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COUNSEL FOR STRATEGIC ACQUISITION PARTNERS, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: § Chapter 11
§
NNN 3500 MAPLE 26, LLC, et al., § Case No. 13-30402-HDH-11
§
Debtors. § Jointly Administered
§

OBJECTION OF STRATEGIC ACQUISITION PARTNERS, LLC TO DEBTORS’ JOINT PLAN OF REORGANIZATION

TO THE HONORABLE HARLIN D. HALE, U.S. BANKRUPTCY JUDGE:

COMES NOW Strategic Acquisition Partners, LLC (“SAP”), a creditor, plan proponent, and party-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”), and files this its *Objection* (the “Objection”) to the *Debtors’ Joint Plan of Reorganization* (the “Plan”), respectfully stating as follows:

I. GOOD FAITH

1. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be proposed in good faith. SAP objects to the Plan as not having been proposed in good faith for at least the following reasons:

- (i) the Plan has been designed by Breakwater Equity Partners, LLC (“Breakwater”) to benefit itself by taking up to twenty-four percent (24%) of the returns to equity for itself, with no legal or contractual right to the same, which is further evidenced by: (i) the fact that this issue is adjudicated in the Plan with prejudice; (ii) the only disclosure is in a footnote in the Plan; and (iii) equity holders are not advised that this treatment may not be correct, may not be in their interests, and may be in the interests of Breakwater alone;
- (ii) Breakwater had substantial input in formulating the Plan, although Breakwater has not been retained in any capacity in the Bankruptcy Case, and neither the Court nor any creditor or party-in-interest have had the benefit of the required disclosures and oversight; and
- (iii) Breakwater has interfered with the solicitation process, including by pre-marking ballots to equity holders to accept the Plan, and by inappropriately advising them to reject competing plans.

2. In short, while good faith is a term of art related to an honest effort to reorganize, the Plan, while proposing a reorganization, is designed to inappropriately benefit Breakwater through undisclosed interests and a lack of honest and open dealing with equity interest holders.

II. COMPLIANCE WITH LAW

3. Section 1129(a)(1) and 1129(a)(2) require that a plan and that plan’s proponent comply with the Bankruptcy Code. SAP objects to the Plan as not complying with the Bankruptcy Code and the Debtors, through Breakwater, as not complying with the Bankruptcy Code, for at least the following reasons:

- (i) Breakwater, with no formal role in this Bankruptcy Case, inappropriately solicited votes in favor of the Plan, including by sending pre-marked ballots to equity holders to accept the Plan and to return the ballots to Breakwater;
- (ii) Breakwater, with no formal role in this Bankruptcy Case, inappropriately solicited votes against competing plans, including by sending pre-marked ballots to equity holders to reject competing plans and to return the ballots to Breakwater;
- (iii) Breakwater, purporting to be a consultant for the Debtors, and the Debtors, referring to Breakwater as their consultant, failed to follow the Bankruptcy Code's statutes and rules applicable to the retention of professionals; and
- (iv) the Debtor, in violation of prior order of the Court, has yet to provide SAP basic documents (including a survey and the title policy) requested by SAP, and it is impossible that none of the Debtors nor any of their agents would not have these basic documents.

III. APPROVAL OF FEES

4. Section 1129(a)(4) requires that any payment for services in connection with the Bankruptcy Case, "or in connection with the plan and incident to the case," has been approved as reasonable or is subject to the approval of the Court as reasonable. Under the Plan, Breakwater is to be paid up to twenty-four percent (24%) of the recovery to equity interest holders. This is for services directly related to the Bankruptcy Case and the Plan, even though no alleged executory contract has been assumed and no retention papers were filed. The Plan fails to preserve this Court's ability to review and approve the same. Thus, the Plan fails to comply with section 1129(a)(4) of the Bankruptcy Code.

IV. IDENTIFICATION OF POST-PETITION OFFICERS AND DIRECTORS

5. Section 1129(a)(5) of the Bankruptcy Code requires that a plan proponent disclose the identity and affiliations of any individual proposed to serve, after confirmation of a plan, as a director, officer, or voting trustee of the debtor or a successor to the debtor. SAP objects to the Plan because it fails to identify the post-confirmation officers and directors of the Successor Debtor or Newco (both as defined in the Plan).

V. FEASIBILITY

6. Section 1129(a)(11) of the Bankruptcy Code generally requires that a plan be feasible. SAP objects to the Plan based on its feasibility.

7. The Plan is based on funding from an equity funder. At deposition, the Debtors refused to answer questions concerning the identity of the plan funder. As such, SAP has no way of knowing what the financial wherewithal of the funder is, much less that the plan funder is ready, willing, and able to comply with all obligations under the Plan.

VI. RESERVATION OF RIGHTS

8. SAP reserves all right to supplement this Objection, including on account of ongoing discovery, ongoing show cause proceedings, and the results of voting on the Plan, none of which have been completed as of this filing.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, SAP respectfully requests that the Court deny confirmation of the Plan, and that the Court grant such other and further relief to which SAP may be justly entitled.

RESPECTFULLY SUBMITTED this 20th day of February, 2014.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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**ATTORNEYS FOR STRATEGIC
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CERTIFICATE OF SERVICE

I hereby certify that, on February 20, 2014, true and correct copies of the foregoing Objection were served (i) electronically upon those parties registered to receive notice via the Court's CM/ECF system, and (ii) upon the parties listed below via electronic mail before 5:00 p.m. Central Time.

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