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

| | | |
|---|---|---|
| *In re*: | X | Chapter 11 |
| GULFPORT ENERGY CORPORATION, *et al.*, | | Case No. 20-35562 (DRJ) |
| Debtors.[1] | | (Jointly Administered) |
| | X | |

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR (I) LEAVE, STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS AND CAUSES OF ACTION AGAINST INSIDERS ON BEHALF OF THE DEBTORS' ESTATES AND (II) EXCLUSIVE SETTLEMENT AUTHORITY**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 5, 2021 AT 10:00 A.M. (PREVAILING CENTRAL TIME) IN COURTROOM 400, 4TH FLOOR, 515 RUSK ST., HOUSTON, TX 77002. YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AUDIO/VIDEO CONNECTION.**

**AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT (832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG DISTANCE CHARGES. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE JONES'S CONFERENCE ROOM NUMBER IS 205961.**

**YOU MAY VIEW VIDEO VIA GOTOMEETING. TO USE GOTOMEETING, THE COURT RECOMMENDS THAT YOU DOWNLOAD THE FREE GOTOMEETING APPLICATION. TO CONNECT, YOU SHOULD ENTER THE MEETING CODE "JUDGEJONES" IN THE GOTOMEETING APP OR CLICK THE LINK ON JUDGE JONES'S HOME PAGE ON THE WEBSITE FOR THE SOUTHERN DISTRICT OF TEXAS. ONCE CONNECTED, CLICK THE SETTINGS ICON AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.**

**HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF THE HEARING. TO MAKE YOUR ELECTRONIC APPEARANCE, GO TO THE SOUTHERN DISTRICT OF TEXAS WEBSITE AND SELECT "BANKRUPTCY COURT" FROM THE TOP MENU. SELECT "JUDGES'**

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

**PROCEDURES," THEN "VIEW HOME PAGE" FOR JUDGE JONES. UNDER "ELECTRONIC APPEARANCE," SELECT "CLICK HERE TO SUBMIT ELECTRONIC APPEARANCE." SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS, AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE REQUEST AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

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The Official Committee of Unsecured Creditors ("**Committee**") of Gulfport Energy Corporation ("**GPOR**") and its affiliated debtors (collectively, the "**Debtors**") files this motion (the "**Motion**") seeking entry of an order substantially in the form attached as **Exhibit A** (the "**Proposed Order**"), under sections 105(a), 1103(c), and 1109(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), granting the Committee (a) standing to prosecute certain avoidance actions belonging to the Debtors' estates (the "**Claims**") against certain of the Debtors' executive officers and management (together, the "**Insiders**" or "**Defendants**") as described in the *Proposed Complaint of the Official Committee of Unsecured Creditors*, attached as **Exhibit B** hereto (the "**Proposed Complaint**"); and (b) exclusive authority to settle those Claims.[2] In support of the Motion, the Committee respectfully states as follows:

## PRELIMINARY STATEMENT

1. The estates have strong claims against the Insiders. In the months leading up to the Debtors' bankruptcy filing, and within applicable preference periods, the Defendants took some $16.2 million out of the Company in the form of incentive and retention bonuses. This is, by some estimates, over one-half of the amount that the Debtors now propose to pay to all of the general unsecured creditors at GPOR under their pending chapter 11 plan.[3] The prepetition transfers were not just preferential, they were constructively fraudulent. Moreover, the evidence indicates that the majority of the prepetition bonus payments were made with the intent of avoiding scrutiny by creditors and the Court, and are therefore subject to avoidance as intentional fraudulent transfers.

[2] The Committee reserves the right to revise the Proposed Complaint or to amend it after filing. Capitalized terms used but not defined here have the meanings defined in the Proposed Complaint.

[3] The Debtors' plan also seeks to provide their executives with 10% of the post-reorganization common stock under a management incentive plan – roughly double what is being offered to the general unsecured creditors at GPOR.

2. In *Enron*, the Court found that similar bonuses, paid "in direct anticipation of" bankruptcy where "management was unwilling to allow . . . creditors and the bankruptcy court the right to participate in any decision," were made with an intent to "hinder or delay" creditors.[4] More recently, Judge Isgur observed that he would "never . . . approve an intentional intent to get around [section] 503(c)" – the provision of the Bankruptcy Code that was designed by Congress to prevent the payment of unwarranted and excessive executive compensation.[5] Claims against the Insiders, in other words, are highly likely to succeed.

3. Despite the strength of the potential Claims, however, the Debtors have chosen not to bring them. Their proposed plan, instead, would release those claims for no consideration. To be clear, the Debtors are not *settling* the claims, as some chapter 11 plans will do – they are simply giving them up. The reason is clear: the Debtors have no interest in suing their own executives, particularly when the Debtors' current counsel had already been retained by the time the questionable prepetition payments were made. Instead, the Debtors and the Defendants hope to proceed to confirmation, sweep aside objections, and obtain a free release.

4. The Court should not permit it. Where a debtor unjustifiably refuses to bring an estate claim, and the claim is colorable, an estate representative can and should be appointed to bring the claim. The benefits to the estate are high (up to $16.2 million), while the costs are likely to be low (as the Committee has already investigated the Claims, and taken discovery). For these and other reasons discussed below, the Committee requests exclusive standing and authority to

[4] *In re Enron Corp.*, No. 01-16034, 2005 WL 6237551, at *39 (Bankr. S.D. Tex. Dec. 9, 2005).

[5] Transcript of Hearing at 334:2-3, *In re Memorial Prod. Partners, L.P.*, No. 17-30262 (Bankr. S.D. Tex. Apr. 4, 2017) (Isgur, J.) (attached as Exhibit C).

pursue (and if warranted, settle) the preference and fraudulent transfer claims against the Insiders that are identified in the Proposed Complaint.[6]

## JURISDICTION, VENUE, AND AUTHORITY

5. This Court has jurisdiction to decide this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b).

6. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

7. The statutory authority for the requested relief is sections 105(a), 1103(c), and 1109(b) of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure.

8. Pursuant to Local Bankruptcy Rule 7008-1, the Committee consents to entry of a final order by this Court in connection with this Motion if it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the Constitution.

## BACKGROUND

9. The bonus payments the Committee seeks to recover fall into two buckets: payments made to the Insiders in April 2020 under the Company's March 2020 Executive Compensation Program, and payments made to the Insiders in September 2020 under the modified August 2020 Executive Compensation Program. The payments are avoidable as both fraudulent transfers and preferences – with the September payments falling within 3 months of bankruptcy and the April payments falling within the longer, one year look-back period for insider preferences. The facts are described in detail in the Proposed Complaint, and set forth in summary form here.

[6] Though the Committee believes it is futile, it has asked the Debtors themselves to pursue the Claims. The Committee expects they will refuse.

### A. The April Payments ($2.6 million)

10. The first set of payments, made on April 3, 2020 in the aggregate amount of approximately $2.6 million (the "**April Payments**"), went to five Insiders, as follows:

| Executive | Position | April Payment |
|---|---|---|
| David Wood | President/CEO/Director | $834,000 |
| Donnie Moore | COO | $505,000 |
| Patrick Craine | General Counsel/Secretary | $435,000 |
| Quentin Hicks | CFO | $425,000 |
| Michael Sluiter | SVP, Reservoir Engineering | $360,000 |
| | | **$2,559,000** |

The April Payments were made under a compensation program approved by the Compensation Committee on March 11, 2020 (the "**March 2020 Executive Compensation Program**").

11. At the time of the April Payments, the Debtors were insolvent:

- They had already retained both Kirkland & Ellis LLP and Perella Weinberg Partners and were considering strategic alternatives, including bankruptcy.
- The Company's $1.8 billion in unsecured notes were trading at roughly a 75% discount to par. *See* GPOR Form 10-Q dated May 8, 2020 at 11 ("At March 31, 2020, the carrying value of the outstanding debt represented by the Notes was approximately $1.8 billion. Based on the quoted market prices (Level 1), the fair value of the Notes was determined to be approximately $447.4 million at March 31, 2020.").
- As a result of falling prices of oil and natural gas, the Company reported that it had been required to record impairments of its oil and natural gas property of $553 million for the three months ended March 31, 2020. *See* GPOR Form 10-Q dated May 8, 2020 at 3.
- In addition to such "book value" impairments which continued steadily in the run up to the Petition Date, the Debtors' latest publicly disclosed net asset value ("**NAV**"), the standardized measure reported only annually, as of December 31, 2019, showed a mere $1.7 billion of NAV, less than the face amount of the

Bonds, let alone all of the Debtors' relevant liabilities. *See* GPOR Form 10-K dated February 27, 2020 at 6.

These factors provide strong evidence of insolvency as of the time of the April Payments.

12. The April Payments under the March 2020 Executive Compensation Program also marked a departure from past practice, and were of dubious value. Among other things, the metrics under the incentive component of the program were altered in ways favorable to the Insiders (as discussed in the Complaint) and the program implemented a retention-based component – not present in 2019 – that was equal to 100% of the Insiders' base salary and was payable in cash, up-front. The Compensation Committee claimed to have adopted the retention component of the program because of "uncertainty facing Gulfport and the broader market," but it cited no evidence of a risk that the Insiders might leave the Company, and discovery has revealed none.

**B. The September Payments ($13.7 million)**

13. The second set of payments, made on September 4, 2020 in the total amount of approximately $13.7 million (the "**September Payments**"), went to the same Insiders, as follows:

| Executive | Position | September Payment |
|---|---|---|
| David Wood | President/CEO/Director | $5,820,863 |
| Donnie Moore | COO | $2,567,199 |
| Patrick Craine | General Counsel/Secretary | $2,142,464 |
| Quentin Hicks | CFO | $2,093,212 |
| Michael Sluiter | SVP, Reservoir Engineering | $1,062,049 |
| | | **$13,685,787** |

These payments were made under a program adopted by the Board on August 4, 2020 (the "**August 2020 Executive Compensation Program**") – a program that made material changes to the March 2020 Executive Compensation program that had been adopted just a few months before.

14. The August 2020 Executive Compensation Plan included a variety of changes that were favorable to the Insiders and intended to limit the ability of creditors and the Court to scrutinize the lavish payments it authorized. In place of the Debtors' ordinary course year-end incentive bonuses comprised of cash and stock, which had already been approved in March 2020, the Compensation Committee instituted a new program providing for bonuses that were (i) 50% retention-based (not performance-based), (ii) all cash, and (iii) paid up-front. The remaining 50% was incentive-based, but turned on revised performance metrics that were measured over an irregular set of short performance periods, unlike those in the earlier plan. [redacted]

15. Even though each of the Insiders had already received retention payments in April 2020 and were obligated to stay at Gulfport through the end of March 2021, the August 2020 Executive Compensation Program awarded them additional payments to remain at the Company until the earlier of, among other things, July 31, 2021 or emergence from bankruptcy. Although these payments thus obtained no more than four additional months of retention – and potentially no additional retention at all if the Company emerged from bankruptcy before March 31, 2021 – the payments authorized under the August 2020 Executive Compensation Plan were significantly larger than the retention payments under the March 2020 Executive Compensation Program.

16. The August revisions to the compensation program, including the prepayment of certain awards, were made in contemplation of bankruptcy. As noted, they included bankruptcy-specific metrics. Even more revealing, at the direction of counsel, the Company's compensation consultant, Pearl Meyer & Partners LLC ("**PMP**"), advised the Compensation Committee that the prepayment of retention and incentive bonuses "***avoids potential uncertainties from court***

***oversight***" and "***eliminates risk of influence from courts, creditors, etc.***, as well as the potential expense of litigation in restructuring to approve insider incentive compensation." *See* Proposed Complaint ¶¶ 60-61 (quoting PMP presentation) (emphasis added).

17. At the time of the September Payments, the Debtors were presumed insolvent for purposes of the preference statute (*see* 11 U.S.C. § 547(f)), and were, in fact, insolvent. In addition to the insolvency-related facts recited above, the Company's Form 10-Q for the second quarter of 2020 contained a "going concern" qualification. *See* GPOR Form 10-Q dated August 8, 2020 at 8 ("As a result of these uncertainties and other factors, management has concluded that there is substantial doubt about the Company's ability to continue as a going concern."). Moreover, the Debtors had already begun canvassing the market for DIP financing and were deep in negotiations with their lenders and noteholders concerning an in-court restructuring. The very decision to adopt the August 2020 Executive Compensation Program was premised in important part on the likelihood of an impending bankruptcy.

**C. The Debtors' Bankruptcy Filing and Chapter 11 Plan**

18. The Debtors filed for bankruptcy on November 13, 2020 (the "**Petition Date**"), with a restructuring support agreement ("**RSA**") in hand, negotiated with their secured lenders and an ad hoc group of unsecured noteholders. The Debtors have subsequently filed a plan premised on the RSA (the "**RSA Plan**") [Dkt. No. 816] and are seeking its approval on April 7, 2021.

19. The RSA Plan contains broad estate and third party releases, including releases of estate claims against the Insiders. *See* RSA Plan Art I.148 & 150 (definition of "Related Party" and "Released Parties"); Art. VIII.C (describing the Debtor release). In addition to the bonuses paid pre-petition, the RSA Plan also sets aside approximately 10% of the New Common Stock for a new management incentive plan, half of which may be allocated to management within the first 60 days following the Debtors' emergence from bankruptcy. *Id*. at Art. I. 108-110, IV.P.

20. In stark contrast to the favorable treatment of the Insiders under the RSA Plan, general unsecured creditors of GPOR are slated to receive a fractional recovery based on their pro rata share of approximately 4.7% of the new equity in the Company, after adjusting for the dilutive effects of the Rights Offering and management incentive plan. *Id*. at Art. I.92, III.B.4A.

## RELIEF REQUESTED

21. The Committee requests entry of an order, substantially in the form attached as **Exhibit A**, under sections 105(a), 1103(c), and 1109(b) of the Bankruptcy Code, granting the Committee standing to commence and prosecute, and exclusive authority to settle, actions against the Defendants substantially in the form of the Proposed Complaint attached as **Exhibit B**.

## BASIS FOR RELIEF REQUESTED

### I. The Committee Satisfies the Legal Standard for Obtaining Derivative Standing.

22. Filing a petition under Chapter 11 of the Bankruptcy Code creates an "estate" comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case," 11 U.S.C. § 541(a)(1), including "causes of action belonging to the debtor at the time the case is commenced." *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 245 (5th Cir. 1988). A debtor-in-possession is "duty bound" to assert the estate's causes of action "if doing so would maximize the value of the estate." *Id*. at 246. But if it refuses or fails to do so, a creditors' committee may be granted "derivative standing" to pursue those claims on behalf of the estate. *See id*. at 252 ("Where the debtor-in-possession is unable or unwilling to fulfill its obligation . . . the Committee may assert the cause of action on behalf and in the name of [the debtor] if authorized to do so by the bankruptcy court."); *see also In re La. World Exposition, Inc.*, 832 F.2d 1391, 1397 (5th Cir. 1987) (citing sections 1103(c)(5) and 1109(b) of the Bankruptcy Code as the legal basis on which courts have afforded creditors' committees standing, and collecting cases).

23. To obtain derivative standing, a creditors' committee must demonstrate that (i) a colorable claim exists and (ii) the debtor-in-possession has unjustifiably refused to pursue the claim. *La. World Exposition*, 832 F.2d at 1397; *see also Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring, Inc.)*, 714 F.3d 860, 863-64 (5th Cir. 2013); *Official Employment-Related Issues Comm. of Enron Corp. v. Lovorado (In re Enron Corp.)*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). These requirements are "relevant considerations" and "not necessarily a formalistic checklist." *La. World Exposition*, 832 F.2d at 1397.

24. As set forth below, the Committee satisfies each prong of the applicable standard and should be granted standing.

**A. The Proposed Complaint Asserts Colorable Causes of Action.**

25. A colorable claim, for purposes of a standing motion, is a claim that has "a possibility of success," *In re McConnell*, 122 B.R. 41, 44 (Bankr. S.D. Tex. 1989), or "raise[s] serious issues for determination." *In re ABC Utils. Servs.*, No. 89-41420-BJH-7, 2001 Bankr. LEXIS 2240, at *27 (Bankr. N.D. Tex. Oct. 9, 2001). While some courts equate this standard with the standard applicable to a motion to dismiss under Rule 12(b)(6) of the Federal Rules[7], others conclude that claims are colorable even if they would not necessarily survive a motion to dismiss. *Adelphia Commc'ns Corp. v. Bank of Am., N.A. (In re Adelphia)*, 330 B.R. 364, 378 (Bankr. S.D.N.Y. 2005) (granting committee standing despite finding that some claims would likely be dismissed under Rule 12(b)(6)); *ABC Utils. Servs.*, 2001 Bankr. LEXIS 2240, at *27 ("[T]he proposed complaint need not be tested against a Rule 12(b)(6) standard to determine if the claims

[7] *See Claridge Assocs., LLC v. Schepis (In re Pursuit Capital Mgmt., LLC)*, 595 B.R. 631, 665 (Bankr. D. Del. 2018) (equating standard to a motion to dismiss); *Official Comm. of Unsecured Creditors v. Hudson United Bank (In re America's Hobby Center, Inc.)*, 223 B.R. 275, 282-88 (Bankr. S.D.N.Y. 1998) (holding that a colorability analysis is "much the same" as a 12(b)(6) analysis).

presented are colorable."). The standard, in other words, is a "relatively easy" one to meet. *Adelphia*, 330 B.R. at 376. The Court need not engage in an extensive merits review or conduct a mini-trial. *Id*. Rather, standing should be denied only if the claims are "facially defective" and would be "a hopeless fling." *Id*. at 376, 386.

26. Here, the claims in the Proposed Complaint are far more than just colorable; indeed, based on the facts adduced to date and the straightforward application of black letter principles of law, they are highly likely to succeed.

**(i) The Preference Claims are Colorable.**

27. The Proposed Complaint alleges that the Debtors transferred $13.7 million in bonus payments to the Insiders in September 2020 (less than three months before the Petition Date) and an additional $2.6 million in payments to the Insiders in April 2020 (within a year of the Petition Date). Because these transfers occurred during the preference period, were on account of antecedent debt, were made while the Debtors were insolvent, and enabled the transferees (all of whom were unsecured creditors) to receive far more than they would have in a chapter 7 liquidation, they are avoidable preferences. *See generally* 11 U.S.C. § 547(b); *Matter of Life Partners Holdings, Inc. v. Cowley*, 926 F.3d 103, 121 (5th Cir. 2019).[8]

(a) <u>The September Payments Were Preferential Transfers.</u>

28. The September Payments satisfy all of the relevant criteria of a preference.

29. The September Payments were all made on September 4, 2020, well within 90 days before the November 13 chapter 11 filing. For purposes of section 547, the Debtors are presumed

[8] In addition, the Committee has determined, based on its due diligence to date, that there are no viable affirmative defenses available to the putative defendants.

to have been insolvent at the time of these transfers because the payments were made within 90 days before the Petition Date. *See* 11 U.S.C. § 547(f).

30. The September Payments also constitute transfers on account of antecedent debt. An antecedent debt is an obligation that is created before the debtor makes the transfer. *See Southmark Corp. v. Schulte Roth & Zabel (In re Southmark Corp.)*, 88 F.3d 311, 316 (5th Cir. 1996). Before the September Payments were made, they were approved by Resolution by the Board on August 3, 2020, and the Debtors' obligation to pay them was memorialized in signed letter agreements between the Debtors and each of the Insiders, dated between August 25 and August 28, 2020. Both Board approval and the letter agreements created an antecedent debt on account of which the September Payments were ultimately made. *See In re Enron Corp.*, No. 01-16034, 2005 WL 6237551, at *18-19 (Bankr. S.D. Tex. Dec. 9, 2005) (bonuses were paid on account of antecedent debt where employees first signed bonus memoranda giving them the right to receive the bonuses); *see also In re PostRock Energy Corp.*, No. 16-11230-SAH, 2019 WL 137116, at *9 (Bankr. W.D. Okla. Jan. 8, 2019) ("[T]he 'debt' associated with the bonus and retention plans arise when the contract agreement or plan is formed and put in place rather than when the payment becomes due.").

31. Finally, the September Payments allowed the Insiders to recover far in excess of what they would recover on account of such claims in a chapter 7 liquidation because, absent the transfers, the Insiders' prepetition claims for compensation would have been unsecured, and unsecured creditors stand to receive far less than a full recovery in these cases.

(b) <u>The April Payments Were Preferential Transfers.</u>

32. The April Payments also satisfy all of the criteria for a preference.

33. First, the transfers occurred within the applicable look-back period. The transferees of the April Payments, as executive officers of the Debtors, were statutory "insiders" under section

101(31) of the Bankruptcy Code. 11 U.S.C. § 101(31)(B)(i)-(ii) ("The term 'insider' includes . . . if the debtor is a corporation . . . [an] officer of the debtor . . . ."). Thus, they were subject to the one-year look-back period under section 547(b)(4)(B) of the Bankruptcy Code, and the transfers – on April 3, 2020 – fell within that period.

34. In addition, the Debtors were insolvent at the time of the April Payments. As described above and in the Complaint, by the beginning of April, the oil and gas market was reeling in the face of the COVID-19 pandemic, GPOR's bonds were trading at a steep discount and the Debtors had already retained restructuring advisors in anticipation of a potential bankruptcy.

35. Like the September Payments, the April Payments to the Insiders were also made on account of antecedent debt. Prior to the date on which the April Payments were made (*i.e.*, April 3), the Compensation Committee approved the payments by Resolution on March 11, and the full Board approved them at a meeting on March 16. The Debtors also entered into signed letter agreements with each of the Insiders, dated as of March 27, 2020, which memorialized the Debtors' obligation to make the April Payments.

36. Finally, as a result of the April Payments, the Insiders received a full recovery on their compensation claims, which far exceeds the amount they would otherwise have received in a chapter 7 liquidation.

**(ii) The Actual Fraudulent Transfer Claims Are Colorable.**

37. Under the Bankruptcy Code, a transfer made within two years before a chapter 11 bankruptcy filing can be avoided if it is made by the debtor "with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted." 11 U.S.C. § 548(a)(1)(A).[9] As the statutory

[9] Oklahoma law, made applicable under section 544(b) of the Bankruptcy Code, is similar. Okla. Stat. tit. 24 § 116.

language, phrased in the disjunctive, makes clear, an intent to "hinder" or "delay" suffices, even in the absence of an intent to "defraud." *In re Enron Corp.*, 2005 WL 6237551, at *39-40 ("Either intent to defraud or to hinder or to delay suffices.") (citation omitted).

38. Intent may be inferred from circumstantial evidence. *See Matter of Wiggains*, 848 F.3d 655, 661 (5th Cir. 2017). Courts have considered a variety of factors or "badges of fraud" to determine whether actual intent exists. *See In re* Soza, 542 F.3d 1060, 1066-67 (5th Cir. 2008). Some of these badges, which are not exclusive and need not all be present to find actual fraud, include (i) the general chronology of events (such as whether the transfer was done just prior to the bankruptcy filing), (ii) whether the debtor was insolvent or became insolvent after the transfer, and (iii) whether the transfer was made to an insider. *In re Silver State Holdings, Assignee*, No. 19-41579, 2020 WL 7414434, at *18-19 (Bankr. N.D. Tex. Dec. 17, 2020). In *In re Enron Corp.*, the court found an intent to hinder or delay creditors where the debtor paid bonuses "in direct anticipation" of an imminent bankruptcy filing and "to avoid perceived delays" that would result from subjecting such payments to bankruptcy court approval. 2005 WL 6237551 at *39-40.

39. Here, the September Payments easily fit the criteria of an actual fraudulent transfer. To begin with, the transfers, approved in August 2020 and made in September 2020, fell well within the two-year look-back period in the Bankruptcy Code. 11 U.S.C. § 548(a)(1).

40. In addition, the Debtors' intent to hinder or delay their creditors is apparent from their own actions and admissions. The Debtors adopted the August 2020 Executive Compensation Plan in anticipation of bankruptcy. Each of the eight comparables their compensation consultant relied on were bankruptcy cases. Several terms of program itself – the performance metrics and the retention period – turned on bankruptcy events. Unlike earlier programs, the compensation was paid in cash, up front, creating the inference that the Debtors were trying to avoid subjecting

the payments to Court and creditor scrutiny. And if that inference were not obvious enough, the Company's compensation consultant advised the Compensation Committee that prepaying executive compensation before a bankruptcy filing would "eliminate risk of influence from courts [and] creditors" and "avoid potential uncertainties from court oversight." This is precisely the type of evidence that the *Enron* Court found probative of an intent to hinder or delay creditors. *See Enron*, 2005 WL 6237551 at *39 ("The payments were made in direct anticipation of the imminent filing of the Enron bankruptcy and to avoid the perceived delays in timely obtaining authority from the bankruptcy court, if any such authority could be obtained . . . .").

41. More recently, Judge Isgur has also been critical of debtors paying compensation to insiders before a bankruptcy filing to the extent such payments are intended to get around the requirements of section 503(c) of the Bankruptcy Code. In *Memorial Production Partners*, the Court explained that payments made to insiders prior to, and in anticipation of, a bankruptcy filing might constitute an "intentional intent to get around [section] 503(c)," which he would not approve. Transcript of Hearing at 334:2-3, *In re Memorial Prod. Partners, L.P.*, No. 17-30262 (Bankr. S.D. Tex. Apr. 4, 2017) (Isgur, J.) (attached as Exhibit C). Here, half of each of the September Payments made to the Insiders were retention-based and would have been prohibited by section 503(c) if the Debtors sought to pay them after the bankruptcy filing. Having specifically contemplated the benefits of making the September Payments before bankruptcy, the Debtors demonstrated an intent to hinder or delay creditors whom section 503(c) serves to protect.

**(iii) The Constructive Fraudulent Transfer Claims Are Colorable.**

42. A transfer is constructively fraudulent if the transferor "received less than a reasonably equivalent value in exchange for such transfer or obligation," and either:

> (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
>
> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
>
> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1)(B)(ii).[10]

43. Here, the September Payments were made for less than reasonably equivalent value and meet at least two of the four residual criteria: they were made while the Debtors were insolvent and they were made to and for the benefit of insiders under an employment contract and not in the ordinary course of business. The April Payments were likewise made for less than reasonably equivalent value at a time when the Debtors were insolvent.

(a) The September Payments Were Constructively Fraudulent.

*(1) The September Payments Were Made for Less Than Reasonably Equivalent Value.*

44. The Debtors did not receive "reasonably equivalent value" in exchange for the September Payments. The payments were made based on the Board's modifications to the terms of the 2020 Executive Compensation Plan, which converted equity and cash performance-based awards to all-cash awards based 50% on performance and 50% on retention. These revisions had

[10] Oklahoma law is similar (absent the fourth prong). *See* Okla. Stat. tit. 24 § 116.

the effect of increasing the cost of the awards to the Debtors and making them more easily attainable than those historically paid by the Debtors.

45. For example, while the Debtors previously issued incentive bonuses based on annual performance periods, the September Payments included $1.5 million of accelerated incentive payments under the March 2020 Executive Compensation Plan on account of just a four-month performance period (April-July 2020), which were not due to be paid under the March 2020 Executive Compensation Plan until the first quarter of 2021. The remaining $12.2 million paid as part of the September Payments were evenly split between (i) special retention payments additive to those paid in April that had not been fully earned yet and (ii) incentive payments that were now pre-paid on a quarterly basis (rather than paid annually at the end of the performance period), all-cash (rather than cash and stock-based) and were based on eligibility criteria [redacted]

46. The Debtors received little in exchange for making the September Payments on these modified terms. As revealed in discovery, neither the chairman of the Compensation Committee nor the Debtors' compensation consultant were aware of any Insider who had secured an offer for alternative employment, let alone an offer for equal or more pay than they were already receiving from the Debtors. Given the distressed state of the oil and gas industry at the time, it is unlikely that the Insiders would have received meaningful opportunities for alternative employment. *See In re Fruehauf Trailer Corp.*, 444 F.3d 203, 216 (3d Cir. 2006) (holding that retention payments made "in an industry with very few jobs to which employees might go" were not exchanged for reasonably equivalent value). As if that were not enough, Gulfport had already made retention payments to these Insiders in April 2020, requiring them to remain with the

Company through the end of March 2021. The Company did not seek to recover these payments from the Insiders when it revised the compensation program in August. Instead, in September, it paid the same Insiders much larger amounts to remain with the Company through the end of July 2021, or emergence from the restructuring, whichever occurred earlier. In effect, Gulfport paid twice for retention through March 2021 and dramatically overpaid for retention thereafter.

47. To the extent the September Payments were prepaid bonuses, they were made for no value at all, much less reasonably equivalent value. Where a transfer is made in exchange for an unperformed promise to provide services in the future, that is not "value" *at the time of the transfer*. *In re Simione*, 229 B.R. 329, 335 (Bankr. W.D. Pa. 1999) ("The purported consideration of future support and remodeling expense for the Note and Mortgage do not constitute value at the time of the Transfer."); *see also In re TSIC, Inc.*, 428 B.R. 103, 115 (Bankr. D. Del. 2010). Moreover, even any subsequent value is limited to the value provided prepetition because any postpetition advances are given to the debtor's *estate*, not to the *debtor*. *See In re Enron Corp.*, 2005 WL 6237551 at *20-21 (citing *In re Bellanca Aircraft Corp.*, 850 F.2d 1275 (8th Cir. 1988)). Here, the Insiders provided GPOR with no value at the time of the September Payments, but ostensibly gave subsequent value by remaining at the company and meeting performance metrics during the following months. However, such value is cut off as of the Petition Date (before the end of the performance period), and thus the value provided by the Insiders to the *debtor* was less than GPOR had contemplated in instituting the modified bonus plan.

48. Therefore, the Debtors received little (if any) value in exchange for the $13.7 million of extraordinary bonus payments to Insiders they made in September.

*(2) The September Payments Were Made While the Company Was Insolvent.*

49. The Debtors were also insolvent at the time of the September Payments, which were made less than three months before their bankruptcy filing and specifically in anticipation of the bankruptcy filing. As discussed above and in the Proposed Complaint, the Debtors were already preparing for a bankruptcy filing in September, they had delivered a going-concern qualification in their most recent Form 10-Q, and their debt was trading at steep discounts to par.

*(3) The September Payments to Insiders Were Not in the Ordinary Course of Business.*

50. In addition to being constructively fraudulent under section 548(a)(1)(B)(I) (addressing insolvency), the September Payments to Insiders were also constructively fraudulent under section 548(a)(1)(B)(IV). Under this provision, as noted, a transfer is constructively fraudulent if it is made for less than reasonably equivalent value and is (i) made to an insider, (ii) under an employment contract and (iii) not in the ordinary course of business. The purpose of the provision is "to enhance the recovery of avoidable transfers and excessive prepetition compensation, such as bonuses, paid to insiders of a debtor." H.R. Rep. No. 109-31, at 154 (2005).

51. The Insiders are statutory insiders under the Bankruptcy Code, and they received the September Payments pursuant to the revised 2020 Executive Compensation Plan and individual letter agreements with the Debtors. The September Payments were also made outside of the ordinary course given that they were paid in amounts higher than the Debtors' historical practice and pursuant to a compensation plan that was extraordinarily and materially modified in the middle of a performance period. *See In re TSIC, Inc.*, 428 B.R. 103, 116 (Bankr. D. Del. 2010) ("The term 'ordinary course of business' protects 'recurring, customary credit transactions that are incurred and paid in the ordinary course of business of the debtor and the debtor's transferee.'"). That they were also specifically paid in anticipation of bankruptcy – a non-ordinary course event

– further places the September Payments outside of the ordinary course. *See Enron*, 2005 WL 6237551 at *21 (denying ordinary course defense to preference claims on basis that payments were made "in direct anticipation of an imminent bankruptcy filing").

52. As such, the September Payments are constructively fraudulent under at least two prongs of section 548.

(b) The April Payments Were Constructively Fraudulent

53. The April Payments were also constructively fraudulent. As discussed above and in the Complaint, the Debtors were insolvent in April.

54. In addition, the Company received less than reasonably equivalent value for the payments. The April Payments consisted of retention-based payments made to the Insiders that were equal to 100% of their respective salaries. When the Compensation Committee approved the payments under the March 2020 Executive Compensation Program, there was no identifiable reason to do so. The retention component was purportedly adopted because of "uncertainty facing Gulfport and the broader market," yet the Compensation Committee cited no evidence of a risk that any Insiders received an alternative offer of employment – much less, that any such offer was for double the amount of their existing salaries. Moreover, when the payments were made in April 2020, in the early days of the COVID-19 pandemic, there were severe headwinds facing the oil and gas industry – particularly due to the onset of a global pandemic and an oil price war between Russia and Saudi Arabia – such that the Insiders' opportunities for alternative employment were likely scarce or nonexistent. The Company also had not made any retention payments in 2019, and paying any retention bonuses at all – much less, using them to double the salaries of the c-suite executives – was not consistent with GPOR's historical practice. Thus, there is nothing to suggest that the payments were reasonably necessary to retain the Insiders.

**B. The Litigation Is Likely To Benefit The Estate.**

55. The claims in the Proposed Complaint are not only colorable, but also likely to benefit the estate. The court need not conduct a "minitrial" on this issue, *see In re America's Hobby Center, Inc.*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998), but need only "assure itself that there is a sufficient likelihood of success to justify the anticipated delay and expense to the bankruptcy estate that initiation and continuation of litigation will likely produce." *Adelphia*, 330 B.R. at 374.

56. Here, a cost-benefit analysis clearly favors the pursuit of the claims. The claims, if successful, would bring up to $16.2 million into the estate, and recovery on at least some of the claims is highly likely. As discussed above, there is ample evidence that the Company structured these payments to avoid court and creditor scrutiny – providing a strong basis for a claim that they intentionally hindered or delayed their creditors. And on the facts uncovered to date, there seems to be little question that the executives were preferred over other creditors (and that no affirmative defenses to a preference apply).

57. To be sure, there are costs associated with litigation. However, the claims in the Proposed Complaint are not particularly complex and the expected value of the litigation (the product of the potential upside multiplied by the likelihood of success) far exceeds any reasonable projection of the costs of suit.[11] Moreover, the Committee has already conducted an investigation, including depositions and document discovery, which should streamline any future discovery that might be required. At a minimum, there is a "fair chance" that the benefits to be obtained from the litigation will outweigh the costs here, especially given that recovery on even a single claim

[11] The Committee is exploring whether to add breach of fiduciary duty claims to the Proposed Complaint. As noted in the Debtors' first-day insurance motion [Dkt. No. 16], the Debtors maintain directors' and officers' insurance policies with more than adequate coverage for the costs of defense and any potential judgment in this matter.

would be substantial. *See In re America's Hobby Center, Inc.*, 223 B.R. at 284. Thus, the Court should grant the Committee standing to pursue the Claims for the benefit of unsecured creditors.

**C. The Debtors Have Unjustifiably Refused to Bring the Claims.**

58. Although colorable causes of action exist that would maximize the value of the estate, the Debtors have failed to pursue these claims without good reason.

59. Under § 704(a)(1) of the Bankruptcy Code, a debtor-in-possession has an obligation to pursue estate causes of action if doing so would maximize the value of the estate. *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 246 (5th Cir. 1988). If a debtor unjustifiably "is unable or unwilling to fulfill its obligation" to assert claims to maximize the value of the estate, it is appropriate for a creditors' committee to be granted standing to pursue such claims. *Id.* at 252; *see also In re Cooper*, 405 B.R. 801, 810 (Bankr. N.D. Tex. 2009). Even where such refusal is "understandable" in view of a conflict of interest, the creditors' interest in collecting the property of the estate must prevail. *See La. World*, 858 F.2d at 253 ("While the debtor-in-possession's refusal was understandable given the grave conflict of interest implications, we cannot ignore the fact that the creditors' interests in seeing the property of the estate collected were not protected.").

60. The Debtors have refused to bring the Claims, instead agreeing to grant full releases to the Executives. The refusal is not justified because the Claims are strong, they have a high upside, and they are unlikely to be costly or time consuming to prosecute. Debtors will sometimes defend their refusal to sue by purporting to "settle" the claims instead. Here, the Debtors have not done so, but instead have simply determined to release them. *See* RSA Plan, Art. VIII.C. There is no justification for giving up colorable, and highly valuable claims, for no consideration. The Debtors can, and should, carve these claims out of the release under the Plan, which would eliminate any alleged risk to confirmation and emergence from letting the Claims proceed.

61. In light of the Debtors' unjustifiable refusal to bring the Claims, the Committee has met the standard for derivative standing under the Fifth Circuit's decision in *Louisiana World*.

## II. The Committee Should Be Given Exclusive Settlement Authority.

62. In addition to being granted authority to pursue the Claims, the Committee should also be granted exclusive authority to settle them.[12] The Debtors, who have asked this Court to release the Claims for no consideration, cannot be considered effective advocates for the Claims in either a litigation or settlement scenario. The Defendants are current executives of the Company and the Debtors are thus unlikely to aggressively pursue the Claims – and might even be conflicted from doing so. Indeed, the Debtors' current counsel likely signed off on the September Payments. Under the circumstances, if the Debtors maintain the authority to settle the Claims, they are likely to severely undervalue them. Thus, the Committee should be granted exclusive authority to settle the Avoidance Actions.

## CONCLUSION

63. For these reasons, the Committee respectfully requests that the Court enter an order (i) granting the Committee derivative standing to commence and prosecute the Claims on behalf of the Debtors' estates; and (ii) granting the Committee exclusive authority to settle such Claims on behalf of the Debtors' estates.

[12] *See e.g. In re Senior Living Properties, LLC*, 294 B.R. 698, 701 (Bankr. N.D. Tex. 2003) (noting the committee had exclusive authority to pursue and settle its alter ego claims); *In re Majestic Capital Ltd.*, No. 11-36225 (Bankr. S.D.N.Y. Dec. 12, 2011) [Dkt. No. 211] (order granting committee exclusive authority to pursue and settle claims); *In re Evergreen Solar, Inc.*, No. 11-12590 (Bankr. D. Del. Oct. 28, 2011) [Dkt. No. 382] (same); *In re Old CarCo LLC*, No. 09-50002 (Bankr. S.D.N.Y. Aug. 13, 2009) [Dkt. No. 5151] (same).

Dated: March 10, 2021
Houston, Texas

Respectfully submitted,

**NORTON ROSE FULBRIGHT US LLP**

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*Counsel for the Official Committee Of Unsecured Creditors of Gulfport Energy Corporation, et al.*

**CERTIFICATE OF SERVICE**

I certify that on March 10, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Julie Harrison*
Julie Harrison

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

| | |
|---|---|
| *In re*: | Chapter 11 |
| GULFPORT ENERGY CORPORATION, *et al.*, | Case No. 20-35562 (DRJ) |
| Debtors.[1] | (Jointly Administered) |

**[PROPOSED] ORDER GRANTING STANDING AND EXCLUSIVE SETTLEMENT AUTHORITY TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PROSECUTE CERTAIN CLAIMS AND CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES**
**[Relates to Dkt. No. __]**

Upon the Motion ("Motion") of the Official Committee of Unsecured Creditors ("Committee") of Gulfport Energy Corporation and its affiliated debtors (collectively, the "Debtors") in the above-captioned chapter 11 cases ("Cases"), seeking entry of an order (this "Order"), under sections 105(a), 1103(c), and 1109(b) of the Bankruptcy Code, authorizing the Committee to pursue the Claims and the Proposed Complaint on behalf of the Debtors, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter under 28 U.S.C. § 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in the Court is proper under 28 U.S.C. §§ 1408 and 1409; and the Court having found that Committee's notice of the Motion was appropriate under the circumstances and no other notice need be provided and the Court having reviewed and considered the Motion; and the Court having determined that the

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

The Motion is GRANTED as set forth herein.

1. To the extent required, the Committee is granted standing to pursue the Claims and the Proposed Complaint on behalf of the Debtors.
2. The Committee is granted exclusive settlement authority with respect to the Claims.
3. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

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

| | |
|---|---|
| In re:<br><br>GULFPORT ENERGY CORPORATION, *et al.*,<br><br>Debtors. | Case No. 20-35562 (DRJ)<br>Chapter 11<br><br>Adversary Proceeding<br><br>No. 21-_____ |
| OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estate of Gulfport Energy Corporation,<br><br>Plaintiff,<br><br>v.<br><br>DAVID WOOD,<br>DONNIE MOORE,<br>PATRICK CRAINE,<br>QUENTIN HICKS,<br>and<br>MICHAEL SLUITER<br><br>Defendants. | Jointly Administered |

**[PROPOSED] COMPLAINT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

The Official Committee of Unsecured Creditors (the "**Committee**" or "**Plaintiff**") of the above-captioned debtors and debtors-in-possession (the "**Debtors**" or "**Company**"), having been vested with standing to sue on behalf of the estate of Gulfport Energy Corporation ("**GPOR**" or "**Gulfport**"), files this complaint against the Defendants and alleges as follows:

## NATURE OF ACTION

1. This is an action to avoid and recover millions of dollars of cash payments made by GPOR to or for the benefit of its executive officers as it was preparing to enter bankruptcy. These bonus payments, most of which were made little more than two months before the Debtors'

bankruptcy filings, not only dwarfed the incentive compensation the executives had received in 2019 – in some cases, by a factor of 10 times or more – they were enormous in absolute terms – over $16 million in cash paid to five insider executives. Such payments preferred the insiders who oversaw GPOR's collapse over other unsecured creditors (who the Debtors expect to receive only pennies on the dollar), provided the insiders with compensation far in excess of the value of the services they actually rendered to prepetition GPOR, and were transparently designed to avoid the scrutiny of the bankruptcy process. Accordingly, the transfers constituted, as applicable, avoidable preferences under 11 U.S.C. § 547 and fraudulent transfers under 11 U.S.C. §§ 548 and 544 and applicable state law, and are recoverable for the benefit of the GPOR estate pursuant to 11 U.S.C. § 550 and the applicable state law analogue.

## JURISDICTION

2. This is an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

3. The Court has exclusive jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Committee has standing to pursue this Complaint under section 1103 of the Bankruptcy Code and the *Order Granting Motion of Official Committee of Unsecured Creditors for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* [ECF No. ___].

## PARTIES

6. On November 27, 2020, the United States Trustee for the Southern District of Texas formed the Committee in these chapter 11 cases. *See Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 248]. The Committee currently consists of six members: (i) MPLX LP; (ii) Pioneer Drilling Services, Ltd.; (iii) Bryon LeFort, Inc.; (iv) REME LLC, d/b/a Leam Drilling Services; (v) Stallion Oilfield Construction Corporation; and (vi) UMB Bank, N.A. (solely as successor indenture trustee for certain senior noteholders). The Committee is vested with, among other things, the powers described in section 1103 of the Bankruptcy Code, including the power to investigate the acts, conduct, assets, liabilities and financial condition of the Debtors.

7. Upon information and belief, defendant David Wood ("**Wood**") is an individual who is domiciled in Oklahoma and works in Oklahoma.

8. At all relevant times, Wood was the Company's Chief Executive Officer and a member of the Company's Board of Directors, classified by the Company as an Executive Officer in the Company's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

9. Wood was an insider of the Debtors as defined in section 101(31) of the Bankruptcy Code.

10. Upon information and belief, defendant Donnie Moore ("**Moore**") is an individual who is domiciled in Oklahoma and works in Oklahoma.

11. At all relevant times, Moore was the Company's Chief Operating Officer, classified by the Company as an Executive Officer in the Company's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

12. Moore was an insider of the Debtors as defined in section 101(31) of the Bankruptcy Code.

13. Upon information and belief, defendant Patrick Craine ("**Craine**") is an individual who is domiciled in Oklahoma and works in Oklahoma.

14. At all relevant times, Craine was the Company's General Counsel and Secretary, classified by the Company as an Executive Officer in the Company's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

15. Craine was an insider of the Debtors as defined in section 101(31) of the Bankruptcy Code.

16. Upon information and belief, defendant Quentin Hicks ("**Hicks**") is an individual who is domiciled in Oklahoma and works in Oklahoma.

17. At all relevant times, Hicks was the Company's Chief Financial Officer, classified by the Company as an Executive Officer in the Company's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

18. Hicks was an insider of the Debtors as defined in section 101(31) of the Bankruptcy Code.

19. Upon information and belief, defendant Michael Sluiter ("**Sluiter**") is an individual who is domiciled in Oklahoma and works in Oklahoma.

20. At all relevant times, Sluiter was the Company's Senior Vice President of Reservoir Engineering, classified by the Company as an Executive Officer in the Company's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

21. Sluiter was an insider of the Debtors as defined in section 101(31) of the Bankruptcy Code.

22. The defendants listed in the foregoing paragraphs 7-21 are collectively referred to as the "**Defendants**" or "**Insiders**."

23. This Court may exercise personal jurisdiction over the Defendants pursuant to Fed. R. Bankr. P. 7004 and Fed. R. Civ. P. 4(k)(1)(C).

## BACKGROUND

24. On November 13, 2020 (the "**Petition Date**"), the Debtors filed petitions in the United States Bankruptcy Court for the Southern District of Texas for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

25. In the years preceding the Debtors' bankruptcy filing, including in 2020, they maintained executive compensation programs, which were typically overseen and approved by the compensation committee (the "**Compensation Committee**") of the Debtors' board of directors (the "**Board**").

26. In February 2020, the Compensation Committee met to assess the Insiders entitled to short-term incentive awards under the Company's 2019 executive compensation plan. These awards were determined based on [redacted]

27. The year 2019 ended in an environment of falling commodity prices. [redacted]

28. [redacted]

29. The Company ultimately paid a total of $1,068,325 in short-term incentive payments to the Insiders under the 2019 program.

**A. The March 2020 Executive Compensation Program and Payments Thereunder**

30. On March 11, 2020, the Compensation Committee approved the Debtors' 2020 executive compensation program (the "**March 2020 Executive Compensation Program**"). On March 16, 2020, the Board adopted the March 2020 Executive Compensation Program and approved both the plan and form of cash award agreement each Insider was entitled to enter into. On March 27, 2020, the Company entered into individual letter agreements with each of the Insiders, establishing the terms for the payment of their respective awards.

**(i) Features of the March Program**

31. The March 2020 Executive Compensation Program included new features designed to benefit the Insiders. First, the Insiders were awarded a cash retention payment equal to 100% of their base salaries. The March 2020 retention award was prepaid (*i.e.*, paid at the outset of the retention period rather than its conclusion), but was subject to clawback by GPOR if the Insider departed or was terminated for non-qualifying reasons less than one year after the date of the award. Gulfport had not made retention-based awards in 2019.

32. The Compensation Committee claimed to have adopted this retention component because of "uncertainty facing Gulfport and the broader market," but it cited no evidence of a risk that the Insiders might leave the Company.

33. As of March 2020, the chairman of the Compensation Committee knew of only one member of management (an individual who is not among the five Defendants) who had recently received an offer for alternative employment.

34. The March 2020 Executive Compensation Program also included a short-term incentive award, which was to be paid in cash, subject to the satisfaction of certain performance metrics over a one-year period. The short-term incentive award was not payable until the first quarter of 2021, after the Company's satisfaction of the metrics was assessed at the conclusion of the one-year performance period.

35. The March 2020 Executive Compensation Program also included a long-term incentive component comprised of both a cash award and time-vested restricted stock. The cash award was conditioned on meeting certain metrics over a one-year performance period and was payable in three equal annual installments, beginning in 2021. The restricted stock award was spread proportionally among the Insiders and payable on the same timeline as the cash award.

**(ii) The Revised Performance Metrics under the March Program**

36. In addition, the March 2020 Executive Compensation Program revised the metrics for the short-term incentive program. [redacted]

**(iii) The April Payments to Insiders under the March Program**

37. Effective as of March 27, 2020, the Company entered into individual retention agreements with each of the Insiders, establishing the terms for the payment of their retention awards.

38. On or about April 3, 2020, the Company paid the Insiders a total of $2,559,000 in retention payments for fiscal year 2020 pursuant to the March 2020 Executive Compensation Program (the "**April Payments**"). The payments were solely based on retention, as the remaining short-term incentive award and 2020 portion of the long-term incentive award were to be paid after year-end.

39. The April Payments made to each Defendant are set forth in the following table:

| **April Payments** | |
|---|---|
| **Insider** | **March 2020 Executive Compensation Program** *Retention Payments* |
| David Wood | $834,000 |
| Donnie Moore | $505,000 |
| Patrick Craine | $435,000 |
| Quentin Hicks | $425,000 |
| Michael Sluiter | $360,000 |
| **Total** | **$2,559,000** |

## B. The Termination of the March 2020 Executive Compensation Program

40. In late July 2020, less than five months after adoption of the March 2020 Executive Compensation Program, the Compensation Committee met to consider revising the terms of its executive compensation program in light of the Company's likely bankruptcy.

41. At the invitation of the Compensation Committee, Pearl Meyer & Partners LLC ("**PMP**"), Gulfport's compensation consultant, presented a report containing proposed terms for a revised executive compensation program.

42. After two meetings on July 31 and August 3, 2020, the Compensation Committee adopted PMP's proposal. Consistent with that proposal, the Compensation Committee recommended that the Board (i) terminate the short term incentive component of the March 2020

Executive Compensation Program, and (ii) adopt a new 2020 executive compensation program (the "**August 2020 Executive Compensation Program**"). Board Resolutions approving these measures were adopted on August 4, 2020.

43. In connection with its termination of the short term incentive component of the March 2020 Executive Compensation Program, Gulfport agreed to pay prorated short-term incentive awards for the preceding four-month period (April through July). The Insiders were awarded $1,480,787 in incentive-based payments for this four-month period.

## C. The August 2020 Executive Compensation Program

44. The August 2020 Executive Compensation Program called for the Debtors to make a cash "incentive payment" to each of the Insiders. While referred to as an "incentive payment," the program was subdivided into equal retention-based and performance-based components.

### (i) Features of the August Program

45. The structure of the August 2020 Executive Compensation Program was particularly advantageous to the Insiders, for a number of reasons.

46. Unlike earlier Gulfport executive compensation programs, the "incentive payment" under the program was payable entirely in cash; no portion was payable in stock.

47. Even though each of the Insiders had already received retention payments in April 2020 and were obligated to stay at Gulfport through the end of March 2021, the August 2020 Executive Compensation Program awarded them additional payments to remain at the Company until the earlier of, among other things, July 31, 2021 or emergence from bankruptcy (*i.e.*, at most, an additional four months of retention).

48. Both the retention and incentive components of the August 2020 Executive Compensation Program were to be "pre-paid" – or paid in full, in cash upon the making of the

award. These pre-paid awards were subject to "clawback" if the recipients (i) left Gulfport for a non-qualifying reason before the end of the retention period or (ii) Gulfport failed to meet performance metrics established by the Compensation Committee.

49. Unlike earlier Gulfport executive compensation awards, no portion of the awards under the August 2020 Executive Compensation Program provided for incentive compensation to be paid over time or after the completion of a performance period.

50. Upon information and belief, Gulfport had not previously pre-paid incentive compensation to executives, and had only adopted pre-paid retention awards in the March 2020 Executive Compensation Program.

**(ii) The Revised Performance Metrics under the August Program**

51. The Compensation Committee approved performance metrics for the August 2020 Executive Compensation Program on August 10, 2020.

52. [redacted]

53. These metrics were to be judged over five unequal performance periods: August and September 2020, October through December 2020, January through March 2021, April through June 2021, and July 2021.

54. Upon information and belief, Gulfport had not previously based incentive compensation on irregular performance periods or performance periods of less than one year.

**(iii) The Bankruptcy Focus of the Compensation Program**

55. Gulfport adopted the August 2020 Executive Compensation Program with a view towards Gulfport's impending bankruptcy.

56. Each of the eight comparables PMP cited as the basis for the executive compensation proposal adopted by the Compensation Committee had filed for bankruptcy protection: Alta Mesa Resources, Whiting Petroleum, Chesapeake Energy, Chapparal Energy, California Resources, Denbury Resources, Oasis Petroleum, and Extraction Oil & Gas.

57. The new and enlarged retention awards were expressly earned after one year *or upon emergence from bankruptcy*, whichever occurred earlier.

58. [redacted]

59. Most significantly, both the retention and incentive components of the August 2020 awards were prepaid in full.

60. At the direction of counsel, PMP informed the Compensation Committee that such prepayment of awards "eliminates risk of influence from courts, creditors, etc., as well as the potential expense of litigation in restructuring to approve insider incentive compensation."

61. In fact, at the direction of counsel, PMP advised the Compensation Committee that prepayment of all compensation was one of the "pros" of the revised program because it "[a]voids potential uncertainties from court oversight."

**D. The September Payments under the March and August Compensation Programs**

62. On or about August 25, 2020, GPOR entered into letter agreements with each of the Insiders memorializing the terms of their potential awards under the August 2020 Executive Compensation Program and obligating GPOR to comply with such terms.

63. On September 4, 2020, the Company paid the Defendants a total of (i) $1,480,787 in incentive-based payments for performance during the prior four-month period pursuant to the March 2020 Executive Compensation Program; and (ii) $12,205,000 in prepaid incentive- and retention-based payments pursuant to the August 2020 Executive Compensation Program (collectively, the "**September Payments**").

64. The September Payments made to each Defendant are set forth in the following table:

| **September Payments** | | | |
|---|---|---|---|
| **Insider** | **March 2020 Executive Compensation Program** *(Incentive Payments)* | **August 2020 Executive Compensation Program** *(Retention & Incentive Payments)* | **Total September Payments** |
| David Wood | $608,363 | $5,212,500 | $5,820,863 |
| Donnie Moore | $294,699 | $2,272,500 | $2,567,199 |
| Patrick Craine | $228,464 | $1,914,000 | $2,142,464 |
| Quentin Hicks | $223,212 | $1,870,000 | $2,093,212 |
| Michael Sluiter | $126,049 | $936,000 | $1,062,049 |
| **Total** | $1,480,787 | $12,205,000 | **$13,685,787** |

**E. The Lack of Reasonably Equivalent Value**

**(i) The Lack of Reasonably Equivalent Value for the April Payments**

65. The April Payments consisted of retention-based payments made to the Insiders that were equal to 100% of their respective salaries. When the Compensation Committee approved

the payments under the March 2020 Executive Compensation Program, there was no identifiable reason to do so. The retention component was purportedly adopted because of "uncertainty facing Gulfport and the broader market," yet the Compensation Committee cited no evidence of a risk that any Insiders received an alternative offer of employment – much less, that any such offer was for double the amount of their existing salaries.

66. Moreover, when the payments were made in April 2020, there were severe headwinds facing the oil and gas industry – particularly due to the onset of a global pandemic and an oil price war between Russia and Saudi Arabia – such that the Insiders' opportunities for alternative employment were likely scarce or nonexistent.

67. The Company also had not made any retention payments in 2019. And paying any retention bonuses at all – much less, using them to double the salaries of the c-suite executives – was not consistent with GPOR's historical practice. Thus, there is nothing to suggest that the Insiders expected to receive the payments or that the payments were otherwise reasonably necessary to retain them.

**(ii) The Lack of Reasonably Equivalent Value for the September Payments**

68. Because each of the Insiders had already received $2.6 million in retention payments in April that obligated them to stay at Gulfport through the end of March 2021, the retention portion of the September Payments (*i.e.*, half of the September Payments made under the August 2020 Executive Compensation Program) gave them an additional $6.1 million to remain at the Company for, at most, an additional four months (and less if the Debtors emerged from bankruptcy before the end of July). In other words, after receiving no retention payments in 2019, the Insiders received more than $8.6 million for a 12-16 month retention period in the months leading up to the Company's bankruptcy filing.

69. In addition, the Company paid the Insiders approximately $7.6 million in incentive payments less than three months before filing for bankruptcy – *i.e.*, $1.5 million paid under the March 2020 Executive Compensation Program and $6.1 million paid under the August 2020 Executive Compensation Program. These payments were more than seven times larger than the incentive awards the Company paid to the Insiders in 2019.

70. Neither the chairman of the Compensation Committee nor the Debtors' compensation consultant was aware of any Insider who had competing job offers or had threatened to leave when it approved the August 2020 Executive Compensation Program.

71. GPOR also failed to receive any value, much less "reasonably equivalent value," for the incentive component, which was simply a pre-payment for future services (worth nothing at the time of the transfer) and based on performance metrics that were modified outside of the ordinary course to make them easier to achieve.

72. Once the Company filed for bankruptcy, the Insiders would work for and provide services to the Gulfport estate, not prepetition Gulfport.

73. Thus, prepetition Gulfport received only the promise that the Insiders would continue to work for it for a few more months, something it had already paid for.

## F. GPOR's Insolvency

### (i) GPOR's Insolvency in April 2020

74. GPOR was insolvent when it made the April Payments on April 3, 2020.

75. GPOR had already retained both Kirkland & Ellis LLP and Perella Weinberg Partners and was considering strategic alternatives, including bankruptcy.

76. The Debtors' latest publicly disclosed net asset value ("**NAV**"), the standardized measure reported only annually, as of December 31, 2019, showed a mere $1.7 billion of NAV,

This NAV was less than the face amount of the Bonds, let alone all of the Debtors' relevant liabilities. *See* GPOR Form 10-K dated February 27, 2020 at 6.

77. GPOR's Form 10-Q dated May 8, 2020 stated at 11 that "[a]t March 31, 2020, the carrying value of the outstanding debt represented by the Notes was approximately $1.8 billion. Based on the quoted market prices (Level 1), the fair value of the Notes was determine to be approximately $447.4 million at March 31, 2020."

78. As a result of falling prices of oil and natural gas, the Company had also already recorded book value impairments of its oil and natural gas property of $553 million for the three months ended March 31, 2020. *See* GPOR Form 10-Q dated May 8, 2020 at 3.

**(ii) GPOR's Insolvency in September 2020**

79. GPOR was insolvent when it made the September Payments on September 4, 2020.

80. Since April 2020, GPOR's insolvency had deepened.

81. GPOR admitted that it was likely to receive "qualified audit opinion," that such an opinion could result in an event of default under its revolving credit facility, and that "there [was] substantial doubt about [GPOR's] ability to continue as a going concern." *See* GPOR Form 10-Q dated August 8, 2020 at 8. GPOR acknowledged lacking access to adequate capital: "[d]ecreased demand for oil and natural gas as a result of the COVID-19 pandemic and the accompanying decrease in commodity prices has significantly reduced the Debtors' ability to access capital markets and to refinance existing indebtedness." *Id*. at 7-8.

82. GPOR continued bankruptcy planning with its legal and financial restructuring advisors, including through the design and adoption of the August 2020 Executive Compensation Program with explicit bankruptcy-specific metrics.

**G. The Debtors' Chapter 11 Plan and Projected Recoveries Thereunder**

83. On November 24, 2020, the Debtors filed a chapter 11 plan (the "**Plan**"), which purports to provide unsecured claims against GPOR (in Class 4A) with a recovery between 3.6% and 19.8% on account of their claims. *See Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Gulfport Energy Corporation and Its Debtor Subsidiaries* [Dkt. No. 817, at 9].

84. Had the Insiders not received the April Payments or the September Payments, they would have held unsecured claims against GPOR in Class 4A for the amount of the payments they received, with an estimated recovery of between 3.6% and 19.8%.

85. By making the April Payments and the September Payments, Gulfport enabled the Insiders to receive payment in full on their claims for retention and incentive compensation. The result is that they received more of the compensation owed to them than they would have received if the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code.

**COUNT ONE**
**(Preferential Transfers – September Payments -- 11 U.S.C §§ 547 & 550)**

**(Against all Defendants)**

86. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

87. GPOR made payments in cash to or for the benefit of the Defendants in the form of the September Payments, totaling $13,685,787.

88. The September Payments were transfers of property, or an interest in property, of GPOR.

89. The September Payments were made within 90 days before the Petition Date.

90. The September Payments, which were made in satisfaction of existing obligations under the August 2020 Executive Compensation Program, were made for or on account of an antecedent debt owed by GPOR to the Defendants before the September Payments were made.

91. GPOR is presumed to have been insolvent when the September Payments were made pursuant to section 547(f) of the Bankruptcy Code (and, as discussed above, GPOR was, in fact, insolvent).

92. The September Payments enabled the Defendants to receive more than they would have received if (i) the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code, (ii) the September Payments had not been made and (iii) the Defendants were paid in accordance with the Bankruptcy Code. The Defendants were unsecured creditors who, like GPOR's other unsecured creditors, would have received far less than payment in full.

93. The September Payments constitute avoidable preferences within the meaning of 11 U.S.C. § 547.

94. As a result of the foregoing, the Plaintiff is entitled to a judgment against the Defendants: (i) avoiding the September Payments; (ii) directing the September Payments be set aside; and (iii) recovering the September Payments pursuant to 11 U.S.C. § 550.

**COUNT TWO**
**(Preferential Transfers – April Payments -- 11 U.S.C §§ 547 & 550)**

**(Against all Defendants)**

95. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

96. GPOR made payments in cash to or for the benefit of the Defendants in the form of the April Payments, totaling $2,559,000.

97. The April Payments were transfers of property, or an interest in property, of GPOR.

98. Each of the Defendants was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), and/or (iii).

99. The April Payments were made between 90 days and one year before the Petition Date.

100. The April Payments were made for or on account of an antecedent debt owed by GPOR to the Defendants before the April Payments were made.

101. The April Payments were made while GPOR was insolvent.

102. The April Payments enabled the Defendants to receive more than they would have received if (i) the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code, (ii) the April Payments had not been made and (iii) the Defendants were paid in accordance with the Bankruptcy Code.

103. The April Payments constitute avoidable preferences within the meaning of 11 U.S.C. § 547.

104. As a result of the foregoing, the Plaintiff is entitled to a judgment against the Defendants: (i) avoiding the April Payments; (ii) directing the April Payments be set aside; and (iii) recovering the April Payments pursuant to 11 U.S.C. § 550.

**COUNT THREE**

**(Actual Fraudulent Transfers – September Payments – 11 U.S.C §§ 548(a)(1)(A) & 550)**

**(Against all Defendants)**

105. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

106. Within two years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the September Payments, totaling $13,685,787.

107. The September Payments constitute transfers of property of GPOR.

108. The September Payments were made with intent to hinder or delay creditors.

109. Not only were the September amounts prepaid in full in a transparent effort to avoid court and creditor scrutiny, but Gulfport's advisors expressly advised that prepaid awards would "eliminate the risk of influence from courts [and] creditors" and "avoid potential uncertainties from court oversight."

110. As a result of the foregoing, the Plaintiff is entitled to a judgment against the Defendants: (a) avoiding the September Payments; (b) directing the September Payments be set aside; and (c) recovering the September Payments pursuant to 11 U.S.C. § 550.

**COUNT FOUR**
**(Actual Fraudulent Transfers – September Payments – 11 U.S.C § 544(b); Okla. Stat. tit. 24 § 112 *et seq.*)**

**(Against all Defendants)**

111. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

112. Pursuant to section 544 of the Bankruptcy Code, the Plaintiff brings this claim on behalf of the Debtors' estate and its creditors under the Oklahoma Uniform Fraudulent Transfer Act ("**OUFTA**"), Okla. Stat. tit. 24 § 112 *et seq.*.

113. Within four years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the September Payments, totaling $13,685,787.

114. The September Payments constitute transfers of property of GPOR.

115. The September Payments were made with intent to hinder or delay creditors.

116. Not only were the September amounts prepaid in full in a transparent effort to avoid court and creditor scrutiny, but Gulfport's advisors expressly advised that prepaid awards would

"eliminate the risk of influence from courts [and] creditors" and "avoid potential uncertainties from court oversight."

117. Each of the Defendants was an "insider" as that term is defined in OUFTA § 113(7)(b)(1), (2) and/or (3).

118. As a result of the forgoing, the Plaintiff is entitled to recover the September Payments from the Defendants. OUFTA § 119.

**COUNT FIVE**
**(Constructive Fraudulent Transfers – September Payments – 11 U.S.C §§ 548(B)(ii)(I), (IV) & 550)**

**(Against all Defendants)**

119. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

120. Within two years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the September Payments, totaling $13,685,787.

121. The September Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk, the fact that the bonuses were prepaid on account of future services and that the composition of, and metrics for obtaining, the bonuses were much more favorable to the Defendants than the Company's historical bonuses.

122. The September Payments constitute transfers of property of GPOR.

123. The September Payments were made while GPOR was insolvent.

124. Each of the Defendants was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), and/or (iii).

125. The September Payments were made pursuant to the terms of the GPOR's executive compensation programs and/or letter agreements between GPOR and the Defendants memorializing the specific awards to be paid under the compensation programs.

126. The September Payments were made outside of the ordinary course because a portion was paid based on a pro-rated performance period and the remainder was pre-paid for future shortened performance periods and was based on an unusual mid-year modification of an existing compensation program in contemplation of a bankruptcy filing.

127. Thus, the September Payments constitute avoidable fraudulent transfers within the meaning of 11 U.S.C. §§ 548(a)(1)(B)(ii)(I) and (IV) because they were (i) made for less than reasonably equivalent value, and (ii) both (a) made at a time when the Company was insolvent and (b) paid to insiders under employment contracts outside of the ordinary course.

**COUNT SIX**
**(Constructive Fraudulent Transfers – September Payments – 11 U.S.C § 544(b); Okla. Stat. tit. 24 § 112 *et seq.*)**

**(Against all Defendants)**

128. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

129. Pursuant to section 544 of the Bankruptcy Code, the Plaintiff brings this claim on behalf of the Debtors' estate and its creditors under OUFTA.

130. Within four years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the September Payments, totaling $13,685,787.

131. The September Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk, the fact that the bonuses were

prepaid on account of future services and that the composition of, and metrics for obtaining, the bonuses were much more favorable to the Defendants than the Company's historical bonuses.

132. The September Payments constitute transfers of property of GPOR.

133. The September Payments were made while GPOR was insolvent or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

134. As a result of the forgoing, the Plaintiff is entitled to recover the September Payments from the Defendants. OUFTA § 119.

**COUNT SEVEN**
**(Constructive Fraudulent Transfers – April Payments –**
**11 U.S.C §§ 548(B)(ii)(I), (IV) & 550)**

**(Against all Defendants)**

135. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

136. Within two years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the April Payments, totaling $2,559,000.

137. The April Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk.

138. The April Payments constitute transfers of property of GPOR.

139. The April Payments were made while GPOR was insolvent.

140. Each of the Defendants was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), and/or (iii).

141. The April Payments were made pursuant to the terms of the GPOR's executive compensation programs and/or letter agreements between GPOR and the Defendants memorializing the specific awards to be paid under the compensation program.

142. The April Payments were made outside of the ordinary course because the Company did not historically make retention-based payments to its employees.

143. Thus, the April Payments constitute avoidable fraudulent transfers within the meaning of 11 U.S.C. §§ 548(a)(1)(B)(ii)(I) and (IV) because they were (i) made for less than reasonably equivalent value, and (ii) both (a) made at a time when the Company was insolvent and (b) paid to insiders under employment contracts outside of the ordinary course.

**COUNT EIGHT**
**(Constructive Fraudulent Transfers – April Payments – 11 U.S.C § 544(b); Okla. Stat. tit. 24 § 112 *et seq.*)**

**(Against all Defendants)**

144. Plaintiff repeats and realleges each and every allegation set forth in each preceding paragraph of the Complaint as though set forth fully again in support of this claim for relief.

145. Pursuant to section 544 of the Bankruptcy Code, the Plaintiff brings this claim on behalf of the Debtors' estate and its creditors under OUFTA.

146. Within four years of the Petition Date, GPOR made transfers to or on behalf of the Defendants in the form of the April Payments, totaling $2,559,000.

147. The April Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk.

148. The April Payments constitute transfers of property of GPOR.

149. The April Payments were made while GPOR was insolvent or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

150. As a result of the forgoing, the Plaintiff is entitled to recover the April Payments from the Defendants. OUFTA § 119.

## RESERVATION OF RIGHTS

151. The Plaintiff hereby specifically reserves the right to bring any and all causes of action that it may maintain against the Defendants including, without limitation, causes of action arising out of the same transaction(s) set forth herein, to the extent discovery in this action or further investigation by the Plaintiff reveals such further causes of action.

## PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court enter judgment in favor of the Plaintiff and against the Defendants as follows:

(1) On Count One, a judgment in the amount of $13,685,787;

(2) On Count Two, a judgment in the amount of $2,559,000;

(3) On Count Three, a judgment in the amount of $13,685,787;

(4) On Count Four, a judgment in the amount of $13,685,787;

(5) On Count Five, a judgment in the amount of $13,685,787;

(6) On Count Six, a judgment in the amount of $13,685,787;

(7) On Count Seven, a judgment in the amount of $2,559,000;

(8) On Count Eight, a judgment in the amount of $2,559,000;

(9) Any and all pre- and post-judgment interest due; and

(10) Such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

Houston, Texas

Respectfully submitted,

**BY:** _____

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*Counsel for the Official Committee Of Unsecured Creditors of Gulfport Energy Corporation, et al.*

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

| | | |
|---|---|---|
| IN RE: | § | CASE NO. 17-30262-H1-11 |
| | § | HOUSTON, TEXAS |
| MEMORIAL PRODUCTION PARTNERS, | § | TUESDAY, |
| LP, | § | APRIL 4, 2017 |
| DEBTOR. | § | 10:03 A.M. TO 8:34 P.M. |

MOTION HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

COURT RECORDER: S. ARNOW

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until 4:00 o'clock in the morning and I'm going to make a bad decision. And I don't think anybody wants that to happen. And just --

UNIDENTIFIED SPEAKER: Understood.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Tell your clients they may need to move the milestone a little bit. And if they can't, they can't. And if the case fails, the case fails. I'm just not going to rush into a bad decision. I know you're not asking me to do that, but that's just --

UNIDENTIFIED SPEAKER: I certainly am not asking you to do that, Your Honor.

THE COURT: That's just the practical side of where we are.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: All right. We'll continue the hearing till 9:15 on Friday the 14th.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: I want you all to think about something. The likelihood that it's appropriate to approve a plan that includes releases for management that in the best possible light, structured around prohibitions in the Bankruptcy Code, is very minimal. You all need to be prepared if we do confirm to explain to me how you think it would be appropriate to give releases of that roughly $5-1/2 million that got paid

immediately before and during the plan. You may be able to do that. It's also possible that I that will simply be a block to confirmation.

I'm telling everybody this so you will know to deal with it. If we end up not confirming I don't think that that helps your client very much either. If that $5 million is going to come back and if it were allocated -- it's not needed in the plan, it's not needed for the forecast and it's not needed by the creditors. It could go to equity and I would allow that if that would restore integrity to the process.

And I got it that we're not done with the testimony. I got it you all may make good arguments. I'm just telling everybody that it's a big issue to me. And it seems like there's now some things on the table that maybe people could talk about better. It is not a big issue to me to try and get a deal done. I'm just saying that may be an outcome that you all would want to do. If I can't confirm I just won't confirm. And if I don't confirm, you know, then God bless your client, they're going to own Memorial Production Partners' assets, right?

UNIDENTIFIED SPEAKER: No, we're the senior secured creditors, we're good.

THE COURT: Well some --

(Indiscernible comments.)

MR. PEREZ: Somebody else has filed a motion non pro

tunc to get the things approved and have that or --

THE COURT: I'm never going to approve an intentional intent to get around 503(c), which is what the witness said.

MR. PEREZ: And, Your Honor, with all due respect, I believe that when -- if you were to hear all of the testimony that that might have been one way to look at it. But I don't think that was the --

THE COURT: When he testified about it again he said it was one of multiple reasons they did it but it was a reason.

MR. PEREZ: Correct.

THE COURT: It's a problem. It's likely that management -- I'm just trying to tell everybody so we're not there on Friday and you're all worrying about this? You all may not know how much it's bothering me. It bothers the hell out of me.

UNIDENTIFIED SPEAKER: Understood Your Honor.

THE COURT: And the creditors don't need that money. They've made their deal. That may be enough to make the deal otherwise. It may be money that's coming back anyway. That may also get them a release. They pay for it.

So, there's an awful lot there that people can think about. People don't have to do a deal. But if anybody thinks I'm going to go confirm a plan just because everybody wants me to -- and you all may even want me to, right? I mean, there's a point at which you don't everybody else owning the stuff.