

**APPENDIX C – PRESERVED CAUSES OF ACTION**

## Appendix C

### Preserved Causes of Action

This Appendix C remains subject to further revision. The Plan Proponents expressly reserve the right to alter, modify, amend, remove, augment or supplement the following list at any time prior to the Confirmation Date (as defined in the Plan (defined below)).

Article 8.8.3 of the *Agreed First Amended Plan of Liquidation of the Debtor and Official Committee of Unsecured Creditors* (the “Plan”)<sup>1</sup> provides as follows:

**Preservation of Causes of Action.** Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Creditor Trust (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor’s Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust’s right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date and (ii) expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action

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<sup>1</sup> All capitalized terms undefined herein shall have the meanings ascribed to them in the Plan.

notwithstanding the rejection or assumption of any Executory Contract during the Case or pursuant to the Plan, to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

Notwithstanding and without limiting the generality of Article 8.8.3 of the Plan, the Debtor has identified below certain specific potential Causes of Action, including: (a) claims related to contracts and leases; (b) Insider Causes of Action; (c) Avoidance Actions; (d) claims related to accounts receivable and accounts payable (including setoffs); and (e) other pending litigation matters. These categories, however, shall not be deemed limiting and any specific Cause of Action listed in one category shall be viewed as if listed in all.

Failure to include any Person in this Appendix C shall not constitute a release of such Person and shall not indicate that Causes of Action against such Person have not been preserved. Moreover, failure to attribute any specific Cause of Action to a particular Person in this Appendix C shall not mean that such Cause of Action is not preserved against such Person. All possible Causes of Action, including Causes of Action not listed on this Appendix C, are retained against all Persons not expressly released pursuant to the Plan or a Final Order.

#### **Claims Related to Contracts and Leases**

Unless otherwise released by the Plan, the Debtor expressly preserves all Causes of Action based in whole or in part upon any and all contracts and leases to which the Debtor is a party or pursuant to which the Debtor has any rights whatsoever, regardless of whether such contract or lease is specifically identified herein. The Causes of Action preserved include, among others, Causes of Action against insurance companies, suppliers of goods and services, vendors, financial institutions or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guaranties, indemnities, recoupment or setoff, or “free goods” or “free guns” owed Debtor under promotional programs or otherwise; (b) for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform under contracts with Debtor; (d) for payments, back charges, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, service provider, lessor or other party; (e) counterclaims and defenses related to any contractual obligations; (f) any turnover actions arising under section

542 or 543 of the Bankruptcy Code; (g) for unfair competition, interference with contract or potential business advantage, infringement of intellectual property or any tort claims; and (h) for any claims against Debtor's insurance carriers, including for payments or other amounts owed by such insurance carrier pursuant to contracts of insurance or settlement agreements with insurers.

Each Person with whom Debtor was a party to an Executory Contract is listed on Schedule G of Debtor's *Schedules of Assets and Liabilities* filed on May 29 and June 13, 2018 (as amended, the "*Schedules*"), as well as Part 9 of Schedule A/B, and Causes of Action against such Persons are expressly preserved under the Plan. In addition, Debtor preserves all Causes of Action against Persons whom were parties to non-executory contracts and leases with Debtor, including manufacturers of firearms, ammunition and accessories that were party to a distributor or distribution agreement with Debtor. For the avoidance of doubt, all claims and Causes of Action against (i) Smith & Wesson Corp., whether under its Distributor Agreement or otherwise and (ii) Ellett Brothers, LLC in connection that certain asset purchase agreement dated April 30, 2018, as amended, by and between Debtor and Ellett Brothers, LLC, are expressly preserved in all respects.

### **Insider Causes of Action**

Debtor may have claims and Causes of Action against current and former Insiders of Debtor. These Causes of Action may be for, *inter alia*, the following: (i) preferential transfers pursuant to section 547 of the Bankruptcy Code; (ii) fraudulent transfers under section 548 of the Bankruptcy Code and applicable non-bankruptcy law; (iii) other avoidance claims under chapter 5 of the Bankruptcy Code; (iv) breaches of fiduciary duties, including breaches of the duty of care and loyalty; (v) improper distributions under applicable non-bankruptcy law; (vi) common law fraud under applicable non-bankruptcy law; and (vii) equitable subordination pursuant to section 510 of the Bankruptcy Code. Among other things, Insiders of Debtor may be the subject of Causes of Action to avoid and recover any transfers received by them as set forth in Part 2 of Debtor's *Statement of Financial Affairs* filed on May 29 and June 13, 2018 (as amended, the "*SOFA*"), or to reduce, disallow, subordinate, or recharacterize any claims identified in Schedule D or E of Debtor's Schedules.<sup>2</sup>

Current and former Insiders of the Debtor that may be subject to one or more of the aforementioned Causes of Action include:

- Andrew M. Harris
- Christopher A. Cole
- David Ray
- James A. Broering
- John K. Flanagan
- Kaitlen A. Fraim
- Mary E. Grim
- Michael Perry
- Noel Shannan Stover

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<sup>2</sup> The SOFA and Schedules are expressly incorporated herein by reference.

- Paul V. Higham
- Steven P. Reed
- Thomas E. Britt
- William L. Fraim

### **Avoidance Actions**

Debtor may have claims and Causes of Action, arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, against creditors, vendors, suppliers and other Persons to avoid and recover transfers of cash or other property from Debtor in applicable periods prior to the Petition Date.

Each Person listed on Part 2 of the SOFA received transfers from Debtor in the 90-day period prior to the Petition Date, and is therefore a potential subject of an Avoidance Action that is expressly preserved under the Plan. In addition, each Person listed on Parts 4 and 13 of the SOFA may have received transfers avoidable under chapter 5 of the Bankruptcy Code or applicable non-bankruptcy law, and such claims are expressly preserved. Finally, any other Person (whether listed on the SOFA or Schedules or not) that received transfers of cash or property from Debtor in the four-year period prior to the Petition Date may have received transfers avoidable under chapter 5 of the Bankruptcy Code or applicable non-bankruptcy law, and such claims are expressly preserved. Finally, for the avoidance of doubt, Debtor's pending adversary proceeding against Smith & Wesson Corp. (Adv. No. 18-02067) is expressly preserved in all respects.

### **Claims Related to Accounts Receivable and Accounts Payable**

Unless otherwise released by the Plan, Debtor expressly preserves all Causes of Action against or related to all Persons that owe or that may in the future owe money to Debtor or the Creditor Trust regardless of whether such Person is explicitly identified in this Appendix C or in the SOFA or Schedules. Furthermore, Debtor expressly preserves all Causes of Action against or related to all Persons that assert or may assert that Debtor or the Creditor Trust owes money to them.

Notwithstanding the generality of the foregoing, Debtor expressly preserves Causes of Action against the following Persons, except to the extent such Causes of Action have been resolved by the Plan or a Final Order:

- All Parties holding deposits or prepayments refundable to Debtor, as set forth in Part 2 of Schedule A/B
- All accounts receivable referenced in, or constituting a part of, Debtor's disclosures in Part 3 of Schedule A/B
- All notes receivable set forth in Part 11, Item 71, of Schedule A/B
- All causes of action against third parties set forth in Part 11, Item 74, of Schedule A/B
- All other miscellaneous receivables and other rights to payment set forth in Part 11, Item 77, of Schedule A/B

In addition, Debtor expressly preserves all claims and Causes of Action for “free goods” or “free guns” owed to it by any supplier under pre-Petition Date promotional program.

**Other Pending Litigation Matters**

Debtor is party to certain pending and prospective litigation matters (both as plaintiff and defendant) for, among other things, collection of accounts receivable and breach of contract, workers’ compensation, and personal injury. These litigation matters are disclosed by Debtor in Part 3 of the SOFA and Part 11, Item 74, of Schedule A/B. Debtor expressly preserves all claims, defenses, cross-claims and counterclaims related to these pending and prospective litigation matters.