

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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RCCI WIND DOWN COMPANY, INC., <i>et al.</i>	:	Case Nos. 20-71970 thru 20-
	:	71974 (AST)
	:	
Debtors.	:	Jointly Administered
	:	
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**STIPULATION AND AGREED ORDER AMONG THE DEBTORS, OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND THE OFFICE OF THE UNITED STATES TRUSTEE (I) APPROVING SOLICITATION AND VOTING PROCEDURES; (II) APPROVING FORMS OF NOTICES AND BALLOTS; (III) SCHEDULING COMBINED HEARING TO CONSIDER DISCLOSURE STATEMENT APPROVAL AND PLAN CONFIRMATION; AND (IV) GRANTING RELATED RELIEF**

This Stipulation is entered into among (i) the above-captioned Debtors, (ii) the Official Committee of Unsecured Creditors in the Debtors’ chapter 11 cases (the “Committee”) and (iii) the Office of the United States Trustee for the Eastern District of New York (the “UST”) and, together with Debtors and Committee, the “Parties”). The Parties hereby stipulate and agree as follows:

**RECITALS**

A. On April 30, 2020 (the “Petition Date”), the Debtors commenced the above captioned chapter 11 cases.

B. At the hearing on September 24, 2020 (the “Sale Hearing”), the Bankruptcy Court approved the sale of substantially all the Debtors’ assets to the Purchaser (the “Sale”) pursuant to that certain Asset Purchase Agreement dated as of August 17, 2020 (the “APA”) as modified by the record of the Sale Hearing and upon the terms and conditions set forth in the order approving the Sale entered on September 25, 2020 [Docket No. 408] (the “Sale Order”);



C. On December 23, 2020, the Bankruptcy Court entered that certain *Order Approving Stipulations* [Docket No. 570] approving that certain *Stipulation By and Among the Debtors and Official Committee of Unsecured Creditors Modifying Sale Order and Resolving Matters Ordered to Mediation and Other Matters Concerning These Chapter 11 Cases* appended thereto (the “Debtor/Committee Stipulation”);

D. The Debtor/Committee Stipulation provides, among other things, that (i) the Debtors will propose and seek confirmation of a chapter 11 plan of liquidation that is in form and substance acceptable to the Committee; (ii) the Debtors and Committee will work cooperatively and in good faith to achieve an effective date of the Plan (the “Effective Date”) on or before March 31, 2021; and (iii) the Plan will provide that the Effective Date will not occur until all claims against the Debtors’ estates have been fully reconciled and each objection to or settlement of any such claims has been sustained or approved by a final, non-appealable order, which condition may only be waived with the express written consent of the Committee.

E. Concurrently herewith and consistent with the foregoing, the Debtors filed the *Amended Joint Plan of Liquidation for RCCI Wind Down Company, Inc. and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 614] (the “Plan”) and its accompanying disclosure statement (the “Disclosure Statement”).

F. The Plan contemplates classifying holders of claims and equity interests,<sup>1</sup> into designated classes for all purposes including voting. The following table identifies the classes of claims and equity interests and their respective voting rights in regard to the Plan:

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<sup>1</sup> Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified.

Class	Designation	Impairment	Entitled to Vote
1	Secured Claims	Unimpaired	No (deemed to accept)
2	Other Priority Claims	Unimpaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Intercompany Claims	Impaired	No (deemed to reject)
5	Equity Interests	Impaired	No (deemed to reject)

G. Based on the foregoing, the Debtors propose to solicit votes to accept or reject the Plan from holders of General Unsecured Claims in Class 3 (“Voting Class”).

H. The Debtors are not proposing to solicit votes from unclassified claimants or holders of claims or interests in any other class (together, the “Non-Voting Classes”).

I. The Debtors and Committee agree that under the facts and circumstances of these Chapter 11 Cases, it is necessary, appropriate, and in the best interests of the Debtors’ estates and creditors that the hearing to consider approval of the Disclosure Statement be combined with the hearing on confirmation of the Plan (the “Combined Hearing”) in accordance with section 105(d)(2)(vi) of the Bankruptcy Code.

J. The U.S. Trustee has no objection to the holding of the Combined Hearing as well as the solicitation and voting procedures and the forms of notices and ballots, in each case as provided in this Stipulation and Agreed Order.

**IT IS HEREBY ORDERED THAT:**

1. The terms of this Stipulation and Agreed Order are hereby approved and so ordered.

2. The Recitals set forth above are incorporated herein as if fully set forth herein.

### **I. Approval of Solicitation and Voting Procedures**

3. The procedures for soliciting and tabulating votes to accept or reject the Plan set forth at Schedule 1 at [Docket No. 610] (the “Solicitation and Voting Procedures”) provide for a fair and equitable voting process consistent with section 1126 of the Bankruptcy Code and are approved in their entirety.

4. KCC LLC as voting agent is hereby authorized to accept the submission of Ballots (as defined below) electronically through a customized online Balloting portal accessible via the Debtors’ case website <https://www.kccllc.net/rubies>. The encrypted Ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the applicable creditor’s electronic signature shall be deemed to be immediately legally valid and effective.

### **II. Approval of Materials and Timeline for Soliciting Votes and Procedures for Confirming the Plan**

#### **A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement**

1. The following dates are hereby established and approved, subject to modification solely with the express written consent of the Committee:

<b>Event</b>	<b>Date</b>
Voting Record Date	February 1, 2021
Solicitation Deadline	February 8, 2021
Voting Deadline	March 5, 2021 at 5:00 p.m. Prevailing Eastern Time
Deadline to file Objections to Disclosure Statement Approval or Plan Confirmation	March 5, 2021
Deadline to file Affidavits or Affirmations in Support of Confirmation and/or Objections	March 12, 2021

Deadline to file Ballot Summary and Vote Certification	March 12, 2021
Deadline to file Confirmation Brief	March 12, 2021
Combined Hearing Date and Time	March 17, 2021 at 9:30 a.m. Prevailing Eastern Time

**B. Approval of Form and Distribution of Solicitation Packages**

2. The solicitation materials and documents included in solicitation packages (the “Solicitation Packages”) to be transmitted on or before the Solicitation Deadline to holders of claims in the Voting Class entitled to vote on the Plan as of the Voting Record Date shall include the following:

- (a) This Stipulation and Agreed Order, without exhibits except for the Solicitation and Voting Procedures set forth at Schedule 1 at [Docket No. 610];
- (b) The notice of the Combined Hearing Notice annexed set forth at Schedule 6 at [Docket No. 610] (the “Combined Hearing Notice”);
- (c) The Disclosure Statement;
- (d) The Plan;
- (e) A voting ballot for holders of claims in the Voting Class in the form set forth at Schedule 2 at [Docket No. 610] (the “Ballots”), as applicable; and
- (d) A letter from the Committee in support of the Plan in the form set forth at Schedule 7 at [Docket No. 610] (the “Committee Support Letter”).

3. The Debtors shall cause the Solicitation Packages to be distributed to all holders of claims in the Voting Class entitled to vote on the Plan on or before the Solicitation Deadline. In addition, the Debtors shall distribute a complete Solicitation Package (excluding the Ballot) to the Office of the U.S. Trustee and to the Committee.

4. The Ballots adequately address the particular needs of these chapter 11 cases, are appropriate for holders of claims entitled to vote to accept or reject the Plan, comply

with the applicable Rules and, together with the Committee Support Letter, are hereby approved.

**C. Approval of Combined Hearing Notice**

5. The Combined Hearing Notice in the form set forth at Schedule 6 at [Docket No. 610] constitutes adequate and sufficient notice of (a) the date, time, and place of the Combined Hearing; (b) the manner in which a copy of the Disclosure Statement and Plan can be obtained; (c) the deadline to object to approval of the Disclosure statement and confirmation of the Plan; (d) the Voting Deadline; and (e) the rejection of executory contracts and unexpired leases that may be rejected pursuant to the Plan, all in satisfaction of the requirements of the Bankruptcy Code and Rules and E.D.N.Y. Local Bankruptcy Rules and is hereby approved.

6. The Debtors shall cause the Combined Hearing Notice to be served on or before the Solicitation Deadline upon all known holders of claims and equity interests and all other persons entitled to notice pursuant to Rule 2002 as of the Voting Record Date.

7. The Debtors are authorized, but not directed, to publish a conformed copy in the New York Times and the The Standard (Hong Kong) within fourteen (14) days after entry of this Stipulation and Agreed Order. The Court finds the foregoing methods reasonably calculated under the circumstances to provide notice of the contents of and dates and deadlines in the Combined Hearing Notice, and determines such methods to be effective, adequate, and sufficient.

**D. Approval of Non-Voting Status Notices**

8. Except to the extent that the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of claims or equity interests in the Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Debtors will serve on such parties the Combined Hearing Notice and the following forms of notice applicable to holders of claims and interests that are not entitled to

vote on the Plan:

a. Holders of claims in the following classes, which are deemed to accept the Plan and thus not entitled to vote pursuant to section 1129(a)(9) or 1126(f) of the Bankruptcy Code shall each be served a notice in the form set forth at Schedule 3 at [Docket No. 610] (the “Deemed Accepting Notice”): Administrative Claims (Unclassified), Priority Tax Claims (Unclassified), Professional Fee Claims (Unclassified), Secured Claims (Class 1), and Other Priority Claims (Class 2);

b. Holders of claims or interests in the following classes, which are deemed to reject the Plan and are thus not entitled to vote pursuant to section 1126(g) of the Bankruptcy Code shall each be served a notice in the form set forth at Schedule 4 at [Docket No. 610] the “Deemed Rejecting Notice”): Intercompany Claims (Class 4) and Equity Interests (Class 5); and

c. Holders of claims that are (a) asserted as wholly unliquidated or wholly contingent, including all claims asserting a right to payment for any tort liability not reduced to judgment prior to the commencement of the Debtors’ chapter 11 cases, (b) asserted in a proof of claim not timely filed, or (c) asserted in a proof of claim as to which an objection to the entirety of the claim is pending as of the Voting Record Date (together, the “Disputed Claimants”), who are not entitled to vote on the Plan pursuant to section 1126(a) of the Bankruptcy Code, shall each be served a notice in the form set forth at Schedule 5 at [Docket No. 610] (the “Notice of Disputed Claim Status”).

9. The Deemed Accepting Notice satisfies the requirements of Rule 3017(d) and is hereby approved. The Deemed Rejecting Notice and Notice of Disputed Claim Status are adequate under the circumstances and are hereby approved.

**E. Approval of Procedures for Filing Objections to Plan and Disclosure Statement**

10. Objections to approval of the Disclosure Statement or confirmation of the Plan will not be considered by the Court unless timely filed and properly served in accordance with this Stipulation and Agreed Order. Specifically, all objections to approval of the Disclosure Statement or confirmation of the Plan must be in writing and state with particularity the legal and factual bases for the objection (and, if practicable, a proposed modification that would resolve such objection) be filed with the Court and served on the Debtors by March 5, 2021, with any affidavits or affirmations in support of any confirmation objection to be filed by March 12, 2021. The Court shall consider only timely filed written objections. All objections not timely filed and

served in accordance with the instructions in the Combined Hearing Notice are hereby deemed waived.

### **III. Miscellaneous**

11. Subject to the express written consent of the Committee, the Debtors shall have the right to alter, amend, and/or modify the Disclosure Statement or Plan, without further order of the Court, in accordance with the Plan, section 1127 of the Bankruptcy Code, and Rule 3019, including the right to withdraw the Plan at any time before the Combined Hearing Date.

12. Nothing in this Order shall be construed as a waiver of the right of the Debtors to object any proof of claim after the Voting Record Date.

13. The Combined Hearing may be adjourned from time to time without further notice to creditors and other parties in interest by an announcement of the adjourned date at the Combined Hearing or any adjournment thereof or by an appropriate filing with the Court.

14. Notice of this Stipulation and Agreed Order shall be deemed good and sufficient notice and the requirements of Rule 2002 are satisfied by such notice.

15. Notwithstanding any provisions of the Bankruptcy Code or Rules or E.D.N.Y. Local Bankruptcy Rules to the contrary, the terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon its entry, and the Debtors are authorized to take all actions necessary to effectuate the relief granted herein.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Stipulation and Agreed Order.

17. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Stipulation and Agreed Order.



18. NOTHING CONTAINED IN THIS STIPULATION AND AGREED ORDER CONSTITUTES AN APPROVAL OF THE DISCLOSURE STATEMENT OR ANY PROVISION OF THE PLAN.

*[remainder of page intentionally blank]*

Dated: January 22, 2021  
New York, New York

TOGUT, SEGAL & SEGAL LLP

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Dated: January 22, 2021  
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Dated: January 22, 2021  
Central Islip, New York

OFFICE OF THE UNITED STATES TRUSTEE  
FOR THE EASTERN DISTRICT OF NEW YORK

By: /s/ Christine H. Black  
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Central Islip, New York 11722-4437

**IT IS SO ORDERED.**

**Dated: January 27, 2021  
Central Islip, New York**



*Alan S. Trust*  
**Alan S. Trust  
Chief United States Bankruptcy Judge**