

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

In re:)	
)	Chapter 11
CSH WINDDOWN, INC.,)	
)	Case No. 18-11272 (LSS)
Debtor.))	
In re:)	Chapter 11
)	Case No. 18-11273 (LSS)
CSN WINDDOWN, INC.,)	
)	
Debtor.))	
In re:)	Chapter 11
)	Case No. 18-11274 (LSS)
HG WINDDOWN, INC.,)	
)	
Debtor.))	
In re:)	Chapter 11
)	Case No. 18-11275 (LSS)
LSG WINDDOWN, INC.,)	
)	
Debtor.))	Hr’g Date: Dec. 1, 2021 at 11:00 a.m. (ET)
		Obj. Deadline: Nov. 24, 2021 at 4:00 p.m. (ET)

**WIND-DOWN ADMINISTRATOR’S MOTION FOR FINAL DECREE AND ORDER
PURSUANT TO 11 U.S.C. §§ 105 AND 350, FED. R. BANKR. P. 3022 AND LOCAL
RULE 3022-1 CLOSING CHAPTER 11 CASES AND TERMINATING CLAIMS AND
NOTICING SERVICES**

Beane Associates, Inc., as the Wind-Down Administrator (“Wind-Down Administrator”), of the debtors (“Debtors”¹) and their estates, moves this Court (the “Motion”) for entry of a final decree and order, substantially in the form attached hereto as Exhibit A (the “Proposed Final

¹ The Debtors and the last four digits of their federal taxpayer identification numbers are:

- (a) CSH Wind-Down, Inc. (f/k/a Color Spot Holdings, Inc.) (7061);
- (b) CSN Wind-Down, Inc. (f/k/a Color Spot Nurseries, Inc.) (3266);
- (c) HG Wind-Down, Inc. (f/k/a Hines Growers, Inc.) (5946); and
- (d) LSG Wind-Down, Inc. (f/k/a Lone Star Growers, Inc.) (4748).

Decree”), pursuant to sections 105(a) and 350(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3022-1(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), closing the Debtors’ above-captioned chapter 11 cases (the “Chapter 11 Cases”), terminating the claims and noticing services provided by Epiq Corporate Restructuring, LLC, the Debtors’ claims and noticing agent (“Epiq”) and abandoning any records. The Chapter 11 Cases have been fully administered within the meaning of section 350 of the Bankruptcy Code, making it appropriate for the United States Bankruptcy Court for the District of Delaware (the “Court”) to enter a final decree closing the Chapter 11 Cases and granting the other related relief requested herein. In support of this motion, the Wind-Down Administrator states:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2).

2. Pursuant to Local Rule 9013-1(f), the Wind-Down Administrator consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief sought herein are sections 105(a), 350 and 554 of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

5. On May 29, 2018 (the “Petition Date”), the Debtors filed their voluntary Chapter 11 petitions with this Court.

6. On June 22, 2018, the Court entered an order (the “Epiq Retention Order”) authorizing the retention of Epiq as the Debtors’ claims and noticing agent to provide the claims and noticing services (the “Claims Agent Services”). *See* D.I. 116.

7. On July 25, 2018, the Court authorized the Debtors to sell substantially all of their assets free and clear of almost all interests under an asset purchase agreement with Wells Fargo Bank, N.A. (“Wells Fargo”) by entering the *Order (I) Approving Asset Purchase Agreement and Authorizing Sale of Certain Assets Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of all Encumbrances; (III) Authorizing the Assumption, Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief*. *See* D.I. 243.

8. On November 29, 2018 (the “Confirmation Date”), the Court confirmed the *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation Proposed by the Debtors* (the “Plan”) by entering the *Findings of Fact, Conclusions of Law and Order Confirming Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation Proposed by the Debtors* (the “Confirmation Order”). *See* D.I. 479. On December 31, 2018, the Plan became effective (the “Effective Date”). *See* D.I. 503.

9. Until the Effective Date, the Debtors managed their affairs as debtors in possession under Sections 1107(a) and 1108 of the Bankruptcy Code. On the Effective Date, the Debtors ceased to be debtors in possession pursuant to Paragraph 6 of the Confirmation Order and became the Post-Effective Date Debtors under Sections 1.71 and 9.2(a) of the Plan, and further Beane

Associates, Inc. became the Wind-Down Administrator under Paragraph 7 of the Confirmation Order and Sections 1.99 and 9.2(b) of the Plan.

10. On March 19, 2019, the Court approved the *Omnibus Order Approving Final Fee Applications*. See D.I. 570. The following is a chart of the allowance of fees and expenses by professional employed by the Debtors on a final basis:

Name of Applicant	Date and Docket No. of Final Fee Application	Aggregate Amount of Fees Approved on a Final Basis	Aggregate Amount of Expenses Approved on a Final Basis
Young Conway Stargatt & Taylor, LLP	1/30/19 Docket No. 526	\$1,139,201.00	\$42,211.94
Epiq Corporate Restructuring, LLC	1/30/19 Docket No. 524	\$22,499.51	\$0.00
Kilpatrick Townsend & Stockton LLP	1/30/19 Docket No. 522	\$501,696.25	\$5,226.98
Morris, Nichols, Arsht & Tunnell LLP	1/30/19 Docket No. 523	\$221,035.50	\$4,350.76
Ballard Spahr	1/30/19 Docket No. 527	\$442,716.50	\$3,607.35
Berkley Research Group, LLC	1/30/19 Docket No. 525	\$351,960.50	\$1,470.51

11. On October 8, 2021, the Court entered an *Order Approving the Wind-Down Administrator's Motion to Address Unliquidated Secured Claims of Certain Insurance Companies*, which resolved the remaining claims of the insurance companies party thereto (the "Insurance Companies Order"). See D.I. 826.

12. As of the date of this Motion, the Wind-Down Administrator has addressed and resolved all 602 proofs of claim filed in this case. There has been no need to file objections to

claims that only assert a general unsecured claim, since under the Plan there will be no distribution to the holders of such claims.

13. Wells Fargo holds valid, properly perfected, unavoidable first priority liens and security interests in substantially all of the Debtors' assets, which liens and security interests secure payment and performance of the Debtors' obligations to Wells under various loan and security agreements entered into prior to the Petition Date. By stipulation, the Wind-Down Administrator agreed with Wells Fargo that the amount of its allowed secured claims is \$31,459,494.40, without prejudice to Wells Fargo's right to assert that its claims are larger in amount.

14. All known secured, priority, and administrative claims have been resolved and/or paid, either consensually or through objection, except for Wells Fargo, which is entitled under the Plan to receive, on account of its secured claims, all of the assets remaining in the Debtors' estates after allowed secured, priority, and administrative claims have been paid. The one known demand of the IRS mentioned at the hearing to consider the Insurance Companies Order was withdrawn by the IRS, and thus the Wind-Down Administrator is unaware of any other pending secured, priority, or administrative claim or demand.

RELIEF REQUESTED

15. The Wind-Down Administrator seeks entry of the Proposed Final Decree: (i) closing the Chapter 11 Cases pursuant to Section 350(b) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 3022-1; (ii) granting the Wind-Down Administrator a discharge from any further duties other than as otherwise provided in this Motion; (iii) authorizing the abandonment and destruction of records upon entry of an order closing the Chapter 11 Cases; (iv) granting relief from certain service requirements under Bankruptcy Rule 6007 to the extent it requires the Wind-

Down Administrator to serve notice of this Motion on all of the Debtors' creditors; and (v) granting such other and further relief as the Court deems just and proper.

16. The Wind-Down Administrator further requests that the Proposed Final Decree be without prejudice to or otherwise affect the continuing effect of the Plan and/or the Confirmation Order, which will survive the closing of these cases. Further, the Wind-Down Administrator requests that the Proposed Final Decree authorize the Wind-Down Administrator, its employees, professionals, and representatives to take such action as may be necessary or appropriate in connection with the closing, including the completion of any final accounting, the filing of final estate tax returns, the issuance to beneficiaries and filing of final tax statements, distribution of all remaining assets to Wells Fargo, and the closing of bank accounts.

17. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered . . . the court shall close the case." 11 U.S.C. § 350(a). Bankruptcy Rule 3022 similarly provides that "[a]fter an estate is fully administered in a chapter 11 reorganization, 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. In addition, Local Rule 3022-1 states that:

Upon 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. Such motion shall include a proposed final decree order that (i) orders the closing of the case and (ii) identifies in the caption and in the body of the order the case name and the case number of each case to be closed under the order.

Del. Bankr. L.R. 3022-1.

18. The above-noted provisions evidence a long-standing policy in favor of terminating bankruptcy court supervision over a debtor after its reorganization plan has been confirmed. *See generally North Amer. Car Corp. v. Peerless Weighing & Vending Machine Corp.*, 143 F.2d 938,

940 (2d Cir. 1944). The Advisory Committee note to Bankruptcy Rule 3022 sets forth six factors that a court should consider in determining whether a case is fully administered:

1. Whether the order confirming the plan has become final;
2. Whether deposits required by the plan have been distributed;
3. Whether the property proposed by the plan to be transferred has been transferred;
4. Whether the debtor has assumed the business or management of the property dealt with by the plan;
5. Whether payments under the plan have commenced; and
6. Whether all motions, contested matters and adversary proceedings have finally been resolved.

See Fed. R. Bankr. P. 3022 Advisory Committee Note (1991).

19. All of these factors need not be present before a court will enter a final decree. *Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.”). 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.*, No. 02-12608, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768–69 (Bankr. N.D. Ill. 1990)); *see also In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing whether to close a case); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (same).

20. Here, the foregoing factors weigh strongly in favor of closing the Chapter 11 Cases. These cases have been “fully administered” within the meaning of section 350 of the Bankruptcy Code, making it appropriate for the Court to enter the Proposed Final Decree. In particular, (i) the Confirmation Order has become final and is non-appealable; (ii) all distributions under the Plan have been made or are otherwise dealt with in the Insurance Companies Order and an Agreement

between the Wind-Down Administrator and Wells Fargo resolving all of Wells Fargo's claims; (iii) all bank accounts associated with the Debtors have been closed or will be closed, save one for purpose of a wind-down reserve; and (iv) all motions, contested matters and adversary proceedings have been resolved.

21. Further, closing the Chapter 11 Cases will relieve the Court, the Office of the United States Trustee, and the Wind-Down Administrator from each of their administrative burdens with respect to these cases. *See In re A.H. Robins Co., Inc.*, 219 B.R. 145, 149 (Bankr. E.D. Va. 1998) (finding that "the obligation to pay UST fees terminates upon closure, dismissal, or conversion of a Chapter 11 case, and will not be paid ad infinitum").

22. Pursuant to the Section 10.6(a) of the Plan, the Wind-Down Administrator will distribute all funds and assets remaining in the Debtor's estates to Wells Fargo, which is anticipated to be in excess of \$2,700,000. However, with Wells Fargo's consent, the Wind-Down Administrator will hold back a reserve totaling \$346,255. This amount will be retained and held in a separately designated, non-commingled account maintained by the Wind-Down Administrator. The purpose of the reserve is to assure sufficient funds are on hand to pay any administrative, priority or secured claims known to exist as of the date the Chapter 11 Cases are closed (of which, as of the date of filing this Motion, there are none), and to provide for payment of final invoices of the Wind-Down Administrator and its professionals, payment of the final quarterly US Trustee Fees, preparation of final tax returns, and other wind up activities. Following final disbursement of the foregoing items, any balance remaining in the reserve shall be remitted to Wells Fargo pursuant to the Plan on account of its allowed secured claims herein.

23. Accordingly, the Wind-Down Administrator submits that it is appropriate and necessary for the Court to enter an order closing the Chapter 11 Cases and granting the requested

additional relief. *See Uni-Marts, LLC, et al.*, Case No. 08-11037 (MFW) (approving the closing of the bankruptcy case prior to all distributions being made to creditors in order to preserve assets and maximize recovery to unsecured creditors).

24. The Court would still possess and retain jurisdiction and authority to re-open these cases for further administration pursuant to Section 350(b) of the Bankruptcy Code if the need to do so arises. The relief sought herein will not prejudice any party in interest.

25. Pursuant to Local Rule 3022-1(c), the Wind-Down Administrator will file a Final Report detailing the incoming funds, the expenses and distributions made (the “Final Report”) within 14 days prior to the hearing on this Motion.

Termination of Claims Agent Services.

26. In addition to the foregoing, upon the closing of these Chapter 11 Cases, neither the Wind-Down Administrator nor the Clerk of this Court will require Epiq to provide the Claims Agent Services. Therefore, consistent with this Court’s *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)* (the “Claims Agent Protocol”), the Wind-Down Administrator requests that the Proposed Final Decree relieve Epiq of its obligations to continue performing such services as described in the Epiq Retention Order and the underlying agreement for services with Epiq.

27. Consistent with the Claims Agent Protocol and Local Rule 2002-1(f)(ix), (xii), within twenty-eight (28) days after this Court’s entry of the Proposed Final Decree, Epiq will (i) forward to the Clerk an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; and (iii) docket a combined final claims register containing the claims filed in each of Debtors’ Chapter 11 Cases. Finally, Epiq will box and transport all original proofs of claim forms 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.

28. Should Epiq receive any mail regarding the Chapter 11 Cases after entry of the Proposed Final Decree, Epiq will collect and forward such mail no less frequently than monthly to the Wind-Down Administrator.

Abandonment and Destruction of Records

29. Section 554 of the Bankruptcy Code provides, among other things, that, “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Courts have held that a debtor-in-possession’s decision to abandon property of the estate rests on the debtor’s business judgment. *See e.g., In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997). Section 9.6 of the Plan requires only thirty (30) days’ notice to parties-in-interest before the Wind-Down Administrator may destroy or otherwise abandon any such documents.

30. Here, with the closing of the Chapter 11 Cases, the records are of inconsequential value, are no longer necessary, and present only a burden on the Wind-Down Administrator and the estate. The Wind-Down Administrator’s ability to abandon and/or destroy any records will enable the Wind-Down Administrator to complete the wind down process. Accordingly, granting the Wind-Down Administrator authority to abandon, dispose of and/or destroy any records is in the best interest of the estate and creditors.

NOTICE

31. The Wind-Down Administrator also requests relief from Bankruptcy Rule 6007 to the extent it requires the Wind-Down Administrator to serve notice of this Motion on *all* creditors of the Debtors. Bankruptcy Rule 6007 provides, in part that:

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States Trustee, all creditors, indenture trustees and committees elected pursuant to section 705 or appointed pursuant to section 1102 of the Code.

Fed. R. Bankr. P. 6007(a).

32. Section 11.1 of the Plan requires the Wind-Down Administrator to give notice of this Motion only to “those Creditors who requested notice in accordance with Bankruptcy Rule 2002.” Thus, the Wind-Down Administrator believes that serving notice of the Motion on all creditors would be costly and provide negligible benefit to the estate and creditors and respectfully submits that providing notice to the United States Trustee and all parties that have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002 will effectuate the goal of adequate notice. Accordingly, the Wind-Down Administrator submits that modifying the notice requirements of Bankruptcy Rule 6007 is in the best interests of the estate and creditors.

33. Notice of this Motion thus will be given to: the U.S. Trustee, Wells Fargo and all creditors who requested notices in accordance with Bankruptcy Rule 2002. No other notice is needed.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

CONCLUSION

WHEREFORE, the Wind-Down Administrator asks the Court to enter an order, substantially in the form of the Proposed Final Decree, in substantially the form attached hereto as Exhibit "A."

Respectfully submitted,

MCELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP

Dated: October 29, 2021

/s/ David P. Primack

David P. Primack (No. 4449)
300 Delaware Avenue, Suite 770
Wilmington, Delaware 19801
Telephone: (302) 300-4515
Facsimile: (302) 654-4031
E-mail: dprimack@mdmc-law.com

-and-

Barry D. Kleban, Esq.
One Penn Center
1617 John F. Kennedy Jr. Boulevard, Suite 3 1500
Philadelphia, PA 10103-1815
Telephone: (215) 557-2945
Facsimile: (215) 557-2990
E-mail: bkleban@mdmc-law.com

*Counsel to Beane Associates, Inc., as the Wind-Down
Administrator*