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

	§	
In re:	§	Chapter 11
	§	
IHEARTMEDIA, INC., *et al.*,[1]	§	Case No. 18-31274 (MI)
	§	
Debtors.	§	(Jointly Administered)
	§	

JOINT EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) DIRECTING THE APPLICATION OF BANKRUPTCY RULES 7023 AND 7023.1, (II) PRELIMINARILY APPROVING THE SETTLEMENT, (III) APPROVING THE RETENTION OF PRIME CLERK LLC AS NOTICE ADMINISTRATOR, (IV) APPROVING THE FORM AND MANNER OF NOTICE, (V) SCHEDULING A FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE SETTLEMENT AS PART OF CONFIRMATION OF THE PLAN, AND (VI) GRANTING RELATED RELIEF

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER ON DECEMBER 11, 2018, AT 9:00 A.M. (CT) BEFORE THE HONORABLE MARVIN ISGUR, 515 RUSK STREET, COURTROOM 404, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

[1] Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims, noticing, and solicitation agent at https://cases.primeclerk.com/iheartmedia. The location of Debtor iHeartMedia, Inc.'s principal place of business and the Debtors' service address is: 20880 Stone Oak Parkway, San Antonio, Texas 78258.

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), Clear Channel Outdoor Holdings, Inc. ("CCOH"), and GAMCO Asset Management, Inc. ("GAMCO") respectfully state the following in support of this emergency motion (this "Motion").

Reservation of Rights - Settlement Remains Subject to Agreement on Definitive Documentation and Final Approvals

1. The Settlement (as defined herein) contemplated by this Motion and the documents attached hereto remain subject to a final agreement being reached on certain of the document terms and the receipt of final approvals. Described herein and attached hereto are the current versions of the documents (CCOH's drafts and Debtors' drafts, where applicable), which if agreed upon, would definitively memorialize the agreement in principle that was announced at the status conference held on November 30, 2018 and set forth in the *Notice of Filing of Separation Settlement Term Sheet* that was filed on December 3, 2018 [Docket No. 2111]. As of the time of the filing of this Motion, the Parties (as defined herein) have not reached final agreement on all of the terms of the documents, nor have all necessary final approvals been obtained. All Parties' rights are reserved with respect to the description of the Settlement set forth in the Motion and in the forms of the documents attached hereto. The Debtors will file revised versions of the documents in advance of the hearing upon a final agreement being reached.

Relief Requested[2]

2. The Debtors, CCOH, and GAMCO, by and through their respective counsel, hereby seek entry of an Order (the "Order") substantially in the form attached hereto as **Exhibit A**: (i) directing the application of rules 7023 and 7023.1 of the Federal Rules of

[2] Capitalized terms not otherwise defined herein have the same meanings as set forth in the Plan.

Bankruptcy Procedure (the "Bankruptcy Rules") and, by incorporation, rules 23 and 23.1 of the Federal Rules of Civil Procedure (the "Civil Rules"); (ii) preliminarily approving the settlement and mutual release attached hereto as **Exhibit 1** to **Exhibit A** (the "Settlement," and the agreement, the "Settlement Agreement") among (a) GAMCO, individually, on behalf of the putative class of public shareholders of CCOH (the "CCOH Minority Shareholders," and together with GAMCO, the "Class Members" or "Class"), and derivatively on behalf of CCOH; (b) CCOH; (c) Bain Capital Partners, LLC and Bain Capital LP (collectively, "Bain"); (d) Thomas H. Lee Partners, L.P. ("THL," and together with Bain, the "Sponsor Entities"); (e) the Delaware Individual Defendants (as defined herein); and (f) the Debtors (collectively, the "Parties") and incorporated into the Plan (as defined herein); (iii) approving the retention of Prime Clerk LLC as notice administrator; (iv) approving the form and manner of notice to Class Members of the Settlement Agreement and to parties in interest in the Chapter 11 Cases; (v) scheduling a fairness hearing (the "Fairness Hearing") to consider final approval of the Settlement as part of confirmation of the Plan; and (vi) granting related relief.

3. Contemporaneously herewith, GAMCO is filing *GAMCO Asset Management, Inc.'s Emergency Motion for Entry of an Order (I) Directing the Application of Bankruptcy Rules 7023 and 7023.1, (II) Certifying a Class, Designating a Class Representative, and Appointing Class Counsel for Purposes of Settlement, and (III) Granting Related Relief* (the "GAMCO Motion"). Pursuant to the GAMCO Motion, GAMCO is requesting entry of an order (a) certifying a settlement class of minority shareholders of CCOH's Class A common shares from March 14, 2015 to March 14, 2018 (collectively, the "CCOH Minority Shareholders," and together with GAMCO, the "Class Members" or "Class"), (b) designating GAMCO as class representative

("Class Representative"), and (c) appointing the law firm of Entwistle & Cappucci LLP as class counsel ("Class Counsel") for purposes of settlement.

4. Additionally, attached as Exhibit D to the Settlement Agreement attached hereto is the Debtors' *Modified Fifth Amended Joint Chapter 11 Plan of Reorganization of iHeartMedia, Inc. and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"). This further revised version of the Plan has been modified to incorporate the terms of the Settlement Agreement, and the Settlement is an essential part of the Plan.

5. The relief requested herein is necessary to the Debtors' ability to confirm the Plan. As of the time of filing of this Motion, CCOH, one of the Debtors' largest creditors holding a claim in the amount of $1,031,721,306, which is in its own class under the Plan (Class 8), has not yet submitted a vote to accept or reject the Plan and CCOH's voting and confirmation objection deadline has been extended pending the ongoing settlement discussions. In addition, the Plan contemplates that CCOH shall enter into multiple agreements in connection with the Separation (as defined herein), which agreements cannot be entered into without CCOH's affirmative consent. The Settlement described herein and incorporated into the Plan is critical to obtaining CCOH's support for the Plan. Emergency relief is requested as the Parties are only seeking preliminary approval of the Settlement at this time, and parties in interest will have an opportunity to object to final approval at a fairness hearing scheduled no earlier than thirty days after notice is distributed and published.

6. While the Debtors filed these chapter 11 cases in March 2018 with a Restructuring Support Agreement (the "Restructuring Support Agreement") that had substantial support across their stakeholder base, a number of key items were left to be negotiated and needed to be resolved in order to have a confirmable plan of reorganization. One of these items was the treatment of

general unsecured creditors. Following extensive negotiations with the Committee and other parties to the Restructuring Support Agreement, the Debtors were able to reach an agreement that was incorporated into the Plan in October 2018. *See* Plan, Article IV.A. The consensual separation of the Debtors from CCOH, the terms of which are set forth in the Settlement Agreement, including the term sheet attached thereto as Exhibit B (the "Separation"), was the other key item as the Restructuring Support Agreement and initial versions of the Plan contemplated a consensual separation but left the terms to be negotiated later. *See Joint Chapter 11 Plan of Reorganization of iHeartMedia, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 551] Art. IV.G. Discussions regarding the Separation started soon after the Petition Date. As described herein, the diligence and analysis required for these negotiations was substantial and negotiations spanned the summer and into the fall. When the Debtors reached the Disclosure Statement hearing without a consensual agreement on the separation of the iHeart and CCOH businesses, the Debtors disclosed the contours of the negotiations and the parameters of the likely separation.[3]

7. Ultimately, an agreement regarding the Separation and Plan was reached that has the support of CCOH and GAMCO, one of CCOH's largest minority shareholders. The agreement was incorporated into the Plan and, without approval of the Settlement, CCOH would not be obligated to agree to the terms of the Separation or vote in favor of the Plan and GAMCO would object to confirmation. Accordingly, the Settlement completes the Debtors' Plan and final approval of the Settlement is a necessary condition to confirmation of the Plan. Given these circumstances, the Debtors respectfully request that the Court approve the relief requested in this Motion on an emergency basis, which will permit the Debtors' confirmation progress to continue

[3] *See* Disclosure Statement, Art. VII.P; Art. IX.D; Art. XIII.B; *see also* infra ¶ 54.

while preserving the rights of parties in interest to raise substantive objections to the Plan (including the Settlement) before final approval.

Jurisdiction and Venue

8. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Court has authority to apply Civil Rules 23 and 23.1 pursuant to Bankruptcy Rules 7023, 7023.1, and 9014. The Parties confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the Parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is permissible pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 363(b) and 1123(b) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 7023, 7023.1, and 9014, and Civil Rules 23 and 23.1.

Introduction

11. The Debtors' restructuring has been a multi-year effort that seeks to address their balance sheet of more than $16 billion in funded debt obligations. The Debtors' chapter 11 cases are among the largest filed in U.S. history. On March 16, 2018, following extensive negotiations with groups representing their primary stakeholders, the Debtors entered into the Restructuring Support Agreement. As a result of the Restructuring Support Agreement, the transactions contemplated in the Plan, including the Separation, enjoy the support of holders of nearly $12 billion of outstanding debt obligations across the Debtors' capital structure (including outstanding indebtedness held by the Debtors and their affiliates), as well as the Debtors' equity

sponsors. Indeed, the actual voting results of the Plan indicate that every class of creditors that has voted has voted to approve the Plan. More than 90% of the votes cast by creditors and shareholders who participated in the vote approved the Plan, demonstrating substantial support for, and far exceeding the votes necessary to confirm, the Plan.[4] The Plan provides for a global compromise and settlement of all claims, interests, causes of action, and controversies resolved pursuant thereto and enables the Debtors to consummate the transactions set forth in the Restructuring Support Agreement, including the Separation. The Debtors have continued to engage with their stakeholders throughout these Chapter 11 Cases and have consensually resolved several disputes with key constituencies, ultimately resulting in only one creditor constituency remaining opposed to the Plan.

12. The Settlement represents the final key piece to the Debtors' Chapter 11 Cases and is the product of months of hard-fought, good-faith, arms'-length negotiations between the Debtors, the CCOH Special Committee (as defined herein), and GAMCO. The Plan, which now incorporates the Settlement, (a) obtains the support of CCOH and GAMCO for the Plan and the Separation, (b) provides CCOH with sufficient liquidity to operate as a stand-alone enterprise post-separation, and (c) settles outstanding issues among the Parties, including those related to the Plan and to the claims in the Delaware Action (as defined herein), bringing to a close what may have otherwise turned into expensive, protracted, and complex litigation that would have likely delayed the Debtors' emergence from chapter 11. *See* Plan, Art. IV.G.

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[4] *See Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Fifth Amended Joint Chapter 11 Plan Of Reorganization of iHeartMedia, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 2116]

13. The material terms of the Settlement Agreement are reflected in the table below:[5]

CCOH Separation and Settlement Consideration	A corporate separation of CCOH from iHeartCommunications, Inc. ("iHC") or any other affiliated entity will occur, pursuant to which: (i) the cash sweep arrangement under the existing Corporate Services Agreement ("CSA") will terminate; (ii) any agreements or licenses requiring royalty payments to Debtors by CCOH for trademarks or other intellectual property will terminate; and (iii) a new transition services agreement ("TSA") will become effective and supersede and replace the existing CSA for administrative services currently and historically provided to CCOH by iHC. The Debtors agree to waive: (i) the set-off for the value of the intellectual property transferred, including royalties; and (ii) the repayment of the post-petition intercompany balance outstanding in favor of the Debtors as of December 31, 2018. The Debtors will make available to CCOH for a period of no more than three years following the effective date of the Plan (the "Effective Date"), an unsecured revolving line of credit in an aggregate amount not to exceed $170 million.
Claim Recovery	CCOH will recover 14.4% in cash on allowed claim of $1,031,721,306 pursuant to its proof of claim, which recovery will be without setoff or reduction.
Releases	Mutual releases, including a release of all claims that have been asserted, could have been asserted, or could ever be asserted with respect to the Chapter 11 Cases and/or in the Delaware Action or in the Norfolk Action, whether directly, derivatively, or on a class-wide basis.

14. The Settlement Agreement is fair, equitable, in the best interests of the Debtors' estates, appropriate in the Debtors' business judgment, and easily falls within the range of reasonable outcomes. Most importantly, approval of the Settlement is required in order to confirm

[5] The description below of the proposed Settlement Agreement is only a summary. In the event of any discrepancy between this summary and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

the Plan. The Settlement provides for the terms of the Separation, which is a necessary part of the Plan and has long been contemplated as part of the multi-year restructuring negotiations, and was included in the Restructuring Support Agreement. Moreover, the releases were a critical negotiated term of the Settlement and the Plan and without the releases, the Parties would not have been willing to enter into the Settlement Agreement, otherwise support the Plan, and move forward with confirmation. Among other things, the Settlement will preserve the value of CCOH, a material asset of the Debtors, thereby positioning the Debtors and CCOH for continued growth and long-term success. The Settlement and consideration being provided thereunder has been the subject of significant negotiation and the consideration centers around the terms of the Separation and mutual releases being provided. Accordingly, approval of the Settlement as part of confirmation will enable the Debtors to emerge from bankruptcy expeditiously, thereby avoiding the inherent uncertainty and substantial costs of a prolonged legal battle regarding the Plan, the Delaware Action, and related claims. For the avoidance of doubt, the release provided in the Settlement Agreement releases the claims asserted in the Norfolk Action (as defined herein).

15. As the Parties seek to release direct, class, and derivative claims through the Settlement Agreement, it is appropriate for the Court to apply Bankruptcy Rules 7023 and 7023.1, and by incorporation, Civil Rules 23 and 23.1. To assure due process, the Parties seek evaluation and final approval of the Settlement Agreement through two stages. In the **first** stage, the Court would preliminarily approve the Settlement Agreement and approve the form and manner of notice to be provided to the Class Members of the Settlement Agreement (the "Class Notice"). The Parties further request that the Court also schedule the Fairness Hearing as part of the Confirmation Hearing, at which any Class Members who object to the Settlement Agreement may appear and present any such objections. The Notice Administrator (as defined herein) would in turn serve the

Class Notice, which would apprise the Class Members of their ability to object to the terms of the Settlement Agreement at the Fairness Hearing. In the **second** stage, the Court would hold the Fairness Hearing as part of the Confirmation Hearing and, following the Fairness Hearing, enter an order finally approving the Settlement Agreement and other related relief as part of confirmation of the Plan.

16. The Parties believe that the Settlement Agreement as incorporated into the Plan is in the best interests of the Debtors' estates, CCOH, the Class Members, and other parties in interest. Accordingly, the Parties respectfully request that the Court enter the Order granting the relief requested in this Motion.

Background

I. THE DEBTORS' CHAPTER 11 PROCEEDINGS.

17. On March 14, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under the Bankruptcy Code in the Court.

18. On March 15, 2018, the Court entered the *Order Authorizing the Retention and Appointment of Prime Clerk LLC as Claims, Noticing and Solicitation Agent* [Docket No. 115] (the "Prime Clerk Retention Order").

19. On May 17, 2018, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Approving Notice of Bar Dates* [Docket No. 743] (the "Bar Date Order"), setting the deadline to file all proofs of claim, except those being asserted by governmental units and other exceptions explicitly set forth in the Bar Date Order, on June 29, 2018, at 5:00 p.m., prevailing Central Time (the "Claims Bar Date").

20. Pursuant to the Bar Date Order, notice of the Claims Bar Date was served on all creditors and other known holders of claims against the Debtors as of May 17, 2018, via first-class mail.

21. On July 2, 2018, the Court entered the *Stipulation and Order Extending the Non-Governmental Bar Date Solely with Respect to Clear Channel Outdoor Holdings, Inc. and Its Subsidiaries* [Docket No. 1040] (the "CCOH Bar Date Stipulation").[6]

22. On September 5, 2018, CCOH timely filed its proof of claim against each Debtor entity, which included a liquidated claim in the amount of $1,031,721,306.00 [Claim No. 3833].

23. On September 5, 2018, GAMCO filed *GAMCO Asset Management, Inc.'s Limited Objection to the Debtors' Motion for Approval of the Disclosure Statement* [Docket No. 1406] objecting to the release provisions contained in the Plan and reserving its rights with respect to confirmation of the Plan. In discussions with the Debtors' counsel, GAMCO has threatened to object to confirmation of the Plan based on the treatment of the balance on the Intercompany Note owed to CCOH.

24. On September 20, 2018, the Court entered the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 1481] (the "Disclosure Statement Order").

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[6] Following the entry of the CCOH Bar Date Stipulation, the Debtors filed numerous notices further extending the non-governmental bar date solely with respect to CCOH and its subsidiaries. [Docket Nos. 1143, 1181, 1244, 1258, 1291, 1343].

25. On October 26, 2018, Wilmington Savings Fund Society, FSB, as successor indenture trustee filed the *Objection of Wilmington Savings Fund Society, FSB, as Successor Indenture Trustee, to Proof of Claim No. 3833* [Docket No. 1681].

26. On November 28, 2018, Norfolk County Retirement System filed the *Limited Objection of Norfolk County Retirement System To The Approval Of Fifth Amended Joint Chapter 11 Plan Of Reorganization* [Docket No. 2055] objecting to the release provisions contained in the Plan, proposing revisions to the release provisions contained in the Plan, and reserving its rights with respect to confirmation of the Plan.

II. THE DEBTORS' RELATIONSHIP WITH CCOH.

27. CCOH is a Delaware corporation that is among the largest providers of outdoor advertising in the United States and throughout the world. Historically, CCOH has provided the Debtors, including radio stations owned by Debtor, iHeartMedia, Inc. ("iHM"), with advertising opportunities through billboards, street furniture displays, transit displays and other out-of-home advertising displays, such as wallscapes and spectaculars, which CCOH owns or operates in key markets worldwide.

28. On November 11, 2005, CCOH became a publicly traded company through an initial public offering, or "IPO", in which CCOH sold 10 percent of its Class A common stock. Prior to the IPO, CCOH was an indirect wholly-owned subsidiary of iHC. As of December 31, 2017, iHC, through its subsidiaries, owned outstanding shares of CCOH's Class A and Class B common stock, collectively representing approximately 89.5 percent of CCOH's outstanding shares of common stock and approximately 99 percent of the total voting power of CCOH's common stock.

29. Prior to the 2005 IPO, CCOH entered into various agreements with the Debtors that serve to govern the relationship between the Debtors and CCOH and provide for, among other

things, the provision of services by the Debtors to CCOH and the allocation of employee benefit, tax, and other liabilities and obligations attributable to CCOH's operations. As outlined in detail in the Disclosure Statement, these Intercompany Agreements (as defined herein) were made in the context of a parent-subsidiary relationship and include the following agreements (collectively, the "Intercompany Agreements"):[7]

- **Master Agreement**: iHC and CCOH entered into the Master Agreement, dated November 16, 2005 (the "Master Agreement"), which, among other things, separated the Debtors from CCOH and provided the foundation for the ongoing relationship between them after CCOH became a public company. The Master Agreement gave iHC significant control over CCOH's operations. Pursuant to the terms of the Master Agreement, iHC and CCOH cannot terminate the agreement until iHC owns less than a majority of CCOH's stock. As such, the Master Agreement contemplated that there could be an efficient separation of the Debtors and CCOH businesses. Specifically, the Master Agreement referenced a trigger date (*i.e.*, the date iHC owns shares of CCOH common stock representing less than 50% of the total voting power of CCOH's common stock) (the "Separation Trigger Date"), and the occurrence of the Separation Trigger Date would affect certain aspects of the Master Agreement.

- **Corporate Services Agreement**: The predecessor of iHeartMedia Management Services, Inc. and CCOH entered into the Corporate Services Agreement, dated November 16, 2005 (the "Corporate Services Agreement"), under which the Debtors provided certain management services to CCOH, including investment, legal, treasury, payroll, and other financial-related services, as well as human resources and employee benefits-related services. The Corporate Services Agreement contemplates both a consensual separation with a separation period for certain transition services and a full termination by mutual agreement or, after the Separation Trigger Date, upon six months' written notice.

- **Employee Matters Agreement**: iHC and CCOH entered into the Employee Matters Agreement, dated November 10, 2005 (the "Employee Matters Agreement"). The Employee Matters Agreement outlines certain compensation and employee benefit matters between the Debtors and CCOH. Under the Employee Matters Agreement, upon at least 90 days' notice, CCOH may withdraw from participation in any plan outlined in the Employee Matters Agreement, and iHC may withdraw as a participating employer in such plans.

- **Tax Matters Agreement**: iHC and CCOH entered into the Tax Matters Agreement, dated November 10, 2005, which provides a foundation for the

[7] All descriptions of the Intercompany Agreements outlined herein are qualified in their entirety by reference to the executed definitive documentation.

coordination of a consolidated tax group, tax filings, tax returns, and usage of tax attributes between the Debtors and CCOH, and allocates the responsibility for the payment of taxes resulting from filing tax returns on a combined, consolidated, or unitary basis.

- **License Agreement**: iHM Identity, Inc. and Outdoor Management Services, Inc. entered into the Amended and Restated License Agreement, dated November 10, 2005 (together with the First Amendment to the Amended and Restated License Agreement dated January 1, 2011), which provides a foundation for CCOH's entitlement to use (in exchange for a contractually negotiated fee), on a nonexclusive basis, the "Clear Channel" trademark and the "Clear Channel Outdoor" trademark logo with respect to day-to-day operations of the Debtors' business worldwide and on the internet, and certain other Clear Channel marks in connection with the Debtors' business.

- **EBIT Agreement**: iHC and CCOH entered the EBIT Program Agreement, dated November 10, 2005 (together with the amendment to the EBIT Program Agreement dated September 18, 2012, the "EBIT Agreement") which provides a foundation for CCOH to have the option to allow the Debtors to use, without charge, any domestic product that CCOH staff believes would otherwise be unsold to promote the Debtors' radio and television products. Additionally, the Debtors agreed, among other things, to (i) spend at least $2.0 million in cash sales on CCOH inventory each calendar year, (ii) provide revenue management services to CCOH on an industry-exclusive basis, (iii) provide promotion consideration to CCOH annually at the iHeartRadio Music Festival and the Cannes Lions International Festival of Creativity, and (iv) use commercially reasonable efforts to obtain $3.0 million annually in advertising business for the benefit of CCOH to remain eligible for continued participation in the EBIT program. Pursuant to the terms of the EBIT Agreement, the agreement shall terminate automatically on the Separation Trigger Date.

30. The Intercompany Agreements require CCOH to use a cash management system provided by the Debtors. Pursuant to the cash management arrangement, iHC managed CCOH's excess operating cash. On a daily basis, cash from CCOH's domestic operations is concentrated and then used for accounts payable (including servicing debt) and payroll obligations. Any remaining amounts are swept to a master account maintained by iHC and either invested or subsequently disbursed by iHC for its general corporate purposes. If CCOH lacks funds to

discharge its daily obligations, then iHC advances funds to CCOH.[8] Separate from the cash management system, there are two unsecured revolving cash management notes, including an intercompany revolving promissory note, which evidences an intercompany balance owed by iHC to CCOH (the "Intercompany Note"), and another note which evidences amounts owed by CCOH to iHC. At any given point in time, only one note carries a balance. Historically, transfers of value between the Debtors and CCOH were evidenced by a corresponding increase or decrease in the balance of the Intercompany Note.

31. The Intercompany Note is a demand note – meaning that repayment of any outstanding balance can be demanded at any time. Although the balance is payable on demand, the Intercompany Agreements restrict CCOH's ability to use cash, and unused cash received on account of a repayment demand is swept back to iHC daily under the cash management arrangement.

32. Under a 2013 settlement agreement resolving prior litigation brought by certain minority shareholders of CCOH on behalf of CCOH (discussed below), a committee of independent directors of CCOH (the "Intercompany Note Committee") had the authority (but not the obligation) to demand repayment of amounts owed under the Intercompany Note under certain circumstances, so long as the Intercompany Note Committee declared a simultaneous dividend equal to the amount demanded. These circumstances were contingent primarily on iHM's liquidity and the size of the Intercompany Note balance. As of the Petition Date, the balance of the Intercompany Note totaled $1,032 million.[9]

[8] In addition, the Debtors incur costs on account of corporate services for the benefit of CCOH and charge those costs to CCOH based on actual direct costs incurred or allocated based on headcount, revenue, or other factors on a *pro rata* basis. The allocation of these costs results in intercompany claims between the Debtors and CCOH that are recorded in the net balance of the Intercompany Note.

[9] The prepetition balance under the Intercompany Note was calculated based on an accounting of various intercompany transactions, including, among other things, (a) the daily sweep of cash from CCOH, (b) the

33. The Intercompany Note originally had a maturity date of August 10, 2010; that date has been extended by amendment. On November 29, 2017, iHC and CCOH amended the Intercompany Note, which resulted in the extension of the maturity date of the Intercompany Note from December 15, 2017 to May 15, 2019 and established the interest rate on the Intercompany Note at 9.3 percent per annum, subject to certain exceptions.

III. THE HISTORY OF LITIGATION REGARDING THE INTERCOMPANY NOTE.

34. In 2012, two minority shareholders of CCOH brought nearly identical derivative suits in the Court of Chancery for the State of Delaware (the "Delaware Court of Chancery") challenging the Intercompany Agreements. *See In re Clear Channel Outdoor Holdings Inc. Derivative Litig.,* C.A. No. 7315-CS (Del. Ch.) ("*CCOH I*"). The minority shareholders of CCOH sued the members of CCOH's Board of Directors (the "CCOH Board"), iHM, iHC, and the Debtors' financial sponsors (the "Sponsors"). The CCOH minority shareholders claimed that the CCOH Board had breached its fiduciary duties by, among other things, failing to extricate CCOH from the Intercompany Agreements and failing to demand repayment under the Intercompany Note. *See GAMCO Asset Mgmt. Inc. v. iHeartMedia Inc.*, No. CV 12312-VCS, 2016 WL 6892802 (Del. Ch. Nov. 23, 2016), *aff'd*, 172 A.3d 884 (Del. 2017) ("*CCOH II*") (recounting history of *CCOH I*). The plaintiffs alleged that CCOH "face[d] a severe risk that the unsecured loan [would] never be paid back because [iHC] has been drowning under a massive debt load since its 2008 leveraged buyout." *CCOH I* Compl. ¶ 1. Accordingly, the plaintiffs claimed that the CCOH Board's fiduciary duties obligated it to (among other things) "demand immediate repayment" in order to protect CCOH from potentially losing the balance owed if iHC were to declare bankruptcy. *Id.* ¶¶ 7, 63.

corporate services provided to CCOH under the Corporate Services Agreement, (c) various payments on behalf of CCOH by iHM, (d) license fees for the use of the Clear Channel name, and (e) interest.

35. In response to those lawsuits, the CCOH Board created a Special Litigation Committee ("SLC") comprised of two independent directors, and delegated the SLC full authority to investigate "all matters related" to the litigation and "take all actions as the [SLC] deems appropriate and in the best interests of [CCOH]." *CCOH I* Settlement at 3-4. Assisted by independent counsel, the SLC conducted an eight-month investigation during which the SLC and its counsel met 40 times, and counsel interviewed 24 individuals and reviewed thousands of documents. *See CCOH I* Transmittal Affidavit of Samuel L. Closic ¶ 6.

36. The SLC brokered a forward-looking settlement that addressed the concern raised in *CCOH I* that the Debtors' financial condition would continue to deteriorate, the balance on the Intercompany Note would continue to grow, the Debtors might not have enough liquidity to pay CCOH back, and the balance might be lost if the Debtors went bankrupt. *See CCOH I* SLC Factual Findings at 12-13.

37. The settlement established the Intercompany Note Committee, composed of the independent board members, to monitor the Intercompany Note. *See CCOH I* Settlement at 19. The settlement empowered the Intercompany Note Committee to demand payment of the Intercompany Note whenever one of two protective financial triggers were satisfied and to use the proceeds to issue a dividend to all shareholders. *See* Intercompany Note Committee Charter at 1-3.

38. The triggers were focused on projecting when, in the future, the Debtors might run out of sufficient liquidity to pay back the Intercompany Note. The first trigger is satisfied whenever iHC's "Liquidity Ratio" falls below 2.0 or is projected to fall below 2.0 within the next three months. *See id.* at 2. The second trigger is satisfied whenever the portion of the

Intercompany Note apportionable to CCOH's public shareholders exceeds $114 million or is projected to exceed $114 million within the next three months. *See id*.

39. In order to enable the Intercompany Note Committee to project when iHC might have future liquidity problems, the settlement required iHC to provide the Intercompany Note Committee with monthly and annual financial projections of the Debtors' future liquidity and the anticipated growth in the balance of the Intercompany Note. *See CCOH I* Settlement at 19-20; *CCOH I* SLC Settlement Br. at 26.

40. Both triggers were designed to protect Minority Shareholders by addressing "the growth of the [Intercompany] Note balance." *CCOH I* SLC Settlement Br. at 23. These triggers "ensure[] independent action in the two circumstances in which the full [CCOH] Board's decision not to make a demand is potentially at the greatest risk of being influenced by the needs of [iHC] or the Sponsors: when the balance of the Intercompany Note is so large that a decision not to exercise the demand feature may not be based solely on consideration of [CCOH's] best interests; and when [iHC's] own financial position is precarious or is projected to become so." *CCOH I* SLC Settlement Br. at 23-26.

41. Importantly, the Intercompany Note Committee's power to demand repayment when the triggers are met is discretionary, not mandatory. The Intercompany Note Committee's Charter provides that "the Committee may, in its discretion, give Notice of Demand if it believes doing so is in the best interests of [CCOH]." The SLC specifically noted that there may be reasons why the Intercompany Note Committee would choose not to demand repayment once a trigger has been satisfied. For example, demanding repayment could be harmful to CCOH because "balances due under the [Intercompany] Note constituted one of [CCOH's] principal sources of liquidity"

given the Master Agreement's constraints on CCOH's ability to borrow. *CCOH I* SLC Factual Findings at 2, 13; *see CCOH I* SLC Settlement Br. at 22-23.

42. In explaining why the proposed settlement was beneficial for CCOH, the SLC noted that "the pre-existing contractual constraints" in the Intercompany Agreements were "favorable to [iHC] in a number of ways." *CCOH I* SLC Factual Findings at 1, 12. The cash management arrangement made it futile for CCOH to demand repayment because "the uses that [CCOH] could make of its cash without [iHC's] consent were extremely limited" and, "unless put to a permitted use, any cash repaid by [iHC] as the result of a demand would be swept back to [iHC]." *Id.* at 2; *see CCOH I* SLC Settlement Br. at 22-23. Moreover, CCOH could not breach the Intercompany Agreements "so long as [iHC] and its affiliates beneficially own more than 50% of the voting power of [CCOH] common stock." *CCOH I* SLC Factual Findings at 1-2, 12-13; *see CCOH I* SLC Settlement Br. at 14-15, 21-22. In particular, even though the Intercompany Note "has a maturity date," "[t]he underlying sweep obligation is set forth in a different agreement, corporate services agreement, and that has no inherent sunset provision. It goes on in perpetuity until such time as [iHC] doesn't control [CCOH] anymore." *CCOH I* Settlement Fairness Hr'g Tr. at 20. Counsel for plaintiffs agreed: "as long as the cash sweep is there, the other notes don't even matter because [iHC is] always going to take [CCOH's] cash." *Id.*

43. No CCOH shareholder objected to the settlement, and, after conducting a fairness hearing, the then-Chancellor of Delaware approved it as fair and reasonable. *See CCOH I* Final Judgment. The Court noted that the Intercompany Agreements were "formidable," they were fully disclosed to investors, and they could not now be broken. *CCOH I* Settlement Fairness Hr'g Tr. at 36-37. It further recognized that demanding repayment of the Intercompany Note would have no "utility" because the repaid cash would be re-swept to iHC under the cash management

arrangement. *Id.* at 37; *see id.* at 20. Moreover, demanding repayment could have "spillover effects" that would outweigh any benefits of such a demand. *Id.* at 33. "[G]iven those realities," the Court concluded that the corporate-governance reforms would provide "substantial benefits on an ongoing basis." *Id.* at 37-38.

44. On May 10, 2016, GAMCO filed a derivative lawsuit in Delaware Court of Chancery regarding the Intercompany Agreements. *CCOH II*, 2016 WL 6892802, at *1 & n.1. GAMCO sued the CCOH Board, iHM, iHC, and the Sponsors. GAMCO alleged that iHC's bankruptcy was "inevitable," *CCOH II* Compl. ¶ 84, because iHC had an "unsustainable capital structure" and was "mired . . . in debt" that it had "little, if any, prospect of repaying or refinancing," *Id.* ¶¶ 1, 3, 7; *see id.* ¶ 9 (noting that the Debtors' lenders had already issued notice of default). GAMCO claimed the CCOH Board's fiduciary duties – and the Sponsors' fiduciary duties as alleged "controlling shareholders" – obligated them "to reduce [CCOH's] exposure to iHC" by "demand[ing] payment on the outstanding balance on the [Intercompany] Note." *Id.* ¶ 9; *see id.* ¶¶ 132, 137; *CCOH II*, 2016 WL 6892802, at *7.

45. The Delaware Court of Chancery granted the Defendants' motion to dismiss those claims on three grounds. First, the suit was barred by the 2013 Settlement, which released any claims that were asserted or could have been asserted in *CCOH I*. *See CCOH II*, 2016 WL 6892802, at *8-11. Second, the suit was barred by the res judicata effect of *CCOH I*. *See id.* at *13-14. Third, "[g]iven the corner into which the Intercompany Agreements have painted the CCOH Board, there is no reasonably conceivable basis upon which GAMCO can establish that the CCOH Board has breached its fiduciary duty by adhering to the carefully-negotiated governance and monitoring provisions agreed to in the 2013 Settlement." *Id.* at *12. GAMCO appealed. The Delaware Supreme Court affirmed "largely on the basis of [this Court's] thorough

decision," without reaching the res judicata or release issues. *GAMCO Asset Mgmt. Inc. v. iHeartMedia Inc.*, 2017 WL 4607413, at *1 (Del. Oct. 12, 2017) (judgment noted at 172 A.3d 884 (table)).

46. On December 29, 2017, Norfolk County Retirement System ("Norfolk") brought yet another derivative action in the Delaware Chancery Court relating to the cash management arrangement and the Intercompany Note. *See Norfolk County Retirement System v. Hendrix, et al.*, C.A. No. 2017-0930-JRS (the "Norfolk Action"). Norfolk sued the board of directors of CCOH, iHM, iHC, and certain of the Sponsor Entities. Norfolk claimed it was a breach of fiduciary duty for CCOH to agree in November 2017 to extend the maturity date of the Intercompany Note at the interest rate agreed by the parties. The defendants filed a motion to dismiss, which was argued on September 20, 2018, and is currently pending before the Delaware Chancery Court.

III. GAMCO'S DELAWARE ACTION.

47. On August 27, 2018, GAMCO filed a verified class action complaint (the "Complaint," attached hereto as **Exhibit B**) in the Delaware Court of Chancery on its own behalf and on behalf of the CCOH Minority Shareholders. *See GAMCO Asset Mgmt. v. Hendrix, et al.*, C.A. No. 2018-0633-JRS (Del. Ch.) (the "Delaware Action").

48. The Complaint names as defendants (a) members of the CCOH Board as of November 29, 2017, including Blair Hendrix, Douglas L. Jacobs, Daniel G. Jones, Paul Keglevic, Vincente Piedrahita, Robert W. Pittman, Olivia Sabine, and Dale W. Tremblay (collectively, the "Board Defendants"); (b) members of the Intercompany Note Committee as of November 8, 2017 (the "Intercompany Note Committee Defendants," and together with the Board Defendants, the "Delaware Individual Defendants"); and (c) certain of the Sponsor Entities. *See* Complaint ¶ 30.

49. The Complaint alleges that in November 2017 the Board Defendants and the Intercompany Note Committee Defendants breached fiduciary duties owed to the Class. More specifically, the Complaint alleges that the Board Defendants and the Intercompany Note Committee Defendants failed to exercise rights available to them to demand repayment of the Intercompany Note, or let the Intercompany Note mature, and simultaneously declare a *pro rata* dividend to CCOH shareholders – including GAMCO and the other CCOH Minority Shareholders – of amounts repaid. *See id.* ¶¶ 19-30. The Complaint further alleges that had the Board Defendants and the Intercompany Note Committee Defendants exercised these rights available to them, they would have avoided the "virtual certainty" that the Intercompany Note balance would become "impaired or wholly uncollectable" when the Debtors filed for bankruptcy on March 14, 2018. *See id.*

50. The Complaint also alleges that certain of the Sponsor Entities, as alleged indirect controlling shareholders, breached fiduciary duties owed to the Class by failing to direct the Board Defendants to let the Intercompany Note mature, thereby triggering a demand for repayment, and to declare a corresponding dividend. Alternatively, the Complaint asserts that certain of the Sponsor Entities aided and abetted alleged breaches of fiduciary duty by the Board Defendants by failing to direct the Board Defendants to permit the Intercompany Note to mature and to declare a dividend.

51. The Complaint primarily seeks declaratory relief – an order declaring that the Defendants breached fiduciaries duties owed to the Class or aided and abetted the breaches – as well as damages allegedly suffered by the Class. *See id.* at 77.

IV. THE SEPARATION OF THE DEBTORS AND CCOH.

52. A critical component of the Settlement (and, therefore, the Plan) is the Separation of the Debtors and CCOH. The Separation was negotiated in a vigorous, arms'-length negotiation among the Debtors, the CCOH Special Committee,[10] GAMCO, and the other Parties.

53. As set forth in the *Disclosure Statement Relating to the Fourth Amended Joint Chapter 11 Plan of Reorganization of iHeartMedia, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1484] (the "Disclosure Statement"), prior to and following the Petition Date, the Debtors and the CCOH Special Committee conducted extensive due diligence to prepare for negotiations regarding the terms of the Separation, including the financial settlement of any intercompany arrangements as well as any incremental liquidity CCOH may need post-separation. On May 16, 2018, the Debtors and CCOH presented five-year business plans to their respective boards of directors, which were subsequently approved by each respective board of directors and presented to the Restructuring Support Agreement parties. Prior to and subsequent to approval of CCOH's five-year business plan, the CCOH Special Committee, with the assistance of Houlihan Lokey, continued to conduct due diligence regarding CCOH's five-year business plan.

54. After the exchanges and diligence mentioned above, settlement negotiations started in earnest between the Debtors and the CCOH Special Committee in early June 2018. These settlement negotiations included numerous discussions between the Parties' respective advisors,

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[10] Given that a number of directors and/or officers of CCOH also serve as directors and/or officers of the Debtors, to avoid the appearance of any conflicts of interest, on January 23, 2018, the CCOH Board established a special committee consisting of CCOH independent directors (the "CCOH Special Committee") to consider, review, and negotiate certain transactions between the Debtors and CCOH in connection with the Debtors' chapter 11 cases. These independent directors do not serve as the management of the Debtors and are not affiliated with the Debtors' equity holders. The CCOH Special Committee is represented by their own independent advisors, including Houlihan Lokey (as financial advisor) and Willkie Farr & Gallagher LLP (as legal counsel). The CCOH Special Committee has the ongoing authority to engage in negotiations with the Debtors and make recommendations to the CCOH Board.

circulation of numerous term sheets, and multiple meetings, including an in-person meeting on July 11, 2018.

55. A key aspect of the negotiations regarding the Separation included a discussion surrounding whether the Debtors may provide CCOH with cash or other considerations that are independent of CCOH's recovery on account of the Intercompany Note, to help ensure that CCOH is adequately capitalized following the Separation. The Debtors and the CCOH Special Committee have determined in their reasonable business judgment that such consideration is necessary, appropriate, and in the best interests of the Debtors' estates and CCOH, as applicable.

56. Following extensive negotiations between the Debtors and the CCOH Special Committee, the Debtors determined, in a reasonable exercise of their business judgement, that it would be beneficial to engage in negotiations with GAMCO in an attempt to resolve GAMCO's objections and threatened objections to the Plan and the claims asserted in the Complaint and related claims, all pertaining to the balance of the Intercompany Note. GAMCO sought additional value flowing to CCOH as part of the Settlement. Following those extensive negotiations, the Parties reached an agreement regarding the material terms of the Separation and resolution of GAMCO's objections and threatened objections to the Plan and the claims asserted in the Delaware Action and related claims. Such terms were memorialized in the Settlement Agreement which is an essential and integral component of the Separation and the Plan. As noted below, the negotiated Settlement closely reflects the terms of the Separation that were originally disclosed in the Disclosure Statement:[11]

[11] The description below of the Amended Plan/Settlement is only a summary. In the event of any discrepancy between this summary and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

Material Term	Disclosure Statement	Amended Plan/Settlement
CCOH Plan Recovery	Allowed claim in the amount of $1,032 million, without any reduction or offset	Payment in cash of 14.4% of the allowed claim of $1,032 million
Range of CCOH's Additional Liquidity Need	As **low as $109 million or as high as $249 million**, after taking into account (a) an approximately $156 million distribution under the Plan on account of the Intercompany Revolving Promissory Note and consideration pursuant to Bankruptcy Rule 9019, and (b) $29 million from a preferred stock issuance	**$230 million** in additional liquidity being provided, after taking into account the $150 million Plan recovery and $40 million preferred stock raise
Funding CCOH Liquidity Shortfall	CCOH may receive supplemental liquidity as a result of including, but not limited to: **(a) an unsecured line of credit provided by a Debtor entity to CCOH**, (b) an increase in the notional amount of the CCOH Preferred Stock issued pursuant to the Plan, (c) new capital provided and/or backstopped by third-parties, or (d) a combination thereof	For a period of no more than three years following the Effective Date, **an unsecured revolving line of credit** in an aggregate amount not to exceed $170 million (at prime rate of interest)
Transfer of Intellectual Property	CCH may contribute any assets necessary to effect the Separation (including intellectual property) to CCOH	A transfer, and waiver of the cost, of the intellectual property owned by the Debtors and utilized by Outdoor, including a waiver of all license fees from the Petition Date through December 31, 2018
Postpetition Intercompany Balance	• The Debtors project that the postpetition balance of the Intercompany Revolving Promissory Note will be approximately $32 million owed by CCOH to iHC • The specifics of the repayment of such projected postpetition balance owed by CCOH to iHC are being negotiated as part of the Separation • It is not contemplated that the postpetition amounts owed by CCOH to iHC would be offset against the prepetition amounts owed by iHC to CCOH	• Waiver of the post-petition intercompany balance owed in favor of the Debtors • To the extent the Debtors owe CCOH on account of the postpetition intercompany balance as of December 31, 2018, the Debtors shall repay such amount in full, in cash, on the Effective Date

Material Term	Disclosure Statement	Amended Plan/Settlement
Transition Services Agreement ("TSA")	The Corporate Services Agreement ("CSA") contemplates both a consensual separation with a 'sunset' period for certain transition services and a full termination by mutual agreement or, after the Separation Trigger Date, upon six months' written notice	As of the Effective Date, new TSA will become effective and supersede and replace the existing CSA for administrative services currently and historically provided to CCOH

V. THE SETTLEMENT AGREEMENT

57. As discussed above, over the course of the last several months, the Parties have engaged in settlement discussions regarding the Plan, the Separation, and the claims asserted in the Delaware Action. Upon the entry of an order substantially in the form attached hereto as **Exhibit A**, the Parties have agreed to the terms of the Plan, the Separation, and the compromise resolving objections to the Plan and claims asserted in the Delaware Action and in the Norfolk Action and related claims pertaining to the Intercompany Note, as set forth in the term sheet attached to the Settlement Agreement as Exhibit B.

Basis for Relief

I. THE COURT HAS JURISDICTION OVER THIS MATTER AND SHOULD DIRECT THE APPLICATION OF BANKRUPTCY RULES 7023 AND 7023.1 AND CIVIL RULES 23 AND 23.1.

58. As discussed herein, the Settlement encompasses the Separation that has been contemplated by the Restructuring Support Agreement and the Plan since the outset of these Chapter 11 Cases. The Settlement represents a key aspect of the Plan and would be approved as part of confirmation of the Plan, a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Further, the Settlement is a contested matter because the Debtors have received objections to confirmation of the Plan,[12] and there is an actual or foreseeable dispute concerning the relief sought herein. *See*

[12] *See* Docket Nos. 1923, 2047, 2055, 2056, 2057, 2058, 2060, and 2080.

Fed. R. Bankr. P. 9014 advisory cmte. note (1982) ("Whenever there is an actual dispute, other than an adversary proceeding before the bankruptcy court, the litigation to resolve that dispute is a contested matter . . . ."); *In re Ephedra Products Liability Litig.*, 329 B.R. 1, 7 (Bankr. S.D.N.Y. 2005) (holding that a matter is a "contested matter" for purposes of [Bankruptcy] Rule 9014 when "opposition is known or reasonably foreseeable"); *see also* Fed. R. Bankr. P. 3020(b)(1) ("An objection to confirmation is governed by [Bankruptcy] Rule 9014.").

59. Bankruptcy Rule 9014, which governs contested matters, provides that "[t]he court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply." Fed. R. Bankr. P. 9014(c); *see In re Today's Destiny, Inc.*, 388 B.R. 737, 758 (Bankr. S.D. Tex. 2008) ("A 'contested matter' triggers Rule 9014."). Among the rules in Part VII of the Bankruptcy Rules are 7023 and 7023.1, which make applicable Civil Rules 23 and 23.1. *See* Fed. R. Bankr. P. 7023; *id.* 7023.1; *see also In re Wilborn*, 609 F.3d 748, 754 (5th Cir. 2010) ("class action proceedings are expressly allowed in the Federal Bankruptcy Rules").

60. Because the Settlement Agreement seeks to release class, direct, and derivative claims, the Parties agree that it is appropriate for the Court to direct the application of Bankruptcy Rules 7023 and 7023.1, and by extension, Civil Rules 23 and 23.1. *See In re Skinner Group, Inc.*, 206 B.R. 252, 255 & n.1 (Bankr. N.D. Ga. 1997) (applying Bankruptcy Rule 7023 and Civil Rule 23 for the purpose of certifying a settlement class and preliminarily approving a settlement of claims that were the subject of "numerous actions" in "both state and federal court"). Civil Rules 23 and 23.1 "promote[s] efficiency and economy in litigation," and "these principles are not less compelling in the bankruptcy context." *In re Wilborn*, 609 F.3d 748, 754 (5th Cir. 2010).

II. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

61. Once a court determines that a class should be certified for purposes of settlement,[13] the settlement generally requires two approvals: a preliminary approval and a final approval after a fairness hearing. *See*, *e.g.*, *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). "Preliminary approval is . . . the first stage of the settlement process, and the court's primary objective at that point is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing." 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.). It is at the final fairness hearing in the second stage of the process that class members may formally object to the settlement. *See In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1062–63 (citing Fed. R. Civ. P. 23(e)(5)).

62. The standard for preliminary approval is not high; the Court must find that "(1) the proposed settlement appears to be the product of serious, informed non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; (4) and falls within the range of possible [judicial] approval." *In re Shell Oil Refinery*, 155 F.R.D. at 555 (citing MANUEL FOR COMPLEX LITIGATION, SECOND § 30.44 (1985)); *accord McNamara v Bre-X Minerals Ltd.*, 214 F.R.D. 424, n.2 (E.D. Tex. 2002) ("the purpose of the preliminary approval is to detect any *obvious* defects that will preclude final approval of the settlement") (internal citations omitted).

63. The Settlement Agreement easily satisfies the standard for preliminary approval. ***First***, the Settlement Agreement arises out of serious, informed, arms'-length bargaining between the Parties. The Debtors have been engaged in ongoing discussions with the CCOH Special

[13] As discussed *supra* ¶ 2, GAMCO is contemporaneously filing the GAMCO Motion, which requests entry of an order (a) certifying the Class, (b) designating GAMCO as Class Representative, and (c) appointing the law firm of Entwistle & Cappucci LLP as Class Counsel for purposes of settlement.

Committee regarding the Separation since the outset of these Chapter 11 Cases, and the Debtors have been engaged in negotiations with GAMCO regarding a resolution of issues with the Plan and claims asserted in the Delaware Action for the past several months. The Parties exchanged a significant amount of information during their negotiations. As noted herein, the CCOH Special Committee was assisted by their own independent advisors and GAMCO was represented by its own legal counsel in the negotiations. The Parties ultimately agreed on the terms of the Settlement Agreement only after months of hard-fought, good-faith negotiations.

64. ***Second***, the Settlement Agreement has no obvious deficiencies. To the contrary, it represents a fair and reasonable compromise that is in the best interests of the Debtors' estates, CCOH, the Class Members, and other parties in interest. The Settlement Agreement will preserve the value of CCOH, a material asset of the Debtors, and provide CCOH with liquidity and time to formulate a business plan to adequately capitalize itself on a go-forward basis. Further, in light of the inherent risks and costs associated with litigating objections to the Plan and related claims, including those asserted in the Delaware Action and in the Norfolk Action, the Settlement Agreement will allow the Debtors, CCOH, and all interested parties, including GAMCO and the CCOH Minority Shareholders, to avoid the inherent uncertainty and substantial costs of a prolonged legal battle regarding the Plan, the Delaware Action, and the Norfolk Action. For essentially the same reasons, the Settlement Agreement is fair and reasonable to the Class Members. As shareholders of CCOH, the Class Members have a direct interest in ensuring that CCOH is adequately capitalized following the Separation in order to preserve their equity investment. Without the Settlement Agreement, the Class Members face uncertainty regarding the outcome of objections to the Plan and the Delaware Action (and any related claims). Even assuming the Class Members were to prevail, it could take years for the Class Members to receive

any relief on their claims. By way of the Settlement Agreement, the Class Members will realize an immediate benefit – their equity interest in CCOH will be bolstered by the consideration being provided to CCOH under the Settlement.

65. ***Third***, no aspect of the Settlement Agreement grants preferential treatment to the Class Representative or any segment of the Class. Instead, all Class Members benefit on equal terms from the structural and other benefits outlined in the Settlement Agreement.

66. ***Fourth***, for the reasons set forth above, the Settlement Agreement falls well within the range of outcomes that could secure judicial approval. The Settlement Agreement is the product of good-faith, arms'-length negotiations between the Parties that provides CCOH with sufficient liquidity to operate as a stand-alone enterprise and settles outstanding issues related to the Plan and the Delaware Action, bringing to a close what may have otherwise turned into lengthy, expensive, and complex litigation.

III. THE COURT SHOULD APPROVE THE FORM AND MANNER OF NOTICE OF THE SETTLEMENT TO THE CLASS AND APPROVE THE RETENTION OF PRIME CLERK LLC AS NOTICE ADMINISTRATOR.

67. Civil Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" the terms of any proposed settlement. Fed. R. Civ. P. 23(e). This requirement is designed to "inform class members of the nature of the pending ligation; of the settlement's general terms; that complete information is available from court files; and that any class member may appear and be heard at the fairness hearing" *DeHoyos* 240 F.R.D. at 300. Proper notice "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and to be heard." *Id.* at 300 (citing *In re Cement & Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987)).

68. With the Court's approval, the Class Notice, substantially in the form attached to the Order as **Exhibit 3**, will be served by Prime Clerk LLC (the "Notice Administrator"), subject

to approval of the Court, to provide all notices approved by the Court to Class Members.[14] The Parties propose that within two (2) business days following entry of (a) an order certifying the Class for settlement purposes and (b) an order preliminarily approving the Settlement Agreement, the Notice Administrator will serve the Class Notice upon each Class Member at the last known address of each Class Member according to the Debtors' books and records (or as updated by Class Counsel's searches for current addresses or as may otherwise be determined by the Parties). *See DeHoyos* 240 F.R.D. at 296 (observing that notice by mail is preferred when all or most of the class members can be identified); *see also* 3 NEWBERG ON CLASS ACTIONS § 8:15 (5th ed.) ("[S]ettlement notice, like any form of notice, must comply with the Constitution's due process requirements – that is, the notice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1098 (5th Cir. 1977) ("the type of notice to which a member of a class is entitled to depends upon the information available to the parties about that person").

69. The Class Notice outlines the terms of the Settlement Agreement, including the fees and costs proposed to be paid to Class Counsel, and describes how each Class Member may obtain a copy of the pleadings in the Delaware Action and a copy of the Settlement Agreement. The Class Notice also states the date, time, location, and purpose of the Fairness Hearing, informs each Class Member of the Fairness Hearing, and describes the procedure for objecting to the Settlement

[14] Prime Clerk has been appointed claims, noticing, and solicitation agent to the Debtors in these chapter 11 cases. The Parties selected Prime Clerk LLC as Notice Administrator, based on their familiarity with the Debtors, the cost estimate, as well as their comprehensive notice plan.

Agreement at the Fairness Hearing. Accordingly, the form and manner of the Class Notice is sufficient and should be approved.[15]

70. With the Court's approval, a publication notice (the "Publication Notice"), substantially in the form attached to the Order as **Exhibit 4**, will be published in a nationwide financial publication following entry of (a) an order certifying the Class for settlement purposes and (b) an order preliminarily approving the Settlement Agreement and approving the form and manner of notice described herein.

71. To notify parties in interest in the Chapter 11 Cases of the Settlement Agreement, the opportunity to object to the Plan on the basis of the Settlement, and the new date of the Confirmation Hearing, the Debtors also are requesting the Court's approval of the form and manner of a supplemental notice of the hearing to consider Confirmation of the Plan (the "Modified Confirmation Hearing Notice"), substantially in the form attached as Exhibit 2 to Exhibit A. The Modified Confirmation Hearing Notice will be filed on the docket of these chapter 11 cases, served on the Notice Parties (as defined herein), and posted to the Debtors' restructuring website at https://cases.primeclerk.com/iheartmedia. In addition, the Debtors will serve the Modified Confirmation Hearing Notice on all Holders of Claims and Interests entitled to vote on

[15] The notice provisions of the Class Action Fairness Act, or "CAFA," 28 U.S.C. § 1715, do not apply here. Among other limitations, CAFA's notice provisions apply only to: "any civil action *filed* in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is *removed* to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action." 28 U.S.C. § 1711(2) (emphases added). In seeking this Court's approval of the Settlement, the parties are neither filing a civil action in district court under Civil Rule 23 nor removing the Delaware Action to district court. The Delaware Action remains pending in the Delaware Court of Chancery. CAFA, moreover, does not provide for jurisdiction over the Delaware Action because the claims asserted in that Action "relate[] to the internal affairs or governance of a corporation" – namely, CCOH – and "arise[] under . . . the laws of the State in which such corporation . . . is incorporated" – namely, Delaware. 28 U.S.C. § 1332(d)(9)(B) (exception to CAFA jurisdiction). The parties request this Court's approval of the Settlement because it is part of the agreement regarding the Separation and Plan reached among the Debtors, CCOH, GAMCO, and multiple other parties and stakeholders.

the Fifth Amended Plan. The Debtors submit that such notice is appropriate under the circumstances and no other notice need be provided.

IV. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING.

72. In addition to preliminary approval, a class settlement requires final approval after a fairness hearing, at which class members may appear and formally lodge objections, if any. *See* Fed. R. Civ. P. 23(e)(2), 23(e)(5); *In re Shell Oil Refinery*, 155 F.R.D. at 555; *In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1062–63; MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.633 ("The fairness hearing . . . will provide class members an opportunity to present their views on the proposed settlement and to hear arguments and evidence for and against the terms.").

73. The Parties propose that the Court schedule a Fairness Hearing on [DATE], 2018, at [TIME] (CT), before the Court, at 515 Rusk Street, Courtroom 404, Houston, Texas, 77702. The Parties believe that scheduling the Fairness Hearing no earlier than 30 days from the date of service of the Class Notice will allow adequate notice to be served upon the Class Members so that Class Members may consider the terms of the Settlement Agreement and decide whether to object. *See* Fed. R. Bankr. P. 2002(a)(3) (providing that "parties in interest" must receive "at least 21 days' notice" of "the hearing on approval of a compromise or settlement of a controversy"); *see also In re Transpacific Passenger Air Trans. Antitrust Litig.*, 701 F. App'x 554, 556 (9th Cir. 2017) (approving a hearing 35 days after notice to the class members); *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 430 (5th Cir. 1977) (same; notice of "almost four weeks"); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975) (same; notice of 19 days); *Air Lines Stewards & Stewardesses Ass'n Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 108 (7th Cir. 1972) (same; notice of "three weeks"); *In re Sprint Corp. Securities Litig.*, 2004 WL 955859, at *3 (D. Kan. Feb. 24, 2004) (same; notice of 32 days); *Marie Raymond Revocable Trust v. MAT*

Five LLC, 980 A.2d 388, 409 (Del. Ch. 2008) ("the general practice of the Court of Chancery is to provide notice to class members between 30 and 45 days prior to the settlement hearing").

V. AFTER THE FAIRNESS HEARING, THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT AND GRANT RELATED RELIEF AS PART OF CONFIRMATION OF THE PLAN OF REORGANIZATION.[16]

A. The Settlement Agreement Satisfies the Requirements of Sections 363(b) of the Bankruptcy Code, and Meets the Applicable Standard for Settlements That Are Included in the Plan Under Section 1123(b) of the Bankruptcy Code.

74. Following the Fairness Hearing, and as part of confirmation of the Plan, the Court should finally approve the Settlement Agreement. It is well settled that settlements are "a normal part of the process of reorganization" and "are 'desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly.'" *In re ASARCO LLC*, No. 05-21207, 2009 WL 8176641, at *9 (Bankr. S.D. Tex. June 5, 2009) (citations omitted). The decision whether to approve or deny a settlement "is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984). Generally, the role of the bankruptcy court is not to "decide the merits of individual issues" in evaluating a settlement. *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Indeed, "in complex controversies, courts may conduct less exacting factual inquiries before approving a settlement which appears to substantially benefit the estate." *Id.* Instead, the court should determine whether the settlement as a whole is "fair and equitable." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *see In re Ambac Fin. Grp., Inc.*, 457 B.R. 299, 308 (Bankr. S.D.N.Y. 2011) (approving a settlement of direct, class, and derivative claims that were the subject of actions pending outside the bankruptcy over objections because

[16] The Debtors reserve all rights to supplement and/or revise their argument in support of final approval of the Settlement in connection with confirmation of the Plan. The Debtors also reserve the right to respond to any objections received to the Settlement.

"the settlement is fair and equitable and in the best interest of the estate"), *aff'd,* 2011 WL 6844533 (S.D.N.Y. Dec. 29, 2011), *aff'd,* 487 F. App'x 663 (2d Cir. 2012).[17]

75. A settlement proponent is not required to show that a settlement is the best possible compromise, but only that the settlement falls "within the range of reasonable litigation alternatives." *See In re Roqumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008) (internal quotations and citations omitted). A proposed settlement should be approved if it is fair, equitable, and in the best interest of the estate. *See In re Age Ref., Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Courts in the Fifth Circuit follow a three-factor balancing test to analyze proposed settlements: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. *See id.* at 540 (internal citations omitted); *see also In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997). The third factor is broken into two more specific factors: (a) whether the settlement is in the best interests of the creditors, with proper deference to their reasonable views; and (b) the extent to which the settlement is truly the product of arms-length bargaining (and not of fraud or collusion). *See In re Age Ref.*, 801 F.3d at 540; *In re Foster Mortg. Corp.*, 68 F.3d 914, 917–18 (5th Cir. 1995); *In re Cajun Elec. Power Co-op., Inc.*, 230 B.R. 715, n. 101 (Bankr. M.D. La. 1999)("The standard under 11 U.S.C. § 1123(b)(3) is the same as the standard for approval of settlements under Rule 9019, Fed.R.Bankr.P."); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 832 (Bankr. D. Del. 2008)("[T]he standards for approving settlements as part of a plan of reorganization are the same as the standards for approving

[17] The bankruptcy court in *Ambac* also entered a stipulation of class certification for purposes of the settlement. *See* Stipulation of Settlement, No. 10-17593-SCC (Bankr. S.D.N.Y. Sept. 13, 2011), ECF 558-1.

settlements under Fed. R. Bankr.P. 9109 [sic].") (citing *In re New Century TRS Holdings*, 390 B.R. 140, 167 (using factors relating to Rule 9019 settlements to determine whether to approve a settlement contained in a plan of liquidation)); *In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004) ("The standards for approval of settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019 . . ."); *In re NII Holdings, Inc.*, 536 B.R. 61, 98 (Bankr. S.D.N.Y. 2015) (Courts analyze settlements under section 1123 by applying the same standard applied under Rule 9019 of the Bankruptcy Rules, which permits a court to "approve a compromise or settlement"); *In re Best Prods. Co., Inc.,* 177 B.R. 791, 794 n. 4 (S.D.N.Y.1995) ("Irrespective of whether a claim is settled as part of a plan pursuant to section 1123(b)(3)(A) of the Bankruptcy Code or pursuant to separate motion under Bankruptcy Rule 9019, the standards applied by the Bankruptcy Court for approval are the same."), *aff'd,* 68 F.3d 26 (2d Cir.1995).

76. Additionally, the Bankruptcy Code authorizes the use of property outside the ordinary course of business with court approval and a valid business reason. Specifically, the Bankruptcy Code authorizes a debtor in possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate," after notice and a hearing. 11 U.S.C. § 363(b)(1). It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business under this provision if there is a good business reason for doing so. *See, e.g.*, *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.") (quoting *In re Cont'l Air Lines, Inc.*, 780 F.3d 1223, 1226 (5th Cir. 1986)); *In re ASARCO, LLC*, 441 B.R. 813, 830 (Bankr. S.D. Tex. 2010)

(finding business judgment standard to be appropriate standard for out-of-the-ordinary course transaction under section 363(b)); *see also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) ("As long as [the decision] appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision . . . should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code.").

77. For the following reasons, the Parties respectfully submit that the Settlement Agreement satisfies the standards for approval under applicable law and that the Court should therefore approve the Settlement Agreement pursuant to sections 363 and 1123(b) of the Bankruptcy Code.

1. The Probability of Success in Litigating the Delaware Action and Objections to the Plan is Uncertain.

78. Although the Defendants believe the Plan is confirmable and they have viable defenses against the claims raised in the Delaware Action, the uncertainty of complex litigation and the Parties' disparate views about the prospects for success in the near and long term make the likelihood of success uncertain. In particular, GAMCO raised, among other claims, a potential constructive trust claim related to the Intercompany Note and has threatened to object to and seek to delay confirmation of the Plan. This uncertainty could result in substantial delays to emergence from chapter 11, the costs of which would be borne by the Debtors directly (in the form of, among other things, a larger payment on the intercompany balance) and indirectly in light of certain indemnification obligations owing in favor of the Defendants.

2. Litigating the Complex Issues Raised or Threatened by GAMCO and CCOH Could Create Considerable Expense, Inconvenience, And Delay.

79. Continued litigation involving CCOH, a material asset of the Debtors, and the CCOH Minority Shareholders would be costly and time consuming. It is critical that the Debtors

safeguard and maximize the value of their interest in CCOH, thereby maximizing the value for all other CCOH shareholders. The proposed Settlement Agreement is a reasonable compromise that allays the likely significant expense and inconvenience of litigating the Delaware Action and other potential claims raised by the CCOH Minority Shareholders, including a potential constructive trust claim against the Debtors that GAMCO threatened to raise in connection with confirmation of the Plan and in objection to the Plan's release provision. Additionally, certain of the Delaware Individual Defendants have filed proofs of claim against the Debtors, asserting indemnification obligations owed to them by the Debtors for their services as a director or manager of CCOH.[18] While the proofs of claim were filed prior to the filing of the Complaint, the proofs of claim note that the individuals should be entitled to indemnification from the Debtors for, among other things, expenses and fines incurred in connection with the defense of *any action*, including the Delaware Action and the Norfolk Action.

80. Pursuant to the Plan, on and as of the Effective Date, all Indemnification Provisions[19] will be assumed by the Debtors, and shall be reinstated and remain intact, irrevocable, and shall survive the Effective Date, and the Reorganized Debtors' governance documents shall provide for indemnification, defense, reimbursement, and limitation of liability of, and advancement of fees and expenses to, among others, the Debtors' and the Reorganized Debtors'

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18 See Claim Nos. 2813, 2815, 2817, 2825, 2820, 2826, 2828, and 2840.

19 "Indemnification Provisions" means the provisions in place before or as of the Effective Date, whether in a Debtor's bylaws, certificates of incorporation, limited liability company agreement, partnership agreement, management agreement, other formation or organizational document, board resolution, indemnification agreement, contract, or otherwise providing the basis for any obligation of a Debtor as of the Effective Date to indemnify, defend, reimburse, or limit the liability of, or to advance fees and expenses to, any of the Debtors' current and former directors, managers, officers, members, employees, attorneys, accountants, investment bankers, and other professionals, and each such Entity's respective Affiliates, as applicable. *See* Plan, Art. I.A.

current and former directors, managers, equityholders, and officers. *See* Plan, Art. V.F. Here, the relevant indemnification documents include management agreements (including the management agreement between iHM and the Sponsor Entities), charters, certificates of incorporation, as well as individual indemnification agreements between certain of the Delaware Individual Defendants and CCOH and iHM. Accordingly, each Delaware Individual Defendant, the Sponsor Entities, and the individual defendants named in the Norfolk Action may be entitled to indemnification from at least one, if not both, of CCOH and the Debtors, the costs of which would be borne by CCOH or the Reorganized Debtors (and their future owners, the Debtors' current creditors). The Settlement avoids those costs.

81. Further, continued litigation with GAMCO and potential future litigation raised by other CCOH Minority Shareholders would divert valuable resources away from both the Debtors and CCOH at a critical juncture in their corporate timelines. The proposed Settlement Agreement will allow the Debtors to allocate their resources more fully toward expeditiously confirming the Plan while also allowing CCOH to direct its resources toward formulating a business plan to adequately capitalize itself on a go-forward basis following the Separation.

3. The Proposed Settlement Agreement Is Fair and Equitable and in the Best Interests of Creditors.

82. Importantly, the Settlement Agreement is supported by an ad hoc group of holders of the Debtors' Term Loan Credit Agreement claims and PGN claims (collectively, the "Term Loan/PGN Group", and together with all holders of Term Loan Credit Agreement claims and PGN Claims, the "Senior Creditors"). Under the Plan, the Senior Creditors are projected to receive approximately [94]% of the equity in Reorganized iHeart and 89.5 percent of CCOH's outstanding shares of common stock. Accordingly, the Senior Creditors, as the future owners of Reorganized

iHeart and CCOH, have an interest in ensuring that the Settlement Agreement is in their best interest and the best interest of CCOH.

83. Further, nearly all of the value of the Debtors' enterprise is at the subsidiary entities and nearly all of the claims held against the subsidiary entities are held by the Senior Creditors. Accordingly, it is the Senior Creditor group that is entitled to nearly all of the value of the Debtors' enterprise. As part of an overall settlement and comprise under the Plan, junior creditors at iHC (who are entitled to no recoveries in a liquidation scenario) are receiving some of the value of the subsidiary entities.[20] Therefore, the Settlement does not prejudice any parties in interest because, as noted above, the Senior Creditors are in support of the Settlement, and the Debtors' other creditors (including those at iHC) are not otherwise entitled to any of the consideration being provided under the Settlement to CCOH.

84. Finally, the Settlement Agreement arises out of arms'-length bargaining among the Parties. The Debtors have been engaged in ongoing discussions with the CCOH Special Committee regarding the Separation since the outset of these Chapter 11 Cases, and the Debtors have been engaged in negotiations with GAMCO regarding a settlement of the Delaware Action for the past several months. The Parties agreed on the terms of the Settlement Agreement following hard-fought, good-faith negotiations. Based on the foregoing, the Debtors have concluded that the Settlement Agreement represents a fair and reasonable compromise that is in the best interest of the Debtors' estates and its creditors.

[20] *See* Disclosure Statement, Exhibit E, at 11.

B. The Settlement Agreement Satisfies the Requirements of Civil Rules 23 and 23.1.

85. Civil Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Final approval of a settlement pursuant to Civil Rule 23(e) turns on whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *In re Shell Oil Refinery*, 155 F.R.D. at 555; *DeHoyos*, 240 F.R.D. at 285-86.

86. Likewise, Civil Rule 23.1(c) provides that "[a] derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23.1(c). "[A] settlement may fairly, reasonably, and adequately serve the best interest of a corporation, on whose behalf the derivative action is brought, even though no direct monetary benefits are paid by the defendants to the corporation." *Maher v. Zapata Corp.*, 714 F.2d 436, 466 (5th Cir. 1983); *see In re Mobile Commc'ns Corp. of Am., Inc., Consol. Litig.*, No. CIV. A. 10627, 1991 WL 1392, at *6 (Del. Ch. Jan. 7, 1991) ("[A] court's role in deciding whether to approve a proposed settlement of a class or derivative action is to determine whether, considering all the circumstances, the proposed agreement represents fair and reasonable compensation for the claims to be released.").

87. "The general rule applicable to the court's exercise of its discretion in deciding the fairness of a proposed [settlement of a] class action is that the court must ensure that the settlement is in the interest of the class, does not unfairly impinge on the rights and interests of dissenters, and does not merely mantle oppression." *DeHoyos*, 240 F.R.D. at 286 (internal citations omitted) (quoting *Garza v. Sporting Goods Properties, Inc.*, No. CIV. A. SA-93-CA-108, 1996 WL 56247, at *11 (W.D. Tex. Feb. 6, 1996)). "[T]here is a strong presumption in favor of

finding the settlement fair." *Id*. Furthermore, "the proposed settlement is not required to achieve some hypothetical standard constructed by imagining every benefit that might someday be obtained in a contested matter," but instead the "[c]ourt may rely on the judgement of experienced counsel for the parties." *Id*.

88. The Fifth Circuit has held that the following six factors are relevant in determining whether a proposed class settlement is fair, reasonable, and adequate: "(1) the existence of fraud or collusion behind the settlement; (2) the probability of plaintiffs' success on the merits; (3) the range of possible recovery; (4) the complexity, expense and likely duration of the litigation; (5) the stage of the proceedings and the amount of discovery completed; and (6) the opinions of the class counsel, class representatives, and absent class members." *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)(citing *Parker v. Anderson*, 667 F.2d 1205,1209 (5th Cir. 1982)); *In re Katrina Canal Breaches Litigation*, 628 F.3d 185, 194-95 (5th Cir. 2010) (citing *Newby v. Enron Corp.*, F.3d 296, 301 (5th Cir. 2004)); *cf. In re TD Banknorth*, 938 A.2d 654, 658 (Del. Ch. 2007) ("an evaluation of whether a settlement is fair and reasonable" "requires balancing the strengths of the claims being compromised against the benefits the settlement provides to the class members."). The *Reed* factors strongly support approval of the Settlement Agreement.

89. First, the Settlement Agreement arises out of serious, informed, arms'-length bargaining between the Parties; it is not collusive or fraudulent. *See supra* ¶ 61.

90. Second and third, the Settlement Agreement reflects the probability of success on the merits and the range of possible recovery. Although the Court "must not try the case in the settlement hearings," it should generally "compare [the settlement's] terms with the likely rewards the class would have received following a successful trial of the case." *Reed*, 703 F.2d at 172. Here, the Settlement Agreement provides substantial benefits to CCOH and affords the Class

Members structural and remedial benefits as CCOH shareholders. As shareholders, the Class Members have a direct interest in ensuring that CCOH is well capitalized following the Separation in order to preserve their equity investment. By way of the Settlement Agreement, the Class Members will realize a significant benefit – their equity interest in CCOH will be bolstered by the separation of the businesses, the termination of the Intercompany Agreements, and the other consideration that the Debtors are providing to CCOH. Moreover, the Class Members will secure such relief immediately, whereas it could take years to secure relief through litigation of their claims.

91. Fourth and fifth, the complexity, expense and likely duration of the litigation, as well as the stage of the proceedings, all militate in favor of approving the settlement. The Complaint pleads several claims for breach of fiduciary duties, and the Parties are still in the pre-trial motions stage. Accordingly, prolonging the litigation could entail significant outlays. *Id.* ("[T]he very purpose of the compromise is to avoid the delay and expense of such a trial.").

92. Sixth, the Settlement Agreement enjoys the support of the Class Representative and Class Counsel, who engaged in months of negotiations with the Debtors to secure its terms. Absent Class Members will be afforded the opportunity to object to any of its terms at the Fairness Hearing. At that time, if significant objections manifest, the Court and the Parties may address them as appropriate.

93. For all of the foregoing reasons, the Parties respectfully request that the Court preliminary approve the Settlement Agreement, which represents an essential and integral component of the Separation and the Plan and a reasonable compromise of the claims presented by the CCOH Minority Shareholders in the Delaware Action.

WHEREFORE, for the reasons stated above, the Parties respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Houston, Texas
December 8, 2018

/s/ *Patricia B. Tomasco*
Patricia B. Tomasco (TX Bar No. 01797600)
Elizabeth Freeman (TX Bar No. 24009222)
Matthew D. Cavenaugh (TX Bar No. 24062656)
JACKSON WALKER L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: ptomasco@jw.com
efreeman@jw.com
mcavenaugh@jw.com

Co-Counsel to the Debtors
and Debtors in Possession

James H.M. Sprayregen, P.C.
Anup Sathy, P.C. (admitted *pro hac vice*)
Brian D. Wolfe (admitted *pro hac vice*)
William A. Guerrieri (admitted *pro hac vice*)
Benjamin M. Rhode (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: james.sprayregen@kirkland.com
anup.sathy@kirkland.com
brian.wolfe@kirkland.com
will.guerrieri@kirkland.com
benjamin.rhode@kirkland.com

-and-

Christopher Marcus, P.C. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: christopher.marcus@kirkland.com

/s/ *Andrew J. Entwistle*
Andrew J. Entwistle (Texas Bar No. 24038131)
Entwistle & Cappucci, LLP
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272

Counsel for GAMCO

/s/ *Jennifer J. Hardy*
Jennifer J. Hardy (Texas Bar No. 24096068)
Willkie Farr & Gallagher LLP
600 Travis Street
Houston, TX 77002
Telephone: (713) 510-1700
Faxsimile: (713) 510-1799

-and-

Matthew A. Feldman
Paul V. Shalhoub
Benjamin McCallen
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

Counsel for CCOH Special Committee, For and On Behalf of CCOH