

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
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BETSEY JOHNSON LLC,	:	Case No. 12-11732 (RG)
	:	
Debtor.	:	
	:	
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING FIRST AMENDED CHAPTER 11 PLAN OF
LIQUIDATION OF BETSEY JOHNSON LLC**

On April 8, 2014, this Court conducted a hearing (the “Confirmation Hearing”) to consider confirmation of the *First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC* [ECF No. 500] that was filed by Betsey Johnson LLC (the “Debtor”), as debtor-in-possession, on January 28, 2014, a copy of which – as modified by those modifications filed with the Court on April 3, 2014 – is attached hereto as Exhibit A (the “Plan”)¹, and the Court having reviewed and considered: (i) the Plan and the *Disclosure Statement for the First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC* (the “Disclosure Statement”) [ECF No. 501], filed by the Debtor on January 28, 2014; (ii) the Plan Supplement [ECF No. 511] filed by the Debtor on February 6, 2014, which includes a form Liquidating Trust Agreement (the “Liquidating Trust Agreement”); (iii) the Affidavits of Service (the “Solicitation Affidavits”) [ECF Nos. 522 and 523] of Donlin, Recano & Company, Inc. (“DRC”) regarding the service of

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan. To the extent that any term used herein is defined in the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) or the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and is not otherwise defined herein or in the Plan, such term shall have the meaning ascribed to it in the Bankruptcy Code or Bankruptcy Rules, as applicable.

the Solicitation Package (defined below), filed by DRC; (iv) the *Memorandum of Law in Support of Confirmation of First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC* (the “Confirmation Memorandum”) [ECF No. 529], filed by the Debtor on April 3, 2014; (v) the *Declaration of Aron Arias in Support of Confirmation of First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC* (the “Arias Declaration”) [ECF No. 528], filed by the Debtor on April 3, 2014; (vi) the *Declaration of Jung W. Song on Behalf of Donlin Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting the First Amended Chapter 11 Plan of Liquidation of Betsey Johnson LLC* (the “Tabulation Declaration”) [ECF No. 525], filed by DRC on April 1, 2014; and (vii) all of the evidence proffered or adduced, and arguments of counsel made, at the Confirmation Hearing; and after due deliberation thereon and good and sufficient cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law in respect of confirmation of the Plan.²

THE COURT FINDS AND CONCLUDES THAT:

A. Exclusive Jurisdiction; Venue; Core Proceeding. This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Judicial Notice. The Court takes judicial notice of the docket of this Chapter 11 Case maintained by the Clerk of the Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, where appropriate. *See* Fed. R. Civ. P. 7052.

arguments made, proffered or adduced at hearings held before the Court during the pendency of this Chapter 11 Case.

C. Filing of the Plan and Plan Supplement. The Debtor filed the Plan and Disclosure Statement on January 28, 2014, which amended the original versions of each that had been filed on December 20, 2013. Also on January 28, 2014, the Debtor filed the Plan Supplement, which contained the Liquidating Trust Agreement and the designation of META Advisors LLC as the initial liquidating trustee (the "Liquidating Trustee"), and the designation of American Express Travel Related Services Co., Inc., Simon Property Group, Inc. and General Growth Properties, Inc. as the initial members of the Liquidating Trust Oversight Committee (the "Initial Members").

D. Plan Modifications. On April 3, 2014, the Debtor filed a modified Plan, which modifications are reflected in the blacklined Plan, attached as Exhibit B hereto. Modifications to the Plan set forth on Exhibit B hereto constitute non-material or technical changes and/or changes with respect to particular Claims by agreement with Holders of such Claims, and do not materially adversely affect or change the treatment of any Claim or Interest under the Plan, except as otherwise agreed by the Holder of such Claims. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code, nor do they require that Holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

E. Disclosure Statement Order. On January 31, 2014, this Court entered its *Order (I) Approving Disclosure Statement; (II) Scheduling Hearing on Confirmation of the Plan; (III) Establishing a Deadline and Procedures for Filing Objections to Confirmation of the Plan; (IV) Establishing A Deadline and Procedures for Temporary Allowance of Claims for Voting*

Purposes; (V) Establishing the Treatment of Certain Contingent, Unliquidated and Disputed Claims for Notice and Voting Purposes; (VI) Approving Form and Manner of Notice of Hearing on Confirmation and Related Issues and Approving Procedures for Distribution of Solicitation Packages and Plan Supplement; (VII) Approving Form Ballot; and (VIII) Establishing a Voting Deadline for Receipt of Ballots (the “Disclosure Statement Order”) [ECF No. 508]. In the Disclosure Statement Order, this Court, among other things, approved: (i) the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code; (ii) the contents of the Solicitation Package³ as complying with Bankruptcy Rules 2002 and 3017(d) and constituting sufficient notice to all interested parties of the Voting Record Date of January 31, 2014, the Voting Deadline of April 1, 2014, the Plan Objection Deadline of April 1, 2014 and the Confirmation Hearing; (iii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan as providing for a fair and equitable process, consistent with section 1126 of the Bankruptcy Code; and (iv) various other notices relating to the confirmation of the Plan.

F. Service of Solicitation Packages. The Solicitation Affidavits attest to the fact that Solicitation Packages were served on February 11, 2014, in accordance with the Disclosure Statement Order and Bankruptcy Rule 3017(d).

G. Good Faith Solicitation. Votes for the acceptance or rejection of the Plan were solicited in good faith and in compliance with the Disclosure Statement Order, sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules for

³ All Solicitation Packages included a CD-ROM containing the Plan and Disclosure Statement, and a hard copy of the Confirmation Hearing Notice. Holders of Class 2 Claims (Madden Secured Claim) and Class 4 Claims (General Unsecured Claims) (collectively, the “Voting Classes”) also received a Ballot to vote to accept or reject the plan, while parties entitled to receive a Solicitation Package, but not in either of the Voting Classes, received a Notice of Non-Voting Status.

the Southern District of New York (the “Local Rules”), and all other applicable rules, laws and regulations. Accordingly, the Debtor and its agents, representatives, attorneys, advisors and other Persons involved in the solicitation process are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 12.3 of the Plan.

H. Notice. Due, adequate and sufficient notice of the Disclosure Statement, the Plan, the Voting Deadline, the Plan Objection Deadline and the Confirmation Hearing was provided to all parties entitled to such notice, including all known Holders of Claims and Interests, and no other or further notice is or shall be required.

I. Tabulation of Votes. On April 1, 2014, DRC filed the Tabulation Declaration, certifying the method and results of the tabulation of Ballots for the Voting Classes. All procedures used to tabulate the Ballots were fair and conducted in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws and regulations. As evidenced by the Tabulation Declaration, both of the Voting Classes have accepted the Plan. Thus, at least one Impaired Class of Claims has voted to accept the Plan, as required by section 1126 of the Bankruptcy Code.

J. Burden of Proof. As more fully set forth herein, the Debtor, as proponent of the Plan, has met its burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of evidence, which is the applicable evidentiary standard in this Court. However, the Court also finds that the Debtor has satisfied the elements of sections 1129(a) and (b) of the Bankruptcy Code under the clear and convincing standard of proof.

K. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

1. Proper Designation and Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims (which are not required to be classified), Article IV of the Plan designates five Classes of Claims and one Class of Interests for the Debtor. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Classes or Interests. Therefore, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

2. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article IV of the Plan specifies the Classes of Claims that are Unimpaired. Therefore, the Plan satisfies section 1123(a)(2) of the Bankruptcy Code.

3. Specification of Treatment of Impaired Classes of Claims (11 U.S.C. § 1123(a)(3)). Article IV of the Plan specifies the Classes of Claims and Interests that are Impaired under the Plan. Article V of the Plan specifies the treatment of Claims and Interests in all such Classes. Therefore, the Plan satisfies section 1123(a)(3) of the Bankruptcy Code.

4. Equal Treatment Within Each Class (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Interest in each respective Class unless the Holder of a particular Claim has agreed to less favorable treatment with respect to such Claim. Therefore, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

5. Adequate Means for Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Article VII of the Plan, entitled "Implementation of the Plan," sets forth numerous provisions that facilitate the implementation of the Plan, such as the transfer of the Debtor's assets to the Liquidating Trust, the appointment, rights and obligations of the Liquidating Trustee and the Liquidating Trust Oversight Committee, respectively, and the cancellation of securities, instruments and agreements evidencing Claims and Interests. Therefore, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

6. Prohibitions on the Issuance of Non-Voting Securities (11 U.S.C. § 1123(a)(6)). The Plan is a liquidating plan, and the Debtor is not issuing securities thereunder. Therefore, section 1123(a)(6) of the Bankruptcy Code does not apply to the Plan.

7. Provisions Regarding Liquidating Trustee (11 U.S.C. § 1123(a)(7)). The Plan Supplement discloses the identities and affiliations of the Liquidating Trustee and the initial members of the Liquidating Trust Oversight Committee. Therefore, the Plan satisfies section 1123(a)(7) of the Bankruptcy Code.

8. Discretionary Contents of the Plan (11 U.S.C. § 1123(b)). The provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (a) Impaired and Unimpaired Claims and Interests, (b) the retention of jurisdiction by this Court as to, among other things, all matters arising out of the Chapter 11 Case and the Plan, (c) the disposition of any remaining executory contracts and unexpired leases, (d) the right to enforce, sue on, settle or compromise (or refuse to do any of the foregoing with respect to) certain Rights of Action against third parties, to the extent not waived and released under the Plan, (e) indemnification obligations, (f) releases by the Debtor, and (g) releases by Holders of Claims and Interests.

9. Bankruptcy Rule 3016. The Plan is dated and identifies the entity signing it and the injunction provisions are described in specific and conspicuous (bold) language. Therefore, the Plan satisfies Bankruptcy Rule 3016.

L. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtor has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order and other orders of this Court, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. The Debtor is a proper debtor under section 109 of the Bankruptcy Code and is a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code. The Debtor complied with the solicitation and tabulation procedures approved under the Disclosure Statement Order and, thus, the Debtor has complied with the requirements under section 1125 of the Bankruptcy Code. In addition, the Plan was validly accepted by at least one (and both) Classes of Impaired Claims and, therefore, the provisions of section 1126 of the Bankruptcy Code have been satisfied. For all of the foregoing reasons, section 1129(a)(2) has been satisfied.

M. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing the Chapter 11 Case and the formulation of the Plan. The Plan was proposed with the legitimate and honest purpose of maximizing the recoveries by Holders of Allowed Claims under the circumstances of

this Chapter 11 Case. Moreover, the Plan was proposed in consultation with the Committee, and the Committee supports confirmation of the Plan.

N. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). The Professionals in this Chapter 11 Case are subject to the requirements of sections 330 and 331 of the Bankruptcy Code and their respective fees, therefore, have been approved by, or are subject to approval by the Court as reasonable. Therefore, the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

O. Liquidating Trustee (11 U.S.C. § 1129(a)(5)). Through the Plan Supplement, the Debtor has disclosed the identity of the Liquidating Trustee as being META Advisors LLC, which is not an insider of the Debtor. The appointment of the Liquidating Trustee is consistent with the interests of Holders of Claims against and Interests in the Debtor, and with public policy. The form of the proposed Liquidating Trust Agreement, as the same may be subsequently amended or modified in accordance with its terms, and the entry of the Debtor into the Liquidating Trust Agreement is appropriate and in the best interests of the Debtor, its Estate and creditors. Therefore, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

P. No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

Q. Best Interests Test (11 U.S.C. § 1129(a)(7)). The Liquidation Analysis, attached as Exhibit B to the Disclosure Statement, and other evidence proffered or adduced at the Confirmation Hearing, (1) is persuasive and credible, (2) has not been controverted by other evidence or have not been challenged, (3) is based upon reasonable and sound assumptions, (4) provides a reasonable estimate of the liquidation value of the Debtor upon hypothetical

conversion to a case under chapter 7 of the Bankruptcy Code, and (5) establishes that each Holder of an Impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

R. Acceptance by All Impaired Classes (11 U.S.C. § 1129(a)(8)). Classes 1 and 3 are Unimpaired under the Plan and, therefore, are deemed to have accepted the Plan. Classes 2 and 4, the Voting Classes, are Impaired under the Plan and have both voted, as a respective Class, to accept the Plan. Classes 5 and 6 will neither receive nor retain any property under the Plan and, therefore, are deemed to have rejected the Plan (the “Rejecting Classes”). Therefore, section 1129(a)(8) has been satisfied with respect to Classes 1, 2, 3 and 4, but not with respect to the Rejecting Classes. However, as discussed more fully below, the Debtor has otherwise met the “cramdown” requirements under section 1129(b) of the Bankruptcy Code, with respect to the Rejecting Classes.

S. Treatment of Claims Entitled to Priority (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Expense Claims and Allowed Priority Non-Tax Claims under the Plan satisfies the requirements of section 1129(a)(9)(A) and (B) of the Bankruptcy Code, the treatment of Allowed Priority Tax Claims under the Plan either does not implicate or satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code and the treatment of Allowed Secured Claims of governmental units under the Plan satisfies the requirements of section 1129(a)(9)(D) of the Bankruptcy Code.

T. Acceptance by At Least One Class of Impaired Claims (11 U.S.C. § 1129(a)(10)).

Each of Class 2 and Class 4, the Voting Classes, is an Impaired Class of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any “insiders.” Therefore, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

U. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan provides for the liquidation of all of the property of the Debtor. The Disclosure Statement, including the Liquidation Analysis, the Confirmation Memorandum, and the evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other credible evidence nor have any objections to the Plan been filed, and (iii) establish that the Plan is feasible since confirmation cannot be followed by any liquidation in addition to that prescribed by the Plan or Liquidating Trust Agreement, nor would confirmation be followed by the need for further financial reorganization. Therefore, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

V. Payment of Fees (11 U.S.C. § 1129(a)(12)). Pursuant to Section 14.1 of the Plan, the Debtor will pay, on or before the Effective Date, any unpaid fees payable under 28 U.S.C. § 1930, thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

W. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtor is not obligated to provide retiree benefits to any Person. Therefore, section 1129(a)(13) of the Bankruptcy Code does not apply to the Plan.

X. Payment of Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtor is not obligated to pay any domestic support obligations. Therefore, section 1129(a)(14) of the Bankruptcy Code does not apply to the Plan.

Y. Objection to the Plan of an Individual Debtor (11 U.S.C. § 1129(a)(15)). The Debtor is not an individual. Therefore; section 1129(a)(15) of the Bankruptcy Code does not apply to the Plan.

Z. Transfers of Property (11 U.S.C. § 1129(a)(16)). The Debtor is a moneyed, business or commercial corporation. Therefore, section 1129(a)(16) of the Bankruptcy Code does not apply to the Plan.

AA. Confirmation of the Plan Over Non-Acceptance of Impaired Classes; Cramdown (11 U.S.C. § 1129(b)). Holders of Claims or Interests in the Rejecting Classes are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. All of the requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8) with respect to the Rejecting Classes, have been met. With respect to the Rejecting Classes, no Holders of Claims against or Interests in the Debtor junior to the Holders of Claims in the Rejecting Classes will receive or retain any property under the Plan on account of such junior Claims or Interests. Further, the Plan does not provide for more than full payment of Claims in Classes senior to the Rejecting Classes. Accordingly, the Plan is fair and reasonable and does not discriminate unfairly, as required by section 1129(b) of the Bankruptcy Code, and may be confirmed notwithstanding the Rejecting Classes' deemed rejection of the Plan.

BB. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in this Chapter 11 Case; therefore, section 1129(c) of the Bankruptcy Code is not applicable.

CC. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. § 77(e)). Therefore, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code.

DD. Small Business Cases (11 U.S.C. § 1129(e)). The Chapter 11 Case is not a “small business case” and, thus, section 1129(e) of the Bankruptcy Code does not apply to the Plan.

EE. Executory Contracts. The Debtor has exercised reasonable business judgment in determining that, as of the Effective Date, it will reject all of the prepetition executory contracts and unexpired leases to which it is a party, unless such contract or lease (a) was assumed or rejected by the Debtor prior to the Effective Date, or (b) is the subject of a separate motion filed under section 365 of the Bankruptcy Code and pending on the Effective Date.

FF. Releases and Exculpation. Each of the release, indemnification and exculpation provisions set forth in the Plan: (1) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b) and (d); (2) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (3) is an integral element of the transactions incorporated into the Plan; (4) confers a material benefit on, and is in the best interest of, the Debtor, its Estate and its creditors; (5) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Chapter 11 Case, with respect to the Debtor, its organization, capitalization, operation and liquidation; and (6) is consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

GG. Agreements and Other Documents. The Debtor has made adequate and sufficient disclosure of: (1) the terms of the Liquidating Trust Agreement; (2) the Distributions to be made pursuant to the Plan; and (3) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing.

HH. Retention of Jurisdiction. The Court may properly retain jurisdiction over the matters set forth in Article XIII of the Plan.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:

1. Confirmation. The Plan, attached hereto as Exhibit A, is hereby approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan are incorporated by reference into and are an integral part of the Plan and this Confirmation Order.

2. Provisions of Plan and Confirmation Order Non-Severable and Mutually Dependent. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth above, are non-severable and mutually dependent.

3. Effectiveness of All Actions. All actions contemplated by the Plan are authorized and approved in all respects (subject to the applicable provisions of the Plan). The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of the Debtor, the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Oversight Committee or any representative, employee or agent thereof or any professional retained thereby, to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order. Pursuant to this Confirmation Order and applicable law, the Debtor, without the need for action by its members or managers, the Liquidating Trust and the Liquidating Trustee are authorized and empowered to take any and all such actions that they or their respective counsel may determine are necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

4. Plan Classification Controlling. The classification of Claims and Interests for purposes of Distributions to be made under the Plan shall be governed solely by the terms of the

Plan. The classifications set forth on the Ballots tendered to or returned by the Debtor's creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes, (c) may not be relied upon by any Holder of a Claim as representing the actual classification of its Claim(s) under the Plan for Distribution purposes, and (d) shall not be binding on the Liquidating Trust, the Liquidating Trustee, the Debtor or the Estate.

5. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, upon entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind (i) any Holder of a Claim against or Interest in the Debtor, whether or not such Claim or Interest is Impaired under the Plan and whether or not the Holder of such Claim or Interest has accepted the Plan, (ii) every other party-in-interest in this Chapter 11 Case, (iii) all parties receiving property under the Plan, and (iv) the respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries and guardians of each of the foregoing.

6. Cancellation of Securities, Instruments and Agreements Evidencing Claims and Interests. Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, the promissory notes, membership interest certificates (including treasury stock), other instruments evidencing Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Claims or Interests shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtor under

such notes, membership interest certificates and other agreements and instruments governing such Claims and Interests shall be discharged. From and after the Effective Date, the Holder of or parties to such Claims or Interests, canceled notes, membership interest certificates and other agreements and instruments shall have no rights arising from or relating to such Claims or Interests, notes, membership interest certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

7. Formation of and Provisions Regarding the Liquidating Trust. The formation, rights, powers, duties, structure, obligations and related matters pertaining to the Liquidating Trust shall be governed by Article VII of the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement, in substantially the form filed with the Court on April 3, 2014, is hereby approved. Upon execution, the Liquidating Trust Agreement shall be valid, binding and enforceable in accordance with its own terms, the Plan and this Confirmation Order, and the Liquidating Trustee shall have all of the rights and powers set forth in the Plan, this Confirmation Order and the Liquidating Trust Agreement.

8. Transfer of Liquidating Trust Assets. On the Effective Date, all property of the Debtor not otherwise distributed to Holders of Allowed Claims on the Effective Date, including, without limitation, title to any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Case, shall be transferred to the Liquidating Trust, for the benefit of the Beneficiaries, and managed and distributed by the Liquidating Trustee on behalf of the Liquidating Trust in accordance with the Plan, the Liquidating Trust Agreement and this Confirmation Order.

9. Withholding and Reporting Requirements. In connection with the Distributions made under the Plan, the Liquidating Trustee, on behalf of the Liquidating Trust, shall comply

with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim or Allowed Interest receiving any Distribution under the Plan, the Liquidating Trustee may require that the Holder provide such Holder's taxpayer identification number and such other information and certification as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder of a Claim or Interest to respond timely to a request by the Liquidating Trustee for tax withholding or reporting information will result in the Holder being treated in the same manner as the Holder of a Claim or Interest for which a Distribution is undeliverable or unclaimed, as described in Sections 8.7 and 8.8 of the Plan.

10. Inapplicability of Unclaimed Property Escheat Laws. Unclaimed property held by the Liquidating Trust shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local government.

11. No Revesting of Assets. Except as otherwise provided in the Plan, on the Effective Date, all Assets comprising the Estate of the Debtor shall be transferred to and vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, encumbrances and interests (except to the extent that such Claims, Liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided herein), which will become the Liquidating Trust Assets, to be held for the benefit of the Beneficiaries. Upon the transfer of the Assets to the Liquidating Trust, the Debtor shall have no further interest in or with respect to Claims, the Liquidating Trust Assets or the Liquidating Trust.

12. Approval of Liquidating Trustee. The appointment of META Advisors LLC as the Liquidating Trustee under the Liquidating Trust Agreement and the Plan is hereby approved, and the Liquidating Trustee is hereby authorized to carry out all duties, as set forth in the Plan,

the Liquidating Trust Agreement and this Confirmation Order. On the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, shall be deemed appointed and shall be assigned such powers as would have been applicable to the Debtor's officers, members and managers, and the Debtor shall be authorized to be dissolved without further action by its officers, members or managers.

13. Liquidating Trust Oversight Committee. The appointment of the Initial Members of the Liquidating Trust Oversight Committee is hereby approved, and the Liquidating Trust Oversight Committee is hereby authorized to carry out all duties, as set forth in the Plan, the Liquidating Trust Agreement, the bylaws governing the Liquidating Trust Oversight Committee and this Confirmation Order.

14. Transfer of Powers. On the Effective Date, the authority, power and incumbency of the persons then acting as officers and managers of the Debtor shall be terminated and such officers and managers shall be deemed to have resigned, without further action by the Debtor. The Plan will be administered and actions will be taken in the name of the Debtor as necessary or appropriate through the Liquidating Trustee, on behalf of the Liquidating Trust, subject to the Liquidating Trust Oversight Committee. Upon the Effective Date, the Debtor's Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; and (iii) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Debtor shall not be entitled to compensation and

reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain former Professionals of the Debtor.

15. Powers of Liquidating Trust and Liquidating Trustee. The Liquidating Trust and the Liquidating Trustee shall have the rights and powers set forth in the Plan, this Confirmation Order and the Liquidating Trust Agreement, without supervision, application or approval of the Bankruptcy Court. Notwithstanding any state or federal law to the contrary or anything herein, the Liquidating Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Liquidating Trust may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

16. Dissolution of Creditors' Committee. Upon the Effective Date, the Creditors' Committee shall automatically dissolve, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution in any of the Chapter 11 Case; and (iv) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The

Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date, or in connection with the Liquidating Trust. The Liquidating Trustee, in its discretion, may retain former Professionals of the Creditors' Committee.

17. Preservation of Rights of Action. Except as otherwise provided in the Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, this Confirmation Order or any other orders of this Bankruptcy Court, and in accordance with section 1123(b) of the Bankruptcy Code, all Rights of Action are preserved notwithstanding the occurrence of the Effective Date of the Plan. The Liquidating Trust and the Liquidating Trustee may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all Rights of Action. The Liquidating Trust shall be empowered to pursue Rights of Action, and no other Person may pursue such Rights of Action. The Liquidating Trust shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Liquidating Trust Assets. The Liquidating Trust shall have the right and power to move the Court for the entry of examination Orders under Bankruptcy Rule 2004, and the Court specifically retains jurisdiction to consider and determine any such motion. The Liquidating Trustee shall also be vested, on behalf of the Liquidating Trust, with the rights, powers and benefits afforded to a "trustee" under sections 704 and 1106 of the Bankruptcy Code.

18. Compensation of Liquidating Trustee and Professionals. The fees and expenses of the Liquidating Trustee and the professionals retained on behalf of the Liquidating Trust shall be paid from the Liquidating Trust in accordance with the terms of the Liquidating Trust

Agreement and payment of such fees and expenses shall not be subject to the approval of this Court.

19. Releases, Limitations of Liability and Indemnification. The releases set forth in Sections 12.1 and 12.2 of the Plan, the exculpation provisions set forth in Section 12.3 of the Plan, and the limitations of liability and indemnification provisions set forth in Sections 7.5 and 7.6 of the Plan are deemed incorporated in this Confirmation Order as if set forth herein and are hereby approved in their entirety; provided that the releases of Non-Debtor Released Parties set forth in Section 12.2 of the Plan shall not be enforceable against any Holder of a Class 4 Claim that elected to opt out of such releases by checking the appropriate box on its Ballot.

20. Injunction Related to Releases. All Persons who have held, hold or may hold Claims against or interests in any of the Released Parties are, with respect to any such Claims or interests, permanently enjoined from and after the Confirmation Date from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or any of its property; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor or any of its property; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or any of its property; (d) except to the extent permitted or preserved by section 553 of the Bankruptcy Code, asserting any right of setoff, directly or indirectly, against any obligation due by the Debtor or any of its property, except as contemplated or allowed by the

Plan or this Confirmation Order; (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (f) prosecuting or otherwise asserting any right, Claim or cause of action released pursuant to the Plan; provided, however, that the foregoing shall not be construed to enjoin any of the Debtor's Rights of Action, whether commenced by the Debtor, the Liquidating Trust or the Liquidating Trustee.

21. No Discharge of Debtor. Pursuant to section 1141(d)(3) of the Bankruptcy Code, occurrence of the Effective Date will not discharge the Claims against the Debtor; provided, however, that no Holder of an Allowed Claim or Allowed Interest may, on account of such Claim or Interest, seek or receive any payment from, or seek recourse against, the Debtor, the Liquidating Trust, the Liquidating Trustee, the Released Parties, or their respective property, successors and assigns, except as expressly provided in this Plan.

22. Term of Bankruptcy Injunction or Automatic Stay. All injunctions or stays provided for in the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Liquidating Trust has been distributed, the Liquidating Trust has been terminated and this Chapter 11 Case has been closed pursuant to section 350 of the Bankruptcy Code; provided however, that nothing herein shall bar the taking of any actions as are necessary to effectuate the transactions specifically contemplated by the Plan or by this Confirmation Order prior to the Effective Date.

23. Exemption from Certain Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, any transfer by the Debtor to the Liquidating Trust, transfer of Liquidating Trust Assets by the Liquidating Trustee, on behalf of the Liquidating Trust, to any

entity, or any transfer pursuant to merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. All state or local government officials or agents are hereby directed to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. All sales, transfers and assignments of owned and leased property by the Debtor, its Estate, or the Liquidating Trust on or after the Effective Date, are deemed to have been in furtherance of, or in connection with, the Plan.

24. Rejected Contracts and Leases; Insurance Policies. As of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party, except for any executory contract or unexpired lease that (a) has been assumed, assigned or rejected by the Debtor prior to the Effective Date, or (b) is the subject of a separate motion filed under section 365 of the Bankruptcy Code and pending on the Effective Date, shall be deemed rejected within the meaning of section 365 of the Bankruptcy Code. Notwithstanding the foregoing, any agreements, documents or instruments relating thereto that are postpetition contracts shall continue to operate unaffected by the Plan, including, without limitation, the Liquidating Trust Agreement. Further, notwithstanding the foregoing, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. Issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums.

25. Distribution Record Date. The Distribution Record Date, as defined in Section 1.35 of the Plan, is January 31, 2014.

26. Bar Date for Rejection Damages Claims. If the rejection of any executory contract or unexpired lease under Section 9.1 of the Plan results in damages to the other party or parties to such contract or lease, a Proof of Claim for such damages must be filed with DRC on or before the date which is forty-five (45) days after the date on which notice of the Effective Date is served. Unless otherwise ordered by this Court, any Holder of a Claim for rejection damages against the Debtor who fails to timely file proof of such Claim shall not be treated as a Holder with respect to such Claim for purposes of Distributions.

27. Bar Date for Certain Postpetition Claims. Except for Administrative Expense Claims arising under section 503(b)(9) of the Bankruptcy Code, the deadline for filing requests for allowance of Administrative Expense Claims, other than for statutory fees of the United States Trustee, shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served. The deadline by which Professionals must file Fee Applications or other requests for payment of Professional Fee Claims incurred through the Effective Date (to the extent not already Allowed) shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served. After the Effective Date, the Liquidating Trustee shall pay the reasonable fees and expenses, incurred after the Effective Date, of the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Oversight Committee and their respective professionals, in accordance with the terms of the Plan, the Liquidating Trust Agreement and this Confirmation Order without further Order of this Court.

28. Claim Objection Deadline. All objections to Claims or Interests must be filed and served on the Holder of such Claims or Interests by the date that is one hundred eighty (180)

days after the later of (a) the Effective Date, or (b) the date on which (i) a Proof of Claim or Proof of Interest is filed with DRC, or (ii) a request for payment is filed with this Court (the “Claim Objection Deadline”). As provided in Sections 1.17 and 8.4 of the Plan, the Claim Objection Deadline may be extended for cause. The filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a Final Order is entered on such motion. In the Event that such motion to extend the Claim Objection Deadline is denied by the Bankruptcy Court, or approved by the Bankruptcy Court and reversed on appeal, the Claim Objection Deadline shall be the later of the current Claim Objection Deadline (as previously extended, as applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline. The Liquidating Trust or Liquidating Trustee shall file and serve all objections to, or pleadings seeking estimation of, Claims and Interests upon the Holder of such Claims or Interests no later than the applicable Claim Objection Deadline.

29. Setoff and Recoupment. Pursuant to Section 8.14 of the Plan, the Liquidating Trustee may, pursuant to applicable law, setoff or recoup, on behalf of the Liquidating Trust, against any Claim or Interest (including for purposes of determining the Allowed amount of such Claim or Interest), any and all of the Rights of Action of any nature that the Liquidating Trust may hold against the Holder of such Claim or Interest; provided, however, that neither the failure of the Liquidating Trustee to do so nor the allowance of any such Claim or Interest that may be subject to setoff or recoupment shall constitute a waiver or release by the Liquidating Trustee of any setoff right or defense, recoupment right, or Right of Action that he or she may have against such Holder.

30. Inconsistent Plan and Confirmation Order Provisions. The provisions of the Plan and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

31. Confirmation Order Supersedes Inconsistent Prior Orders. This Confirmation Order shall supersede any orders of this court entered prior to the Confirmation Date that may be inconsistent with this Confirmation Order.

32. Effectuating Documents and Further Transactions. In accordance with section 1142 of the Bankruptcy Code, upon entry of this Confirmation Order, the Debtor and, after the Effective Date, the Liquidating Trust and the Liquidating Trustee, acting by and through their respective officers and agents, are hereby authorized, empowered and directed, without further Order of the Court, to issue, execute, deliver, file and record any document, and take any and all actions necessary and appropriate to implement the Plan, including, without limitation, forming the Liquidating Trust and entering into the Liquidating Trust Agreement (substantially in the form included in the Plan Supplement). All such entities shall be bound by the terms and provisions of all documents issued, executed and delivered by them as necessary or appropriate to implement or effectuate the transactions contemplated by the Plan.

33. References to Plan Provisions. The failure to include or specifically reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the

effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety.

34. Filing and Recording. This Confirmation Order is and shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities that may be required, by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments.

35. Effective Date; Notice of Confirmation Order and of Effective Date. The Effective Date shall occur after the conditions precedent to the occurrence of the Effective Date, which are set forth in Section 10.2 of the Plan, have either taken place or been waived pursuant to the terms of Section 10.3 of the Plan. On or before the fifth (5th) Business Day following the occurrence of the Effective Date, the Debtor shall serve or cause to be served notice of this Confirmation Order and of the occurrence of the Effective Date, pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), on all Holders of Claims and Interests, the United States Trustee and other parties-in-interest, by causing a copy of such notice, in substantially the same form as the notice attached hereto as Exhibit C (the "Notice of Effective Date"), which Notice of Effective Date is hereby approved, to be delivered to such parties by first-class mail, postage prepaid; provided, however, that notice need not be given or served under the Bankruptcy Code, the Bankruptcy Rules or this Confirmation Order to any Person to whom the Debtor caused to be mailed the Confirmation Hearing Notice (as defined in the Disclosure Statement), but received such notice returned as undeliverable, unless the Debtor has been informed, in writing, by such

Person of that Person's new address. The Debtor is authorized to send the Notice of Effective Date, rather than a copy of the entered Confirmation Order, provided that copies of the Confirmation Order are made available to requesting parties at their own expense. The Notice of Effective Date is adequate under the particular circumstances of this Chapter 11 Case, and no other or further notice is necessary.

36. Failure to Consummate Plan and Substantial Consummation. If the Effective Date does not occur, then the Plan, any settlement or compromise embodied in the Plan, the assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be null and void. In such event, nothing contained in the Plan or this Confirmation Order, and no acts taken in preparation for consummation of the Plan, shall or shall be deemed to (a) constitute a waiver of release of any Claims by or against, or Interests in, the Debtor or any other Person, (b) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, (c) constitute an admission of any sort by the Debtor or any other Person, or (d) be construed as a finding of fact or conclusion of law with respect thereto.

37. 28 U.S.C. § 157(d). Nothing in this Confirmation Order or the Plan is intended to modify or violate 28 U.S.C. § 157(d).

38. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon entry hereof.

39. Waiver of Stay of Confirmation Order. The provisions of Federal Rule of Civil Procedure 62(a) and Bankruptcy Rules 7062 and 3020(e) shall not apply to this Confirmation Order on or after the date of its entry and the Debtor is authorized to consummate the Plan at any time thereafter.

Dated: April 9, 2014
New York, New York





Robert E. Grossman
United States Bankruptcy Judge