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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE MICHAEL B. KAPLAN
CASE NO. 15-11127 (MBK)

In re: C. WONDER LLC, *et al.*,[1] Debtors-in-Possession.	Chapter 11 (Jointly Administered) **DECLARATION OF STEPHEN MAROTTA IN SUPPORT OF CONFIRMATION OF THE DEBTORS' PLAN OF ORDERLY LIQUIDATION** **HEARING DATE AND TIME:** **August 31, 2015 at 2:00 p.m.**

STEPHEN MAROTTA, hereby declares:[2]

1. I am the Chief Restructuring Officer of C. Wonder LLC, one of the within debtors and debtors-in-possession (collectively, the "**Debtors**"). In that capacity, I am generally familiar with the Debtors' day-to-day operations, business affairs and books and records.

2. I submit this Declaration (the "**Declaration**") in support of confirmation of the First Amended Chapter 11 Joint Plan of Liquidation for C. Wonder LLC, *et al.*, filed July 20,

[1] The Debtors in these Chapter 11 cases are C. Wonder LLC; C. Wonder Gift Cards Inc.; C. Wonder Transport LLC; CW Holland LLC and CW International Holdings LLC.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (defined herein), which is incorporated herein by reference.

2015 [Docket No. 409], as the same may be amended from time to time (the "**Plan**") pursuant to Section 1129 of Title 11 of the United States Code (the "**Bankruptcy Code**"). All matters set forth in this Declaration are based on (a) my personal knowledge, (b) my discussions with other members of the Debtors' management, (c) my review of relevant documents, including the Plan, (d) my opinion, based on my personal experience and knowledge of the Debtors' business and financial condition, or (e) as to matters involving the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, my reliance on the advice of the Debtors' bankruptcy counsel. The references to sections of the Bankruptcy Code in this Declaration have been supplied by counsel to the Debtors in order to provide the context for the statements made herein.

3. If I were called to testify, I could and would testify competently to the facts set forth herein.

I. BACKGROUND

4. On January 22, 2015 (the "**Filing Date**"), the Debtors each filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code.

5. A comprehensive statement of the facts pertinent to the Debtors' business, their prepetition capital structure and the circumstances leading to the Chapter 11 filings is set forth in my Declaration submitted in support of the Debtors' various "First Day Motions" (the "**First Day Declaration**") [Docket No. 19]. A complete description of the events leading to the filing of the Plan is set forth in the First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Chapter 11 Joint Plan of Orderly Liquidation of C. Wonder LLC, *et al.* (the "**Disclosure Statement**") [Docket No. 408]. The facts from the First Day Declaration and the Disclosure Statement are incorporated herein by reference.

A. The Sale of the Debtors' Assets

6. As of the Filing Date, the Debtors were a specialty retailer that designed and marketed women's clothing, jewelry, shoes, handbags and other accessories, as well as select home goods under the C. Wonder brand.

7. The Debtors sold substantially all of their assets approximately two (2) months after the commencement of these Chapter 11 cases. The Debtors no longer maintain active business operations and pending confirmation of the Plan operated their business for the purpose of winding down their affairs for the benefit of the Debtors' creditors.

B. The Solicitation of the Plan

8. On July 21, 2015, the Court entered an *Order: (A) Conditionally Approving the First Amended Disclosure Statement for Solicitation Purposes Only; (B) Scheduling a Joint Hearing to Determine the Adequacy of the First Amended Disclosure Statement Pursuant to 11 U.S.C. § 1125(b) and Confirmation of the First Amended Joint Plan of Orderly Liquidation; (C) Approving Notice and Objection Procedures in Respect of Adequacy of the Disclosure Statement and Plan Confirmation; (D) Fixing a Record Date for Voting and Temporary Allowance of Claims; (E) Approving Solicitation Packages and Procedures for Distribution Thereof; and (F) Approving the Form of Ballots and Establishment of Procedures for Voting on the Plan* (the "**Disclosure Statement and Voting Procedures Order**") [Docket No. 411]. Pursuant to the Disclosure Statement and Voting Procedures Order, the Bankruptcy Court conditionally approved the Disclosure Statement as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' creditors and equity interest holders to make an informed judgment whether to accept or reject the Plan. The Disclosure Statement and Voting Procedures Order also approved, among other things: (a) all materials to be transmitted to creditors entitled to vote on the Plan (the

"**Solicitation Packages**"), (b) the form of ballots, and (c) the procedures for voting and for tabulation of votes to accept or reject the Plan.

9. On July 21, 2015, the Debtors commenced their solicitation of votes with respect to the Plan.

C. Voting Results

10. The Court established August 17, 2015 (the "**Voting Deadline**") as the deadline for receipt of votes accepting or rejecting the Plan. On August 21, 2015, the Debtors filed the Certification of Christina Pullo Certifying Votes on the Debtors' Plan of Orderly Liquidation (the "**Voting Declaration**") [Docket No. 436], which sets forth the results of voting on the Plan.

11. As set forth in the Voting Declaration, as of the Voting Deadline, the creditors entitled to vote on the Plan have accepted or are deemed to have accepted the Plan.

II. THE PLAN SATISFIES ALL REQUIREMENTS FOR CONFIRMATION

12. Based on my review of the Plan and all related materials and my discussions with Debtors' legal counsel, it is my understanding that the Plan complies with all applicable provisions of the Bankruptcy Code.

A. The Plan Satisfies Section 1122 of the Bankruptcy Code

13. Articles IV and V of the Plan provide for the separate classification of Claims against and Equity Interests in the Debtors based on differences in the legal nature and/or priority of the Claims and Equity Interests. Specifically, the Plan designates four (4) Classes of Claims and five (5) Classes of Equity Interests. Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class.

14. As required by Section 1122(a) of the Bankruptcy Code, each Class of Claims or Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. Further, valid business, factual and legal reasons

exist for separately classifying the various Classes of Claims and Equity Interests under the Plan. Additionally, similar Claims have not been placed into different Classes to affect the voting on the Plan. Accordingly, I believe that the classification of Claims and Equity Interests complies with Section 1122(a) of the Bankruptcy Code.

B. The Plan Satisfies Section 1123(a) of the Bankruptcy Code

15. The Plan complies fully with each requirement of Section 1123(a) of the Bankruptcy Code.

(a) Section 1123(a)(1) of the Bankruptcy Code: In accordance with Section 1123(a)(1) of the Bankruptcy Code, Articles IV and V of the Plan designate each Class of Claims and Equity Interests, other than Claims of a kind specified in Section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code.

(b) Section 1123(a)(2) of the Bankruptcy Code: Articles IV and V of the Plan identify each Class of Claims and Equity Interests that is not impaired under the Plan.

(c) Section 1123(a)(3) of the Bankruptcy Code: Article V of the Plan sets forth the treatment of impaired Claims and Equity Interests.

(d) Section 1123(a)(4) of the Bankruptcy Code: As required by Section 1123(a)(4) of the Bankruptcy Code, the Plan provides for the same treatment of each Claim or Equity Interest within a particular Class.

(e) Section 1123(a)(5) of the Bankruptcy Code: Article VI of the Plan enumerates the means for implementation of the Plan as required by Section 1123(a)(5). As set forth in Article VII of the Plan, the Plan provides for the appointment of a Plan Administrator to act as the Debtors' liquidating agent and for the Plan Administrator to take any and all actions necessary to (a) liquidate the Debtors' Assets, (b) investigate and prosecute Causes of Action on the Debtors' behalf, (c) defend, protect and enforce any and all rights and interests of the

Debtors, (d) make any and all Distributions required or permitted to be made, (e) file any and all reports, requests for relief, or objections thereto, (f) dissolve the Debtors and otherwise wind down the Debtors and any corporate entity owned by the Debtors including preparation of and filing of final tax returns, (g) file post-Effective Date reports as required under applicable law, (h) pay all Statutory Fees, (i) object to Claims filed against the Debtors, and (j) pay any and all claims, liabilities, losses, damages, costs and expenses of the Plan Administrator's attorneys and other professionals. As required by Section 1123(a)(5) of the Bankruptcy Code, these means for implementation of the Plan are adequate.

(f) Section 1123(a)(6) of the Bankruptcy Code: The Plan does not provide for the issuance of non-voting equity securities. Accordingly, Section 1123(a)(6) of the Bankruptcy Code is not applicable.

(g) Section 1123(a)(7) of the Bankruptcy Code: As set forth in the Plan, the Plan Administrator is Brian Ryniker acting in accordance with the Retention Agreement and the Plan. The Plan Administrator was jointly selected by the Debtors and Committee. As required by Section 1123(a)(7) of the Bankruptcy Code, the Plan Administrator has been selected in a manner consistent with the Holders of Claims and Equity Interests and with public policy.

(h) Section 1123(a)(8) of the Bankruptcy Code: Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Debtors because the Debtors are not individuals.

C. The Plan Satisfies Section 1123(b) of the Bankruptcy Code

16. The Plan contains certain of the permissive provisions authorized by Section 1123(b) of the Bankruptcy Code. The Plan also seeks to implement exculpation and injunction provisions. The exculpation and injunction provisions in Article IX of the Plan are permissible pursuant to Section 1123(b)(6) of the Bankruptcy Code. These provisions provide protection to those interested parties who were essential to, who have made substantial

contributions in connection with, the Chapter 11 Cases and the Plan and who exercised good faith in overseeing the sale of the Debtors' assets and negotiating and participating in matters immediately preceding and throughout these Chapter 11 cases. The provisions are limited in nature, however, and exclude, among other things, acts of misconduct or gross negligence or acts that occurred prior to the Filing Date.

17. The exculpation and injunction provisions of the Plan are fair and necessary under the circumstances of these Chapter 11 cases and are supported by the creditor constituencies in these Chapter 11 cases, as evidenced by the support from the Committee and further evidenced by the fact that creditors voted overwhelmingly in favor of the Plan.

D. The Plan Satisfies Section 1123(d) of the Bankruptcy Code

18. There are no Executory Contracts or unexpired leases assumed pursuant to the Plan. Therefore, Section 1123(d) of the Bankruptcy Code is not applicable.

E. The Plan Satisfies Section 1129(a) of the Bankruptcy Code

19. The Plan complies fully with each requirement of Section 1129(a) of the Bankruptcy Code.

(a) Sections 1129(a)(1) and (a)(2) of the Bankruptcy Code: The Plan, the Debtors and the Committee, as joint proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, as required by Sections 1129(a)(1) and 1129(a)(2), respectively. The Debtors and the Committee and their members, agents, accountants, consultants and attorneys have acted in "good faith" within the meaning of Section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and orders of this Court in connection with all their respective activities relating to the solicitation of acceptances of the Plan.

(b) Section 1129(a)(3) of the Bankruptcy Code: The Plan was proposed in good faith with the legitimate and honest purposes of maximizing the value of the Debtors and the corresponding recovery to their creditors. Indeed, the Plan is the result of the collaborative efforts of the Debtors and the Committee.

(c) Section 1129(a)(4) of the Bankruptcy Code: The Plan provides that the Bankruptcy Court shall retain jurisdiction to hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under Section 330 or 503 of the Bankruptcy Code. Under the terms of the Plan, the Bankruptcy Court has jurisdiction to review any dispute with respect to the reasonableness of such fees.

(d) Section 1129(a)(5) of the Bankruptcy Code: The Debtors have complied with Section 1129(a)(5) of the Bankruptcy Code. The proponents of the Plan as well as the Plan Administrator have been disclosed. The appointment of the Plan Administrator is consistent with the interests of creditors and equity security holders and with public policy. Therefore, Section 1129(a)(5) of the Bankruptcy Code will be satisfied.

(e) Section 1129(a)(6) of the Bankruptcy Code: The Plan does not provide for any rate change that requires regulatory approval. Therefore, Section 1129(a)(6) of the Bankruptcy Code is not applicable.

(f) Section 1129(a)(7) of the Bankruptcy Code: The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code because it provides value which is not less than that which would be recovered by creditors in a Chapter 7 bankruptcy proceeding. In a Chapter 7 liquidation, creditors would receive distributions based on the liquidation of the Remaining Assets. However, the net proceeds from the collection and liquidation of the Remaining Assets would be reduced in a Chapter 7 proceeding by any commission payable to Chapter 7 trustee of

each of the Debtor's estates as well as the fees for the trustee's attorneys and other professionals. Moreover, a Chapter 7 liquidation would result in delay in the payment to creditors and trigger a new bar date for filing proofs of claim against the Debtors. Hence, Chapter 7 would not only delay distribution but raise the prospect of additional claims that were not asserted in the Debtors' Chapter 11 cases. When the cost of liquidation is considered, as well as the time delay in receiving distributions, the Court finds that creditors will receive smaller distributions pursuant to a Chapter 7 liquidation than under the Plan.

(g) Section 1129(a)(8) of the Bankruptcy Code: As indicated in Articles IV and V of the Plan, Class 1A and Class 1B are unimpaired and are thus conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Furthermore, based on my review of the Voting Declaration, all impaired classes of the Debtors that are entitled to vote have either accepted the Plan or are deemed to accept the Plan. Therefore, the Plan satisfies Section 1129(a)(8) of the Bankruptcy Code. Classes 3A, 3B, 1C, 1D and 1E, the Classes of Equity Interests for the Debtors are deemed to reject the Plan. Accordingly, Section 1129(a)(8) has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of Section 1129(b), as set forth below.

(h) Section 1129(a)(9) of the Bankruptcy Code: Based on my review of Article III of the Plan, the Plan provides for the treatment of Administrative Expense Claims, Priority Tax Claims, Fee Claims and other Claims entitled to priority under Sections 507(a)(1)-(8) of the Bankruptcy Code, as applicable, in the manner required by Section 1129(a)(9) of the Bankruptcy Code.

(i) Section 1129(a)(10) of the Bankruptcy Code: Based on my review of the Voting Declaration and my knowledge of the solicitation process, I understand that one impaired

Class of Claims for the Debtors has accepted the Plan, excluding the votes cast by insiders. Accordingly, the Plan satisfies the requirements of Section 1129(a)(10) of the Bankruptcy Code.

(j) Section 1129(a)(11) of the Bankruptcy Code: Based on my review of the Plan, confirmation of the Plan is not likely to be followed by a further liquidation or the need for further financial reorganization of the Debtors. The Plan contemplates that all proceeds of the Remaining Assets will be distributed to the creditors of the Debtors pursuant to the terms of the Plan. Since no further reorganization of the Debtors will be possible and sufficient funds exist to make all payments required by the Plan, the Plan is feasible within the meaning of Section 1129(a)(11) of the Bankruptcy Code.

(k) Section 1129(a)(12) of the Bankruptcy Code: All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date, as required by Section 1129(a)(12) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of Section 1129(a)(12) of the Bankruptcy Code.

(l) Section 1129(a)(13) of the Bankruptcy Code: The Debtors have no obligation to pay "retiree benefits" within the meaning of Section 1114 of the Bankruptcy Code on or before the Filing Date. Accordingly, Section 1129(a)(13) of the Bankruptcy Code is not applicable.

(m) Section 1129(a)(14) of the Bankruptcy Code: The Debtors are not required to pay any domestic support obligations. Accordingly, Section 1129(a)(14) of the Bankruptcy Code is not applicable.

(n) Section 1129(a)(15) of the Bankruptcy Code: The Debtors are not individuals. Accordingly, Section 1129(a)(15) of the Bankruptcy Code is not applicable.

(o) Section 1129(a)(16) of the Bankruptcy Code: The Debtors are not corporations or trusts that are not a moneyed, business, or commercial corporation or trust. Section 1129(a)(16) of the Bankruptcy Code is thus not applicable.

F. The Plan Satisfies Section 1129(d) of the Bankruptcy Code

20. Although implementation of the Plan may avoid adverse tax consequences that may otherwise arise from the transactions contemplated by the Plan, based on my review of the Plan and my knowledge of the Debtors, the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of Section 5 of the Securities Act and, to date, no governmental unit has objected to confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of Section 1129(d) of the Bankruptcy Code.

G. The Plan Satisfies the "Cram Down" Requirements under Section 1129(b) of the Bankruptcy Code

21. Notwithstanding the fact that the Classes of Equity Interests of the Debtors are deemed to reject the Plan, the Plan may still be confirmed because it does not discriminate unfairly and is fair and equitable as to the Class of Equity Interests that is deemed to have rejected the Plan. All holders of Equity Interests of the Debtors are treated similarly. The Debtors' creditors will not be paid in full and, therefore, the Plan properly provides that holders of Equity Interests in the Debtors will receive nothing. Moreover, the Plan is fair and equitable to the holders of Equity Interests in the Debtors because no holder of a junior interest will receive or retain any property on account of any distribution under the Plan.

III. CONCLUSION

22. The Plan will enable the Holders of Claims and Equity Interests to realize the highest possible recoveries under the circumstances. Therefore, the Plan is in the best interests of all Holders of Claims and Equity Interests and should be confirmed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 25th day of August, 2015.

STEPHEN MAROTTA