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

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| ARENA ENERGY, LP, *et al.*,[1] | ) | Case No. 20-34215 (MI) |
| | ) | (Joint Administration Requested) |
| Debtors. | ) | |

**DECLARATION OF ANTHONY R. HORTON IN SUPPORT OF THE CHAPTER 11 PETITIONS OF ARENA ENERGY, LP AND ITS DEBTOR AFFILIATES**

I, Anthony R. Horton, hereby declare under penalty of perjury:

1. I am a disinterested and independent member of the Board of Directors (the "Board") of Arena Energy GP, LLC, which, through a series of affiliated entities,[2] controls the general partner of Arena Energy, LP ("Arena Energy"), a limited partnership organized under the laws of Delaware and one of the above-captioned debtors and debtors in possession (together with Arena Energy, collectively, the "Debtors" or the "Company").

2. I have over 20 years of experience helping companies develop and execute comprehensive value maximizing business and strategic action plans, with a focus on the energy industry. In addition to my role as a disinterested director for Arena Energy, I currently serve on the boards of Neiman Marcus Group Inc., Seadrill Partners LLC, Travelport GDS, NanoLumens

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Arena Energy, LP (1436); Arena Energy 2020 GP, LLC (N/A); Arena Energy GP, LLC (7454); Arena Exploration, LLC (1947); Sagamore Hill Holdings, LP (8266); and Valiant Energy, L.L.C. (7184). The location of the debtors' service address is: 2103 Research Forest Drive, Suite 400, The Woodlands, Texas 77380.

[2] Arena Energy GP, LLC is the sole member and manager of Arena Energy 2020 GP, LLC, which is the sole general partner of W.R. Day, LP, which is the sole member and manager of Arena Energy 2020 II GP, LLC, which is the sole general partner of Arena Energy, LP.

Inc., and Frontera Infrastructure. I also serve as a restructuring advisor to the management of Just Energy, Inc. I previously served as an independent director for Sheridan Production Partners and Mission Coal and as chairman of the boards of EXCO Resources, Inc., Lone Star Gas Co., Enserch Energy, EFH Australia Holdings, and EECI Inc.

3. I am also the Chief Executive Officer and Managing Director of AR Horton Advisors LLC, through which I advise public and private companies on business and financial strategies, including balance sheet liability management programs and in-court restructurings.

4. For nearly two decades, I held a variety of senior executive roles at Energy Future Holdings Corp. ("EFH") and its subsidiaries and affiliates, including Executive Vice President, Chief Financial Officer, Treasurer, Chief Risk Officer, and Head of Corporate Development. In these positions, I guided and advised EFH and its subsidiaries and affiliates through numerous out-of-court restructuring transactions as well as EFH's successful chapter 11 reorganization, which was one of the most complex bankruptcy proceedings in history. Through those experiences, I have extensive experience in the oil and gas industry. I hold a Bachelors of Arts in Economics and Management from the University of Texas at Arlington and a Masters of Professional Accounting and Finance from the University of Texas at Arlington and Dallas. My professional certifications and designations include CPA, CFA, CMA, and CFM.

5. I was appointed to the Board on March 19, 2020. Dean Swick, another disinterested and independent director, was appointed to the Board on March 4, 2020. Together, we are the sole members of the Board's Transaction Committee (the "Transaction Committee") and Compensation Committee. Since June 26, 2020, the Transaction Committee has had the sole and exclusive authority to evaluate, negotiate, and approve any sale transaction involving the Debtors

and their assets. In this capacity, I am generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records.

6. I submit this declaration (the "Declaration") to assist the United States Bankruptcy Court for the Southern District of Texas (the "Court") and parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of the Debtors' petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed with the Court on the date hereof.

7. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' employees, operations and finances, information learned from my review of relevant documents, information supplied to me by members of the Debtors' management team and their advisers, or my opinion based on my experience, knowledge, and information concerning the Debtors' operations, financial affairs, and restructuring initiatives. I am over the age of 18, and I am authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.[3]

## Background

8. The Debtors are collectively the most active drillers of new oil and gas wells of all current offshore upstream oil and gas exploration companies operating on the Gulf of Mexico Outer Continental Shelf. Headquartered in The Woodlands, Texas, the Debtors have approximately 57 employees. The Debtors' operating revenue for the twelve-month period that

[3] The factual support for the First Day Motions is in the *Declaration of J. Michael Vallejo, Chief Financial Officer for Arena Energy, LP, in Support of the Chapter 11 Petitions of Arena Energy, LP and its Debtor Affiliates, the Cash Collateral Motion and Other First Day Motions*, filed contemporaneously herewith (the "Vallejo Declaration"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Vallejo Declaration.

ended December 31, 2019, was approximately $580.8 million, and, as of the date hereof (the "Petition Date"), the Debtors have over $1.0 billion in total funded debt obligations.

9. The Debtors commenced these prepackaged chapter 11 cases to implement the value-maximizing restructuring contemplated by the Restructuring Support and Plan Sponsor Agreement, dated August 19, 2020 (the "RSA"), a copy of which is attached to the Disclosure Statement. The RSA—which is supported by approximately 72.4% of their first-lien revolving facility lenders and approximately 94% of their second-lien lenders—will be implemented through the *Debtors' Joint Prepackaged Plan Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"),[4] which will be filed in connection herewith. Importantly, the Plan contemplates that allowed general unsecured and lienholder claims will remain unimpaired and "ride through" these chapter 11 cases unaffected. The Debtors seek to consummate the Plan as expeditiously as possible, given cash constraints, the level of stakeholder consensus, and risks associated with hurricane season in the Gulf of Mexico.

10. On the Petition Date, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

[4] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Vallejo Declaration or the Plan, as applicable.

**Events Leading to These Chapter 11 Cases**

11. Over the last eighteen months, the Debtors have attempted to address their high levels of funded indebtedness using nearly every possible strategy. With more than $1.0 billion in outstanding funded indebtedness and significant plugging and abandonment and similar liabilities, the Debtors understood that a reformation of their capital structure was necessary for them to continue their otherwise sound business operations as a going concern, satisfy their surety and environmental obligations, and withstand the ever-present volatility of the energy markets.

12. More specifically, I understand that, beginning in late 2018, the Debtors began to consider strategies including a refinancing of the Term Loan, a potential extension of the maturity date of the RBL Facility, the issuance of $800 million in senior secured notes, the sale of certain properties, and transferring certain overriding royalty interests. I also understand that, in August 2019, the need to address the Debtors' capital structure became particularly acute in light of a potential financial covenant default under the RBL Facility and the Term Loan.[5] As efforts to address the capital structure became more challenging, the Debtors engaged Kirkland & Ellis LLP ("Kirkland") as counsel, Evercore Group L.L.C. ("Evercore") as financial advisor and investment banker, and Alvarez & Marsal ("A&M") as restructuring advisor to engage with the Debtors' secured lenders regarding a forbearance and waiver in connection with the potential financial covenant default and to develop and assess possible holistic restructuring and recapitalization options for the Debtors' capital structure.

13. To further facilitate these efforts, Arena Energy GP, LLC appointed Mr. Swick and me to the Board in early 2020 to provide restructuring experience and guidance and ensure that

[5] Additional detail on these early efforts to address the Debtors' capital structure is contained in the Vallejo Declaration.

the Debtors' multi-pronged efforts to address their capital structure were supported by independent governance.

14. The Debtors continued to engage with their secured lenders in early 2020 regarding potential strategies to maximize stakeholder value, including raising new capital, refinancing the Debtors' prepetition credit facilities, selling assets, and reorganizing their business enterprise. These discussions became more urgent as the result of the unprecedented conditions that plagued the Debtors' industry starting in March 2020: the "price war" between Saudi Arabia and Russia, coupled with dwindling demand for energy resulting from the COVID-19 pandemic.

15. As described in further detail below, the Debtors' stakeholder engagement efforts were ultimately successful and resulted in the Debtors, the RBL Facility Agent, and the holders of nearly 72.4% of the commitments under the RBL Facility entering into the RSA, and the holders of 94% of the Term Loan Claims entering into the Restructuring Stipulation, all of which voted to accept the Plan during the Debtors' prepetition solicitation process.

16. The cornerstone of the RSA is a purchase and sale agreement with San Juan Offshore, LLC (the "Plan Sponsor") pursuant to which the Debtors will transfer all of their assets as a going concern to the Plan Sponsor pursuant to the Plan. The transactions contemplated by the RSA will generate tremendous value for the Debtors and their stakeholders because the Plan will: (a) restructure over $1 billion in funded indebtedness; (b) satisfy all trade, customer, royalty, and other non-funded debt claims in full in the ordinary course of business; (c) permit the Debtors' business enterprise to continue as a going concern and, therefore, avoid potentially triggering approximately net $530 million in plugging and abandonment obligations ($305 million of which

is supported by surety bonds); and (d) preserve dozens of good-paying jobs, including here in Texas.[6]

**I. Limited Waiver of April 2020.**

17. The Debtors hoped in 2019 that they could refinance their debt. This became untenable in August of that year when the Debtors determined a financial covenant default under the RBL Facility and Term Loan had occurred, entitling the RBL Facility Agent to exercise remedies against certain Debtors and their assets. In response, the Debtors engaged extensively with the RBL Facility Agent regarding a potential forbearance and waiver. Those efforts, however, were at an impasse until a RBL Facility Lender notified the Debtors that it would terminate a hedging obligation, which would result in the Debtors receiving $36 million in cash. This served as a catalyst for a resolution between the Debtors and the RBL Facility Agent.

18. More specifically, to prevent the RBL Facility Lenders from sweeping this much-needed infusion of cash, the Debtors negotiated the Limited Waiver and Forbearance Agreement, dated April 13, 2020 (the "Limited Waiver"). In return, pursuant to the Limited Waiver, the Debtors agreed to transfer the hedge termination proceeds to a blocked account from which the Debtors would be permitted to draw, subject to certain mutually agreed-upon restrictions. Those restrictions included, among other things, the Debtors' commitment to submit a thirteen-week cash flow forecast every four weeks to the RBL Facility Agent for approval and to pay certain

[6] The Plan Sponsor is sponsored by Lime Rock Partners VIII, LP and certain insiders of the Debtors, including Chief Executive Officer Mike Minarovic, Chief Financial Officer J. Michael Vallejo, and Chief Operating Officer Chris Capsimalis. As described in greater detail herein, in light of the involvement of certain insiders, all matters involving the sale process were overseen and directed by the Transaction Committee. In addition, the Debtors successfully fought for—and obtained—a clear "fiduciary out" in order to allow consideration of any potential alternative transaction that may arise. Specifically, Section 9.01 of the RSA provides, in part, that the Debtors may terminate the RSA for any reason, including to pursue an alternative restructuring proposal. Section 9.02 of the RSA permits the Debtors to, among other things, participate in, consider, respond to, and facilitate discussions of potential unsolicited alternative restructuring proposals, subject to certain terms and conditions.

outstanding expenses, costs, and fees owed to the RBL Facility Lenders.[7] With the Limited Waiver in place, the Debtors gained access to much-needed liquidity.

## II. Engagement With Secured Lenders.

19. The Debtors sought to leverage the momentum generated by the Limited Waiver to forge consensus with the Debtors' secured lenders. For example, the Debtors made a series of proposals to the RBL Facility Agent regarding potential restructuring alternatives. More specifically, the Debtors, under the supervision of the Board's independent directors, developed a reorganization proposal intended to preserve the Debtors' operations as a going concern with financing to be provided by the RBL Facility Lenders (the "Restructuring Framework"). After two meetings with a steering committee of the RBL Facility Lenders, on May 29, 2020, the Board's independent directors, on behalf of the Debtors, presented the Restructuring Framework to the RBL Facility Agent and the steering committee and made a formal offer to have the RBL Facility Lenders enter into the Restructuring Framework. On June 4, 2020, the independent directors presented the same Restructuring Framework to the entire syndicate of RBL Facility Lenders. Thereafter, to permit the RBL Facility Lenders to evaluate the Restructuring Framework, the Debtors established a virtual dataroom and made its senior management and advisers available to the RBL Facility Lenders. Unfortunately, on June 9, 2020, the RBL Facility Lenders notified the Debtors' management in writing that the syndicate was unable to support the Restructuring Framework. The RBL Facility Agent also informed the Debtors that the syndicate members were unwilling to acquire the Company's assets.

[7] From May to June, other hedging obligations pursuant to the RBL Facility were terminated, resulting in an additional $2 million being deposited in the blocked account.

20. On June 8, 2020, the Debtors presented the Restructuring Framework to the Term Loan Agent and certain Term Loan Lenders. During that presentation, the Debtors invited the Term Loan Lenders to fund the transactions contemplated by the Restructuring Framework or to otherwise submit a bid to acquire substantially all of the Debtors' assets. To facilitate the Term Loan Lenders' review of the Restructuring Framework, the Debtors also provided the Term Loan Agent with the same information and access to management provided by the Debtors to the RBL Facility Lenders.[8]

21. Ultimately, the Term Loan Lenders also declined to fund the transactions contemplated by the Restructuring Framework. Instead, certain Term Loan Lenders supported an alternative "RemainCo" structure where the Debtors would "abandon" certain assets in the Gulf of Mexico burdened by plugging and abandonment liabilities for reclamation by sureties and the federal government. The Debtors (which have an exemplary record on safety and environmental matters) did not believe that the proposed RemainCo structure was feasible for a variety of regulatory and other reasons and that the pursuit of such a structure could create significant environmental remediation liabilities. Furthermore, the Debtors determined that a RemainCo structure would take many months to negotiate and document and that, due to expected regulator and surety opposition, such a structure would take the better part of a year to implement following a bankruptcy filing. As described in the Vallejo Declaration, the Debtors' surety bonds are not sufficient to cover almost 42% of their projected plugging and abandonment liabilities. The

[8] In addition to their efforts to engage with the Term Loan Lenders regarding the Restructuring Framework, the Debtors engaged extensively with the Term Loan Lenders regarding potential restructuring alternatives. More specifically, since May 2020, the Company has hosted three briefings with the Term Loan Agent and Term Loan Lenders. The Debtors also held seven telephonic discussions with various Term Loan Lender principals, and Evercore has likewise engaged extensively with the Term Loan Lenders' advisors, as further described in the *Declaration of Curtis Flood in Support of the Chapter 11 Petitions of Arena Energy, LP and its Debtor Affiliates* (the "Flood Declaration"), filed contemporaneously herewith.

Debtors continued to urge the Term Loan Lenders or a subset thereof to participate in the Debtors' prepetition marketing process, but the Term Loan Lenders did not.

## III. Sale Efforts and the Initial Plan Sponsor Proposal.

22. In the face of dwindling liquidity and no prospect of incremental capital, the Debtors had no choice but to try to sell their assets. The independent directors instructed Evercore to broadly and aggressively market the Debtors' assets for sale. Thereafter, Evercore sent information to more than 900 prospective buyers and engaged in negotiations and discussions with more than 70 potentially interested parties.[9]

23. As Evercore began its initial contact with potential bidders, it became apparent that co-founder, equityholder, and Chief Executive Officer Mike Minarovic, or an entity affiliated with him, may be interested in pursuing a bid for the Debtors' assets, or making a new money investment in the Debtors' business enterprise. Mr. Minarovic for some time had expressed interest in being part of the Debtors' solution and had engaged separate advisers to interface with the Debtors in connection with their evaluation of various strategic options. As his interest crystallized, Mr. Minarovic and Lime Rock Partners VIII, LP formed the Plan Sponsor, which informed Evercore that it planned to submit a bid. Thereafter, Mr. Swick and I directed the Debtors' personnel and advisers to screen Mr. Minarovic and substantially all other executives affiliated with the Plan Sponsor off from any oral or written communications regarding the sale process. Additionally, Mr. Swick and I directed the Debtors' advisers to develop a protocol to govern communications between potential bidders and other interested parties (such as surety providers, lenders, and other key constituents) that were expected to remain in contact with Mr. Minarovic in his capacity as chief executive officer. To add a further level of independence

[9] The marketing process is described in detail in the Flood Declaration.

to the process, on June 26, 2020, the Transaction Committee (consisting solely of the two independent directors) was formed and was given exclusive authority to negotiate with bidders, select bids and approve any sale transactions.

24. Following two rounds of competitive bidding, the Transaction Committee, with input from Evercore and Kirkland, determined that nearly all of the proposals received were defective in material respects, such as a lack of an operator, surety bonding commitments, and/or financial capital to consummate a transaction, with the exception of a proposal from the Plan Sponsor (the "Initial Plan Sponsor Proposal"). The Initial Plan Sponsor Proposal was attractive for a variety of reasons, including that it: (a) contemplated the acquisition of ***all*** of the Debtors' assets and equity as a going concern on an "as is, where is" basis, without potential title or environmental contingencies; (b) provided for the assumption of all the Debtors' plugging, abandonment, and decommissioning liability and the replacement of the Debtors' existing surety bonds, and included a bonding support letter demonstrating that existing surety providers of the Debtors were willing to support the proposal and continue to provide surety bonding to the Plan Sponsor; (c) included financial support from a private equity investor with significant experience with the Debtors' assets and the oil and gas sector generally; (d) provided a 10% deposit of the proposed purchase price; and (e) would save the jobs of the Debtors' dedicated employees and allow for the bulk of the Debtors' contract and trade liabilities to be assumed by a healthy, solvent entity, thus avoiding potentially hundreds of millions of dollars in environmental and surety claims.

25. The Initial Plan Sponsor Proposal, which provided a $75 million cash purchase price that was subject to certain purchase price adjustments, was structured as a stalking horse bid that would set the floor for competing bids in a court-supervised auction process to be conducted in chapter 11 cases for the Debtors, and furthermore contained an acknowledgement that it was subject to higher or otherwise better bids submitted in connection with acceptable bidding

procedures governing such auction. The Transaction Committee, after consulting with the RBL Facility Lenders, who indicated their support for the Initial Plan Sponsor Proposal, determined that the Initial Plan Sponsor Proposal was the best and highest proposal received and instructed Evercore and Kirkland to commence negotiations over a purchase and sale agreement and related documentation for the Initial Plan Sponsor Proposal. During this time, the Transaction Committee and the Debtors' advisers continued to engage with the Term Loan Lenders regarding their RemainCo proposal in an effort to leave no potential solution off the table. However, these efforts were ultimately proved unsuccessful in achieving a feasible proposal from the Term Loan Lenders.

## IV. Amended Plan Sponsor Proposal and the Plan Sponsor Transaction.

26. After determining that no other proposal would yield higher value and certainty, and after exhaustive marketing (as detailed in the Flood Declaration), the Transaction Committee authorized the Debtors to finalize the terms of an asset purchase agreement between the Plan Sponsor and the Debtors documenting the Initial Plan Sponsor Proposal. This decision was made only after significant deliberations and weeks of hard-fought, arm's-length negotiations with the Plan Sponsor, extensive discussions between the Transaction Committee and its advisers, and as a result of the Transaction Committee's business judgment that the Initial Plan Sponsor Proposal was the highest or best offer and the most value-maximizing alternative. I believe that the Initial Plan Sponsor Proposal would have resulted in a successful auction under section 363 of the Bankruptcy Code by setting a high floor for potential bids.

27. Prior to execution of definitive documentation, the Initial Plan Sponsor Proposal required that the parties come to agreement on the terms of the bidding procedures that would govern a court-supervised auction process for the solicitation of competing offers. While the Plan Sponsor agreed that the Initial Plan Sponsor Proposal would be subject to higher or otherwise better offers submitted in connection with such an auction process, the Plan Sponsor and the RBL

Facility Lenders were unable to reach agreement. At the same time, the Debtors—faced with the reality of their rapidly dwindling liquidity—began to grow concerned that a lengthy in-court auction process and a sale of substantially all of their assets without a comprehensive chapter 11 plan transaction supported by a financial sponsor could ultimately leave the estates administrative insolvent and with material risk of liquidation.

28. To facilitate negotiations among the Debtors, the Plan Sponsor, and the RBL Facility Secured Parties beyond the July 24, 2020 maturity date under the RBL Facility, holders of approximately 80% of the outstanding commitments under the RBL Facility Credit Agreement (as well as the RBL Facility Agent) entered into a forbearance agreement on July 27, 2020 (the "Forbearance Agreement"), pursuant to which the consenting lenders agreed to forbear from exercising their rights or remedies through August 10, 2020. The Forbearance Agreement was subsequently extended through August 18, 2020. The Debtors utilized the breathing room afforded by the Forbearance Agreement to seek a global solution to the issues presented by implementation of the Initial Plan Sponsor Proposal.

29. These negotiations ultimately resulted in a mutually agreeable alternative transaction based upon an improved proposal by the Plan Sponsor (the "Amended Plan Sponsor Proposal"). Importantly, the Amended Plan Sponsor Proposal provided all of the same structural benefits of the Initial Plan Sponsor Proposal highlighted above, but for significantly higher value and greater consideration to the Debtors' estates, including (i) a cash purchase price of $64,157,079.00, which is not subject to any price adjustments, (ii) up to $60,000,000 in contingent value payments to holders of RBL Facility Claims based on the trading price of oil on the West Texas Intermediate ("WTI") index through 2024, and (iii) payment in full of all administrative, priority, and general unsecured claims (including all trade, vendor, and lienholder claims). In

exchange for the increased consideration and improved terms in the Amended Plan Sponsor Proposal, which eliminated downside price risk for the Debtors and their estates as well as the risk of administrative insolvency and provided holders of RBL Facility Claims with rights to share in potential upside value, the Plan Sponsor required a corresponding reduction of consummation risk, and therefore the Debtors and the RBL Facility Secured Parties agreed to consummate the sale to the Plan Sponsor contemplated under the Amended Plan Sponsor Proposal pursuant to a chapter 11 plan and without any further auction process.

30. The Debtors, the Plan Sponsor, and the RBL Facility Agent, on behalf of the Consenting RBL Lenders, entered into negotiations over a holistic restructuring agreement to memorialize their mutual agreement to the terms of the Amended Plan Sponsor Proposal. Those productive discussions resulted in the parties' entry into the RSA on August 19, 2020.

## V. Negotiations Resulting in the Restructuring Stipulation

31. Pursuant to the RSA and the Restructuring Stipulation, the Debtors have agreed to consummate, and the Consenting RBL Facility Parties and the Consenting Term Lenders have agreed to support and vote to accept, a chapter 11 plan effectuating the Plan Sponsor Transaction, including the sale of the Debtors' business enterprise to the Plan Sponsor, in exchange for the consideration distributed to the Debtors' estates under the plan, as described above.

32. While the Plan does not contemplate a postpetition marketing process and auction, the Debtors believe that the Plan and proposed sale will maximize value for the Debtors and their stakeholders. More specifically, Evercore, at the direction of and under the oversight of the independent directors and the Transaction Committee, has already conducted an exhaustive public prepetition auction process (with two separate bid deadlines) that spanned nearly three months. In light of that exhaustive process—which did not result in any viable offers other than the proposals submitted by the Plan Sponsor—the Transaction Committee, in a sound exercise of its business

judgment, has determined that the cost of any further marketing (with a corresponding negative impact on liquidity) in an effort to obtain the speculative upside of a new bid is not a prudent use of estate resources. This is particularly true where, as is the case here, a postpetition marketing and auction process would subject the Plan Sponsor Transaction to termination by the Plan Sponsor, thereby jeopardizing the substantial value provided to the Debtors' estates thereunder and exposing the Debtors' estates to material risk of administrative insolvency in the event of a failed or disappointing auction. Furthermore, holders of more than two-thirds by amount and a majority in number of the RBL Facility Claims and the Term Loan Claims—as well as the RBL Facility Agent, which holds duly perfected first liens on substantially all of the Debtors' assets securing claims that grossly exceed even the most optimistic valuation of the assets by several hundred million dollars—are contractually obligated pursuant to the RSA and the Restructuring Stipulation to support the Plan Sponsor Transaction, including the sale to the Plan Sponsor, and vote to accept the Plan. Moreover, while the RSA prohibits the Debtors from soliciting competing proposals, it provides the Debtors with a "fiduciary out" that permits the Debtors to evaluate any unsolicited alternative transaction and, if appropriate, terminate the RSA to pursue any such unsolicited alternative transaction. In light of the foregoing, I believe that the best and viable path as of the Petition Date was for the Debtors to enter into the RSA and pursue the Plan Sponsor Transaction.

## V. The Transaction Committee's Engagement with Another Potential Bidder.

33. It is also worth noting that the Debtors have until recently continued to receive periodic inbounds from a potential strategic transaction counterparty regarding an acquisition of the Debtors' assets (the "Potential Bidder"). On or around May 18, 2020, Evercore initially engaged with the Potential Bidder regarding a potential acquisition. On or around May 20, 2020, Evercore provided the Potential Bidder with a proposed nondisclosure agreement in form and

substance consistent in all material respects with the form executed by all other potentially interested parties (including the Plan Sponsor). The Potential Bidder, however, refused to execute the nondisclosure agreement unless it was permitted to engage with the Debtors' secured lenders, sureties, customers, and other key parties. The Transaction Committee, in consultation with Evercore and its other advisers, determined that such a condition—which no other potential bidder sought to impose on the Debtors—would jeopardize the integrity of the sale process.

34. Thereafter, Evercore, at the direction of the Transaction Committee, sought to engage with the Potential Party regarding a nondisclosure agreement for weeks. Those discussions did not result in execution of a nondisclosure agreement, and the Potential Bidder ceased contact with Evercore until late June 2020. At that time, Evercore learned that the Potential Bidder proposed to operate the assets in connection with a bid submitted by a financial sponsor (the "Financial Sponsor") contacted by Evercore as part of its sale process. Evercore and the Financial Sponsor engaged in extensive dialogue regarding a potential bid under the expectation that the Potential Bidder had executed a joinder to the Financial Sponsor's nondisclosure agreement. Ultimately, the Financial Sponsor's bid did not result in an agreement.

35. Thereafter, the Potential Bidder ceased engaging with Evercore until late July 2020, when the Potential Bidder sought to reengage with Evercore regarding its interest in submitting a new bid, separate and apart from the Financial Sponsor's prior bid. Notwithstanding the advanced discussions with the Plan Sponsor, the Transaction Committee—as a fiduciary for all stakeholders—directed Evercore to engage with the Potential Bidder as quickly as possible. However, further engagement with the Potential Bidder quickly became problematic. As an initial matter, the Potential Bidder's new bid contained numerous significant flaws, including purchase price reductions for title and environmental defects, inadequate debt and equity financing

commitments, a lack of firm surety bonding commitments, and a proposal to reject or renegotiate certain midstream agreements. Furthermore, the Potential Bidder continued to refuse to execute a nondisclosure agreement. To make matters worse, Evercore learned that the Financial Sponsor, in contravention of its nondisclosure agreement, had shared confidential information with the Potential Bidder without requiring the Potential Bidder to execute a joinder to the Financial Sponsor's nondisclosure agreement, as required by the express terms of that agreement.

36. In response, the Transaction Committee directed its advisers to inform the Potential Bidder that it must immediately execute a standard nondisclosure agreement.[10] As of the date hereof, the Potential Bidder has not executed a nondisclosure agreement or otherwise evidenced any indication that it will comply with Evercore's marketing procedures.

37. Accordingly, in light of the value of the Plan Sponsor Transaction and the lack of actionable alternatives from other potentially interested parties, the Transaction Committee determined that it was appropriate to proceed with the RSA and the Plan Sponsor Transaction contemplated thereby. To be clear, the Potential Bidder—and any other potentially interested party—may submit an unsolicited proposal that is actionable, in which case, the Transaction Committee will review any such proposal in accordance with the terms of the RSA.

## VI. The Confirmation Timeline and Next Steps.

38. In sum, the Plan Sponsor Transaction is not only the best deal; at this time, it is the sole viable alternative available. Accordingly, the Debtors commenced solicitation on August 20, 2020. Prior to the commencement of the solicitation of votes on the Plan, the Debtors obtained contractual obligations under the RSA and the Restructuring Stipulation to support and vote to

[10] The Transaction Committee also directed its advisers to inform the Financial Sponsor that it was also under an obligation to destroy any confidential information received as part of Evercore's process.

accept the Plan from the RBL Facility Agent, holders of approximately 72.4% by principal amount of the RBL Facility Claims and holders of approximately 94% by principal amount of the Term Loan Claims.

39. In connection with the commencement of these cases, the Debtors are seeking approval of their proposed confirmation schedule, which is consistent with the RSA. The Debtors seek to consummate a transaction as expeditiously as possible given the Debtors' current cash position and inability to arrange additional financing sources. The Debtors' business is capital intensive, and the Debtors are largely unhedged relative to commodity prices. Further, the Debtors are unable to obtain additional hedging arrangements from current or prospective stakeholders until the Debtors' capital structure is improved. Moreover, current and prospective commodity prices are not at a level that provides sufficient economic return to justify committing additional capital or using the Debtors' limited cash for the drilling of proved undeveloped reserves. As such, the Debtors are depleting their producing reserve base without replacing it with new or additional producing reserves as would normally be the case. As a result, the Company's reserve base declines with each passing day, leaving less assets for stakeholders recoveries. The parties are also cognizant of the fact that hurricane season in the Gulf of Mexico runs from June until November, and seek to consummate a transaction as expeditiously as possible to minimize the risk of the Debtors' assets diminishing as a result of hurricane-related events. The Debtors' proposed schedule is summarized as follows:

| **Event** | **Date** |
|---|---|
| Voting Record Date | August 12, 2020 |
| Solicitation Commencement Date | August 20, 2020 |
| Publication Deadline | August 28, 2020 |
| Voting Deadline | August 28, 2020, at 12:00 p.m., prevailing Central Time |
| Objection Deadline | September 18, 2020, at 4:00 p.m., prevailing Central Time |
| Reply Deadline | September 22, 2020, at 4:00 p.m., prevailing Central Time |

| Event | Date |
|---|---|
| Combined Hearing | September 25, 2020 |

40. As discussed in greater detail herein, I believe that these chapter 11 cases present the best path forward for the Debtors.

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

Dated: August 21, 2020

*/s/ Anthony R. Horton*
Anthony R. Horton
Independent Director
Arena Energy GP, LLC

**Certificate of Service**

I certify that on August 21, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Matthew D. Cavenaugh*
Matthew D. Cavenaugh