

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

TAM WINDDOWN LLC and  
UP WINDDOWN LLC,

Debtors.<sup>1</sup>

Case No. 20-bk-23346-PDR  
Case No. 20-bk-23348-PDR

Chapter 11 Cases  
(Jointly Administered)

**DEBTORS' EXPEDITED MOTION TO PAY PROFESSIONALS  
RETAINED BY THE DEBTORS AND THE CREDITORS' COMMITTEE**

**Expedited Hearing Requested on or Before March 30, 2021**

**Basis for Requested Expedited Hearing**

The Debtors respectfully request the Court to conduct an expedited hearing on this Motion. The current fiscal year for Fox Rothschild LLP, the law firm which serves as bankruptcy counsel to the Official Committee of Unsecured Creditors, ends on March 31, 2021. The relief in this Motion requests, among other things, approval by the Court to pay to Fox Rothschild LLP, on or prior to March 31, 2021, accrued and unpaid professional fees and expenses due to Fox Rothschild LLP and which have already been approved and allowed by prior order of the Court.

TAM WINDDOWN LLC (f/k/a Tamarac 10200, LLC, "Tamarac") and UP WINDDOWN LLC (f/k/a Unipharma, LLC, "Unipharma"), and together with Tamarac, the "Debtors"), by and through their undersigned counsel, hereby file this expedited motion (the "Motion") requesting an expedited hearing on the Motion on or prior to March 30, 2021 and seeking the entry of an order, substantially in the form attached hereto as **Exhibit "A"**, authorizing the Debtors, prior to the occurrence of the "Effective Date" of the Plan (defined

<sup>1</sup> The last four digits of each Debtor's federal tax identification number are TAM Winddown LLC (2050) and UP Winddown LLC (8962). The address of the Debtors is 10200 N.W. 67th Street, Tamarac, FL 33321.



herein), to pay accrued and unpaid professional fees and expenses previously approved and allowed by the Court at the Confirmation Hearing (defined herein), and by prior orders of the Court (discussed herein), for Fox Rothschild, LLP and the other professionals retained by the Debtors and the Official Committee of Unsecured Creditors. In support of this Motion, the Debtors respectfully state:

### **BACKGROUND**

1. On December 7, 2020 (the "Petition Date"), each of the Debtors commenced a bankruptcy case by filing a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. The Debtors are managing their affairs as debtors-in-possession pursuant sections 1107(a) and 1108 of the Bankruptcy Code.

3. On December 18, 2020, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee").

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' bankruptcy cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

5. The legal predicates for the relief sought herein are (i) section 105(a) of the Bankruptcy Code, (ii) the *Order Confirming the Debtors' Amended Joint Plan of Liquidation with Technical Modifications, Dated February 17, 2021, as Amended* [ECF No. 496] (the "Confirmation Order"), and (iii) the Final Fee Orders (defined herein).

**CONFIRMATION OF THE DEBTORS' JOINT PLAN OF LIQUIDATION  
& APPROVAL OF THE PROFESSIONALS' FINAL FEE APPLICATIONS**

6. On March 9, 2021, the Court held a hearing (the "Confirmation Hearing").

7. At the Confirmation Hearing, the Court confirmed the *Debtors' Amended Joint Plan of Liquidation with Technical Modifications*, dated February 17, 2021 (as may be amended or modified, including, but not limited to all exhibits thereto, collectively, the "Plan").

8. At the Confirmation Hearing, the Court also approved the final fee applications filed by the four Professionals (defined herein).

9. On March 19, 2021, the Court entered the Confirmation Order.

**FINAL FEE ORDERS**

10. On March 12, 2021, the Court entered the *Order Granting First and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Berger Singerman LLP, as Counsel to the Debtors* [ECF No. 486] (the "Berger Singerman Final Fee Order"). In the Berger Singerman Final Fee Order, the Court authorized the Debtors to pay Berger Singerman LLP (the bankruptcy counsel to the Debtors, "Berger Singerman"), the sum of \$797,134.88 (the "Berger Singerman Fees/Expenses"), representing the net amount of unpaid legal fees and expenses due to Berger Singerman through the date of the Confirmation Hearing.

11. On March 12, 2021, the Court entered the *Order Granting First and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses to SOLIC Capital Advisors, LLC and SOLIC Capital, LLC* [ECF No. 487] (the "SOLIC Final Fee Order"). In the SOLIC Final Fee Order, the Court authorized the Debtors to pay SOLIC Capital Advisors, LLC and SOLIC Capital, LLC (which have provided the services of Neil F. Luria as Chief Restructuring Officer for the Debtors, as well as certain other interim officers and support personnel to the Debtors, collectively, "SOLIC"), the sum of \$230,000.00 (the "SOLIC

Fees/Expenses”), representing the net amount of unpaid professional fees and expenses due to SOLIC through the date of the Confirmation Hearing.

12. On March 17, 2021, the Court entered the *Order Awarding Final Compensation to PricewaterhouseCoopers LLP for Services Rendered as Financial Advisor to the Official Committee of Unsecured Creditors for the Period December 22, 202 Through March 9, 2021* [ECF No. 494] (the “PwC Final Fee Order”). In the PwC Final Fee Order, the Court authorized the Debtors to pay PricewaterhouseCoopers LLP (the financial advisors to the Creditors’ Committee, “PwC”), the sum of \$173,355.50 (the “PwC Fees/Expenses”), representing the net amount of unpaid professional fees and expenses due to PwC through the date of the Confirmation Hearing.

13. On March 18, 2021, the Court entered the *Order Granting First and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Fox Rothschild LLP, as Counsel to the Official Committee of Unsecured Creditors for the Period December 19, 202 through March 9, 2021* [ECF No. 495] (the “Fox Rothschild Final Fee Order”), and together with the Berger Singerman Final Fee Order, SOLIC Final Fee Order and PwC Final Fee Order, collectively, the “Final Fee Orders”). In the Fox Rothschild Final Fee Order, the Court authorized the Debtors to pay Fox Rothschild LLP (the bankruptcy counsel to the Creditors’ Committee, “Fox Rothschild”, and together with Berger Singerman, SOLIC and PwC, collectively, the “Professionals”), the sum of \$105,832.35 (the “Fox Rothschild Fees/Expenses” and together with the Berger Singerman Fees/Expenses, SOLIC Fees/Expenses and PwC Fees/Expenses, collectively, the “Fees/Expenses”), representing the net amount of unpaid legal fees and expenses due to Fox Rothschild through the date of the Confirmation Hearing.

**THE PLAN PROVIDES THAT THE FEES/EXPENSES ARE TO BE PAID TO THE PROFESSIONALS ON THE EFFECTIVE DATE OF THE PLAN**

14. The Plan provides that the Fees/Expenses are to be paid in full to the Professionals upon the “Effective Date” of the Plan. Specifically, Article II.B of the Plan states, in pertinent part:

All entities seeking an award by the Bankruptcy Court of Fee Claims (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date by the date that shall be set by order of the Bankruptcy Court, and (b) *subject to the terms of the Final DIP Order, shall be paid in full in such amounts as are Allowed by the Bankruptcy Court (i) upon the later of (A) the Effective Date and (B) the date upon which the order relating to any such Allowed Fee Claim is entered or (ii) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Fee Claim and the Plan Administrator.*

*See Plan, Art. II.B (emphasis supplied.)*

15. In turn, Article XI.A of the Plan details the conditions precedent to the “Effective Date” of the Plan.

**THE REQUESTED RELIEF SHOULD BE GRANTED**

16. Although the Effective Date of the Plan has not yet occurred, the Debtors are in the process of finalizing certain matters with the DIP Lender and the proposed Plan Administrator. Additionally, the Court’s order approving the sale of substantially all of the Debtors’ assets [ECF No. 315] (the “Sale Order”) is currently on appeal, and the Debtors have filed a motion to dismiss the appeal [ECF No. 421]. One of the conditions precedent to the Effective Date of the Plan is that the Sale Order has become a final order. *See Plan, Art. XI.A.(a).* As such, the Plan cannot go effective unless (i) the appeal of the Sale Order is dismissed and becomes a final order, (ii) the Sale Order becomes a final order through other

judicial action, or (iii) the DIP Lender waives this condition precedent pursuant to Article XI.B of the Plan.

17. Recently, Fox Rothschild reached out to the undersigned counsel to request payment of the Fox Rothschild Fees/Expenses because Fox Rothchild's fiscal year ends on March 31, 2021, and the Fox Rothschild Fees/Expenses have been included, for budgetary reasons, in the current fiscal year for the firm. In addition, the Debtors do not wish to inconvenience the bankruptcy counsel to the Creditors' Committee and the other Professionals by delaying the payment of the approved and allowed Fees/Expenses due to them while the Debtors work out certain open matters with the DIP Lender and the proposed Plan Administrator, and separately, the condition precedent to the Effective Date of the Plan involving the Sale Order is either resolved by judicial action or waived by the DIP Lender.

18. The Debtors submit that no party will be prejudiced by the relief requested in this Motion. All of the Fees/Expenses have already been approved and allowed by the Court at the Confirmation Hearing and in the Final Fee Orders. Importantly, no party in interest objected to the approval of the final fee applications filed by the Professionals or the entry of the Final Fee Orders and the DIP Lender supports the relief requested in this Motion. In addition, all of the funds necessary for the Plan to go effective, including to pay the Professionals the amounts of the Fees/Expenses due under the Final Fee Orders, have been approved by the DIP Lender and are currently being held in the Debtors' possession. Moreover, the requested relief will result in Fox Rothchild receiving the Fox Rothschild Fees/Expenses during the current fiscal year as planned, as well as permitting the other Professionals to receive payment of their Fees/Expenses which have been approved and allowed by the Court. Accordingly, the Debtors believe that, under the circumstances, cause exists to grant this Motion.

**WHEREFORE**, the Debtors respectfully request the entry of an Order substantially in the form attached as hereto as **Exhibit "A"**: (a) granting this Motion; (b) authorizing the Debtors, upon entry of the Order and without waiting for the occurrence of the Effective Date under the Plan, to pay the Professionals the Fees/Expenses due under the Final Fee Orders; and (c) granting such further relief which this Court deems just and proper.

Dated: March 25, 2021

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**Exhibit "A"**

Proposed Order



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
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In re:

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Case No. 20-bk-23346-PDR  
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Chapter 11 Cases  
(Jointly Administered)

**ORDER GRANTING  
DEBTORS' EXPEDITED MOTION TO PAY PROFESSIONALS  
RETAINED BY THE DEBTORS AND THE CREDITORS' COMMITTEE**

**THIS MATTER** came before the Court on March \_\_, 2021 at \_\_\_\_\_  
a.m./p.m. (the "Hearing") upon the *Debtors' Expedited Motion to Pay Professionals Retained by  
the Debtors and the Creditors' Committee* [ECF No. \_\_] (the "Motion")<sup>2</sup> filed by the above-  
captioned debtors in possession (collectively, the "Debtors"). The Motion seeks entry of an

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<sup>2</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion.

order authorizing the Debtors, prior to the occurrence of the “Effective Date” of the Plan, to pay the accrued and unpaid professional fees and expenses previously approved and allowed by the Court at the Confirmation Hearing and by prior orders of the Court for the Professionals retained by the Debtors and the Creditors’ Committee. The Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and that this Court may enter a final order consistent with Article III of the Constitution; (iii) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; (v) notice of the Motion was appropriate under the circumstances and no other notice need be provided; and (vi) upon review of the record before the Court, including the legal and factual bases set forth at the Hearing, in the Confirmation Order and the Final Fee Orders, all of which are incorporated herein in their entirety, and good and sufficient cause exists to grant the relief requested. Accordingly, it is

**ORDERED** that:

1. The Motion is **GRANTED**.
2. The Debtors are authorized, immediately upon the entry of this Order and without the Effective Date of the Plan having occurred, to pay the Fees/Expenses authorized by the Final Fee Orders to the Professionals.
3. In the event that the Effective Date of the Plan does not occur and a party in interest requests a return of the Fees/Expenses from the Professionals to the Debtors’ estates, the Court may consider such request.

4. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

# # #

Submitted by:

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*(Christopher Andrew Jarvinen, Esq. is directed to serve a copy of this order on interested parties and file with the Court a certificate of service.)*