

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>SAEXPLORATION HOLDINGS, INC., et al.,</b>  <p style="text-align: center;"><b>Debtors.<sup>1</sup></b></p>	§ § § § § § §	<b>Chapter 11</b>  <b>Case No. 20-34306 (MI)</b>  <b>(Joint Administration Pending)</b>
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**DECLARATION OF MICHAEL FAUST IN SUPPORT  
OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Michael Faust, being duly sworn, depose and say:

1. I am the President, Chief Executive Officer and Chairman of the Board of SAExploration Holdings, Inc. (“SAE”) and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”). I am over the age of 18, competent to testify, and authorized to submit this declaration (the “Declaration”) on behalf of the Debtors.

2. I joined SAE’s Board of Directors in 2017 and in August 2019 became the Chairman of the Board and Interim President of SAE until February 2020, when I also became the Chief Executive Officer and the President of SAE. In May of 2018, I joined the board of directors at Obsidian Energy Ltd., a Canadian mid-size oil and gas production company. From March of 2019 to November of 2019, I was the Interim Chief Executive Officer of Obsidian. Currently, I am a director and chair of the strategic committee and serve on the reserves and operation committee. Since March 2019, I have also served on the Board of Directors of Parker

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: SAExploration Holdings, Inc. (7100), SAExploration Sub, Inc. (8859), SAExploration, Inc. (9022), SAExploration Seismic Services (US), LLC (5057), and NES, LLC. The address of the Debtors’ headquarters is: 1160 Dairy Ashford Road, Suite 160, Houston, TX 77079.

Drilling Company, a U.S. provider of drilling services and rental tools to the energy industry in the U.S. and international markets, where I serve on the Audit and Nominating and Corporate Governance Committees.

3. Prior to joining SAE, I worked at ExxonMobil, ConocoPhillips Alaska, Inc. and ConocoPhillips Canada Ltd., where I oversaw and managed the companies' exploration and strategy in those regions. I earned a Master of Arts degree in Geophysics from the University of Texas at Austin in 1984, after receiving my Bachelor of Science degree in Geology from the University of Washington in 1981. I am a Certified Petroleum Geologist and a member of the American Association of Petroleum Geologists and the Society of Exploration Geophysicists.

4. Except as otherwise noted, all facts set forth in this Declaration are based on my personal knowledge, my discussions with members of the Debtors' senior management, my review of relevant documents or, based on my experience and knowledge of the Debtors' operations and financial conditions, my opinion. In making this Declaration, I have relied, in part, on information and materials that the Debtors' personnel and advisors have gathered, prepared, verified, and provided to me in each case under my ultimate supervision, at my direction and/or for my benefit in preparing this Declaration. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

5. To minimize any disruption to the Debtors' operations and to ensure a smooth transition into chapter 11, the Debtors intend to request various types of relief in "first day" applications and motions (collectively, the "First Day Pleadings") in connection with the chapter 11 cases (the "Chapter 11 Cases").<sup>2</sup> I submit this declaration in support of the Debtors'

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the relevant First Day Pleadings or the Plan.

(a) voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and (b) the First Day Pleadings.

6. This Declaration is divided into two parts. Part I provides background information about the Debtors, their business operations, their corporate and capital structures, and the circumstances surrounding the commencement of the Chapter 11 Cases. Part II sets forth the relevant facts in support of each of the First Day Pleadings.

## **PART I – BACKGROUND**

### **A. Overview**

7. The Debtors are a full-service global provider of seismic data acquisition, logistical support, and processing services to their customers in the oil and natural gas industry that operate through wholly-owned subsidiaries, branch offices and variable interest entities in North America, South America, Asia Pacific, West Africa and the Middle East.

8. The Debtors commenced the Chapter 11 Cases to implement this restructuring through a prenegotiated plan of reorganization (the “Plan”), a copy of which has been filed contemporaneously herewith. The Plan reduces the Debtors’ prepetition debt by approximately \$74 million and deleverages their balance sheet. The Plan has the support of holders of approximately 100% of the Debtors’ secured debt under the Prepetition Credit Agreement, approximately 82% of the secured debt under the Prepetition Term Loan Agreement, and 100% of the secured debt under the Prepetition Convertible Notes (all as defined below and collectively, the “Consenting Creditors”), who have documented their support for the restructuring and the Chapter 11 Cases through a restructuring support agreement (the “Restructuring Support Agreement”). The Restructuring Support Agreement is attached hereto as **Exhibit A**. The Debtors believe that the Plan and the commencement of the Chapter 11 Cases

are positive milestones that allow them to reduce their debt to a sustainable level and set a course for a smooth exit from bankruptcy as a healthier enterprise.

## **Plan**

9. The Debtors reorganization includes: (i) entry into a first lien exit term loan facility (the “First Lien Exit Facility”) in an aggregate principal amount of \$15 million, on the terms set forth in the First Lien Exit Facility Term Sheet attached to the Restructuring Support Agreement as Exhibit B and otherwise as approved pursuant to the terms of the Definitive Documents; (ii) conducting a rights offering (the “Rights Offering”) pursuant to which all eligible Prepetition Credit Agreement Lenders, Prepetition Term Loan Lenders, and Prepetition Convertible Noteholders will be offered the opportunity to purchase loans to be advanced under the First Lien Exit Facility and equity in reorganized SAE, in each case in the amounts and in accordance with the Rights Offering Procedures and the Plan, with the Rights Offering being backstopped by certain of the Consenting Credit Agreement Lenders, Consenting Term Loan Lenders, and Consenting Convertible Noteholders pursuant to the backstop commitment agreement (the “Backstop Agreement”) attached to the Restructuring Support Agreement as Exhibit I; (iii) the satisfaction in full of the Prepetition Credit Agreement Advances through the entry into a Second Lien Exit Facility (the “Second Lien Exit Facility”) in an aggregate amount of \$20.5 million, on the terms set forth in the Second Lien Exit Facility Term Sheet attached to the Restructuring Support Agreement as Exhibit C and otherwise as approved pursuant to the terms of the Definitive Documents; (iv) the conversion of the Prepetition Term Loan Advances and the Prepetition Convertible Notes to new equity in reorganized SAE as described in the Plan; (v) a cash pot of \$100,000 for General Unsecured Claims; and (vi) the grant of a new Management Incentive Plan on the terms described in the MIP Term Sheet attached to the

Restructuring Support Agreement as Exhibit D and otherwise as approved pursuant to the terms of the Definitive Documents (the “Management Incentive Plan”).

10. The Debtors believe that, to be successful, the Chapter 11 Cases must proceed expeditiously. The terms of the Restructuring Support Agreement reflect that belief and the Debtors have agreed to certain milestones contained in the Restructuring Support Agreement, regarding, among other things, a deadline for entry of an order by the Court approving the Disclosure Statement and solicitation procedures and confirming the Plan within 70 calendar days after the Petition Date. To meet this deadline, the Debtors propose the following timeline for the Chapter 11 Cases and have sought emergency relief to establish the proposed schedule (subject to the Court’s calendar):

<b>Event</b>	<b>Deadline</b>
Voting Record Date	September 8, 2020
Hearing on Conditional Approval of Disclosure Statement	September 11, 2020 at 9:00 a.m. (Prevailing Central Time)
Complete Commencement of Plan Solicitation and Mailing of Combined Notice	September 16, 2020
Plan Supplement Filing Deadline	October 12, 2020 at 5:00 p.m. (Prevailing Central Time)
Plan Voting Deadline, Deadline to Object to final approval of Disclosure Statement and Confirmation, and Opt Out Deadline	October 19, 2020 at 5:00 p.m. (Prevailing Central Time)
Deadline to File Voting Affidavit	October 22, 2020 at 5:00 p.m. (Prevailing Central Time)
Deadline to file Consolidated Brief and Reply in Support of Confirmation	October 23, 2020 at 5:00 p.m. (Prevailing Central Time)
Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Plan (the “ <u>Combined Hearing</u> ”)	October 27, 2020 at _____.m. (Prevailing Central Time)

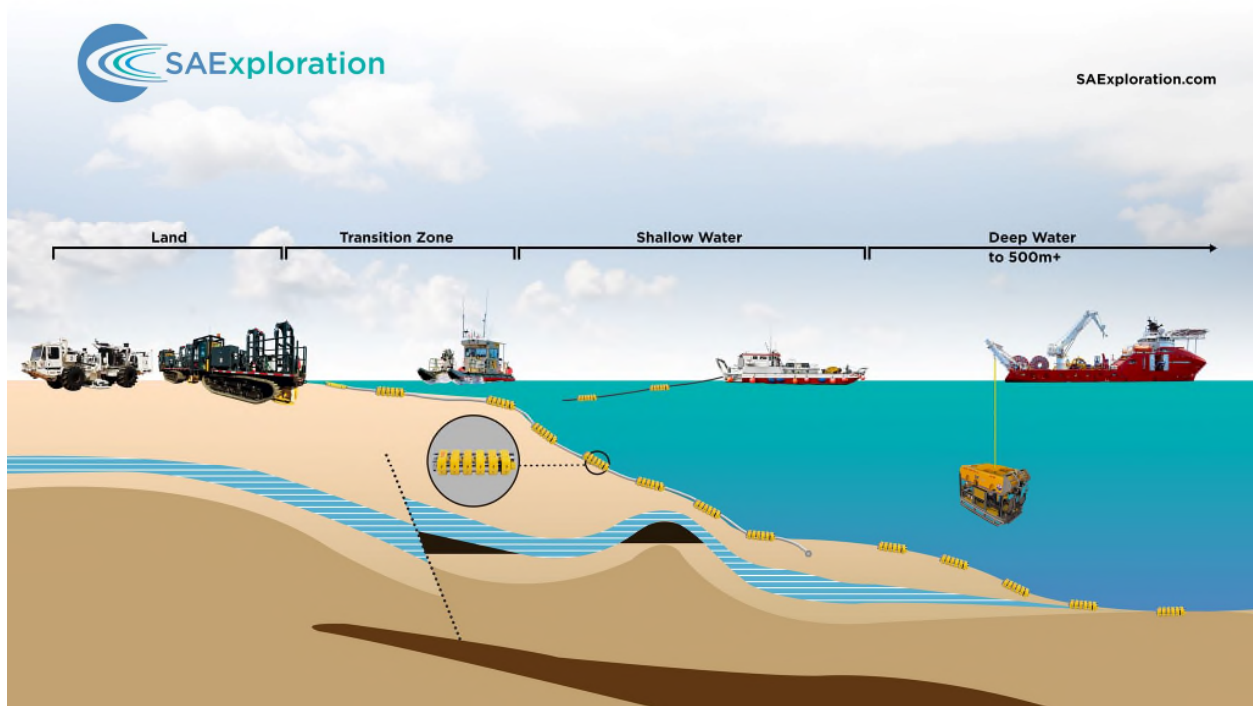
11. A quick resolution to these Chapter 11 Cases is essential to the preservation of the value of the Debtors' assets and estates. The Debtors' stakeholders have supported the Debtors' business leading up to the filing in anticipation of a balance sheet restructuring that does not risk the erosion of the Debtors' asset base, reputation, or business relationships. To ensure that result, the Debtors negotiated a favorable transaction with the Consenting Creditors. In exchange for that consideration, the Consenting Creditors have insisted that chapter 11 costs be minimized and that the transaction be effectuated promptly to avoid delay, disruption to operations, and degradation of value.

**B. The Debtors' Business**

12. The Debtors' business was started in 2006 in Peru as Exploración Sudamericana (South American Exploration), where its operations were focused until its expansion into Colombia in 2008. In 2010, the Debtors further expanded with the establishment of operations in Papua New Guinea and the opening of offices in Port Moresby, Papua New Guinea and Brisbane, Australia. In 2011, South American Exploration changed its name to SAExploration, incorporated in Delaware, and, in the same year, established seismic operations in North America with the acquisitions of Datum Exploration in Calgary, Canada and Northern Exploration Services in Anchorage, Alaska. In 2013, a business combination with a blank check company under the name Trio Merger Corp. was consummated in which SAE became a publicly listed company on the NASDAQ Capital Market.

13. Today the Debtors are a full-service global provider of seismic data acquisition, logistical support and processing services to customers in the oil and natural gas industry. In addition to the acquisition of 2D, 3D, time-lapse 4D and multi-component seismic data on land, in transition zones between land and water, and offshore in depths reaching 3,000 meters, the

Debtors offer a full-suite of logistical support and data processing services utilizing their proprietary, patent-protected software.



14. The Debtors operate crews around the world that are currently supported by over 160,000 owned land channels of seismic data acquisition equipment and other leased equipment as needed to complete particular projects. Seismic data is used by the Debtors' customers, including major integrated oil companies, national oil companies and independent oil and gas exploration and production companies, to identify and analyze drilling prospects and maximize successful drilling. While the results of the seismic surveys the Debtors conduct generally belong to their customers and are proprietary in nature, Alaskan Seismic Ventures, LLC ("ASV"), a related party variable interest entity, currently maintains a multiclient seismic data library of approximately 440 square kilometers in certain basins in Alaska, which is available for future sale or license. Combined the Debtors and their non-debtor affiliates currently employ 132 full-time employees. The Debtors and their non-debtor affiliates also employ hourly and day-rate

employees, but that number can fluctuate depending on the time of year and the size and number of projects at the time.

15. The Debtors specialize in the acquisition of seismic data in logistically complex and challenging environments and delicate ecosystems, including jungle, mountain, arctic and subaquatic terrains. The Debtors have extensive experience in deploying personnel and equipment in remote locations, while maintaining a strong quality, health, safety and environmental track record and building positive community relations in the locations where they operate. The Debtors employ highly specialized crews made up of personnel with the training and skills required to prepare for and execute each project and, over time, train and employ large numbers of people from the local communities where they conduct their surveys. The Debtors' personnel are equipped with the technology necessary to meet the specific needs of the particular project and to manage the challenges presented by sensitive environments.

16. As of the Petition Date, the Debtors had approximately \$65.3 million of backlog under contract, in addition to approximately \$977.6 million of bids outstanding. Of the \$65.3 million of backlog under contract, the Debtors expect \$2 million to be completed in 2020. The Debtors' backlog estimates represent those projects for which a customer has executed a contract or signed a binding letter of award, which can vary significantly from time to time, particularly if the backlog is made up of multi-year contracts with some of the Debtors' more significant customers.

**i. Seismic Technology**

17. Seismic technology is the primary tool used to locate oil and natural gas reserves, and it facilitates the development of complex reservoirs. Seismic data is used to pinpoint and determine the locations of subsurface features favorable for the accumulation of hydrocarbons,



as well as define the make-up of the sedimentary rock layers and their corresponding fluids. Seismic data is acquired by introducing acoustic energy into the earth and water through controlled energy sources. Seismic energy sources can consist of truck-mounted vibration equipment in accessible terrain, explosives such as dynamite in more difficult terrain, or vessel-mounted air guns in water and certain marsh environments. The sound waves created by explosives or vibration equipment are reflected back to the surface and collected by seismic sensors referred to as “geophones” or “hydrophones,” which measure ground and water displacement. A typical project involves the use of thousands, and sometimes tens of thousands, of channels recording simultaneously over the survey area. In general, the higher the number of recording channels employed in a given survey, the richer the data set that is produced.

18. Once seismic data is acquired, complex mathematical algorithms are used to transform the data into 2D profiles, 3D volumes of the earth’s subsurface or 4D time-lapse seismic data. These images are then interpreted by geophysicists and geologists for use by oil and natural gas companies in evaluating prospective areas, designing drilling programs, selecting drilling sites and managing producing reservoirs.

**ii. Seismic Data Acquisition Services**

19. The Debtors provide a full range of seismic data acquisition services, including in-field data processing and related logistics services. The Debtors currently provide their services on a proprietary basis to their customers and the seismic data acquired is owned by their customers once acquired, other than the multiclient seismic data library maintained by ASV. Their seismic data acquisition and logistics services include, (a) Program Design, Planning and Permitting, (b) Camp Services, (c) Survey and Drilling, (d) Recording, and (e) In-Field Data Processing.

**iii. Seismic Data Processing Services and Multiclient Seismic Data Library**

20. The Debtors also provide a full suite of onshore and offshore proprietary seismic data processing services. Seismic data are processed to produce an accurate image of the earth's subsurface using proprietary computer software and internally developed technologies. Advanced signal processing of 2D, 3D, time-lapse 4D and multi-component seismic data acquired by the Debtors and other industry contractors, as well as reprocessing of previously acquired legacy data, provides clients with detailed subsurface information essential to reducing risk in their exploration and production activities.

21. ASV currently maintains a multiclient seismic data library of approximately 440 square kilometers of certain basins in Alaska which is available for future sale or license.

**iv. Debtors' Markets and Trends**

22. The following discussion reflects the Debtors' markets and trends prior to the COVID-19 coronavirus pandemic. See "Update for 2020" below for a recent update on the Debtors' markets and trends.

**a. North America**

23. While the last several years have seen a decline in demand, the North American market has historically been a stable and sustainable market for 3D seismic data acquisition. Use of 3D technology is the norm in the United States and Canada as international oil companies seek to maximize the efficiency of their reservoirs and reduce exploration risk. The Debtors' operations in the North American market are consistent with their strategy to help increase their equipment utilization rates, while concurrently increasing margins, by balancing growth in North and South America, which have complementary operating seasons.

**b. South America**

24. The economies in South American countries continue to expand and develop, demanding significantly more energy to fuel their growth. As the political environments stabilize, oil companies are increasing operations in the market and are seeking experienced seismic service providers with complex environment know-how, strong quality, health, safety and environmental records and excellent relations with local communities to satisfy their exploration needs.

25. The Debtors have maintained operations in South America since 2006 while further growing their presence in Bolivia, Brazil, Colombia, and Peru. Although the global oil and natural gas industry downturn significantly impacted exploration activity in South America, particularly during 2019 and 2018, Brazil is projected to show strong growth in the marine-based market. While some improvements in the level of customer interest can be seen by an increase in inquiries and subsequent tenders, no assurance can be given that this will result in increased activity or that future decreases in activity will not occur again.

**c. Asia Pacific**

26. Exploration activities in Asia Pacific have declined recently with lower commodity prices but there is a steady demand for energy in the region. The Debtors expect the Asia Pacific market to continue to be a predominantly marine-based market in the current commodity price environment. This trend is expected to continue as long as customers remain hesitant to commit capital to large onshore projects that are more exploration driven.

**d. West Africa**

27. Historically, West Africa has presented numerous offshore marine opportunities. More recently, offshore marine seismic activity has been increasing in certain West African

countries. These projects are more focused on production–enhancement initiatives than new exploration. Despite the current macro–economic instability related to the oil and natural gas industry downturn, we expect overall offshore marine seismic activity to continue to improve in the near to medium–term future.

**e. Update for 2020**

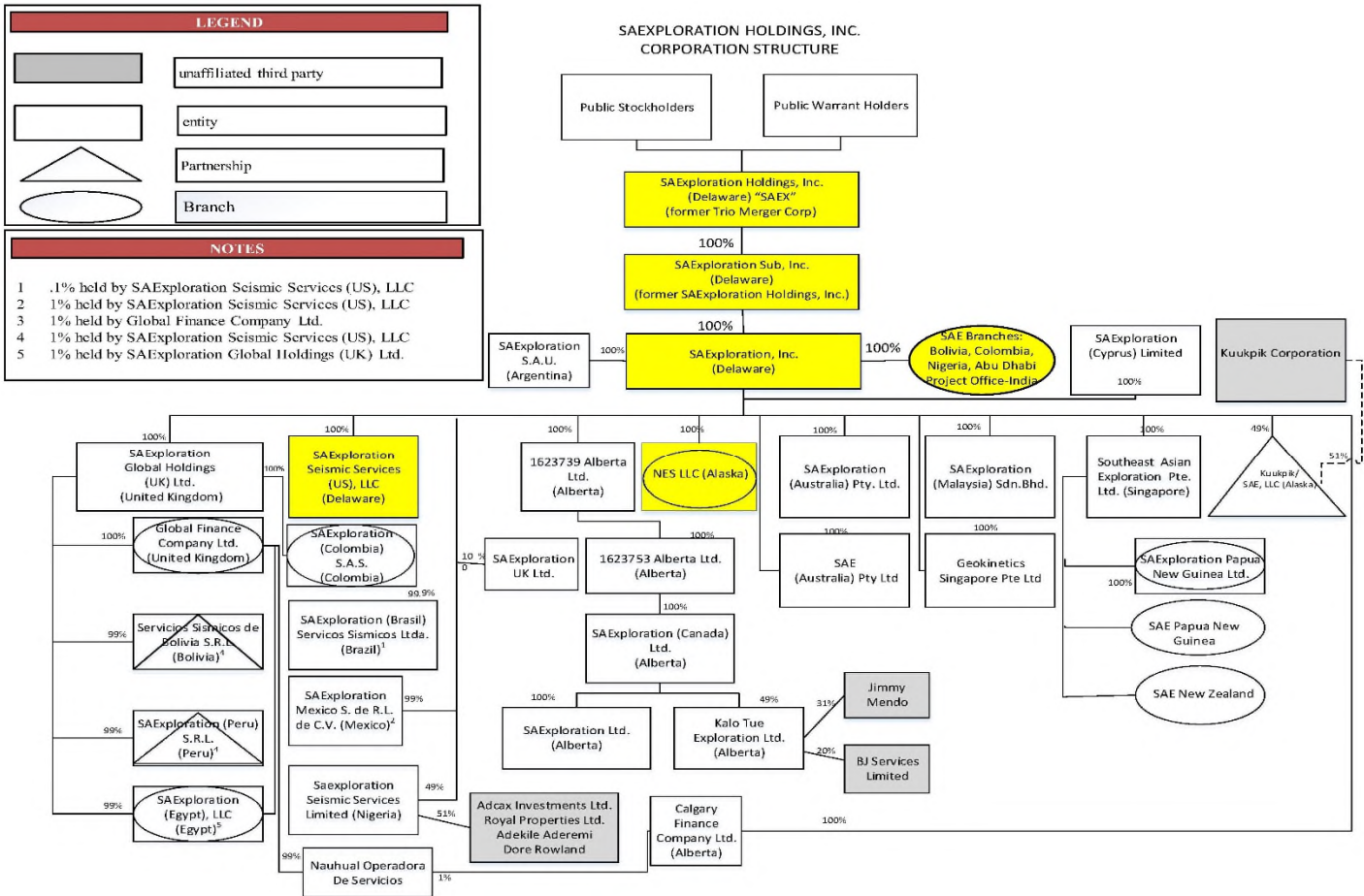
28. Due to the significant uncertainty in the outlook for oil and natural gas development as a result of the significant decline in oil prices since the beginning of 2020 due to the COVID–19 coronavirus pandemic and its impact on the worldwide economy and global demand for oil, the Debtors’ project visibility has continued to deteriorate as certain of their scheduled and anticipated projects have recently been cancelled or delayed and there is no assurance as to when they may be reinitiated or awarded, if at all. The Debtors are unable to predict when market conditions may improve and worsening overall market conditions could result in additional reductions of backlog and bids outstanding.

**C. The Debtors’ Corporate Structure**

29. The Debtors’ full corporate structure, which includes non-debtor entities, is reflected in the organizational chart below:<sup>3</sup>

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<sup>3</sup> The Debtors in the Chapter 11 Cases are highlighted in yellow.



30. SAE is the publicly traded parent holding company of the Debtors. SAEXPLORATION Sub, Inc. (“SAE Sub”) is 100% owned by SAE and is a holding company that owns 100% of SAE Inc. and was formerly SAEXPLORATION Holdings, Inc., which was the original entity that was acquired in 2013. SAEXPLORATION, Inc. (“SAE Inc.”) is the primary operating company of the Debtors. SAEXPLORATION Seismic Services (“Seismic Services”) is owned 100% by SAE Inc. and is the company that performs all land seismic acquisition services in the contiguous United States. NES, LLC (“NES”) is the entity that conducts the Debtors’ operations in Alaska. The non-Debtor entities are non-U.S. holding companies and operating entities.

31. In addition to the general operations and the separate entities owned by SAE Inc., SAE Inc. has four distinct “branches” within the SAE Inc. entity for the Company’s operations in

Bolivia, Colombia, United Arab Emirates, and India (individually, as a “Branch” and collectively as, the “Branches”). The Branches are not separate legal entities, but the Debtors treat them as separate, in part, by maintaining separate bank accounts, identifying employees as employees of a certain Branch, and keeping separate books and records for each Branch.

32. The Debtors are controlled by the Board of Directors at SAE, which consists of the five members listed below:

<b>Name</b>	<b>Position</b>
Michael Faust	Chairman
L. Melvin Cooper	Director
Gary Dalton	Director
Alan Menkes	Director
Jacob Mercer	Director

33. With the exception of myself, each member of the Board has been determined to be an independent director under NASDAQ standards.

34. The Debtors’ core management team consists of the following individuals:

<b>Name</b>	<b>Position</b>
Michael Faust	President and Chief Executive Officer
John Simmons	Vice President and Chief Financial Officer
Mike Scott	Executive Vice President Operations
Darin Silvernagle	Senior Vice President Marine
David A. Rassin	Vice President, General Counsel, Secretary and Chief Compliance Officer

#### **D. The Debtors’ Capital Structure**

35. The following description of the Debtors’ capital structure is for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of such obligations and their respective related agreements.

**i. *Prepetition Secured Indebtedness***

**1. *Prepetition Credit Agreement***

36. SAE Inc. is the borrower under that certain Third Amended and Restated Credit and Security Agreement dated as of September 26, 2018 (as further amended, the “Prepetition Credit Agreement”), among SAE, SAE Sub, NES, Seismic Services, and SAExploration Acquisitions (U.S.), LLC, which was subsequently merged out of existence, as guarantors, Cantor Fitzgerald Securities (the “Prepetition Credit Agreement Agent”), as the administrative agent and the collateral agent, and the lenders party thereto. Borrowings under the Prepetition Credit Agreement are secured primarily by substantially all of the Debtors’ assets located in the United States, subject to certain exclusions. The Debtors may use borrowings under the Prepetition Credit Agreement for working capital purposes and general corporate purposes. The Prepetition Credit Agreement matures on August 1, 2021.

37. As of the Petition Date, \$20.5 million in principal is outstanding under the Prepetition Credit Agreement and interest payments are due on the last day of each month. The interest rate for borrowings under the Prepetition Credit Agreement is 11.75% through and including August 2020 and 12.75% thereafter (the “Prepetition Credit Interest Rate”); however, pursuant to the Prepetition Credit Agreement and the ABL Forbearance Agreement (as defined below), while the Debtors are in default, the interest rate is two percentage points above the Prepetition Credit Interest Rate.

38. On April 13, 2020, the Debtors entered into a forbearance agreement with certain of the lenders of approximately 98% of the outstanding principal amount of the loans under the Prepetition Credit Agreement (the “ABL Forbearance Agreement”), pursuant to which the lenders agreed to refrain from exercising their rights and remedies under the Prepetition Credit

Agreement with respect to certain existing defaults and other events of default that have occurred and are continuing. The ABL Forbearance Agreement was originally effective until the earlier to occur of (i) 5:00 p.m. (New York City time) on May 31, 2020 and (ii) the date the ABL Forbearance Agreement otherwise terminates in accordance with its terms. The May 31, 2020 deadline was ultimately extended to August 31, 2020. The ABL Forbearance Agreement terminated on the commencement of the Chapter 11 Cases.

39. As a result of existing events of default, the Debtors are unable to borrow additional amounts under the Prepetition Credit Agreement without the requisite approval of the lenders under the Prepetition Credit Agreement.

## ***2. Prepetition Term Loan***

40. On June 29, 2016, SAE entered into that certain Term Loan and Security Agreement (as amended or otherwise modified from time to time, the “Prepetition Term Loan Agreement”), among SAE Inc., SAE Sub, NES, and Seismic Services as guarantors, the lenders party thereto (the “Prepetition Term Loan Lenders”) and Delaware Trust Company (the “Prepetition Term Loan Agent”), as the collateral agent and as the administrative agent. Borrowings under the Prepetition Term Loan Agreement are secured primarily by substantially all of the collateral securing the obligations under the Prepetition Credit Agreement, subject to certain exclusions. Pursuant to the terms of the Prepetition Term Loan Agreement, the Debtors were able to draw upon \$30 million at closing. The security interest in the collateral under the Prepetition Loan Agreement is junior to the security interest in the collateral securing the obligations under the Prepetition Credit Agreement, which priority is governed by the intercreditor agreements among the lenders.



41. As of the Petition Date, \$29 million in principal is outstanding under the Prepetition Term Loan Agreement and interest payments are due on the last day of each month. Borrowings under the Prepetition Term Loan Agreement bear interest at a rate of 12.50% (the “Prepetition Term Loan Interest Rate”); however, pursuant to the Prepetition Term Loan Agreement and the Term Loan Forbearance Agreement (as defined below), while the Debtors are in default, the interest rate is two percentage points above the Prepetition Term Loan Interest Rate.

42. The Prepetition Term Loan Agreement matures in January 2021 and, to date, the Debtors have been unable to negotiate an extension of the maturity date with the Prepetition Term Loan Lenders. Absent the Restructuring, the Debtors would likely be unable to repay the Prepetition Term Loan when due in January 2021.

43. On April 13, 2020, the Debtors entered into a forbearance agreement with certain of the Prepetition Term Loan Lenders of approximately 82% of the outstanding principal amount of the term loans under the Prepetition Term Loan Agreement (the “Term Loan Forbearance Agreement”), pursuant to which the Prepetition Term Loan Lenders agreed to refrain from exercising their rights and remedies under the Prepetition Term Loan Agreement with respect to certain existing defaults and other events of default that have occurred and are continuing. The Term Loan Forbearance Agreement was originally effective until the earlier to occur of (i) 5:00 p.m. (New York City time) on May 31, 2020 and (ii) the date the Term Loan Forbearance Agreement otherwise terminates in accordance with its terms. The May 31, 2020 deadline was ultimately extended to August 31, 2020. The Term Loan Forbearance Agreement terminated on the commencement of the Chapter 11 Cases.

### 3. *Prepetition Convertible Notes*

44. On September 26, 2018, SAE issued \$60 million in aggregate principal amount of 6.00% Senior Secured Convertible Notes due 2023 (the “Prepetition Convertible Notes”). The Prepetition Convertible Notes were issued under that certain indenture dated as of September 26, 2018 (as amended, supplemented or otherwise modified from time to time, collectively the “Prepetition Indenture”), among SAE, as issuer, SAE Inc., SAE Sub, Seismic Services, NES and SAExploration Acquisitions (U.S.), LLC (which was subsequently merged out of existence), as guarantors, and Wilmington Savings Funds Society, FSB (the “Indenture Trustee”), as Trustee and Collateral Trustee thereunder. The Prepetition Convertible Notes are secured primarily by substantially all of the collateral securing the obligations under the Prepetition Credit Agreement, subject to certain exceptions. The security interest in the collateral under the Prepetition Indenture is junior to the security interest in the collateral securing the obligations under the Prepetition Credit Agreement and the Prepetition Term Loan Agreement.

45. As of the Petition Date, the outstanding principal on the Prepetition Convertible Notes was \$60 million. Interest under the Prepetition Indenture is payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year. In 2018 and 2019, the Debtors recorded interest expense of \$1.6 million and \$6.2 million, respectively, related to the Prepetition Convertible Notes, of which \$1.0 million and \$2.6 million, respectively, related to contractual interest expense.

46. On April 13, 2020, the Debtors entered into a forbearance agreement with certain holders of approximately 98% of the outstanding principal amount of the Prepetition Convertible Notes (the “Notes Forbearance Agreement”), pursuant to which the holders of the Prepetition Convertible Notes agreed to refrain from exercising their rights and remedies under the

Prepetition Indenture with respect to certain existing defaults and other events of default that have occurred and are continuing. The Notes Forbearance Agreement was originally effective until the earlier to occur of (i) 5:00 p.m. (New York City time) on May 31, 2020 and (ii) the date the Term Loan Forbearance Agreement otherwise terminates in accordance with its terms. The May 31, 2020 deadline was ultimately extended to August 31, 2020. The Notes Forbearance Agreement terminated on the commencement of the Chapter 11 Cases.

#### **4. *Equity Pledge***

47. Under the Prepetition Credit Agreement, Prepetition Term Loan Agreement, and the Prepetition Convertible Notes and subject to an intercreditor agreement, SAE pledged 65% of its equity interests in the following non-debtor affiliates: (a) SAExploration Mexico S. de R.L. de C.V.; (b) SAExploration (Australia) Pty. Ltd.; (c) SAExploration (Malaysia) Sdn. Bhd.; (d) Southeast Asian Exploration Pte. Ltd.; (e) Calgary Finance Company, Ltd.; (f) 1623739 Alberta Ltd.; (g) SAExploration (Brasil) Servicos Sismicos Ltda.; and (h) SAExploration Global Holdings (UK) Ltd. In addition, under the Prepetition Credit Agreement SAE pledged its 49% equity interest in the Kuukpik/SAExploration LLC joint venture.

#### **5. *GTC Equipment Loan***

48. On November 18, 2019, SAE Inc. financed the purchase of a 30,000 single channel GCL system and certain related equipment from GTC, Inc. (“GTC”) pursuant to a secured promissory note payable to GTC in the original principal amount of \$9,973,730 (the “GTC Equipment Loan”). The GTC Equipment Loan bears interest at a fixed rate equal to 7.0% per annum and matures on January 1, 2023. Principal and interest is due and payable in equal monthly payments of \$307,959.83. As of the Petition Date, the outstanding principal balance of the GTC Equipment Loan is \$8.2 million.

49. The GTC Equipment Loan is secured by a purchase money lien on and security interest in the 30,000 single channel GCL system and related equipment acquired by SAE Inc.

*ii. PPP Loan*

50. On May 11, 2020 SAE received an unsecured loan in the amount of \$6.8 million (the “PPP Loan”) pursuant to the Paycheck Protection Program (the “PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The PPP Loan matures in May 2022 and bears interest at a rate of 1.0% per annum. Principal and interest are payable monthly beginning seven months from the date of the PPP Loan and may be prepaid at any time prior to maturity with no prepayment penalties.

51. Under the terms of the CARES Act, PPP Loan recipients can apply for and be granted forgiveness for all or a portion of the loan. Such forgiveness will be determined, subject to limitations, based on the use of loan proceeds for payment of payroll costs and any covered payments of mortgage interest, rent, and utilities. In the event the loan, or any portion thereof, is forgiven pursuant to the PPP, the amount forgiven is applied to outstanding principal. SAE intends to use the proceeds of the PPP Loan to maintain payroll and make lease, rent and utility payments. Without the PPP Loan, the Debtors would have been forced to further reduce the number of employees. As of the Petition Date, \$6.8 million remains outstanding under the PPP Loan.

*iii. Trade Creditors*

52. As of the Petition Date, the Debtors were current on their trade debt and believe they owe less than \$3 million for prepetition amounts to their trade creditors.

*iv. Equity*

53. As of the Petition Date, SAE has 6,612,332 outstanding shares of common stock, par value \$0.0001 per share. Since 2012, the common stock of SAE had been traded on the NASDAQ Capital Market (the “NASDAQ”). On June 15, 2020, the Debtors received written notice from the Listing Qualifications Department of the NASDAQ Stock Market that its staff had determined to suspend trading in the common stock of SAE at the opening of business on June 17, 2020 and to complete the delisting of the common stock of SAE by filing a Form 25-NSE with the SEC. The NASDAQ Stock Market reached its decision to delist SAE’s common stock from the NASDAQ pursuant to Listing Rule 5550(b)(1) because SAE had not complied with the minimum \$2.5 million stockholders’ equity requirement for continued listing on the NASDAQ. Following the suspension of trading in SAE’s common stock on the NASDAQ, the common stock of SAE began trading on electronic bulletin boards established for unlisted securities such as the OTC Bulletin Board or OTC Markets Pink Open Market.

54. As of the Petition Date, SAE had approximately 35.4 million warrants outstanding, which are potentially exercisable into approximately 2.3 million shares of common stock of SAE. The Prepetition Convertible Notes also currently have the right to convert to equity.

**E. The Debtors’ Litigation**

55. The Debtors are involved in litigation relating to a putative class action lawsuit against SAE and certain of its former and current executive officers and directors named therein (the “Class Action Defendants”) in the U.S. District Court for the Southern District of Texas captioned *Amrit Kumar and Tony Tep, Individually and on behalf of all others similarly situated v. SAExploration Holdings, Inc., et al.* Case No. 4:19–cv–03089. The plaintiffs seek to represent

a class of stockholders who purchased or otherwise acquired the publicly traded securities of SAE from March 15, 2016 through February 7, 2020 (the “Covered Period”). The complaint generally alleges that the Class Action Defendants violated Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b–5 by making false and misleading statements in the periodic reports of SAE filed with the SEC during the Covered Period. The complaint requests damages, including interest, and an award of reasonable costs and expenses, including counsel and expert fees.

56. On September 6, 2019, a purported stockholder, M. Shane Hamilton, filed a stockholder derivative lawsuit against certain of the former and current executive officers and directors of SAE named therein (the “Derivative Defendants”) in the U.S. District Court for the District of Delaware captioned *M. Shane Hamilton, derivatively on behalf of SAExploration Holdings, Inc., v. Jeff Hastings, et al.* The derivative complaint generally alleges (i) breaches by the Derivative Defendants of their fiduciary duties as directors and/or officers of SAE, (ii) unjust enrichment, (iii) waste of corporate assets, and (iv) violations of Section 14(a) of the Exchange Act. The derivative complaint seeks, among other things, relief (i) directing SAE and the Derivative Defendants to take actions to reform and improve corporate governance and internal procedures of SAE, (ii) awarding SAE restitution from the Derivative Defendants, and (iii) awarding the Derivative Plaintiff’s costs and attorneys’ and experts’ fees.

57. The Securities Exchange Commission (“SEC”) has been conducting an investigation of certain matters, including with respect to revenue recognition, accounts receivable, and tax credits. The Department of Justice (“DOJ”) is conducting a parallel investigation with the SEC. The SEC and DOJ investigations are continuing, and the Debtors are currently unable to predict the eventual scope, duration or outcome of any potential SEC or DOJ

legal action or other action or whether it could have a material impact on the Debtors' financial condition, results of operations, or cash flow.

58. The Alaska Department of Revenue (the "DOR") is conducting an investigation with respect to the determination that ASV is a variable interest entity and related Alaska tax credit certificates. The DOR investigation is continuing, and the Debtors are unable to predict the eventual scope, duration or outcome of any potential DOR legal action or other action or whether it could have a material impact on the Debtors' financial condition, results of operations, or cash flow.

#### **F. Events Leading to Chapter 11 Cases**

59. From 2018 to 2020, the Debtors took the following actions, among others, to increase liquidity, reduce debt levels, and extend debt maturities:

- a. Consummated an exchange offer and consent solicitation pursuant to which the majority of the then outstanding amount of SAE's 10% Senior Secured Notes due 2019 and 10% Senior Notes due 2019 were exchanged, which reduced cash interest expense and the amount due at maturity;
- b. Entered into the Prepetition Credit Agreement and issued the Prepetition Convertible Notes;
- c. Sold the assets related to the Debtors' Australia business for (i) \$6,000,000 (AUD) paid in cash on the closing date, (ii) \$600,000 (AUD) payable no later than 30 business days after the closing date, and (iii) earn-out payments based on the utilization of certain of the sold assets following the closing date in an amount of up to \$3,000,000 (AUD), with a minimum earn-out payment of \$750,000 (AUD) in each of the two earn-out years;
- d. Sold the seismic data and related assets for the Aklaq, Kuukpik and CRD Surveys for \$15 million and repaid \$14.5 million of the amount due under the Prepetition Credit Agreement with the proceeds received from the sale of the seismic data;
- e. Reduced full-time employees by 30% since year-end 2019; and
- f. Applied for and received the \$6.8 million unsecured PPP Loan pursuant to the CARES Act.

60. Although the Debtors generated net income and cash from operating activities in the first six months of 2020, they have reported recurring losses from operations and have not generated cash from operating activities for the six years ended December 31, 2019, and as of June 30, 2020, the Debtors had a stockholders' deficit of \$33.2 million. The Debtors anticipate negative cash flows from operating activities to begin to occur again in the second half of 2020 and continue for the foreseeable future due to, among other things, the significant uncertainty in the outlook for oil and natural gas development as a result of the significant decline in oil prices since the beginning of 2020 due to the COVID-19 coronavirus pandemic and its impact on the worldwide economy and global demand for oil. Due to these market conditions, certain of the Debtors scheduled or anticipated projects have been cancelled or delayed and there is no assurance as to when they may resume, if at all.

	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total Stockholders' Deficit Attributable to the Corporation	Noncontrolling Interest	Total Stockholders' Deficit
Balance at December 31, 2019	\$ ---	\$ 240,068	\$ (274,535)	\$ (2,912)	\$ (2,232)	\$ (39,611)	\$ 3,798	\$ (35,813)
Net income	---	---	(1,795)	---	---	(1,795)	2,607	812
Other comprehensive income	---	---	---	2,141	---	2,141	---	2,141
Equity based compensation expense	---	354	---	---	---	354	---	354
Distributions to noncontrolling interest	---	---	---	---	---	---	(5,982)	(5,982)
Balance at July 31, 2020	\$ -	\$ 240,422	\$ (276,330)	\$ (771)	\$ (2,232)	\$ (38,911)	\$ 423	\$ (38,488)

61. As of July 31, 2020, the Debtors had approximately \$17.2 million of cash on hand and approximately \$124.8 million aggregate principal amount of total debt (including finance leases), of which \$115.3 million is classified as current portion of long term debt. As of the Petition Date, the Debtors' assets total approximately \$68.1 million whereas the total current liabilities total \$112 million.

62. The Debtors are in default under the Prepetition Credit Agreement, Prepetition Term Loan Agreement, and Prepetition Convertible Notes. In anticipation of these defaults, the



Debtors negotiated forbearance agreements with certain of the lenders under the Prepetition Credit Agreement and the Prepetition Term Loan Agreement, and certain of the holders of the Prepetition Convertible Notes. The forbearance agreements terminated on the commencement of the Chapter 11 Cases and the Debtors remain in default on the aforementioned obligations. As a result of existing events of default occurring thereunder, the Debtors are unable to borrow additional amounts under the Prepetition Credit Agreement without the requisite approval of the lenders under the Prepetition Credit Agreement, which has limited the Debtors' ability to utilize the Prepetition Credit Agreement to fund continuing operations.

63. As discussed above, SAE's common stock was suspended from trading on the NASDAQ, which event constitutes a "fundamental change" under the terms of the Prepetition Indenture. Upon notice of such fundamental change to the holders of the Prepetition Convertible Notes, such holders would have the option to require SAE to repurchase for cash all of their Prepetition Convertible Notes at a repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to, but excluding, the repurchase date. On June 16, 2020, the Debtors and holders of 100% in aggregate face amount of the Prepetition Convertible Notes entered into a supplemental indenture to the Prepetition Indenture, which provided that a fundamental change resulting from the failure of SAE's common stock to be listed or quoted on any of the NYSE American, The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market, The NASDAQ Capital Market, the OTCQX Market or the OTCQB Market (or any of their respective successors) would not be deemed to have occurred as a result of such failure until the earlier of (i) August 31, 2020 or (ii) the termination date of the forbearance period set forth in the Notes Forbearance Agreement. The Debtors were unable to obtain a waiver of this fundamental change from the holders of the

Prepetition Convertible Notes and the Debtors did not expect that they would have sufficient funds to make any required repurchases of the Prepetition Convertible Notes.

64. Management, along with its legal and financial advisors, explored various strategic alternatives to address the Debtors' capital structure. The Debtors have also attempted to manage operating costs by actively reducing costs related to office leases, payroll, travel, and board fees and actively pursuing other cost-cutting measures, including costs related to office leases, maintaining servers, and travel, to maximize liquidity consistent with current industry market expectations. However, the Debtors have been unable to negotiate an extension of the January 2021 maturity date of the Prepetition Term Loan Agreement or waivers of the events of default under the Prepetition Credit Agreement and the Prepetition Term Loan Agreement, and a cross default under the indenture governing the Prepetition Convertible Notes. As a result of such events of default, the Debtors are unable to borrow additional amounts under the Prepetition Credit Agreement without the requisite approval of the lenders under such credit facility. The Debtors have also been unable to obtain additional financing.

65. If approved by this Court, the Debtors' restructuring will significantly reduce the Debtors' debt load and associated cash interest expense, and provide them with additional liquidity to fund the Debtors' continued operations.

## **PART II. FIRST DAY PLEADINGS**

### **A. Administrative and Procedural First Day Pleadings**

#### **i. Joint Administration Motion**

66. I believe that joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders and other pleadings, and related notices, that otherwise would need to be filed in each separate case absent joint administration. I believe

that joint administration will save considerable time and expense for the Debtors, the Clerk of the Court, the U.S. Trustee and other parties in interest, which will, in turn, result in substantial savings for the Debtors' estates.

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

**ii. Consolidated Creditor List Motion**

68. The Debtors, while separate legal entities, have a large number of common creditors and a centralized cash management system. Filing separate lists of the top 20 unsecured creditors and separate creditor matrices in their respective cases would generate a variety of lists with a large number of duplicate entries. Consolidating the list of creditors to one list between the Debtors of the 30 largest unsecured creditors is in the best interest of the Debtors, its estate, and its creditors to avoid unnecessary duplication and to ensure administrative efficiency. In addition, the Debtors require additional time to file their 2015.3 Reports while they focus on operating while in chapter 11.

**iii. Claims Agent Retention Application**

69. Epiq Corporate Restructuring, LLC's ("Epiq") retention is the most effective and efficient manner of noticing these creditors and parties in interest of the filing of the Chapter 11 Cases and of other developments in the Chapter 11 Cases. I am informed that Epiq has acted as the claims and noticing agent in numerous cases of comparable size.

70. Epiq's retention to act as an agent of the Court, as an independent third party with significant experience in this role, is in the best interests of the Debtors as well as their estates and creditors.

**B. Operational First Day Pleadings**

**i. Cash Collateral**

71. The Debtors seek relief under the Cash Collateral Motion to utilize their cash together with postpetition receipts from operations to prosecute the Chapter 11 Cases and operate their businesses on a postpetition basis. With the consent of the Consenting Creditors, the Debtors propose to use the Cash Collateral for (i) the costs of administering these Chapter 11 Cases, including the satisfaction of administrative costs and expenses of the Debtors incurred in these Chapter 11 Cases, (ii) any payments authorized by any order of this Court, including first-day related relief subject to the terms thereof, (iii) the Debtors' ongoing working capital needs during the pendency of these Chapter 11 Cases, (iv) funding the Carve-Out, and (v) other general corporate purposes.

72. In return, the Debtors have agreed to an adequate protection package that includes: adequate protection liens and superpriority administrative claims for any diminution in value of the Prepetition Secured Parties' collateral, monthly cash interest payments at the applicable non-default contract rate, payment of the secured lenders' professional fees and expenses, and certain reporting and budgeting obligations.

73. The Debtors are not seeking debtor-in-possession financing. As such, the Debtors' access to Cash Collateral during these Chapter 11 Cases is critical to their restructuring efforts. Absent entry of the Cash Collateral Orders, the Debtors would be unable to generate revenue, operate their businesses, or pay their employees. Indeed, without access to sufficient cash, the

Debtors would potentially have to suspend operations, materially damaging the Debtors' business reputation and relationships with their customers. Further, there can be no guarantee that if the Debtors were to temporarily suspend operations that such operations could be resumed once the Debtors' access to cash was restored. For these reasons, entry of the Cash Collateral Orders is in the best interests of the Debtors, their creditors, and all other parties in interest.

74. The Debtors, with the assistance of their advisors, prepared a 13-week cash forecast that takes into account payments to be made pursuant to the First Day Pleadings, if granted. I have reviewed the cash forecast and concluded that it is reasonable. I have further concluded that the Debtors' cash on hand and revenue earned from operations is sufficient to fund all payments contemplated by the First Day Pleadings and fund the Debtors' postpetition operating and restructuring-related expenses.

75. Continued and uninterrupted access to Cash Collateral will allow the Debtors to continue operating their businesses in the ordinary course, to the benefit of the Debtors' estates and their stakeholders. The ultimate terms of the adequate protection package and the Cash Collateral Orders are reflective of the extensive and arms' length negotiations involved.

76. For the reasons described herein, the relief requested in the Cash Collateral Motion is in the best interests of the Debtors, their creditors, and all other parties in interest.

**ii. Cash Management Motion**

77. To support their operations, the Debtors maintain a cash management system to facilitate cash flow between Debtor entities, while minimizing costs (the "Cash Management System").

78. On a daily basis, the Debtors process deposits, withdrawals, and other transfers in accordance with ordinary course practices. Accordingly, the Debtors maintain records of all

transactions processed to track the funds involved in the Debtors' operations and efficiently manage their resources. This system enables the Debtors to satisfy their operating needs, ensure cash availability and liquidity, pay material debt obligations in the ordinary course and reduce administrative expenses by facilitating the movement of funds. The Cash Management System is therefore a critical component of the Debtors' overall business.

79. The Cash Management System includes eighteen bank accounts (collectively, the "Bank Accounts") controlled by the Debtors at Wells Fargo Bank, N.A. ("Wells Fargo"), HSBC Bank USA, N.A. ("HSBC"), Kotak Mahindra Bank ("Kotak"), Texas Champions Bank ("Texas Champions"), Banco Nacional de Bolivia, Banco de Bogota Miami, Banco BBVA, and Credicorp Capital Colombia SA (collectively, the "Banks"). A list of the Debtors' Bank Accounts (the "Account List") is attached to the Cash Management Motion as Exhibit A.<sup>4</sup> Wells Fargo, where the vast majority of the Debtors' funds are held, is included in the U.S. Trustee's List of Approved Depositories. The Account List identifies the type of account and indicates the owner of each Bank Account. Each Bank Account is described below and a diagram of the Cash Management System is attached to the Cash Management Motion as Exhibit B.

- a. *SAExploration Inc. Operating Account (0164)* (the "Corporate Operating Account"). The Corporate Operating Account is held at Wells Fargo, and the Debtors maintain this account for the day-to-day operating needs of SAExploration Inc., including collections, disbursements, and payroll for corporate personnel and all international and expat employees. This account distributes funds to other Bank Accounts as needed and receives funds from other Bank Accounts. As of the Petition Date, the account balance was approximately \$13,203,597.
- b. *SAExploration Seismic Services (US), LLC (1565)* (the "Lower 48 Operating Account"). The Lower 48 Operating Account is held at Wells Fargo, and the Debtors maintain this account for the day-to-day operating needs of

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<sup>4</sup> The Debtors believe that Exhibit A that is attached to the Cash Management Motion is a complete list of their Bank Accounts. To the extent that any Bank Account has been omitted from that list, the Debtors request that the interim and final orders granting the relief sought herein apply to all Bank Accounts actually in, or linked to, the Cash Management System.

SAExploration Seismic Services (US), LLC, including collections, disbursements, and payroll for non-corporate personnel in all states where the Debtors operate except for Alaska. This account primarily transfers funds to and from the Corporate Operating Account and periodically to and from other Bank Accounts. As of the Petition Date, the account balance was approximately \$588,594.

- c. *SAExploration, Inc. Alaska Operating Account (3676)* (the “Alaska Operating Account”). The Alaska Operating Account is held at Wells Fargo, and the Debtors maintain this account for the Debtors’ day-to-day operations in Alaska, including collections, disbursements, and payroll for Debtor personnel in Alaska and payments under the GTC Equipment Loan. This account primarily transfers funds to and from the Corporate Operating Account and periodically to and from other Bank Accounts. As of the Petition Date, the account balance was approximately \$648,281.
- d. *SAExploration, Inc. (Processing) Operating Account (0854)* (the “Processing Operating Account”). The Processing Operating Account is held at Wells Fargo and the Debtors maintain this account for the day-to-day operating needs of the Processing division including collections, disbursements, and payroll for Processing personnel. This account primarily transfers funds to and from the Corporate Operating Account and periodically to and from other Bank Accounts. As of the Petition Date, the account balance was approximately \$101,837.
- e. *SAExploration, Inc. (Marine Operating Account) (2273)* – (the “Marine Operating Account”). The Marine Operating Account is held at Wells Fargo, and the Debtors maintain this account for the Debtors’ day-to-day operations for the Marine division, including collections and disbursements. This account primarily transfers funds to and from the Corporate Operating Account and periodically to and from other Bank Accounts. As of the Petition Date, the account balance was approximately \$724,676.
- f. *SAExploration, Inc. (Marine India Collections Account) (2281)* (the “Marine India Collections Account”). The Marine India Collections Account is held at Wells Fargo, and the Debtors opened this account to receive funds related to a specific project in India. Although this account is currently dormant because the project has concluded, this account historically transferred funds to the Corporate Operating Account, the Marine India Disbursements Account, and the Marine India Operating Account. As of the Petition Date, the account balance was approximately \$9,860.
- g. *SAExploration, Inc. (Marine India Disbursements Account) (4248)* (the “Marine India Disbursements Account”). The Marine India Disbursements Account is held at Wells Fargo, and the Debtors opened this account to make payments related to a specific project in India. Although this account is currently dormant because the project has concluded, this account was historically funded from the Corporate Operating Account, the Marine India Collections Account, and the

Marine India Operating Account. As of the Petition Date, the account balance was approximately \$292.

- h. *SAExploration, Inc. (Marine India Operations Account) (0509)* (the “Marine India Operating Account”). The Marine India Operating Account is held at Kotak, and the Debtors maintain this bank account for the India project’s office operations and tax payments and refunds. Although this account is currently dormant, this account was historically funded from the Corporate Operating Account and the Marine India Collections Account and transferred funds to the Marine India Disbursements Account. As of the Petition Date, the account balance was approximately \$3,469.
- i. *SAExploration Holdings, Inc. (0826)* (the “Debt Holdings Account”). The Debt Holdings Account is held at Wells Fargo, and the Debtors primarily make payments related to the Prepetition Credit Agreement, the Prepetition Term Loan Agreement, and the Prepetition Convertible Notes and occasionally disbursements to vendors. This account is primarily funded from the Corporate Operating Account and periodically from other Bank Accounts. As of the Petition Date, the account balance was approximately \$107,710.
- j. *SAExploration, Inc. (266-7)* (the “HSBC Main Account”). The HSBC Main Account is held at HSBC, and the Debtors maintain this account as the main account for other HSBC accounts in Canada, Malaysia, and Singapore. This account primarily transfers funds to and from the Corporate Operating Account and periodically to and from the other Bank Accounts. As of the Petition Date, the account balance was approximately \$643.
- k. *SAExploration, Inc. Paycheck Protection Program Account (4627)* (the “PPP Account”). The PPP Account is held at Texas Champions, and the Debtors opened the PPP Account in order to maintain separation and clarity of funds received from the Small Business Administration’s Paycheck Protection Program. The PPP Account funded payroll into the Corporate Operating Account, the Lower 48 Operating Account, the Alaska Operating Account, and the Seismic Processing Account. As of the Petition Date, the account balance was approximately \$1,317,352.
- l. *SAExploration, Inc. (Bolivian Branch) (7440)* (the “Bolivian Bolivianos Account”). The Bolivian Bolivianos Account is held at Banco Nacional de Bolivia, and the Debtors maintain this account for the day-to-day operating needs of the Debtors branch in Bolivia including collections, disbursements, and payroll for Bolivian employees. This account transfers funds to and from the Corporate Operating Account and the Bolivian Dollars Account. As of the Petition Date, the account balance was approximately \$127,648.
- m. *SAExploration, Inc. (Bolivian Branch) (6331)* (the “Bolivian Dollars Account”). The Bolivian Dollars Account is held at Banco Nacional de Bolivia, and the Debtors maintain this account for the day-to-day operating needs of the Debtors



branch in Bolivia including collections, disbursements. This account transfers funds to and from the Corporate Operating Account and the Bolivian Boliviano Account. As of the Petition Date, the account balance was approximately \$1,324.

- n. *SAExploration, Inc. (Colombian Branch) (9800)* (the “Colombian Operating Account”). The Colombian Operating Account is held at Banco De Bogota Miami, and the Debtors maintain this account for the day-to-day operating needs of the Debtors branch in Colombia including collections, disbursements, and payroll for Colombian employees. This account transfers funds to and from the Corporate Operating Account and the Colombian Dollars Account and transfers funds to the Colombian Disbursement Account and the Colombian Disbursement and Transfer Account. As of the Petition Date, the account balance was approximately \$22,697.
- o. *SAExploration, Inc. (Colombian Branch) (3544)* (the “Colombian Dollars Account”). The Colombian Dollars Account is held at Banco De Bogota Miami, and the Debtors maintain this account for the day-to-day operating needs of the Debtors branch in Colombia including collections, disbursements, and payroll when there is a project ongoing in Colombia. This account transfers funds to and from the Corporate Operating Account and the Colombian Operating Account and transfers funds to the Colombian Disbursement Account, and the Colombian Disbursement and Transfer Account. As of the Petition Date, the account balance was approximately \$321,890.
- p. *SAExploration, Inc. (Colombian Branch) (2689)* (the “Colombian Disbursement Account”). The Colombian Disbursement Account is held at Banco BBVA, and the Debtors maintain this account to make payments related to the day-to-day operating needs of the Debtors branch in Colombia and payroll when there is a project ongoing in Colombia. This account is funded by the Colombian Operating Account and the Colombian Dollars Account. As of the Petition Date, the account balance was approximately \$151.
- q. *SAExploration, Inc. (Colombian Branch) (5631)* (the “Colombian Disbursement and Transfer Account”). The Colombian Disbursement and Transfer Account is held at Credicorp Capital Colombia SA, and the Debtors maintain this account to make payments related to the day-to-day operating needs of the Debtors branch in Colombia. This account is funded by the Colombian Operating Account and the Colombian Dollars Account. As of the Petition Date, the account balance was approximately \$4,401.
- r. *SAExploration Holdings, Inc. Utility Deposit Account (6521)* (the “Utility Deposit Account”). In preparation for the Chapter 11 Cases, the Debtors began the process of opening the Utility Deposit Account at Wells Fargo, but as of the Petition Date, the account was still subject to ongoing processing by Wells Fargo, as such the account number is subject to change. Additionally, the account is not ready to accept funds, but the Debtors will transfer \$41,976.19 from the Corporate

Operating Account for the proposed adequate assurance for the Debtors' utility providers.

### **Business Forms and Investment and Deposit Practices**

80. In the ordinary course of business, the Debtors may use a number of checks, business letterhead, purchase orders, invoices, envelopes, promotional materials, and other business forms and correspondence (collectively, the "Business Forms"). Given that the Debtors used the Business Forms prepetition, they do not include references to the Debtors' current status as debtors in possession. Most parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as a result of the publicity surrounding the Chapter 11 Cases and the notice of commencement of the Chapter 11 Cases that will soon be provided to parties in interest.

81. I believe that requiring the Debtors to change existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts and impose needless expenses on the estates, without any meaningful corresponding benefit.

### **Intercompany Transactions**

82. As explained above, in the ordinary course of business, certain Debtors regularly transfer money between their accounts to fund operations and also in some instances pay amounts due on behalf of other Debtors (the "Intercompany Transactions").

83. I believe that the failure to continue the Intercompany Transactions in the ordinary course of the Debtors' business would unnecessarily hinder operations. Absent the continuation of the Intercompany Transactions, the Debtors' ability to operate their primary business during the Chapter 11 Cases would be prejudiced, and their ability to maximize value for creditors would be reduced. Avoiding such hindrances by continuing the Intercompany Transactions is, therefore, in the best interests of the estates.

**iii. Employee Wages Motion**

84. As described more fully in the Employee Wages Motion, the continuation of the compensation (both in the form of salary and wages and benefit programs) for the Debtors' 138 employees (each, an "Employee") is critical to the Debtors' continued operations and reorganization. The Debtors Employees perform various roles, including human resources, project management, project management, mechanics, geophysicists, accounting, engineering, geology, and supply chain among other roles. Collectively, the Employees' skills and knowledge of the Debtors' infrastructure, customers, and business operations are essential to the continued operation of the Debtors' business. Without the Employees' continued, uninterrupted services, an effective reorganization of the Debtors will not be possible.

85. The Debtors' employees (collectively, the "Workforce") perform a wide variety of functions critical to the Debtors' operations, the administration of the Chapter 11 Cases, and the Debtors' successful reorganization.

86. The Workforce is the most important part of the Debtors' business. I believe that any delay in paying or failure to pay prepetition Employee Obligations could irreparably impair the morale of the Workforce at the time when their dedication, confidence, retention, and cooperation are crucial. Failure to pay the Employee Obligations could also inflict a significant financial hardship on the Employees' families. The Debtors cannot risk such a substantial disruption to their business operations, and it is inequitable to put Employees at risk of such hardship. Without this relief, otherwise-loyal Employees may seek other work opportunities, thereby putting at risk the Debtors' continued operation as a reorganized enterprise. Payment of these obligations in the ordinary course of business would enable the Debtors to focus on completing a successful reorganization, which would benefit all parties in interest.

87. The Debtors estimate that they owe \$481,894.51<sup>5</sup> on account of the Prepetition Workforce Obligations because (a) they paid prepetition wages to the day rate expatriate Employees on August 26, 2020 and (b) on August 27, 2020 prior to filing the petition, Automatic Data Processing, Inc. (“ADP”) withdrew money from the Debtors bank accounts, in accordance with the Debtors ordinary course payment schedule described below, to pay prepetition wages and salaries to all other Employees for the pay period ending on (x) August 22, 2020 for all hourly United States Employees and day rate expatriates Employees, (y) August 28, 2020 for all salaried Employees in the United States (z) July 31, 2020 for all salaried expatriate Employees and all Employees at the Bolivian and Colombian Branches, and the Debtors are requesting the ability to pay any unpaid Prepetition Workforce Obligations not paid prior to the Petition Date.

### **Wages and Salary**

88. In the ordinary course of business, the Debtors pay (i) all Employees in the United States bi-weekly on Fridays, (ii) all expatriate Employees within the last five business days of each month, and (iii) Colombian and Bolivian Employees on the last business day of each month. The Debtors pay (a) all hourly and day rate Employees (wherever located) six days in arrears, (b) all salaried Employees (wherever located) current. However, in the preparation for filing of the Chapter 11 Cases, on August 26, 2020, the Debtors paid certain executives current through August 28, 2020. Thus, the Debtors estimate that as of the Petition Date, approximately \$68,332 is owed on account of accrued and unpaid wages and salaries for the Employees. In addition, the Unpaid Compensation as of the Petition Date also includes an estimated \$4,134 owed to three Independent Contractors, which will become due within 30 days of the Petition

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<sup>5</sup> As discussed below, this amount includes the cash value \$413,562.26 of vacation awards, but the Debtors are not seeking to pay these amounts and instead are simply seeking to maintain the accrued vacation postpetition.

Date. The Independent Contractors provide services that include and are related to finance, information technology, and research and development.

### **Vacation and Sick Leave**

89. The Debtors also provide paid time off to their full-time Employees, which is classified as “Vacation” and “Sick Leave.” Vacation entitlement is granted on an individual basis as stated in the respective Employee’s offer of employment and begins accruing bi-weekly with the first month of hire or beginning of the calendar year, except Employees in Bolivia<sup>6</sup> and Colombia<sup>7</sup> that are entitled to Vacation based on the Employee’s years working for the Debtors as governed by applicable law. Part-time, hourly, and day rate Employees are not entitled to paid vacation.

90. Approval of Vacation is at the discretion of management, and in the event that an Employee is involuntarily terminated, accrued but untaken Vacation hours are paid out. Vacation time accrues at the beginning of each calendar year, and the Employees may carry over up to 240 hours to the following year, except in Colombia and Bolivia where Employees may carry over all of their Vacation according to local law.

91. As of the Petition Date, the balance for untaken Vacation is approximately \$413,562, including \$7,493 that is attributable to Employees at the Colombian and Bolivian Branches. Unused Sick Leave is not paid out to an Employee regardless of the reason for termination. The Debtors do not believe that they owe any Vacation payouts to any former Employees as of the Petition Date, but seek to continue their Vacation policy postpetition in the ordinary course of business.

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<sup>6</sup> In Bolivia, all employees that have been employed by the Debtors for one to five years are entitled to 15 working days off, five to ten years are entitled to 20 working days off, and anyone with more than ten years of service gets 30 working days.

<sup>7</sup> In Colombia, all employees are entitled to 15 working days off with no increases.

**Reimbursable Expenses**

92. The Debtors routinely reimburse Employees for certain expenses incurred within the scope of their employment, such as travel, food, and cell phones (the “Reimbursable Expenses”). There is a lag between the time expenses are incurred and the time an expense is processed and reimbursed. Consequently, it is difficult for the Debtors to determine with precision the actual amount of incurred, but not reported, Reimbursable Expenses as of any particular time. Since April 2020, the average aggregate monthly amount expended by the Debtors for the Reimbursable Expenses is between \$500 and \$134,333<sup>8</sup>. The Debtors request the authority to pay the Reimbursable Expenses in the ordinary course of business whether arising prepetition or postpetition.

**Severance**

93. In Colombia and Bolivia, local law requires the Debtors to pay severance to Employees who are terminated or furloughed, but for all other Employees, severance payments are at the discretion of management (the “Severance Obligations”). In particular, Employees are given two weeks of salary for every year that they were employed by the Debtors as severance. The Debtors pay the Severance Obligations at the Employee’s discretion as either a lump sum payment or according to their pay schedule after the Employee has signed a “Confidential Separation Agreement and General Release.” As of the Petition Date, the Debtors estimate that they owe approximately \$44,335 for Severance Obligations of which \$38,624 are for COBRA payments, and \$3,862.40 will come due within the first 30 days of filing. By this Motion, the Debtors seek authority, but not direction, to honor in the ordinary course of business the severance policies and practices prior to the Petition Date.

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<sup>8</sup> In months where Debtors have multiple projects ongoing and employees are on assignment, they are reimbursed for food, cell phones, lodging, per diem, travel, supplies which results in a much higher amount to be reimbursed.

## The Health Plans

94. The Debtors' healthcare plans, which include medical, dental, and vision benefits, are an important component of the Benefits offered by the Debtors (the "Health Plans"). The Debtors offer the Health Plans to one Employee based in Bolivia and all of their Employees based in the United States (the "U.S. Employees"), although they have different plans for the three United States based Employees that travel internationally (the "International Employees,").<sup>9</sup> The Health Plans are described more fully below.

## Medical Plans

95. The Debtors' have three medical benefit plans (each a "Medical Plan," and collectively, the "Medical Plans"): (i) one for the U.S. Employees that is a partially self-funded plan, (ii) one for the International Employees, which is a fully insured plan that also includes vision insurance, and (iii) one for a single Employee in Bolivia. The first two Medical Plans are administered by Cigna Health and Life Insurance Company ("Cigna") and the Medical Plan for the Bolivian Employee is administered by Allianz Seguros Medicos. For the U.S. Employees' Medical Plan, the monthly average premium is approximately \$213,400. The Debtors pay 70% of the premium and the U.S. Employees pay 30% of the premium, which is deducted from their paycheck. The Debtors pay 100% of the \$3,911.67 premium for the Medical Plan for the International Employees, and all of the \$74 monthly premium for the Medical Plan for the single covered Bolivian Employee. As of the Petition Date, the Debtors believe that no amounts attributable to the Debtors are currently outstanding, including administration fees related

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<sup>9</sup> The Debtors pay the insurance premiums in advance each month and the funds collected from Employees reimburses the Debtors. The Debtors do not hold any Employee funds that are not property of the estate. For the avoidance of doubt, the Debtors are not seeking to assume the Health Plans by this Motion and any request to assume the Health Plans will be made by separate motion.

thereto. The Debtors are requesting authority to continue to operate the Medical Plans in the ordinary course of business.

### **Dental Plan**

96. The Debtors offer two dental plans (each a “Dental Plan,” and collectively, the “Dental Plans”) a fully insured dental plan for the International Employees and a partially self-funded dental plan for U.S. Employees, both administered by Cigna. For the U.S. Employees, the monthly premium is \$4,400 for administration of the Dental Plan, as the Debtors pay 70% of the premium and Employees pay 30% of the premium. For International Employees, the Debtors pay 100% of the \$224.89 premium. As of the Petition Date, the Debtors believe that no amounts attributable to the Debtors are currently outstanding, including administration fees related thereto. The Debtors are requesting authority to continue to operate the Dental Plans in the ordinary course of business.

### **Vision Plan**

97. The Debtors offer a separate vision plan (the “Vision Plan”) to U.S. Employees through Cigna, whereas vision is covered under the Medical Plan for International Employees. The monthly premium for the Vision Plan is \$2,200. Employees pay 30% of the premium and the Debtors pay 70% of the premium and for administration of the Vision Plan. As of the Petition Date, the Debtors believe that no amounts attributable to the Debtors are currently outstanding, including administration fees related thereto. The Debtors are requesting authority to continue the Vision Plan in the ordinary course of business.

### **401(k) Plan**

98. The Debtors offer their Employees the opportunity to participate in a 401(k) savings plan (the “401(k) Plan”), which is administered by Empower Retirement. The



Employees may contribute a percentage of their base pay, subject to regulatory limits. All administrative fees for the 401(k) Plan are paid by the Employees. The Debtors are seeking authority to continue the 401(k) Plan in the ordinary course of business.

### **Life Insurance and Disability Benefits**

99. The Debtors offer their Employees based in the United States with access to life insurance, accidental death and dismemberment coverage, short-term disability, long-term disability benefits (the “Life Insurance,” “AD&D Coverage,” “STD Benefits,” “LTD Benefits,” respectively) through Unum (collectively, the “Unum Benefits”). The Unum Benefits, which are paid for entirely by the Employees opting into the Unum Benefits, provide the Employees (i) Life Insurance, AD&D Coverage, and LTD Benefits up to his or her annual earnings, but not less than \$50,000 and not exceeding \$500,000 and (ii) STD Benefits at 60% of the Employee’s weekly earnings to a maximum benefit of \$1,500 per week for a maximum of sixteen weeks. The Debtors deduct an average of approximately \$15,323.87 monthly from Employee’s paychecks to pay Unum for the Unum Benefits. As of the Petition Date, the Debtors believe that no amounts are outstanding for premiums owed and claims asserted under these programs, and the Debtors seek authority to continue these programs in the ordinary course of business.

### **Traveling Benefits**

100. The Debtors provide expatriate Employees and U.S. Employees that are on assignment internationally with emergency medical and dental insurance, Life Insurance, AD&D Coverage, repatriation insurance and other benefits while the expatriate or U.S. Employee is on assignment through Cigna (“Traveling Benefits”). The Debtors prepaid \$18,000 for 749 weeks of coverage and purchase additional weeks of coverage as necessary. As of the Petition Date, because of COVID-19, all international travel has been suspended, but out of the 749 weeks that

the Debtors prepaid for, 100 are remaining, and the Debtors seek authority to continue these programs in the ordinary course of business.

### **International Employee Benefits**

101. The Debtors offer the International Employees Life Insurance, AD&D Coverage, LTD Benefits, medical evacuation and repatriation insurance, and an employee assistance program, through Cigna (collectively, “International Employee Benefits”). The International Employee Benefits, which are paid for primarily by the International Employee, provide the International Employee with Life Insurance of three times the their annual compensation, but not less than \$300,000 and not more than \$500,000. The AD&D Coverage provides the International Employee with three times their annual compensation with no minimums or maximums, and the LTD Benefits provide the International Employee with coverage equal to the lesser of 60% of their covered earnings or \$8,500 per month. The Debtors pay for 2% of the \$1,542 monthly premium for the International Employee Benefits. As of the Petition Date, the Debtors believe that no amounts are outstanding for premiums owed and claims asserted under these programs, and the Debtors seek authority to continue these programs in the ordinary course of business.

102. I believe that maintaining the Benefits discussed above are critical for maintaining Employee morale during the Chapter 11 Cases, and to prevent Employees from seeking employment from other companies that offer similar benefits.

### **Employee Withholdings**

103. In connection with paying the Unpaid Compensation and the Benefit Obligations, the Debtors routinely deduct and/or withhold from the Employees’ paychecks amounts that the Debtors are required to transmit to third parties. For example, the Debtors may deduct from the

Employees' earnings, among other things, (a) payroll taxes related to federal, state, and local income taxes, FICA, Social Security, and Medicare taxes, including similar taxes for the foreign jurisdictions in which the Branches operate, for remittance to the appropriate federal, state, local, or foreign government taxing authority; (b) employee contributions for health benefits; (c) employee contributions to employee life insurance, long-term disability insurance, and personal accident insurance; (d) employee contributions to 401(k) plans and 401(k) loan repayments; and (e) legally ordered deductions, such as child support and garnishments. The Debtors then forward amounts equal to the Employee Withholdings from general operating accounts to appropriate third-party recipients. I believe that disbursement of the Employee Withholdings would not prejudice other creditors because I have been informed by counsel that such obligations generally give rise to priority claims under section 507(a) of the Bankruptcy Code.

104. As described in the Employee Wages Motion, the Debtors pay fees to third-party administrators and servicers of the Benefits. Third-party administrators assist the Debtors with, among other things, administering the Benefits, and assist with payroll servicing and payroll transfer administration in connection with Employee Obligations. I believe that continued payment to third-party administrators is necessary, and without the continued service of these administrators, the Debtors will be unable to continue honoring their obligations to Employees in an efficient and cost-effective manner.

105. The Debtors are not seeking relief to pay prepetition Employee Obligations to any individual Employee in excess of the \$13,650 cap imposed by section 507(a)(4) of the Bankruptcy Code on an interim basis. I also believe that the total amount sought to be paid by the Employee Wages Motion is modest compared to the magnitude of the Debtors' overall

business. Furthermore, the Debtors have sufficient funds to pay the Employee Obligations in the ordinary course using cash maintained by the Debtors and cash generated through operations. Accordingly, I believe the relief requested in the Employee Wages Motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors, their estates, and all parties in interest.

**iv. Insurance and Surety Bond Motion**

106. In the ordinary course of their business, the Debtors maintain workers' compensation insurance, business property insurance, general liability insurance, and other insurance programs (each, an "Insurance Program") and incur certain obligations to pay premiums and other obligations related thereto, including, but not limited to, broker or advisor fees, payments due under a premium financing agreement, taxes, other fees, and deductibles (collectively, the "Insurance Obligations"), in accordance with or relating to their respective insurance policies (each, an "Insurance Policy") through several insurance carriers (each, an "Insurance Carrier").

107. The Insurance Programs include: (i) coverage of worker's compensation and employer's liability (the "Workers' Compensation Insurance"); (ii) coverage of potential third party liability in connection with the Debtors' businesses (the "General Liability Program"); (iii) coverage for liability from the Debtors' use of non-Debtor owned aircraft (the "Non-Owned Aircraft Liability Program"); (iv) coverage for losses of office property and equipment (the "Business Property Liability Program"); (v) coverage for losses of cargo (the "Cargo Liability Program"); (vi) coverage for losses related to marine vessels and their operations (the "Charters Liability Program") (vi) coverages of management liability and directors and officers liability (the "Management Liability Program"); and (vii) umbrella and excess coverage for various

casualty Insurance Policies, as described below (the “Umbrella Liability Program”). A detailed list of the Insurance Policies is attached to the Insurance and Surety Bond Motion as Exhibit A. The Debtors also retain the services of various insurance brokers in connection with maintaining the Insurance Programs. The Insurance Programs and the role of each insurance broker are discussed below.

108. The Debtors have financed many of their Insurance Policies through the Premium Financing Agreements (as defined below) and the Debtors were obligated to make premium installment payments related to several Insurance Policies, which the Debtors renewed prepetition. The Insurance Policies subject to these installment payments, which were paid prepetition, cover both pre- and postpetition periods.

109. In the ordinary course of business, the Debtors are required to provide surety bonds to certain governmental units or other public agencies to secure the Debtors’ payment or performance of certain obligations (the “Surety Bond Program,” the individual surety bonds, the “Surety Bonds,” and all payment obligations or posting of collateral related thereto, the “Surety Bond Obligations”). Seven of the eight Surety Bonds are issued by HCC Insurance Holdings (collectively, the “Sureties”) and one is a cash bond held at Wells Fargo Bank Alaska, N.A. A detailed list of the Surety Bonds is attached to the Insurance and Surety Bond Motion as Exhibit B.

### **Workers’ Compensation**

110. In the ordinary course of business, the Debtors maintain Workers’ Compensation Insurance for claims arising from or related to employment by the Debtors (the “Workers’ Compensation Claims”). The Insurance Carrier for the Workers’ Compensation Insurance is Everest National Insurance Company (“Everest”). In many instances, applicable law in the

jurisdictions in which the Debtors operate requires that the Debtors maintain Workers' Compensation Insurance.<sup>10</sup> The Workers' Compensation Insurance covers, among other things, statutory workers' compensation and employer liability claims generally arising from accidents, disability, death, or disease sustained by employees in the course of their employment with the Debtors.

111. The Debtors renewed the Workers' Compensation Insurance for an annual premium of approximately \$749,183. The Debtors paid this premium in full prepetition, and the term of the Workers' Compensation Insurance is December 31, 2019 through December 31, 2020. This premium is subject to an audit (a "Premium Audit"), which will determine if any decreases or increases in the Debtors' actual payroll obligations require a corresponding increase or return of funds, or an arrearages payment, in the premium for the expired coverage period. If any arrearages arise from the Premium Audit, such arrearages are due 30 days after such amounts are invoiced to the Debtors.

112. Due to the nature of their business, some of the Debtors' employees may be exposed to certain occupational hazards. The Workers' Compensation Insurance requires no deductible, and thus the Debtors owe no amounts for Workers' Compensation Claims. All amounts owed for Workers' Compensation Claims are paid by Everest. Accordingly, to the best of their knowledge, the Debtors do not owe any prepetition amounts on account of the Workers' Compensation Insurance.

113. Under applicable workers' compensation laws, the Debtors or the applicable Insurance Carrier may be obligated to pay all or part of a Workers' Compensation Claim directly to an employee, his or her other medical providers, or his or her heirs or legal representatives.

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<sup>10</sup> The states where the Debtors carry Workers' Compensation Insurance are Alaska, Arizona, California, Colorado, Florida, Illinois, Kansas, Louisiana, Mississippi, Michigan, North Dakota, New Mexico, Nevada, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wyoming.

Although unlikely, it is possible that an event giving rise to an obligation of the Insurance Carriers to make such a payment—for example, for injury or disease of an employee—could have occurred prepetition without the Debtors’ knowledge. To that end, out of an abundance of caution, the Debtors seek relief to pay such Workers’ Compensation Claims and related costs, and for Everest to have authorization to do the same.

### **General Liability Program**

114. The General Liability Program provides coverage for legal or contractual liability or other damages to third parties arising from or incurred to third parties in connection with the Debtors’ business operations or the Debtors’ premises. This Insurance Program accordingly covers damages from the following:

- General Commercial liability, including injuries to third parties arising out of the Debtors’ operations. This liability is generally covered up to \$1,000,000 per occurrence and the deductible is \$25,000.
- Hired Auto and Non-Owned Auto Liability Insurance. This liability is covered up to \$1,000,000 for any one accident or occurrence and there is no deductible.
- Owned Auto Liability Insurance. This Liability is covered up to \$1,000,000 for any one accident or occurrence and the deductible is \$5,000.

115. The General Liability Program provides coverage up to an aggregate amount of \$2,000,000 in the United States and \$5,000,000 in Canada, and up to \$10,000 in the United States and \$25,000 in Canada with respect to medical payments for each such accident or occurrence.

116. The Insurance Carriers under these policies are AIG Canada – Toronto, AIG Property Casualty Company – New York, AIG Malaysia Insurance Berhad, (collectively, “AIG”), BISA Seguros & Reaseguros S.A., and SBS Seguros Colombia S.A. The coverage period is December 31, 2019 through December 31, 2020, and the Debtors paid the annual

premium of approximately \$615,403 in full prepetition. Accordingly, the Debtors do not owe any amounts on account of the General Liability Program as of the Petition Date.

**Non-Owned Aircraft Liability Program**

117. The Non-Owned Aircraft Liability Program covers liabilities to third parties resulting from bodily injury or property damage from the Debtors' use of non-Debtor owned aircraft. This program generally covers liability (i) for property or personal injury damages up to \$10,000,000 for any one accident. The Insurance Carrier is Allianz Global Corporate & Specialty – Toronto (“Allianz”). The coverage period is December 31, 2019 through December 31, 2020, and the Debtors paid the annual premium of \$16,935 in full prepetition. Accordingly, the Debtors do not owe any amounts on account of this program as of the Petition Date.

**The Business Property Liability Program**

118. The Business Property Liability Program provides coverage protection against all risks of physical loss or damage to scheduled electronic data processing equipment and software, tenants' improvements and betterments, and business personal property. This coverage provides protection for electronic data processing equipment and software in an aggregate amount of approximately \$5,000,000. The deductible is \$2,500 per any one accident or occurrence, and \$10,000 if damage occurs from wind or hail. The Insurance Carrier is Allianz Global Corporate & Specialty. The coverage period is December 31, 2019 through December 31, 2020, and the Debtors paid the annual premium of approximately \$25,303 in full prepetition. Thus, the Debtors do not owe any amounts on account of this program as of the Petition Date.

**Cargo Liability Program**

119. The Debtors carry insurance that covers all risks or physical loss or damage and machinery breakdown to vehicles and other equipment, real or personal property, and goods



while in transit in land or offshore or while in storage and while aboard a vessel or other conveyance or while in the care, custody, or control of the Debtors' Cargo Liability Program. The Cargo Liability Program has a deductible of \$100,000 for land based equipment and \$250,000 for subsea equipment with a policy limit of \$30,000,000. The Insurance Carrier is Rogers Insurance LTD. and Lloyds of London. The coverage period is January 1, 2020 through January 1, 2021, and the Debtors paid an annual premium of \$161,346 in full prepetition. Thus, the Debtors do not owe any amounts on account of this program as of the Petition Date.

### **Charters Liability Program**

120. The Debtors' Charters Liability Program charters liability, commercial hull, cargo, and property and indemnity insurances to cover vessels, anywhere in the world for any loss, damage, or expense, including but not limited to demurrage and/or removal of wreck or collision liability or any other consequential loss or damage, resulting from any accident in which the vessels may be involved, including protection and indemnity risks. The Insurance Carriers are Allianz Malaysia, MSIG Insurance, Allianz Global Corporate & Specialty, and QBE Insurance. The policy limit for the property and indemnity coverages is \$1,000,000, for commercial hull the limit varies depending on the specific vessel that is covered ranging from \$40,000 to \$1,000,000 with the average being approximately \$400,000. The deductible for property and indemnity coverage is \$15,000, for commercial hull the deductibles vary depending on the specific vessel that is covered ranging from \$10,000 to \$100,000 with the average being approximately \$45,000. The coverage periods are all for a year, and the Debtors paid the annual premiums for the Charters Liability Program of approximately \$304,960 in full prepetition. Thus, the Debtors do not owe any amounts on account of this program as of the Petition Date.

## Management Liability Program

121. The Management Liability Program provides preventative protection against a variety of liability and damages associated with the Debtors' directors, officers, and other upper management; including, but not limited to, the following areas, each within the first layer of coverage:

- Directors and Officers Liability: This provides coverage for the liability arising from the Debtors' directors and officers for alleged wrongful acts. Liability is covered up to \$2,500,000 in aggregate for the coverage period and there is no deductible. The coverage period is March 1, 2020 through March 1, 2021. The Insurance Carrier for this coverage is Associated Industries Insurance Co., Inc., and the policy premium is \$150,937.51 that was paid in full by the Debtors prepetition.
- Commercial Crime Insurance: This provides coverage for liability accruing to the Debtors from an employee's alleged dishonesty, forgery or alteration, and computer fraud. Liability is covered up to \$5,000,000 in the aggregate for the coverage period, with a \$100,000 deductible for each claim. The coverage period is December 31, 2019 through December 31, 2020. The Insurance Carrier for this coverage is Great American Insurance Company, and the policy premium is \$23,625 that was paid in full by the Debtors prepetition.

122. After the first layer of liability coverage, the Debtors have five additional layers of coverage exclusively for the directors' and officers' liability indicated above. The coverages are (a) Excess Directors and Officers coverage, (b) Excess Executive Plus Directors and Officers, (c) General Excess Liability, (d) Excess Public Directors and Officers A, B, and C coverage, and (e) Excess Side A Division and Officers coverage. No deductibles are owed for these coverages. The policy period for all of these coverages is March 1, 2020 through March 1, 2021, and the Debtors paid, in the aggregate, \$619,850, in full prepetition. The Insurance Carriers are as follows: Berkley Insurance Company, RLI Insurance Company, Ascott Specialty Insurance Company, Endurance American Insurance Company, and Argonaut Insurance Company.

123. The Debtors also purchased “tail” coverage (the “Tail Policies”). The Tail Policies protect the Debtors and their directors and officers against any claims made after the current primary directors’ and officers’ liability policy and Directors and Officers Side A policies expire for acts that occurred when the policies were in effect. The Tail Policies provide coverage for six years starting from the Debtors’ emergence from bankruptcy. The premium for the Tail Policies is approximately \$1,010,000 and the Debtors paid it in full prepetition. A list of the Tail Policies is attached as Exhibit C to the Insurance and Surety Bond Motion.

### **Umbrella Liability Program**

124. The Umbrella Liability Program provides coverage that supplements the coverage provided in the casualty programs above, including the employers’ liability insurance under the Workers Compensation Insurance, the Owned Auto Program, and the General Liability Program (the “Underlying Policies”). The annual aggregate coverage provided by the Commercial Umbrella Liability Occurrence Form coverage with AIG Insurance Company of Canada is \$4,000,000 with a deductible of \$25,000, and the Excess Liabilities provided by Rogers Insurance LTD and Lloyds of London (the “Excess Coverage”) provides coverage over the Underlying Policies for an annual aggregate of \$20,000,000 with a deductible of \$25,000. The coverage period for the Umbrella Liability Program is December 31, 2019 through December 31, 2020, and the Debtors paid the annual aggregate premiums of approximately \$374,841 in full prepetition. Accordingly, the Debtors do not owe any amounts on account of the Umbrella Liability Program as of the Petition Date.

### **Premium Financing**

125. Many of the Insurance Policies are financed through a premium finance agreement entered into by and between SAE and First Insurance Funding of Canada on January 28, 2020 (the

“First Insurance Premium Financing Agreement”) and Lockton Companies LLC on March 11, 2020 (the “Lockton Premium Financing Agreement” together with the First Insurance Premium Financing Agreement, the “Premium Finance Agreements”). Pursuant to the First Insurance Premium Financing Agreement, First Insurance Funding of Canada financed the Debtors’ premium payments in the total aggregate amount of \$2,081,497 (including broker’s fees and financing charges) that the Debtors paid in full prepetition. Pursuant to the Lockton Premium Financing Agreement, Lockton financed the Management Liability Program for an aggregate amount of \$767,037.51 (including broker’s fees and financing charges). The obligations under the Premium Finance Agreements were paid prepetition, thus the Debtors do not owe any amounts on account of the First Insurance Premium Financing Agreement.

### **Surety Bond Program**

126. The Surety Bonds relate to the Debtors’ seismic operations on federal lands and in various states across the country, including, Alaska, Montana, Wyoming, Pennsylvania, Colorado, and North Dakota. When a governmental unit or other public agency requests a bond and the Debtors determine that they have better operational uses for cash or cash equivalents and do not wish to provide the cash and/or cash equivalents necessary to satisfy such request, the Debtors may post a surety bond. Such sureties provide, upfront, the full amount of the requested cash and/or cash equivalents to the requesting party on behalf of the Debtors, in exchange for, among other things, a fee from the Debtors to secure the bond issuance on the Debtors’ behalf. The issuance of a surety bond shifts the risk of the Debtors’ nonperformance or nonpayment from the obligee to the surety or issuer.

127. Collectively, the Debtors’ Surety Bonds provide coverage in the aggregate amount of approximately \$461,000, and, as of March 2020, all of the Debtors Surety Bonds are fully

supported by cash collateral. Premiums related to the Surety Bond Program are generally determined on an annual or per-bond basis and are paid by the Debtors when a particular surety bond is issued or renewed. The Debtors pay approximately \$7,220 annually in premiums on account of the Surety Bond Program and of that amount \$2,200 will come due within 30 days of the petition date.

128. To continue their business operations during the reorganization process, the Debtors must be able to provide financial assurance to the relevant governmental authorities and other third parties. This, in turn, requires the Debtors to maintain the existing Surety Bond Program, including paying bond premiums as they fall due, providing collateral, renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of business, paying related fees to third parties, and executing other agreements (as needed) in connection with the Surety Bond Program. Failing to provide, maintain, or timely replace their surety bonds in the ordinary course of business will prevent the Debtors from undertaking essential functions related to their operations. In the first 30 days after the Petition Date, the Debtors will have to renew two Surety Bonds, which will not require the posting of any additional cash collateral. Although the Debtors are not aware of any amounts owed on account of the Surety Bond Program as of the Petition Date, out of an abundance of caution, the Debtors seek authority to honor any Surety Bond Obligations, continue the Surety Bond Program in the ordinary course of business and continue acquiring additional bonds to ensure that the Surety Bond Program and the Debtors' business operations remain uninterrupted on a postpetition basis.

#### **Insurance Broker and Surety Bond Broker Services**

129. The Debtors retain (i) Rogers Insurance Ltd.; (ii) Lockton; and (iii) Willis Temby Insurance Brokers Pty Ltd to serve as their insurance brokers and consultants for the Insurance

Programs (each in such capacity, an “Insurance Broker”) and Marsh & McLennan Agency, LLC serve as their surety bond broker and consultants for the Surety Bond Program (the “Surety Bond Broker”). The Insurance Brokers and Surety Bond Broker provide access to specific markets and expertise in certain lines and types of coverage. In addition, the Insurance Brokers often act as the intermediary between the Debtors and the Insurance Carriers, as the Insurance Brokers will often transfer insurance premiums and claims asserted for various Insurance Programs to the various Insurance Carriers, likewise, the Surety Bond Broker provides similar services. The Debtors pay the Insurance Brokers commissions up-front as policies are renewed each year, based on the aggregate amount of the insurance premiums, and pay the Surety Bond Broker commission up-front as bonds are renewed each year based on the aggregate amount the surety bond premiums. As of the Petition Date, the Debtors do not owe any prepetition commissions to the Insurance Brokers or Surety Bond Broker. For the avoidance of doubt, the Debtors request authority from this Court to continue making payments to the Insurance Brokers for the Insurance Obligations and the Surety Bond Broker for the Surety Bond Obligations, as necessary under the Insurance Programs and the Surety Bond Program, as applicable.

130. In light of the risks applicable to the Debtors’ operations and the critical need for the Debtors to protect their assets from such risks, I believe it is essential that the Debtors maintain the Insurance Programs and the Surety Bond Program and that they obtain authority to pay all obligations related thereto, including outstanding payments to the Insurance Brokers and Surety Bond Brokers. Without authority to maintain and pay amounts owed in connection with the Insurance Programs and Surety Bond Program, the ability of the Debtors to conduct business operations in many locations would come to a halt to the detriment and prejudice of all parties in interest. Additionally, based on the Debtors’ current circumstances, I believe it is unlikely that

the Debtors would be able to renew or replace their existing Insurance Programs or Surety Bond Program on more favorable terms. Furthermore, I understand that the Debtors must maintain most or all of the Insurance Programs and Surety Bond Program to comply with the U.S. Trustee's operating guidelines, applicable state and federal laws, requirements from state and federal regulatory agencies, and other prepetition contracts. Based on the foregoing, I believe that the relief requested in the Insurance and Surety Bond Motion is in the best interests of the Debtors, their estates, and all other parties in interest and should be granted in all respects.

**v. Taxes Motion**

131. I understand that the taxes the Debtors typically incur generally fall into the following categories: Payroll Taxes, Income Taxes, Property Taxes/Ad Valorem Taxes, Franchise Taxes, Sales and VAT Taxes, and Regulatory Assessments (each as defined in the Taxes Motion and collectively, the "Taxes"). A non-exclusive list of the Taxing Authorities is set forth on Exhibit A to the Taxes Motion.

**1. Payroll Taxes**

132. As set forth in more detail in the Debtors' Employee Wages motion,<sup>11</sup> in the normal course of business, payroll related to trust fund taxes accrue as employees provide services to the Debtors. Where applicable, these payroll related taxes include federal, state, and local income tax, social security tax, Medicare, state unemployment insurance, state disability insurance, and similar taxes in countries where the Branches operate (collectively, the "Payroll Taxes").<sup>12</sup> Generally, these funds are deducted from employee earnings and required Debtor

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<sup>11</sup> See Debtors' Emergency Motion for an Order (i) Authorizing, but not Directing, the Debtors to Pay Prepetition Workforce Obligations, (ii) Authorizing, but not Directing, the Debtors to Continue Certain Workforce Benefit Programs, and (iii) Authorizing, but not Directing, Applicable Banks to Honor Prepetition Checks for Payment of the Prepetition Workforce Obligations, filed contemporaneously herewith.

<sup>12</sup> Given the payroll cycle and the Petition Date, the Debtors believe that they owe approximately \$17,630, which will all be due within 30 days after the Petition Date.

contributions, but due to the commencement of the Chapter 11 Cases, may not have been forwarded to the appropriate third-party recipients. Such withheld funds, to the extent they remain in the Debtors' possession, constitute moneys held in trust and therefore are not property of the Debtors' estates. Out of an abundance of caution, however, by this Motion, the Debtors seek authority, in their discretion, to forward the Payroll Taxes to the appropriate parties in the ordinary course.

## **2. Income Taxes**

133. The Debtors incur income taxes on profits in the various jurisdictions, including the United States, various states within the United States, and the countries where the Branches operate (the "Income Taxes"). The Debtors typically pay Income Taxes in the ordinary course of business, and in certain jurisdictions, customers are required to withhold and remit Income Taxes to the relevant Taxing Authority on behalf of the Debtors. As of the Petition Date, approximately \$399,183 in state and Colombian income taxes are due, of that amount, approximately \$299,528 is due by October, 15, 2020, approximately \$57,443 is due by November 15, 2020, and approximately \$42,212 is due by December 15, 2020, additionally certain other Income Taxes and other Taxes attributable to the prepetition period may come due during the Chapter 11 Cases. Thus, the Debtors request authority to pay all prepetition Income Taxes that have accrued as of the Petition Date and to continue to pay such obligations in the ordinary course on a postpetition basis.

## **3. Property Taxes/Ad Valorem Taxes**

134. The Debtors own, or owned, property in various states, including Texas, Alaska, and Oklahoma, and certain Taxing Authorities in these states and the counties within those states have the authority to levy property occupancy taxes, real estate taxes, and other property taxes



against the Debtors' leased and owned real and personal property (the "Property Taxes"). The Debtors estimate the prepetition liability for Property Taxes to be approximately \$685,371, none of which is payable within 30 days after the Petition Date.<sup>13</sup> Failure to timely remit payment of Property Taxes may subject the Debtors to penalties or interest. The Debtors therefore seek authority to pay all prepetition Property Taxes that are outstanding or have accrued as of the Petition Date and to continue to pay such obligations in the ordinary course of business on a postpetition basis.

#### **4. Franchise Taxes**

135. The Debtors are required to pay taxes assessed for the privilege of doing business within a particular jurisdiction (the "Franchise Taxes"). The Debtors pay Franchise Taxes to the applicable Taxing Authorities in Delaware, Louisiana, New York, and Oklahoma. Franchise Taxes are typically paid quarterly or annually to the applicable Taxing Authorities. As of the Petition Date, the Debtors estimate they owe approximately \$74,766 in prepetition Franchise Taxes, none of which will become payable in the first 30 days of the Chapter 11 Cases. The Debtors therefore request authority to honor such prepetition Franchise Taxes and to pay any postpetition Franchise Taxes in the ordinary course of business.

#### **5. Sales and VAT Taxes**

136. In connection with the Debtors' operations around the world, including, in the United States, Colombia, Bolivia, India, and the United Arab Emirates, the Debtors incur, collect, and remit sales and value-added taxes based on the goods and/or services that are used or consumed and assessed in relation to the value added by such goods and/or services (the "Sales

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<sup>13</sup> This amount ignores lien and assessment dates under state law and results from a calculation of the amount owed by prorating the time period to which the applicable taxes relate. Determining whether Property Taxes are prepetition or postpetition in nature can be difficult due to the intricacies of state law, and the Debtors are taking no position on those issues in this Motion.

and VAT Taxes”). Sales and VAT Taxes essentially are general consumption taxes charged at either the point of purchase for goods and services or the point of sale of goods and services, which are usually set by the Taxing Authority as a percentage of the retail price of the good or service purchased. The process by which the Debtors remit Sales and VAT Tax varies depending on the Taxing Authority, but Sales and Use Tax is generally remitted on either a monthly or quarterly basis. Sales and VAT Taxes of approximately \$14,545 have accrued and remain unpaid as of the Petition Date, all of which is payable during the first 30 days of the Chapter 11 Cases. Accordingly, the Debtors seek authority to honor such outstanding prepetition obligations and to continue paying any such obligations in the ordinary course of business on a postpetition basis.

#### **6. Regulatory Assessments**

137. In the ordinary course of business, the Debtors incur certain regulatory assessments, levies, inspection fees and other miscellaneous fees (collectively, “Regulatory Assessments,” and together with Payroll Taxes, Franchise Taxes, Sales and VAT Taxes, Property Taxes, and Income Taxes, the “Taxes”). The continued payment of Regulatory Assessments, including any amount due and owing on account of Regulatory Assessments incurred prior to the Petition Date, is crucial to the continued operation of the Debtors’ business. Further, payment of Regulatory Assessments is required under state and federal law and non-compliance would be a violation of state and federal statutes. Regulatory Assessments are typically paid annually, with certain assessments paid on a semi-annual or quarterly basis, totaling approximately \$15,000 to \$35,000 per year. As of the Petition Date, no Regulatory Assessments are due and owing.

138. Based on the foregoing, I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors, their estates, and all parties in interest and should be approved.

**vi. Utilities Motion**

139. As more fully described in the motion, the Debtors obtain gas, water, electricity, internet, telecommunications, and other similar utility products and services (collectively, the “Utility Services”) from approximately 23 utility providers (collectively, the “Utility Companies”), a list of which is attached as Exhibit A to the proposed order (the “Utilities Services List”). I believe that uninterrupted Utility Services are essential to the Debtors’ ongoing operations and the success of the Chapter 11 Cases. Should any Utility Company alter, refuse, or discontinue service, even briefly, the Debtors’ business operations could be severely disrupted. The Debtors operate a complex business with significant operations around the world. Interruption of the Utility Services provided at any of their locations would disrupt necessary communication and coordination between the Debtors’ employees, vendors, customers, and various regulatory authorities, and would prevent the provision of necessary support to these same parties. I believe that any such disruption would jeopardize the Debtors’ ability to manage their reorganization efforts. As a result, it is essential that the Utility Services continue uninterrupted during the Chapter 11 Cases.

140. I believe that there are no material defaults or significant arrearages with respect to the undisputed invoices for prepetition Utility Services. As of the Petition Date, the Debtors believe that no utility costs are outstanding. Based on a monthly average for the twelve months prior to the Petition Date, the Debtors estimate that their aggregate cost of Utility Services for the

next 30 days will be approximately \$83,952.38. Thus, I believe that the proposed \$41,976 utility deposit is appropriate and adequately protects the Utility Companies.

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

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

**vii. Critical Vendors and Lien Claims Motion**

143. The Debtors' vendors and suppliers are located around the world. Even minor disruptions in the supply chain could have adverse consequences for the Debtors, their employees, customers, and the environment. Certain of the Debtors' vendors are critical to maintaining a physical workplace that minimizes the potential for COVID-19 incidents, which would have a material adverse impact on the value of the Debtors' estates. The following table summarizes the types of claims that the Debtors request authority to pay pursuant to this Motion as well as estimated aggregate prepetition amounts outstanding as to each type:

<b>Category</b>	<b>Description</b>	<b>Interim Relief Requested</b>	<b>Final Relief Requested</b>	<b>503(b)(9) Portion<sup>14</sup></b>
<b>Critical Vendors</b>	Suppliers of equipment, goods, and services essential to the Debtors' business.	\$772,021.11	\$1,031,458.72	\$497,800.50
<b>Statutory Lien Vendors</b>	Vendors that provide logistics, freight forwarding, shipping, storage, logistics, and maintenance of vehicles, vessels, or other personal property, construction or other vendors who have lien rights under applicable non-bankruptcy law.	\$174,491.80	\$249,274.00	\$61,640.00
<b>HSE Suppliers</b>	Vendors that provide critical health and safety training, support, and services.	\$13,243.86	\$18,919.80	\$4,485.00
<b>Foreign Vendors and Utilities</b>	Vendors and utilities that are non-U.S. based.	\$462,562.43	\$660,803.48	\$65,032.50
<b>503(b)(9) Claimants</b>	Vendors with goods or materials delivered within the twenty (20) days before the Petition Date that are not otherwise Critical Vendors, Statutory Lien Vendors, HSE Suppliers, or Foreign Vendors and Utilities.	\$30,437.05	\$43,481.50	\$43,481.50
<b>Total</b>		<b>\$1,402,756.25 (the "Interim Critical Vendor Cap")</b>	<b>\$2,003,937.50 (the "Final Critical Vendor Cap")</b>	<b>\$628,958.00</b>

144. Critical Vendors. In the ordinary course of business, the Debtors incur certain obligations (the "Critical Vendor Claims") to suppliers of goods and services used primarily for seismic acquisition (the "Critical Vendors") owned and operated by the Debtors. The Critical Vendors may include original equipment manufacturers and providers of explosives and vibration equipment, seismic sensors, survey equipment, fuel and lubricant, mooring and

<sup>14</sup> The amounts in this column represent the portion of the claims of Critical Vendors, Shippers, Warehousemen, and Other Lien Claimants, HSE Suppliers and Foreign Vendors and Utilities that are estimated to be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code.

anchoring services, hardware and tools, communications, and workforce deployment services. The Critical Vendor Claims may include amounts to purchase certain supplies that are utilized in the acquisition of seismic data on land, in transition zones between land and water, and offshore in water depths of up to 3,000 meters as well as providing logistic and data processing support for their proprietary, patented software. The Critical Vendor Claims may also include amounts to purchase certain services to store and maintain the Debtors' equipment, to provide workforce deployment and maintenance, to store and protect proprietary seismic data, and to provide general office support functions. The Debtors require the goods and services provided by the Critical Vendors to continue operating their business, including providing seismic data acquisition, logistical support, and data processing to their oil and natural gas industry customers.

145. I believe that a disruption of any of the Critical Vendors' delivery of necessary goods and services may prevent safe and efficient operation of the seismic acquisition services. Even a temporary disruption of the Debtors' operations would lead to adverse consequences, including the loss of revenue from current or future contracts, and may impede the Debtors' ability to retain current contracts and bid on and secure new customer contracts.

146. Furthermore, due to the specialized and remote nature of the Debtors' operations, some of the Critical Vendors are the sole source of their goods and services or are among a small number of such suppliers in the world or in those geographic regions in which the Debtors operate. These Critical Vendors may refrain from supplying goods and services essential for the day-to-day operations of the Debtors if they are not paid. Moreover, certain Critical Vendors are reliant upon the Debtors for the continued operation of their own business; without the Debtors' payments, several Critical Vendors would have little or no working capital, and may be forced to cease operations. Accordingly, I believe that it is imperative that the Debtors maintain positive

relationships with the suppliers of the goods and services essential to their operations throughout the course of these Chapter 11 Cases. It is therefore crucial that the Debtors be allowed to pay Critical Vendors in the ordinary course so as to avoid the potential disruption to their operations.

147. For the 12 months prior to the Petition Date, the Debtors' average monthly payments to Critical Vendors was approximately \$3,307,694.77. As of the Petition Date, the Debtors estimate that \$1,031,458.72 in Critical Vendor Claims are outstanding and that approximately \$722,021.11 of that amount will come due during the interim period before entry of the Final Order. Accordingly, by this Motion, the Debtors seek the authority but not the direction to pay any prepetition Critical Vendor Claims up to an aggregate amount of \$722,021.11 on an interim basis, and in a total aggregate amount of \$1,031,458.72 on a final basis.

148. Statutory Lien Vendors. In the ordinary course of business, the Debtors engage a variety of shippers, warehousemen, and other trade parties who may have statutory lien rights including: (a) logistics service providers, freight forwarders, movers and towers ("Shippers"), (b) shipyards and storage facilities ("Warehousemen"), (c) offshore logistics providers ("Offshore Logistics Providers"), (d) specialized mechanical maintenance engineering providers ("Other Lien Claimants"), and (e) third-party contractors, repairmen, and manufacturers ("Third Party Contractors" and together with Shippers, Warehousemen, Offshore Logistics Providers, and Other Lien Claimants, the "Statutory Lien Vendors").<sup>15</sup>

149. I have been advised that under most state laws, as well as maritime law as it relates to the Offshore Logistics Providers, the Statutory Lien Vendors may have a lien on the goods in their possession or under their control, which lien secures the charges or expenses

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<sup>15</sup> The Debtors do not concede that any liens (contractual, common law, statutory, or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity, and perfection of all such liens, and/or to seek avoidance thereof.

incurred in connection with the transportation, storage, or provision of such goods. Additionally, pursuant to section 363(e) of the Bankruptcy Code, such parties, as bailees, may potentially be entitled to adequate protection in the form of a possessory lien. As a result, certain Statutory Lien Vendors may refuse to deliver or release the Debtors inventory or other goods and materials, as applicable, before their liens and claims have been satisfied. Additionally, to the extent Statutory Lien Vendors provide offshore goods or services, they may be able to assert maritime liens on the vessels or against the goods or products provided.

150. The Debtors pay the Shippers and the Warehousemen in arrears and, therefore, may be liable to the Shippers and Warehousemen, as applicable, for certain prepetition amounts. The Debtors' possible failure to pay any such fees may entitle the Shippers to assert a lien, attempt to maintain possession of the Debtors' property, and/or fail to deliver the Debtors' property as and when due in the ordinary course of business. Likewise, the Debtors' possible failure to pay any such amounts may entitle the Warehousemen to assert a lien, attempt to take possession of the Debtors' property, and/or bar the Debtors' access to Materials stored by the Warehousemen. Furthermore, applicable non-bankruptcy law may permit a Shipper or Warehousemen to attach a lien on the goods in its possession, which lien secures the charges or expenses incurred in connection with the transportation or storage of such goods.<sup>16</sup> As a result, certain Shippers and Warehousemen may refuse to deliver or release property in their possession or control before the prepetition amounts owed to them by the Debtors have been satisfied and their liens redeemed.

151. The Debtors routinely transact business with a number of Third-Party Contractors in the ordinary course of business. For example, the Debtors pay for repair and maintenance of

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<sup>16</sup> By this Motion, the Debtors do not concede that any liens (contractual, common law, statutory, or otherwise) described in the Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity, and perfection of any and all such liens, and to seek avoidance thereof.



its equipment, vibrators, electronics, cables and geophones. A significant portion of these expenses are payments to third parties that perform labor or furnish or transport materials, equipment or supplies in connection with the acquisition of seismic data. These Third-Party Contractors may potentially assert statutory and contractual liens against the Debtors' property (or even property of other third parties with working interests under operating agreements) to secure payment for prepetition goods and services provided to the Debtors. Given the nature of the Debtors' business, some of their vendors may be entitled to assert liens, and in certain circumstances, the liens of the Third-Party Contractors may be senior to the liens of other secured creditors.

152. In addition, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>17</sup> These statutory liens often allow such parties to retain possession of equipment, machinery, supplies, and other materials (or impair title to the equipment, machinery, supplies, and other materials, by filing a security interest) until the debtor satisfies the outstanding amounts owed. Arguably, acts to perfect these statutory liens are not subject to the automatic stay under section 362 of the Bankruptcy Code.

153. For the 12 months prior to the Petition Date, the Debtors' average monthly payment to Statutory Lien Vendors was approximately \$221,736.38. As of the Petition Date, the

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<sup>17</sup> Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A). Under section 547(e)(2)(A) of the Bankruptcy Code, a transfer for preference analysis purposes takes place "at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time."

Debtors estimate that approximately \$249,274.00 in Statutory Lien Vendor obligations (the “Statutory Lien Claims”) are outstanding and that approximately \$174,491.80 of that amount will come due during the interim period before entry of the Final Order.

154. I have been informed by counsel that pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>18</sup> These statutory liens often allow such parties to retain possession of equipment, machinery, supplies, and other materials (or impair title to the equipment, machinery, supplies, and other materials, by filing a security interest) until the debtor satisfies the outstanding amounts owed. Arguably, acts to perfect these statutory liens are not subject to the automatic stay under section 362 of the Bankruptcy Code.

### **HSE Suppliers**

155. In the ordinary course of business, the Debtors incur obligations to suppliers (the “HSE Suppliers”) of goods and services utilized in the Debtors’ operations, payment of which are necessary to ensure the health, safety, environmental, and regulatory compliance and integrity of the Debtors’ operations but which are not Critical Vendor Claims, statutory lien claims, or 503(b)(9) Claims (the “HSE Claims”).

156. The Debtors rely on certain vendors that provide services which either directly result in operation of the seismic acquisition services in a safe and compliant manner, or supplies

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<sup>18</sup> Under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance power “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b)(1)(A). Under section 547(e)(2)(A) of the Bankruptcy Code, a transfer for preference analysis purposes takes place “at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time.”

such as maritime/navigation documents, personal protective equipment (for both fighting the spread of COVID-19 and protecting against everyday workplace hazards), workwear, and tools which allow the crews to execute their duties safely. These vendors also provide a variety of inspection services, in some cases required, or personnel screening, and training programs designed to onboard the workforce, provide instruction for safe operations or prevent injury for both onshore and offshore personnel, equipment inspection and certification, and classification services.

157. For the 12 months prior to the Petition Date, the Debtors' average monthly payment to the HSE Suppliers was approximately \$16,164.26. As of the Petition Date, the Debtors estimate that approximately \$18,919.80 in HSE Supplier obligations (the "HSE Claims") are outstanding and that approximately \$13,243.86 of that amount will come due during the interim period before entry of the Final Order.

### **Foreign Vendors and Utilities**

158. The Debtors operate crews around the world that are currently supported by over 160,000 owned land channels of seismic data acquisition equipment and other leased equipment as needed to complete particular projects. As a result, the Debtors rely on a number of vendors and service providers that are not U.S.-based, and who are not familiar with U.S. bankruptcy law or principles. In addition, in many non-U.S. ports around the world, the Debtors rely on non-U.S. utility providers for essential utility services such as electricity. Many of these foreign vendors and utilities (the "Foreign Vendors and Utilities") do not speak English as their native language and may not be comfortable with, understand, or feel themselves bound by, orders of a U.S. bankruptcy court.

159. I believe and have been informed by advisors that regarding the Foreign Vendors and Utilities, the Debtors believe there is a material risk that the Foreign Vendors and Utilities

holding claims against the Debtors (the “Foreign Vendor and Utility Claims”) may disregard the automatic stay and engage in conduct that disrupts the Debtors’ operations, or may simply be confused by the chapter 11 process, particularly in those countries with liquidation-oriented insolvency procedures. Notably, Foreign Vendors and Utilities that believe the automatic stay does not govern their actions may exercise self-help, which could include shutting down the Debtors’ access to essential goods, services, and utilities.

160. Foreign Vendors and Utilities may also sue the Debtors in a foreign court to recover prepetition amounts owed to them. If they are successful in obtaining a judgment against the Debtors, the Foreign Vendors and Utilities may seek to exercise post-judgment remedies, including seeking to withhold vital supplies and services from the Debtors. Because the Debtors would have limited, if any, effective and timely recourse and no practical ability to remedy this situation or, most importantly, the ability to replace these Foreign Vendors and Utilities (absent payment of amounts sought), their business could be irreparably harmed by any such action to the detriment of the Debtors’ estates and creditors.

161. I believe that with the importance the Foreign Vendors and Utilities play in the Debtors’ global operations, even a temporary disruption in the Debtors’ supply chain would have a negative effect on the operation of the Debtors’ business. Indeed, the vast majority of Foreign Vendors and Utilities also satisfy the criteria for consideration as a Critical Vendor set forth above. Accordingly, the Debtors need the ability to pay the Foreign Vendor and Utility Claims on an uninterrupted basis.

162. For the 12 months prior to the Petition Date, the Debtors’ average monthly payment to the Foreign Vendors and Utilities was approximately \$612,049.40. As of the Petition Date, the Debtors estimate that approximately \$660,803.48 in Foreign Vendor and Utility Claims

are outstanding and that approximately \$462,562.43 of that amount will come due during the interim period before entry of the Final Order.<sup>19</sup>

### **503(b)(9) Claimants**

163. In the 20 days before the Petition Date, the Debtors received certain goods and materials from various vendors (the “503(b)(9) Claimants”) in the ordinary course of business. The 503(b)(9) Claimants may not be Critical Vendors, Statutory Lien Vendors, HSE Suppliers or Foreign Vendors and Utilities. However, the Debtors believe that their claims are entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims”). Moreover, most of the Debtors’ relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors obtain supplies on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claim, especially claims that would be entitled to administrative expense claim treatment. I believe that certain 503(b)(9) Claimants could reduce the Debtors’ existing trade credit or demand payment in cash on delivery, negatively impacting the Debtors’ liquidity.

164. As of the Petition Date, the Debtors estimate that approximately \$43,481.50 in 503(b)(9) Claims are outstanding and that approximately \$30,437.05 of that amount will come due during the interim period before entry of the Final Order.

165. I believe that the Debtors need to be given authority to pay those undisputed claims arising from the value of such goods received by the Debtors within 20 days before the Petition Date that were sold to the Debtors in the ordinary course of business (each, a “503(b)(9) Claim,” and, together with the Lien Claims, the “Obligations”) in order to facilitate a smooth

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<sup>19</sup> The Debtors have made every effort to ensure that the Foreign Vendor and Utilities Claims are not duplicative of Critical Vendor Claims. However, given that many Foreign Vendor and Utilities are also critical and could be classified as Critical Vendors, it is possible that some Foreign Vendors and Utilities may be in the Critical Vendor category, and *vice versa*.

transition into bankruptcy. The Debtors will pay the 503(b)(9) Claims as they come payable in the ordinary course of business.

### **Payment of Outstanding Purchase Orders**

166. In the ordinary course of business, the Debtors may have ordered goods prior to the Petition Date that will not be delivered until after the Petition Date (the “Outstanding Purchase Orders”). To avoid the risk of becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Purchase Orders unless the Debtors issue substitute purchase orders postpetition. Receiving delivery of Outstanding Purchase Orders may be critical to preventing any disruption to the Debtors’ business operations, and in the Critical Vendors and Lien Claimants Motion, the Debtors request the authority, but not the direction to, pay Outstanding Purchase Orders as they come due that, in the Debtors’ sole discretion, are critical to their operations.

### **Identification and Payment of Specified Trade Claimants**

167. The Debtors’ considered several factors when identifying whether a particular vendor was a Critical Vendor, Statutory Lien Vendor, HSE Supplier, Foreign Vendor or Utility, or 503(b)(9) Claimant (collectively, the “Specified Trade Claimants” and their claims, the “Specified Trade Claims”). These include: (a) whether the vendor is the “sole source” provider of necessary equipment or among a handful of such providers in the world or in the particular geographic regions in which the Debtors operate; (b) whether a vendor contract exists that could be deemed executory allowing the Debtors to compel performance in the absence of satisfying a prepetition claim; (c) whether the failure to pay prepetition claims could result in the vendors, both foreign and domestic, refusing to provide essential goods or services in the future, thereby forcing the Debtors to cease operations or lose time and money; and (d) whether certain

specifications, customization, location, or other relevant characteristics of the drilling units or ongoing projects prevent the Debtors from obtaining goods or services from alternative sources without significant burden or expense.

**viii. Restrictions on Equity Trading Motion**

168. The Debtors have incurred, and are currently incurring, significant NOLs for federal and state income tax purposes. As of August 31, 2020, the Debtors estimate to have consolidated federal, state, and foreign NOLs of approximately \$100,146,667, \$62,353,192, and \$2,625,392, respectively. These NOLs could translate into significant potential future tax savings for the Debtors.<sup>20</sup> I believe that without the relief requested in the Restrictions on Equity Trading Motion, the Debtors may lose the ability to preserve their NOLs if there is a change in control based on the sale of the equity interests in SAE.

**C. Request for Emergency Consideration**

169. The Debtors request emergency consideration of the Joint Administration Motion; the Scheduling Motion; the Creditor List Motion; the Cash Collateral Motion; the Cash Management Motion; the Insurance and Surety Bond Motion; the Taxes Motion; the Employee Wages Motion; the Critical Vendors and Lien Claims Motion; the Utilities Motion; the Claims Agent Retention Application; the Confirmation Schedule Motion; and the Restrictions on Equity Trading Motion. I believe that, based on the complexity of the Chapter 11 Cases (as explained to me by the Debtors' counsel) and the Debtors' urgent need to continue operations during these cases, emergency consideration of such motions is warranted.

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<sup>20</sup> As of the Petition Date, the Debtors have commenced a review of their NOL assets, including any applicable Section 382 limitations. Accordingly, these estimations remain subject to final review and confirmation. The Debtors' requested relief is intended to help ensure that any NOL assets and certain other Tax Attributes are protected, in the interim, while such review and confirmation remains pending.

### **Conclusion**

170. The above describes the Debtors' business and capital structure, the factors that precipitated the commencement of the Chapter 11 Cases, the terms of the Debtors' balance sheet restructuring, and the critical need for the Debtors to restructure their financial affairs and operations. The provisions of the Bankruptcy Code will assist the Debtors in achieving their financial reorganization and reestablishing themselves as a healthy economic enterprise able to effectively compete in their industry for the benefit of their economic stakeholders and employees.



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

Dated: August 27, 2020  
Houston, Texas

By: Michael J. Faust  
Name: Michael Faust