

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

TAM WINDDOWN LLC and
UP WINDDOWN LLC,

Debtors.¹

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

Chapter 11 Cases
(Jointly Administered)

DEBTORS' MOTION TO APPROVE THE FORM OF THE NOTICE OF THE EFFECTIVE DATE OF THE DEBTORS' AMENDED JOINT PLAN OF LIQUIDATION WITH TECHNICAL MODIFICATIONS, DATED FEBRUARY 17, 2021, AS AMENDED

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 motion (the "Motion") seeking the entry of an order, substantially in the form attached hereto as **Exhibit "A"**, (i) approving the form of the notice of the "Effective Date" of the *Debtors' Amended Joint Plan of Liquidation with Technical Modifications*, dated February 17, 2021 [ECF No. 496, Exh. A] (as may be amended or modified, including, but not limited to all exhibits thereto, collectively, the "Plan"), substantially in the form attached hereto as **Exhibit "B"** (the "Effective Date Notice"), and (ii) holding that such Effective Date Notice provides additional, sufficient notice of the bar date for filing rejection damage claims, as set forth in paragraph 21 of 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"), to the non-Debtor parties to the

¹ 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.

Debtors' remaining Executory Contracts (defined herein) which will be rejected by the Debtors on the Effective Date of the Plan. 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 section 105(a) of the Bankruptcy Code and the Confirmation Order.

THE DEBTORS' EXECUTORY CONTRACTS

6. On December 22, 2020, each of the Debtors filed their schedules of assets and liabilities which, among other things, included a list of their Executory Contracts² on Schedule "G" ("Executory Contracts and Unexpired Leases"). *See* dockets for (i) TAM Winddown LLC

² The Plan defines "Executory Contract" as "a contract or lease to which one of more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code." *See* Plan, Art. I.A.45.

(Case no. 20-23346-PDR) at ECF No. 108 and (ii) UP Winddown LLC (Case No. 20-23348-PDR) at ECF No. 14.³

7. In compliance with this Court's *Order Granting Debtors' Expedited Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Entry into the Stalking Horse Bid Agreement with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (II) Approving Bidding Procedures, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling a Hearing to Consider the Transaction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Procedures, and (VII) Granting Related Relief*, dated December 31, 2020 [ECF No. 158] (the "Bidding Procedures Order"), the Debtors filed on January 6, 2021, the *Notice of Assumption and Cure Amount with Respect to Executory Contracts or Unexpired Leases Potentially to be Assumed and Assigned in Connection with Sale of Debtors' Assets* [ECF No. 189] (the "Assumption Notice").

8. The Assumption Notice listed the Debtors' Executory Contracts identified to be subject to the sale of substantially all of the Debtors assets and provided the proposed cure amount for each such Executory Contract.

9. The Assumption Notice was served on all parties-in-interest, including but not limited to the non-Debtor parties to the Debtors' Executory Contracts. *See* ECF Nos. 192, 410.

10. In compliance with this Court's *Order Granting Debtors' Motion for Entry of an Order (I) Approving Stalking Horse Bid Agreement and Authorizing the Sale of Certain Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Claims and Liens Except for Permitted Liens, Encumbrances and Assumed Liabilities, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and*

³ On March 8, 2021, the Debtors filed an amended Schedule "G" for Debtor UP Winddown LLC [ECF No. 476].

Unexpired Leases, and (IV) Granting Related Relief, dated January 29, 2021 [ECF No. 315] (the “Sale Order”), the Debtors filed two notices [ECF Nos. 334 and 357] (collectively, the “Assumption/Assignment Notices”).

11. The Assumption/Assignment Notices collectively list the Executory Contracts that the Debtors assumed and assigned to the buyer pursuant to the Sale Order.

12. The Assumption/Assignment Notices were served on all parties-in-interest, including but not limited to the non-Debtor parties to the Debtors’ Executory Contracts. *See* ECF Nos. 337, 360.

CONFIRMATION OF THE DEBTORS’ PLAN

13. On March 9, 2021, the Court held a hearing (the “Confirmation Hearing”).

14. At the Confirmation Hearing, the Court confirmed the Plan.

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

16. The Confirmation Order was served on all parties-in-interest, including but not limited to the non-Debtor parties to the Debtors’ Executory Contracts. *See* ECF No. 520.

EFFECTIVE DATE OF THE PLAN

17. Article XI of the Plan sets forth the conditions precedent to the “Effective Date” of the Plan. *See* Plan, Art.I.A.41 (definition of Effective Date) and Art.XI.A.

18. The Effective Date of the Plan has not yet occurred.

19. Pursuant to paragraph 48 of the Confirmation Order, a notice of the occurrence of the Effective Date is required to be filed as soon as practicable after the Effective Date.

THE PLAN PROVIDES THAT ALL REMAINING EXECUTORY CONTRACTS ARE TO BE REJECTED ON THE EFFECTIVE DATE

20. Article IX.A of the Plan, as amended by the Confirmation Order, provides for the rejection on the Effective Date of all of the Debtors’ remaining Executory Contracts unless

certain exceptions apply, as follows:

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract: (i) is identified for assumption in the Plan Supplement; (ii) as of the Effective Date is subject to a pending motion to assume such Executory Contract; (iii) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (iv) is an Insurance Policy.

See Confirmation Order, pp. 12-13.

21. As set forth in paragraph 21 of the Confirmation Order, the bar date for non-Debtor parties to Executory Contracts that are rejected by the Debtors on the Effective Date is not later than thirty (30) days thereafter, as follows:

21. Bar Date for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan. Claims created by the rejection of Executory Contracts (as defined in the Plan) ... must be filed with the Bankruptcy Court and served on the Debtors, the Winddown Estates or the Plan Administrator (as the case may be) no later than thirty (30) days after... (b) the Effective Date, with respect to any Executory Contract that is deemed rejected [on the Effective Date] pursuant to Article IX of the Plan... Any rejection claim for which a proof of claim is not filed and served within the time deadlines provided in the Plan and this Confirmation Order will be forever barred from assertion and shall not be enforceable against the Debtors, their assets, properties, or interests in property, or the Liquidating Trust, or its assets, properties, or interests in property. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims in Class 5 under the Plan and shall be subject to the provisions of the Plan.

See Confirmation Order, p. 42 (emphasis in the original.)

THE REQUESTED RELIEF SHOULD BE GRANTED

22. The Debtors believe that the record in these Chapter 11 cases clearly reflects the fact that all of the non-Debtor parties to the Executory Contracts have received more than ample

notice throughout the Debtors' bankruptcy cases of all of the material actions taken by the Debtors that are relevant in any way with respect to such parties, including being served with the Plan and the Confirmation Order which provide, among other things, that all Executory Contracts that were not otherwise assumed and assigned by the Debtors to the buyer pursuant to the sale that closed on February 11, 2021, or which are subject to a separate motion seeking assumption or rejection, are being rejected by the Debtors upon the Effective Date of the Plan, and there exists a bar date for filing related rejection damage claims. In an abundance of caution, however, the Debtors have filed this Motion seeking the Court's approval of the Effective Date Notice which provides additional, targeted, notice to affected parties with respect to the bar date for filing rejection damage claims for Executory Contracts rejected on the Effective Date of the Plan, and the Debtors request that the Court finds that such Effective Date Notice provides additional, sufficient notice of the bar date to affected parties.

23. The Debtors submit that the relief requested in the Motion should be uncontroversial and is beneficial for the Debtors' estates, creditors, and the non-Debtor parties to the Debtors' remaining Executory Contracts because the proposed, two-page, Effective Date Notice attached hereto as **Exhibit "B"** is short and includes bolded language specifically targeted to such non-Debtor parties to file (if relevant) a rejection damage claim by the bar date as set forth in paragraph 21 of the Confirmation Order (i.e., not later than 30 days after the Effective Date) or else waive whatever rights they may have to assert rejection damage claims against the Debtors' estates. Accordingly, the Debtors believe that ample 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) approving the form of the notice of the Effective Date Notice substantially in the form attached hereto as **Exhibit "B"**;

(c) holding that such Effective Date Notice provides additional, sufficient notice to the non-Debtor parties to the Executory Contracts to be rejected by the Debtors on the Effective Date of the Plan with respect to the bar date for filing rejection damage claims as set forth in paragraph 21 of the Confirmation Order; and (d) granting such further relief which this Court deems just and proper.

Dated: April 7, 2021

BERGER SINGERMAN LLP
Counsel for Debtors in Possession
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Christopher Andrew Jarvinen
Paul Steven Singerman
Florida Bar No. 0378860
singerman@bergersingerman.com
Christopher Andrew Jarvinen
Florida Bar No. 21745
cjarvinen@bergersingerman.com

Exhibit "A"

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

TAM WINDDOWN LLC and
UP WINDDOWN LLC,

Debtors.¹

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

Chapter 11 Cases
(Jointly Administered)

**ORDER GRANTING
DEBTORS' MOTION TO APPROVE THE FORM OF THE NOTICE OF THE
EFFECTIVE DATE OF THE DEBTORS' AMENDED JOINT PLAN OF LIQUIDATION
WITH TECHNICAL MODIFICATIONS, DATED FEBRUARY 17, 2021, AS AMENDED**

THIS MATTER came before the Court on April __, 2021 at _____ a.m./p.m.
(the "Hearing") upon the *Debtors' Motion to Approve the Form of the Notice of the Effective
Date of the Debtors' Amended Joint Plan of Liquidation with Technical Modifications, Dated*

¹ 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.

February 17, 2021, as Amended [ECF No. ___] (the “Motion”)² filed by the above-captioned debtors in possession (collectively, the “Debtors”). 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 and in the Confirmation Order, 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 Effective Date Notice, in substantially the form as attached to the Motion as Exhibit “B”, is **APPROVED**.
3. The Effective Date Notice provides additional, sufficient notice to all parties-in-interest, including but not limited to the non-Debtor parties to the Executory Contracts to be rejected by the Debtors on the Effective Date of the Plan, of the bar date for filing rejection damage claims.
4. Nothing in this Order revises, has any impact on, or effects in any way the Confirmation Order. In the event of any conflict between the terms of this Order and the Confirmation Order, the terms of the Confirmation Order shall govern.

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

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

#

Submitted by:

Christopher Andrew Jarvinen, Esq.
cjarvinen@bergersingerman.com
BERGER SINGERMAN LLP
1450 Brickell Avenue, Ste. 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

(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.)

Exhibit "B"

Proposed Effective Date Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

TAM WINDDOWN LLC and
UP WINDDOWN LLC,

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

Debtors¹.

Chapter 11 Cases
(Jointly Administered)

**NOTICE OF THE (I) OCCURRENCE OF THE EFFECTIVE DATE
OF THE DEBTORS' AMENDED JOINT PLAN OF LIQUIDATION
AND (II) BAR DATE FOR FILING REJECTION DAMAGE CLAIMS
BY NON-DEBTOR PARTIES TO THE DEBTORS' EXECUTORY
CONTRACTS REJECTED ON THE EFFECTIVE DATE OF THE PLAN**

**TO ALL CREDITORS, INTEREST HOLDERS, NON-DEBTOR PARTIES TO THE
DEBTORS' REMAINING EXECUTORY CONTRACTS, AND PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that on April __, 2021, the Effective Date occurred under the *Debtors' Amended Joint Plan of Liquidation with Technical Modifications* dated February 17, 2021 [ECF No. 496, Exh. "A"] (the "Plan"), as confirmed pursuant to an order of the Bankruptcy Court entered on March 19, 2021 [ECF No. 496] (the "Confirmation Order").²

**BAR DATE FOR FILING REJECTION DAMAGE CLAIMS FOR EXECUTORY
CONTRACTS REJECTED BY THE DEBTORS ON THE EFFECTIVE DATE OF THE
PLAN. PLEASE TAKE FURTHER NOTICE THAT ON THE EFFECTIVE DATE,
EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR CONFIRMATION
ORDER, EACH EXECUTORY CONTRACT NOT PREVIOUSLY REJECTED BY
THE DEBTORS, ASSUMED BY THE DEBTORS, OR ASSUMED AND ASSIGNED
BY THE DEBTORS SHALL BE DEEMED AUTOMATICALLY REJECTED
PURSUANT TO SECTIONS 365 AND 1123 OF THE BANKRUPTCY CODE, UNLESS
SUCH EXECUTORY CONTRACT: (I) WAS IDENTIFIED FOR ASSUMPTION IN
THE PLAN SUPPLEMENT; (II) AS OF THE EFFECTIVE DATE IS SUBJECT TO A
PENDING MOTION TO ASSUME SUCH EXECUTORY CONTRACT; (III) IS A
CONTRACT, INSTRUMENT, RELEASE, INDENTURE, OR OTHER AGREEMENT
OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN; OR (IV) IS
AN INSURANCE POLICY.**

¹ 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.

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in, as applicable, the Plan or the Confirmation Order.

THE BAR DATE FOR FILING PROOFS OF CLAIM WITH RESPECT TO EXECUTORY CONTRACTS REJECTED BY THE DEBTORS ON THE EFFECTIVE DATE OF THE PLAN (EACH, A “REJECTION CLAIM”) IS MAY __, 2021 (i.e., NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE PLAN).

ANY REJECTION CLAIM FOR WHICH A PROOF OF CLAIM IS NOT FILED AND SERVED BY MAY __, 2021 WILL BE FOREVER BARRED FROM ASSERTION AND SHALL NOT BE ENFORCEABLE AGAINST THE DEBTORS, THEIR ASSETS, PROPERTIES, OR INTERESTS IN PROPERTIES OR THE LIQUIDATING TRUST (IF ANY), OR ITS ASSETS, PROPERTIES, OR INTERESTS IN PROPERTY.

PLEASE TAKE FURTHER NOTICE that the Confirmation Order, the Plan (attached as Exhibit “A” to the Confirmation Order), and related documents are available on the website of the Debtors’ noticing agent, Kurtzman Carson Consultants LLC, at www.kccllc.net/unipharma or by accessing the Bankruptcy Court’s website at www.flsb.uscourts.gov (please note that a PACER/ECF password and login are required to access documents on the Bankruptcy Court’s website).

Dated: April __, 2021

BERGER SINGERMAN LLP
Counsel for Debtors and Debtors-in-Possession
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Christopher Andrew Jarvinen
Paul Steven Singerman
Florida Bar No. 0378860
singerman@bergersingerman.com
Christopher Andrew Jarvinen
Florida Bar No. 21745
cjarvinen@bergersingerman.com