Docket #0671 Date Filed: 07/08/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Sticky's Holding LLC., *et al*.,[1]	Case No. 24-10856 (JKS)
	(Jointly Administered)
Reorganized Debtors.	**Related Docket No. 646** **Objection Deadline: July 9, 2025 at 12:00 p.m. (ET)**

REORGANIZED DEBTORS' OPPOSITION TO UNITED STATES TRUSTEE'S MOTION FOR ENTRY OF AN ORDER CONVERTING CASES TO CASES UNDER CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112(b)

The above-captioned reorganized debtors (the "**Reorganized Debtors**"), by and through their undersigned counsel, hereby respectfully submit this opposition (the "**Objection**") to the *United States Trustee's Motion for Entry of an Order Converting Cases to Cases Under Chapter 7 Pursuant To 11 U.S.C. § 1112(b)* (the "**Conversion Motion**") [Docket No. 646]. In support of this Objection, the Reorganized Debtors respectfully represent as follows:

PRELIMINARY STATEMENT[2]

The Conversion Motion should be denied, or alternatively adjourned, until after consideration of the proposed sale (the "**Proposed Sale**") set forth in the *Letter of Intent for Purchase and Sale of All of the Assets of Sticky's Holdings LLC and Related Debtors, and Advance*

[1] The Reorganized Debtors in these cases, along with the last four digits of each the Reorganized Debtor's federal tax identification number are as follows: Sticky's Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky's BK I LLC (0423); Sticky's NJ 1 LLC (5162); Sticky Fingers VII LLC (1491); Sticky's NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky's NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky's WC 1 LLC (0427); Sticky's Franchise LLC (5232); Sticky's PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky's IP LLC (4569). The Reorganized Debtors' mailing address is 21 Maiden Lane, New York, NY 10038.

[2] Capitalized terms used in the Preliminary Statement shall have the meanings ascribed in the Objection below.

Funding [*See* Docket No. 644] (the "**LOI**"). At the hearing on the Plan Modification Motion, the Court asked the parties to confer and report back to the Court. The LOI is the result of those discussions. The Reorganized Debtors believe that the Proposed Sale will maximize value for holders of administrative expense claims accrued during these cases due to the failed plan of reorganization and modified plan. The LOI is in the best interests of creditors and the only chance of a meaningful and timely recovery for administrative creditors. Undersigned counsel has reached out to many of the creditors in these cases and believes they support a quick sale process, rather than immediate conversion.

Conversion prior to the Proposed Sale being consummated will likely result in delay and reduced or no recoveries to creditors. The LOI terminates by its terms upon conversion and the Reorganized Debtors believe that the purchase price offered, including the assumption of the SBA loan, will not be available if the Proposed Sale is not consummated quickly. Given the unique circumstances of these cases, the Reorganized Debtors do not believe that "cause" to convert these Chapter 11 Cases to cases under chapter 7 exists and that immediate conversion is not in the best interest of the Reorganized Debtors' creditors.

Since the Court's June 9, 2025 ruling denying the Plan Modification Motion, the Reorganized Debtors: (i) engaged replacement counsel; (ii) filed the LOI that details the Proposed Sale and provides for funding to administer these cases through the closing of the Sale; and (iii) engaged with landlords, the United States Trustee ("**U.S. Trustee"**), the Subchapter V Trustee and other known administrative claim holders, to determine what path these parties thought best to pursue. While the U.S. Trustee and the Subchapter V Trustee believe that these cases should convert immediately, as set forth in the Conversion Motion, all of the administrative creditors undersigned counsel talked to support a quick sale in Chapter 11. To the extent this Court agrees

with the Reorganized Debtors, the Reorganized Debtors intend to quickly file a sale motion, seeking approval of the LOI under section 363 of the Bankruptcy Code, and a motion to establish a bar date for unpaid administrative expense claims. Notably, the Conversion Motion—filed three days after the filing of the LOI—fails to address the LOI or the Proposed Sale transaction.

For the reasons set forth herein, the Reorganized Debtors believe the Conversion Motion should be denied. To the extent the Court is inclined to consider the Conversion Motion, the Reorganized Debtors believe that compelling circumstances exist, in accordance with section 1112(b)(3) of the Bankruptcy Code, to defer ruling on the Conversion Motion until after the Proposed Sale is consummated.

BACKGROUND

A. GENERAL BACKGROUND.

1. On April 25, 2024 (the "**Petition Date**"), the Reorganized Debtors commenced with the Court voluntary cases (the "**Chapter 11 Cases**") under chapter 11 of the Bankruptcy Code and elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

2. On April 26, 2024, the U.S. Trustee appointed Natasha Songonuga of Archer & Greiner, P.C. to serve as the Subchapter V Trustee (the "**Subchapter V Trustee**") in these cases pursuant to section 1183(a) of the Bankruptcy Code. The Reorganized Debtors are operating their businesses as debtors in possession pursuant to sections 1184 of the Bankruptcy Code.

3. Additional detail regarding the Reorganized Debtors, their businesses, the events leading to commencement of these cases, and the facts and circumstances supporting the relief requested herein are set forth in the *Declaration of Jamie Greer in Support of First Day Relief*,

sworn to on April 25, 2024 [D.I. 13] (the "**First Day Declaration**") and incorporated herein by reference.

4. On November 13, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Subchapter V Debtors' Modified First Amended Plan of Reorganization* [Docket No. 398] (the "**Confirmation Order**"). The *Subchapter V Debtors' Modified First Amended Plan of Reorganization* [Docket No. 368] (the "**Plan**") went effective on November 29, 2024 [Docket No. 431] (the "**Effective Date**").

5. As described in the *Motion of Reorganized Debtors to Convert the Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code* [D.I. 481] (the "**Debtors' Motion to Convert**"), filed February 10, 2025, the Reorganized Debtors were unable to generate sufficient cash to administer these Cases and continue as a going concern.

6. On April 30, 2025, the Court entered the *Order (I) Authorizing Entry Into Proposed Letter of Intent with Harker Palmer Investors LLC; (II) Authorizing Reorganized Debtors and Their Professionals to Perform Obligations Thereunder; and (III) Granting Related Relief* [D.I. 585] (the "**LOI Order**").

7. Pursuant to the LOI Order, the Reorganized Debtors filed *the Reorganized Debtors' Motion for Entry of an Order (I) Authorizing the Reorganized Debtors to Modify, and Approving Modifications to, the Confirmed Plan of Reorganization, (II) Confirming the Subchapter V Reorganized Debtors' Second Modified First Amended Plan of Reorganization, and (III) Granting Related Relief* [D.I. 595] (the "**Plan Modification Motion**") for authority to modify their Confirmed Plan, approval of the modifications to the Confirmed Plan, and Confirmation of the Modified Plan.

8. A hearing on the Plan Modification Motion was held on June 6, 2025. In a bench ruling on June 9, 2025, the Court denied the Plan Modification Motion based on the Reorganized Debtors' failure to obtain consent from administrative claim holders but encouraged the parties to continue to meet and confer in light of the Court's ruling.

9. On June 18, 2025, Pashman Stein Walder Hayden, P.C. filed its motion to withdraw as counsel to the Reorganized Debtors [Docket No. 639].

10. In the spirit of the Court's ruling, on June 24, 2025, the Reorganized Debtors retained Chipman Brown Cicero & Cole, LLP ("**CBCC**") as replacement counsel. A *Notice of Substitution of Counsel* was filed on June 27, 2025 [Docket No. 643]. Since their engagement, CBCC has spent significant time familiarizing itself with these cases, and engaging in discussions with the Subchapter V Trustee, the U.S. Trustee, counsel for various landlords, and other administrative claimants.

B. THE JUNE 18, 2025 LETTER OF INTENT WITH HARKER PALMER INVESTORS LLC.

11. On July 27, 2025, the Reorganized Debtors filed the LOI for the Proposed Sale by Harker Palmer Investors LLC or, its designee ("**Harker Palmer**" or the "**Purchaser**"), and for the provision of advance funding. *See* Docket No. 644. In summary, the LOI contemplates the following:[3]

- Upon approval of the LOI by the Board of the Reorganized Debtors, the Reorganized Debtors shall promptly seek a status conference with the Bankruptcy Court (the "**Sale Status Conference**");
- At the Sale Status Conference, the Reorganized Debtors shall request (i) a hearing on shortened notice for the proposed Sale, and (ii) the Court's deferred ruling on the Debtors' pending Motion to Convert;

[3] The summary of the LOI provided herein is qualified in its entirety by reference to the provisions of the LOI. In the event of any inconsistencies between the provisions of the LOI and the summary set forth herein, the terms of the LOI shall govern. Capitalized terms that are used but not defined in the following summary shall have the meanings ascribed to such terms in the LOI.

- Upon execution of the LOI by the Reorganized Debtors, the Purchaser shall advance $37,000 to the Reorganized Debtors to be held in trust and solely applied: (i) $12,000 to be used to pay outstanding fees and expenses of the Subchapter V Trustee; and (ii) $25,000 to pay the Reorganized Debtors' operating costs and expenses (salaries and other expenses) and, at the discretion of the Reorganized Debtors, the fees and expenses of the Reorganized Debtors' counsel and the Subchapter V Trustee from and after June 10, 2025, with any such funds not so expended returned to the Purchaser if the closing of the Sale does not occur;

- Following the Sale Status Conference, and the Court's (i) setting a hearing on the Sale and (ii) deferring ruling on the Motion to Convert until after the hearing on the Sale, the Purchaser shall advance to the Reorganized Debtors $160,000 to be held in trust and solely to be used to pay the professional fees and expenses of the Reorganized Debtors' counsel and claims and noticing agent incurred in connection with the preparation of the Sale hearing related pleadings and notice, providing notice of the Sale hearing, and implementing the Sale if approved, with any such funds not so expended returned to the Purchaser if the closing of the Sale does not occur. The aggregate $197,000 in advances described above are referred to as the "**Initial Further Advance**";

- The Purchaser may, at its discretion, advance an additional $50,000 in trust to the Reorganized Debtors solely to pay fees and expenses incurred in connection with the Sale Hearing, including the Reorganized Debtors' professionals and the Subchapter V Trustee, with any such funds not so expended returned to the Purchaser if the closing of the Sale does not occur (the "**Additional Further Advance**", and together with the Initial Further Advance, the "**Further Non-Refundable Earnest Money Deposit**");

- A hearing on the Motion to Convert shall be deferred until a date that is after the hearing on the Sale;

- Within five (5) business days after the Sale Status Conference, and the Court having set a hearing on the Sale: (i) the Purchaser shall prepare the APA and Sale Order and (ii) the Reorganized Debtors shall prepare a motion to approve the Sale and supporting declaration (the "**Sale Motion**") and a notice of the Sale (the "**Sale Notice**"). The Reorganized Debtors shall promptly after the Sale Status Conference and the Bankruptcy Court setting a hearing on the Sale, seek an order, on shortened notice, approving the Sale Notice;

- The Sale, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, shall consist of all of the Reorganized Debtors' assets and all property of the Reorganized Debtors' estates (collectively, the "**Purchased Assets**"), provided, however, that the Purchased Assets shall not include: (i) the Reorganized Debtors' real property leases (which will be rejected), (ii) the Reorganized Debtors' executory contracts previously assumed (except for the previously assumed Separate Agreement which shall be assigned to the

Purchaser), (iii) personal property located at the Reorganized Debtors' real property leases, and (iv) the Reorganized Debtors' food inventory (collectively (i) through (iv), the "**Excluded Assets**");

- The Sale of the Purchased Assets will be documented in the APA and Sale Order and will incorporate provisions to effectuate the same as acceptable to the Purchaser, including, among other things:
    - Pursuant to sections 105, 363, and 365 of the Bankruptcy Code the Purchased Assets shall be sold free and clear of all claims, liens and interests. The Purchaser shall not have any successor liability or otherwise be liable for any claims against, or interests in, the Reorganized Debtors, except for the assumed EIDL Loan which Purchaser shall pay to the oblige of the EIDL Loan on or after the closing of the Sale;
    - The purchase priced for the Purchased Assets shall be two million dollars ($2,000,000.00) (the "**Cash Purchase Price Portion**") plus the assumption of the payment obligations on the EIDL loan (the "**Purchase Price**"). The aggregate of the First Earnest Money Deposit, Second Earnest Money Deposit, and the Further Non-Refundable Earnest Money Deposit shall be credited against the Cash Purchase Price Portion and the net amount thereof paid on the closing of the Sale (the "**Net Cash Portion of the Purchase Price**").
    - The Purchaser will pay to Reorganized Sticky's the Net Cash Portion of the Purchase Price on the closing of the Sale, and Reorganized Sticky's shall be authorized to use (i) the Deposits as provided for in the LOI (to the extent not previously used) and the Net Cash Portion of the Purchase Price to pay the Reorganized Debtors' costs and expenses of the Sale not previously paid from the Deposits; and (ii) the balance of the Net Cash Portion of the Purchase Price: (a) to pay up to $50,000 for operating expenses of the Reorganized Debtors; (b) to pay up to $100,000 (less the Further Initial Advance made) for professional fees and expenses of the Reorganized Debtors following the closing of the Sale, and (c) with the balance as further ordered by the Bankruptcy Court. Notwithstanding the foregoing, nothing in the LOI shall operate as a cap on the fees and expenses of the Reorganized Debtors' professionals, the claims agent and the Subchapter V Trustee, which such fees and expenses to the extent incurred from and after June 10, 2025 and not paid from the Deposits shall be paid by Reorganized Sticky's as a cost and expense of the Sale from the Net Cash Portion of the Purchase Price at closing.
- The Sale shall be approved and closing thereon shall occur on or before August 16, 2025.

12. On June 30, 2025, the U.S. Trustee filed the Conversion Motion [Docket No. 646], which is scheduled to be heard on shortened notice at the July 10, 2025 omnibus hearing. *See* Docket Nos. 649, 650. Notably, the Conversion Motion does not address the LOI, the proposed Sale or the funding contemplated therein.

OBJECTION

I. THE U.S. TRUSTEE FAILS TO SHOW CAUSE TO CONVERT THE REORGANIZED DEBTORS' CHAPTER 11 CASES.

13. The Bankruptcy Code provides that the Court shall convert a case to chapter 7, "[if it] is in the best interests of creditors and the estate, for cause." 11 U.S.C. § 1112(b)(1). The "burden is on the moving party to prove cause by a preponderance of the evidence." *In re Rsrvs. Resort, Spa & Country Club LLC*, 2013 WL 3523289, at *2 (Bankr. D. Del. July 12, 2013). Once "cause" is found, "the burden shifts to the opposing part to show why dismissal or conversion would not be in the best interests of the estate and the creditors." *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.*, 465 F. App'x 93, 96-97 (3d Cir. 2011).

14. The U.S. Trustee argues that conversion of the Reorganized Debtors' chapter 11 cases to chapter 7 is warranted because of "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).[4]

15. As more fully described herein, the U.S. Trustee fails to satisfy its burden under section 1112(b)(4)(A) of the Bankruptcy Code for conversion of the Chapter 11 Cases at this time given the Proposed Sale and Initial Further Advance contemplated under the LOI.

[4] 11 U.S.C. § 1112(b)(4) provides sixteen different grounds for "cause." However, the U.S. Trustee only pleaded "cause" under section 1112(b)(4)(A). For the avoidance of doubt, the Reorganized Debtors submit that there is no "cause" for conversion on any grounds at this time given the receipt of the LOI.

A. The Reorganized Debtors Will Not Suffer a Substantial or Continuing Loss to, or Diminution of, the Estate Supporting Conversion.

16. To prevail on a showing of "cause" under subsection 1112(b)(4)(A), "both tests [(a) loss to or diminution of the estate and (b) absence of a reasonable likelihood of rehabilitation] must be satisfied." *In re AIG Financial Products Corp.*, 651 B.R. 463, 475 (Bankr. D. Del. 2023), aff'd No. 23-573-GBW, 2024 WL 3967465 (D. Del. Aug. 28, 2024). The U.S. Trustee fails to show a continuing loss to the Estates given the Proposed Sale and Initial Further Advance contemplated under the LOI.

17. Subsection 1112(b)(4)(A) of the Bankruptcy Code requires a movant to first show the existence of "substantial or continuing loss to or diminution of the estate." 11 U.S.C. § 1112(b)(4)(A). To assess whether there is a "substantial or continuing loss to or diminution of the estate," "[a] court must make a full evaluation of the present condition of the estate, not merely look at the debtor's financial statements." *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003); *see also AIG Financial*, 651 B.R. at 475 (declining to convert case where debtor "ha[d] cash on hand," had "reduced accruing losses by filing bankruptcy," and where there was potential for deal with movants, notwithstanding their pleadings).

18. Courts do not convert a case merely because a debtor may be sustaining losses while administering its estate; "[s]mall losses over an extended period may be acceptable." *AdBrite*, 290 B.R. at 215. Instead, courts require more—a true degradation of estate assets. *See In re Strawbridge*, 2010 WL 779267, at *4 (Bankr. S.D.N.Y. Mar. 5, 2010) ("[T]here must be both a 'pattern of decline' and an inability to 'stop the bleeding' for cause to exist under [section] 1112(b)(4)(A)."); *In re Creech*, 538 B.R. 245, 250 (Bankr. E.D.N.C. 2015) (denying motion to convert because "[t]his is clearly not a case where the operating account has been depleted and there is no income to fund ongoing expenses").

19. The Reorganized Debtors submit that in light of the transactions contemplated by the LOI, including the Further Non-Refundable Earnest Money Deposit proposed to be provided by Harker Palmer, that there is no substantial or continuing loss to, or diminution of, the Reorganized Debtors' estates. The Reorganized Debtors believe that the Further Non-Refundable Earnest Money Deposit will be sufficient to pay the Reorganized Debtors' current operating expenses and professionals fees through the Proposed Sale, which must close on or before August 16, 2025. Allowing the Proposed Sale to proceed for a short period of time will not result in a substantial or continuing loss to or diminution of the Reorganized Debtors' estates.

20. In support of its Conversion Motion, the U.S. Trustee only sets forth conclusory statements that the Reorganized Debtors' estates will continue to incur professional fees if these cases remain in chapter 11, and that landlord administrative rent claims continue to accrue. However, the Further Non-Refundable Earnest Money Deposit will cover all professional fees through the Proposed Sale and all of the Reorganized Debtors' leases have now been rejected, therefore there is no longer any accruing unpaid administrative rent. Notwithstanding the Further Non-Refundable Earnest Money Deposit will cover all accrued and unpaid professional fees moving forward, Courts have found that accrual of professional fees "does not constitute a continuing loss to the estate." *In re TMT Procurement Corp.*, 534 B.R. 912, 920 (Bankr. S.D. Tex. 2015); *see also In re Vaughan*, No. 11-10-10759, 2013 WL 2244285, at *7-8 (Bankr. D.N.M. May 21, 2013) (denying conversion and finding that accruing professional fees did not establish cause because, inter alia, "the Trustee has expended professional fees for the purpose of building up the value of future assets for the benefit of the estate"). Further, for the loss to be "substantial" under section 1112(b)(4)(A), a movant must show that the loss sufficiently large given the financial circumstances of the debtor as to ***materially negatively impact*** the bankruptcy estate and interests

of creditors." *See* 7 Collier on Bankruptcy ¶ 1112.04[6][a][i] (Alan N. Resnick & Harry J. Sommer eds., 16th ed. 2014) (emphasis added).

21. The Conversion Motion does not address the effect of the LOI, the Proposed Sale, or the Further Non-Refundable Earnest Money Deposit to be provided thereunder. In fact, the U.S. Trustee has not provided any evidence to demonstrate that there has been, or will be, a "pattern of decline" or an inability to "stop the bleeding." *Strawbridge*, 2010 WL 779267, at *4. Instead, the U.S. Trustee has simply pointed out that there will continue to be professional fees incurred by the Reorganized Debtors' estates. While professional fees will be incurred in connection with the Proposed Sale process, such fees are fully accounted for under the LOI. Aside from the professional fees that will be incurred to continue the administration of these chapter 11 cases, the Reorganized Debtors do not forecast any additional administrative expenses to be incurred after July 10, 2025, not covered by the Further Non-Refundable Earnest Money Deposit, that could possibly "materially negatively impact" the bankruptcy estates and interests of creditors. Specifically, any material costs that are anticipated to be borne by the Reorganized Debtors' estates after July 10, 2025, will almost certainly be commensurable to the costs incurred by any Chapter 7 trustee to continue the orderly administration of these cases, without the benefit of the LOI, the Further Non-Refundable Earnest Money Deposit, or the Proposed Sale.

22. Finally, the U.S. Trustee wholly ignores that conversion to chapter 7 would not reduce costs or yield better results. Conversion would likely result in no Proposed Sale, substantial Chapter 7 administrative expenses that will be incurred by a Chapter 7 trustee in getting up to speed and retaining new professionals, without any ability to pay. Accordingly, U.S. Trustee has not met its burden to satisfy the first prong of subsection 1112(b)(4)(A).

B. The Reorganized Debtors Have a Reasonable Likelihood of Rehabilitation in Chapter 11.

23. Even if "loss" could be shown, a movant seeking conversion under subsection 1112(b)(4)(A) must also demonstrate "the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The U.S. Trustee argues that: (i) the Reorganized Debtors have no reasonable likelihood of rehabilitation because "the Debtors have ceased operations and have no cash flow"; and (ii) the Reorganized Debtors inability to meet their commitments under the confirmed plan, and the Court's denial of the Plan Modification Motion because of the Reorganized Debtors failure to obtain the affirmative consent of all unpaid administrative claimants to the modification, lead to a conclusion that no plan can be confirmed.

24. The Reorganized Debtors have been candid with the Court, and all parties in interest, that the confirmed Plan required modification and subsequently filed the Plan Modification Motion. In the spirit of the Court's June 9, 2025 ruling denying the Plan Modification Motion and requesting the parties to meet and confer, the Reorganized Debtors have (i) engaged replacement counsel; (ii) filed the LOI that details the Proposed Sale of substantially all their assets and provides for funding to administer these cases through the closing of the Proposed Sale, and (iii) engaged with certain landlords and known administrative claim holders to determine what path the creditors would prefer.

25. If the Court allows these cases to proceed in Chapter 11 to pursue the Proposed Sale on an expedited timeline, the Reorganized Debtors also intend to file a motion to establish an administrative claims bar date, so that the Reorganized Debtors will understand the full universe of administrative expense claims. With that information, the Reorganized Debtors can work to address the remaining administrative claims, possibly by resolving them or gaining their consent to take a lesser amount in exchange for a quick distribution. With this information the Reorganized

Debtors may be able to dismiss these cases, with a pro-rata or agreed upon distribution or formulate a consensual liquidating plan. If neither option is available, the Reorganized Debtors could turn the Proposed Sale proceeds over to a Chapter 7 trustee to administer, after the Proposed Sale is approved. Courts have found that a liquidating plan is a form of rehabilitation. *See In re Smith*, 77 B.R. 496, 502 (Bankr. E.D. Pa. 1987) ("There is no requirement that the plan contemplate reorganization, as a liquidating plan is an acceptable alternative in a Chapter 11 case, and thus a liquidation is a form of rehabilitation."); *In re R&S St. Rose Lenders, LLC*, 2016 WL 3536533, at *6 n.11 (Bankr. D. Nev. May 18, 2016) (denying U.S. Trustee's conversion motion and finding that conversion was not in the best interests of creditors where U.S. Trustee argued that there was no likelihood of rehabilitation because the debtor has proposed a liquidating plan); *In re McTiernan*, 519 B.R. 860, 866 (Bankr. D. Wy. 2014) (holding that there is "a reasonable likelihood of rehabilitation" if the "Debtor may successfully liquidate").

26. In connection with the Proposed Sale, the Reorganized Debtors have engaged with various parties in interest in these cases, including certain of the landlords and administrative claimants that previously agreed to settle their claims, as identified in the *Declaration of Jamie Greer in Support of Reorganized Debtors' Plan Modification Motion* [Docket No. 622].

27. Based on discussions with these claimants, the Reorganized Debtors are not aware of any substantive objection to the Proposed Sale process, and understand that the holders of the administrative claims, that were previously compromised as part of the proposed Modified Plan, are willing to consider preserving the previously agreed upon settlements and distributions, presuming all administrative creditors are treated in a similar fashion, which has the benefit of: (i) avoiding claims litigation and the associated costs and delay, (ii) providing for an immediate distribution on the settled claims (approx. 30 cents on the dollar on the reduced claim), while

preserving (and enhancing by reducing claims litigation expenses) a pro-rata distribution on the remaining administrative claims at the same amount as if no administrative claims were settled (approx. 16 cents on the dollar); that there is no prejudice to non-settling administrative creditors as the settlements do not dilute (and likely enhance) their pro rata distribution; and (iii) preserving a value maximizing transaction. Granting the Conversion Motion would compromise the economic benefits and efficiency of preserving the Proposed Sale, the settlements, and trying to get distributions out to known and settling creditors, while preserving pro-rata treatment of all administrative creditors, if there were no settlements at all.

28. The Reorganized Debtors submit that for the reasons set forth above, granting the relief requested in the Conversion Motion at this time is not appropriate. Accordingly, the Movant has not met its burden to satisfy the second prong of subsection 1112(b)(4)(A) of the Bankruptcy Code.

II. EVEN IF THE U.S. TRUSTEE HAD SUCCESSFULLY SHOWN "CAUSE," CONVERSION IS NOT IN THE BEST INTERESTS OF CREDITORS OR THE ESTATES.

29. If cause is found, "the burden shifts to the opposing party to show why conversion would not be in the best interests of the estate and the creditors." *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.*, 465 F. App'x 93, 96-97 (3d Cir. 2011); *In re Korn*, 523 B.R. 453, 464 (Bankr. E.D. Pa. 2014) (same). Even if the U.S. Trustee had successfully satisfied its burden to show "cause" for conversion (it has not), conversion is decidedly against the interests of creditors.

30. Conversion prior to the Proposed Sale being consummated will likely result in no Proposed Sale, significant delay and reduced or no recoveries to creditors. The LOI terminates by its terms upon conversion and the Reorganized Debtors believe that the purchase price offered, including the assumption of the SBA loan, will not be available if the Proposed Sale is not consummated quickly. Given the unique circumstances of these cases, the Reorganized Debtors

do not believe that immediate conversion is in the best interest of the Reorganized Debtors' creditors.

31. Simply stated, the immediate conversion of the Chapter 11 Cases to cases under chapter 7 would not be beneficial to the administration of the Reorganized Debtors' estates or to the interests of creditors. Without the Proposed Sale, administrative creditors are likely to receive nothing in these cases. As the U.S. Trustee is aware, the fees and commissions of a chapter 7 trustee and its professionals, and the delay in any distributions to administrative creditors, if any, alone support immediate conversion is not in the best interests of creditors. Adding yet another layer of unpaid administrative expenses for a Chapter 7 Trustee and its professionals will further reduce any funds available for distributions to existing creditors.

III. ALTERNATIVELY, THE COURT SHOULD ADJOURN THE HEARING ON THE CONVERSION MOTION SO THAT IT MAY BE CONSIDERED AFTER THE SALE HEARING.

32. Section 1112(b)(3) of the Bankruptcy Code provides that the "court shall commence the hearing on a motion under this subsection not later than 30 days after the filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time *or compelling circumstances prevent the court from meeting the time limits established by this paragraph*." 11 U.S.C. § 1112(b)(3) (emphasis added).

33. Rule 2002(a)(4) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") requires that 21-days' notice of a hearing on the dismissal or conversion of a chapter 11 case be provided to "the debtor, the trustee, all creditors and indentured trustees" by mail. (Emphasis added). *See also* Local Rule 2002-1(b).

34. If the Court is not inclined to simply deny the Conversion Motion outright, the Reorganized Debtors submit that compelling circumstances exist for this Court to defer ruling on

the Conversion Motion so that it may be considered after consideration of the Sale Motion. *See, e.g., In re Wolper Constr. Co.*, 2009 Bankr.LEXIS 2595 (Bankr. D. Utah 2009) (finding that compelling circumstances existed due to the court's workload and issues related to a pending sale motion in the case to prevent the court from deciding the motion within the 15 days required by section 1112(b)(3)); *In re SageCrest II LLC*, 2010 Bankr.LEXIS 4592 (Bankr. D.Ct. 2010) (finding that "compelling circumstances" under section 1112(b)(3) existed where movant's pending discovery requests, and the court's time constraints, justified an extension to the 30-day time limit; the court also found compelling circumstances to defer trial under section 105(a) of the Bankruptcy Code).

35. For the reasons set forth above, conversion of the Chapter 11 Cases is not in the best interests of the Reorganized Debtors' creditors and estates prior to Court's consideration of the Sale Motion and the establishment of an administrative claims bar date.

36. Finally, the Court, *all creditors*, and all parties in interest should have the opportunity to consider the Conversion Motion in light of the Proposed Sale and additional funding set forth in the LOI. The U.S. Trustee has failed to comply with Local Rule 9013-1(f), which requires that a certificate of service be filed with the Conversion Motion.[5] Accordingly, the Court should strike the Conversion Motion, or at a minimum, adjourn the July 10, 2025 hearing thereon or treat it as a status conference, and defer ruling until the U.S. Trustee has established that proper

[5] In pertinent part, Local Rule 9013-1(f) states: "Form of Motion. All motions must have attached thereto a notice conforming to Local Rule 9013-1(e), a proposed form of order specifying the exact relief to be granted, and a certificate of service showing the date of service, means of service and the names and addresses of the parties served." (emphasis added)." The U.S. Trustee's disregard for this critical filing renders it impossible to verify whether in fact the U.S. Trustee complied with its obligation to serve the Conversion Motion upon all creditors, as required by Bankruptcy Rule 2002(a)(4). The Reorganized Debtors acknowledge that the title to the U.S. Trustee's motion to shorten notice for the Conversion Motion [Docket No. 647] includes a request to limit notice; however, no discussion of this relief is contained in the motion to shorten or the order entered by the Court. *See* Docket No. 649.

notice was given pursuant to Bankruptcy Rule 2002(a)(4), and/or the Court has considered the Sale Motion.

RESERVATION OF RIGHTS

37. This Objection is filed with a full reservation of rights, including the right to amend and/or supplement the Objection in all respects, including based on any new or additional information that the Reorganized Debtors obtain, and to raise additional arguments at the hearing on the Conversion Motion.

LOCAL RULE 9013-1(h) CONSENT

38. Pursuant to Local Rule 9013-1(h), the Reorganized Debtors consent to the entry of a final judgment or order with respect to this Objection if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

CONCLUSION

For the reasons set forth above, the Reorganized Debtors respectfully request that this Court enter an order denying the relief requested in the Conversion Motion; and granting such other relief as this Court deems just, equitable and appropriate.

Dated: July 8, 2025

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