

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
PIKE NURSERY HOLDING LLC,)	CASE NUMBER: 07-79129-mgd
)	
Debtor.)	
_____)	

RESPONSE OF MARCUS A. WATSON, SR., CHAPTER 7 TRUSTEE TO FINAL
APPLICATION OF ALVAREZ & MARSAL SECURITIES, LLC AS FINANCIAL
ADVISOR TO THE DEBTOR FOR ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES

COMES NOW Marcus A. Watson, Sr., Chapter 7 Trustee for the estate of Pike Nursery Holding LLC, and files this response to the “Final Application of Alvarez & Marsal Securities, LLC as Financial Advisor to the Debtor for Allowance of Compensation and Reimbursement of Expenses” (“Application”). In support of this response, the Trustee shows this Court as follows:

1. Marcus A. Watson, Sr. is the duly appointed Chapter 7 Trustee of this estate, having been appointed by the Office of the United States Trustee on March 19, 2008.

2. The Trustee responds to the Final Application of Alvarez & Marsal Securities, LLC (“A&M”). The Application seeks payment of a multiple transaction fee of \$200,000 plus reimbursement of expenses. The Trustee has no objection to the reimbursement of expenses, but expresses his concern about the applicability of the

multiple transaction fee. The Trustee is concerned that the terms of the Application for Authority to Retain A&M Securities, LLC as Financial Advisor to the Debtor entered *nunc pro tunc* to November 26, 2007 and the executed engagement letter do not provide for the payment of multiple transaction fees under the facts as they developed. The definition of "Sale Transaction" in the executed engagement letter specifically excludes "a transaction, or series of transactions, which are not going concern sales, pursuant to which the Company's assets are liquidated either through Chapter 11.." By definition, the liquidation sales were not Sales Transactions for which a multiple transaction fee would be due. In the alternative, while there were multiple bidders, there was but one Sale Transaction, an auction.

3. Moreover, the Trustee believes that the Court should consider deferring any final decision of the Application at this time because of the assertion of a claim by Armstrong Nurseries, Inc. ("Armstrong"). Armstrong has asserted a potential claim to the Trustee arising out of its purchase of certain assets of the estate. Specifically, Armstrong claims, *inter alia*, that information provided in a virtual due diligence room was inaccurate with respect to the terms of leases and the ownership of equipment. The Trustee does not concede that Armstrong has any claim with respect to these matters and asserts that had Armstrong exercised reasonable due diligence, it could have avoided any alleged loss. Moreover, the Trustee believes that the purchase contract for the Armstrong sale also precludes any claim. However, the existence of this asserted claim gives the

Trustee concern that under the present circumstances, it is not prudent to pay Applicant \$200,000 in fees.

4. At a minimum, the Court should consider deferring a final ruling on the Application until more clarity has been brought to the Armstrong claim and the Trustee has been able to investigate it further.

WHEREFORE Marcus A. Watson, Sr., Chapter 7 Trustee for the Estate of Pike Nursery Holding LLC requests this Court to consider this response in ruling on the Application and states that he does not object to Applicant's request for reimbursement of expenses in the amount of \$2,122.72.

This the 8th day of July, 2008.

\s\ John A. Christy
John A. Christy, Esq.
Georgia Bar 125518
J. Carole Thompson Hord
Georgia Bar No. 291473
Attorneys for Marcus A. Watson, Sr.
Chapter 7 Trustee

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within and foregoing Objection of Marcus A. Watson, Sr., Chapter 7 Trustee to Final Application of Alvarez & Marsal Securities, LLC as Financial Advisor to the Debtor for Allowance of Compensation and Reimbursement of Expenses was served via the ECF system where indicated or by first class United States mail in properly addressed envelopes with sufficient postage affixed thereon, to insure delivery upon the parties listed below, and upon the parties listed on the Master Service List which is attached hereto as **Exhibit "A"**.

This the 8th day of July, 2008.

/s/ John A. Christy
John A. Christy

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

CHAPTER 7 MASTER SERVICE LIST

Leroy Culton, Esq. – via ECF
U.S. Trustee
362 Richard Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303
Email: leroy.culton@usdoj.gov

Marcus A. Watson
Finley, Colmer and Company
3091 Governors Lake Drive
Suite 450
Norcross, GA 30071

John A. Christy, Esq. – via ECF
Carole Thompson Hord, Esq. – via ECF
Schreeder, Wheeler & Flint, LLP
1100 Peachtree Street, Suite 800
Atlanta, Georgia 30309
Email: jchristy@swfllp.com
Email: chord@swfllp.com

J. Robert Williamson – via ECF
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, NE
Atlanta, GA 30303
Email: rwilliamson@swlawfirm.com

William A. DuPre IV – via ECF
Paul M. Alexander – via ECF
Miller & Martin PLLC
1170 Peachtree St., N.E. Suite 800
Atlanta, GA 30309-7649
Email: bdupre@millermartin.com
Email: palexander@millermartin.com

Christopher T. Buchanan
James R. Langdon – via ECF
Moore & Van Allen
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003
Email: jimlangdon@mvalaw.com

Jonathan S. Shenson
Klee, Tuchin, Bogdanoff & Stern, LLP
1999 Avenue of the Stars
39th Floor
Los Angeles, CA 90067-5061

Karen Fagin White – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Atlanta, GA 30339
Email: kfwhite@cpmas.com

Scott B. Riddle, Esq. – via ECF
Suite 2250 Resurgens Plaza
945 East Paces Ferry Road
Atlanta, Georgia 30326
Email: sbriddle@mindspring.com

Ron C. Bingham, II, Esq. – via ECF
Thompson, O'Brien, Kemp & Nasuti, P.C.
40 Technology Parkway South
Suite 300
Norcross, GA 30092
Email: rbingham@tokn.com

John C. Pennington – via ECF
P. O. Box 275
Helen, GA 30545
Email: jcppc@alltel.net

Priscilla H. Douglas, Esq.
Corporate Counsel
California First Leasing Corporation
18201 Van Karman Avenue
Suite 800
Irvine, CA 92612

Robert M. D. Mercer – via ECF
Gwendolyn J. Godfrey – via ECF
Powell Goldstein, L.L.P.
Fourteenth Floor
One Atlantic Center
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Email: rmerc@pogolaw.com
Email: ggodfrey@pogolaw.com

Jeffrey N. Pomerantz – via ECF
Jeffrey W. Dulberg – via ECF
Pachulski Stang Ziehl & Jones LLP
Eleventh Floor
10100 Santa Monica Blvd.
Los Angeles, CA 90067-4100
Email: jpomerantz@pszjlaw.com
Email: jdulberg@pszjlaw.com

Bruce Z. Walker, Esq. – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Suite 1600
Atlanta, GA 30339
Email: bwalker@cpmas.com
Email: mnewsome@cpmas.com

Sarah R. Borders – via ECF
Robert K. Ozols
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Email: sborders@kslaw.com

Michael W. Bishop, Esq. – via ECF
Looper Reed & McGraw, P.C.
1601 Elm Street, Suite 4100
Dallas, TX 75201
Email: mbishop@lrmlaw.com

Samuel D. Hicks
Hicks, Casey & Foster, P.C.
136 N. Fairground Street
Suite 100
Marietta, GA 30060

American Express Bank FSB – via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: notices@becket-lee.com

American Express Travel & Related Svcs Co –
via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: notices@becket-lee.com

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE 2nd Avenue, Suite 1120
Miami, FL 33131-1605

Jody Charles Campbell – via ECF
Webb, Tanner, Powell, Mertz & Wilson LLP
P. O. Box 1390
Lawrenceville, GA 30046-1390
Email: jcampbell@wtpllp.com

Michael E. Hastings
Brandy M. Rapp
LcClairRyan
1800 Wachovia Tower
Drawer 1200
Roanoke, VA 24006

J. Hayden Kepner, Jr., Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, SW, Suite 2100
Atlanta, GA 30363
Email: hkepner@agg.com

Paul M. Rosenblatt, Esq. – via ECF
Kilpatrick Stockton LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, GA 30309-4530
Email: prosenblatt@kilpatrickstockton.com

William H. Short Jr., Esq.
Haynsworth Sinkler Boyd, P.A.
P. O. Box 11889
Columbia, SC 29211-1889

Samuel R. Arden, Esq. – via ECF
Hartman, Simons, Spielman & Wood LLP
6400 Powers Ferry Road, NW
Suite 400
Atlanta, GA 30339
Email: sarden@hssw.com

Michael D. Payne, Esq. – via ECF
Lisa Ritchey Craig, Esq. – via ECF
McCullough, Payne & Haan, LLC
171 17th Street NW
Atlanta, GA 30363
Email: mpayne@mphlawfirm.com
Email: lcraig@mphlawfirm.com

David H. Conaway, Esq.
Shumaker, Loop & Kendrick, LLP
128 S. Tryon Street, Suite 1800
Charlotte, NC 28202

Mark A. Baker – via ECF
Morris Schneider Prior Johnson & Freedman
1587 Northeast Expressway
Atlanta, GA 30329
Email: M_Baker@Prommis.com

James C. Joedecke, Jr., Esq. – via ECF
Ryan D. Worsley, Esq.
Andersen, Tate & Carr, P.C.
1505 Lakes Parkway, Suite 100
Lawrenceville, GA 30043
Email: gconroy@atclawfirm.com

J. Dewayne Bunch, Esq.
McCoin, McCoin and Bunch
443 Worth Street, NW
Cleveland, TN 37311

Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236-3568

Thomas R. Walker, Esq. – via ECF
McGuireWoods LLP
The Proscenium
1170 Peachtree Street, NE
Atlanta, GA 30309
Email: trwalker@mcguirewoods.com

David W. Cranshaw – via ECF
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Email: dhp@mmmlaw.com

Michael F. Holbein, Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, NW
Suite 2100
Atlanta, GA 30363-1031
Email: michael.holbein@agg.com

S. Elizabeth Hall, Esq. – via ECF
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308
Email: ehall@mckennalong.com

Vivieon E. Kelley, Esq. – via ECF
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street NE
Atlanta, GA 30308-2216
Email: vivieon.kelley@troutmansanders.com

J. Scott Jacobson, Esq.
Melissa J. Perignat, Esq. – via ECF
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway, Suite 600
Atlanta, GA 30339
Email: mperignat@hnzw.com

William Rountree, Esq. – via ECF
Macey, Wilensky & Kessler, LLP
600 Marquis Two Tower
285 Peachtree Center Avenue, NE
Atlanta, GA 30303
Email: wrountree@MaceyWilensky.com

Monrovia Nursery Company
Attn: Tyler Page
18331 E. Foothill Blvd.
Azusa, CA 91702

Internal Revenue Service
Centralized Insolvency Operation
P. O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency
Attn: District Director
Room 400 - Stop 334D
401 West Peachtree Street NW
Atlanta, GA 30308

Commissioner
Georgia Department of Labor
Sussex Place - Room 600
148 International Blvd., N.E.
Atlanta, GA 30303

United States Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530

US Attorney
Civil Process Clerk
1800 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Federal Trade Commission
Southeast Region
Attn: Bradley Elbein, Director
Suite 1500
225 Peachtree Street, NE
Atlanta, GA 30303

Ronald S. Gellert, Esq. – via ECF
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102
Email: rgellert@eckertseamans.com

CLIENTS:7031:1:NEW MASTER SERVICE LIST.doc