

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:)
) Chapter 11
ORECK CORPORATION, et al) Case No. 13-04006
)
) Judge Lundin
Debtors.) (Jointly Administered)
)
)

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: March 31, 2014
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: April 15, 2014
at 9:00am, Courtroom Two, Second Floor, Customs House, 701 Broadway,
Nashville, Tennessee, 37203

**NOTICE OF JOINT MOTION TO APPROVE SETTLEMENT
WITH LEAD PLAINTIFFS AND THE PUTATIVE CLASS**

Notice is hereby provided of the *Joint Motion Of The Debtors, The Official Committee Of Unsecured Creditors, And Lead Plaintiffs And The Putative Class, For Entry Of An Order Pursuant To 11 U.S.C. § 105 And Fed. R. Bankr. P. 9019 Approving A Compromise And Settlement Of The Class Certification Motion And The Proofs Of Claim* attached hereto.

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to enter the attached order, or if you want the court to consider your views on the order, then on or before **March 31, 2014**, you or your attorney must:

File with the court your written response or objection explaining your position. PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTIONS YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, TN (Monday – Friday, 8:00 a.m. – 4:00 p.m.).

Your response must state that the deadline for filing responses is **March 31, 2014**, the date of the scheduled hearing is **April 15, 2014**, and the motion to which you are responding is the Joint Motion to Approve Settlement with Lead Plaintiffs and the Putative Class.

You must serve your response or objection **by electronic service through the Electronic Filing System** described above.

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's web site at <www.tnmb.uscourts.gov>.

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Respectfully Submitted:

/s/ William L. Norton, III
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**UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

ORECK CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 13-04006

Judge Lundin

(Jointly Administered)

**JOINT MOTION OF THE DEBTORS, THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS, AND LEAD PLAINTIFFS AND THE PUTATIVE
CLASS, FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 105 AND FED. R.
BANKR. P. 9019 APPROVING A COMPROMISE AND SETTLEMENT OF THE CLASS
CERTIFICATION MOTION AND THE PROOFS OF CLAIM**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these cases, and Lead Plaintiffs (defined below), on behalf of themselves and the Putative Class (defined below) (the Debtors, Committee, and Lead Plaintiffs and the Putative Class are referred to herein as the “**Movants**”), by and through their respective counsel, submit this motion (the “**Motion**”) for the entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving a compromise and settlement with the Putative Class (defined below). In support of the Motion, the Movants respectfully state as follows:

JURISDICTION AND VENUE

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

¹ The Debtors are as follows: Oreck Corporation, ASP Oreck, Inc., Oreck Direct, LLC, Oreck Merchandising, LLC, Oreck HomeCare, LLC, Vecteur, LLC, Oreck Holdings, LLC, Oreck Manufacturing Company, and Oreck Sales, LLC.

2. The statutory predicates for the relief sought herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

BACKGROUND

A. General Background

3. On May 6, 2013 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ bankruptcy cases.

5. On May 16, 2013, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 103]. On May 17, 2013, the Committee selected Lowenstein Sandler LLP to serve as its counsel.

B. The MDL Class Action

6. On September 13, 2013, Linda Gonzalez, Gina Chenier, Gaya Yosri, Scott Stiepleman, Greg Ruscitti, Teri Latta, and Edward Paragin (collectively the “**Lead Plaintiffs**”) filed, on behalf of themselves and all others similarly situated (together with the Lead Plaintiffs, the “**Putative Class**” or the “**Claimants**”), the *Motion of the Lead Plaintiffs and Putative Class for Relief from the Automatic Stay or, in the Alternative, for Class Certification Pursuant to Bankruptcy Rule 7023* (the “**Class Certification Motion**”) [Docket No. 795]. In the Class Certification Motion, the Lead Plaintiffs sought to represent approximately two hundred thousand (200,000) consumers who allegedly purchased vacuum cleaners and/or air purifiers from the Debtors on the basis of allegedly false and misleading advertising (the “**Claims**”) in an action styled as *In re: Oreck Corporation Halo Vacuum and Air Purifiers Marketing and Sales Practices Litigation*, MDL Case No. 2:12-ML-02317 (C.D. Cal.) (the “**MDL Class Action**”).

7. Also on September 13, 2013, the Claimants filed proofs of claim in the bankruptcy cases of Oreck Corporation, Oreck Direct LLC and Oreck Homecare LLC (the “**Halo**”).

Debtors”) asserting joint and several liability for the Claims (the “**Proofs of Claim**”) [Oreck Corporation – Claim No. 275; Oreck Direct LLC – Claim No. 27; Oreck Homecare LLC – Claim No. 66].

C. The Proposed Settlement

8. The Debtors, the Committee, and the Putative Class, through their respective counsel, have engaged in good-faith negotiations and reached a settlement and compromise (the “**Settlement**”) with respect to the Class Certification Motion and the Proofs of Claim. The terms of the Settlement are as follows:²

Putative Class Claim Fixed: The Putative Class will have an allowed general unsecured claim of \$2 million if the Debtors’ estates are substantively consolidated and \$1.5 million against each of the Halo Debtors if the Debtors’ estates are not substantively consolidated (the “**Settlement Funds**”). Any distributions on this claim will be paid to Kirtland & Packard, LLP (“**K&P**”) in trust, pending a decision or settlement on certification in the MDL Class Action. If the MDL Class Action is dismissed with prejudice or certification is denied by a final non-appealable order of the United States District Court for the Central District of California (the “**California Court**”) in the MDL Class Action, K&P shall return all distributions to the applicable Debtors’ estates. If the Putative Class is certified by a final non-appealable order of the California Court, or pursuant to a settlement in the MDL Class Action, the distributions shall be distributed to members of the Class in accordance with any orders entered by the California Court or in accordance with the terms of the settlement. The Debtors shall be prohibited from contesting any motion for class certification in the MDL Class Action and / or challenging any settlement regarding class certification in the MDL Class Action.

Stay Relief: The Putative Class shall be granted relief from the automatic stay to proceed against the Debtors, in name only, in the MDL Class Action.

² The terms of the Settlement are set forth in full in this Motion. The parties do not contemplate negotiating and executing a separate settlement agreement.

The Debtors and the Committee agree not to support and, to the extent compatible with their fiduciary duties, to file or join in an objection to any motion filed by any other defendant in the MDL Class Action to extend the automatic stay to those defendants.

Records Request:

The Debtors will provide counsel to the Putative Class with reasonable access to any document repository created pursuant to any plan confirmed by this Court (or by agreement of the parties), which repository shall not include confidential information or materials protected from disclosure by the attorney-client privilege, the attorney work product doctrine or other evidentiary doctrines under applicable federal or state law, and agrees not to abandon or dispose of records without the prior consent of counsel to the Putative Class, which consent shall not be unreasonably withheld.

Cooperation with Investigation:

The Debtors and the Committee agree not to object or otherwise interfere with the Claimants' efforts to interview, depose, or obtain documents from any former officer or employee of the Debtors.

Scope of Settlement

Nothing in this Settlement shall release, impair, alter or otherwise affect, nor shall it be construed in any manner that releases, impairs, alters or otherwise affects, any claims that have been, or may be asserted by the Lead Plaintiffs or the Putative Class against any party to, or related to, the MDL Class Action, except for those claims against the Debtors, which claims are released except to the extent of the general unsecured claims provided for herein.

RELIEF REQUESTED

9. By this Motion, the Movants respectfully request that the Court enter an order, substantially in the form submitted herewith, approving the Settlement.

BASIS FOR RELIEF

10. Bankruptcy Rule 9019(a) provides, in pertinent part, that upon a motion, and after notice and a hearing, the Court may approve a compromise or settlement. Approval of

a settlement is within the discretion of the Bankruptcy Court. *See In re West Pointe Properties, L.P.*, 249 B.R. 273, 282 (Bankr. E.D. Tenn. 2000). Compromises “are favored in bankruptcy in order to minimize the cost of litigation to the estate and expedite its administration, and [] the approval of a compromise is within the sound discretion of the bankruptcy judge.” *In re Edwards*, 228 B.R. 552, 568-69 (Bankr. E.D. Penn. 1998) (citing *In re Martin*, 91 F.3d 389, 392 (3d Cir. 1996)); *see also In re West Pointe Properties, L.P.*, 249 B.R. at 282.

11. In reviewing a proposed compromise and settlement under Bankruptcy Rule 9019, bankruptcy courts must consider “whether the proposed compromise is in the best interests of the estate.” *In re Media Central v. Jackson Family Television, Inc.*, 190 B.R. 316, 320 (E.D. Tenn. 1994). The court has “an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable.” *In re West Pointe Properties, L.P.*, 249 B.R. at 281 (quoting *Reynolds v. Commissioner of Internal Revenue*, 861 F.2d 469, 473 (6th Cir. 1988)). The bankruptcy court must give some deference to the trustee’s judgment regarding the proposed compromise and must not substitute its judgment for the trustee’s judgment. *In re Media Central*, 190 B.R. at 321.

12. Federal courts have determined that several factors should be considered when reviewing whether a settlement is in the best interests of the estate. This Court has stated that “the factors to consider are ‘the probabilities of ultimate success in the litigation, the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting any judgment that might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.’” *In re Media Central*, 190 B.R. at 320 (quoting *In re Tennol Energy Co.*, 127 B.R. 820, 828 (Bankr. E.D. Tenn. 1991)); *see also Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). When analyzing the factors “the bankruptcy court should canvass the issues and determine whether the proposed settlement falls within the range of reasonableness in the case, but without trying the case or otherwise deciding the issues of law and fact presented.” *In re*

Media Central, 190 B.R. at 321 (citing *Tennol Energy Co.*, 127 B.R. at 828); see also *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983).

13. Each of these factors weigh in favor of approval of the Settlement. First, the class in the MDL Class Action has yet to even be certified. Given that the MDL Class Action is in its infancy, it is impossible to determine the Putative Class's likelihood of recovery. Accordingly, at this stage in the litigation, the Settlement is the most likely route to resolving the Claims without subjecting any of the parties involved to the inherent risks of class action litigation.

14. In addition, any litigation resulting from the Claims will likely be complex and protracted, "with its attendant expense, inconvenience, and delay." *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 461 (2d Cir. 2007). At this stage, the parties have merely engaged in settlement discussions regarding the facts and circumstances giving rise to the Claims, but the Debtors have not conducted the extensive discovery that will be required to defend against a class action lawsuit of this scope. The "expense, inconvenience, and delay" associated with any litigation are far outweighed by the certainty, immediacy, and cost-savings of a consensual resolution of the Claims.

15. Finally, the Settlement is the culmination of arm's length negotiations between the Debtors, the Committee and the Putative Class. As demonstrated herein, the Settlement is a fair and reasonable resolution of the Claims, and represents an outcome more favorable to all parties involved than the risks, costs, and delay associated with any litigation.

16. Accordingly, the Movants submit that the Settlement is fair and prudent, is in the best interests of the Debtors' estates and creditors, and falls within the "range of reasonableness" and therefore the Motion should be approved by this Court.

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

Respectfully submitted,

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Dated: March 10, 2014
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