

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

In re:

Avadel Specialty Pharmaceuticals, LLC,

Debtor.

Chapter 11

Case No. 19-10248 (CSS)

Obj. Deadline: October 22, 2021 at 4:00 p.m. (ET)

Hearing Date: November 2, 2021 at 10:00 a.m. (ET)

**MOTION OF THE PLAN ADMINISTRATOR FOR ORDER
AND FINAL DECREE CLOSING THE CHAPTER 11 CASE**

Karrilyn Thomas of MCA Financial Group, Ltd., solely in her capacity as the plan administrator (the “**Plan Administrator**”), hereby files this motion (the “**Motion**”), pursuant to section 350(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3022-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an Order, substantially in the form annexed hereto as Exhibit A (the “**Final Decree and Order**”), decreeing as closed the above-captioned chapter 11 case (the “**Chapter 11 Case**”). In connection therewith, the proposed Final Decree and Order provides for the termination of services provided by Epiq Corporate Restructuring, LLC (“**Epiq**”) as the Claims and Noticing Agent under 28 U.S.C. § 156(c).¹ In support of this Motion, the Plan Administrator respectfully states as follows:

Jurisdiction, Venue and Statutory Predicates

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

¹ Epiq was appointed the Claims and Noticing Agent by Order of this Court, dated February 8, 2019 [Docket No. 37].

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).
4. The statutory and other legal predicates for the relief requested herein are section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 3022-1.
5. Pursuant to Local Rule 9013-1(f), the Plan Administrator consents to entry of a final order under Article III of the United States Constitution.

Relevant Background

A. Chapter 11 Case; Confirmation of Plan

6. On February 6, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. A detailed description of the facts and circumstances leading to this Chapter 11 Case is set forth in the *Declaration of Gregory J. Divis in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief* [Docket No. 10] (the “**First Day Declaration**”). No committee of unsecured creditors was appointed in this Chapter 11 Case.

7. On October 6, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Debtor's First Amended Proposed Combined Disclosure Statement and Chapter 11 Plan of Liquidation and Granting Final Approval of Disclosure Statement* [Docket No. 419] (the “**Confirmation Order**”), with a copy of *Debtor's First Amended Proposed Combined Disclosure Statement and Chapter 11 Plan of Liquidation* (the “**Plan**”)² attached thereto as Exhibit A.

8. The Effective Date occurred on October 21, 2020, and the Debtor substantially consummated the Plan and emerged from chapter 11. *See Notice of (A) Occurrence of Effective*

² All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Plan.

Date of the First Amended Chapter 11 Plan of Liquidation and (B) Deadlines for Filing Certain Claims, dated October 21, 2020 [Docket No. 429]. The Confirmation Order is final, non-appealable, and not subject to any pending appeal.

B. Structure of the Plan; Distributions

9. On or after the Effective Date, the Plan Administrator made payments to Holders of Allowed Administrative Claims (including Allowed Professional Fee Claims)³ and Allowed Priority Tax Claims as provided in the Plan.

10. In addition, the Plan provides for five (5) Classes of Claims against, and one (1) Class of Interests, in the Debtor. Class 1 (Other Priority Claims), Class 2 (Secured Tax Claims), and Class 3 (Other Secured Claims) were Unimpaired and the respective Holders received the applicable treatment under the Plan. *See* Plan §§ III.A–B. Class 5 (Subordinated Claims and Class 6 (Interests) were Impaired and deemed to reject the Plan. Class 4 (General Unsecured Claims were Impaired and entitled to vote on the Plan.

11. The Plan Administrator is preparing to make Distributions to Holders of Allowed Class 4 Claims pursuant to the Plan.

C. Reporting Requirements and Statutory Fees

12. Since the Effective Date of the Plan, the Plan Administrator has filed all required post-confirmation quarterly reports.

13. The Plan Administrator will, pursuant to Local Rule 3022-1(c), file a final report for the Chapter 11 Case at least fourteen (14) days prior to the hearing on this Motion.

14. The Plan Administrator believes it is current on applicable U.S. Trustee fees through the second calendar quarter of 2021 and will make payment on the third calendar quarter

³ Following the Effective Date, all final fee applications for estate professionals were approved on a final basis [Docket No. 453], and all approved fees and expenses have been paid in accordance with the terms of the Plan.

of 2021 before this Motion is heard. Within thirty (30) days after entry of the Final Decree and Order, the Plan Administrator will pay any and all fees remaining due and payable pursuant to 28 U.S.C. § 1930(a)(6).

Relief Requested

15. The Plan Administrator requests that this Court enter the proposed Final Decree and Order closing the Chapter 11 Case.

Basis for Relief

A. The Estate Has Been Fully Administered.

16. Section 350(a) of the Bankruptcy Code provides that the Court shall close a case after the estate has been fully administered. *See* 11 U.S.C. § 350(a). In addition, Bankruptcy Rule 3022 provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Local Rule 3022-1(a) further provides that “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Local Rule 3022-1(a).

17. The term “fully administered” is not defined in the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules. The Advisory Committee Note to Bankruptcy Rule 3022 (the “Advisory Committee Note”) specifically indicates that “[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed.” The Advisory Committee Note further sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

- a. whether the order confirming the plan of reorganization has become final;
- b. whether deposits required by the plan of reorganization have been distributed;

- c. whether property proposed by the plan of reorganization to be transferred has in fact been transferred;
- d. whether the debtor has assumed the business addressed by the plan of reorganization;
- e. whether payments under the plan of reorganization have commenced; and
- f. whether all motions, contested matters and adversary proceedings have been finally resolved.

18. Courts in this district and others adopt the view that “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed.” *In re SLI, Inc.*, Case No. 02-12608, 2005 Bankr. LEXIS 1322, at *5 (Bankr. D. Del. June 24, 2005); *see also In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (recognizing that Bankruptcy Rule 3022 allows the court flexibility and “does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees here involved have been paid.”); *Walnut Assocs. v. Sidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (recognizing that “all of the factors in the Committee Note need not be present before the Court will enter a final decree”).

19. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan of reorganization has been substantially consummated. *See, e.g., In re JCP Props., Ltd.*, 540 B.R. 596, 605 (Bankr. S.D. Tex. 2015) (noting that “substantial consummation is the pivotal question here to determine the propriety of closing the [case]”); *In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case);

Walnut Assocs., 164 B.R. at 493 (same). Section 1101(2) of the Bankruptcy Code defines substantial consummation as the “(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.” 11 U.S.C. § 1101(2).

20. Here, the Debtor’s estate has been fully administered and the foregoing factors weigh in favor of closing the Chapter 11 Case.

21. First, the Confirmation Order is a final, non-appealable order. The Plan has been substantially consummated within the meaning of section 1101(2) of the Bankruptcy Code.

22. Second, the Debtor was not required to distribute any deposits under the Plan.

23. Third, the property proposed by the Plan to be transferred has in fact been transferred. Distributions to Holders of Allowed General Unsecured Claims are imminent.

24. Fourth, on the Effective Date, the Plan Administrator assumed the role provided under the Plan.

25. Fifth, on or after the Effective Date, as required under the Plan, the Plan Administrator made payments to Holders of Allowed Administrative Claims and Allowed Other Priority Claims. Distributions to Holders of Allowed General Unsecured Claims are anticipated to be substantially completed within the next several weeks.

26. Sixth, all motions and contested matters have been finally resolved. All claims have been reconciled and appropriate objections filed and orders entered. There have been no adversary proceedings filed in this Chapter 11 Case.

B. Termination of Services Provided by Claims and Noticing Agent.

27. In addition to closing this Chapter 11 Case, the Plan Administrator respectfully requests that the Final Decree and Order include a provision relieving Epiq of any further obligations with respect to claims and noticing services.

28. In accordance with Local Rule 2002-1(f)(ix), within twenty-eight (28) days of entry of the Final Decree and Order, Epiq will: (a) forward to the Clerk an electronic version of all imaged claims, (b) upload the creditor mailing list into CM/ECF, and (c) docket a Final Claims Register. Epiq shall further box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

Notice

29. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware and (b) those parties requesting notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

30. No prior motion for the relief requested herein has been made to this or any other court.

Conclusion

WHEREFORE, for the reasons set forth herein, the Plan Administrator respectfully requests that this Court enter a Final Decree and Order closing the Chapter 11 Case and granting such other and further relief as the Court deems just and proper.

Dated: October 8, 2021

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