

LOWENSTEIN SANDLER LLP

Kenneth A. Rosen, Esq.
Nicholas B. Vislocky, Esq.
1251 Avenue of the Americas, 17th Floor
New York, New York 10020
(212) 262-6700 (Telephone)
(212) 262-7402 (Facsimile)

-and-

65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)

Proposed Counsel to the Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Binder & Binder – The National Social Security
Disability Advocates (NY), LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 14-23728 (____)

(Joint Administration Requested)

**DEBTORS' MOTION REQUESTING APPROVAL OF PROCEDURES FOR
REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND
ABANDONMENT OF *DE MINIMIS* PERSONAL PROPERTY RELATED THERETO**

The debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”) submit this motion (the “Motion”) for entry of an order

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: (1) Binder & Binder - The National Social Security Disability Advocates (NY), LLC (1450); (2) SSDI Holdings, Inc. (3038); (3) Binder & Binder - The National Social Security Disability Advocates LLC (8580); (4) Binder & Binder - The National Social Security Disability Advocates (AZ), LLC (5887); (5) Binder & Binder - The National Social Security Disability Advocates (CA), LLC (1456); (6) Binder & Binder - The National Social Security Disability Advocates (CO), LLC (0945); (7) Binder & Binder - The National Social Security Disability Advocates (CT), LLC (0206); (8) Binder & Binder - The National Social Security Disability Advocates (FL), LLC (1455); (9) Binder & Binder - The National Social Security Disability Advocates (GA), LLC (4768); (10) Binder & Binder - The National Social Security Disability Advocates (IL), LLC (1457); (11) Binder & Binder - The National Social Security Disability Advocates (MD), LLC (3760); (12) Binder & Binder - The National Social Security Disability Advocates (MO), LLC (2108); (13) Binder & Binder - The National Social Security Disability Advocates (NJ), LLC (1454); (14) Binder & Binder - The National Social Security Disability Advocates (NC), LLC (1460); (15) Binder & Binder - The National Social Security Disability Advocates (OH), LLC (7827); (16) Binder & Binder - The National Social Security Disability Advocates (PA), LLC (1453); (17) Binder & Binder - The National Social Security Disability Advocates (TX), LLC (1458); (18) Binder & Binder - The National Social Security Disability Advocates VA, LLC (7875); (19) Binder & Binder - The National Social Security Disability Advocates (WA), LLC (0225); (20) Binder & Binder - The National Social Security Disability Advocates (LA), LLC (8426); (21) Binder & Binder - The National Social Security Disability Advocates (MI), LLC (8762); (22) Binder & Binder - The National Social Security Disability Advocates (DC), LLC (5265); (23) The Rep for Vets LLC (6421); (24) National Veterans Disability Advocates LLC (dba The Rep for Vets LLC) (7468); and (25) The Social Security Express Ltd. (4960) (together, the “Debtors”).

substantially in the form annexed hereto (the “Proposed Order”) for approval of streamlined procedures for the Debtors’ (a) rejection of Contracts (defined below) as of the Rejection Date (defined below) and (b) abandonment of De Minimis Property (defined below) related thereto. In support of this Motion, the Debtors rely upon and incorporate by reference the Declaration of William A. Brandt, Jr. Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Chapter 11 Petitions and First Day Motions (the “First Day Declaration”) filed concurrently herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION, VENUE, AND STATUTORY PREDICATES

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are sections 105(a), 365(a) and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rule 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 6006-1 and 6007-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

BACKGROUND

3. On December 18, 2014 and continuing onto December 19, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. 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 trustee,

examiner or official committee of unsecured creditors (“Creditors Committee”) has been appointed in the Chapter 11 Cases.

5. The factual background regarding the Debtors, including their operations, their capital and debt structure, and the commencement of these Chapter 11 Cases is more fully described in the First Day Declaration, which is deemed fully incorporated herein by reference.

BACKGROUND RELEVANT TO THE MOTION

6. As of the Petition Date, the Debtors are, collectively, a party to a substantial number of executory contracts and unexpired leases, including, without limitation, certain personal property leases, unexpired leases of nonresidential real property, including any amendments, modifications, guaranties, or other agreements related thereto (“Real Property Leases”), property and facilities management agreements, and agreements for the provision of goods and services (each a “Contract” and, collectively, the “Contracts”).

7. Furthermore, at the premises associated with their Real Property Leases, the Debtors maintain certain personal property, furniture, fixtures and/or equipment related to their businesses (such as equipment, fixtures, furniture, advertising displays and other personal property) which is either owned by the Debtors, leased by the Debtors from third parties, or subject to equipment financing agreements with third parties (collectively, “Personal Property”).

8. Simultaneously herewith, the Debtors filed a motion to reject certain Contracts as of the Petition Date. However, the Debtors anticipate that additional Contracts will no longer provide a benefit to their estates. Accordingly, by this Motion the Debtors are also seeking (i) approval of certain proposed expedited procedures for the rejection of Contracts (the “Rejection Procedures”) pursuant to section 365(a) of the Bankruptcy Code; and (ii) authority to take any and all actions necessary and appropriate to implement and effectuate the Rejection Procedures

as approved by this Court, including abandoning, pursuant to section 554(a) of the Bankruptcy Code, all Personal Property that the Debtors deem, in their business judgment, has little to no value to their estates (“De Minimis Property”). Below is a summary of the Debtors’ proposed Rejection Procedures as incorporated into the proposed order accompanying this Motion:

- (a) **Rejection Notice.** (i) The Debtors will file on the docket for these Chapter 11 Cases a notice substantially in the form attached to the Proposed Order (the “Rejection Notice”)² which sets forth:
- (1) the Contract(s) to be rejected³;
 - (2) name and address, as known to the Debtors, of the Contract counter parties listed alphabetically pursuant to Bankruptcy Rule 6006(f);
 - (3) deadlines and procedures for filing an Objection (defined below);
 - (4) the proposed date the applicable Contract is deemed rejected (“Rejection Date”); and
 - (5) if applicable, descriptive information identifying the Contract.
- (ii) In connection with any Real Property Leases identified on a Rejection Notice, the Debtors shall include in the Rejection Notice, to the best of their knowledge: (1) the street address of real property that is the subject of the Contract; and (2) identify De Minimis Property to be left at the Premises.
- (iii) If the Debtors propose to abandon De Minimis Property that is subject to a true lease, and located at a premises that is the subject of a Rejection Notice, such Rejection Notice shall indicate the same, and the automatic stay shall be deemed modified to permit the respective personal property lessor to retrieve such abandoned property within seven (7) days of filing of the Rejection Notice (the “Collection Deadline”).
- (b) **Service of Rejection Notice.** The Debtors will serve the Rejection Notice by first class, postage paid mail, e-mail and/or fax on: (i) the non-Debtor counter party (and its counsel, if known) for the respective Contract at the last known address available to the Debtors; and if applicable, (ii) counsel to the Creditors’ Committee (collectively, the “Rejection Notice Parties”). The Debtors will serve all Rejection Notices with a copy of the Court’s order granting the Motion.

² The Rejection Notice shall be substantially in the form annexed to the Proposed Order.

³ Consistent with Rule 6006(f) of the Bankruptcy Rules, however, no more than 100 unexpired Contracts will be contained on any one Rejection Notice.

- (c) **Objection Procedures.** (i) Should a party in interest object (“Objection”) to the Debtors’ proposed rejection of a Contract, such party must file and serve a written objection so that such Objection is filed with this Court and actually received by the following parties (the “Objection Notice Parties”) no later than twenty-one (21) calendar days after the date the Rejection Notice is filed (“Objection Deadline”): (1) counsel to the Debtors, Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Mary Seymour, Esq. and Nicholas B. Vislocky, Esq.); (2) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004; and (3) counsel to the Creditors Committee, if applicable.
- (ii) If an Objection is not timely filed and served, the Debtors may submit to the Court a proposed order (the “Rejection Order”) granting such relief along with a statement confirming the absence of a timely Objection.
- (iii) If an Objection is timely filed and received in accordance with the Rejection Procedures, the Debtors shall seek a hearing on such Objection, to be scheduled at the Court’s convenience and provides at least seven (7) calendar days’ notice of such hearing to the objecting party and the Objection Notice Parties.
- (iv) If the Court ultimately upholds the Debtors’ determination to reject the applicable Contract, then the Contract shall be deemed rejected as of either: (1) the Rejection Date, or (2) the date determined by the Court in an order overruling such Objection.
- (d) **Deadline to File Proofs of Claim.** Counterparties to Contracts that are rejected pursuant to the Rejection Procedures are required to file a proof of claim on or before the later of: (i) the deadline for filing proofs of claim established by the Court in the Chapter 11 Cases, or (ii) thirty (30) days after the Rejection Date. If a proof of claim is not timely filed, such claimant shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with these Chapter 11 Cases.
- (e) **Security Deposits Remain Estate Property Unless Otherwise Determined.** If the Debtors have deposited funds with a Contract counterparty as a security deposit or other arrangement, such Contract counterparty may not setoff or otherwise use such deposit without the prior authority of the Court or agreement of the parties.

9. The Debtors also request authority, prior to and through the Rejection Date, to remove Personal Property from the premises that are the subject of any rejected Contract, in their

sole discretion. However, the Debtors will not remove property that is owned by an applicable landlord.

10. To the extent that the Debtors determine that their interest in De Minimis Property has little or no value or that the preservation of the De Minimis Property will be burdensome to their estates (as compared with the expense of removing and storing such property) the Debtors request authority to abandon, in their sole discretion, any De Minimis Property remaining at a premises subject to a rejected real property lease as of the Rejection Date. However, the Debtors shall not abandon De Minimis Property subject to a true lease without first rejecting the underlying lease for such De Minimis Property. If the Debtors propose to abandon De Minimis Property that is (i) subject to a true lease, and (ii) located at a premise that is the subject of a Rejection Notice, such Rejection Notice shall indicate the same. Should the Debtors propose to abandon De Minimis Property, the foregoing notice and objection procedures will apply to the personal property lessor and the Rejection Notice will set forth a description of the property proposed to be abandoned, as required by Local Rule 6007-1, and shall be served on the personal property lessor.

11. In all events, including if property is not retrieved by the Collection Deadline, the Debtors request that the property be deemed abandoned pursuant to section 554 of the Bankruptcy Code as of the Rejection Date and, except as set forth above, that the landlord(s) be authorized to dispose of such abandoned property without liability to any third party claiming an interest in such abandoned property.

12. In connection with the foregoing Rejection Procedures, the Debtors also request that they be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate the Rejection Procedures

as approved by this Court, and that entry of the requested order be without prejudice to the Debtors' right to seek further, other, or different relief regarding the Contracts.

13. These Rejection Procedures are proposed in an effort to streamline the Debtors' ability to reject burdensome Contracts, and thereby minimize unnecessary postpetition obligations, while also providing Contract counterparties with adequate notice of the rejection of any such Contract and an opportunity to object to such rejection within a reasonable time period. Accordingly, the Debtors respectfully submit that the Rejection Procedures should be approved as they balance the respective interests of the parties, are an appropriate exercise of the Debtors' business judgment, and constitute a common form of relief in many bankruptcy cases administered in this and other jurisdictions.

RELIEF REQUESTED

14. By this Motion, the Debtors request entry of an order authorizing the Debtors to institute the Rejection Procedures proposed herein to streamline their process to reject Contracts going forward.

BASIS FOR RELIEF

A. Rejection of Executory Contracts, Leases and Employment Agreements is a Sound Exercise of the Debtors' Business Judgment

15. Section 365 of the Bankruptcy Code empowers a debtor in possession, subject to court approval, to reject an executory contract or unexpired lease. 11 U.S.C. § 365(a). Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, a debtor may assume or reject any executory contract or unexpired lease." *In re Old Carco LLC*, 424 B.R. 633, 638 (Bankr. S.D.N.Y. 2010) (citations omitted); *see Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993), *cert. dismissed*, 511 U.S. 1026 (1994). In determining whether the rejection of an unexpired lease or executory

contract should be authorized, courts apply the “business judgment” standard. *See Orion Pictures, id.*; *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (noting that “[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of discretion, the debtor’s business judgment will not be altered”) (citations omitted). Courts define “business judgment” as “[t]he presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation’s best interest.” *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005).

16. The business judgment standard is not strict; a debtor must only demonstrate that either assumption or rejection of an executory contract or unexpired lease will benefit the estate. Upon such a representation, courts generally do not second-guess a debtor’s decision to assume or reject an executory contract or unexpired lease. *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (recognizing that the business judgment rule shields corporate decision-makers and their decisions from judicial second-guessing); *see In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (business judgment standard is satisfied when a debtor determines that rejection will benefit the estate), *In re Stable Mews Assocs., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984) (holding rejection is appropriate based solely on the resulting benefit to the estate); *see also, In re Exide Techn.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (stating that the business judgment standard “is not a difficult standard to satisfy and requires only a showing that [the debtor’s decision] will benefit the estate”).

17. Additionally, in the case of unexpired leases of nonresidential real property, the Debtors will likely vacate the premises before or upon serving the Rejection Notice, thereby allowing the counterparties to take possession of the property. *See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 608-09 (2d Cir. 2007) (holding bankruptcy court did not abuse its discretion in finding balance of equities favored making rejection of a nonresidential lease of real property retroactive to date tenant vacated premises, as tenant's action provided landlord with opportunity to relet premises); *In re New Valley Corp.*, No. 98-982, 2000 U.S. Dist. LEXIS 12663, at *44-46 (D.N.J. Aug. 31, 2000) (holding bankruptcy court properly exercised its discretion in adjusting the effective date of rejection from the date the court signed the order authorizing rejection to the date on which the debtor vacated and the landlord exercised control over the property); *In re Amber's Stores*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (holding that lease at issue should be deemed rejected as of the petition date due to equities of the case where debtor turned over keys and vacated premises and served motion to reject lease as soon as possible). For this reason, the Debtors reserve the right to seek a Rejection Date to be deemed effective as of the Petition Date.

18. Prior to the Petition Date, the Debtors and their advisors reviewed the Contracts to determine what value, if any, they provide to the Debtors' estates. (The Debtors are seeking authority to reject certain of these Contracts by a separate motion.) However, the Debtors anticipate that additional Contracts will have no marketable value beneficial to the Debtors' estates. Accordingly, the Debtors are seeking approval of the proposed Rejection Procedures in an attempt to streamline this process for both their estates and Contract counterparties. The Debtors believe that the proposed Rejection Procedures will save substantial legal expenses and Court time that would otherwise be dedicated to litigating and adjudicating multiple hearings

held on separate motions. Moreover, the Rejection Procedures provide parties in interest with at least twenty-one days to file an Objection, which is longer than typically sought in this District. Accordingly, the proposed Rejection Procedures balance the need for an expeditious reduction of burdensome costs to the Debtors' estates while providing appropriate notice of the proposed rejection to parties in interest.

B. Permitting the Debtors to Abandon De Minimis Property is Appropriate Under the Circumstances

19. Section 554(a) of the Bankruptcy Code provides that a debtor in possession may abandon, subject to Court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Before authorizing abandonment of property, a bankruptcy court must find either: (i) the property is burdensome to the estate or (ii) the property is both of inconsequential value and inconsequential benefit to the estate. *See, e.g., Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 497 (1986), *reh'g denied*, 475 U.S. 1091 (1986); *In re Texaco, Inc.*, 90 B.R. 38, 44 (S.D.N.Y. 1988); *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 882 n.7 (Bankr. S.D.N.Y. 1990).

20. The De Minimis Property proposed to be abandoned in connection with future rejections of Contracts is of inconsequential value to the Debtors' estates as it would primarily consist of fixtures, furniture, and other office equipment. The Debtors believe that the cost of retrieving, marketing and reselling the De Minimis Property far outweighs any recovery the Debtors could hope to attain for the property. Thus, the Debtors have determined that the abandonment of any such De Minimis Property as of the Collection Date is in the best interests of the Debtors, their estates and creditors.

C. Approval of Rejection Procedures is Appropriate Under the Debtors' Circumstances

21. Finally, section 105 of the Bankruptcy Code provides, in relevant part, that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Debtors submit that the implementation of the proposed procedures is appropriate in these Chapter 11 Cases and is well within the Court’s equitable powers under section 105 of the Bankruptcy Code. Indeed, similar relief has been granted in various other chapter 11 cases previously filed in this Court. *See, e.g., In re Grubb & Ellis Co.*, Case No. 12-10685 (MG) (Bankr. S.D.N.Y. March 23, 2012) (Docket No. 814); *In re Borders Grp., Inc.*, Case No. 11-10614 (MG) (Bankr. S.D.N.Y. June 2, 2011) (Docket No. 964); *In re The Great Atl. & Pac. Tea Co.*, Ch. 11 Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) (Docket No. 734); *In re Blockbuster Inc.*, Ch. 11 Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Oct. 21, 2010) (Docket No. 362); *see also, In re MF Global Holdings Ltd.*, Case No. 11- 15059 (MG) (Bankr. S.D.N.Y. March 6, 2012) (Docket No. 527) (decision and order identifying element to be included in proposed rejection procedures).

NOTICE

22. Notice of this Motion has been given to (i) Counsel to Capital One Bank, N.A., McCarter & English, LLP, Four Gateway Center, 100 Mulberry St., Newark, New Jersey 07102, Attn: Joseph Lubertazzi, Jr. (jlubertazzi@mccarter.com); (ii) Counsel to US Bank National Association, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Kenneth J. Ottaviano (kenneth.ottaviano@kattenlaw.com); (iii) Stellus Capital Investment Corporation, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: Stephen E. Gruendel (stevegruendel@mvalaw.com); (iv) AON Risk Services – Jacksonville, 13901 Sutton Park Drive S, STE 300, Jacksonville, Florida 32224; (v)

AFCO Credit Corporation, 14 Wall Street, Suite 8A-19, New York, New York 10005; (vi) potential Contract counterparties; (vii) the Debtors' twenty largest unsecured creditors; (viii) the Office of the United States Trustee for the Southern District of New York; (ix) the Internal Revenue Service; and (x) those parties who have filed a notice of appearance and request for service of pleadings in the chapter 11 case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: December 19, 2014

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen
Kenneth A. Rosen, Esq.
Nicholas B. Vislocky, Esq.
1251 Avenue of the Americas, 17th Floor
New York, New York 10020
(212) 262-6700 (Telephone)
(212) 262-7402 (Facsimile)

-and-

65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)

*Proposed Counsel to the Debtors and Debtors-in
Possession*