

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

In re:

OGGUSA, Inc.,

Debtor.

Chapter 11

Case No. 20-50133-grs

Honorable Gregory R. Schaaf

**NOTICE OF HEARING**

Now comes Oxford Restructuring Advisors LLC, solely in its capacity as Plan Administrator for the GenCanna Wind-Down Trust, and hereby notices its Motion to Extend Time to File Avoidance Actions for January 20, 2022 at 9:00 a.m., before the Honorable Gregory R. Schaaf, United States Bankruptcy Judge for the Eastern District of Kentucky, Second Floor Courtroom, 100 East Vine Street, Lexington, Kentucky 40507.

Respectfully submitted,

**OXFORD RESTRUCTURING  
ADVISORS, LLC as the Plan  
Administrator of the GenCanna Wind-  
Down Trust,**

By: /s/ Aaron L. Hammer

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OGGUSA, Inc.,

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**PLAN ADMINISTRATOR’S MOTION TO  
EXTEND TIME TO FILE AVOIDANCE ACTIONS**

Oxford Restructuring Advisors LLC, as Plan Administrator of the GenCanna Wind-Down Trust (the “**Plan Administrator**”) in the above-referenced case, pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule(s)**”) and 11 U.S.C. §§ 105(a) and 108(a), respectfully moves this Court (this “**Motion**”) for the entry of an order extending by 180 days the time for filing complaints under 11 U.S.C. §§ 542, 544, 545, 546, 547, 548, 549, 550, 551, and 553, including avoidance actions, as well as any claims based on state law. In support thereof, the Plan Administrator states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a).
2. This matter is a core proceeding under 28 U.S.C. § 157(b).
3. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

4. On January 24, 2020 (the “**Petition Date**”), certain creditors filed an involuntary bankruptcy petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) against OGGUSA, Inc. f/k/a GenCanna Global USA, Inc. (“**GenCanna**”)

in the United States Bankruptcy Court for the Eastern District of Kentucky (the “**Bankruptcy Court**”).

5. On February 5, 2020, OGG, Inc. f/k/a GenCanna Global, Inc. (“**GCG**”) and Hemp Kentucky, LLC (“**Hemp KY**” and collectively with GenCanna and GCG, the “**Debtors**”) each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. On February 6, 2020, GenCanna consented to the involuntary petition filed against it and the Court entered an order for relief under chapter 11 of the Bankruptcy Code in GenCanna’s Case. [Dkt. No. 94].

7. On that same day, a *Notice of Designation as Complex Chapter 11 Case* was filed by GenCanna pursuant to KYEB LBR 2081-2(b). [Dkt. No. 43]. This local rule recognizes the “need for simplification of noticing and hearing procedures to reduce delays and expense[]” in complex chapter 11 cases. *See* KYEB LBR 2081-2(a)(iv).

8. An order was entered on February 7, 2020, [Dkt. No. 89] consolidating the Debtors’ bankruptcy cases for joint administration in the main case, the above-styled GenCanna chapter 11 bankruptcy case (the “**Bankruptcy Case**”).

9. On February 18, 2020, the United States Trustee for Region 8 appointed the Official Committee of Unsecured Creditors for GenCanna Global USA, Inc. *et al.* pursuant to 11 U.S.C. §§ 1102 [Dkt. No. 135].

10. On October 9, 2020, the *Debtors’ Second Amended Joint Plan of Liquidation* [Dkt. No. 1405] was filed along with its related disclosure statement [Dkt. No. 1406] (as amended or modified from time to time in accordance with the terms thereof and together with all exhibits, schedules, appendices, and supplements thereto, the “**Plan**”).

11. On November 12, 2020, the Bankruptcy Court entered an order confirming the Plan (the “**Confirmation Order**”) [Dkt. No. 1517].

12. Pursuant to the Plan and Confirmation Order, the GenCanna Wind-Down Trust Agreement (the “**Trust Agreement**”) was approved which, on December 10, 2020, established the GenCanna Wind-Down Trust (the “**Trust**”) and appointed Oxford Restructuring Advisors LLC as the Plan Administrator (the “**Plan Administrator**”).

13. Under the Trust Agreement, the Debtors transferred certain assets to the Trust including, but not limited to, causes of action arising under 11 U.S.C. §§ 510, 542 through 551, and 553 of (the “**Avoidance Actions**”).

14. On October 21, 2021, the Bankruptcy Court entered an order administratively closing the GCG and Hemp KY bankruptcy cases, leaving GenCanna as the only remaining debtor in the Bankruptcy Case. [Dkt. No. 1768].

15. On December 16, 2021, the Bankruptcy Court entered an order granting the use of the revised case caption, as set forth above in this Motion. [Dkt. No. 1781].

16. On December 21, 2021, the Bankruptcy Court entered an order establishing procedures for the Trust’s orderly resolution and administration of the Avoidance Actions. [Dkt. No. 1786].

17. Since its appointment in December 2020, the Plan Administrator has reviewed the Debtors’ books and records to evaluate the Trust’s potential Avoidance Actions and prepare to reduce them to judgment.

18. To date, the Plan Administrator has settled with nineteen preference transferees and successfully resolved significant claims with the Debtors’ insiders, realizing over \$1,500,000 in

transfers being returned to the Trust. The Plan Administrator is also presently engaged in productive settlement negotiations with numerous preference transferees.

19. Additionally, and more specifically, as of the date of this Motion the Plan Administrator has:

- a. filed complaints against multiple transferees thereby commencing almost 10 avoidance adversary proceedings;
- b. obtained many pre-suit settlements adding a total amount of just over \$1,300,000 to the Trust.
- c. performed an extensive investigation of the Debtors' Directors and Officers liability, resulting in an insurance payment of \$2,000,000 to the Trust;
- d. examined and challenged certain professional fees incurred in the Bankruptcy Cases, resulting in meaningful savings for the Trust;
- e. commenced its reconciliation process of the approximate 1275 claims in the Bankruptcy Case; and
- f. drafted and is ready to file an additional 40 or so avoidance complaints in the coming days.

20. Due to the short window of time between its appointment and the statutory deadlines established by 11 U.S.C. § 546 and the volume of Avoidance Actions that may be pursued, it will likely be necessary for the Plan Administrator to file a large number of avoidance complaints—possibly well over 150 adversary proceedings. To minimize administrative burdens and to preserve the Trust and judicial resources, the Plan Administrator respectfully requests that the Bankruptcy Court extend the deadlines under § 546(a) (together, the “**Chapter 5 Deadline**”).

### **RELIEF REQUESTED**

21. Based on the foregoing, and for the reasons set forth below, the Plan Administrator requests that the Bankruptcy Court enter an order, substantially in the form of the one attached hereto as Exhibit A, providing a 180-day extension of time to file complaints under 11 U.S.C. §§ 542, 544, 545, 546, 547, 548, 549, 550, 551, and 553, including avoidance actions, as well as any claims based on state law.

### **LEGAL AUTHORITY**

22. Pursuant to 11 U.S.C. § 546(a) and Federal Rule of Bankruptcy Procedure 9006(a), the Plan Administrator is entitled to bring adversary proceedings asserting bankruptcy causes of action through February 7, 2022. Section 546(a) provides, in relevant part, that: “[a]n action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after... 2 years after the entry of the order for relief...”.

23. Originally, the Sixth Circuit Court of Appeals concluded that the statute of limitations in § 546 was jurisdictional in nature. *In re Butcher*, 829 F.2d 596, 600 (6th Cir. 1987).

24. However, after the Bankruptcy Reform Act of 1994 was passed (revising § 546), in *Bartlik v. U.S. Dep't of Lab.*, the Sixth Circuit Court of Appeals stated, *en banc*, that the “application of [Federal Rule of Appellate Procedure] 26 (a), and likewise its counterpart [Civil Rule] 6 (a), to calculate a limitations period does not ‘expand’ or ‘enlarge’ a court’s jurisdiction.” 62 F.3d 163 (6th Cir. 1995).

25. Although *Bartlik* did not directly address § 546 or Bankruptcy Rule 9006, it effectively overruled the *Butcher* case. After *Bartlik*, courts in the Sixth Circuit have ruled that § 546(a) is subject to tolling. *See Hyundai Translead, Inc. ex rel. Est. of Trailer Source, Inc. v. Jackson Truck & Trailer Repair Inc.*, 419 B.R. 749, 756 (M.D. Tenn. 2009); *In re Pomaville*, 190

B.R. 632, 636 (Bankr. D. Minn. 1995); *In re Dill*, No. 05-35813, 2008 WL 2357237, at \*3 (Bankr. E.D. Tenn. June 3, 2008); *In re McKenzie*, No. 08-16378, 2014 WL 693446, at \*6 (Bankr. E.D. Tenn. Feb. 21, 2014); *In re Wofford*, No. 08-13410, 2012 WL 3070625, at \*5 (Bankr. E.D. Tenn. July 30, 2012).

26. Other Circuit Courts have expressly adopted that the weight of authority, § 546(a)'s plain language, and legislative history all support a finding that § 546 (a) is a true statute of limitations that can be waived. *See In re Int'l Admin. Servs., Inc.*, 408 F. 3d 689, 699 (11th Cir. 2005).

27. Additionally, bankruptcy courts have authority to enlarge the two-year statute of limitations set forth in § 546(a) for “cause shown” under Rule 9006(b).

28. Rule 9006(b) states, in relevant part:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Rule 9006(b)(1).

29. Requests under Rule 9006(b)(1) to extend time prior to the expiration of the period to act are typically liberally granted:

Rule 9006(b)(1) requires a party to show some cause for an order enlarging the period of time. What constitutes cause is not set out in the rule, but some justification for the enlargement seems to be required. The court may in its discretion grant or deny the motion. While 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, they should nonetheless be wary of granting motions for extensions of time as a matter of course.

10-9006 *Collier on Bankruptcy* P 9006.06 (2011).



30. The Eleventh Circuit has recognized that a bankruptcy court's order under Bankruptcy Rule 9006(b) can give extra time to commence an adversary proceeding that would have otherwise been time-barred. *Int'l Admin. Servs.*, 408 F. 3d at 699 (“Therefore, section 546 is indeed a statute of limitations...subject to enlargement by court order, rather than a statute of repose or jurisdictional bar.”) (citing *In re Rodriguez*, 283 B.R. 112, 116-18 (Bankr. E.D.N.Y. 2001)); see also *In re Fundamental Long Term Care, Inc.*, 501 B.R. 784, 792 (Bankr. M.D. Fla. 2013) (considering *Int'l Admin. Servs.* in connection with and ultimately enlarging deadline under § 546).

31. For this same reason, pursuant to § 108(a) and Rule 7001, bankruptcy courts also have the authority to extend the two-year deadline for bringing non-bankruptcy causes of action. *See id.*

32. Indeed, bankruptcy courts in this district have ruled that the time limits imposed by § 546 are not jurisdictional and can be extended by Rule 9006(b). *See In re Thermoview Indus.*, No. 05-37123(1)(7), 2007 WL 4365376, at \*1 (Bankr. W.D. Ky. Dec. 11, 2007).

33. In *Thermoview*, the bankruptcy court granted the trustee's unopposed motion to extend the 546(a) period under Rule 9006(b)(1). Later, the *Thermoview* court denied an adversary defendant's motion to alter, amend, or vacate the order extending the 546(a), stating that:

This is an exceedingly complex case in which the Trustee has pursued and filed nearly 400 adversary proceedings. It is clear that the Court has discretion to extend the time within which the Trustee may commence an avoidance action upon a showing of good cause. [Bankruptcy Rule 9006(b)] gives the Court authority “for cause” ... “at any time in its discretion” to order the time within which an act is specified to take place enlarged. This includes the period of time for commencing avoidance actions under 11 U.S.C. § 546(a). *See, In re International Administrative Services, Inc.*, 408 F.3d 689, 690 (11th Cir.2005).

The case at bar presents a situation where good cause exists to extend the limitations period. The Trustee is actively pursuing hundreds of preference actions and the Court does not find that the his [sic] motion to extend the time within which to

bring an action against [the adversary defendant] was for purposes of delay. Accordingly, the Court finds no reason to alter or amend its Order extending the deadline for bringing preference actions herein.

*Id.*

34. Later, the successor judge presiding over the transferred adversary between the trustee and defendant concurred with the earlier decision, concluding that “this Court’s independent review of the issue causes it to find that the deadlines imposed by 11 U.S.C. § 546 are not jurisdictional and that the bankruptcy court has the discretion to extend the deadlines in appropriate circumstances.” *In re Thermoview Indus., Inc.*, 381 B.R. 225, 229 (Bankr. W.D. Ky. 2008).

35. Therefore, it is within the Court’s sound discretion to extend the Chapter 5 Deadline under Rule 9006(b)(1).

### **ANALYSIS**

36. In this case, because the order of relief was entered on February 6, 2020, the Chapter 5 Deadline is February 7, 2022 (*i.e.*, two years after entry of the order of relief by this Court, with the inclusion of an extra day because February 6, 2022, falls on a Sunday). [Dkt. No. 94]; *see also* Rule 9006(a) (continuing time periods if the last day of the period ends on a weekend or legal holiday until the next day that is not a weekend or a legal holiday).

37. As such, this Motion seeking relief under Rule 9006(b)(1) is timely given that the period has not yet expired.

38. Similar to *Thermoview*, here, the Plan Administrative is actively pursuing to avoid and recover preferential transfers made to hundreds of transferees and this Motion is not brought for purposes of delay. Rather, an extension of the Chapter 5 Deadline is needed so that the Trust can continue its active recovery efforts by (a) filing hundreds of additional adversary avoidance

complaints, and (b) continuing its ongoing pre-suit settlement negotiations to avoid further expenditures of both the Trust's and Court's resources.

39. As detailed above, at the time of this Motion, the Plan Administrator has already recovered over \$3,000,000 to the Trust and taken significant steps, in furtherance of avoiding and recovering potentially millions of additional dollars for the Trust's beneficiaries.

40. This Motion is the Plan Administrator's first request for any extension of time in this case. And, as set forth above, the Plan Administrator—since its appointment through today—has been diligently performing its statutory duties by investigating, settling, and prosecuting chapter 5 causes of actions.

41. For these reasons, the Plan Administrator has sufficiently shown that this Motion is timely, necessary, and not being filed for purposes of delay. Therefore, good cause exists to extend the Chapter 5 Deadline.

### **CONCLUSION**

**WHEREFORE** the Plan Administrator pray that the Court enter an order (a) granting this Motion, (b) extending the deadline for commencing actions under 11 U.S.C. §§ 544, 545, 546, 547, 548, 549, 550, 551, and 553, including avoidance actions, as well as any claims based on state law, and (c) granting any such further relief as this Court deems necessary and proper.

Respectfully submitted,

**OXFORD RESTRUCTURING  
ADVISORS LLC as the Plan  
Administrator to the GenCanna Wind-  
Down Trust,**

By: /s/ Aaron L. Hammer

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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that he caused a true and correct copy of the foregoing **MOTION TO EXTEND TIME TO FILE AVOIDANCE ACTIONS**, to be filed electronically with the United States Bankruptcy Court for the Eastern District of Kentucky on January 6, 2022. Notice and a copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system. The undersigned attorney further certifies that he caused a true and correct copy of the above-mentioned document to be served by first class U.S. mail, postage prepaid, upon all non-ECF creditors as listed on Master Service List [ECF No. 1415].

By: /s/ Aaron L. Hammer  
Counsel for Oxford Restructuring Advisors  
LLC, solely in its capacity as Plan  
Administrator for the GenCanna Wind-  
Down Trust