordance with this Article II.C.1 of the Plan~~If the Professional Fee Claims Estimate is greater than zero, as soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow. ~~-~~The Debtors shall fund the Professional Fee Escrow with Cash equal to the Professional Fee ~~Escrow~~Claims Estimate. Except as provided in the Plan, the Professional Fee Escrow shall be funded on the Effective Date and maintained in trust for the Professionals and shall not be considered property of the Debtors' Estates~~.~~ or a Liquidating Trust Asset. When all Allowed Professional Fee Claims have been paid in full, amounts remaining in the Professional Fee Escrow, if any, shall be ~~distributed~~transferred to the ~~Wind-Down~~Priority Claims Reserve and shall be distributed in accordance with the Plan.

To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Allowed Professional Fee Claims owing to the Professionals after application of funds held in the applicable Professional Trust Account, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which Allowed Administrative Claim shall be satisfied in accordance with the Plan.

(b) Final Fee Applications.

(c) ~~Final Fee Applications.~~

All final requests for payment of Professional Fee Claims shall be ~~F~~filed no later than the first Business Day that is ~~60~~ 45 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. ~~The~~Subject to Article C.1 of the Plan, the amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow ~~when such Claims are Allowed by a Final Order. To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which Allowed Administrative Claim shall be satisfied in accordance with the Plan. After all Allowed Professional Fee Claims have been paid in full, the Final Order allowing such Professional Fee Claims may direct the escrow agent to return any excess amounts to the Wind-Down Reserve~~, or as otherwise provided herein, when such Claims are allowed by an order of the Bankruptcy Court, which order is not subject to a stay.

~~4. Treatment of Certain Claims and Interests.~~

~~Notwithstanding anything to the contrary in the Plan, the failure to object to Confirmation of this Plan by a Holder of an Administrative Expense Claim, Priority Tax Claim, or Other Priority Claim against any Debtor shall be deemed to be such Holder's agreement to receive treatment for such Claim (to the extent such Claim is Allowed) that is different from that set forth in 28 U.S.C. § 1129(a)(9).~~

~~Section 1129(a)(9) of the Bankruptcy Code is a default provision, and administrative and priority claimants can "agree[] to a different treatment of such claim." 11 U.S.C. § 1129(a)(9). The Debtors have provided conspicuous notice to Holders of Administrative Claims, Tax Priority Claims, and Other Priority Claims that such Holders will be deemed to have agreed to treatment different from the treatment provided by section 1129(a)(9) of the Bankruptcy Code if they do not object to Confirmation by the Plan Objection Deadline, and that such treatment~~

~~may be less favorable than the treatment otherwise provided by section 1129(a)(9) of the Bankruptcy Code. Accordingly, the Debtors believe that Holders of Administrative Claims, Priority Tax Claims, and Other Priority Claims will have sufficient notice and opportunity to make their intent known if they do not agree to receive treatment different from that set forth in 11 U.S.C. § 1129(a)(9). See In re Teligent, Inc., 282 B.R. 765, 770 (Bankr. S.D.N.Y. 2002).~~

4. Priority Claims Reserve.

On or after the Effective Date, Hybrid shall promptly cause the Priority Claims Reserve Subsequent Funding to occur as needed to satisfy the amount of Allowed Priority Claims against the Estates, in accordance with Article II of the Plan.

5. Hybrid Reservation of Rights.

Hybrid reserves all rights to review and object to Priority Claims asserted against the Debtors or their Estates in accordance with the terms of the Plan.

~~5.~~6. U.S. Trustee Statutory Fees.

The Debtors or the Liquidating Trustee, as applicable, shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

B. *Classification and Treatment of Claims and Interests.*

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

1. Summary of Classification of Claims and Interests

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, DIP Facility Claims, and Professional Fee Claims are classified in the Classes set forth in Article III of the Plan for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and pursuant to sections ~~,~~ 1122 and ~~,~~ 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. The Debtors reserve the right to withdraw the Plan with respect to one or more Debtors while seeking Confirmation or approval of the Plan with respect to all other Debtors.

~~1.~~2. Class Identification.

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as set forth ~~in the Plan, and summarized~~ below. The Plan shall apply as a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth ~~therein~~in the Plan shall apply separately to each of the Debtors. All of the potential Classes for the Debtors are set forth ~~therein~~in the Plan. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims shall be treated as set forth in Article III.E of the Plan. For all purposes under the Plan, each Class will contain sub-Classes for each of the Debtors ~~(i.e., there will be nine (9) Classes for each Debtor).~~, as applicable.

Class	Claims and Interests	Status	Voting Rights

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Senior Loan Claims	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	SVB Loan Secured Claims	Impaired	Entitled to Vote
5A	General Unsecured Claims against Holdings	Impaired	Entitled to Vote
5B	General Unsecured Claims against Fisker Automotive	Impaired	Entitled to Vote
6	Warranty Claims	Impaired	Entitled to Vote
~~6~~7	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
~~7~~8	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
~~8~~9	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
~~9~~10	Holdings Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

~~2.~~3. Classification of Claims and Interests.

(a) Class 1—Other Priority Claims.

(i) *Classification*: Class 1 consists of all Other Priority Claims.

(ii) *Treatment*: Except to the extent that a Holder of an Allowed Class 1 Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Class 1 Other Priority Claim, each such Holder shall be paid in full with ~~proceeds of~~a distribution from the ~~Senior~~Priority Claims ~~Assets~~Reserve in accordance with the priorities set forth in Bankruptcy Code.

(iii) *Voting*: Class 1 is Unimpaired. Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

(b) Class 2—Senior Loan Claims.

(i) *Classification*: Class 2 consists of all Senior Loan Claims.

(ii) *Allowance*: ~~Class 2~~Senior Loan Claims shall be ~~a~~Allowed in ~~an~~the amount ~~equal to~~of the ~~Purchaser Credit Bid~~Hybrid Cash Distribution.

(iii) *Treatment*: ~~Each~~On the Effective Date, each Allowed Class ~~-~~ 2 Claim shall be satisfied, compromised, settled, and released in full in exchange for the ~~Purchaser Credit Bid~~Hybrid Cash Distribution.

~~(iii)~~(iv) *Withdrawal of Deficiency Claim*: The Holder of such Claim shall withdraw any Hybrid Deficiency Claim.

~~(iv)~~(v) *Voting*: Class 2 is Impaired. Holders of Claims in Class 2 are entitled to vote to accept or reject the Plan.

(c) Class 3—Other Secured Claims.

(i) *Classification*: Class 3 consists of all Other Secured Claims.

(ii) *Treatment*: Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 3 Claim, each such Holder shall receive, at the ~~Debtors'~~Liquidating Trustee's election:

(A) with Hybrid's consent, payment in full in Cash of such Holder's Allowed Other Secured Claim with ~~proceeds~~a distribution from the ~~Senior~~Priority Claims ~~Assets~~Reserve in accordance with the priorities set forth in Bankruptcy Code;

(B) the Liquidating Trust's interest in the Collateral securing such Holder's Allowed Other Secured Claim; or

(C) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.

(iii) *Voting*: Class 3 is Unimpaired. Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan.

(d) Class 4—SVB Loan Secured Claims

(i) *Classification*: Class 4 consists of all SVB Loan Secured Claims.

(ii) *Allowance*: SVB Loan Secured Claims shall be Allowed in the amount of the SVB Cash Distribution.

~~(ii)~~(iii) *Treatment*: ~~Except to~~On the ~~extent that a Holder of an~~Effective Date, each Allowed Class 4 Claim ~~agrees to a less favorable treatment,~~shall be satisfied, compromised, settled, and released in full ~~and final satisfaction, compromise, settlement, and release of and~~ in exchange for ~~each Class 4 Claim, each such Holder shall receive its Pro Rata Share of~~ the SVB Cash ~~Payment~~Distribution.

~~(iii)~~(iv) *Voting*: Class 4 is Impaired. Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

(e) Class 5A—General Unsecured Claims against Holdings.

(i) *Classification*: Class 5A consists of all General Unsecured Claims against Holdings.

(ii) *Treatment*: Except to the extent that a Holder of an Allowed Class 5A Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 5A Claim, ~~each such Holder shall receive:~~Allowed Class 5A Claims shall receive a beneficial interest in its Pro Rata share of of the Liquidating Trust Assets.

~~(A) if Class 5A rejects the Plan, each such Holder shall receive a Pro Rata distribution of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code; and~~

~~(B) if Class 5A accepts the Plan, each such Holder shall receive a Pro Rata distribution of (x) of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code and (y) the Unsecured Creditor Recovery Pool, which shall be subject to the Carve Out (as defined in the DIP Orders) in all respects.~~

~~(iii) *Restrictions on Distributions*: Each Holder of an Allowed Class 5A Claim shall not be entitled to any distribution from the Senior Claims Assets or their Cash proceeds until:~~

~~(A) all Allowed Senior Claims have been paid in full; or~~

~~(B) a Disputed Claims Reserve has been established for the payment of all such Senior Claims.~~

~~(iv) *Conditional Waiver of Lender Deficiency Claim*: If Class 5A votes to accept the Plan, the Purchaser shall waive, and shall be deemed to have waived, any Lender Deficiency Claim arising from or related to the Senior Loan.~~

~~(v)~~(iii) *Voting*: Class 5A is Impaired. Holders of Claims in Class 5A are entitled to vote to accept or reject the Plan.

(f) Class 5B—General Unsecured Claims against Fisker Automotive.

(i) *Classification*: Class 5B consists of all General Unsecured Claims against Fisker Automotive.

(ii) *Treatment*: Except to the extent that a Holder of an Allowed Class 5B Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 5B Claim, ~~each such Holder shall receive:~~Allowed Class 5B Claims shall receive a beneficial interest in its Pro Rata share of the Liquidating Trust Assets.

~~(A) if Class 5B rejects the Plan, each such Holder shall receive a Pro Rata distribution of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code; and~~

~~(B) if Class 5B accepts the Plan, each such Holder shall receive a Pro Rata distribution of (x) of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code and (y) the Unsecured Creditor Recovery Pool, which shall be subject to the Carve Out (as defined in the DIP Orders) in all respects.~~

~~(iii) *Restrictions on Distributions*: Each Holder of an Allowed Class 5B Claim shall not be entitled to any distribution from the Senior Claims Assets or their Cash proceeds until:~~

~~(A) all Allowed Senior Claims have been paid in full; or~~

~~(B) a Disputed Claims Reserve has been established for the payment of all such Senior Claims.~~

~~(iv) *Conditional Waiver of Lender Deficiency Claim*: If Class 5B votes to accept the Plan, the Purchaser shall waive, and shall be deemed to have waived, any Lender Deficiency Claim arising from or related to the Senior Loan.~~

~~(v)~~(iii) *Voting*: Class 5B is Impaired. Holders of Claims in Class 5B are entitled to vote to accept or reject the Plan.

(g) Class 6 ~~Intercompany~~Warranty Claims.

(i) *Classification*: Class 6 consists of all ~~Intercompany~~Warranty Claims.

(ii) *Treatment*: ~~Class 6 Claims will be canceled, released, and extinguished as~~Except to the extent that a Holder of ~~the Effective Date~~an Allowed Class 6 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and ~~will be~~release of ~~no further force or effect,~~ and ~~Holders of~~ in exchange for each Class 6 ~~Claims will not receive any distribution on account of such~~ Claim, each Holder of an Allowed Class 6 Claim~~; provided, however,~~ shall receive:

(A) **if such Holder elects to opt out of the** ~~Debtors may reinstate Class 6 Claims in their discretion solely to implement~~ **Warranty Program**, a beneficial interest in its Pro Rata share of the ~~Plan~~Liquidating Trust Assets.

(B) **if such Holder does not elect to opt out of the Warranty Program**, the treatment set forth in the Warranty Program.

~~(ii)~~(iii) *Voting*: Class 6 is Impaired. Holders of Claims in Class 6 are ~~deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not~~ entitled to vote to accept or reject the Plan.

(h) Class 7 ~~Section 510(b)~~Intercompany Claims.

(i) *Classification*: Class 7 consists of all ~~Section 510(b)~~Intercompany Claims.

(ii) *Treatment*: Class 7 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 7 Claims will not receive any distribution on account of such Class 7 ~~Claims~~Claim; provided, however, the Liquidating Trustee may reinstate Class 7 Claims in its discretion solely to implement the Plan.

(iii) *Voting*: Class 7 is Impaired. Holders of Claims in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(i) Class 8 ~~Intercompany Interests~~Section 510(b) Claims.

(i) *Classification*: Class 8 consists of all ~~Intercompany Interests~~Section 510(b) Claims.

(ii) *Treatment*: Class 8 ~~Interests~~Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 8 ~~Interests~~Claims will not receive any distribution on account of such Class 8 ~~Interests; provided, however, the Debtors may reinstate Class 8 Interests in their discretion solely to implement the Plan~~Claims.

(iii) *Voting*: Class 8 is Impaired. Holders of ~~Interests~~Claims in Class 8 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(j) Class 9—~~Holdings~~Intercompany Interests.

(i) *Classification*: Class 9 consists of all ~~Holdings~~Intercompany Interests.

(ii) *Treatment*: Class 9 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class ~~–~~ 9 Interests will not receive any distribution on account of such Class 9 Interests; provided, however, the Liquidating Trustee may reinstate Class 9 Interests in its discretion solely to implement the Plan.

(iii) *Voting*: Class 9 is Impaired. Holders of Interests in Class 9 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(k) Class 10—Holdings Interests.

(i) *Classification*: Class 10 consists of all Holdings Interests.

(ii) *Treatment*: Class 10 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 10 Interests will not receive any distribution on account of such Class 10 Interests.

(iii) *Voting*: Class 10 is Impaired. Holders of Interests in Class 10 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

4. The Warranty Program

As noted above, the Debtors incurred potential Warranty Claims in the ordinary course of business pursuant to certain of the Debtors' Warranty Agreements that provided for customary limited warranty programs. These Warranty Claims may be held by the Debtors' former Retailers and Distributors, as well as by Persons that own or formerly owned the Debtors' vehicles. Pursuant to Section 1.10 of the Purchase Agreement, Wanxiang assumed and agreed to honor the Debtors' obligations under the Debtors' limited warranties on Karma sedans that existed as of the date of the Purchase Agreement in an amount not to exceed (a) $2,000 per each vehicle warrantied or (b) $400,000 in the aggregate (which amount will be increased by $1,000,000 when commercial production of the Karma sedan, or a substantially similar model, restarts and upon the production of the 250th vehicle).

Wanxiang subsequently agreed to implement the Warranty Program, which will provide greater benefits to holders of Warranty Claims in addition to the treatment already provided pursuant to the Purchase Agreement. The terms and conditions of the Warranty Program will be set forth in the Plan Supplement, and will generally provide for the following:

- [TO COME]

Holders of Allowed Warranty Claims will automatically be included in this Warranty Program, unless such Holder elects to opt out of the Warranty Program, in which case such Warranty Claim holder will receive a beneficial interest in its Pro Rata share of the Liquidating Trust Assets pursuant to the applicable procedures set forth in the Solicitation Procedures. The Debtors will include in the Solicitation Package distributed to each Holder of Class 6 Warranty Claims a Warranty Claims Election Form, in substantially the form attached as Exhibit 4-B to the Disclosure Statement Order. The Warranty Claims Election Form contains clear instructions for executing and returning the Warranty Claims Election Form to inform the Debtors of the applicable Holder's election to forego participation in the Warranty Program and to receive, instead, a beneficial interest in its Pro Rata share of the Liquidating Trust Assets. Any Holder of Class 6 Warranty Claims that fails to submit a Warranty Claims Election Form or that submits a Warranty Claims Election Form that is incomplete, improperly executed or delivered, or not **actually received** by the Administrative Advisor by 4:00 p.m. (prevailing Eastern time) on [_____], 2014, shall be deemed to accept participation in the Warranty Program as its treatment under the Plan.

~~3.~~5. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the ~~Debtors'~~Liquidating Trustee, the Debtors, or the Debtors' Estates in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

~~4.~~6. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

~~5.~~7. Voting Classes; Presumed Acceptance by Non-Voting Classes.

~~At the Confirmation Hearing, the Debtors will request approval of Article III.F of the Plan, which provides that if~~If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the Holders of such Claims or Interests in such Class.

~~6.~~8. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan, with the reasonable consent of the Committee and Hybrid, in accordance with Article ~~X~~XI of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

C. *Means for Implementation of the Plan.*

1. Sources of Consideration for Plan Distributions.

The Debtors' Cash on hand, ~~Cash~~ Sale Proceeds, ~~Remaining Assets, and~~ the Debtors' rights under the Purchase Agreement, the Excluded Assets, and Hybrid's undertaking to cause one or more instances of the Priority Claims Reserve Subsequent Funding to occur shall be used to fund the distributions to ~~the~~ Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims provided in the Plan.

2. Hybrid Parties' Claims Waiver.

Subject to the occurrence of each of the SVB Cash Distribution, the Hybrid Cash Distribution, and the Effective Date, each Hybrid Party shall waive and shall be deemed to have waived any distribution from the

Debtors, their Estates, and the Liquidating Trust on account of any other Claims or Causes of Action such Entities hold or may hold against the Debtors or their Estates, including any Hybrid Deficiency Claim arising from the Senior Loans and/or deficiency Claim arising from the Related Party Note Claims.

3. The Liquidating Trust.

On or prior to the Effective Date, the Debtors, on their own behalf and on behalf of the Beneficiaries, will execute the Liquidating Trust Agreement and will take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement as further described in Article VII of the Plan. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtors will transfer to the Liquidating Trust all of their rights, title, and interests in all of the Liquidating Trust Assets; provided that the Liquidating Trust will reimburse the affected party for all reasonable costs and expenses incurred in transferring the Privileged Documents.

Notwithstanding anything to the contrary in the Plan, any disclosure or examination of any Privileged Documents shall be limited to the Liquidating Trustee and the attorneys that the Liquidating Trustee has retained on behalf of the Liquidating Trust for the purpose of pursuing Causes of Action or claims not released by the Debtors, those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Liquidating Trustee on behalf of the Liquidating Trust for the purpose of assisting the Liquidating Trust in pursuing such Causes of Action or claims. The Liquidating Trustee may not disclose any of the Privileged Documents (or the contents of the Privileged Documents), or otherwise take any actions that may constitute a waiver of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the Privileged Documents, without further order of the Bankruptcy Court. Nothing in the Plan shall constitute a waiver of any privilege claims over any of the documents, including the Privileged Documents, that are produced to or received by the Liquidating Trust or Liquidating Trustee. For the avoidance of doubt, the Liquidating Trust is a successor-in-interest to the Debtors, and thus, the transfer of the Privileged Documents as provided herein does not impair or waive any privilege.

~~2.~~4. General Settlement of Claims.

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan. Without limiting the generality of the foregoing, the distributions for General Unsecured Claims are solely on account of the compromise and settlement of the dispute over the value of allegedly unperfected liens purportedly securing the Senior Loan and the extent of Hybrid's entitlement to the proceeds of the Estates' assets under Finnish and other applicable law pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019.[19]

A court may approve a proposed compromise or settlement, so long as the compromise or settlement is in the "best interest of the estate." In re Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986). In making this determination, a court typically examines four factors: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) (citations omitted). Further, a court need only determine that the proposed settlement or compromise is above the "lowest point in the range of reasonableness." In re Pa. Truck Lines, Inc., 150 B.R. 595, 598 (E.D. Pa. 1992), aff'd, 8 F.3d 812 (3d Cir. 1993); see also In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006) (noting that "the court does not have to be convinced that the settlement is the best possible compromise," rather the court need only "conclude that the settlement is 'within the reasonable range of litigation possibilities'" (citations omitted)).

[19] Generally, the standards for approval of a settlement or compromise under section 1123 of the Bankruptcy Code are the same as those under Bankruptcy Rule 9019. In re Coram Healthcare Corp., 315 B.R. 321, 334–35 (Bankr. D. Del. 2004).

The Debtors believe that their global compromise and settlement with Hybrid and the Committee, as reflected by the Plan, is a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors' Estates. Among other things, it resolves the material prospect of substantial litigation among the parties, which the Debtors believe would be expensive and lengthy due to the complexity of the issues presented. These included legal and factual issues regarding the validity and perfection of liens securing certain inventory located outside the United States, the validity and perfection of liens securing intellectual property registered outside of the United States, and the value associated with such assets, as well as rights to adequate protection arising from the Hybrid DIP Order.

Moreover, after the Debtors conducted their investigation and analysis of the claims asserted, the Debtors believe that all parties possessed a colorable possibility of success on certain of these issues if litigation were to go forward. Therefore, besides the detrimental cost and undue delay that such litigation would likely introduce into these chapter 11 cases, such litigation also posed significant risk to the potential recoveries of the Debtors' General Unsecured Creditors and the successful resolution of these chapter 11 cases in the event that Hybrid prevailed. Specifically, if Hybrid were successful, General Unsecured Creditors would likely receive no recovery on account of their Claims, and the Debtors' Estates would likely be rendered administratively insolvent. Instead, the global compromise and settlement mitigates this risk and also obtains support for the Plan from two of the Debtors' primary constituencies—(a) their senior secured creditor and (b) the Committee, as representatives and fiduciaries of the Debtors general unsecured creditors. Accordingly, the Debtors believe that their global compromise and settlement with Hybrid and the Committee is fair, reasonable, and in the best interests of the Debtors' Estates.

~~3.~~5. Corporate Action.

~~As set forth in Article IV.C of the Plan, upon~~Upon the Effective Date, by virtue of the solicitation of votes in favor of th~~e~~is Plan and entry of the Confirmation Order, ~~-~~all actions contemplated by the Plan (including any action to be undertaken by the ~~Liquidator~~Liquidating Trustee) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in the Plan involving the ~~company~~corporate structure of the Debtors, and any ~~company~~corporate action required by the Debtors in connection ~~with the Plan~~therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

The authorizations and approvals contemplated by Article ~~-~~ IV.~~C~~E of the Plan~~,~~ shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

~~4. Waiver of Certain Lender Deficiency Claims.~~

~~Subject to the terms and conditions of Article III.C.5(d) and Article III.C.6(d) of the Plan, as of the Effective Date, all Lender Deficiency Claims on account of the Senior Loan will be deemed waived, and the Holders thereof shall be deemed to have waived any such Lender Deficiency Claims, in each instance in accordance with the terms of the Purchase Agreement.~~

~~5.~~6. Dissolution ~~and~~of Boards of the Debtors.

As of the Effective Date, the existing boards of directors of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, shareholders, and members and any all remaining officers or directors of each Debtor shall be dismissed without any further action required on the part of any such Debtor, the shareholders of such Debtor, or the officers and directors of such Debtor.

~~6.~~7. Effectuating Documents; Further Transactions.

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the ~~Liquidator, are each~~Liquidating Trustee is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate

to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

~~7.~~8. Exemption from Certain Taxes and Fees.

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any Post-Confirmation transfer from ~~a Debtor to the Wind Down Reserve or to~~ any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

9. Restructuring Fee.

On the Effective Date, the Restructuring Fee shall be disbursed from the Professional Fee Escrow in accordance with Section 2(b) of Exhibit 1 to the *Order (A) Authorizing the Employment and Retention of Beilinson Advisory Group, LLC as Restructuring Advisors for the Debtors, Effective Nunc Pro Tunc to the Petition Date and (B) Waiving Certain Time-Keeping Requirements* [Docket No. 522].

~~8.~~10. Preservation of Rights of Action.

~~Unless any~~Other than Causes of Action against an Entity that are ~~expressly~~ waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Bankruptcy Court order~~,~~ (including, for the avoidance of doubt, any claims or Causes of Action released pursuant to Article IX.D of the Plan), the Debtors reserve and, as of the Effective Date, assign to the Liquidating Trust, any and all Causes of Action, including any actions specifically enumerated in the Plan Supplement and any actions against Bayerische Motoren Werke Aktiengesellschaft or its affiliates and representatives, whether arising before or after the Petition Date, and preserve the right to commence, prosecute, or settle such Causes of Action, notwithstanding the occurrence of the Effective Date. ~~Prior to the Effective Date, the Debtors, and on~~On and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, may pursue such Causes of Action in its sole discretion.

~~Notwithstanding anything to the contrary in the Plan, except as provided in Article VIII~~Subject in all respects to Article IX.D of the Plan, the Debtors shall not release any Avoidance Actions arising under section 547 or 548 of the Bankruptcy Code, or any applicable nonbankruptcy law pursuant to section 544(b) of the Bankruptcy Code, and the ~~Liquidator~~Liquidating Trustee shall be authorized and empowered to enforce any such Avoidance Actions on and after the Effective Date in accordance with ~~Article IV.H~~the terms of the Plan.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the ~~Liquidator~~Liquidating Trustee will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. ~~For the avoidance of doubt, other than with respect to Causes of Action (including Causes of Action on account of or arising under section 506(c) of the Bankruptcy Code) on account of the Senior Loan, which Causes of Action shall be released on and after the Effective Date, the~~The Debtors reserve all rights arising under section 506(c) of the Bankruptcy Code with respect to all Secured Claims asserted against the Debtors or their Estates.

The Debtors reserve the Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. ~~Prior~~Except as otherwise provided by the Plan Settlement Term Sheet, prior to the Effective Date, the Debtors, and on and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding anything contained in the Plan to the contrary, the settlement of claims and causes of action with respect to Hybrid, SVB, or DEDA or raised by the Committee Standing Motion shall be resolved only by the Plan.

~~9. Wind Down.~~

~~(a) Wind Down and Dissolution of the Debtors.~~

~~On and after the Effective Date, the Liquidator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Liquidator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates. As soon as practicable after the Effective Date, the Liquidator shall: (a) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (b) file for each of the Debtors, a certificate of dissolution, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); (c) complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (d) take such other actions as the Liquidator may determine to be necessary or desirable to carry out the purposes of the Plan. The filing by the Liquidator of any Debtor's certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders or board of directors of each such Debtor. Solely to the extent and subject to the limitations provided in the Purchase Agreement, the Liquidator Agreement, the Plan, and the Confirmation Order, the Debtors shall fund the Wind Down Reserve with funds to pay costs, expenses, or claims arising from or related to any Wind Down, including the costs and expenses associated with any Claims resolution or similar process following the Effective Date. Notwithstanding anything in the Plan to the contrary, the Liquidator will make, or cause to be made, all distributions under the Plan other than those distributions made by the Debtors on the Effective Date.~~

~~(b) Liquidator.~~

~~Prior to or on the Effective Date, the Liquidator shall be designated by the Debtors pursuant to the terms of the Liquidator Agreement for purposes of conducting the Wind Down and shall succeed, as successor to the Debtors, to such powers as would have been applicable to the Debtors, the Debtors' officers, directors, shareholders, and the Debtors' Estates, and the Liquidator shall be authorized to undertake the Wind Down, to implement the Plan, and to enforce any agreement, contract, claim, or Cause of Action and take any and all actions that, prior to the Effective Date, the Debtors could have undertaken on behalf of the Debtors or their Estates, including with regards to any objections, claims, motions, proceedings, or Causes of Action filed by the Debtors in these Chapter 11 Cases that are pending as of the date hereof. All property of the Debtors' Estates not distributed to the Holders of Claims or Interests on the Effective Date, or transferred pursuant to the Purchase Agreement, shall be managed and distributed by the Liquidator pursuant to the terms of the Liquidator Agreement and the Plan and shall be held in the name of the Debtors free and clear of all Claims against the Debtors and Interests in the Debtors except for rights to such distributions provided to Holders of Allowed Claims and Interests as provided in the Plan.~~

~~(c) Wind Down Reserve.~~

~~Any and all costs and expenses incurred by the Liquidator in connection with the Wind Down shall be paid through the Wind Down Reserve, which shall be funded into one or more segregated accounts and shall be used to fund the administration and Wind Down of the Chapter 11 Cases following the Effective Date; provided that any balance remaining in the Wind Down Reserve upon entry of a decree closing the Chapter 11 Cases pursuant to~~

~~section 350(a) of the Bankruptcy Code shall be distributed to Holders of Allowed Claims against the Debtors as provided in the Plan.~~

~~10. Delaware Facility~~

~~On and after the Effective Date, the Debtors shall be authorized in accordance with Section 1.9 of the Purchase Agreement to sell the Delaware Facility free and clear of all Claims and Liens, other than Permitted Liens (as defined in the Purchase Agreement), junior to the DoE Liens (as defined in the Purchase Agreement), in one or more transactions, within a period of eighteen (18) months after the Effective Date, pursuant to a sale process to be managed by the Liquidator in consultation with the Purchaser, and at a price and on terms acceptable to the Purchaser; provided that such time period may be extended by mutual agreement of the Liquidator and the Purchaser.~~

~~On any after the Effective Date, the Liquidator shall be authorized in accordance with Section 1.9 of the Purchase Agreement to transfer to the Purchaser the proceeds of the sale of the Delaware Facility, after first paying from such proceeds (1) the costs and expenses of the Debtors and Liquidator, as applicable, of complying with Section 1.9 of the Purchase Agreement or as contemplated by Section 1.9(b) of the Purchase Agreement, (2) any closing costs payable by the Debtors or Liquidator, (3) the satisfaction of any indebtedness necessary to release any Liens senior to the DoE Liens (as defined in the Purchase Agreement), and (4) any unpaid costs of the Debtors or Liquidator, as applicable, relating to the maintenance of the Delaware Facility.~~

11. Committee Standing Motion.

On the Effective Date, the relief requested by the Committee Standing Motion shall be moot.

12. Closing of Debtors' Cases

On the Effective Date, Fisker Automotive's Chapter 11 Case shall be closed for all purposes, without further action by the Debtors or order of the Bankruptcy Court. For the avoidance of doubt, the closing of such case shall not have any effect, in any manner, on the Causes of Action that the Liquidating Trustee may assert in accordance with the Plan and the Liquidating Trust Agreement. The jointly administered case of FAH Liqiudating Corp., identified as Case No. 13-13087 (KG) (the "Main Case") shall remain open and subject to the provisions of Article IV.K of the Plan. Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Main Case, when all Assets contributed to the Liquidating Trust in accordance with Article IV.C of the Plan have been liquidated and converted into Cash (other than those assets abandoned by the Liquidating Trust), and such Cash has been distributed in accordance with the Liquidating Trust Agreement and this Plan, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Main Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

D. *Treatment of Executory Contracts and Unexpired Leases*.

1. Assumption and Assignment of Executory Contracts and Unexpired Leases.

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (~~a~~1) is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (~~b~~2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract ~~or Unexpired Lease~~ as of the Effective Date; (~~c~~3) was previously assumed or assumed and assigned to the Purchaser or another third party, as applicable, during the pendency of the Chapter 11 Cases; (~~d~~) 4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (~~e) is a D&O Policy or an insurance policy; or (f) is the Purchase Agreement~~5) is a D&O Policy or an insurance policy (except with respect to any executory insurance policy or contract, if any, with Safeco Insurance, an affiliate of Liberty Mutual, which contract or policy shall be rejected pursuant to the Plan); (6) is the Purchase Agreement; or (7) is the LLC Agreement. Notwithstanding anything contained in the Plan to the contrary, no Executory Contract or Unexpired Lease shall be assumed or

assumed and assigned to the Liquidating Trust without the Committee's consent (such consent not to be unreasonably withheld; provided that in all instances the Purchase Agreement and the LLC Agreement shall be assumed and assigned to the Liquidating Trust.

2. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date, subject to the limitation described below, by the Debtors or by Purchaser in accordance with the Purchase Agreement, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (~~a)~~ 1) the amount of the Cure Obligation, (~~b)~~ 2) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (~~c)~~ 3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided that prior to the Effective Date, the Debtors, and on and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

At least fourteen (14) days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be ~~F~~filed, served, and actually received by the Debtors not later than fourteen (14) days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely ~~object~~ to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

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

3. Claims Based on Rejection of Executory Contracts and Unexpired Leases.

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with Bankruptcy Court and served on the Debtors or, after the Effective Date, the ~~Liquidator~~Liquidating Trustee, as applicable, no later than fourteen (14) days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the ~~Liquidator~~Liquidating Trustee, as applicable, no later than fourteen (14) days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above shall not (~~a)~~ 1) be treated as a creditor with respect to such Claim, (~~b~~2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (~~c~~3) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the ~~Liquidator~~Liquidating Trustee, the Debtors' Estates, or the property for any of the foregoing without the need for any objection by the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract

or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.

~~4. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases.~~

4. ~~Rejection or repudiation~~Purchase Agreement; Designated Contracts.

The Debtors' assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan ~~or otherwise~~ shall ~~not constitute a termination of preexisting~~ be subject in all respects to the Purchaser's rights and obligations ~~owed to the Debtors' Estates under such contracts or leases. In particular, notwithstanding~~, including any ~~nonbankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right for the Debtors or the Liquidator, as applicable, to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased, or services previously received,~~Cure Obligations assumed by the ~~contracting Debtors from counterparties to rejected or repudiated~~ Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired ~~Leases~~ Leases that constitute Designated Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement, including Section 1.5(c) thereof.

5. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors or the Debtors on behalf of the Debtors' Estates during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

6. Insurance Policies.

Each insurance policy, including the D&O Policy, shall be assumed by the Debtors on behalf of the applicable Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, to the extent such insurance policy is executory, unless such insurance policy previously was rejected by the Debtors or the Debtors' Estates pursuant to a Bankruptcy Court order~~, is the subject of a motion to reject pending on the Effective Date, or is included in the schedule of rejected Executory Contracts and Unexpired Leases contained in the Plan Supplement~~ or is the subject of a motion to reject pending on the Effective Date, and coverage for defense and indemnity under the D&O Policy shall remain available to all individuals within the definition of "Insured" in the D&O Policy. Notwithstanding the foregoing, (x) upon the Effective Date, the Estates and the Liquidating Trust shall no longer have any interest in the D&O Policy or any payments made in accordance with their terms other than with respect to proceeds arising from claims or Causes of Action not settled and/or released pursuant to the Plan, and (y) any insurance policy or Executory Contract, if any, with Safeco Insurance, an affiliate of Liberty Mutual, shall be rejected pursuant to the Plan.

7. Reservation of Rights.

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection,

the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

E. *Provisions Governing Distributions*.

1. Calculation of Amounts to Be Distributed.

Each Holder of an Allowed Claim against ~~or Allowed Interest in~~ the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims ~~or Allowed Interests~~ in the applicable Class from the Debtors or the ~~Liquidator~~Liquidating Trustee, on behalf of the Debtors or the Liquidating Trust, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article VIII of the Plan. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim ~~or Allowed Interest~~ shall, on account of such Allowed Claim ~~or Allowed Interest~~, receive a distribution in excess of the Allowed amount of such Claim ~~or Interest~~ plus any interest accruing on such Claim ~~or Interest~~ that is actually payable in accordance with the Plan.

2. Rights and Powers of the Debtors, Liquidating Trustee, and ~~Liquidator.~~Hybrid

(a) Powers of the Debtors, Liquidating Trustee, and ~~Liquidator~~Hybrid.

All distributions under the Plan shall be made on the Effective Date by the Debtors or thereafter by the ~~Liquidator, as applicable, or their designees. The Debtors or the Liquidator~~Liquidating Trustee, as applicable, or their designees, including with respect to distributions from the Priority Claims Reserve on account of Allowed Priority Claims; provided that prior to the Effective Date, the Debtors shall consult in good faith with Hybrid and give Hybrid or its designee reasonable written notice an opportunity to object prior to any distributions from the Priority Claims Reserve.

After the Effective Date, (i) Hybrid and its designees or representatives as identified in the Plan Supplement (which, after the Effective Date, may include the Beilinson Advisory Group) shall have the right to object to, allow, or otherwise resolve any Priority Claim, and (ii) the Liquidating Trustee shall have the right to object, allow, or otherwise resolve any General Unsecured Claim and/or Warranty Claim.

To the extent that the litigation or resolution of any Claim involves allowance of, or leaves unresolved, a Priority Claim and a General Unsecured Claim and/or Warranty Claim, then the Liquidating Trustee may object to, allow, or otherwise resolve such Priority Claim (other than the WARN Adversary Proceeding and the WARN Adversary Claims) with Hybrid's consent in its sole discretion upon reasonable prior written notice and Hybrid and its designees or representatives may object to, allow, or otherwise resolve any such General Unsecured Claim and/or Warranty Claim with the Liquidating Trustee's consent in its sole discretion upon reasonable prior written notice. Notwithstanding anything in the Plan to the contrary, on the Effective Date, Hybrid or its designees and the Liquidating Trustee shall have the right to defend the WARN Adversary Proceeding and the WARN Adversary Claims on behalf of the Estates; provided that any settlement with respect to the WARN Adversary Proceeding or WARN Adversary Claims shall either be (a) mutually agreeable to Hybrid and the Liquidating Trustee in their sole discretion or (b) subject to Bankruptcy Court approval following prior consultation between Hybrid or its designees and the Liquidating Trustee, and the Bankruptcy Court may take into account the reasonableness of how any such settlement is allocated between Holders of Priority Claims and Holders of General Unsecured Claims and/or Warranty Claims.

Each of Hybrid and the Liquidating Trustee shall use commercially reasonable efforts to coordinate in good faith regarding the reconciliation of Claims as provided in Article VI.B.1 of the Plan.

For the avoidance of doubt, to the extent Hybrid or its designees or representatives object to, allow, or otherwise resolve any Claim, including with respect to the WARN Adversary Claims and the defense of the WARN Adversary Proceeding, Hybrid shall do so at its sole cost and expense.

The Debtors and the Liquidating Trustee, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash ~~held in~~from the ~~Wind Down Reserve~~Liquidating Trust.

~~Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, as applicable, shall be empowered to, as applicable: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (ii) make all distributions contemplated under the Plan; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Debtors or Liquidator, as applicable, by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Debtors or the Liquidator, as applicable, to be necessary and proper to implement the provisions hereof.~~

(b) Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the ~~Liquidator~~Liquidating Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the ~~Liquidator~~Liquidating Trustee shall be paid in Cash from the ~~Wind Down Reserve or the Remaining~~Liquidating Trust Assets without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

(a) Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be closed and the Debtors, ~~the Liquidator,~~Hybrid, or the Liquidating Trustee or any other party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

(b) Delivery of Distributions in General.

~~(i) Initial Distribution Date.~~

~~Except as otherwise provided in the Plan, the Debtors or the Liquidator, as applicable, shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Debtors' books and records as of the date of any such distribution; provided that, the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder. If a Holder holds more than one Claim in any one Class, all Claims of the Holder will be aggregated into one Claim and one distribution will be made with respect to the aggregated Claim.~~

~~(ii) Disputed Claims Reserves.~~

~~On or prior to the Effective Date, and after making all distributions required to be made on such date under the Plan, the Debtors shall establish the Disputed Claims Reserve for Disputed Claims, which Disputed Claims Reserve shall be administered by the Debtors or the Liquidator, as applicable.~~

~~The Debtors or the Liquidator, as applicable, shall hold Cash in the Disputed Claims Reserve in trust for the benefit of the Holders of Claims or Interests ultimately determined to be Allowed. The Debtors or the Liquidator, as applicable, shall, in its sole discretion, distribute such amounts (net of any expenses, including any~~

~~taxes relating thereto), as provided in the Plan, as such Disputed Claims or Interests are resolved by a Final Order or agreed to by settlement, and such amounts will be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims or Interests been Allowed Claims or Interests as of the Effective Date.~~

~~(iii)~~(i) Payments and Distributions on Disputed Claims.

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall~~,~~ in the Liquidating Trustee's reasonable discretion, be deemed to have been made by the ~~Liquidator at its reasonable discretion,~~ Liquidating Trustee on the Effective Date, unless the ~~Liquidator~~Liquidating Trustee and the applicable Holder of such Claim agree otherwise.

~~(iv)~~(ii) Special Rules for Distributions to Holders of Disputed Claims or Interests.

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors, Hybrid or the ~~Liquidator~~Liquidating Trustee, as applicable, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim or Interests, other than with respect to Professional Claims, until all Disputed Claims or Interests held by the Holder of such Disputed Claim ~~or Interest~~ have become Allowed Claims or ~~Interests or~~ have otherwise been resolved by settlement or Final Order~~; provided that if the Debtors or the Liquidator, as applicable, does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim, the Holder of such Disputed Claim shall be entitled to a distribution on account of that portion of such Claim, if any, that is not disputed at the time and in the manner that the Debtors or the Liquidator, as applicable, makes distributions to similarly situated Holders of Allowed Claims pursuant to the Plan~~.

~~(v)~~(iii) Distributions.

On and after the Effective Date, the ~~Liquidator~~Liquidating Trustee shall make the distributions required to be made on account of Allowed Claims or Interests under the Plan on such date. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the ~~Liquidator~~Liquidating Trustee in the Disputed Claims Reserve and distributed ~~at the Liquidator's reasonable discretion~~on the next Subsequent Distribution Date that occurs after such Claim is Allowed. ~~No~~In accordance with Article VIII.D of the Plan, no interest shall accrue or be paid on the unpaid amount of any distribution paid ~~in accordance with Article VI.C of~~pursuant to the Plan. For the avoidance of doubt, in no event shall the Liquidating Trustee or the Liquidating Trust be required to pay from the Liquidating Trust Assets moneys that are required to be funded by Hybrid pursuant to the Plan.

(c) Minimum; De Minimis Distributions.

No Cash payment of less than $100.00, in the reasonable discretion of the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, shall be made to a Holder of an Allowed Claim ~~or Allowed Interest~~ on account of such Allowed Claim ~~or Allowed Interest~~.

(d) Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the ~~Debtors' Estates~~Liquidating Trust or the Priority Claims Reserve (as applicable) automatically and without need for a further order by the Bankruptcy Court for distribution in

accordance with the Plan and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

(e) Cy Pres.

Notwithstanding anything to the contrary in the Plan, if the Liquidating Trustee determines that any Beneficiaries of the Liquidating Trust no longer exist or cannot otherwise be reasonably ascertained, or the Liquidating Trustee determines that the Liquidating Trust Assets are insufficient to make any further distribution economically justifiable, the Liquidating Trustee may, in its reasonable discretion, distribute the Liquidating Trust Assets that constitute Cash to a charitable organization upon the same terms and conditions provided for in the Plan. For the avoidance of doubt, the Liquidating Trust Assets subject to Article VI.C.5 of the Plan do not include the Priority Claims Reserve.

~~(e)~~(f) Manner of Payment Pursuant to the Plan.

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, by check or by wire transfer.

4. Compliance with Tax Requirements/Allocations.

In connection with the Plan, to the extent applicable, the Debtors, or the ~~Liquidator~~Liquidating Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

5. Claims Paid or Payable by Third Parties.

(a) Claims Paid by Third Parties; Recourse to Collateral.

The Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or, as applicable, the ~~Debtors or the Liquidator~~Liquidating Trust, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

Notwithstanding the foregoing, in the event a Holder of a Warranty Claim that elected to opt out of the Warranty Program receives consideration on account of a Warranty Claim under the Warranty Program established by this Plan, then any distribution from the Liquidating Trust to the Holder on account of such Warranty Claim shall be reduced by the fair value of the consideration received under the Warranty Plan without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) Claims Payable by Insurance, Third Parties; Recourse to Collateral.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance

policy~~.~~, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors' insurers ~~agrees to satisfy~~, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such ~~insurers' agreement~~payment, the applicable portion of such Claim ~~may~~shall be expunged without a Claim~~s~~ objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Applicability of Insurance Policies.

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary of any of the Debtor's insurance policies with respect to such policies, including the D&O Policy, and the rights of the Debtors under any such insurance policies shall vest in such beneficiaries thereof as of the Effective Date.

F. *The Liquidating Trust and the Liquidating Trustee.*

1. Liquidating Trust Creation.

On the Effective Date, the Liquidating Trust will be established and become effective for the benefit of the Beneficiaries and for the implementation and distribution of the Priority Claims Reserve as provided for herein. The Liquidating Trust Agreement will contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtors, the Liquidating Trustee, and the Beneficiaries) will take all actions necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust.

The powers, authority, responsibilities, and duties of the Liquidating Trust, the Liquidating Trustee, and the Liquidating Trust Oversight Committee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2. Purpose of the Liquidating Trust.

The Liquidating Trust will be established for the primary purpose of liquidating its assets and making distributions in accordance with the Plan, Confirmation Order and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

3. Transfer of Assets to the Liquidating Trust.

The Debtors and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Beneficiaries pursuant to the Liquidating Trust Agreement, with the Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtors will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of their rights, title, and interests in the Liquidating Trust Assets, including any claims, rights, and Causes of Action that the Debtors may hold against any Entity in accordance with the provisions of the Plan, notwithstanding any prohibition on assignment under non-bankruptcy law. The Liquidating Trust will accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries, subject to the Plan and the Liquidating Trust Agreement.

On the Effective Date, all Liquidating Trust Assets, will vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; provided, however, that the Liquidating Trust, with the consent of the Liquidating Trustee, may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trust believes, in good faith, have no value to the Liquidating Trust. Any Assets the Liquidating Trust so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims and Interests except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtors

of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trust, the Debtors will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust. Notwithstanding anything in the Plan to the contrary, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything in the Plan to the contrary, the Debtors shall not transfer or be deemed to have transferred to the Liquidating Trust any claims or Causes of Action (1) released pursuant to Article IX.D of the Plan or (2) exculpated pursuant to Article IX.F of the Plan to the extent of any such exculpation.

4. Tax Treatment of the Liquidating Trust.

For all federal income tax purposes, the Beneficiaries of the Liquidating Trust will be treated as grantors and owners thereof and it is intended that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701–4 and that the Liquidating Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of an undivided interest in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust's duration. The Liquidating Trust will not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement. The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the trust.

The Liquidating Trust shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with the Plan. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

The Liquidating Trust may request an expedited determination of Taxes of the Debtors or of the Liquidating Trust, including the Disputed Claims Reserve, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Debtors and the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

5. Equity Consideration.

The Liquidating Trust shall hold the Equity Consideration subject to the terms and conditions set forth in the LLC Agreement, including with respect to Section 8.2(f) thereof; provided that, the Liquidating Trust may, with the Purchaser's consent, cause the Equity Consideration to be held in a wholly-owned subsidiary of the Liquidating Trust.

6. The Liquidating Trust Oversight Committee.

On the Effective Date, the Liquidating Trust Oversight Committee shall be formed pursuant to the Liquidating Trust Agreement. The Liquidating Trust Oversight Committee shall be comprised of [three (3)] members, all of whom shall be selected by the Committee and all [three (3)] of whom shall be identified in the Plan Supplement.

The Liquidating Trustee shall report all material matters (as described in the Liquidating Trust Agreement) to and seek approval for all material decisions (as described in the Liquidating Trust Agreement) from the Liquidating Trust Oversight Committee.

From and after the Effective Date, subject to the powers and rights of Hybrid as provided in Articles VI.B and VIII.A of the Plan, settlement by the Liquidating Trust of any General Unsecured Claims and Causes of Action shall require: (1) approval only of the Liquidating Trustee, if the amount claimed by the Liquidating Trust against a defendant is less than two million five hundred thousand dollars ($2,500,000); (2) approval only of the Liquidating Trustee and the Liquidating Trust Oversight Committee, if the amount claimed by the Liquidating Trust against a defendant is more than two million five hundred thousand dollars ($2,500,000) but less than five million dollars ($5,000,000); and (3) approval of the Liquidating Trustee, the Liquidating Trust Oversight Committee, and the Bankruptcy Court, if the amount claimed by the Liquidating Trust against a defendant is unliquidated or equals to or exceeds five million dollars ($5,000,000).

7. Distribution; Withholding.

Notwithstanding anything in the Plan to the contrary, the Liquidating Trustee will make, or cause to be made, all distributions under the Plan and the Liquidating Trust Agreement other than (a) those distributions made by the Debtors on the Effective Date and (b) distributions from the Professional Fee Escrow in accordance with Article II.C of the Plan.

The Liquidating Trust may withhold from amounts distributable to any Entity any and all amounts, determined in the Liquidating Trustee's sole discretion, required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

8. Insurance.

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust on and after the Effective Date.

9. Other Rights and Duties.

In addition to the Liquidating Trustee's rights and duties with respect to the Liquidating Trust, on and after the Effective Date, the Liquidating Trustee will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

On the Effective Date, the Liquidating Trust shall: (1) take possession of all books, records, and files of the Debtors and their Estates other than the Debtors' Professionals' Documents; and (2) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement, that retention of same is no longer necessary or required.

Any and all rights to conduct investigations with respect to Causes of Action or claims not released by the Debtors shall vest with the Liquidating Trust and shall continue until dissolution of the Liquidating Trust, as if neither the Confirmation Date nor the Effective Date had occurred.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Liquidating Trustee.

10. Priority Claims Reserve.

Subject to the provisions of Article VI.B.1 of the Plan, the Liquidating Trustee shall administer the Priority Claims Reserve for payment of Allowed Priority Claims; provided, that prior to the Effective Date, the Debtors shall consult in good faith with Hybrid and give Hybrid or its designee reasonable written notice and an opportunity to object prior to the allowance of settlement of any Claim otherwise entitled to a distribution from the Priority Claims Reserve.

To the extent that funds held in the Priority Claims Reserve are insufficient to satisfy the amount of Allowed Priority Claims against the Estates, whether allowed as of the Effective Date or afterwards, after application of such funds in accordance with Article II of the Plan, Hybrid shall cause one or more instances of the Priority Claims Reserve Subsequent Funding to occur.

For the avoidance of doubt, funds held in the Priority Claims Reserve shall not be Liquidating Trust Assets and, to the extent Cash remains in the Priority Claims Reserve after payment of all Allowed Priority Claims, the Liquidating Trustee shall promptly remit such balance to Hybrid or Hybrid's designee.

11. Disputed Claims Reserve.

The Liquidating Trustee may maintain, in accordance with the Liquidating Trustee's powers and responsibilities under the Plan and the Liquidating Trust Agreement, a Disputed Claims Reserve. The Liquidating Trustee may, in its reasonable discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided in the Plan and in the Liquidating Trust Agreement, as Disputed Claims are resolved pursuant to Article VIII of the Plan, and such amounts may be distributed on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date.

The Liquidating Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims

12. Wind-Down.

In addition to the Liquidating Trustee's rights and duties with respect to the Liquidating Trust, on and after the Effective Date, the Liquidating Trustee will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Liquidating Trustee shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Liquidating Trustee shall: (1) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (2) file for each of the Debtors a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable), including, but not limited to, any actions contemplated in Sections 275–283 of the General Corporation Law of the State of Delaware (the "DGCL"); (3) in the Liquidating Trustee's reasonable discretion, complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (4) take such other actions as the Liquidating Trustee may determine to be necessary or desirable to carry out the purposes of the Plan. For purposes of clause (2) of the preceding sentence, the Plan shall constitute a plan of distribution as contemplated in the DGCL. The certificate of dissolution or equivalent document may be executed by the Liquidating Trustee without need for any action or approval by the shareholders or Board of Directors of any Debtor. From and after the Effective Date, the Debtors (5) for all purposes shall be deemed to have withdrawn their

business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (6) shall be deemed to have cancelled pursuant to this Plan all Interests, and (7) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, (8) the dissolution of the Debtors shall not have any effect, in any manner, on the Causes of Action that the Liquidating Trustee may assert in accordance with the Plan and the Liquidating Trust Agreement and (9) notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

13. Termination of the Liquidating Trust.

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, and (3) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, but in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Liquidating Trust Assets; provided that the dissolution, or deemed dissolution, of the Liquidating Trust shall not affect or limit the ability of the Liquidating Trust to transfer the Equity Consideration in accordance with the LLC Agreement, including Section 8.2(f) thereof.

14. Transfer of Beneficial Interests.

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

15. Termination of the Liquidating Trustee.

The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

16. Exculpation; Indemnification.

The Liquidating Trustee, the Liquidating Trust, professionals retained by the Liquidating Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Liquidating Trust Agreement.

~~F.~~G. *Procedures for Resolving Contingent, Unliquidated, and Disputed Claims and Interests.*

1. Resolution of Disputed Claims.

(a) Allowance of Claims and Interests.

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

(b) Prosecution of Objections to Claims or Interests.

~~Unless~~Subject to the provisions of Article VI.B.1 of the Plan, and other than with respect to Professional Fee Claims, unless otherwise agreed by, as applicable, the Debtors ~~or the Liquidator~~prior to the Effective Date or the Liquidating Trustee on and after the Effective Date, the Debtors ~~or the Liquidator~~, the Liquidating Trustee, or Hybrid, as applicable and to the extent provided by Article VI.B.1 of the Plan, or its designee shall have the exclusive authority to File objections to Claims or Interests, settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all Claims or Interests, regardless of whether such Claims or Interests are in a Class or otherwise~~. From~~; provided, that, the Debtors or the Liquidating Trustee, as applicable, shall consult in good faith with Hybrid and give Hybrid or its designee reasonable written notice and an opportunity to object prior to the allowance of settlement of any Claim otherwise entitled to a distribution from the Priority Claims Reserve.

Subject to the foregoing sentence, from and after the Effective Date, the ~~Liquidator (i~~Liquidating Trustee (a) may settle or compromise any Disputed Claim ~~without any further notice to or action, order, or approval of the Bankruptcy Court and (ii~~in accordance with the Liquidating Trust Agreement and Article VII of the Plan and (b) shall succeed to the Debtors' rights with respect to any objections Filed by the Debtors that remain pending as of the Effective Date. From and after the Effective Date, the ~~Liquidator~~Liquidating Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Claims Estimation.

~~Prior to the Effective Date, the Debtors and on~~On and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, may, at any time, request that the Bankruptcy Court estimate (~~i~~a) any Disputed Claim pursuant to applicable law and (~~ii~~b) any contingent or unliquidated Claim pursuant to applicable law, including section 502(c) of the Bankruptcy Code, regardless of whether the Debtors or the ~~Liquidator~~Liquidating Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. Notwithstanding any provision otherwise in the Plan to the contrary, a Claim that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

(d) Expungement or Adjustment to Claims Without Objection.

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtors or the ~~Liquidator~~Liquidating Trustee (or the Notice and Claims Agent at, as applicable, the Debtors' or the ~~Liquidator's~~Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtors or the ~~Liquidator~~Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(e) Deadline to File Objections to Claims or Interests.

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

2. Disallowance of Claims.

To the maximum extent provided by section ~~-~~ 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, alleges is a transferee of a transfer that is avoidable under section ~~-~~ 522(f), 522(h), 544, 545, 547, 548, 549, or ~~-~~ 724(a) of the Bankruptcy Code shall be disallowed if (~~a~~1) the Entity, on the one hand, and the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code and (~~b~~2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

3. Amendments to Claims.

~~On or after~~After the ~~Effective~~Confirmation Date, ~~except as provided in Article II.A of the Plan,~~ a Claim or Interest may not be ~~F~~filed or amended without the ~~prior~~ authorization of the Bankruptcy Court ~~or, as applicable, the Debtors or Liquidator,~~ and any such new or amended Claim Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court ~~.~~; provided that, even with such Bankruptcy Court authorization, a Claim or Interest may be amended by the Holder of such Claim or Interest solely to decrease, but not to increase, unless otherwise provided by the Bankruptcy Court, the amount, number or priority.

4. No Interest.

Unless otherwise specifically provided for in the Plan (including Article ~~-~~ III of the Plan), by applicable law, or agreed-to by, as applicable, the Debtors or the ~~Liquidator~~Liquidating Trustee, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

~~G.~~H. *Settlement, Release, Injunction, and Related Provisions.*

1. Compromise and Settlement of Claims, Interests, and Controversies.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (~~a~~1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (~~b~~2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (~~c~~3) the Holder of such a Claim or Interest has accepted the Plan. Without limiting the generality of the foregoing, the distributions set forth at Article III.C.5 of the Plan and Article III.C.6 of the Plan, including the waiver of Related Party Note Claims, represent a compromise of the dispute over the value of allegedly unperfected liens purportedly

securing the Senior Loan. Any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the ~~F~~filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.

2. Release of Liens.

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Debtors.

3. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right for the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4. Debtor Release.

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, EACH DEBTOR ON BEHALF OF ITSELF ~~AND~~, ITS ESTATE, AND THE LIQUIDATING TRUST (SUCH THAT THE LIQUIDATING TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO ARTICLE IX.D OF THE PLAN), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, SHALL PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SHALL BE DEEMED RELEASED BY EACH DEBTOR AND ITS ESTATE) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS OR THE LIQUIDATING TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES; PROVIDED, HOWEVER, THAT THE FOREGOING "DEBTOR RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF ANY DEBTOR OR THEIR RESPECTIVE CHAPTER 11 ESTATES AGAINST A RELEASED PARTY (1) ARISING UNDER ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS ~~THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, (2) ARISING UNDER THE PURCHASE AGREEMENT, OR (3) WHICH RESULTS FROM ANY ACT OR OMISSION THAT IS JUDICIALLY DETERMINED PURSUANT TO A FINAL ORDER TO HAVE RESULTED FROM SUCH RELEASED PARTY'S FRAUD OR WILLFUL MISCONDUCT~~THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN OR (2) ARISING UNDER THE PURCHASE AGREEMENT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS' ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS' ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

5. Third Party Release.

~~ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, PROVIDED, HOWEVER, THAT THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT OPERATE TO RELEASE ANY RELEASED PARTY ON ACCOUNT OF LIABILITY THAT IS JUDICIALLY DETERMINED PURSUANT TO A FINAL ORDER TO HAVE RESULTED FROM SUCH RELEASED PARTY'S FRAUD OR WILLFUL MISCONDUCT.~~

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, PROVIDED, HOWEVER, THAT, SOLELY WITH RESPECT TO THE COMMITTEE MEMBERS, THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT AFFECT ANY COMMITTEE MEMBER'S PROOFS OF CLAIM FILED AGAINST THE DEBTORS OR CLAIMS OR CAUSES OF ACTION PENDING AGAINST A RELEASED PARTY IN A COMPLAINT OR PLEADING FILED AS OF THE PETITION DATE IN A COURT OR ARBITRATION PANEL OF COMPETENT JURISDICTION; PROVIDED, FURTHER, HOWEVER, THAT, THE THIRD PARTY RELEASE SHALL PRECLUDE A COMMITTEE MEMBER FROM AMENDING OR MODIFYING SUCH COMPLAINT OR PLEADING TO ASSERT CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY THAT WAS NOT OTHERWISE A PARTY TO SUCH PROCEEDING AS OF THE PETITION DATE.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

Any party permitted to vote on the Plan may opt out of this Third Party Release provided in Article IX.E of the Plan by checking the appropriate box to do so on such party's Ballot. If such party checks the appropriate box, it will not be bound by the Third Party Release. The election to withhold consent to grant such release is at such party's option, and any such party that fails to vote will be deemed to have consented to the Third Party Release. Likewise, any such party that votes to accept or reject the plan and submits a Ballot without checking the box to opt out of the Third Party Release will be deemed to consent to the Third Party Release.

6. Exculpation.

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors; provided that ~~the foregoing "Exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud or willful misconduct; provided, further, that~~ each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the foregoing "Exculpation" provided under Article ~~VIII~~IX.F of the Plan, the rights of any Holder of a Claim or Interest to enforce rights arising under this Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan.

7. Injunction.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ~~ARTICLE VIII~~ARTICLE IX.D OF THE ~~P~~PLAN; (3) HAVE BEEN RELEASED PURSUANT TO ~~ARTICLE VIII~~ARTICLE IX.E OF THE ~~P~~PLAN; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ~~ARTICLE VIII~~ARTICLE IX.F OF THE ~~P~~PLAN (BUT ONLY TO THE EXTENT OF THE EXCULPATION PROVIDED IN ~~ARTICLE VIII~~ARTICLE IX.F ~~OF THE PLAN~~); OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED, INCLUDING THE LIQUIDATING TRUST) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR

ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH HOLDER HAS OBTAINED ENTRY OF A FINAL ORDER AUTHORIZING SUCH SETOFF, SUBROGATION, OR RECOUPMENT AS PROVIDED IN THE PLAN; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

8. Waiver of Statutory Limitations on Releases.

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER ARTICLE ~~VIII~~IX OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN ARTICLE ~~VIII~~IX OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

9. Setoffs.

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtors, and on and after the Effective Date, the ~~Liquidator~~Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest or other pleading Filed with respect thereto prior to the Confirmation Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim or Interest (before any distribution is made on account of such Allowed Claim or Interest), any ~~C~~claims, rights, and Causes of Action of any nature that the Debtors' Estates may hold against the

Holder of such Allowed Claim or Interest, to the extent such ~~C~~claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release by the Debtors or the ~~Liquidator~~Liquidating Trustee, as applicable, of any such ~~C~~claims, rights, and Causes of Action that the Debtors' Estates may possess against such Holder. In no event shall any Holder of Claims or Interests be entitled to ~~setoff~~set off any Claim or Interest against any ~~C~~claim, right, or Cause of Action of the Debtors' Estates unless such Holder obtains entry of a Final Order entered by the Bankruptcy Court authorizing such setoff; provided that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtors' or the ~~Liquidator's~~Liquidating Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

10. GP Supercars

Nothing in Article IX.E of the Plan shall impair the ability of Committee Member GP Supercars & More SRL to continue to assert the Claims and Causes of Action against Henrik Fisker, Raymond J. Lane, and Bernhard Koehler in connection with the arbitration proceeding pending in Irvine, California, captioned as Case No. 50 457 t 00955 13 or in a court of appropriate jurisdiction or other appropriate forum if it is decided at some future date that such dispute is more properly resolved in such other forum.

I. *Substantial Consummation of the Plan.*

~~10.~~1. Conditions Precedent to Consummation of the Plan.

~~H. *Conditions Precedent to Confirmation and Consummation of the Plan.*~~

~~1. Conditions Precedent to the Effective Date.~~

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article ~~IX~~X.B of the Plan:

(a) the Bankruptcy Court shall have entered the Confirmation Order in form and substance materially consistent with this Plan in all respects and otherwise reasonably acceptable to the Debtors, Hybrid, and the Committee;

(b) the ~~Plan and~~ Plan Supplement, including any amendments, modifications, or supplements thereto shall be in form and substance materially consistent with this Plan in all respects and otherwise reasonably acceptable to the Debtors, Hybrid, and the Committee;

(c) the ~~Liquidator~~Liquidating Trustee shall have been appointed and the ~~Liquidator~~Liquidating Trust Agreement shall have been executed and become effective;

(d) all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (~~i~~a) been tendered for delivery~~,~~ and (~~ii~~b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;

(e) the ~~Sale Transaction~~Liquidating Trust Cash Distribution shall have ~~been consummated~~occurred;

(f) the ~~Wind Down~~Priority Claims Reserve shall have been established and funded; and

(g) the Professional Fee Escrow shall have been established and funded.

(h) the Hybrid Cash Distribution shall have occurred; and

(i) the SVB Cash Distribution shall have occurred.

The payments required to satisfy the Distribution Conditions Precedent shall be made contemporaneously with Consummation of the Plan, but such payments may be made only after the satisfaction of the Initial Conditions Precedent.

2. Waiver of Conditions.

The conditions to Confirmation of the Plan and ~~to the Effective Date~~Consummation of the Plan set forth in Article ~~IX~~X of the Plan may be waived by the Debtors with the prior written consent from Hybrid and the Committee, each in their reasonable discretion.

3. Effect of Non-Occurrence of Conditions to the Effective Date.

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (~~a~~1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtors; (~~b~~2) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (~~c~~3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

~~I.~~J. *Modification, Revocation, or Withdrawal of the Plan.*

1. Modification and Amendments.

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article ~~X of the Plan~~XI of the Plan. Any modifications to the Plan shall be consistent in all respects with the Plan Settlement Term Sheet and shall otherwise be reasonably acceptable to the Debtors, the Committee, and Hybrid.

2. Effect of Confirmation on Modifications.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

3. Revocation or Withdrawal of the Plan.

The Debtors reserve the right, in good-faith consultation with the Committee and Hybrid, to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors, in good-faith consultation with the Committee and Hybrid, revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (~~a~~1) the Plan with respect to such Debtor shall be null and void in all respects; (~~b~~2) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed

pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (~~c~~3) nothing contained in the Plan with respect to such Debtor shall: (~~i~~a) constitute a waiver or release of any Claims or Interests; (~~ii~~b) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (~~iii~~c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

~~J.~~K. *Retention of Jurisdiction.*

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

(b) decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

(c) resolve any matters related to: (~~i~~a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (~~ii~~b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (~~iii~~c) the Debtors or Liquidating Trustee amending, modifying, or supplementing, after the Effective Date, pursuant to Article V of the Plan, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (~~iv~~d) any dispute regarding whether a contract or lease is or was executory or expired;

(d) enforce Hybrid's obligations to cause one or more instances of the Priority Claims Reserve Subsequent Funding to occur in accordance with Article II.D of the Plan;

~~(d)~~(e) ensure that distributions to Holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

~~(e)~~(f) adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

~~(f)~~(g) adjudicate, decide, or resolve any and all matters related to Causes of Action;

~~(g)~~(h) enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

~~(h)~~(i) enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

~~(i)~~(j) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

~~(j)~~(k) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

~~(k)~~(l) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article ~~VIII~~IX of the Plan ~~hereof~~ and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

~~(l)~~(m) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 of the Plan;

~~(m)~~(n) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

~~(n)~~(o) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

~~(o)~~(p) adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

~~(p)~~(q) consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

~~(q)~~(r) determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

~~(r)~~(s) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

~~(s)~~(t) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

~~(t)~~(u) hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

~~(u)~~(v) enforce all orders previously entered by the Bankruptcy Court;

~~(v)~~(w) hear any other matter not inconsistent with the Bankruptcy Code;

~~(w)~~(x) enter an order concluding or closing the Chapter 11 Cases; and

~~(x)~~(y) enforce the injunction, release, and exculpation provisions set forth in Article ~~VIII~~ IX of the Plan.

~~K.~~L. *Miscellaneous Provisions*.

1. Immediate Binding Effect.

Subject to Article ~~IX~~X.A of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, Hybrid, the Debtors' Estates, the Liquidating Trustee, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

2. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

~~3. Payment of Statutory Fees.~~

~~All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtors or the Liquidator, as applicable, until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.~~

~~4.~~3. Dissolution of Committee~~s~~.

On the Effective Date, the Committee ~~and any other statutory committee appointed in the Chapter 11 Cases~~ shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Cases~~.~~, except the Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The Debtors and the ~~Liquidator~~Liquidating Trustee shall no longer be responsible for paying any fees or expenses incurred after the Effective Date by the Committee Members ~~or the members of or advisors to any other statutory committees after the Effective Date~~.

~~5.~~4. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

~~6.~~5. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

~~7.~~6. Service of Documents.

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on:

If to the Debtors to:

FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc~~.~~)
c/o Beilinson Advisory Group
~~475 Washington Boulevard~~
~~Marina Del Rey~~
3080 Airway Avenue
Costa Mesa, California ~~9~~02~~9~~626
Attn.: Marc Beilinson

with copies to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn.: Anup Sathy, P.C. and Ryan Preston Dahl

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Attn.: Laura Davis Jones, James E. O'Neill, and Peter J. Keane

~~If to the Purchaser to:~~

~~Keller & Benvenutti LLP~~
~~650 California Street, Suite 1900~~
~~San Francisco, California 94108~~

~~Attn.: Tobias S. Keller and Peter Benvenutti~~

If to the Committee to:

Brown Rudnick LLP
Seven Times Square
New York, New York 10036
Attn.: ~~William R. Baldiga~~Sunni Beville

If to the Purchaser to:

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attn.: Bojan Guzina

If to Hybrid to:

Keller & Benvenutti LLP
650 California Street, Suite 1900
San Francisco, California 94108
Attn.: Tobias S. Keller

Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Attn.: Susheel Kirpalani

~~8.~~7. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

~~9.~~8. Entire Agreement.

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

~~10.~~9. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (~~a~~1) valid and enforceable pursuant to its terms; (~~b~~2) integral to the Plan and may not be deleted or modified without the ~~Debtors'~~ consent~~;~~ of the Debtors, the Committee, and (~~c~~Hybrid, such consent not to be unreasonably withheld; and (3) nonseverable and mutually dependent.

~~11.~~10. Waiver or Estoppel.

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

ARTICLE VII.
STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in the Disclosure Statement.

A. *Confirmation Hearing.*

Section ~~1~~1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to conduct a hearing to consider confirmation of a chapter 11 plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. **The Bankruptcy Court has scheduled the**

Confirmation Hearing for ~~January 3,~~ [_____], 2014, at ~~9:30 a.~~ [__]:[__]0 [__].m., prevailing Eastern Time. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the Filing of a notice of such adjournment served in accordance with the order approving the Disclosure Statement and Solicitation Procedures. Any objection to the Plan must: (1) be in writing; (2) conform to the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (3) state the name, address, phone number, and ~~e-mail~~email address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (4) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (5) be Filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is actually received by the following notice parties set forth below no later than the Plan Objection Deadline. **Unless an objection to the Plan is timely served and Filed, it may not be considered by the Bankruptcy Court**.

<table>
<tr><th colspan="2">~~Proposed~~ Co-Counsel to the Debtors</th></tr>
<tr><td>James H.M. Sprayregen, P.C. (admitted pro hac vice)
Anup Sathy, P.C. (admitted pro hac vice)
Ryan Preston Dahl (admitted pro hac vice)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654</td><td>Laura Davis Jones (DE Bar No. 2436)
James E. O’Neill (DE Bar No. 4042)
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PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)</td></tr>
<tr><th>Co-Counsel to the ~~Purchaser~~Committee</th><th>~~Proposed~~ Co-Counsel to ~~the Committee~~Hybrid</th></tr>
<tr><td>William R. Baldiga

BROWN RUDNICK~~Ralph Norton~~
~~DAVIS & GILBERT~~ LLP
~~1740 Broadway~~
Seven Times Square
New York, ~~NY 10019~~New York 10036

~~with a copy to (which shall not constitute notice):~~

~~Peter Benvenutti~~
~~Tobias Keller~~
~~KELLER & BENVENUTTI~~Sunni P. Beville
BROWN RUDNICK LLP
~~650 California Street~~One Financial Center
Boston, Massachusetts 02111

Mark Minuti
SAUL EWING LLP
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~~San Francisco, CA 94108~~

~~Richard A. Barkasy~~
~~SCHNADER HARRISON SEGAL & LEWIS LLP~~
~~824 N. Market Street, Suite 800~~
P.O. Box 1266
Wilmington, Delaware 19801~~01~~99</td><td>Peter Benvenutti
KELLER & BENVENUTTI~~William R. Baldiga~~
~~BROWN RUDNICK~~ LLP
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~~222 Delaware Avenue, Suite 1200~~
~~P.O. Box 1266~~
~~Wilmington, Delaware 19899~~</td></tr>
</table>

U.S. Trustee
Office Of The United States Trustee The District of Delaware 844 King Street, Suite 2207 Wilmington, Delaware 19801 Attn: Mark Kenney, Esq.

B. *Confirmation Standards.*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code and that they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below.

1. Feasibility.

The Bankruptcy Code requires that to confirm a chapter 11 plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor(s) unless contemplated by the plan.

The Plan provides for the liquidation and distribution of the Debtors' assets. Accordingly, the Debtors believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

2. Best Interests of Creditors.

Notwithstanding acceptance of the Plan by a voting Impaired Class, to confirm the Plan, the Bankruptcy Court must still independently determine that the Plan is in the best interests of each Holder of a Claim or Interest in any such Impaired Class that has not voted to accept the Plan, meaning that the Plan provides each such Holder with a recovery that has a value at least equal to the value of the recovery that each such Holder would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, if an Impaired Class does not unanimously vote to accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the recovery that each such Class member would receive if the Debtors were liquidated under chapter 7.

The Debtors believe that the Plan satisfies the best interests test because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. Unsecured creditors are paid from any remaining sale proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

Substantially all of the Debtors' assets are being liquidated through the Debtors' proposed Sale Transaction in accordance with the proposed Sale Order. Although the Plan effects a liquidation of the Debtors' ~~Remaining Assets~~assets and a chapter 7 liquidation would achieve the same goal, the Debtors believe that the Plan provides a greater recovery to Holders of Allowed General Unsecured Claims than would a chapter 7 liquidation. Liquidating

the Debtors' Estates under the Plan likely provides Holders of Allowed General Unsecured Claims with a larger, more timely~~, larger~~ recovery because of the fees and expenses that would be incurred in a chapter 7 liquidation, including the potential added time and expense incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Chapter 11 Cases. Moreover, conversion to chapter 7 would require entry of a new bar date. See Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the amount of Claims ultimately Filed and Allowed against the Debtors could materially increase, thereby reducing creditor recoveries versus those available under the Plan.

Accordingly, the Debtors believe that the Plan is in the best interests of creditors.

C. *Alternative Plans.*

The Debtors do not believe that there are any alternative plans for the reorganization or liquidation of the Debtors' Estates. The Debtors believe that the Plan, as described herein, enables Holders of Claims and Interests to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

D. *Acceptance by Impaired Classes.*

The Bankruptcy Code requires, as a condition to Confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accept the plan. A class that is not "impaired" under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is "impaired" unless the plan: (1) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (2) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question; or (3) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, a Class of creditor Claims will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their Ballots in favor of acceptance, subject to Article III of the Plan.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds (2/3) in dollar amount of those interests who actually vote to accept or reject a plan. Votes that have been "designated" under section 1126(e) of the Bankruptcy Code are not included in the calculation of acceptance by a class of interests. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds (2/3) in amount actually voting cast their Ballots in favor of acceptance, not counting designated votes, subject to Article III of the Plan.

Article III.F of the Plan provides in full: "If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be ~~pr~~deem~~su~~ed accepted by the Holders of such Claims or Interests in such Class." Such "deemed acceptance" by an impaired class in which no class members submit ballots satisfies section 1129(a)(10) of the Bankruptcy Code. In re Tribune Co., 464 B.R. 126, 183 (Bankr. D. Del. 2011) ("Would 'deemed acceptance' by a non-voting impaired class, in the absence of objection, constitute the necessary 'consent' to a proposed 'per plan' scheme? I conclude that it may." (footnote omitted)); see In re Adelphia Commc'ns Corp., 368 B.R. 14, 259–63 (Bankr. S.D.N.Y. 2007).

E. *Confirmation Without Acceptance by All Impaired Classes.*

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if Impaired Classes entitled to vote on the plan have not accepted it or if an Impaired Class is deemed to reject the Plan,

provided that the plan is accepted by at least one Impaired Class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

1. No Unfair Discrimination.

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of Classes of Claims of equal rank (e.g., classes of the same legal character). The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests satisfy the foregoing requirements for ~~non-consensual~~nonconsensual Confirmation.

2. Fair and Equitable Test.

This test applies to Classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no Class of Claims receive more than 100% of the amount of the Allowed Claims in such class. As to the non-accepting Class, the test sets different standards depending on the type of Claims or Interests in such Class. As set forth below, the Debtors believe that the Plan satisfies the "fair and equitable" requirement because there is no Class of equal priority receiving more favorable treatment and no Class that is junior to such dissenting class that will receive or retain any property on account of the Claims or Interests in such Class.

(a) Secured Claims.

The condition that a plan be "fair and equitable" to a non-accepting class of secured claims includes the requirements that: (i) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (ii) each holder of a secured claim in the class receives deferred Cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

(b) Unsecured Claims.

The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the following requirement that either: ~~(i)~~(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or ~~(ii)~~ (ii) the holder of any claim or any equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior equity interest any property.

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(c) Equity Interests.

The condition that a plan be "fair and equitable" to a non-accepting class of equity interests includes the requirements that either: ~~(i)~~ (i) the plan provides that each holder of an equity interest in that class receives or retains under the plan on account of that equity interest property of a value, as of the effective date of the plan, equal to the greater of: (A) the allowed amount of any fixed liquidation preference to which such holder is entitled; (B) any fixed redemption price to which such holder is entitled; or (C) the value of such interest; or ~~(ii)~~ (ii) if the class does not receive the amount as required under (i) hereof, no class of equity interests junior to the non-accepting class may receive a distribution under the plan.

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ARTICLE VIII.
CERTAIN RISK FACTORS TO BE CONSIDERED BEFORE VOTING

Holders of Claims and Interests entitled to vote should read and ~~consider~~ carefully consider the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered together with this Disclosure Statement, referred to or incorporated by reference in this Disclosure Statement, before voting to accept or reject the Plan. These factors should not be regarded as constituting the only risks present in connection with the Debtors' business or the Plan and its implementation.

A. *Risk Factors that May Affect Recovery Available to Holders of Allowed Claims and Allowed Interests Under the Plan.*

1. Actual Amounts of Allowed Claims May Differ from Estimated Amounts of Allowed Claims, Thereby Adversely Affecting the Recovery of Some Holders of Allowed Claims and Allowed Interests.

The estimate of Allowed Claims and recoveries for Holders of Allowed Claims and Allowed Interests set forth in this Disclosure Statement are based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may ~~vary~~ significantly vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtors cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims and Allowed Interests under the Plan.

~~2. The Debtors May Be, or May Become, Administratively Insolvent or Become Unable to Pay Priority Class in Full.~~

~~As of the Petition Date, the Debtors have limited cash reserves, and substantially all of their assets are collateral for the Debtors' secured loans. Therefore, if the Debtors are unable to obtain final approval of their DIP financing (as set forth in the DIP Motion) or if the Sale Transaction is never closed, the Debtors would likely become administratively insolvent. Additionally, the Debtor could also become administratively insolvent if actual Allowed Administrative Claims, Allowed Tax Claims, or Allowed Other Priority Claims exceed the Debtors' estimates.~~

~~3. The Debtors May be Unable to Confirm the Plan if the WARN Adversary Proceeding is Successful.~~

~~As noted above, the WARN Adversary Proceeding seeks, among other things, priority unsecured claims against the Debtors' Estates. In particular, the parties to this action have asserted that the Debtors' reduction in force occurring on April 5, 2013 occurred not more than 180 days prior to the Debtor's cessation of business, thereby conferring priority status to such claims per sections 507(a)(4) and/or 507(a)(5) of the Bankruptcy Code. The Debtors disputed this position. While the Debtors do not believe the parties to the WARN Adversary Proceeding are entitled to priority claims, to the extent the WARN Adversary Proceeding successfully asserts material levels of Allowed Other Priority Claims against the Debtors' Estates, the Debtors may be unable to pay such priority claims in full, which could render the Plan unconfirmable. See 11 U.S.C. § 1129(a)(9).~~

2. ~~The Debtors May Not Be Able to Satisfy the~~ Any Valuation of the Equity Interest in the Wanxiang Affiliate Designated to Acquire the Debtors' Assets Is Speculative, and Could Potentially be Zero.

As noted above, and as more fully set forth and memorialized in the Purchase Agreement, Wanxiang's successful bid for the Acquired Assets consisted of, among other things, a contribution of a 20% common equity interest in a Wanxiang affiliate designated to acquire the Debtors' assets. Any valuation of this Equity Consideration is necessarily speculative, and the Debtors believe it could potentially be zero. Accordingly, the ultimate value attributable to the Equity Consideration, if any, could materially affect, among other things, recoveries to the Debtors' creditors, including holders of General Unsecured Claims.

~~4.~~3. ~~Conditions Precedent to Consummation of the Plan.~~

~~To the extent that the Debtors are unable to satisfy the conditions precedent to Consummation of the Plan, the Debtors may be unable to consummate the Plan and parties may terminate their support, financial or otherwise, for the Plan prior to the Confirmation or Consummation of the Plan. This loss would likely contribute to the loss of support for the Plan by important creditor constituents. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.~~

~~5.~~4. The Debtors Cannot Guaranty Recoveries Provided by the Plan.

Although the Debtors have made commercially reasonable efforts to estimate Allowed Claims, including Administrative Claims, Priority Tax Claims, and Other Priority Claims, it is possible that the actual amount of such Allowed claims is materially higher than the Debtors' estimates. Creditor recoveries could be materially reduced or eliminated in this instance. ~~The Debtors also have limited assets available to make creditor distributions and to fund the Wind-Down of these Estates. If these assets are ultimately insufficient to fund the Wind-Down or to pay Administrative or Priority Claims, the Debtors may be unable to make the distributions required by the Plan.~~

~~6.~~5. Certain Claims Asserted Against the Debtors May Be Non-Dischargeable.

Sections 1141(d)(6) and 523(a) of the Bankruptcy Code limit a debtor's ability to discharge certain claims, including claims arising under the federal False Claims Act, 31 U.S.C. § 3729 et seq. See 11 U.S.C. § 1141(d)(6). As noted above, at least one action arising under the False Claims Act has been asserted against the Debtors. Additional parties may seek to assert other Claims against the Debtors and allege that such Claims are not subject to the injunction provisions of the Plan. In the event the Debtors are subject to material liabilities not subject to the Plan's injunction provisions, the Debtors may be unable to consummate or implement their Plan.

~~7.~~6. Certain Tax Implications of the Debtors' Bankruptcy.

Holders of Allowed Claims should carefully review Article IX of this Disclosure Statement, "Certain United States Federal Tax Income Consequences~~"~~," to determine the tax implications of the Plan and the Chapter 11 Cases.

B. *Certain Bankruptcy Law Considerations.*

The occurrence or ~~non-occurrence~~nonoccurrence of any or all of the following contingencies, and any others, may affect distributions available to Holders of Allowed Claims and Allowed Interests under the Plan but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or necessarily require a re-solicitation of the votes of Holders of Claims in such Impaired Classes.

1. Parties in Interest May Object to the Plan's Classification of Claims and Interests.

Section ~~-~~1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

2. Failure to Satisfy Vote Requirements.

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to pursue another strategy to wind down the Estates, such as an alternative chapter 11 plan, a dismissal of the Chapter 11 Cases and an out-of-court dissolution, an assignment for the benefit of creditors, a conversion to a chapter 7 case, or other strategies. There can be no

assurance that the terms of any such alternative strategies would be similar or as favorable to the Holders of Allowed Claims and Allowed Interests as those proposed in the Plan.

3. The Debtors May Not Be Able to Secure Confirmation of the Plan.

The Debtors will need to satisfy section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, a finding by a bankruptcy court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or an Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the Solicitation Procedures, and the voting results are appropriate, the Bankruptcy Court can still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims and Allowed Interests will receive with respect to their Allowed Claims and Allowed Interests.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications may result in a less favorable treatment of any Class than the treatment currently provided in the Plan. Such a less favorable treatment may include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

4. Nonconsensual Confirmation.

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents' request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the Bankruptcy Court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting classes. The Debtors believe that the Plan satisfies these requirements and the Debtors may request such nonconsensual Confirmation in accordance with section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual Confirmation of the Plan may result in, among other things, increased expenses and the expiration of any commitment to provide support for the Plan, financially or otherwise.

5. Parties in Interest May Object to the Amount or Classification of a Claim.

Except as provided in the Plan, certain parties in interest, including the Debtors, reserve the right, under the Plan, to object to the amount or classification of any Claim. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is or may be subject to an objection or is not yet Allowed. Any Holder of a Claim that is or may be subject to an objection, thus, may not receive its expected share of the estimated distributions described in this Disclosure Statement.

6. Risk of ~~Non-Occurrence~~Nonoccurrence of the Effective Date.

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether such an Effective Date will, in fact, occur.

7. Contingencies May Affect Votes of Impaired Classes to Accept or Reject the Plan.

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims and Allowed Interests to be subordinated to other Allowed Claims and Allowed Interests. The occurrence of any and all such contingencies, which may affect distributions available to Holders of Allowed Claims and Allowed Interests under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

8. Risk Affecting Potential Recoveries of Holders of Claims in the Voting Classes.

The Debtors cannot state with any degree of certainty what recovery will be available to Holders of Claims in the voting Classes. At least three unknown factors make certainty impossible. First, the Debtors cannot know, at this time, how much Cash will remain after paying all Allowed Claims that are senior to the Claims of Holders in the voting Classes. Second, the Debtors cannot know ~~with any certainty~~, at this time, the number or size of Claims in the voting Classes which will ultimately be Allowed. Third, the Debtors cannot know ~~with certainty~~, at this time, the number or size of Claims in Classes senior to the voting Classes, or Claims that are unclassified, which will ultimately be Allowed.

C. *Disclosure Statement Disclaimer*.

1. The Financial Information Contained in this Disclosure Statement has not Been Audited.

In preparing this Disclosure Statement, the Debtors and their advisors relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information, and any conclusions or estimates drawn from such financial information, provided in this Disclosure Statement, and while the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant that the financial information contained herein, or any such conclusions or estimates drawn therefrom, is without inaccuracies.

2. Information Contained in this Disclosure Statement Is for Soliciting Votes.

The information contained in this Disclosure Statement is for the purposes of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

3. This Disclosure Statement Was Not Reviewed or Approved by the United States Securities and Exchange Commission.

This Disclosure Statement was not filed with the United States Securities and Exchange Commission under the Securities Act or applicable state securities laws. Neither the United States Securities and Exchange Commission nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained in this Disclosure Statement.

4. No Legal or Tax Advice Is Provided to You by this Disclosure Statement.

This Disclosure Statement is not legal advice to you. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or an Interest should consult his or her own legal counsel, accountant, or other applicable advisor with regard to any legal, tax, and other matters

concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

5. No Admissions Made.

The information and statements contained in this Disclosure Statement will neither (a) ~~–~~ constitute an admission of any fact or liability by any entity (including, without limitation, the Debtors) nor (b) ~~–~~ be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or Allowed Interests, or any other parties in interest.

6. Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtors may seek to investigate, File, and prosecute Claims and Interests and may object to Claims or Interests after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

7. No Waiver of Right to Object or Right to Recover Transfers and Assets.

The vote by a Holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors (or any entity, as the case may be) to object to that Holder's Claim or Interest, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtors or their respective Estates are specifically or generally identified in this Disclosure Statement.

8. Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors.

The Debtors' advisors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not ~~verified~~ independently verified the information contained in this Disclosure Statement.

9. Potential Exists for Inaccuracies, and the Debtors Have No Duty to Update.

The statements contained in this Disclosure Statement are made by the Debtors as of the date of this Disclosure Statement, unless otherwise specified in this Disclosure Statement, and the delivery of this Disclosure Statement after the date of this Disclosure Statement does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

10. No Representations Outside this Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the U.S. Trustee.

D. *Liquidation Under Chapter 7.*

If no plan can be confirmed, the Debtors' Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code.

ARTICLE IX.
CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of certain United States federal income tax consequences of the Plan to the Debtors and certain Holders of Allowed Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), Treasury Regulations thereunder ("Treasury Regulations"), and administrative and judicial interpretations and practice, all as in effect on the date of this Disclosure Statement and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the Internal Revenue Service as to any of the tax consequences of the Plan discussed below. There can be no assurance that the Internal Revenue Service will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to Holders of Allowed Claims that are not United States persons (as such term is defined in the Internal Revenue Code) or that are otherwise subject to special treatment under United States federal income tax law (including, without limitation, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, employees, persons holding Allowed Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction, and regulated investment companies). Moreover, this summary does not purport to cover all aspects of United States federal income taxation that may apply to the Debtors and Holders of Allowed Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under any laws other than United States federal income tax law, including under state, local, or foreign tax law.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF ALLOWED CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THIS DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. *Certain United States Federal Income Tax Consequences to Holders of Allowed Claims*

1. Consequences to Holders of Allowed Class ~~3, Class 4, Class 5A,~~2 and Class ~~5B~~4 Claims.

Pursuant to the Plan, Allowed Class ~~3 (Other Secured~~2 (Senior Loan Claims) and and Class 4 (SVB Claims) Claims will ~~(i)~~ be exchanged for Cash~~, (ii) be exchanged for the collateral securing such Claims, or (iii) have their Claims rendered Unimpaired. Holders of Allowed Class 4 (SVB Loan Claims), Class 5A (General~~

~~Unsecured Claims against Holdings), and Class 5B (General Unsecured Claims against Fisker Automotive) will be exchanged for Cash.~~. A Holder who receives Cash ~~or collateral~~ in exchange for its Claim pursuant to the Plan generally will recognize income, gain, or loss for United States federal income tax purposes in an amount equal to the difference between (a) the amount of Cash ~~(or the value of any collateral)~~ received in exchange for its Claim and (b) the Holder's adjusted tax basis in its Claim. The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. See the discussions of "accrued interest" and "market discount" below.

2. Consequences to Holders of Allowed Class 1, Class 3, Class 5A, and Class 5B Claims.

Pursuant to the Plan, the Debtors will liquidate and distribute certain assets to the Liquidating Trust. Each Holder of Allowed Class 1 (Other Priority Claims), Class 3 (Other Secured Claims), Class 5A (General Unsecured Claims against Holdings) and Class 5B (General Unsecured Claims against Fisker Automotive) Claims will be exchanged for their Pro Rata share of the beneficial interests in the Liquidating Trust.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, pursuant to Treasury Regulation Section 301.7701-4(d) and related regulations, the Debtors believe that the Liquidating Trust should be treated as a grantor trust setup for the benefit of the Holders of Class 1, Class 3, Class 5A, and Class 5B Claims. Holders that receive Liquidating Trust interests will be treated for United States federal income tax purposes as receiving their pro rata share of the Liquidating Trust's assets from the Debtors in a taxable exchange and then depositing them in the Liquidating Trust in exchange for Liquidating Trust interests. Each such Holder should recognize gain or loss equal to the difference between (a) the fair market value of the Liquidating Trust interests received in exchange for such Claims and (b) such Holder's adjusted tax basis in the Claims surrendered by such Holder.

The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. See the discussions of "accrued interest" and "market discount" below. A Holder's tax basis in the Liquidating Trust interests should equal their fair market value as of the Effective Date. A Holder's holding period for the Liquidating Trust interests should begin on the day following the Effective Date.

Holders of Class 1, Class 3, Class 5A, and Class 5B Claims that receive Liquidating Trust interests will be required to report in their United States federal income tax returns their share of the Liquidating Trust's items of income, gain, loss, deduction, and credit in the year recognized by the Liquidating Trust, which may include partnership income, gain, loss, deduction, and credit attributable to the Equity Consideration held by Liquidating Trust. This requirement may result in Holders being subject to tax on their allocable share of the Liquidating Trust's taxable income prior to receiving any cash distributions from the Liquidating Trust.

As noted above, this summary does not apply to Holders of Allowed Claims that are not United States persons, as such term is defined in the Internal Revenue Code ("Non-U.S. Holders"). The tax consequences to Non-U.S. Holders is complex and will vary depending on the circumstances and activities of such Holder. Each Non-U.S. Holder of Class 1, Class 3, Class 5A, and Class 5B Claims is urged to consult with its own tax advisor regarding the U.S. federal, state local and non-U.S. tax consequences of receipt of the Liquidation Trust interests, including any tax consequences attributable to the Equity Consideration held by Liquidating Trust.

It is plausible that a Holder receiving the Liquidating Trust interests could treat the transaction as an "open" transaction for United States federal tax purposes, in which case the recognition of any gain or loss on the transaction might be deferred pending the determination of the amount of the proceeds ultimately received from the Liquidating Trust. The United States federal income tax consequences of an open transaction are uncertain and highly complex, and a holder should consult with its own tax advisor if it believes open transaction treatment might be appropriate.

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS.

~~2.~~3. Accrued Interest.

A portion of the consideration received by Holders of Allowed Claims may be attributable to accrued interest on such Claims. Such amount should be taxable to that Holder as interest income if such accrued interest has not been previously included in the Holder's gross income for United States federal income tax purposes. Conversely, Holders of Claims may be able to recognize a deductible loss to the extent any accrued interest on the Claims was previously included in the Holder's gross income but was not paid in full by the Debtors.

If the fair value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Claims, the extent to which such consideration will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed Claims in each Class will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan is binding for United States federal income tax purposes, while certain Treasury Regulations generally treat payments as allocated first to any accrued but unpaid interest and then as a payment of principal. The Internal Revenue Service could take the position that the consideration received by the Holder should be allocated in some way other than as provided in the Plan. Holders of Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED INTEREST.

~~3.~~4. Market Discount.

Under the "market discount" provisions of the Internal Revenue Code, some or all of any gain realized by a Holder of a Claim who exchanges the Claim for an amount may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if its Holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, in each case, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a Holder on the taxable disposition of Allowed Claims (determined as described above) that were acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Allowed Claims were considered to be held by the Holder (unless the Holder elected to include market discount in income as it accrued).

~~4.~~5. Information Reporting and Backup Withholding.

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently at a rate of 28%) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; provided that the required information is timely provided to the Internal Revenue Service.

The Debtors, or the applicable withholding agent, will withhold all amounts required by law to be withheld from payments of interest. The Debtors will comply with all applicable reporting requirements of the Internal Revenue Service.

THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

B. *Certain United States Federal Income Tax Consequences to the Debtors.*

The Debtors may recognize taxable gain or loss as a result of Consummation of the Plan upon the sale of its assets in an amount equal to the difference between the fair market value of the assets sold and the applicable Debtor's tax basis in such assets. Thus the amount of gain or loss recognized will depend on the value of the assets sold, which cannot be known with certainty until the Plan is consummated. It is possible the Debtors will recognize taxable income or gain in connection with Consummation of the Plan and may not have sufficient net operating losses or other tax attributes to fully offset the amount of gain recognized, in which case the Debtors will be required to pay cash income taxes (federal and state) with respect to the amount of net income (and the Debtors' ability to apply net operating losses against the alternative minimum taxable income may subject to limitation) and will reduce the amount of Cash proceeds available to be distributed to Holders of the Allowed Claims.

1. Cancellation of Debt Income.

Under the Internal Revenue Code, a taxpayer generally recognizes cancellation of debt income ("CODI") to the extent that indebtedness of the taxpayer is cancelled for less than the amount owed by the taxpayer, subject to certain judicial or statutory exceptions. The most significant of these exceptions with respect to the Debtors is that taxpayers who are operating under the jurisdiction of a federal bankruptcy court are not required to recognize such income. In that case, however, the taxpayer must reduce its tax attributes, such as its net operating losses, general business credits, capital loss carryforwards, and tax basis in assets, by the amount of the CODI avoided. In this case, the Debtors expect that they will recognize significant CODI from the implementation of the Plan. As a result, the Debtors expect that their net operating losses will be reduced on account of such CODI. However, since the Debtors intend to liquidate, any remaining net operating losses will have no ongoing value to the Debtors or to the Holders of Claims or Holdings Interests.

ARTICLE X.
RECOMMENDATION OF THE DEBTORS

The Debtors believe that the Plan is in the best interests of all Holders of Claims against~~,~~ and Interests in~~,~~ the Debtors, and urge all Holders of Claims against and Interests in the Debtors entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Notice and Claims Agent by the Voting Deadline.

Dated: ~~December 10, 2013~~April 30, 2014

FAH Liquidating Corp. (f/k/a Fisker~~-~~ Automotive Holdings, Inc~~.~~.)
FA Liquidating Corp. (f/k/a Fisker~~-~~ Automotive, Inc~~.~~.)

By: ~~*/s/ Marc Beilinson*~~
Name: Marc Beilinson
Title: Chief Restructuring Officer

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~~*Proposed*~~ *Counsel to the Debtors and Debtors in Possession*

EXHIBIT A

Debtors' Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code

EXHIBIT B

Debtors' Corporate Structure
as of the Petition Date

EXHIBIT C

Asset Purchase Agreement by and Among
Fisker Automotive Holdings, Inc. and Fisker Automotive, Inc. as Sellers
and ~~Hybrid Tech Holdings, LLC~~Wanxiang America Corporation as Buyer (as amended by Amendment No. 1 to Asset Purchase Agreement and Amendment No. 2 to Asset Purchase Agreement)

EXHIBIT D

Limited Liability Company Agreement
for Wanxiang Automotive Acquisition Company LLC

EXHIBIT E

Plan Settlement Term Sheet