

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

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In re: : Chapter 11  
Velti Inc., et al.,<sup>1</sup> : Case No. 13-12878 (PJW)  
: (Jointly Administered)  
Debtors. :  
: **Re: Dkt. No. 360**  
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**ORDER CONFIRMING THE DEBTORS' PLAN OF  
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") having:

- commenced chapter 11 cases (collectively, the "Chapter 11 Cases") on November 4, 2013 (the "Petition Date"), by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code");
- continued to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- obtained, on February 7, 2017, entry of the *Order Granting Motion of Debtors and Debtors in Possession for an Order Establishing Deadlines for Filing Proofs of Claim and Section 503(b)(9) Claim Requests and Approving the Form and Manner of Notice Thereof* [Docket No. 270] which, among other things, set March 17, 2014 as the General Bar Date<sup>2</sup>, and the *Order Granting Motion of Debtors and Debtors in Possession for an Order Establishing Extended Deadline for Filing Proofs of Claim* [Docket No. 353] which, among other things, set May 12, 2014 as the extended bar date;

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<sup>1</sup> The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Velti Inc. (4475), Air2Web, Inc. (5572), Air2Web Interactive, Inc. (2364), Velti North America, Inc. (8900), Velti North America Holdings, Inc. (3953) and Velti US Holdings, Inc. (8299). The mailing address of each of the Debtors, solely for purposes of notices and communications, is DLA Piper LLP (US), Attn: Chun I. Jang, 203 N. LaSalle Street, Suite 1900, Chicago, Illinois 60601.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

- filed, on April 12, 2014, the *Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 360] (the "Plan") and the *Disclosure Statement for the Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 361] (the "Disclosure Statement");
- obtained approval of the Disclosure Statement by that certain Order [Docket No. 356] (the "Disclosure Statement Order"), docketed on April 10, 2014. The Disclosure Statement Order also approved, among other things, solicitation procedures and related notices, forms and ballots in support of the Plan (collectively, the "Solicitation Materials");
- distributed the Solicitation Materials on or before April 15, 2014, consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Disclosure Statement Order, as evidenced by the *Affidavit of Service* made by Varouj Bakhshian, filed on April 16, 2014 (the "Solicitation Affidavit") [Docket No. 370];
- filed, on May 26, 2014, the *Declaration of Notice, Balloting and Claims Agent Regarding Solicitation and Tabulation of Votes in Connection with the Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* (the "Voting Declaration") [Docket No. 410];
- filed, on May 26, 2014, the *Declaration of Russell A. Perry in Support of Confirmation of the Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 416] (the "Confirmation Affidavit").

The Bankruptcy Court having:

- taken judicial notice of the docket and record of these Chapter 11 Cases;
- entered the interim and final Orders approving DIP Financing on November 5, 2013 and December 2, 2013, respectively [Docket Nos. 25 & 115];
- entered the Disclosure Statement Order on April 10, 2014 [Docket No. 356];
- set May 29, 2014 at 9:30 a.m. prevailing Eastern time, as the date and time for the commencement of the Confirmation Hearing pursuant to sections 1126, 1128 and 1129 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018;
- reviewed the Disclosure Statement, the Plan, the Plan Confirmation Brief, the Voting Declaration, the Confirmation Affidavit and all filed pleadings, exhibits, statements and comments regarding confirmation of the Plan ("Confirmation") and the record of these Chapter 11 Cases;
- reviewed the objections and statements filed in opposition to Confirmation, including but not limited to the *Objection by the Internal Revenue Service to the (Revised)*

*Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 398] (collectively, the "Objections");

- heard and considered the statements of counsel, all testimony and other evidence proffered and/or adduced at the Confirmation Hearing, and in respect of, Confirmation; and
- determined to overrule any and all Objections not consensually resolved or withdrawn; and

NOW, THEREFORE, it appearing to the Bankruptcy Court that notice of the Confirmation Hearing, and the opportunity for any party in interest to object to Confirmation is adequate and appropriate as to all parties in interest and other entities affected, benefitted or bound by or to be affected, benefitted or bound by the Plan and Confirmation Order and the transactions contemplated thereby; and upon consideration of and determining that the legal and factual bases set forth in the documents filed in support of Confirmation, the statements of counsel, all testimony and other evidence proffered, adduced and presented at the Confirmation Hearing, and the Confirmation Affidavit, establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following Findings of Fact and Conclusions of Law:<sup>3</sup>

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. Jurisdiction and Venue**

1. On the Petition Date, the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are qualified to be Debtors under section 109 of the Bankruptcy Code.

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<sup>3</sup> This Confirmation Order constitutes the findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052, made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

2. Jurisdiction and Core Proceeding (28 U.S.C. §157(b)(2)). This Court has jurisdiction under 28 U.S.C. §1334 over the Chapter 11 Cases, the Debtors, all property of the Debtors' Estates and all parties that filed proofs of Claim or otherwise subjected themselves to the jurisdiction of the Bankruptcy Court, and to consider Confirmation of the Plan and all provisions thereof. Confirmation of the Plan is a core proceeding under 28 U.S.C. §157(b)(2).

3. Venue (28 U.S.C. §§1408 and 1409). Venue of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§1408 and 1409.

4. Since the Petition Date, the Debtors have operated their business and remained in possession of their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

**B. Judicial Notice**

5. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of this Court (the "Docket"), including, without limitation, all pleadings, certifications, notices and other documents docketed all orders entered, and the transcripts of, and all evidence and arguments made, proffered or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Cases.

**C. Burden of Proof**

6. The Debtors, as the proponents of the Plan, have met their burden of proof with respect to each of the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard respecting confirmation of a plan of reorganization. The Bankruptcy Court also finds that the Debtors have satisfied the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence.

**D. Bankruptcy Rule 3016**

7. The Plan is dated and identifies the Debtors submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b).

**E. Disclosure Statement Order**

8. On April 10, 2014, the Bankruptcy Court entered the Disclosure Statement Order that, among other things: (a) approved the Disclosure Statement and determined that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and Fed. R. Bankr. P. 3017; (b) fixed the deadline for voting to accept or reject the Plan; (c) fixed the date and time for the commencement of the Confirmation Hearing; (d) established the objection deadline and procedures for objecting to the Plan; and (e) established the record date and certain procedures for soliciting and tabulating votes with respect to the Plan.

**F. Transmittal and Mailing of Solicitation Materials; Notice**

9. As evidenced by the Solicitation Affidavit, the Debtors complied with the service requirements and procedures approved in the Disclosure Statement Order. The Debtors have provided notice of the Confirmation Hearing and solicited ballots accepting or rejecting the Plan by timely transmitting the Solicitation Materials to all holders of Claims and Equity Interests, in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules and the local rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The notices of the Confirmation Hearing are adequate and sufficient; no other notice need be given.

**G. Voting**

10. Holders of Claims in Classes 1 (Senior Secured Loan Claims), 3a (General Unsecured Claims), 3b (GSO Deficiency Claim) and 3c (Intercompany Claims) under the Plan are impaired and entitled to vote to accept or reject the Plan. Holders of Claims in Class 2 (Other Secured Claims) are unimpaired and deemed to accept the Plan. Holders of Equity Interests in Class 4 are impaired and will receive no distribution under the Plan, and thus are deemed to reject the Plan.

11. On May 27, 2014, the Debtors' Claims Agent filed with this Court the Voting Declaration [Docket No. 410] certifying the method and results of the ballot tabulation for Classes 1, 3a, 3b and 3c.

12. The Debtors and their respective directors, officers, agents, affiliates, representatives, attorneys and advisors following entry of the Disclosure Statement Order solicited votes to accept or reject the Plan in good faith and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order and all other applicable statutes, rules, laws and regulations.

**H. Voting Report**

13. As evidenced by the Voting Declaration, all ballots were properly tabulated. Pursuant to sections 1124 and 1126 of the Bankruptcy Code, Classes 1 (Senior Secured Loan Claims), 3a (General Unsecured Claims), 3b (GSO Deficiency Claim) and 3c (Intercompany Claims), which are the only classes entitled to vote on the Plan, each voted to accept the Plan by the standards required by section 1126(c) of the Bankruptcy Code.

**I. Compliance With the Requirements of Section 1129 of the Bankruptcy Code<sup>4</sup>**

14. The Debtors' Plan, as modified in this Confirmation Order, contains modifications which constitute non-material changes and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under Section 1125 of the Bankruptcy Code or re-solicitation of votes under Section 1126 of the Bankruptcy Code.

15. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as set forth below:

**(a) Section 1129(a)(1): Compliance of the Plan With Applicable Provisions of the Bankruptcy Code**

16. The Plan complies with all applicable provisions of the Bankruptcy Code, including Bankruptcy Code sections 1122 and 1123.

**(i) Section 1122, 1123(a)(1): Proper Classification**

17. Article III of the Plan classifies six Classes of Claims and Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests designated by the Plan, and the creation of such Classes does not unfairly discriminate between holders of Claims and Equity Interests. The Plan, therefore, satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

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<sup>4</sup> The Debtors submit that the following Bankruptcy Code provisions are not applicable in these Chapter 11 Cases: §§ 1129(a)(6), 1129(a)(13), 1129(a)(14), 1129(a)(15) & 1129(a)(16).

**(ii) Section 1123(a)(2)-(4): Specified Treatment and No Discrimination**

18. Article III, Section B of the Plan specifies that Claims in Class 2 are not impaired under the Plan, in accordance with section 1123(a)(2) of the Bankruptcy Code, and that Claims and Equity Interests in Classes 1, 3a, 3b, 3c and 4 are impaired and describes the treatment of each such Class in accordance with section 1123(a)(3) of the Bankruptcy Code. Further, Article III, Section B of the Plan further specifies that Class 4 is not entitled to receive any distribution and, therefore, is deemed to reject the Plan. As required by section 1123(a)(4) of the Bankruptcy Code, the treatment of each Claim or Equity Interest within a Class is the same as the treatment of each other Claim or Equity Interest in such Class, unless the holder of a Claim or Equity Interest agrees to less favorable treatment on account of its Claim or Equity Interest in such Class.

**(iii) Section 1123(a)(5): Adequate Means for Plan Implementation**

19. Pursuant to section 1123(a)(5) of the Bankruptcy Code, Article IV of the Plan provides adequate and proper means for the Plan's implementation, including, without limitation (a) the appointment of Charles C. Reardon as the Litigation Trustee to hold, manage, dispose of, sell, convert to Cash, and distribute the assets vesting in the Litigation Trust for the benefit of the Allowed General Unsecured Creditors that are entitled to Distributions therefrom under the Plan; and (b) the funding of the Litigation Trust for the purpose of pursuing the Vested Causes of Action for the benefit of the beneficiaries of the Litigation Trust with no objective to continue or engage in the conduct of a trade or business.

**(iv) Section 1123(a)(6): Non-Voting Equity Securities**

20. The Plan does not provide for the issuance of non-voting equity securities, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.



**(v) Section 1123(a)(7): Designation of Directors and Officers**

21. The Plan complies with section 1123(a)(7) and ensures that the appointment of Charles C. Reardon as the Responsible Person is consistent with the interests of holders of Allowed Claims because the Creditors Committee has consented to the choice of the Responsible Person.

**(vi) Section 1123(b)(1)-(2): Impairment/Unimpairment of Classes of Claims and Equity Interests & Executory Contracts**

22. As described above, Article III of the Plan provides for the impairment of certain Classes of Claims and Equity Interests, while leaving others unimpaired. The Plan thus modifies the rights of such holders of Claims and Equity Interests and leaves the rights of others unaffected. In addition, subject to certain exculpations provided for therein, Article VII of the Plan also provides for the rejection of the remaining executory contracts and unexpired leases to which the Debtors are parties.

**(vii) Section 1123(b)(3): Releases, Exculpation and Injunction Discharge**

23. Releases. The release of Claims in favor of the Released Parties pursuant to section 1123(b)(3)(A) of the Bankruptcy Code are described in Article IX.B of the Plan. Each of the Released Parties has contributed significant value to the Debtors, their Plan and their liquidation efforts that warrant the releases.

24. The releases also fully comply with the applicable standard enunciated by the courts in In re Zenith Electronics Corp., 241 B.R. 92 (Bankr. D. Del. 1999), In re Spansion, Inc., 426 B.R. 114 (Bankr. D. Del. 2010) and In re Washington Mutual, Inc., 442 B.R. 314 (Bankr. D. Del. 2011). The Released Parties all share an identity of interest with the Debtors and have made substantial contributions to the Debtors' reorganization efforts. In addition, the releases are an

integral part of the agreement by and among the Debtors, GSO and the Creditors Committee to support the Plan. The third party releases are fully consensual.

25. Accordingly, the Court finds that the releases represent a valid exercise of the Debtors' business judgment, are granted in exchange for reasonable consideration and are integral and necessary to consummation of the Plan. The Released Parties have provided sufficient value in exchange for the releases, and the releases are narrowly tailored and meet the objectives of the parties.

26. Exculpation. The exculpation set forth in Article IX.C of the Plan, as modified herein, is an essential and integral provision of the Plan. The record in these Chapter 11 Cases fully supports the exculpation provisions set forth in Article IX.C of the Plan and as modified herein. Such provisions are appropriately tailored to protect the Debtors' Professionals, the Creditors Committee, the Creditors Committee's members (but solely in their capacity as members of the Creditors Committee and not in their individual capacities), and the Creditors Committee's Professionals, from litigation relating to acts or omissions arising on or after the Petition Date, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases.

27. Each of the releases and exculpation provisions set forth in the Plan, as modified or limited by this Order: (a) is within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§1334(a), 1334(b), and 1334(d); (b) is essential to the implementation of the Plan; (c) is an integral element of the transactions incorporated into and contemplated by the Plan; (d)

confers material benefits on, and is in the best interests of, the Debtors, their estates, their creditors and other parties in interest; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in these Chapter 11 Cases; and (f) is consistent with sections 105, 1123, 1129, and other applicable provisions of the Bankruptcy Code. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the releases and exculpation provisions contained in Article IX of the Plan, as modified by this Confirmation Order.

**(b) Section 1129(a)(2): Compliance by the Debtors With the Applicable Provisions of the Bankruptcy Code**

28. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2), including, without limitation, sections 1123, 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019.

29. In particular, the Debtors are proper debtors under section 109 of the Bankruptcy Code and are proper Plan Proponents under section 1121(a) of the Bankruptcy Code. Furthermore, the solicitation of acceptances or rejections of the Plan: (i) complied with the Disclosure Statement Order; (ii) complied with all applicable laws, rules and regulations governing the adequacy of disclosure in connection with such solicitation; and (iii) occurred only after disclosure of “adequate information” to holders of Claims or Equity Interests, as section 1125(a) of the Bankruptcy Code defines that term and as determined by the Bankruptcy Court in the Disclosure Statement Order. Accordingly, the Debtors and their Representatives have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code.

**(c) Section 1129(a)(3): Proposal of the Plan in Good Faith**

30. The Debtors proposed the Plan based upon extensive, arm's-length negotiations between and among the Debtors, the Creditors Committee, and the Senior Secured Term Loan Lenders, and proposed the Plan in good faith and not by any means forbidden by law, as required by section 1129(a)(3) of the Bankruptcy Code. This Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the process leading to the formulation of the Plan and the Disclosure Statement. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and good faith purposes of liquidating the Debtors' estates and maximizing their value. The one Objection filed does not allege that the Plan was not proposed in good faith.

**(d) Section 1129(a)(4): Bankruptcy Court Approval of Certain Payments Reasonable**

31. The procedures set forth in the Plan for the Bankruptcy Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, comply with section 1129(a)(4) of the Bankruptcy Code. As a result, the requirements of section 1129(a)(4) of the Bankruptcy Code have been satisfied.

**(e) Section 1129(a)(5): Disclosure and Identity of Proposed Management**

32. The Plan complies with Bankruptcy Code section 1129(a)(5) by providing for the appointment of the Responsible Person to serve as of and after the Effective Date. No further disclosure is necessary because the Debtors will not retain any managers or officers as of the Effective Date.

**(f) Section 1129(a)(7): Best Interests of Creditors**

33. Each entity that holds a Claim or Equity Interest in a class that is impaired under the Plan either: (a) has accepted the Plan; or (b) as set forth in the Liquidation Analysis annexed as Exhibit D to the Disclosure Statement, will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the entity would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The methodology used and assumptions made in the Liquidation Analysis, as supplemented by the evidence proffered or adduced at the Confirmation Hearing or otherwise in the record of these Chapter 11 Cases, are reasonable. As a result, the requirements of section 1129(a)(7) of the Bankruptcy Code have been satisfied.

**(g) Section 1129(a)(8): Acceptance by the Plan by Each Impaired Class**

34. As set forth in the Voting Declaration, Classes 1 (Senior Secured Loan Claims), 3a (General Unsecured Claims) and 3b (GSO Deficiency Claim), as impaired classes entitled to vote on the Plan, each voted in favor of the Plan. There were no Class 3c (Intercompany Claims) eligible to vote on the Plan.

35. Class 2 Claims are unimpaired and conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code.

36. Class 4 is impaired and the holders of Equity Interests will receive no distribution on account of their Equity Interests under the Plan and thus, the Class is deemed to reject the Plan under section 1126(g) of the Bankruptcy Code.

37. Because Class 4 is impaired and conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, the Debtors sought Confirmation under section 1129(b), rather than section 1129(a), of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to Class 4, the Court finds the Plan is

confirmable, because the Plan does not discriminate unfairly and is fair and equitable with respect to Class 4. All voting classes have voted to accept the Plan. As a result, the requirements of section 1129(b) of the Bankruptcy Code have been satisfied.

**(h) Section 1129(a)(9): Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code**

38. The treatment of Allowed Administrative Claims, Allowed Claims for Accrued Professional Compensation and Allowed Priority Tax Claims under Article II of the Plan respectively, satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

**(i) Section 1129(a)(10): Acceptance by at Least One Impaired Class**

39. As set forth in the Voting Declaration and above, at least one impaired class, other than Class 4 which is deemed to reject, voted to accept the Plan by the requisite majorities, determined without including the acceptance of the Plan by any insider. Accordingly, section 1129(a)(10) of the Bankruptcy Code is satisfied.

**(j) Section 1129(a)(11): Feasibility of the Plan**

40. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

41. The evidence proffered or adduced at the Confirmation Hearing, including, without limitation, the Perry Affidavit demonstrates that the Debtors will have sufficient funds to satisfy their obligations under the Plan and, given that the Plan contemplates the liquidation of the Debtors, confirmation of the Plan is not likely to be followed by the further reorganization of the Debtors or any successor to the Debtors that is not otherwise contemplated by the Plan. As a result, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

**(k) Section 1129(a)(12): Payment of Bankruptcy Fees**

42. In accordance with section 1129(a)(12) of the Bankruptcy Code, Article V.N of the Plan provides for the payment of all fees payable under 28 U.S.C. §1930(a). As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

**(l) Section 1129(b): Confirmation of the Plan Over Nonacceptance of Impaired Class**

43. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding that not all impaired classes voted to accept the Plan. All classes of impaired Claims voted to accept the Plan. Class 4 Equity Interests is deemed to reject, but no holder of Equity Interests objected to Confirmation.

44. The requirements of section 1129(b)(2) of the Bankruptcy Code are satisfied with respect to Class 4 because there are no holders of Claims or Equity Interests that are junior to Class 4 that will receive or retain under the Plan any property, in accordance with section 1129(b)(2)(C)(ii) of the Bankruptcy Code.

**(m) Satisfaction of Confirmation Requirements**

45. Based on the foregoing, the Plan and Plan Proponents satisfy the requirements for Confirmation set forth in section 1129(b) of the Bankruptcy Code and the Plan may be confirmed notwithstanding the deemed rejection by Class 4.

**(n) Section 1129(c): Only One Plan**

46. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. As a result, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

**(o) Section 1129(d): Principal Purpose of the Plan is Not the Avoidance of Taxes or Application of the Securities Law**

47. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e). As a result, the requirements of section 1129(d) of the Bankruptcy Code have been satisfied.

**J. Executory Contracts and Unexpired Leases**

48. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the rejection of executory contracts and unexpired leases under the Plan. The Debtors have exercised reasonable and sound business judgment in determining whether to assume, assume and sell and assign, or reject each of their executory contracts and unexpired leases, as set forth in the Plan and the exhibits thereto, and such determination is in the best interests of the Debtors, their Estates, and all parties in interest in these Chapter 11 Cases. As set forth in the Plan, all insurance policies issued (or providing coverage at any time) to the Debtors and all related agreements shall be transferred to and shall vest in the post-Effective Date Debtors. Accordingly, the Plan satisfies the provisions of section 1123(b)(2) of the Bankruptcy Code.

**K. Satisfaction of Conditions Precedent to Effective Date**

49. This Order is entered and shall satisfy one of the conditions precedent to the Effective Date set forth in Article VIII of the Plan.

**L. Retention of Jurisdiction**

50. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article X of the Plan.



**ORDER**

Based on the foregoing, it is hereby ORDERED and DECREED:

**A. Order**

1. All requirements for Confirmation of the Plan have been satisfied. The Plan, as attached as Exhibit A hereto, or as the same may be modified by this Confirmation Order, shall be, and hereby is, CONFIRMED. The terms of the Plan are incorporated by reference into, and are an integral part of this Order.

**B. Objections**

2. To the extent that any Objections to Confirmation have not been resolved, withdrawn, waived or settled prior to entry of this Order or otherwise resolved as stated on the record of the Confirmation Hearing, they are hereby overruled on their merits.

**C. Findings of Fact and Conclusions of Law**

3. The findings of fact and the conclusions of law stated in this Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the these Chapter 11 Cases and this matter by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

**D. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependent**

4. The provisions of the Plan and this Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

**E. Record Closed**

5. The record of the Confirmation Hearing is closed.

**F. Notice**

6. Good and sufficient notice has been provided of the Confirmation Hearing, the deadline for filing and serving Objections to the Plan, injunctions and third-party releases, bar dates, and other hearings described in the Disclosure Statement Order and the Plan, which notice has been given and is hereby approved.

**G. Solicitation and Notice**

7. The Solicitation Materials and the solicitation of votes on the Plan complied with the Disclosure Statement Order, were appropriate and sufficient based on the circumstances of these Chapter 11 Cases, solicitation was conducted in good faith, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

**H. Plan Classification Controlling**

8. The terms of the Plan shall solely govern the classification of Claims and Equity Interests for purposes of the Distributions to be made thereunder. The classifications set forth on the ballots tendered to or returned by the Debtors' Creditors in connection with voting on the Plan: (a) were set forth on the ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes; (c) may not be relied upon by any Creditor as representing the actual classification of such Claims under the Plan for distribution purposes; and (d) shall not bind the Debtors or their successors in interest.

**I. Binding Effect and Validity**

9. Unless otherwise provided in the Plan or this Order, the provisions of the Plan and this Order shall bind the Debtors, the Creditors Committee, the Responsible Person, and all holders of Claims against and any Equity Interests in the Debtors, including their successors and assigns, whether or not the Claims or Equity Interests are impaired under the Plan, whether or

not the holders thereof voted to accept the Plan or filed proofs of Claim in any of these Chapter 11 Cases. Each Plan term and provision, is valid and enforceable.

**J. Effectuation of the Plan**

10. Pursuant to section 303 of the General Corporation Law of the State of Delaware and any comparable provision of the business corporation or alternate entity laws of any, as applicable, no action of the Boards of Directors of the Debtors, will be required to authorize the Debtors, to execute, deliver, file or record any and all documents and instruments, and to take any and all action necessary or desirable to implement the Plan and this Order and to effect any other transactions contemplated therein or thereby. To effectuate the Plan and such transactions, the officers or responsible representatives of the Debtors are authorized, without further notice or application to or order of the Court to execute, deliver, file or record such agreements or documents, and to take such other actions as any such individual may determine to be necessary or desirable to effectuate the Plan and such transactions, regardless of whether such actions or documents are specifically referred to in the Plan or this Order. To the extent that, under applicable non-bankruptcy law, any of these actions otherwise would require the consent or approval of the shareholders, boards of directors or managing member of the Debtors, this Order constitutes such consent, approval and direction.

**K. Responsible Person**

11. Charles C. Reardon, in his individual capacity, shall be appointed as the Responsible Person. The Debtors shall fully cooperate with the Responsible Person, and shall turn over all cash, assets, and documents to the Responsible Person on or before the Effective Date. The Debtors, and not the Responsible Person, are responsible for and shall file all tax returns within 60 days of the entry of this order. The Responsible Person is responsible for reconciling and objecting to administrative, secured and priority claims, and distributions to

Allowed Priority Claims and Allowed Administrative Claims from the Debtors' assets and from the Disputed Priority and Administrative Claims Reserve (but not from the Litigation Trust). The Debtors' attorney-client privilege, work-product privilege and any other privilege or immunity shall be preserved for the benefit of the Responsible Person. The term "Responsible Person" in the Plan shall include the Litigation Trustee whenever contextually appropriate.

**L. Litigation Trust**

12. The Litigation Trust Agreement, in substantially the form attached hereto as Exhibit B, is hereby approved. The Litigation Trust shall be established pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code, for the purpose of pursuing the Vested Causes of Action for the benefit of the beneficiaries of the Litigation Trust with no objective to continue or engage in the conduct of a trade or business. The Litigation Trust shall be deemed to stand in the shoes of the Debtors for purposes of contesting, settling or compromising such Vested Causes of Action and shall be vested with all of the interests, rights and defenses of the Debtors related to such Vested Causes of Action. The Litigation Trust shall be vested with all the powers and authority set forth in this Plan and the Litigation Trust Agreement. The Litigation Trustee shall have all decision making authority for the Litigation Trust as provided in the Litigation Trust Agreement, including, but not limited to, authority to retain counsel and other professionals (including on a contingency or hourly fee basis) and to prosecute, settle, liquidate, dispose of, and/or abandon the Vested Causes of Action or litigation without Bankruptcy Court approval. The Litigation Trustee shall also be responsible for reconciling and objecting to General Unsecured Claims and making distributions to holders of Allowed General Unsecured Claims. The litigation trust allows for the appointment of a Trust Oversight Committee, with the duties and responsibilities set forth in Section VI of the Litigation Trust

Agreement. The Debtors and the Responsible Person shall be, and hereby are, authorized to enter into the Litigation Trust Agreement, in substantially the form attached hereto as Exhibit B.

13. The Litigation Trust is a “liquidating trust” (a) as such term is defined in Section 301.7701-4(d) of U.S. Treasury Regulations, and (b) in accordance with the requirements set forth in Revenue Procedure 94-45, 1994-2 C.B. 684. The Litigation Trust is formed under Delaware law, and shall be governed by Delaware law.

14. Charles C. Reardon, in his individual capacity, shall be appointed as the Litigation Trustee for the sole purpose of liquidating and distributing the assets vesting with the Litigation Trust and with no objective to continue or engage in the conduct of a trade or business. The Debtors’ attorney-client privilege, work-product privilege or immunity shall be preserved for the benefit of the Litigation Trustee and vest in the Litigation Trust.

**M. Treatment Is in Full Satisfaction**

15. Except as provided in the Plan or this Order or otherwise agreed in writing and approved by the Court, the treatment set forth in the Plan and the payments and Distributions to be made thereunder shall be in full and complete satisfaction of all Claims released in the Plan. Except as otherwise provided in the Plan or this Confirmation Order, such treatment supersedes and replaces any agreements with or rights those entities may have in or against the Debtors or their respective property.

**N. Cancellation of Equity Interests**

16. On the Effective Date, all agreements and other documents evidencing rights of any holder of Equity Interest against any of the Debtors, including share certificates and any agreements, warrants options or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied.

**O. Non-Debtor Obligations**

17. Anything in the Plan or this Order to the contrary notwithstanding, no promissory notes, loan agreements, instruments, security documents, mortgages, deeds of trust or other agreements to which any non-Debtor is a party (or that encumbers or affects their respective property), and no claim, right, remedy, lien, interest, liability or obligation arising thereunder shall be modified, affected, impaired, enjoined discharged, canceled or annulled; *provided, however,* that the obligations of and Claims against the Debtors thereunder shall be as provided for in the Plan.

**P. The Releases, Exculpation, Injunction and Related Provisions Under the Plan**

18. It is hereby ordered that the Bankruptcy Court approves of and grants the releases, exculpations, injunctions and related provisions contained in Article IX of the Plan, and as amended herein, and determines that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (b) in the best interests of the Debtors and all holders of Claims; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to any of the Releasing Parties asserting any Claim or Cause of Action thereby released.

**Q. Exemption from Transfer Taxes and Recordation Fees**

19. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**R. The Creditors Committee**

20. Upon the Effective Date, the Creditors Committee shall exist, and its Professionals shall remain engaged solely with respect to applications filed pursuant to sections 330 and 331 of the Bankruptcy Code, any appeal or post-judgment motion concerning the Plan or the Confirmation Order, and motions seeking the enforcement of the provisions of the Plan or the Confirmation Order.

**S. Executory Contracts and Unexpired Leases**

21. Other than as provided herein, this Order constitutes the approval under sections 363 and 365 of the Bankruptcy Code of the deemed rejection of all executory contracts that exist between the Debtors and any Person as of immediately prior to the Confirmation Date, except for any executory contract (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date or (ii) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date.

22. The rejection of executory contracts and unexpired leases as set forth in the Plan is approved. Any Claims resulting from the rejection of executory contracts and unexpired leases pursuant to Article VII.A of the Plan must be filed with the Bankruptcy Court and served on the Debtors and the Responsible Person no later than thirty (30) days after service of notice of the Effective Date. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III of the Plan and any other applicable provisions of the Plan.

**T. Administrative Claims and Final Fee Applications**

23. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, “Administrative Claims” shall mean Claims for costs and expenses of administration under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation: the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises), other than claims for Accrued Professional Compensation. Any fees or charges assessed against the Estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code are excluded from the definition of Administrative Claim and shall be paid in accordance with Article V.N. of the Plan. Notwithstanding anything to the contrary herein, (a) the filing of an Administrative Claim shall not be required in order to receive payment for any tax liability, including interest thereon, described in sections 503(b)(1)(B) and (C) in accordance with section 503(b)(1)(D) of the Bankruptcy Code, (b) the Professionals shall not be required to file a request for payment of any Administrative Claim on or before the Administrative Claims Bar Date for fees and expenses arising under sections 330, 331 or 503(b)(2-5) of the Bankruptcy Code, as such Professionals will instead file final fee applications in accordance with this Order, and (c) GSO shall not be required to file a request for payment for any surviving obligations relating to or arising out of the Final APA.

24. Requests for payment of Administrative Claims, together with accompanying documentation, must be filed with the Bankruptcy Court on or before 5:00 p.m., prevailing Eastern time, on the Administrative Claims Bar Date. Administrative Claims must be filed and served in the manner prescribed by Article II.A.1 of the Plan and the Bankruptcy Rules. The request for payment of an Administrative Claim will be timely filed only if it is actually received



by the Bankruptcy Court by 5:00 p.m., prevailing Eastern time, on the Administrative Claims Bar Date.

25. The Responsible Person shall pay, from the Debtors' assets and funds held in reserve as set forth in Article VI.A of the Plan, each holder of an Allowed Administrative Claim, in satisfaction of such Allowed Administrative Claim, the full unpaid amount of such Allowed Administrative Claim in Cash: (1) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (2) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (3) at such time and upon such terms as may be agreed upon by such holder and the Responsible Person; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided, however*, that Administrative Claims do not include administrative claims filed or asserted pursuant to section 503(b)(9) of the Bankruptcy Code after the General Bar Date, unless the Responsible Person, in its discretion, chooses to treat such Claims as Administrative Claims. Notwithstanding anything to the contrary stated in the Plan or in this Order, the Responsible Person shall not pay to satisfy Administrative Claims that are for substantial contribution or similar claims under sections 503(b)(3) and (b)(4) without further order of this Court.

26. All Professionals in these Chapter 11 Cases, other than those Professionals who have been otherwise relieved of the requirement to file fee applications by prior orders of the Court, shall not be required to file a request for payment of any Administrative Claim on or before the Administrative Claims Bar Date for fees and expenses arising under sections 330, 331 or 503(b)(2-5) of the Bankruptcy Code, as such Professionals will instead file final fee

applications required by the Bankruptcy Code and the Bankruptcy Rules in accordance with this Order. All such Professionals shall file all requests for allowance of compensation and reimbursement of expenses pursuant to sections 328, 330 or 503(b) of the Bankruptcy Code for services performed and expenses incurred in these Chapter 11 Cases through the Effective Date by no later than sixty (60) days following the Effective Date. The U.S. Trustee, the Debtors, the Responsible Person and the Creditors Committee shall have thirty (30) days from the filing of such final fee applications to formally object to any such fee applications, and, in the event such formal objection is timely filed, the Court will schedule a hearing to determine all objections to such applications for final allowances of compensation or reimbursement of expenses under sections 328, 330 or 503(b) of the Bankruptcy Code. Notwithstanding anything to the contrary herein, nothing shall prohibit the Responsible Person from continuing to pay the Professionals in the ordinary course and in accordance with prior orders of this Court including, without limitation, the *Order Granting Motion of Debtors and Debtors in Possession for Authorization to Retain and Pay Professionals Utilized by the Debtors in the Ordinary Course of Business* [Docket No. 109], entered on December 2, 2013, and the *Order Granting Motion of the Debtors and Debtors in Possession for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 111], entered on December 2, 2013 for fees or expenses incurred prior to the Effective Date.

**U. Transfers of Claims After the Effective Date**

27. The Responsible Person shall not have any obligation to recognize the transfer of any Claim that occurs after the Effective Date, and will be entitled, for all purposes, to recognize and distribute only to holders of Allowed Claims, who are listed as holders of such Claims in the official claims registry as of the Effective Date.

**V. Substantive Consolidation**

28. The substantive consolidation of the Debtors' Estates as provided for in the Plan is hereby approved.

**W. Exemption from Securities Laws**

29. Pursuant to Section 1145 of the Bankruptcy Code the offer, issuance, sale and transfer of any security in accordance with the Plan or this Order shall be exempt under section 5 of the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and any state or local law requiring registration for the offer, issuance, dissolution, or sale of a security. Any transfer of the beneficial interests in the Debtors shall be restricted as set forth in the Debtors' organizational documents and subject to the provisions of Section 1145 of the Bankruptcy Code relating to the definition of an underwriter in Section 2(11) of the Securities Act of 1933, as amended, and compliance with any applicable rules and regulations of the Securities and Exchange Commission.

**X. Modifications**

30. The modifications to the Disclosure Statement, and to the Plan set forth in this Order, constitute non-material changes and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under Section 1125 of the Bankruptcy Code or re-solicitation of votes under Section 1126 of the Bankruptcy Code.

**Y. Payment of Statutory Fees**

31. All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Responsible Person shall pay any and all such fees payable, when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee.

Each Debtor shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

**Z. References to Plan Provisions**

32. The Plan is confirmed in its entirety and hereby incorporated into this Order by reference and as modified hereby. The failure to reference or discuss any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of, or otherwise affect, the validity, binding effect and enforceability of such provision, and each provision of the Plan shall have the same validity, binding effect and enforceability as if fully set forth in this Order.

**AA. Headings**

33. Headings utilized herein are for convenience and reference only, and shall not constitute a part of this Order for any other purpose.

**BB. Effect of Conflict Between Plan and Confirmation Order**

34. The provisions of the Plan and this Order shall be construed in a manner consistent with each other so as to effect the purpose of each. If there is any conflict between the terms of the Plan and the terms of this Order, the terms of this Order shall control solely to the extent of the conflict.

**CC. Effect of Conflict Between Plan, Confirmation Order and Final APA**

35. Neither the Plan nor this Order amends the Final APA or the previous order of this Court approving the Final APA. The provisions of the Final APA, the Plan and this Order shall be construed in a manner consistent with each other so as to effect the purpose of each.

**DD. Notice of Effective Date**

36. As soon as reasonably practicable, but in no event later than five (5) Business Days after the Effective Date, the Debtors with the assistance of the Debtors' Claims and

Servicing Agent, shall serve a notice of the Effective Date on all holders of Claims and Equity Interests and all counterparties to executory contracts. The notice of Effective Date shall include notice of (a) the bar date for filing rejection damage claims (or other claims for damages) arising from the rejection under the Plan of executory contracts or unexpired leases, which shall be thirty 30 days after service of notice of the Effective Date, (b) the bar date for filing of Administrative Claims, and (c) the last day for filing final applications or motions for professional fees and expenses pursuant to Article II.B of the Plan.

**EE. Final Order**

37. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

38. Notwithstanding the possible applicability of Bankruptcy Rules 3020(e), 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

39. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all related documents or any amendments or modifications thereto.

**FF. Authorization to Consummate**

40. The Debtors are authorized to consummate the Plan at any time after the entry of this Order, subject to the satisfaction or waiver of the conditions precedent to the Effective Date set forth in Article VIII of the Plan.

**GG. Miscellaneous**


41. Notwithstanding any provision to the contrary in the Plan or this Order confirming the Plan, nothing shall: (1) affect the ability of the Internal Revenue Service (the “IRS”) to pursue any non-debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors’ Estates; or (2) affect the rights of the IRS to assert setoff and recoupment and such rights are expressly preserved. To the extent the IRS Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code) are not paid in full in cash on the Effective Date, the IRS Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate and method set forth in 26 U.S.C. Sections 6621 and 6622. IRS administrative expense claims allowed pursuant to the Plan or section 503 of the Bankruptcy Code shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. Moreover, nothing in the Plan or this Order confirming the Plan shall: (a) effect a release, discharge, injunction or otherwise preclude any claim whatsoever against any Debtors, the Debtors’ Estates or the Litigation Trustee by or on behalf of the IRS relating to any liability arising out of any unfiled pre-petition tax return or any pending audit or audit which may be performed with respect to any pre-petition tax return; and (b) nothing shall enjoin the IRS from amending any claim against any Debtors, the Debtors’ Estates or the Litigation Trustee with respect to any tax liability arising as a result of the filing of an unfiled return or a pending audit or audit which may be performed with respect to any pre-petition or administrative tax return. Further, any liability arising as a

result of an unfiled return or final resolution of a pending audit or audit which may be performed with respect to any pre-petition tax return shall be paid in accordance with 11 U.S.C. Sections 1129(a)(9)(A) and (C).

42. Nothing in the Plan or the Litigation Trust Agreement shall release, enjoin, or otherwise prohibit the assertion of any affirmative defenses or counterclaims that YellowPages.com, LLC may assert to reduce or eliminate any award of damages that the Debtors or the Litigation Trustee may seek against them.

IT IS SO ORDERED.

Dated: May ~~20~~<sup>29</sup>, 2014  
Wilmington, Delaware

  
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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE