IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
COLT HOLDING COMPANY LLC, *et al*.,[1]	:	Case No. 15-11296 (LSS)
Debtors.	:	Jointly Administered
	:	**Hearing Date (Proposed): 1/11/16 @ 11:30 a.m.** **Objection Deadline (Proposed): At the hearing**

DEBTORS' EXPEDITED MOTION FOR APPROVAL OF MODIFICATIONS TO DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND RELATED PLAN DOCUMENTS

Colt Holding Company LLC and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), by and through their undersigned counsel, file this expedited motion (the "**Motion**") for entry of an order, substantially in the form attached hereto as Exhibit A, (i) approving modifications (the "**Modifications**") to the *Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 675] (as amended, supplemented, or otherwise modified, the "**Confirmed Plan**") and certain Plan Documents in respect thereof, including, but not limited to, those modifications embodied in that certain "Sciens Group Commitment Amount Term Sheet" (the "**Commitment Term Sheet**");[2] (ii) deeming the Confirmed Plan and the Plan Documents, each as modified by the Modifications, to be accepted by Holders of Claims and Equity Interests who previously

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Colt Holding Company LLC (0094); Colt Security LLC (4276); Colt Defense LLC (1950); Colt Finance Corp. (7687); New Colt Holding Corp. (6913); Colt's Manufacturing Company LLC (9139); Colt Defense Technical Services LLC (8809); Colt Canada Corporation (5534); Colt International Coöperatief U.A. (6822); and CDH II Holdco Inc. (1782). The address of the Debtors' corporate headquarters is: 547 New Park Avenue, West Hartford, Connecticut 06110.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Confirmed Plan.

accepted or were deemed to accept the Confirmed Plan, and (iii) granting such other relief as the Court deems just and proper. In support of the relief requested in the Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Confirmed Plan—which was accepted by all voting classes and confirmed by this Court—is the product of a series of settlements with each of the Debtors' key creditor and equity holder constituencies. *First*, the Debtors gave clear direction to these chapter 11 cases by entering into the Restructuring Support Agreement ("**RSA**") with members of the Consortium, Sciens Capital Management LLC ("**Sciens**"), and NPA Hartford LLC ("**NPA Hartford**"). The RSA averted costly litigation, created the framework for a capital infusion necessary for the Debtors to emerge from chapter 11 and execute their business plan, and outlined the terms of a lease extension and option to purchase the West Hartford Facility. Full releases in favor of the parties to the RSA (the "**Plan Support Parties**"), including Sciens, was a critical element of the overall settlement embodied in this agreement.

2. *Second*, following the filing of initial versions of the Confirmed Plan, the Debtors reached an agreement with the Committee on certain plan amendments. Among other things, these amendments provided general unsecured creditors and certain holders of Senior Notes with the opportunity to elect a Cash or Fourth Lien Note distribution on account of their allowed claims. Accredited holders of the Senior Notes were also offered the opportunity to participate in the Offering. In return, the Committee agreed to support the Confirmed Plan featuring the above-described settlements and to recommend that unsecured creditors vote to accept the Confirmed Plan and grant the releases contemplated therein.

3. *Third*, while negotiating the settlements embodied in the RSA and the amendments made to the Confirmed Plan, the Debtors engaged in discussions with their

prepetition Term Loan Lender and DIP Term Loan Lender, Morgan Stanley, as well as their DIP Senior Loan Lenders, for appropriate Exit Facilities to facilitate consummation of the Confirmed Plan. Morgan Stanley and the DIP Senior Lenders also provided an extension of the DIP Term Loan Facility and the DIP Senior Loan Facility, respectively, through December 29, 2015, which the parties targeted as the Effective Date of the Confirmed Plan.

4. *Fourth*, the Debtors achieved a settlement with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) and its Local 376 (together, the "**Union**"), which was entered on the record at the Confirmation Hearing, approved by the Court, and embodied in the Confirmation Order.

Developments Since the Confirmation Hearing

5. Shortly after the Confirmation Hearing, Sciens indicated that it would not be able to fund its $15 million commitment under the Offering by the funding deadline set forth in the Equity Commitment Agreement ("**ECA**"),[3] and, on December 28, 2015, Sciens in fact did not fund its commitment in accordance with the ECA, resulting in a default thereunder. The Debtors and all other parties to the ECA and the RSA have respectively reserved all of their rights in respect of Sciens' default. However, the parties to the ECA have deemed it in the Debtors' best interests to maintain the settlements described above and consensually exercise their rights under section 1127(b) of the Bankruptcy Code, both in terms of the timing and amount of Sciens' contribution under the Confirmed Plan. The DIP Lenders accommodated these goals by extending the maturity of the DIP Facilities from December 29, 2015, to January 31, 2016, in exchange for fees that incentivize consummation of the Confirmed Plan in early January,

[3] A substantially final form of the ECA was filed as Exhibit Q to the Plan Supplement [D.I. 733]. The ECA was subsequently executed on December 14, 2015, and, subject to this Court's approval, shall be amended and restated in accordance with the Modifications.

pursuant to amendments to the DIP Facilities which were approved by the Court on December 29, 2015. Additionally, in return for these concessions, Sciens has agreed to support consummation of the Confirmed Plan on or before January 11, 2016, regardless of its ability to participate in the Offering, and has assisted the Debtors, the Consortium, and other parties in interest in finalizing the terms of the West Hartford Facility Lease extension with NPA Hartford. Critically, NPA Hartford has agreed to extend the West Hartford Facility Lease upon consummation of the Confirmed Plan on the terms set forth in the RSA, as modified by the terms set forth in the term sheet attached as Annex A to the Commitment Term Sheet (the "**Lease Amendment Term Sheet**"), regardless of whether Sciens participates in the Offering, owns any part of the reorganized Debtors' equity, or has any role in the management of the company going forward. As set forth in the Lease Amendment Term Sheet, but subject to the other terms and conditions set forth in the Confirmed Plan and RSA, NPA Hartford has agreed to deliver an executed lease amendment into escrow on or before January 8, 2016, which lease amendment shall be effective upon consummation of the Confirmed Plan (so long as all other terms and conditions in the Confirmed Plan, RSA, and lease are satisfied). In addition to the terms set forth in the RSA, the lease amendment will include an option for the Reorganized Debtors to purchase the West Hartford Facility from NPA Hartford through June 1, 2016.

Modification of the Confirmed Plan and Certain Plan Documents

6. The proposed Modifications to the Confirmed Plan (i) may reduce the total amount raised through the Offering from $50 million to between $45 million and $50 million as of the Effective Date and (ii) reallocate the amounts committed under the ECA as of the Effective Date. While the Modifications are discussed in detail below, Sciens will generally be given the opportunity to purchase at least $1 million of Offering Units on or before January 8,

2016, and if it purchases at least $2.6 million of Offering Units, will be given the opportunity to purchase additional Offering Units on or before February 8, 2016, from the Reorganized Debtors or members of the Consortium. To ensure that the Offering will raise at least $45 million as of the Effective Date, members of the Consortium have agreed to purchase Offering Units in an amount equal to the difference between $10 million and Sciens' Effective Date contribution. The Modifications also limit, among other things, Sciens' corporate governance rights and its right to receive management fees from the Reorganized Debtors under the Confirmed Plan and related Plan Documents to reflect the significantly reduced amount it may contribute. Additionally, Sciens has agreed it will have no right to participate in the Offering after January 8, 2016, if it fails to purchase at least $2.6 million of Offering Units, and will take all appropriate actions to support consummation of the Confirmed Plan if unable to participate. In addition, NPA Hartford has agreed to deliver into escrow on or before January 8, 2016, an executed five-year lease extension with a purchase option, on the terms set forth in the RSA (as modified by the Lease Amendment Term Sheet), with such lease extension effective upon consummation of the Confirmed Plan regardless of whether Sciens participates in Offering, owns any equity in the Reorganized Debtors upon emergence, or has any role in the management of the Reorganized Debtors going forward, but contingent on satisfaction of the other terms and conditions set forth in the Confirmed Plan, the RSA, and the lease itself.

7. As discussed below and as will be set forth in a declaration in support of this Motion (the "**Declaration**"), the Debtors are confident that the Confirmed Plan remains feasible and that any adjustments to Cash available on the Effective Date will not adversely impact the ability of the Debtors to emerge from chapter 11, to pay post-Effective Date obligations as they come due, and to comply with liquidity covenants in the Exit Facilities. The Debtors also

respectfully submit that resolicitation of the Confirmed Plan, which would be costly and time consuming, is unnecessary because the Modifications do not materially and adversely affect the consideration provided to creditors under the Confirmed Plan or the Debtors' ability to make distributions under the Confirmed Plan. Additionally, it is essential to the relief sought by this Motion—which is supported by the Committee, the Consortium, Sciens, NPA Hartford, the DIP Lenders, and the proposed Exit Lenders—that the above-described, hard-earned settlements achieved over the last six months and approved by this Court, including the releases granted in favor of Sciens and the other Plan Support Parties, are preserved.

8. For these reasons, the Debtors respectfully submit that the Modifications and the Commitment Term Sheet (including the Lease Amendment Term Sheet), which do not materially and adversely change or affect the consideration provided to impaired classes (all of which voted to accept the Confirmed Plan), should be approved.

JURISDICTION

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.[4] Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The predicates for the relief requested herein are sections 105(a) and 1127 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 3019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

[4] Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors hereby expressly confirm their consent to the entry of a final order by this Court in connection with this motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection therewith consistent with Article III of the United States Constitution.

GENERAL BACKGROUND

10. On June 14, 2015, each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. On June 16, 2015, this Court entered an order directing joint administration of the Debtors' Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 [D.I. 69].

11. On June 25, 2015, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed a statutory committee of unsecured creditors (the "**Committee**") pursuant to section 1102(a)(1) of the Bankruptcy Code.

12. On December 16, 2015, this Court confirmed the Confirmed Plan and entered its *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 807] (the "**Confirmation Order**").

MODIFICATIONS TO THE PLAN DOCUMENTS

13. The Debtors propose Modifications to the Confirmed Plan and certain Plan Documents consistent with the terms and conditions of the Commitment Term Sheet (including the Lease Amendment Term Sheet), a fully executed version of which will be filed as Exhibit B to this Motion. A redline of the Confirmed Plan as modified—reflecting changes to Sections 5.4(a) and 5.9(c), among others, necessary to implement the Modifications—is attached hereto as Exhibit C. Further, on or before Friday, January 8, 2016, the Debtors will file revised versions of certain Plan Documents (including the ECA and the Reorganized Parent LLC Agreement) along with redlines against the versions filed with the Plan Supplement [D.I. 721, 733] to show the changes necessary to implement the Modifications.

14. The principal terms and conditions of the Modifications and Commitment Term Sheet are as follows:

- The Modifications will guarantee a "**First Closing Date**" of the Offering on or before **January 11, 2016**—which is anticipated to be the Effective Date of the Confirmed Plan. Sciens, however, needs to fund its initial contribution on or before 5:00 p.m. (Eastern Standard Time) on **January 8, 2016**.

- The Modifications may reduce the total amount raised through the Offering from $50 million to between $45 million and $50 million, depending on the total amount contributed by Sciens.

- On or before 5:00 p.m. (Eastern Standard Time) on January 8, 2016, Sciens shall have the opportunity to purchase Offering Units in an amount not less than $1 million (such amount, the "**Sciens Initial Funding Amount**").

- On or before 12:00 p.m. (Eastern Standard Time) on January 11, 2016, in addition to their existing purchase obligations under the ECA, Fidelity/Newport and other members of the Consortium will purchase Offering Units in an amount equal to $10 million minus the Sciens Initial Funding Amount (such amount, the "**Creditors Funding Amount**").

- If the Sciens Initial Funding Amount funded by Sciens on or before 5:00 p.m. (Eastern Standard Time) on January 8, 2016, equals at least $2.6 million (the "**Sciens Threshold Funding Amount**")**,** then on or before 5:00 p.m. (Eastern Standard Time) on February 8, 2016 (the "**Second Closing Date**"), Sciens shall have the opportunity to fund an additional amount equal to up to the lesser of (x) $10,000,000, or (y) the maximum amount which shall not cause the aggregate amount of the Sciens Group Commitment Amount to exceed $15 million (the "**Sciens Subsequent Funding Amount**").

- To the extent that Sciens funds any portion of the Sciens Subsequent Funding Amount on or before the Second Closing Date, then the amount of such Sciens Subsequent Funding Amount shall, (x) first be used to increase the total amount raised in the Offering to $50 million, which $50 million shall be retained by the Reorganized Debtors for uses consistent with the Confirmed Plan and related Plan Documents and (y) to the extent the total Offering proceeds exceed $50 million, be returned to Fidelity/Newport and the members of the Consortium on a pro rata basis in accordance with the amount such parties contributed to the Creditors Funding Amount.

- To the extent that Sciens does not fund at least $10 million on January 8, 2016, Fidelity/Newport and other members of the Consortium have agreed to purchase additional Offering Units equal to the Creditors' Funding Amount as they shall agree amongst themselves. In the event that Sciens does not fund at least the initial $2.6 million Sciens Initial Funding Amount, (i) Sciens shall not, and shall have no

right to, participate in the Offering, and (ii) provided that (a) NPA Hartford and the Reorganized Debtors have entered into an amendment to the West Hartford Facility Lease and (b) Sciens and NPA Hartford have not impeded consummation of the Confirmed Plan, Sciens shall be entitled to the releases and payment of professional fees (which shall not exceed to the agreed upon cap of $2.7 million which would have applied if the Plan had been consummated on December 28, 2015) currently contemplated under the Confirmed Plan.

- Sciens' corporate governance rights will be altered depending on its level of commitment under the Offering (the funding requirements for Sciens to designate one or two members of the Governing Board of the Reorganized Debtors are discussed in detail in the Commitment Term Sheet).

- Similarly, Sciens' right to receive management fees from the Reorganized Debtors and the amount of such fees (if applicable) are discussed in detail in the Commitment Term Sheet.

- NPA Hartford will deliver into escrow on or before January 8, 2016, an executed five-year lease amendment with an option to purchase, on the terms set forth in the RSA and the Lease Amendment Term Sheet, with such lease amendment to be released from escrow and effective as of consummation of the Confirmed Plan, regardless of whether Sciens participates in the Offering, owns any of the Reorganized Debtors' equity, or is involved in the management of the Reorganized Debtors in any capacity moving forward (but still subject to the other terms and conditions in the Confirmed Plan and RSA).

- As a result of NPA Hartford's agreement under the Lease Amendment Term Sheet, and subject to the terms and conditions set forth in the Lease Amendment Term Sheet: (i) NPA Hartford shall be entitled to designate one board observer, but only if Sciens is not entitled to designate any board members, and (ii) the membership units that NPA Hartford will receive under the Confirmed Plan will convert to full voting units upon a sale to a third party.

- The Modifications provide that in the event that the amount of estate professional fees not paid on the Effective Date and allowed by the Court exceed the amount of the Professional Fees Escrow, the excess amount will be an obligation of the Reorganized Debtors and paid from cash on hand; *provided*, *however* that the Reorganized Debtors, the Committee, the Consortium, and all other parties in interest reserve all rights to object to the payment of fees and expenses of estate professionals, including, without limitation, the cash amounts paid to such professionals on the Effective Date.

15. To be clear, the Commitment Term Sheet does not change the rights and obligations of NPA Hartford or the terms of the Plan or RSA as it relates to NPA Hartford (except with respect to those terms set forth in the Lease Amendment Term Sheet), other than to

the extent that it includes a consent by NPA Hartford to the changes to the rights and obligations of Sciens and the Consortium (among other parties), and a commitment by NPA Hartford to comply with the terms of the Plan and RSA notwithstanding such changes as between the "Term Sheet Parties" to the Lease Amendment Term Sheet. Specifically, this consent and agreement ensures that if all of the other terms and conditions of the Plan and RSA (and the Commitment Term Sheet) are satisfied, NPA Hartford will enter into the amended West Hartford Facility Lease even if Sciens has no equity or governance rights with respect to Reorganized Colt.

16. Additionally, the Debtors will be providing notice to Eligible Holders not party to the RSA that have elected to participate in the Offering of the changes to the Confirmed Plan, the Plan Documents, and the Offering. These Eligible Holders will be given the right, on or before January 8, 2016, to rescind any amounts contributed to date as a result of the Modifications, and, if they elect not to participate in the Offering (such Eligible Holders, the "**Rescinding Eligible Holders**"), they will receive, at their election, distributions of Cash and/or Fourth Lien Notes on account of their Allowed Senior Notes Claims in accordance with Section 4.5 of the Confirmed Plan. Any amounts withdrawn from the Offering by Eligible Holders prior to January 8, 2016, will be funded by the Backstop Parties in accordance with Section 5.4 of the Confirmed Plan.

RELIEF REQUESTED

17. By this Motion, the Debtors are seeking entry of an Order, pursuant to section 1127(b) of the Bankruptcy Code, (i) approving the Modifications and the Commitment Term Sheet (including the Lease Amendment Term Sheet), (ii) deeming the Confirmed Plan and the Plan Documents, each as modified by the Modifications, to be accepted by Holders of Claims and Equity Interests who previously accepted or were deemed to accept the Confirmed Plan, and (iii) granting such other relief as the Court deems just and proper.

BASIS FOR RELIEF REQUESTED

I. MODIFICATION OF THE CONFIRMED PLAN AND PLAN DOCUMENTS IS IN ACCORDANCE WITH THE CONFIRMATION ORDER, THE CONFIRMED PLAN, AND SECTION 1127(B) OF THE BANKRUPTCY CODE

A. The Modifications Are in Accordance with the Confirmation Order and Confirmed Plan

18. Paragraph 63 of the Confirmation Order and Section 12.7 of the Confirmed Plan govern modifications and amendments as follows:

> The Debtors shall not amend this Plan without the prior written consent of (a) the RSA Creditor Parties, such consent not to be unreasonably withheld; (b) the other Plan Support Parties, to the extent such consent is required under the Restructuring Support Agreement, (c) the Term Loan Exit Lenders, such consent not to be unreasonably withheld, and (d) only with respect to modifications or amendments that adversely affect the treatment of General Unsecured Claims or the treatment of Senior Notes Claims, the Committee. Otherwise, subject to the requirements of section 1127 of the Bankruptcy Code, Rule 3019 of the Federal Rules of Bankruptcy Procedure, and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, alterations, amendments, or modifications of the Plan may be proposed in writing by the Debtors at any time prior to or after the Confirmation Date (with three (3) Business Days of advance notice to the Committee or, with the consent of the Committee, on less than three (3) Business Days of advance notice to the Committee), but prior to the Effective Date. Holders of Claims and Equity Interests that have accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification complies with the requirements of this Section 12.7 and does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder; *provided*, *however*, that any Holders of Claims or Equity Interests that were deemed to accept the Plan because such Claims or Equity Interests were Unimpaired shall continue to be deemed to accept the Plan only if, after giving effect to such amendment or modification, such Claims or Equity Interests continue to be Unimpaired.

Confirmation Order ¶ 63; Plan § 12.7.

19. The Modifications shall be in accordance with the procedures set forth in the Confirmation Order and Confirmed Plan. The Debtors have the exclusive right to seek modifications to the Plan Documents.[5] Further, the Debtors have received or expect to recieve the consent of the RSA Creditor Parties, the other Plan Support Parties, the proposed Senior and Term Loan Exit Lenders, and, even though the Modifications do not materially and adversely affect the treatment of unsecured creditors, the Committee. Lastly, with the consent of the Committee, the Debtors have proposed the Modifications on less than three Business Days of notice to the Committee.

B. The Modifications Satisfy Section 1127(b) of the Bankruptcy Code

20. Through this Motion, the Debtors seek an order approving and authorizing the Modifications consistent with the standards for approval of modifications to confirmed plans under section 1127(b) of the Bankruptcy Code.

21. Section 1127(b) of the Bankruptcy Code provides the standards for post-confirmation modifications of a plan:

> The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

11 U.S.C. § 1127(b).

22. Post-confirmation modifications under section 1127(b) of the Bankruptcy Code require (i) that "substantial consummation" has not yet occurred, (ii) "circumstances [that]

[5] Further, the Debtors previously obtained an extension of their exclusive right under section 1121 of the Bankruptcy Code (i) for filing a plan through and including January 11, 2016, and (ii) for soliciting acceptances of a plan through and including March 10, 2016 [D.I. 674].

warrant such modification," and (iii) "that such plan as modified [] meet[s] the requirements of sections 1122 and 1123" and be confirmed, after notice and a hearing, under section 1129 of the Bankruptcy Code. *Id.* The Modifications satisfy these requirements.

1. Substantial Consummation of the Confirmed Plan Has Not Occurred

23. Post-confirmation modifications may be made in accordance with section 1127(b) of the Bankruptcy Code before substantial consummation of a plan. Section 12.5 of the Confirmed Plan provides that the Confirmed Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code on the Effective Date. All conditions precedent to effectiveness of the Confirmed Plan have not been satisfied or waived, and the Confirmed Plan has not been substantially consummated. The Effective Date has not occurred, and, accordingly, the Debtors remain debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code and no distributions have been made to Holders of Allowed Claims pursuant to the Confirmed Plan.

2. The Circumstances Warrant the Modifications.

24. The Debtors respectfully submit that the Modifications are warranted under the circumstances. Rather than resort to costly litigation over rights and remedies available to the parties as a result of Sciens' default under the ECA (all such rights, however, being reserved), the parties have negotiated in good faith to modify the Confirmed Plan and certain Plan Documents in order to ensure that the Debtors receive sufficient capital in accordance with the Commitment Term Sheet to (i) make distributions under the Confirmed Plan and (ii) emerge from chapter 11 as a going concern. Accordingly, the circumstances here warrant modification because the Modifications are necessary to give effect to an agreement among the parties to resolve a potentially protracted and debilitating dispute and to preserve the value-maximizing transactions under the Confirmed Plan.

25. Further, without the Modifications, the Confirmed Plan may not go effective, in which case it will be rendered null and void. If the Confirmed Plan is rendered null and void, the chapter 11 cases face the risk of converting to chapter 7. And as made clear in the liquidation analysis attached to the Disclosure Statement, the Debtors have concluded that conversion would result in little or no recoveries on account of allowed unsecured claims. The Modifications, therefore, are necessary to preserve recoveries for the Debtors' creditors and to avoid the risk of conversion of these chapter 11 cases to cases under chapter 7.

3. The Confirmed Plan Fully Complies with Sections 1122 and 1123 of the Bankruptcy Code.

26. The Court found that the Confirmed Plan complies with sections 1122 and 1123 of the Bankruptcy Code. *See* Confirmation Order ¶ K (finding that the Confirmed Plan "complies with all applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code, including, without limitation, sections 1122 and 1123 of the Bankruptcy Code").

27. Section 1127(b) requires that a modified plan must meet the requirements of section 1122. Because the Court found that the Confirmed Plan satisfies section 1122, *id.*, and because the Modifications do not alter the classification of Claims under the Confirmed Plan, the Confirmed Plan as modified meets the requirements of section 1122.

28. Section 1127(b) further requires that a modified plan must meet the requirements of section 1123. The Debtors respectfully submit that the Confirmed Plan as modified meets the mandatory requirements of section 1123(a). Section 1123(a) of the Bankruptcy Code identifies requirements that must exist in all plans, which the Court found to exist in the Confirmed Plan, *id.* The Confirmed Plan and, by extension, the Plan Documents contain those same elements including, among other things, by continuing to provide the same treatment to all claims

classified together, § 1123(a)(4), and providing adequate means for implementation through the Modifications to the Offering, § 1123(a)(5).

29. The Confirmed Plan as modified also meets the permissive provisions of section 1123(b). Section 1123(b) of the Bankruptcy Code identifies provisions that may exist in a plan. In particular, section 1123(b)(3)(A) provides that a plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate," and section 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." In accordance with these subsections, the Debtors have included—and the Court has approved—the settlement and release provisions of the Confirmed Plan. *See* Confirmed Plan §§ 10.4, 10.7; Confirmation Order ¶¶ K(xi)–(xii), HH, OO, 9–10, 49, 52. The Modifications leave these provisions unaltered.

30. The settlement of claims under Section 10.7 of the Confirmed Plan remains appropriate under section 1123(b)(3)(A) of the Bankruptcy Code. The settlement of estate claims under the Confirmed Plan as modified satisfies the applicable standard for approval of a settlement under Bankruptcy Rule 9019, which looks to whether the proposed settlement falls above the lowest point in the range of reasonableness. *See In re Capmark Fin. Group Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010). The Debtors hereby incorporate the arguments set forth in paragraphs 37 and 38 of the *Memorandum of Law in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 778] (the "**Confirmation Brief**") by reference and respectfully submit that the settlements under the Confirmed Plan as modified fall within the range of reasonableness in consideration of the *Martin* factors. As the Court observed at the Confirmation Hearing, the settlements constitute the foundation of the Confirmed Plan. Without the settlements, there would be no

preservation of going concern value, there would be a significant loss of jobs in West Hartford, and these Chapter 11 Cases may devolve into contentious litigation, risking conversion of these cases to cases under chapter 7. Accordingly, the settlements of Section 10.7 of the Confirmed Plan remain appropriate and permissible under section 1123(b)(3)(A) of the Bankruptcy Code.

31. The releases under Section 10.4 of the Confirmed Plan remain appropriate under section 1123(b)(6) of the Bankruptcy Code. The releases under the Confirmed Plan remain in compliance with applicable standards of the Third Circuit, and the Debtors hereby incorporate the arguments set forth in paragraphs 40 through 58 of the Confirmation Brief by reference. Regardless of the amount that Sciens ultimately contributes under the Offering, the Modifications do not affect the consideration provided to creditors under the Confirmed Plan or its feasibility (as discussed in greater detail below) but instead provide a clear path toward emergence from chapter 11 and enable the Debtors to preserve their settlements with the Plan Support Parties—and, by extension, maintain their fragile settlements with the Committee and the Union on behalf of their respective constituencies—without which value-destroying litigation may ensue to the detriment of the Debtors' estates and their creditors. In terms of contributions to these Chapter 11 Cases, Sciens has committed its continued support and cooperation in facilitating the consummation of the Plan in accordance with Commitment Term Sheet. Sciens and its principals have also continued to support the execution of an amendment to the West Hartford Facility Lease by NPA Hartford—the lynchpin of the Debtors' reorganization—regardless of the extent that Sciens ultimately participates in the Offering. Furthermore, Sciens and its principals played a critical role in resolving the issues with the Debtors' Union in a consensual manner. Taken together, these efforts and contributions are critical to achieving

consummation of the Plan and preserving going concern value of the Debtors and therefore warrant the releases under the Confirmed Plan.

II. THE MODIFICATIONS DO NOT MATERIALLY AND ADVERSELY IMPACT THE TREATMENT OF ACCEPTING CLASSES; NO RESOLICITATION IS NEEDED.

32. The Debtors request approval of the Modifications without need for further solicitation of votes. Courts addressing this issue have only required resolicitation where plan modifications materially and adversely affect or change the treatment of voting creditors. *See Enron Corp v. New Power Co.* (*In re New Power Co.*), 438 F.3d 1113, 1117–18 (11th Cir. 2006) (court may deem holder's prior vote of acceptance for original plan as acceptance of a modified plan even without resoliciting "unless the modification materially and adversely changes the way that claim or interest holder is treated"); *In re Federal-Mogul Global Inc.*, 2007 WL 4180545, at *38–39 (Bankr. D. Del. Nov. 16, 2007) (order confirming plan and approving modifications without resolicitation); *In re McCommas LFG Processing Partners, LP*, 2007 WL 4234139, at *3 (Bankr. N.D. Tex. Nov. 29, 2007) ("[p]ursuant to section 1127(d) of the Bankruptcy Code and Bankruptcy Rule 3019, all acceptances of the Plan prior to such Modifications are deemed acceptances of the Plan"); *In re Celotex Corp.*, 204 B.R. 586, 608–09 (Bankr. M.D. Fla. 1996) (holding that creditors and equity holders who had accepted debtor's plan of reorganization were deemed to have accepted modifications that did not adversely change treatment under plan of any claims or interests).

33. The Modifications do not materially and adversely affect the treatment of creditors under the Confirmed Plan. The Modifications do not affect the distributions to the DIP Lenders or the prepetition Term Loan Lender in the form of the Senior Loan Exit Facility or the Term Loan Exit Facility. As noted above, Eligible Holders not party to the RSA that have elected to participate in the Offering will be given the opportunity to rescind this election prior to

January 8, 2016. Additionally, while the Modifications *may* reduce the amount of new capital raised through the Offering from $50 million to $45 million as of the Effective Date, this reduction will not adversely impact the value of the Fourth Lien Notes or New Class B LLC Units distributed to unsecured creditors as there will be a corresponding reduction in (i) the amount of the Third Lien Exit Facility (which is senior in priority to the Fourth Lien Notes) and (ii) the amount of New Class A LLC Units and the Priority Return (which must be paid before distributions can be made on account of the New Class B LLC Units).

34. The Modifications also do not affect the ability of the Debtors to make Cash distributions in accordance with the Confirmed Plan. As will be set forth in the Declaration, the Debtors expect that they will have sufficient liquidity from the proceeds of the Exit Facilities and the Offering (even if reduced to $45 million as of the Effective Date) and from Cash on hand to fund all Cash payments required to be made on or reasonably after the Effective Date, including (i) all amounts owed on account of Allowed Administrative Expense Claims (including amounts necessary to cure monetary defaults on assumed executory contracts and unexpired leases), Allowed Trade Claims, and Allowed Class 4-B and Class 6 Claims whose Holders have elected to receive a distribution from the Cash Election Reserve, and (ii) all amounts required to be funded by the Debtors into the Cash Election Reserve on account of disputed, contingent, or unliquidated unsecured claims. The Debtors also expect, for reasons that will be discussed further in the Declaration, that following payment of all such amounts, they will be in compliance with all applicable financial covenants in the agreements governing the Exit Facilities.

35. It also has been determined that modifications to a party's corporate governance rights as of consummation of a plan do not require resolicitation. *See In re Motor Coach Indus.*

Int'l, Inc., Case No. 08-12136 (BLS) (Bankr. D. Del. Jan. 28, 2009, and Apr. 17, 2009) (D.I. 771, 990) (approving post-confirmation modifications, without resolicitation, to designation rights with respect to directors of reorganized debtor). Accordingly, Sciens' agreement to relinquish certain corporate governance rights depending on the amount of its contribution does not require resolicitation of the Confirmed Plan.

36. Because the Modifications do not materially and adversely affect or change the treatment of any Claim against or Equity Interest in the Debtors, and because those affected by the Modifications consent to them, pursuant to section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019, the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor do they require that voting creditors be afforded an opportunity to change previously cast acceptances or rejections of the Plan as filed with the Bankruptcy Court. Disclosure of the Modifications herein constitutes due and sufficient notice under the circumstances. Accordingly, the Modifications are properly before the Court and all votes cast with respect to the Confirmed Plan shall be binding and shall be deemed to be cast with respect to the Confirmed Plan.[6]

NOTICE

37. Notice of this Motion, including all exhibits, shall be provided on the date hereof via overnight delivery and email delivery to (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the Senior DIP Agent; (iv) counsel to the Term DIP Agent; (v) counsel to the Prepetition Term Loan Agent; (vi) counsel to the Senior Notes Indenture Trustee; (vii) the Term

[6] Moreover, the Confirmed Plan remains confirmable over the sole deemed rejecting class, Class 9 Equity Interests in Parent, pursuant to section 1129(b) of the Bankruptcy Code for the plain reason that Sciens, holding approximately 87% of the Equity Interests in Parent, has committed its continued support to consummation of the Confirmed Plan as modified.

DIP Lenders and Prepetition Term Loan Lenders; (viii) counsel to the Term DIP Lenders and Prepetition Term Loan Lenders; (ix) the Senior DIP Lenders; (x) counsel to the Senior DIP Lenders; (xi) the Internal Revenue Service and Canada Revenue Agency; (xii) the Securities and Exchange Commission; (xiii) the Pension Benefit Guaranty Corporation; and (xiv) any party that has requested notice pursuant to Bankruptcy Rule 2002(i). A copy of the motion is also available on the Debtors' case website at http://www.kccllc.net/coltdefense. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

38. The provision of notice to these parties and the hearing on the Motion satisfies the requirement of section 1127(b) that "[s]uch plan as modified . . . becomes the plan only if . . . the court, after notice and a hearing, confirms such plan as modified under section 1129 of this title." 11 U.S.C. § 1127(b). Section 102(1) of the Bankruptcy Code provides that "after notice and a hearing" means "such notice as is appropriate in the particular circumstances and such opportunity for a hearing as is appropriate in the particular circumstances." *Id.* § 102(1). As described above, the Modifications do not affect the rights of any party in interest that has not consented thereto. The proposed notice and hearing on this Motion, therefore, is appropriate in these circumstances and sufficient under section 1127(b) of the Bankruptcy Code.

NO PRIOR REQUEST

39. No previous motion for the relief sought herein has been made to this or any other Court.

* * *

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (i) approving the Modifications and the Commitment Term Sheet (including the Lease Amendment Term Sheet), (ii) deeming the Confirmed Plan and the Plan Documents, each as modified by the Modifications, to be accepted

by Holders of Claims and Equity Interests who previously accepted or were deemed to accept the Confirmed Plan, and (iii) granting such other relief as the Court deems just and proper.

[*remainder of page intentionally left blank*]

Dated: January 5, 2016
Wilmington, Delaware

/s/ Jason M. Madron

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