

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

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In re:	: Chapter 11
FBI Wind Down, Inc. (f/k/a Furniture Brands International, Inc.),	: Case No. 13-12329 (CSS)
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Debtor. <sup>1</sup>	: <b>Hearing Date: 1/12/2022 at 11:30 a.m. (ET)</b>
	: <b>Objection Deadline: 12/6/2021 at 4:00 p.m. (ET)</b>

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**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER FURTHER  
EXTENDING THE TERM OF THE FBI WIND DOWN, INC.  
LIQUIDATING TRUST THROUGH AND INCLUDING DECEMBER 31, 2022**

Alan D. Halperin, in his capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the FBI Wind Down, Inc. Liquidating Trust (the “Liquidating Trust”), by his undersigned counsel, files this motion (the “Motion”) for entry of an order granting a further extension of term of the Liquidating Trust through and including December 31, 2022, to enable the Liquidating Trustee and his professional advisors to complete the wind up of the Liquidating Trust. In support of the Motion, the Liquidating Trustee respectfully states as follows:

**JURISDICTION, VENUE, AND PREDICATES**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is FBI Wind Down, Inc. (f/k/a Furniture Brands International, Inc.) (7683). On August 6, 2021, the Court entered an order closing the chapter 11 cases of FBI Wind Down, Inc.’s debtor affiliates, all of which were direct or indirect subsidiaries of FBI Wind Down, Inc. (collectively, the “Subsidiary Debtors”). A complete list of the Subsidiary Debtors, along with their federal tax identification numbers, is available through the Court’s CM/ECF electronic case filing system (<https://ecf.deb.uscourts.gov/>) under case no. 13-12329, at docket no. 3250.

### **RELEVANT BACKGROUND**

2. On September 9, 2013 (the “Petition Date”), the above-captioned Debtor and the Subsidiary Debtors each filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. On November 22, 2013, following a hearing on notice, the Court approved the sale of substantially all the Debtors’ assets to Heritage Home Group, LLC (“HHG”). The sale to HHG closed on November 25, 2013.

4. On July 14, 2014, the Court entered an order (the “Confirmation Order”), *inter alia*, (i) confirming the *Second Amended Joint Plan of Liquidation of FBI Wind Down, Inc. and Its Subsidiaries under Chapter 11 of the Bankruptcy Code* [D.I. 1840] (as amended, the “Plan”), (ii) approving the FBI Wind Down, Inc. Liquidating Trust Agreement (the “Trust Agreement”),<sup>2</sup> and (iii) establishing the Liquidating Trust.

5. On August 1, 2014 (the “Effective Date”), the Plan became effective and the Liquidating Trustee was appointed to, *inter alia*, administer the Liquidating Trust and wind down the Debtors’ affairs. Since the Effective Date, the Liquidating Trustee and his professionals have undertaken a variety of activities to implement the terms of the Plan and to wind up the estate and the Liquidating Trust in an expeditious and efficient manner.

6. The Liquidating Trust had an initial term of five years, subject to extension by order of this Court. Section 7.3(j) of the Plan provides:

The Liquidating Trust will terminate on the earlier of: (a) final liquidation, administration and distribution of the Liquidating Trust Assets in accordance with the terms of the Liquidating Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth in the Liquidating Trust Agreement or the Plan; and (b) the fifth (5th) anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed term extensions can be

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<sup>2</sup> See D.I. 1807, Item 2.

obtained so long as Bankruptcy Court approval is obtained within six (6) months before the expiration of the term of the Liquidating Trust and each extended term, provided that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust within the meaning of Section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After (a) the final Distributions pursuant to this Plan, (b) the filing by or on behalf of the Liquidating Trust of a certification of dissolution with the Bankruptcy Court, and (c) any other action deemed appropriate by the Liquidating Trustee, the Liquidating Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

Plan ¶ 7.3(j); *see* Liquidating Trust Agreement ¶ 8.1.

7. The initial five year term of the Liquidating Trust was due to expire on August 1, 2019.

8. On April 8, 2019, the Court entered an Order [D.I. 3133] (the “First Extension Order”) extending the term of the Liquidating Trust through and including December 31, 2020, without prejudice to the right of the Liquidating Trustee to seek a further extension of such term.

9. On November 20, 2020, the Court entered an Order [D.I. 3199] (the “Second Extension Order”) further extending the term of the Liquidating Trust through and including December 31, 2021, without prejudice to the right of the Liquidating Trustee to seek a further extension of such term.

#### **RELIEF REQUESTED AND BASIS THEREFOR**

10. By this Motion, the Liquidating Trustee seeks the entry of an order, substantially in the form annexed hereto as Exhibit A, pursuant to Bankruptcy Code section 105(a), Bankruptcy Rule 9006(b)(1) and section 7.3(j) of the Plan, further extending the term of the Liquidating Trust through the earlier of (a) the finalization of the Liquidating Trust’s liquidation, administration and distribution of the Liquidating Trust’s assets and the full performance of all other duties and functions as set forth in the Plan and the Liquidating Trust Agreement, or (b) December 31, 2022,

subject to the Liquidating Trustee's right to seek a further extension of the term of the Liquidating Trust.

11. The Plan and Trust Agreement each expressly permit the extension of the Liquidating Trust if (i) such extension is approved within six (6) months prior to the date of termination of the Liquidating Trust, and (ii) such extension would not adversely affect the Liquidating Trust's status as a "liquidating trust" for federal income tax purposes. *See* Plan ¶ 7.3(j); Liquidating Trust Agreement ¶ 8.1; *see also* 26 CFR § 301.7701-4(d).<sup>3</sup>

12. Bankruptcy Code section 105(a) provides, in relevant part, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

13. Bankruptcy Rule 9006(b)(1) permits the Court, in its discretion, to extend the term of the Liquidating Trust "for cause." Fed. R. Bankr. P. 9006(b)(1).

14. The Liquidating Trustee files this Motion within the current term of the Liquidating Trust and within the time frame set forth in section 7.3(j) of the Plan. For the reasons set forth below, the Liquidating Trustee submits cause exists to extend the term of the Liquidating Trust as requested herein. Further, the extension of the term of the Liquidating Trust is not being sought to "unreasonably prolong" the Liquidating Trust or for any other improper purpose. Rather, the extension is sought to facilitate the liquidation of the remaining assets of the Liquidating Trust and to complete the wind up of the Liquidating Trust for the benefit of unsecured creditors.

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<sup>3</sup> The regulation provides in relevant part that a "liquidating trust" will be treated as "trust" for purposes of the Internal Revenue Code if such liquidating trust is organized for the primary purpose of liquidating and distributing assets and its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. In addition, the liquidation must not be "unreasonably prolonged" and the "liquidation purpose [cannot] become so obscured by business activities that the declared purpose of liquidation can be said to be lost or abandoned, the status of the organization will no longer be that of a liquidating trust." 26 CFR § 301.7701-4(d).

15. Although Bankruptcy Rule 9006 does not define “cause,” “courts should be liberal in granting extensions of time sought before the period to act has elapsed, as long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused . . . .” 10 Collier on Bankruptcy ¶ 9006.06 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.). In the context of determining whether “cause” exists to grant a trustee’s request to extend time, courts have considered such factors as the size and complexity of the issues involved, the good faith progress made in resolving issues, the amount of time elapsed in the case, and whether any prejudice to creditors would result. *See In re Express One Int’l.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (citing cases). The Liquidating Trustee submits cause exists to grant the relief requested in this Motion.

16. Since the entry of the Second Extension Order, the Liquidating Trustee and his professional advisors have continued to work diligently to liquidate the Liquidating Trust’s remaining assets and to wind up the Debtor and the Liquidating Trust. Among other things, during the past year, the Liquidating Trustee has (i) concluded the long-running purchase price litigation with the HHG chapter 7 estate; (ii) resolved all of the remaining adversary proceedings filed under this chapter 11 case; (iii) made a fifth interim distribution to holders of allowed general unsecured claim, thereby providing each such holder with an aggregate distribution near or above the high recoveries projected in the Plan; (iv) filed all required quarterly United State Trustee reports; (v) closed all of the Debtors’ chapter 11 cases except for the main bankruptcy case; and (vi) taken other actions to complete the wind up of the Liquidating Trust.

17. The Liquidating Trustee had initially anticipated completing the wind up of the Liquidating Trust by the end of 2021. However, as a result of a number of factors, including the ongoing COVID-19 pandemic and the time needed to resolve certain claims and to liquidate certain

Trust assets, the Liquidating Trustee has determined that a further extension of the term of the Trust as requested in this Motion is necessary and appropriate to complete the wind up of the Liquidating Trust in a prudent, efficient and expeditious manner.

18. If the term of the Liquidating Trust is not extended and the Liquidating Trust were to terminate on December 31, 2021, the Liquidating Trustee would be forced to abandon the remaining unliquidated assets or to sell such assets at “fire sale” prices. Further, at this juncture, there is not sufficient time to properly wind up the Liquidating Trust, including calculating and paying the final distributions (which are dependent, in part, on the recoveries from the unliquidated assets), preparing and filing the final tax returns, and taking certain other steps necessary to wind up the Liquidating Trust.

19. To avoid undue and unnecessary prejudice to the holders of allowed general unsecured claims, the Liquidating Trustee respectfully requests that the Court enter the proposed order annexed hereto extending the term of the Liquidating Trust through the earlier of (a) the finalization of the Liquidating Trust’s liquidation, administration and distribution of all Liquidating Trust assets and the full performance of all other duties and functions as set forth in the Plan and Liquidating Trust Agreement, or (b) December 31, 2022. In an abundance of caution, the Liquidating Trustee also requests that such an extension be without prejudice to his right to seek a further extension.

20. The Liquidating Trustee submits no party in interest will be prejudiced if the relief requested herein is granted.

21. Accordingly, the Liquidating Trustee submits cause exists to further extending the term of Liquidating Trust through December 31, 2022.

**BRIDGE ORDER**

22. Pursuant to Del. Bankr. L.R. 9006-2, by virtue of the filing of this Motion, the term of the Liquidating Trust is automatically extended until the Court acts on this Motion, without the need for the entry of a bridge order. *See* Del. Bankr. L.R. 9006-2.

**PRIOR REQUESTS**

23. As set forth above, the Court has previously entered the First Extension Order and the Second Extension Order, thereby extending the term of the Liquidating Trust through December 31, 2021, without prejudice to the rights of the Liquidating Trustee to seek a further extension of the term of the Trust.

**NOTICE**

24. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 3, and (ii) all parties that have requested to receive notices in this chapter 11 case pursuant to Bankruptcy Rule 2002. In light of the relief requested, the Liquidating Trustee submits no other or further notice need be given.

**CONCLUSION**

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order, substantially in the form attached hereto, (i) extending the term of the Liquidating Trust through the earlier (a) the finalization of the Liquidating Trust's liquidation, administration and distribution of all Liquidating Trust assets and the full performance of all other duties and functions as set forth in the Plan and the Liquidating Trust Agreement, or (b) December 31, 2022, subject to the

Liquidating Trustee's right to seek further extensions, and (ii) granting the Liquidating Trustee such other and further relief as the Court deems appropriate under the circumstances

Dated: November 22, 2021  
Wilmington, Delaware

ARCHER & GREINER, P.C.

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