

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	}	Chapter 11
KDC AGRIBUSINESS LLC, <i>et al.</i> ,	}	Case No. 23-10786 (CTG)
Debtors. ¹	}	(Jointly Administered)
	}	Obj. Deadline: To be determined
	}	Hearing Date: To be determined

EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) CONVERTING THE CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE, (II) ESTABLISHING A BAR DATE FOR THE FILING OF FINAL FEE APPLICATIONS FOR CHAPTER 11 PROFESSIONALS AND SETTING A HEARING THEREON, AND (III) GRANTING RELATED RELIEF

KDC Agribusiness LLC (“**KDC Ag.**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) hereby file this motion (this “**Motion**”)² for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), (i) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code effective as of the entry of the Proposed Order (the “**Conversion Date**”); (ii) establishing a bar date for all professionals retained in the Chapter 11 Cases to file a Final Fee Application (as defined below) and setting a hearing thereon; and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

¹ The debtors and debtors in possession in these cases and the last four digits of their respective Employer Identification Numbers are: KDC Agribusiness LLC (2280), Do Good Chicken LLC (1523), Do Good Foods Facility Management LLC (3974), Do Good Foods Fort Wayne LLC (6909), Do Good Foods LLC (9976), Do Good Foods Managed Services LLC (4214), Do Good Foods Selma LLC (3776) and KDC Agribusiness Fairless Hills LLC (8680) (“**Fairless Hills**”). The debtors’ mailing address, other than Fairless Hills, is 1545 US Highway 206, Suite 100, Bedminster, New Jersey 07921. The mailing address of Fairless Hills is 250 Canal Road, Fairless Hills, Pennsylvania 19030.

² The Debtors intend to file a motion to shorten requesting that the Motion be heard on an expedited basis.



INTRODUCTION³

1. The Debtors entered chapter 11 with the goal of pursuing a value-maximizing Sale Transaction for the benefit of their creditors and other stakeholders. Consistent with this goal, the Debtors, among other things, secured approval of a \$30 million DIP Facility, obtained entry of an order approving bidding procedures, continued to market their assets, and commenced an adversary proceeding against CSS in an effort to expeditiously resolve the cloud over their property created by CSS's trade secret claims asserted in the Chancery Action.

2. To date the Debtors have been unable to favorably resolve the overhang on their sale process caused by the unresolved trade secret litigation between the Debtors and CSS. As a result, and in light of the Court's ruling to lift the automatic stay and permit CSS to pursue its trade secret claims against the Debtors in the Chancery Court, the DIP Secured Parties became, and remain, unwilling to advance any additional funds under the DIP Facility.⁴

3. In the three months since the Court's entry of the Lift-Stay Order, the Debtors and their advisors have worked tirelessly to broker a viable path forward in the Chapter 11 Cases with its various stakeholders, including their DIP Lenders and CSS. These efforts resulted in the executed Purchase Agreement. Under the terms of the Purchase Agreement, the Debtors would have received \$2.5 million from NewCo (as defined in the Purchase Agreement) that the Debtors believe would have covered allowed administrative expense claims incurred through the anticipated closing of the transaction with the Purchaser (the "**Brand Assets Sale Transaction**").

³ Capitalized terms used but not defined in the Introduction shall have the meaning given to such terms in the body of the Motion.

⁴ To continue operations, the Debtors have relied on receivables received in the ordinary course of their business and pursued cost saving initiatives to significantly reduce operating expenses, including by, among other things, terminating substantially all of their employees, rejecting contracts, and ceasing operations at their facility in Fairless Hills, Pennsylvania.

4. On November 13, 2023, the Court entered its *Preliminary Observations* [Docket No. 464] regarding the Brand Assets Sale Transaction. In light of the Court's statements, the Debtors have been unable to achieve consensus among interested parties regarding a path forward on the Brand Assets Sale Transaction. With no prospects for a consensual sale of the Brand Assets and extremely limited liquidity, the Debtors have concluded that they can no longer maintain these Chapter 11 Cases in a responsible manner. Accordingly, the Debtors believe it is in the best interests of their estates to convert the Chapter 11 Cases to a chapter 7 liquidation so that a chapter 7 trustee can complete the wind-down of the estates.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

7. On June 16, 2023 (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing the Chapter 11 Cases. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the

Bankruptcy Code. No creditors' committee has been appointed by the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"), nor has a trustee or examiner been appointed in the Chapter 11 Cases.

8. As more fully described in the *Declaration of David Buffa in Support of Debtors' Petitions and First Day Motions* [Docket No. 22] (the "**First Day Declaration**"),⁵ the Debtors have historically operated at a loss and relied on debt or equity financing to fund their operations. In the years since their inception, the Debtors experienced a number of economic and operational challenges that strained their finances and impeded their ability to raise financing and execute on their business strategy. These challenges were further exacerbated by the Debtors' litigation with California Safe Soil, LLC ("**CSS**") in the Delaware Court of Chancery (the "**Chancery Court**") in the action styled *California Safe Soil, LLC v. KDC Agribusiness, LLC, et al.*, Docket No. 2021-0498 (Del. Ch. June 8, 2021) (the "**Chancery Action**").

9. Despite their efforts prior to the Petition Date, the Debtors were unable to secure third-party bridge financing or equity investments sufficient to ensure that the Debtors could fully fund their ongoing operations and continue to scale their approach to eliminating grocery food waste in the United States while also successfully prosecuting the Chancery Action. Although discussions with certain third parties entered late-stage negotiations, these parties ultimately declined to provide additional capital, either via financing or equity investment, citing overhang from the Chancery Action as a key impediment to providing such capital. As a result, the Debtors had no choice but to commence the Chapter 11 Cases in order to avail themselves of the protections

⁵ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration or the Final DIP Order (as defined below), as applicable.

and “breathing room” that chapter 11 is intended to provide and to pursue a value-maximizing sale of substantially all of their assets or the sale of equity interests in KDC Ag. (a “**Sale Transaction**”).

10. To fund the projected costs of the Chapter 11 Cases and support the Debtors’ sale efforts, certain of the Pre-Petition Secured Parties (each a “**DIP Lender**” and collectively, the “**DIP Lenders**”), with UMB Bank, N.A. as agent for the DIP Lenders (in such capacity, the “**DIP Agent**” and, together with the DIP Lenders, collectively, the “**DIP Secured Parties**”), agreed to provide the Debtor up to \$30 million in postpetition, superpriority secured funding (the “**DIP Facility**”). On July 20, 2023, the Court entered an order [Docket No. 209] (the “**Final DIP Order**”) approving the DIP Facility on a final basis.⁶

11. In connection with pursuit of a potential Sale Transaction and consistent with the milestones under the DIP Facility, shortly after the Petition Date the Debtors filed an adversary complaint against CSS in an effort to resolve the cloud over their property created by CSS’s trade secret misappropriation claim asserted in the Chancery Action. *See* Adv. Pro. No. 23-50410 (CTG). The Debtors believed that determining their rights in their facilities, operations, and manufacturing processes must be resolved before any Sale Transaction could be consummated. Otherwise, a buyer would not know what it was buying or whether operating the business would lead to a future claim by CSS. As a result, and given the trial-ready nature of the dispute between the parties, the Debtors sought an expedited determination of the question posed by complaint.

12. Meanwhile, on July 7, 2023, CSS filed a motion [Docket No. 117] (the “**CSS Lift Stay Motion**”) seeking to dismiss the Chapter 11 Cases, or, in the alternative, granting CSS relief from the automatic stay to permit CSS to continue prosecuting the Chancery Action in the

⁶ The Final DIP Order was subsequently amended pursuant to that certain *First Amendment to Debtor-In-Possession Loan Agreement*, dated as of October 18, 2023. *See* Docket No. 417.

Chancery Court against certain of the Debtors. The Debtors and the DIP Secured Parties opposed the relief requested by the CSS Lift Stay Motion. *See* Docket Nos. 212–14.

13. On August 9, 2023, the Court commenced and held a two-day hearing on the CSS Lift Stay Motion and the objections thereto. At the conclusion of the hearing on August 10, 2023, the Court issued a bench ruling (the “**Bench Ruling**”) that denied CSS’s request to dismiss the Chapter 11 Cases, but granted CSS’s request to lift the automatic stay with respect to the Chancery Action. *See* Docket No. 290 at 99:11–110:5. On August 18, 2023, the Court entered an order [Docket No. 303] (the “**Lift Stay Order**”) consistent with the Court’s Bench Ruling.⁷

14. Following the Court’s ruling on the CSS Lift Stay Motion, the Debtors and their advisors worked tirelessly to chart a go-forward path in chapter 11, including the pursuit of the Sale Transaction. Following substantial marketing and outreach efforts, on October 26, 2023, the Debtors filed the *Notice of Credit Bid, Successful Bidder and Cancellation of Auction* [Docket No. 421] (the “**Notice of Successful Bidder**”). As further explained in the Notice of Successful Bidder, UMB Bank N.A. (the “**Purchaser**”), in its capacity as the administrative agent under the DIP Credit Agreement, submitted an executed *Asset Purchase Agreement*, dated as of October 26, 2023 (the “**Purchase Agreement**”), for certain assets related to the “Do Good” brand (the “**Brand Assets**”).

15. After filing of the Purchase Agreement, CSS objected to the proposed Brand Assets Sale Transaction and entry of an order approving such transaction. *See* Docket Nos. 435 & 447. Since the filing of the objection by CSS, the Debtors and their advisors have been engaged in discussions with CSS, Purchaser, NewCo and the DIP Lenders regarding a consensual path

⁷ Entry of the Lift Stay Order constituted an Event of Default under the DIP Facility. *See* DIP Credit Agreement § 8.01(f)(xix). As a result of such default, the DIP Secured Parties have refused to provide the Debtors with access to monies available under the DIP Facility.

forward for the sale of the Brand Assets. To accommodate additional discussions, the Debtors adjourned the hearing on approval of the proposed Brand Assets Sale Transaction by two weeks. Although the Debtors made every effort to reach a resolution with parties during the adjournment, it has become apparent that no such deal is possible under the circumstances.

16. With no prospects for a consensual sale of the Brand Assets and extremely limited liquidity, the Debtors have determined, in an exercise of their sound business judgment, that conversion of their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code is in the best interests of their estates, creditor and all parties in interest.

RELIEF REQUESTED

17. By this Motion, the Debtors request entry of the Proposed Order pursuant to section 1112(a) of the Bankruptcy Code and Bankruptcy Rules 1017, 1019 and 2016 (i) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code effective as of the Conversion Date, (ii) establishing a bar date for all professionals retained in the Chapter 11 Cases to file a Final Fee Application and setting a hearing thereon, and (iii) and granting related relief.

18. The Debtors further request that the Court approve the following procedures in connection with the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (the “**Conversion Procedures**”):

(a) **Professional Fees.** Professionals retained in the Chapter 11 Cases shall file final fee applications for compensation (collectively, the “**Final Fee Applications**”) in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all orders of this Court (including the Final DIP Order), no later than twenty-one days after the Conversion Date (the “**Final Fee Bar Date**”). Objections, if any, to the Final Fee Applications shall be filed and served by no later than twenty days after the Final Fee Bar Date. A hearing to consider such timely filed Final Fee Applications shall be held before this Court on a date convenient to the Court that is at least forty-five days after the Conversion Date (the “**Fee Hearing**”). To the extent the Court approves a Final Fee Application following the Conversion Date, all approved amounts owed for professional fees and expenses shall be paid as follows: (a) first, from each professional’s retainer to the extent such retainer exists; (b) second, the Professional Fee Account; (c)

thereafter, from the Carve Out (if any); and (d) thereafter, from the Debtors' chapter 7 estates in accordance with the priorities set forth in the Bankruptcy Code. For the avoidance of doubt, upon the Conversion Date, Kurtzman Carson Consultants ("KCC") is authorized to apply its retainer, if any, to amounts owed to KCC pursuant to section 156(c) of the Bankruptcy Code. Notwithstanding anything to the contrary contained herein, each professional must turn over (i) any remaining retainer or (ii) any remaining funds in the (a) Professional Fee Escrow and/or (b) Carve Out (if any), as applicable, to the Debtors following satisfaction of all approved amounts owed to such professional for professional fees and expenses.

(b) **Books and Records.** Within ten calendar days of appointment of the chapter 7 trustee, turn over to the chapter 7 trustee all records and property of the estates under their custody and control as required by Bankruptcy Rule 1019(4). For purposes hereof, the Debtors may provide copies (including electronic copies) of such books and records to the chapter 7 trustee, or instructions for locating and accessing such books and records, and may retain copies of such books and records to the extent necessary to complete the reports required herein.

(c) **Schedule of Unpaid Debts.** Within fourteen calendar days of entry of this Order, as required by Bankruptcy Rule 1019(5), file a schedule of unpaid debts incurred after the Petition Date and before the Conversion Date, which schedule shall include the name and address of each creditor holder any such debt.

(d) **Final Report.** Within thirty calendar days of entry of this Order, as required by Bankruptcy Rule 1019(5), file and transmit a final report and account to the U.S. Trustee.

(e) **Claims.** Within fourteen calendar days of the Conversion Date, KCC shall (i) forward to the Clerk of this Court an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; and (iii) docket a final claims register in the Chapter 11 Cases.

BASIS FOR RELIEF

A. The Debtors Are Entitled to Conversion of the Chapter 11 Cases to Chapter 7 Cases as a Matter of Right

19. Subject to three enumerated exceptions, section 1112(a) of the Bankruptcy Code provides that a debtor may convert a case to chapter 7 as a matter of right. *See* H.R. Rep. No. 95-595, 1st Sess. 405 (1977) ("Subdivision (a) gives the debtor an absolute right to convert a voluntarily commenced Chapter 11 Case in which the debtor remains in possession to a liquidation

case”); *see also In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987).

20. The enumerated exceptions to this absolute right are namely: (i) the debtor is not a debtor in possession; (ii) the case was originally commenced as an involuntary case under chapter 11; or (iii) the case was converted to a chapter 11 case other than at the debtor’s request. 11 U.S.C. § 1112(a); *see also Dieckhaus Stationers*, 73 B.R. at 970. None of these exceptions are applicable here.

21. As described above, the Debtors find themselves in a dire financial position given that they currently lack liquidity to fund and maintain the Chapter 11 Cases. Accordingly, in the exercise of their business judgment and in consultation with their advisors, the Debtors concluded that given the state of their businesses proceeding with these cases in chapter 11 would be untenable.

22. While the Debtors believed (and still believe) that the Brand Asset Sale Transaction and Purchase Agreement would have been the best avenue for maximizing the value of the Debtors’ estates, the Debtors have determined that continuing to proceed in chapter 11 is no longer possible, appropriate or value maximizing and that conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code is the best path to maximize value for the benefit of all stakeholders. Accordingly, the Debtors believe, in their business judgment, that the timely conversion of the Chapter 11 Cases to cases under chapter 7 is warranted and in the best interest of these estates and the Debtors’ creditors.

B. The Conversion Procedures Are Appropriate

23. Pursuant to Local Rule 2002-1(f)(xi), “[u]pon conversion of a chapter 11 case to a chapter 7 case, if there are more than 200 creditors, the claims agent appointed in the chapter 11 case shall . . . submit a termination order.” *See Del. Bankr. L.R. 2002-1(f)(xi)*. The Debtors

respectfully request that any Order approving this Motion also provide for the termination of KCC's services as claims and noticing agent in the Chapter 11 Cases.

24. The Debtors also believe that the Conversion Procedures are appropriate under the facts of these cases, consistent with the requirements of the Bankruptcy and Local Rules, and should be approved. The Conversion Procedures include, among other things, a request to extend the deadline under Bankruptcy Rule 1019(5)(A)(i) for the filing of a schedule of any unpaid postpetition, pre-conversion debts from fourteen days after the Conversion Date to thirty days after the Conversion Date.

25. The Debtors further request that the Court establish the Final Fee Bar Date of twenty-one days after the Conversion Date for professionals to file their final fee applications. Objections, if any, to the final fee applications shall be filed and served by no later than twenty days after the Final Fee Bar Date. Doing so will allow the Debtors' estates to determine, in a timely and efficient manner, the final amount owed to professionals for fees and expenses related to the Chapter 11 Cases. The Debtors request further that the Court establish a hearing date for the Final Fee Hearing to consider approval of the final fee applications at the Court's earliest convenience subsequent to the Final Fee Bar Date.

NOTICE

26. Notice of this Motion will be provided to (a) the U.S. Trustee (Attn: Timothy J. Fox (timothy.fox@usdoj.gov)); (b) the holders of the twenty largest unsecured claims against the Debtors on a consolidated basis; (c) the Internal Revenue Service; (d) the United States Attorney's Office for the District of Delaware and all other states in which the Debtors operate; (e) counsel to the Pre-Petition Secured Bond Parties; (f) counsel to Piper Sandler; (g) counsel to the Pre-Petition Notes Secured Parties; (h) counsel to the FW Pre-Petition Secured Parties; (i) counsel to the DIP

Lenders; (j) counsel to the DIP Agent; (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002; and (l) all other creditors and parties in interest listed in the Debtors' creditor matrix. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

27. The Debtors have not previously sought the relief requested herein from the Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order and grant such other and further relief to the Debtors as the Court may deem proper.

Dated: November 15, 2023
Wilmington, Delaware

/s/ Brendan J. Schlauch
John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Brendan J. Schlauch (No. 6115)
David T. Queroli (No. 6318)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: 302-651-7700
Fax: 302-651-7701
Email: knight@rlf.com
heath@rlf.com
schlauch@rlf.com
queroli@rlf.com

Counsel to the Debtors

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
KDC AGRIBUSINESS LLC, <i>et al.</i> ,)	Case No. 23-10786 (CTG)
Debtors. ¹)	(Jointly Administered)
)	Re: Docket No. ___

**ORDER (I) CONVERTING THE CHAPTER 11 CASES TO CASES
UNDER CHAPTER 7 OF THE BANKRUPTCY CODE, (II) ESTABLISHING
A BAR DATE FOR THE FILING OF FINAL FEE APPLICATIONS FOR
CHAPTER 11 PROFESSIONALS AND SETTING A HEARING
THEREON, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of KDC Agribusiness LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) for entry of an order pursuant to section 1112(a) of the Bankruptcy Code and Bankruptcy Rules 1017, 1019 and 2016, (i) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code effective as of the Conversion Date (as defined below); (ii) setting a bar date for all professionals retained in the Chapter 11 Cases to file a Final Fee Application and establishing a date for hearing thereon; and (iii) establishing certain conversion procedures, all as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C.

¹ The debtors and debtors in possession in these cases and the last four digits of their respective Employer Identification Numbers are: KDC Agribusiness LLC (2280), Do Good Chicken LLC (1523), Do Good Foods Facility Management LLC (3974), Do Good Foods Fort Wayne LLC (6909), Do Good Foods LLC (9976), Do Good Foods Managed Services LLC (4214), Do Good Foods Selma LLC (3776) and KDC Agribusiness Fairless Hills LLC (8680) (“**Fairless Hills**”). The debtors’ mailing address, other than Fairless Hills, is 1545 US Highway 206, Suite 100, Bedminster, New Jersey 07921. The mailing address of Fairless Hills is 250 Canal Road, Fairless Hills, Pennsylvania 19030.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

§ 157; and the Court having venue pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and sufficient notice of the Motion having been given under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion; and a hearing having been held to consider the relief requested in the Motion, if necessary; and upon the record herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Effective as of the date of entry of this Order (the “**Conversion Date**”), the Chapter 11 Cases shall be converted to cases under chapter 7 of the Bankruptcy Code.
3. Professionals retained in the Chapter 11 Cases shall file final fee applications for compensation (collectively, the “**Final Fee Applications**”) in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all orders of this Court (including the Final DIP Order), on or before _____, 2023, at 4:00 p.m. (the “**Final Fee Bar Date**”) or be forever barred from receiving such compensation. Objections, if any, to the Final Fee Applications shall be filed and served by no later than twenty days after the Final Fee Bar Date. A hearing on such timely filed Final Fee Applications shall be held before this Court on _____, 2023, at _____ (Eastern Time).
4. To the extent the Court approves a Final Fee Application following the Conversion Date, all approved amounts owed for professional fees and expenses shall be paid as follow: (a) first, from each professional’s retainer to the extent such retainer exists; (b) second, the Professional Fee Account; (c) thereafter, from the Carve Out (if any); and (d) thereafter, from the

Debtors' chapter 7 estates in accordance with the priorities set forth in the Bankruptcy Code. For the avoidance of doubt, upon the Conversion Date, Kurtzman Carson Consultants ("KCC") is authorized to apply its retainer, if any, to amounts owed to KCC pursuant to section 156(c) of the Bankruptcy Code. Notwithstanding anything to the contrary contained herein, following satisfaction of all approved amounts owed to such professional for professional fees and expenses (i) each professional must turn over any remaining retainer, if any, and (ii) any remaining funds, if any, in the (a) Professional Fee Escrow and/or (b) Carve Out (if any) shall be turned over to the chapter 7 trustee.

5. The Debtors shall:

- a. within ten calendar days of appointment of the chapter 7 trustee, turn over to the chapter 7 trustee all records and property of the estates under their custody and control as required by Bankruptcy Rule 1019(4). For purposes hereof, the Debtors may provide copies (including electronic copies) of such books and records to the chapter 7 trustee, or instructions for locating and accessing such books and records, and may retain copies of such books and records to the extent necessary to complete the reports required herein;
- b. within fourteen calendar days of entry of this Order, as required by Bankruptcy Rule 1019(5), file a schedule of unpaid debts incurred after the Petition Date and before the Conversion Date, which schedule shall include the name and address of each creditor holder any such debt;
- c. within thirty calendar days of entry of this Order, as required by Bankruptcy Rule 1019(5), file and transmit a final report and account to the U.S. Trustee; and
- d. within fourteen calendar days of the Conversion Date, KCC shall (i) forward to the Clerk of this Court an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; and (iii) docket a final claims register in the Chapter 11 Cases.

6. Subject to its compliance with Del. Bankr. L.R. 2002-1(f)(x), on the Conversion Date, the duties of KCC, as the claims and noticing agent in the Chapter 11 Cases, are hereby terminated, and KCC will have no further obligations to the Court, the Debtors, the chapter 7

trustee (once appointed), or any party in interest with respect to the Chapter 11 Cases or the chapter 7 cases.

7. A representative of the Debtors, and, if so requested by the chapter 7 trustee, counsel to the Debtors in these cases shall appear at the First Meeting of Creditors pursuant to sections 341(a) and 343 of the Bankruptcy Code and such representative shall be available to testify at such hearing.

8. Nothing in this Order or the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code shall affect or modify any order of this Court (or documents related thereto) entered during the Chapter 11 Cases.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.