IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
KIKO USA, Inc.,	)	Case No. 18-10069 (MFW)
Debtor. [1]	)	**Related to Doc. No. 258**

DECLARATION OF MARK SAMSON IN SUPPORT OF CONFIRMATION OF AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR KIKO USA, INC.

I, Mark Samson, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

A. Background and Experience.

1. I am a Managing Director with Getzler Henrich & Associates, LLC ("GH"). I am the Chief Restructuring Officer of the above-captioned debtor (the "Debtor"). I am authorized by the Debtor to make this declaration in support of confirmation of the *Amended Chapter 11 Plan of Reorganization for KIKO USA, Inc.*, dated May 9, 2018 [D.I. 258] (as may be amended, supplemented or otherwise modified, and together with the exhibits thereto, including the documents in the Plan Supplement (as defined in the Plan), the "Plan"),[2] pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the "Bankruptcy Code").

2. I am familiar with the Debtor's day-to-day operations, business affairs, and books and records. All facts set forth in this declaration are offered to the best of my knowledge, information and belief, and, except as may be otherwise indicated, are based upon my personal knowledge, my review of relevant documents, information provided to me by the Debtor's

[1] The last four digits of the Debtor's federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

professionals working with me or under my supervision, or my informed opinion based upon my experience and knowledge of the Debtor's industry, operations, and financial condition.

3. I have more than twenty-five years of financial advisory, crisis management, interim executive and chief restricting officer experience. My experience spans many industries, including, in relevant part, the retail, distribution and manufacturing industries.

4. The Plan is the product of good faith and arms-length negotiations among the Debtor, the Debtor's parent and DIP Lender, KIKO S.p.A, and in certain instances, the Office of the United States Trustee and certain of the Debtor's creditors and parties-in-interest.

5. I have read, and am familiar with, the Plan. I was personally involved in the development of the Plan. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

B. The Debtor and the Chapter 11 Case.

6. On January 11, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Debtor is a retailer of cosmetics and a wholly-owned subsidiary of KIKO S.p.A., an Italian corporation. The Debtor was incorporated as a Delaware corporation in March of 2013.

8. Through the Debtor, KIKO-branded products are advertised, marketed, and sold in retail stores in the United States as affordable European-designed and produced products for every consumer, without a particular targeted consumer. Prior to the Petition Date, the Debtor leased 30 retail stores throughout the United States. The Debtor's products are also available in

the United States via online sales through the Debtor's website and, more recently, on Amazon.com. The products are sourced and purchased by KIKO USA through KIKO S.p.A., and warehoused locally and supplied into U.S. operations (stores and e-commerce) through a third party external logistics provider (Wit Logistics) based in Monroe Township, New Jersey.

9. As of the Petition Date, the Debtor relied on retail sales to fund its operations. Unfortunately, at times, retail sales were insufficient to cover its operating costs (primarily rent and labor), and the Debtor's sole shareholder, KIKO S.p.A, provided equity advances to allow the Debtor to have sufficient liquidity to cover its operating losses.

10. A confluence of factors contributed to the Debtor's need to commence the Chapter 11 Case. These include macroeconomic factors—including most significantly, the general downturn in the retail industry, particularly in shopping malls – which have led to a decrease in sales and the marked shift away from brick-and-mortar retail to online channels. Over time, these factors tightened the Debtor's liquidity and culminated in a liquidity crisis by the fall of 2016, when KIKO faced dwindling cash flows and sales projections well under historical numbers. The combination of the above factors, and others plaguing the consumer products goods/retail industry as a whole, contributed to the Debtor's severely depressed profitability performance. The purpose of the bankruptcy filing was to provide the Debtor an opportunity to develop a comprehensive operational restructuring to simplify its business and build on its core strengths.

11. On the Petition Date, the Debtor operated 29 retail store locations – 28 in the mainland of the United States and 1 location in San Juan, Puerto Rico. Prior to and after the Petition Date, the Debtor worked closely with its advisors to evaluate the performance of its brick-and-mortar locations with the ultimate goal of closing underperforming stores. During the

Bankruptcy Case, the Debtor rejected twenty-six of its retail leases and also rejected its office lease.

12. Pursuant to the Plan, the Debtor expects to reorganize and continue to operate its business in the United States with a much smaller retail footprint.

13. The Plan and the Debtor's future business operations will be supported by the Debtor's parent, KIKO S.p.A. The Debtor and a number of other wholly-owned subsidiaries of KIKO S.p.A. make up the KIKO Group, which owns and operates approximately 1,000 KIKO cosmetic stores mainly located in Italy, Spain, France, Portugal, Germany, the United Kingdom and the United States. In 2017, the KIKO Group enjoyed net sales in excess of 600 million euros. Based upon discussions with the principals of KIKO S.p.A., I am satisfied that KIKO S.p.A. has sufficient funds on hand, and/or access to funds, necessary to fund the Plan.

14. The Parent's commitment to fund the Plan is included in the Unanimous Written Consent signed by the Parent on May 8, 2018 and filed with the Court on June 4, 2018.

THE PLAN SATISFIES THE REQUIREMENTS FOR CONFIRMATION BY THIS COURT

A. The Plan Satisfies the Requirements of Bankruptcy Code Section 1123.

15. As further described below, the Plan contains each of the mandatory provisions listed in section 1123(a) of the Bankruptcy Code, as well as certain permissive provisions. See 11 U.S.C. § 1123(b).

16. Proper Classification. Section 1123(a)(1) of the Bankruptcy Code requires that a plan designate classes of interests and classes of claims, other than those of a kind specified in sections 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code. See 11 U.S.C. § 1123(a)(1). Article 3 of the Plan complies with this statutory section, as the Plan designates four (4) classes

of Claims and Interests, other than those specified in sections 507(a)(2), 507(a)(3) and 507(a)(8) of the Bankruptcy Code.

17. Specified Treatment of Unimpaired Claims. Section 1123(a)(2) of the Bankruptcy Code requires that a plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). In compliance with this statutory section, Article 3 of the Plan specifies that Classes 1, 2 and 4 are not impaired under the Plan and are conclusively presumed to accept the Plan.

18. Specified Treatment of Impaired Classes. Section 1123(a)(3) of the Bankruptcy Code next requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." Article 3 of the Plan, as well as certain other parts of the Plan, specify the impaired treatment of Claims in Class 3. Therefore, the Plan satisfies section 1123(a)(3) of the Bankruptcy Code.

19. No Discrimination. Under section 1123(a)(4) of the Bankruptcy Code, a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest[.]" Under the Plan, the treatment of each Claim or Interest in each particular class is the same as the treatment of any other Claim or Interest in such class. Accordingly, the requirements of Bankruptcy Code section 1123(a)(4) are met in the present case.

20. Implementation of the Plan. Section 1123(a)(5) of the Bankruptcy Code requires that a plan "provide adequate means for the plan's implementation." See 11 U.S.C. § 1123(a)(5). In the present case, Article 4 of the Plan, together with other provisions of the Plan and the Plan Supplement, satisfy the requirements of section 1123(a)(5) of the Bankruptcy Code because such

provisions provide for (i) the reorganization of the Debtor; (ii) the funding of the Plan; and (iii) the post-Effective Date funding and operation of the Debtor's business.

21. Selection of Existing Corporate Officers and Directors. Section 1123(a)(7) of the Bankruptcy Code requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." In the present case, section 1123(a)(7) of the Bankruptcy Code is satisfied because the Plan contemplates that the Debtor's existing officers and directors will continue to serve in their respective roles for the Reorganized Debtor following the Effective Date.

B. The Discretionary Provisions of the Plan Should Be Allowed.

22. Section 1123(b) of the Bankruptcy Code sets forth various provisions that may be included in a chapter 11 plan but are not required. See 11 U.S.C. § 1123(b). Among other things, a chapter 11 plan may: (i) impair or leave unimpaired any class of claims, secured or unsecured, or interests; (ii) provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected; or (iii) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estate, or the retention and enforcement of any claim or interest by the debtor, the trustee or a representative of the estate. See 11 U.S.C. § 1123(b).

23. Impairment. In the present case, Article 3 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Interests under the Plan. In so doing, the Plan modifies the rights of impaired classes and leaves the rights of other classes unaffected. See 11 U.S.C. § 1123(b)(1).

24. Treatment of Executory Contracts and Unexpired Leases. Pursuant to Article 5 of the Plan, the Debtor will reject all pre-petition executory contracts and unexpired leases to which the Debtor is a party that have not been either (i) previously assumed, assumed and assigned or rejected by the Debtor, (ii) the subject of a pending motion to assume or reject on the Confirmation Date or (iii) identified in the Plan Supplement and assumed pursuant to the Confirmation Order. See 11 U.S.C. § 1123(b)(2).

25. Retention, Enforcement and Settlement of Claims. Article 7 of the Plan provides that (i) the Debtor shall retain all Litigation Claims; and (ii) all Avoidance Actions are waived, effective on the Effective Date. The Plan also contains, at Article 9, a release, an exculpation provision and an injunction provision, as further described below. See 11 U.S.C. § 1123(b)(3).

(a) The Debtor's Release.

26. Article 9, Section 9.05 of the Plan provides:

> Except as otherwise provided [in the Plan], as of the Effective Date, for good and valuable consideration, including providing financing to facilitate and implement the Plan, KIKO S.p.A., in any and all capacities, including as the DIP Lender, its affiliates, and the current and former officers, directors, principals, members, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of KIKO S.p.A., in each case solely in their capacity as such are deemed released and discharged by the Debtor and its Estate from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise that the Debtor or its Estate would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement, the negotiation, formulation or preparation of the debtor-in-possession financing, Plan, the Plan Supplement, or related agreements, instruments, or other documents in connection with the transactions contemplated under the Plan, the solicitation of votes with respect to the Plan, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided* that nothing in the Plan, including this Section 9.05 shall release (i) any obligations under the Plan or the

> Plan Supplement; or (ii) any acts constituting willful misconduct, gross negligence, intentional fraud or criminal conduct as determined by a Final Order.

See Plan at § 9.05.

27. Section 1123(b)(3)(A) of the Bankruptcy Code permits debtors to include a settlement of their claims as a discretionary provision in a chapter 11 plan. Moreover, it is my understanding that settlements pursuant to a plan are generally subject to the same standards applied to settlements sought under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

28. A release of KIKO, S.p.A. is appropriate in this case for a number of reasons. First, the Debtor is dependent upon KIKO, S.p.A. for financial support to fund the Plan and its go forward business operations, as necessary. Accordingly, a claim against KIKO, S.p.A. will negatively impact the Debtor. Second, KIKO, S.p.A. made, and will continue to make, a substantial contribution to the Debtor in the form of the DIP Loan, the DIP Loan forgiveness, the funding of Plan payments and go-forward financial support. Third, the Debtor's creditors have overwhelmingly voted in favor of the Plan and no creditor objected to the proposed release of KIKO, S.p.A. Fourth, the Plan provides for creditors to receive full payment for the Allowed amount of their Claims. Finally, the Debtor is not aware of any viable claims that it may have against KIKO S.p.A and does not believe that the pursuit of any such claims would be in the best interests of the Debtor's Estate due to the costs that would be incurred in pursuing such claims versus any benefits that may exist. The Debtor therefore submits that the proposed release is a valid settlement of whatever claims the Debtor may have against KIKO S.p.A. under Bankruptcy Rule 9019 and section 1123(b)(3)(A) of the Bankruptcy Code, and is warranted in light of the factors set forth above.

(b) The Exculpation Provision.

29. Article 9, Section 9.04 of the Plan provides:

> Neither the Debtor, Reorganized KIKO, nor any of their respective members, officers, directors, trustees, employees, advisors, professionals, or agents has any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. In all respects, the Debtor, Reorganized KIKO, and each of their respective members, officers, directors, trustees, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.

See Plan at § 9.04 (the "Exculpation Provision").

30. Without the Exculpation Provision, the exculpated parties may be threatened with litigation and potential liabilities and the implementation of the Plan may be hindered. In addition, I understand that exculpation provisions aimed at providing limited protection to certain parties for their solicitation efforts throughout the course of the bankruptcy proceedings have generally been found to be consistent with the protections afforded under section 1125(e) of the Bankruptcy Code.

(c) The Injunction Provision.

31. The Plan contains an injunction provision in Article 9, Section 9.03 (the "Injunction Provision"), which, among other things, permanently enjoins all entities who have held, or may hold Claims against, or Interests in, the Debtor from, *inter alia*, taking any of the following actions: (i) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (iii) creating, perfecting, or enforcing any Lien or encumbrance against any property to be distributed under the Plan; and (iv) commencing or continuing any

action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

32. Without the Injunction Provision, parties may take actions that are contrary to the releases and exculpation provisions set forth in the Plan and hinder the successful implementation of the Plan. The Debtor accordingly requests that the Injunction Provision be approved.

C. The Debtor Has Complied with Section 1129(a) of the Bankruptcy Code.

33. Compliance with the Bankruptcy Code. To the best of my knowledge, and based on the facts set forth in this Declaration and all the proceedings had and pleadings filed in this case, the Debtor has complied with the Bankruptcy Code and the Solicitation Procedures Order in compliance with sections 1129(a)(1) and 1129(a)(2) of the Bankruptcy Code.

34. Plan Proposed in Good Faith. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." In the present case, the Debtor has proposed the Plan in good faith and not by any means forbidden by law. Further, the Debtor and its officers and directors have acted in good faith in the negotiation and formulation of the Plan.

35. Payments for Services or Costs and Expenses. Section 1129(a)(4) of the Bankruptcy Code requires that payments for services or costs and expenses incurred in connection with these Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, must either have been approved, or be subject to approval, by the Bankruptcy Court as reasonable. See 11 U.S.C. § 1129(a)(4). The requirements of this statutory section are met in the present case, as all fees incurred in the Chapter 11 Case have been or will be fully disclosed and subject to Bankruptcy Court approval. In addition, the Plan provides for the

Bankruptcy Court's retention of jurisdiction to hear and determine any and all applications by professionals for compensation and reimbursement of expenses arising out of or related to the Chapter 11 Case. See Plan, Art. 10, Sec. 10.01.

36. Directors, Officers and Insiders. Sections 1129(a)(5)(A)(i) and (ii) of the Bankruptcy Code require that the Debtor disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor," and require a finding that "the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy[.]" As stated earlier, the Plan provides for the Debtor's current officers and directors to continue in such capacity post-Effective Date for the Reorganized Debtor. The continuation of such officers and directors is beneficial to the Debtor, its Estate and Creditors, as these officers and directors provide the Debtor with necessary skills and critical institutional knowledge.

37. No Rate Changes. Section 1129(a)(6) of the Bankruptcy Code requires that a regulatory commission with jurisdiction over the rates charged by a debtor approve any rate change provided for in a chapter 11 plan. In the present case, the Debtor's Plan does not contain any changes to rates that are established by, approved by, or otherwise subject to, any governmental regulatory commission.

38. Best Interests of Creditors Test. Section 1129(a)(7) of the Bankruptcy Code requires that with respect to each impaired class of claims or interests, each holder of a claim or interest of such class must accept the plan or receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that the claimant would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(7). In the present case, and based upon my review of the vote tabulation report

prepared by the Debtor's balloting agent (the "Voting Report"), the only class of impaired claims, Class 3, voted to accept the Plan. Accordingly, I believe that section 1129(a)(7) of the Bankruptcy Code is satisfied.

39. Acceptance of the Plan by Each Impaired Class. Subject to the exceptions contained in section 1129(b) of the Bankruptcy Code, section 1129(a)(8) of the Bankruptcy Code requires that each class of Claims and Interests either (i) have accepted the plan or (ii) not be impaired under the plan. 11 U.S.C. § 1129(a)(8). Section 1129(a)(10) of the Bankruptcy Code further requires that if a class of claims is impaired under a plan, at least one class of impaired claims must have voted to accept the plan, which determination does not include acceptances of the plan by any insider. See 11 U.S.C. § 1129(a)(10).

40. In the present case, and based upon my review of the Voting Report, it is my understanding that, the only impaired class under the Plan, Class 3, voted to accept the Plan. Accordingly, sections 1129(a)(8) and 1129(a)(10) of the Bankruptcy Code have been satisfied.

41. Treatment of Administrative and Tax Claims. Section 1129(a)(9) of the Bankruptcy Code requires, with some exceptions, that unless the holder agrees otherwise, holders of priority claims must receive cash in the allowed amount of their claims on the effective date of a plan. See 11 U.S.C. § 1129(a)(9). Article 3 of the Plan provides for such payment as soon as practicable after the Effective Date or when such claim becomes Allowed. Thus, the Debtor is in compliance with section 1129(a)(9) of the Bankruptcy Code.

42. Impaired Class Approval. As stated above, based on my review of the Voting Report, and upon information and belief, at least one Class of impaired Claims, excluding any insiders, has accepted the Plan. Thus, the requirements of Bankruptcy Code section 1129(a)(10) are met.

43. Feasibility. Section 1129(a)(11) of the Bankruptcy Code requires courts to determine that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of a debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. See 11 U.S.C § 1129(a)(11). In the present case, the Plan and Plan Supplement make clear that KIKO S.p.A. has committed to fund both the Plan and the Reorganized Debtor's go forward business operations, when necessary. Accordingly, it is my belief that the Plan is feasible.

44. Payment of Fees. Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or otherwise will be paid on the Effective Date of the Plan. See 11 U.S.C. § 1129(a)(12). Article 12, Section 12.13 of the Plan provides that all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 will be paid by the Debtor on or as soon as practicable after the Effective Date. Thus, the Plan is consistent with Bankruptcy Code section 1129(a)(12).

45. Continuation of Retiree Benefits. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the "continuation after the effective date of payment of all retiree benefits . . . for the duration of the period the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). In the present case, the Debtor does not have any retiree payment obligations. As such, section 1129(a)(13) of the Bankruptcy Code is not applicable in this Chapter 11 Case.

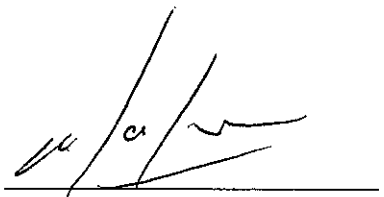
46. Only One Plan. Other than the Plan (including previous versions thereof), no plan has been filed in this Chapter 11 Case. Accordingly the requirements of section 1129(c) of the Bankruptcy Code are met.

47. Principal Purpose of the Plan. In compliance with section 1129(d) of the Bankruptcy Code, the principal purpose of the Plan is *not* the avoidance of taxes or the application of section 5 of the Securities Act of 1933.

48. I believe that the Debtor has formulated a Plan that treats all Classes fairly, equitably and reasonably and accomplishes the successful reorganization of the Debtor in accordance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. Because the Plan satisfies all of the requirements of sections 1123 and 1129 of the Bankruptcy Code and serves the best interests of the Debtor's Estate and creditors, I believe that confirmation of the Plan is warranted.

I hereby declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2018



Mark Samson