IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

In re:	)	**Chapter 11**
	)	
FIBRANT, LLC, *et al.*, [1]	)	**Case No. 18-10274 (SDB)**
	)	
	)	
Debtors.	)	**Jointly Administered**
	)	

DEBTORS' MOTION PURSUANT TO SECTION 1127 OF THE BANKRUPTCY CODE SEEKING APPROVAL OF MODIFICATIONS TO THE DEBTORS' CONFIRMED SECOND AMENDED AND RESTATED PLAN OF LIQUIDATION WITHOUT THE NEED FOR FURTHER DISCLOSURE OR SOLICITATION OF VOTES

The above-captioned debtors (collectively, the "Debtors") hereby file this motion (the "Motion") for entry of an order (the "Order"), substantially in the form attached to this Motion as **Exhibit A**, pursuant to Section 1127 of title 11 of the United States Code (the "Bankruptcy Code"), approving certain modifications to the Debtors' Second Amended and Restated Plan of Liquidation for Fibrant, LLC, et al., dated May 22, 2019 (the "Plan"),[2] which was confirmed by this Court pursuant to the *Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended and Restated Plan of Liquidation Dated as May 22, 2019 Filed by the Debtors* [Docket No. 855], entered on May 29, 2019 (the "Confirmation Order"), without the need for further

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant South Center, LLC (8270); and Georgia Monomers Company, LLC (0042).
[2] Capitalized terms used but not defined herein have the meanings given to them in the Plan.

disclosure or solicitation of votes. In support of this Motion, the Debtors respectfully state the following:

I. PRELIMINARY STATEMENT

1. The Plan presently provides for the dissolution of Fibrant, which occurred immediately following the transfer of the EPD Permit to ELT.

2. By this Motion, the Debtors propose changes to the Plan that are designed to dissolve Evergreen and Monomers, in addition to Fibrant, leaving South Center as the sole remaining Debtor until substantial consummation of the Plan occurs.

3. The proposed Plan modifications are appropriate under Section 1127 of the Bankruptcy Code. They will not reduce or adversely affect the value that creditors or equity security holders will receive under the Plan. Thus, there is no material or adverse impact on creditors, equity security holders or any other party in interest in the Bankruptcy Cases and no need for further disclosures or resolicitation of their votes on the Plan.

4. Accordingly, the Debtors respectfully request that the Court enter an order approving the modifications to the Plan set forth below under Section 1127(b) of the Bankruptcy Code and providing that the Confirmation Order applies to the Plan, as modified.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction over the Debtors, their estates, and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

6. Venue of the Bankruptcy Cases and this Motion in the Southern District of Georgia is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested in this Motion are Sections 1127(b) and (c) of Bankruptcy Code.

III. BACKGROUND

8. On February 23, 2018, the Debtors filed with this Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

9. On February 13, 2019, the Debtors filed the *Disclosure Statement for Amended and Restated Plan of Liquidation Filed by Fibrant, LLC, et al.* [Docket No. 601] (the "Disclosure Statement").

10. On May 23, 2019, the Debtors filed the Plan.

11. On February 7, 2019, the Court conducted a hearing on approval of the Disclosure Statement, and on February 14, 2019, the Court entered the *Order Approving (I) the Disclosure Statement with Respect to Amended and Restated Plan of Liquidation; (II) Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Plan; and (III) Related Notice and Objection Procedures* [Docket No. 604] (the "Disclosure Statement Approval Order"). The Disclosure Statement Approval Order, among other things: (i) approved the Disclosure Statement as containing "adequate information" pursuant to Section 1125 of the Bankruptcy Code; (ii) approved the solicitation procedures for the solicitation of votes on the Plan; (iii) fixed April 5, 2019 as the date by which all ballots to accept or reject the Plan must be received (the "Voting Deadline"); (iv) fixed April 5, 2019 as the last day for creditors and other parties in interest to file objections to confirmation of the Plan; (v) scheduled a hearing to consider confirmation of the Plan for April 17, 2019 (the "Confirmation Hearing"); and (vi) prescribed the form and manner of notice with respect to the foregoing.

12. The Plan has been accepted by all impaired classes of claims and interests entitled to vote in excess of the statutory thresholds specified in Section 1126(c) of the Bankruptcy Code.

13. On May 29, 2019, this Court entered the Confirmation Order confirming the Plan. The Effective Date of the Plan occurred on June 26, 2019.[3]

IV. THE PROPOSED MODIFICATIONS

14. Article 6.2 of the Plan presently provides for the dissolution of Fibrant, and states, in relevant part:

> Fibrant will be deemed dissolved and will cease to exist upon the date the EPD Permit is transferred, which dissolution shall occur immediately following the transfer of the EPD Permit to ELT; such dissolution shall be deemed to occur pursuant to the applicable laws of the State of Delaware and without the necessity of taking any action or making any filing with the Delaware Secretary of State or otherwise. Fibrant and the Liquidating Trustee are authorized to file the Plan and Confirmation Order as evidence of the dissolution of Fibrant and shall take such actions as reasonably requested by the ChemicaInvest Parties with respect to the dissolution of Fibrant and administration of such dissolution with the Delaware Secretary of State.

15. Article 6.21 of the Plan further provides:

> After the occurrence of the Consummation Date and the entry of an order of the Bankruptcy Court closing the Bankruptcy Cases, South Center, Evergreen and Monomers shall be deemed dissolved pursuant to the applicable laws of the State of Georgia without the necessity of taking any action or making any filing with the Georgia Secretary of State or otherwise.

16. The following proposed modifications to the Plan (collectively, the "Modifications") reflect changes to the Plan that are designed to dissolve Evergreen and Monomers, in addition to Fibrant, leaving South Center as the sole remaining Debtor until the Bankruptcy Cases are closed. The Modifications are as follows:

The existing provisions of Article 6.21 of the Plan shall be deleted and the following language shall be inserted in lieu thereof:

[3] *Notice of Confirmation of Plan, Permanent Injunction, Various Deadlines, Effective Date,* entered on June 28, 2019 [Docket No. 887].

> Evergreen and Monomers will be deemed dissolved and will cease to exist upon the date that is 150 days after the Effective Date, which dissolution shall occur immediately following the 150th day; such dissolution shall be deemed to occur pursuant to the applicable laws of the State of Georgia and without the necessity of taking any action or making any filing with the Georgia Secretary of State or otherwise. The Liquidating Trustee is authorized to take such actions as reasonably requested by the ChemicaInvest Parties with respect to the dissolution of Evergreen and Monomers and administration of such dissolution with the Georgia Secretary of State. After the occurrence of the Consummation Date and the entry of an order of the Bankruptcy Court closing the Bankruptcy Cases, South Center shall be deemed dissolved pursuant to the applicable laws of the State of Georgia without the necessity of taking any action or making any filing with the Georgia Secretary of State or otherwise.

17. The Debtors submit that the Modifications will have no impact on any Distributions to creditors pursuant to the Plan, and are not adverse to any parties in interest.[4]

V. RELIEF REQUESTED

18. By this Motion, the Debtors seek entry of the Order, pursuant to Section 1127(b) of the Bankruptcy Code, authorizing the Modifications to the Plan and determining that the Modifications are proper without further disclosure or resolicitation of votes under Sections 1127(c) or 1127(d) of the Bankruptcy Code.

VI. THE PROPOSED MODIFICATIONS SHOULD BE APPROVED

19. Article 14.1 of the Plan provides for modification of the Plan, and states, in relevant part:

> The Debtors may modify this Plan with the prior written consent of the ChemicaInvest Parties pursuant to Section 1127 of the Bankruptcy Code and as herein provided, to the extent applicable law permits. The Debtors may modify this Plan with the prior written consent of the ChemicaInvest Parties in accordance with this paragraph, before or after confirmation, upon notice to the Creditor Trustee only, or after such notice and hearing as the Bankruptcy Court deems appropriate, if the Bankruptcy Court finds that the modification does not materially and adversely affect the rights of

[4] The Debtors reserve the right to further modify the Plan prior to the hearing on this Motion.

> any parties in interest which have not had notice and an opportunity to be heard with regard thereto.

20. Section 1127 of the Bankruptcy Code, in relevant part, provides:

> (b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.
>
> (c) The proponent of a modification shall comply with section 1125 of this title with respect to the plan as modified.
>
> (d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

21. The Debtors submit that the proposed Modifications satisfy Section 1127(b) because the circumstances warrant the Modifications and the Plan, as modified, meets the requirements of Sections 1122, 1123 and 1129 of the Bankruptcy Code. The Debtors have also determined that the Modifications are in the best interest of their estates, the creditors and other parties in interest.

22. Additionally, Section 1127(b) is further satisfied because the Modifications do not affect the classification or treatment of claims or interests addressed under the Plan, and thus do not implicate this Court's previous ruling that the Plan satisfies the requirements of Section 1122, 1223 and 1129 of the Bankruptcy Code.

23. Both the ChemicaInvest Parties and the Creditor Trustee have confirmed to the Debtors their consent to the Modifications.

24. Accordingly, the Modifications should be approved.

VII. THE PROPOSED MODIFICATIONS DO NOT REQUIRE FURTHER DISCLOSURE OR RESOLICITATION

25. As noted above, Section 1127(c) of the Bankruptcy Code requires that any proposed modification to a plan must comply with, among other things, the disclosure requirements of Section 1125 of the Bankruptcy Code. The legislative history of Section 1127(c) makes clear that not all modifications to a confirmed plan require new disclosure. *See* H. Rep. No. 595, 95th Cong., 1st Sess., 411 (1977) ("[I]f the modification were sufficiently minor, the court might determine that additional disclosure was not required under the circumstances"). A number of courts have held that further disclosure and resolicitation of votes on a modified plan is required only when the modification materially and adversely impacts parties who previously voted for the plan. *See, e.g.*, *In re 4 West Holdings, Inc.*, 593 B.R. 448, 459 (Banker. N.D. Tex. 2018) ("a creditor's prior acceptance of a plan will be deemed an acceptance of the modified plan if the modification does not 'materially and adversely change' the treatment of the creditor's claim.") (citations omitted); *In re Aleris Int'l, Inc.*, 2010 WL 3492664, at *32 (Bankr. D. Del. May 13, 2010) ("Further disclosure and resolicitation of votes on a modified plan is only required . . . when the modification materially *and* adversely affects parties who previously voted for the plan.") (citations omitted) (emphasis in original); *In re Federal-Mogul Global Inc.*, 2007 Bankr LEXIS 3940, *113 (Bankr. D. Del. 2007) (additional disclosure under Section 1125 is not required where plan "modifications do not materially and adversely affect or change the treatment of any Claim against or Equity Interest in any Debtor."); *Beal Bank, S.S.B. v. Jack's Marine, Inc. (In re Beal Bank, S.S.B.)*, 201 B.R. 376, 380 n.4 (E.D. Pa. 1996) (further disclosure and solicitation not required under Sections 1127(b) and (c) where modification to plan is immaterial); *In re Century Glove, Inc.*, 1993 U.S. Dist. LEXIS 2286, *12 (D. Del. Feb. 10, 1993) (upholding bankruptcy court's finding that Section 1127 did not require further disclosure and resolicitation of votes on plan modification that altered

the treatment to only one creditor when "the modifications at issue did not materially and adversely impact any creditors who voted for the Plan"); *In re Am. Solar King Corp.*, 90 B.R. 808, 823-24 (Bankr. W.D. Tex. 1988) ("Further disclosure occurs only when and to the extent that the debtor intends to solicit votes from previously dissenting creditors or when the modification materially and adversely impacts parties who previously voted for the plan."); *see also In re Temple Zion*, 125 B.R. 910, 914 (Bankr. E.D. Pa. 1991) (further disclosure pursuant to Section 1125 is unnecessary where post-confirmation plan modification under Section 1127(b) affected distribution to only one creditor, but did not affect any allegedly impaired class).

26. The *American Solar King* court explained the logic behind not requiring disclosure and resolicitation of a plan modification where such modification is not material:

> Ballots solicited with the original disclosure statement previously approved by the court will still be valid for the modified plan, because that disclosure statement is presumed already to contain "adequate information" to cover minor modifications. "Adequate information" is a term of art, defined by Section 1125 to be that disclosure necessary for a reasonable investor to make an informed judgment on whether to vote for a given plan. 11 U.S.C. § 1125(a)(1). A modification which is not "material" is by definition one which will not affect an investor's voting decision. Additional disclosure would serve no purpose and would therefore not be required.

Am. Solar King, 90 B.R. at 824, n. 28 (internal citations omitted).

27. The proposed Modifications are not material. "A modification is material if it so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance." *Am. Solar King*, 90 B.R. at 824 (internal citation omitted). In *American Solar King*, the court held that an amendment to a plan to increase the distribution of stock in the reorganized company to one creditor such that other creditors' recoveries would be diluted by less than one percent as a result of the modification to "be so small" so as to be immaterial. *Id.* Similarly, in *Beal Bank, S.S.B. v. Jack's Marine, Inc.*

(In re Beal Bank, S.S.B.), the court held that a modification to a plan after confirmation to extend by 60 days the date on which a creditor would receive payment did not require further disclosure or solicitation "given the immaterial nature of the modification." 201 B.R. 376, 380 (E.D. Pa. 1996). The Debtors submit that the Modifications are immaterial. The proposed Modifications do not reduce the value that any creditor will receive under the Plan, and the dissolutions of Evergreen and Monomers are consistent with the dissolution of Fibrant already provided for under the Plan.

28. Rule 3019 of the Federal Rules of Bankruptcy Procedure by its terms applies only to modifications of a chapter 11 plan before confirmation and is, therefore, not applicable in these circumstances. Nevertheless, it provides guidance on when resolicitation may or may not be warranted. Bankruptcy Rule 3019 provides that a modification that "does not adversely change the treatment of the claim of any creditor shall be deemed accepted by all creditors . . . who have previously accepted the plan." The 1993 Advisory Committee Note to Rule 3019 explains that "the rule makes clear that a modification may be made, after acceptance of the plan without submission to creditors and equity security holders if their interests are not affected." Fed. R. Bankr. 3019 advisory committee's note (1993). In this case, because the proposed Modifications are minor and do not adversely affect the interests of creditors, each creditor that accepted the original Plan should be deemed to accept the Plan, as modified by the Modifications, without the option to change its previous vote. *See In re 4 West Holdings, Inc.*, 593 B.R. at 448.

29. Courts have held that proposed plan modifications are not adverse where "[n]one of the changes negatively affects the repayment of creditors." *See, e.g., In re Mount Vernon Plaza Community Urban Redevelopment Corp. I*, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987); *see also Am. Solar King*, 90 B.R. at 823, n. 27 ("The modified plan need not be resubmitted to creditors

and interest holders if the court finds that they are not adversely affected.") (internal citations omitted). In this case, neither creditors nor equity interest holders will be adversely affected by the Modifications. The value that holders of equity interest will receive under the Plan will not be reduced by the Modifications, and the Modifications do not impact distributions to creditors.

30. Therefore, because the proposed Modifications to the Plan are neither material nor adverse, the Debtors submit that they need not provide further disclosure in respect thereof or resolicit the votes of any parties in interest.

VIII. NOTICE

31. As expressly provided in the Plan, notice of this Motion shall be provided to: (a) the U.S. Trustee; (b) counsel to the Creditor Trustee; (c) counsel to the ChemicaInvest Parties; (d) counsel to the Liquidating Agent; and (e) any party that has requested notice following entry of the Confirmation Order. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of the Order granting the relief requested herein and such other and further relief to the Debtors as is just and proper.

Dated: November 12, 2019
Augusta, Georgia

KING & SPALDING LLP

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Counsel for the Debtors-in-possession

EXHIBIT A

(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

In re:	)	**Chapter 11**
	)	
FIBRANT, LLC, *et al.*,[1]	)	**Case No. 18-10274 (SDB)**
	)	
	)	
Debtors.	)	**Jointly Administered**
	)	

ORDER AUTHORIZING MODIFICATIONS TO THE DEBTORS' CONFIRMED SECOND AMENDED AND RESTATED PLAN OF LIQUIDATION WITHOUT THE NEED FOR FURTHER DISCLOSURE OR SOLICITATION OF VOTES

This matter coming before the Court on motion (the "Motion"),[2] filed by the above-captioned debtors (collectively, the "Debtors"), seeking entry of an order, pursuant to Section 1127 of the Bankruptcy Code, approving the Modifications to the Plan without the need

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant South Center, LLC (8270); and Georgia Monomers Company, LLC (0042).

[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

for further disclosure or solicitation of votes; and this Court having jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. 157 and 1334; and this Court having determined that this is a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having determined that venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth in this Order.

2. The Modifications comply with Section 1127 of the Bankruptcy Code.

3. The Plan, as modified by the Modifications, complies with Sections 1122, 1223 and 1129 of the Bankruptcy Code and is hereby confirmed.

4. The Debtors are not required to provide further disclosure in respect of the Modifications to the Plan or to resolicit the votes of any creditors or equity security holders as a result thereof.

5. The Confirmation Order remains in full force and effect and shall apply to the Plan, as modified by the Modifications.

6. Any creditor that has accepted the Plan is deemed to have accepted the Plan, as modified by the Modifications, and such creditor shall not have the opportunity to change its previous acceptance.

7. The Modifications shall not change the obligations of the Debtors or their estates to pay U.S. Trustee fees in effect prior to the Modifications.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

 # # # End of Order # # #

Order submitted by:

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IN THE UNITED STATES BANKRUPTCY COURT
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FIBRANT, LLC, *et al.*,[1]	)	**Case No. 18-10274 (SDB)**
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ORDER AUTHORIZING MODIFICATIONS TO THE DEBTORS' CONFIRMED SECOND AMENDED AND RESTATED PLAN OF LIQUIDATION WITHOUT THE NEED FOR FURTHER DISCLOSURE OR SOLICITATION OF VOTES

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for further disclosure or solicitation of votes; and this Court having jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. 157 and 1334; and this Court having determined that this is a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having determined that venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth in this Order.

2. The Modifications comply with Section 1127 of the Bankruptcy Code.

3. The Plan, as modified by the Modifications, complies with Sections 1122, 1223 and 1129 of the Bankruptcy Code and is hereby confirmed.

4. The Debtors are not required to provide further disclosure in respect of the Modifications to the Plan or to resolicit the votes of any creditors or equity security holders as a result thereof.

5. The Confirmation Order remains in full force and effect and shall apply to the Plan, as modified by the Modifications.

6. Any creditor that has accepted the Plan is deemed to have accepted the Plan, as modified by the Modifications, and such creditor shall not have the opportunity to change its previous acceptance.

7. The Modifications shall not change the obligations of the Debtors or their estates to pay U.S. Trustee fees in effect prior to the Modifications.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

 # # # End of Order # # #

Order submitted by:

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