

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

In re:)	
)	Chapter 11
LUCKY BUCKS, LLC, <i>et al.</i>)	
)	Case No. 23-10758 (KBO)
Debtors. ¹)	
)	Hearing Date: TBD
)	Objection Deadline: TBD
)	
)	

**MOTION FOR ENTRY OF ORDER PURSUANT TO
BANKRUPTCY CODE SECTION 105(a) AND BANKRUPTCY
RULE 9019 AUTHORIZING AND APPROVING
COMPROMISE AND SETTLEMENT OF CLAIMS**

Holdings, as debtor and debtor in possession, hereby moves (the “Motion”) for entry of an order pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing and approving the compromise and settlement of claims pursuant to that certain settlement agreement (the “Holdings Settlement Agreement”) by and among Holdings and certain recipients of two pre-petition distributions made by Holdings and described below (collectively, the “Recipients”).² In support of this Motion, Holdings relies on the *Declaration of Neal P. Goldman in Support of the Motion to Approve Compromise and Settlement of Claims* (the “Goldman Declaration”). In further support of this Motion, Holdings respectfully states as follows:

¹ The Debtors in these chapter 11 cases (the “Chapter 11 Cases”), along with the last four digits of each Debtor’s federal identification number, include: (i) Lucky Bucks, LLC (“Lucky Bucks”) (4376); (ii) Lucky Bucks HoldCo, LLC (“HoldCo” and, together with Lucky Bucks, the “OpCo Debtors”) (0081), and (iii) Lucky Bucks Holdings LLC (“Holdings”) (3221). The Debtors’ primary mailing address is 5820 Live Oak Parkway, Suite 300, Norcross, Georgia 30093.

² The Recipients consist of (i) TCFIII Luck Acquisition LLC, (ii) TCFIII Luck SPV LP, (iii) Lucky Bucks Ventures, Inc., (iv) Seven Aces Holdings ULC, (v) 2786692 Ontario Inc., (vi) Ryan C Bouskill Professional Corporation, (vii) Stephanie Polito, (viii) Shafik Kassam, and (ix) James Boyden.

PRELIMINARY STATEMENT

1. This Motion seeks the Court’s approval of a good faith, arm’s-length settlement among Holdings and the Recipients that is both necessary and essential to pave the way for a global restructuring of the Debtors’ estates (the “Holdings Settlement”). The Holdings Settlement resolves potential claims and causes of action against the Recipients—including every key member of the Debtors’ management team—relating to prepetition distributions made in November 2021 and January 2022 (the “Claims,” described below), and reflects the culmination of hard-fought negotiations between Holdings’ independent manager, Mr. Neal P. Goldman (the “Independent Manager”), and the Recipients.

2. As detailed below, the Holdings Settlement will provide meaningful and fair consideration for Holdings’ stakeholders. Moreover, the Holdings Settlement will best position the Debtors to achieve a successful turnaround by compromising Claims against key members of their workforce whose focus and commitment is essential to drive the Debtors’ restructuring efforts to conclusion. Put simply, Holdings’ entry into the Holdings Settlement Agreement at the Independent Manager’s recommendation represents a prudent exercise of sound business judgment that will maximize value and inure to the benefit of all stakeholders.

Lucky Bucks’ History of Sustained Growth

3. Before the downturn in the Georgia coin operated amusement machine (“COAM”) industry in mid-2022, Lucky Bucks experienced a period of strong economic growth. Lucky Bucks became one of the largest COAM operators in Georgia, driven primarily by acquisitions of other COAM operators. From 2016 to 2021, Lucky Bucks increased its number of locations from 90 to over 500, and its COAM count from 500 to nearly 3,000.

4. This sustained growth led to a comparable increase in revenue. Lucky Bucks' pro forma EBITDA grew from \$21 million in 2017 to over \$100 million in 2021, while its pro forma gross annual revenue rose above \$245 million. Moreover, the COVID-19 pandemic did not slow Lucky Bucks' growth or adversely impact its performance, given that its COAMs were located in "essential businesses" such as convenience stores and gas stations. In fact, Lucky Bucks' revenue increased substantially during the pandemic, while its "wins per unit per day" (or "WPUD") grew steadily due to effective route optimization and deployment of best-in-class COAMs and games.

5. The broader Georgia COAM market also enjoyed steady growth during this period, with the value of holding an existing Class B master license³ strengthening amidst limitations on the issuance of new licenses. Furthermore, the limited political appetite for gaming expansion in Georgia, together with localized and differentiated COAM clientele, ensured a stable revenue base for the Class B license holders going forward. In sum, the favorable operating environment, together with Lucky Bucks' high EBITDA margins and consistent free cash flow generation, created widespread expectations for future sustained success.

The Dividend Recapitalization

6. Lucky Bucks' solid credit profile and increasing earnings trajectory presented attractive investment opportunities for capital markets participants. These factors—increased, growing profitability coupled with low existing debt—presented Lucky Bucks with an opportunity to implement a dividend recapitalization (a common leveraged recapitalization involving the issuance of new debt to pay dividends to shareholders, thereby reducing equity financing in relation to debt financing). Accordingly, Lucky Bucks approached potential investors.

³ Before a COAM operator business like Lucky Bucks can place its machines in locations for public use, it must have a Class B master license issued by the Georgia Lottery Corporation ("GLC"). Every year, master license holders ("MLHs") must apply to the GLC to renew their license. *See* Ga. Code. Ann. § 50-27-71.

7. In July 2021, Lucky Bucks, as borrower, and HoldCo, as guarantor, entered into senior secured credit facilities in the aggregate amount of approximately \$535 million,⁴ consisting of (i) a \$35 million revolving credit facility due 2026 (the “RC Facility”) and (ii) a \$500 million first-lien term loan due 2027 (the “TL Facility,” and together with the RC Facility, the “Prepetition OpCo First Lien Credit Facility”). On July 30, 2021, approximately \$203.6 million of the \$535 million was distributed by Lucky Bucks to its member (the “OpCo Distribution”).

8. Lucky Bucks’ business continued to generate substantial free cash flow in the months following the consummation of the Prepetition OpCo First Lien Credit Facility. As such, Lucky Bucks returned to the capital markets in November 2021 to raise an additional \$195 million of unsecured payment-in-kind (“PIK”) notes issued by newly-formed Holdings (the “Holdings PIK Notes”) pursuant to a Note Purchase Agreement dated November 29, 2021 (originally and as amended, the “Note Purchase Agreement”). Of those funds, approximately \$185.2 million was distributed to members (including indirectly to management) (the “November Distribution”).

9. Lucky Bucks’ performance continued to flourish, and in January 2022, Holdings raised an additional \$55 million of Holdings PIK Notes pursuant to an existing “upsizing” provision of the Note Purchase Agreement. Of those funds, approximately \$52.5 million was distributed to members (including indirectly to management) (the “January Distribution,” and together with the November Distribution, the “Holdings Distributions”) (the OpCo Distribution and the Holdings Distributions, the “Distributions”).

10. Holdings issued the Holdings PIK Notes for the purpose of making the Holdings Distributions. Accordingly, each purchaser of Holdings PIK Notes (collectively, the

⁴ The principal amount of the senior secured credit facilities was upsized to \$610 million in October 2021.

“Noteholders”) was fully aware at the time of its purchase that the funds would be distributed to Holdings’ members.

The Economic Downturn

11. Shortly after the consummation of the dividend recapitalization, numerous macroeconomic challenges began to significantly impact Lucky Bucks’ business and financial performance. Rising interest rates, an end to federal stimulus programs implemented in response to the COVID-19 pandemic, and historic inflation began to negatively affect the discretionary income of COAM customers and the associated demand for COAM gaming. Lucky Bucks was particularly impacted by the sharp rise in interest rates because of the floating interest rate under its Prepetition OpCo First Lien Credit Facility. Lucky Bucks and other MLHs were also adversely impacted by the GLC’s increasingly strict regulatory enforcement within the COAM industry. By mid-2022, Lucky Bucks was experiencing the effects of the GLC’s more rigorous enforcement of the requirement that location owners may not derive more than 50% of their total gross monthly retail receipts from COAM machines, and the prohibition on cash redemptions on COAM winnings. Although the location owners, rather than Lucky Bucks, were responsible for these violations, the suspension or revocation of location licenses by the GLC resulted in the removal of approximately 360 of Lucky Bucks’ COAMs during 2022 and approximately 65 year-to-date as of May 31, 2023.

12. Ultimately, the confluence of macroeconomic challenges and increasingly strict regulatory enforcement created a “perfect storm” in 2022 that resulted in a sharp decline in Lucky Bucks’ revenue. Moreover, as Lucky Bucks’ competitors were experiencing the same problems, increased competition for location contracts ensued, which led to predatory behavior by smaller MLHs. This behavior included “inducement,” whereby MLHs offer compensation to location

owners to incentivize them to terminate existing contracts with their competitors. Such inducements led to significant “churn” among the location contracts, with certain MLHs offering location owners ever-increasing economic incentives to switch MLHs. This behavior exacerbated already negative operating trends experienced by larger market participants like Lucky Bucks.

13. Although Lucky Bucks undertook legislative reform initiatives aimed at curtailing such predatory conduct, the overall market conditions, increasingly strict regulatory enforcement, and diminished customer spending rendered its current debt structure unsustainable. As a result of business closures/license cancellation, non-renewal of location licenses, and increasingly strict enforcement, Lucky Bucks’ machine count declined precipitously. Macroeconomic factors also decreased consumer spending, resulting in a 11% year over year decrease in Lucky Bucks’ WPUD by the end of 2022. The combination of the challenging market dynamics, increasingly strict regulatory enforcement, and declining customer spending caused Lucky Bucks’ revenue to decline by approximately 3% and adjusted EBITDA to decline by approximately 5% in 2022 as compared to 2021.

Restructuring Initiatives

14. Recognizing the significant weakening of its business model, and with looming interest and amortization payments due in early 2023, as well as a sharp decline in contract renewal rates, the Debtors engaged restructuring advisors. The Debtors’ advisors immediately began to identify steps to address the Debtors’ near-term liquidity issues and, with the Debtors’ input, construct a business plan and financial projections to develop transaction proposals and engage with creditors. As an initial matter, the Debtors launched negotiations with (i) an ad hoc group of holders of the Holdings PIK Notes (the “Ad Hoc PIK Noteholder Group”), and (ii) an ad hoc group of term lenders under the TL Facility (the “TL Ad Hoc Group”).

15. During initial discussions with these creditor constituencies, it became apparent that creditors would threaten to bring “claw-back” litigation claims against members of the Debtors’ management team who had received portions of the Holdings Distributions. The specter of these claims had the potential to distract management from performing essential services that would be necessary to effectuate any restructuring.

Appointment of the Independent Manager & Settlement Negotiations

16. In March 2023, Holdings appointed Mr. Neal P. Goldman as Independent Manager and Holdings and sole member of the Restructuring Committee of the Holdings’ Board of Managers (the “Board”) and requested that he, among other things, conduct a comprehensive evaluation (the “Investigation”) of potential claims arising from the Distributions that the Debtors may possess against certain individuals and entities who were recipients of the Distributions (the “Distribution Claims”). The Investigation was thorough and involved (i) interviewing key witnesses, including members of Lucky Bucks’ senior management and Trive Capital Management LLC (“Trive”) (Holdings’ largest equity sponsor), (ii) reviewing key documents relevant to the Distributions and related transactions, and (iii) retaining Mr. Edward McDonough, a leading solvency expert at Alvarez & Marsal (“A&M”), to perform a solvency analysis.

17. After consulting with his advisors, the Independent Manager determined that the Distribution Claims have a substantially uncertain likelihood of success on their merits.

18. Following this determination, the Independent Manager directed his advisors to explore settlement talks with Holdings’ creditors and the Recipients.⁵ The Independent Manager believed that a settlement—as opposed to litigation—could achieve substantial benefits for all

⁵ The TL Ad Hoc Group made clear from the outset of negotiations that it was willing to work constructively towards a global resolution. Goldman Declaration ¶ 17 n.4.

stakeholders, including, among other things: (i) capturing “settlement value” for stakeholders who would be unlikely to realize value through litigation; (ii) avoiding the costs of litigation, which would direct valuable resources away from the Debtors’ critical restructuring initiatives; and (iii) freeing members of the management team from distractions at a time when their focus and attention is pivotal to any rehabilitation of the business.

19. The Independent Manager directed his advisors to approach representatives of the Ad Hoc PIK Noteholder Group to (i) solicit its views on any potential claims members of the Ad Hoc PIK Noteholder Group believed they had arising from the Holdings Distributions, and (ii) ascertain its demands in exchange for a consensual resolution of any Claims related to the Holdings Distributions.⁶ The Ad Hoc PIK Noteholder Group was unwilling to share any such theories or offer any proposals for settlement of the Claims at that time.

20. The Independent Manager then directed his advisors to proceed with settlement talks with the Recipients to attempt to compromise and settle the Claims on reasonable terms. Following several weeks of good faith and arm’s-length negotiations between the Independent Manager and the Recipients, the parties agreed on the terms of a compromise and settlement in which Holdings will receive an aggregate payment of \$15,000,000 to resolve the Claims.

The Holdings Settlement Motion

21. As set forth below, the Independent Manager and Holdings believe the Holdings Settlement is reasonable, offers substantial benefits to creditors and all stakeholders, and will facilitate a global resolution to the Debtors’ chapter 11 cases. Under Bankruptcy Rule 9019, the Court may approve a settlement if it falls above the lowest point within the “range of

⁶ Any claims of members of the Ad Hoc PIK Noteholder Group are limited to the Holdings Distributions, as the OpCo Distribution did not pass through the Debtor entity (Holdings) obligated under the Note Purchase Agreement.

reasonableness.” The Holdings Settlement far exceeds the lowest point of the range of reasonableness. The Holdings Settlement reflects the culmination of a fair and arm’s-length negotiation conducted by an independent fiduciary that generates a substantial recovery for Holdings’ estate. The Holdings Settlement also avoids the uncertainty, expense, and delay that would result from a lengthy and protracted litigation of the Claims. Furthermore, the Holdings Settlement fairly compromises Claims against valuable members of the Debtors’ management team, who will play a critical role in the OpCo Debtors’ reorganization—enabling them to focus on the turnaround of the OpCo Debtors’ business rather than be forced to respond to litigation.

22. For these reasons and those below, Holdings’ entry into the Holdings Settlement Agreement at the Independent Manager’s recommendation should be approved as a sound exercise of its business judgment and a favorable resolution of the Claims.

JURISDICTION

23. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Holdings consents to the entry of a final order if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the requested relief are Bankruptcy Code § 105(a) and Bankruptcy Rule 9019.

BACKGROUND

I. Lucky Bucks' Business and the Debtors' Bankruptcy Filing.

24. Lucky Bucks is among the largest COAM operators based in, and incorporated under the laws of, the state of Georgia. Lucky Bucks holds Class B master licenses issued by the GLC and maintains a vast footprint throughout Georgia, with a particular concentration in the populous Atlanta and Macon regions. Holdings is the ultimate parent of OpCo and HoldCo. The Debtors' headquarters are in Norcross, Georgia.

25. The Debtors filed voluntary petitions for relief under the Bankruptcy Code in this Court on June 8, 2023 (the "Petition Date"). The Debtors continue in possession of their properties and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee of unsecured creditors has been appointed in these cases.

26. Much of the factual background described herein and relating to the Debtors' commencement of these cases is set forth in detail in the *Declaration of James Boyden in Support of Debtors' Chapter 11 Petitions and First Day Relief* filed on the Petition Date (ECF No. ___) and incorporated herein by reference.

II. Distributions to the Recipients.

27. As noted above, in conjunction with a dividend recapitalization at a time Lucky Bucks' business was experiencing sustained economic growth, three Distributions were made to the Recipients in 2021 and 2022 in the aggregate amount of approximately \$441 million. The dates and amounts of each Distribution are summarized as follows and discussed in more detail below:

Date	Amount	Financed Through
July 30, 2021	\$203.6 million	Prepetition OpCo First Lien Credit Facility
November 30, 2021	\$185.2 million	Holdings PIK Notes
January 25, 2022	\$52.5 million	Holdings PIK Notes

28. In July 2021, in connection with a refinancing of approximately \$288 million of existing debt, Lucky Bucks originated the Prepetition OpCo First Lien Credit Facility in the aggregate amount of \$535 million. Of those funds, Lucky Bucks made the OpCo Distribution of approximately \$203.6 million to its member on July 30, 2021.

29. Thereafter, in November 2021 and January 2022, Holdings, a limited liability company organized under the laws of Delaware in November 2021, raised a combined \$250 million in connection with the issuance of the Holdings PIK Notes pursuant to the Note Purchase Agreement, the proceeds of which (after fees, costs, and expenses) were then distributed (in two separate distributions) from Holdings to its members—*i.e.*, the Holdings Distributions:

- (i) Holdings first raised \$195 million in November 2021 in connection with the issuance of Holdings PIK Notes pursuant to the Note Purchase Agreement. Of those funds, Holdings made the November Distribution of approximately \$185.2 million to its members on November 30, 2021.
- (ii) In January 2022, Holdings raised an additional \$55 million in connection with issuance of additional Holdings PIK Notes pursuant to the Note Purchase Agreement. Of those funds, Holdings made the January Distribution of approximately \$52.5 million to its members on January 25, 2022.

30. Each of the Noteholders was aware at the time of its purchase of the Holdings PIK Notes (*i.e.*, in November 2021 and January 2022) that Holdings intended to distribute the proceeds to its members; indeed, the entire purpose of the issuance of the Holdings PIK Notes was to fund

the Holdings Distributions. In that regard, Section 6.11 of the Note Purchase Agreement, the “Use of Proceeds” provision, requires Holdings to “[u]se the proceeds of the Notes on the Closing Date to fund a Restricted Payment to the holders of the Issuer’s [Holdings’] Capital Stock, and to pay costs, fees and expenses incurred in connection with the Transactions.”

III. The Economic Downturn and the Debtors’ Restructuring Initiatives.

31. As noted above, shortly after the consummation of the dividend recapitalization, numerous macroeconomic challenges began to significantly impact Lucky Bucks’ business and financial performance. Rising interest rates, an end to federal stimulus programs implemented in response to the COVID-19 pandemic, and historic inflation began to negatively affect the discretionary income of COAM customers and the associated demand for COAM gaming. Lucky Bucks and other MLHs were also adversely impacted by increasingly strict regulatory enforcement within the COAM industry.

32. Moreover, as Lucky Bucks’ competitors were experiencing the same problems, increased competition for location contracts ensued, which led to predatory behavior by smaller MLHs. This behavior included “inducement,” whereby MLHs offer compensation to location owners to incentivize them to terminate existing contracts with their competitors. Such inducements led to significant “churn” among the location contracts, with certain MLHs offering location owners ever-increasing economic incentives to switch MLHs. This behavior further exacerbated negative operating trends experienced by larger market participants such as Lucky Bucks.

33. The combination of challenging market dynamics, increasingly strict regulatory enforcement, declining customer spending, and inducement from rival MLHs resulted in a substantial decline in Lucky Bucks’ revenue, which significantly undermined its ability to service its debt.

34. Recognizing the significant weakening of their business model, and with looming interest and amortization payments due in early 2023, the Debtors engaged restructuring advisors in the fall of 2022. The Debtors' advisors immediately began to identify steps to address the Debtors' near-term liquidity issues and engaged in discussions with creditors.

35. During initial discussions with these creditor constituencies, it became apparent that the Debtors would have to address threats from creditors to bring "claw-back" litigation claims against members of the Debtors' management team who received portions of the Holdings Distributions. The specter of these claims had the potential to distract management from performing essential services that would be necessary to effectuate any restructuring.

IV. The Independent Manager Is Appointed and Evaluates the Strength of Distribution Claims.

36. On March 24, 2023, Mr. Neal P. Goldman was appointed as the Independent Manager of Holdings and sole member of the Restructuring Committee of the Board.⁷ Goldman Declaration ¶ 5. In April 2023, in his capacity as Independent Manager, Mr. Goldman began to evaluate the strength of the Distribution Claims. *Id.* ¶ 12. The Independent Manager evaluated, among other things, claims for constructive fraudulent transfer and unlawful distribution. *Id.* ¶ 10.

37. As an initial matter, the Independent Manager directed Mr. Edward McDonough of A&M to undertake a solvency analysis under the Independent Manager's oversight. *Id.* ¶ 12. The Independent Manager also instructed Milbank LLP ("Milbank")⁸ to assist in his evaluation of

⁷ Mr. Goldman has held management and leadership roles at many distressed companies, including, among other roles, serving as an independent member of the board of directors. *See* Goldman Decl. ¶ 4. He currently serves as CEO and Managing Member of SAGE Capital Investments, LLC, a consulting firm specializing in independent board of director services, strategic planning, and other services. *Id.* ¶ 3.

⁸ The Debtors first retained Milbank in October 2022, approximately 9 months after the last of the three Distributions.

whether the Distribution Claims had enough likelihood of success and prospect of recovery (whether through judgment or settlement) to warrant the risk and expense of pursuit thereof. *Id.*

38. The Investigation was comprehensive. The Independent Manager directed his advisors and the Debtors to assemble information regarding, among other things, the facts and circumstances surrounding the financing transactions that led to the Distributions (*i.e.*, the Prepetition OpCo First Lien Credit Facility and the Holdings PIK Notes), Lucky Bucks' historical financial condition and projections, and the processes followed in making the Distributions. *Id.*

¶ 13. In addition to reviewing documents related to these topics, the Independent Manager held numerous discussions with his advisors to identify key areas of focus for the Investigation. *Id.*

¶¶ 13, 15. At the Independent Manager's direction, his advisors conducted interviews of key witnesses, including members of Lucky Bucks' senior management team and Trive (Holdings' largest equity sponsor). *Id.* ¶ 14.

39. After consulting with his advisors, the Independent Manager formed the view that any Distribution Claims have a substantially uncertain likelihood of success on their merits. *Id.*

¶ 16.

V. The Independent Manager Directs His Advisors to Negotiate with Creditors and Recipients.

40. After forming a view on the strength of the Distribution Claims, the Independent Manager directed his advisors to explore settlement talks with Holdings' creditors and the Recipients.⁹ Goldman Declaration ¶ 17. The Independent Manager believed that a settlement—as opposed to litigation—could achieve substantial benefits for all stakeholders. *Id.*

⁹ As noted above, the TL Ad Hoc Group made clear from the outset of negotiations that it was willing to work constructively towards a global resolution. Goldman Declaration ¶ 17 n.4.

41. Accordingly, the Independent Manager's advisors approached counsel for the Ad Hoc PIK Noteholder Group to (i) solicit its views on any potential Claims its members believed they had arising from the Holdings Distributions, and (ii) ascertain its demands in exchange for a consensual resolution of any Claims. *Id.* ¶ 18. The Ad Hoc PIK Noteholder Group was unwilling to share any such theories, offer any proposals for settlement of the Claims at that time, or provide any substantive detail about any direct claims arising from the Holdings Distributions that the group believed it may have. *Id.*

42. The Independent Manager, through his advisors, then began to engage in settlement discussions with the Recipients to determine whether Holdings could favorably settle the Claims. *Id.* ¶ 19. Over the course of several weeks, the Independent Manager and Recipients engaged in negotiations through their respective advisors. *Id.* During these negotiations, the Independent Manager remained constantly engaged. *Id.* The advisors presented real-time updates to the Independent Manager after material discussions with the Recipients. *Id.* During discussion at these meetings, the Independent Manager actively directed the negotiation strategy. *Id.*

VI. The Parties Reach a Compromise and the Independent Manager Recommends, and the Board Approves, the Holdings Settlement.

43. The Independent Manager and Recipients agreed on the terms of a settlement, which are incorporated into the Holdings Settlement Agreement that is attached to the proposed order. *See Exhibit A* hereto; Goldman Declaration ¶ 20. In sum, the Holdings Settlement Agreement provides for an aggregate payment in the amount of \$15,000,000 to Holdings' estate, in exchange for a release of claims, including Claims related to the Holdings Distributions. *Id.* ¶ 20.

44. The Board held a meeting on June 7, 2023, to consider the Holdings Settlement Agreement. *Id.* ¶ 21.

45. After careful consideration, the Board unanimously approved entry into the Holdings Settlement Agreement. *Id.* ¶ 22.

RELIEF REQUESTED

46. Holdings seeks entry of an order pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 (the “Proposed Order”) substantially in the form attached hereto as **Exhibit A** authorizing and approving Holdings’ entry into, and performance under, the Holdings Settlement Agreement. A copy of the Holdings Settlement Agreement is attached to the Proposed Order.

BASIS FOR RELIEF

I. The Holdings Settlement Agreement is a Reasonable and Favorable Resolution of the Claims.

47. The Third Circuit has “explicitly recognized with approval” the “strong presumption in favor of voluntary settlement agreements.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (citing *Pennwalt Corp. v. Plough, Inc.*, 676 F.2d 77, 79-80 (3d Cir. 1982)). “Compromises and settlements are favored in bankruptcy” to minimize litigation and expedite the administration of a bankruptcy estate. 10 COLLIER ON BANKRUPTCY ¶ 9019.02 (2022).

48. The approval of a settlement under Bankruptcy Rule 9019 is at the discretion of the Court. *Key3Media Grp., Inc. v. Pulver.com Inc. (In re Key3Media Grp., Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005). In deciding whether to approve a settlement, the Court must determine “whether the compromise is fair, reasonable, and in the best interest of the estate.” *In re Northwestern Corp.*, 2008 WL 2704341, at *6 (Bankr. D. Del. July 10, 2008) (citation omitted). A creditor’s objection “cannot be permitted to predominate over the best interests of the estate as a whole.” *Key3Media*, 336 B.R. at 97.

49. In the Third Circuit, courts apply a four-factor balancing test to decide whether to approve a settlement: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Fry’s Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (citation omitted). No factor is determinative, and a court should “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (citation omitted).

50. To assess the settlement, “[i]t is sufficient to present the Court with the legal positions asserted by each side and the facts relevant to those issues.” *In re Wash. Mut., Inc.*, 442 B.R. 314, 330 (Bankr. D. Del. 2011). Indeed, the Court need not conduct a “mini-trial” or “conduct a full evidentiary hearing as a prerequisite to approving a compromise.” *See, e.g., In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010) (citation omitted); 10 COLLIER ON BANKRUPTCY ¶ 9019.02 (2022) (explaining that “there would be no point in compromising” if courts were required to hold a “mini-trial” before approving a settlement; if that were the case, “the parties might as well go ahead and try the case”). Further, “[t]he court does not have to be convinced that the settlement is the best possible compromise, but only that the settlement falls within a reasonable range of litigation possibilities.” *In re Wash. Mut., Inc.*, 442 B.R. at 328; *see also In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (settlement must be above “the lowest point in the range of reasonableness”) (citation omitted).

51. The Holdings Settlement fairly balances a plaintiff’s chance of potential recovery on the Claims, avoids disruptions to the restructuring process caused by creditor attempts to obtain

standing to pursue the claims, yields a substantial cash payment to the estate, enables key members of management to focus on the rehabilitation of Lucky Bucks' business rather than be required to respond to claims with a low chance of success, and results from an independent, arm's-length process. It falls well within the range of reasonableness.

A. The Independent Manager Determined that Success on the Claims Is Substantially Uncertain.

52. To prove claims for constructive fraudulent transfer or unlawful distribution, a plaintiff must show, among other things, that the transferor was insolvent, or in a similarly precarious financial condition, as of the transfer/distribution.¹⁰ Here, after consulting with his advisors, the Independent Manager determined that the Claims have a substantially uncertain likelihood of success. *See* Goldman Declaration ¶ 16.

B. The Holdings Settlement Fairly Balances the Parties' Litigation Positions and Risks.

53. The Holdings Settlement appropriately balances the litigation positions of Holdings and the Recipients and reflects the risk and cost that proceeding with a lawsuit would impose. The Holdings Settlement provides a definite and immediate recovery, whereas any recovery from litigation could potentially be zero. *See In re Scripsamerica, Inc.*, 634 B.R. 863, 874 (Bankr. D. Del. 2021) ("Given the likely difficulties proving the merits of any claim against [settling party] . . . the Estate is better off with the certainty of receiving some payment now.").

¹⁰ To establish a constructive fraudulent transfer, a plaintiff must show that (1) the transfer was made without reasonably equivalent value, and (2) at the time of the transfer, the debtor either (a) was insolvent, or became insolvent as a result of the transfer, (b) was engaged or about to engage in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction, or (c) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due. *See* 11 U.S.C.S. § 548(a)(1)(B); DEL. CODE ANN. tit. 6, §§ 1304(a)(2), 1305(a). Similarly, an unlawful distribution claim under Delaware law (the state in which Holdings is organized) requires a plaintiff to show that, after making the distribution, the sum of the transferor-LLC's total assets would be less than the sum of its total liabilities. 6 DEL. CODE § 18-607(a) ("A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company . . . exceed the fair value of the assets of the limited liability company[.]").

54. Indeed, if litigated, the Claims would be hotly contested and would ultimately hinge on a fact-intensive expert analysis about Holdings' solvency. Such litigation would raise complicated valuation and factual issues likely requiring expert testimony from both solvency and industry experts. Litigating these factually complex issues—potentially all the way to trial—would require significant expenditure of professionals' fees for both attorneys and financial advisors/experts. In short, litigation would require time and resources that Holdings cannot afford to expend and would significantly distract from and delay the Debtors' overall reorganization process—and any potential recovery in such litigation would be speculative.

C. The Holdings Settlement Offers Substantial Benefits to the Debtors' Estates and their Creditors.

55. The Holdings Settlement offers substantial benefits to the Debtors' estates (for the benefit of all stakeholders, including creditors) in the form of a cash payment of \$15,000,000 to settle the Claims at Holdings. Additional benefits for stakeholders, include, among other things: (i) capturing "settlement value" for stakeholders who would not otherwise be entitled to such value if litigation were to proceed; (ii) avoiding the costs of litigation, which would direct valuable resources away from the Debtors' critical restructuring initiatives; and (iii) negotiating a fair, unbiased result for the benefit of all parties. *See In re Capmark Fin. Grp. Inc.*, 438 B.R. at 519 (debtors established that settlement was in paramount interest of creditors "by demonstrating the numerous tangible and intangible benefits provided by the [s]ettlement"—among other things, unsecured creditors objecting to settlement would still benefit from debtors' cost savings from avoiding litigation and ability to emerge from bankruptcy sooner in settlement scenario); Goldman Declaration ¶¶ 17, 21.

56. Another crucial benefit of the Holdings Settlement Agreement is that it eliminates distractions for Lucky Bucks' management team that would otherwise be associated with litigating

the Claims. As noted above, it became apparent from early discussions with the Debtors' creditor constituencies that the Debtors would have to address threats from creditors to bring "claw-back" litigation claims against members of their management team related to the Holdings Distributions. Because key members of the management team received portions of the Holdings Distributions, it was clear that these litigation threats had the potential to distract management from performing essential services that would be necessary to effectuate any restructuring. By compromising the Claims pursuant to the Holdings Settlement Agreement, the members of the management team will be able to focus their attention on implementing the restructuring transactions contemplated by the Debtors' chapter 11 plan and returning their business to profitability, for the benefit of all stakeholders.

57. As a reasonable compromise of the Claims after a thorough and fair process, this result offers substantial benefits to the Debtors' estates and to their creditors.

D. The Holdings Settlement Is the Result of an Independent Process and Arm's-Length Negotiation.

58. The reasonableness of the Holdings Settlement is reaffirmed by the fact that it stems from a robust and independent process overseen by the Independent Manager. *See In re Tribune Co.*, 464 B.R. 126, 155 (Bankr. D. Del. 2011) ("[I]n assessing the fairness of [a] proposed settlement, a court may consider the extent that the settlement is truly the product of arm's-length bargaining, and not fraud or collusion."). Holdings recognizes that the Recipients are insiders of Holdings, and as such, Holdings and its advisors acted with utmost care to ensure that the settlement process led by the Independent Manager was conducted independently in good faith and at arm's-length. Goldman Declaration ¶¶ 11, 19; *see, e.g., Geltzer v. Original Soupman Inc. (In re Soup Kitchen Int'l Inc.)*, 506 B.R. 29, 45 (Bankr. E.D.N.Y. 2014) (declining to view

settlement as an “insider settlement” because a disinterested trustee, not debtor’s management or principals, negotiated the settlement).

NOTICE

59. Holdings has provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Delaware Attorney General; (d) the GLC; (e) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (f) counsel for the TL Ad Hoc Group; (g) counsel to the ad hoc group of lenders under the RC Facility; (h) counsel to the Agent under the Prepetition OpCo First Lien Credit Agreement; (i) counsel to the OpCo DIP Agent; (j) counsel to the counsel Holdings DIP Agent, if any; (k) counsel to the Ad Hoc Holdings PIK Noteholder Group; (l) the Internal Revenue Service; (m) the Georgia Department of Revenue; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. Holdings submits that in light of the relief requested, no other or further notice need be given.

CONCLUSION

60. The Holdings Settlement Agreement embodies a fair and reasonable compromise of the Claims that offers substantial benefits to the Debtors’ estates. Holdings therefore respectfully request that the Court enter the Proposed Order and grant such further relief as it deems just and proper.

Dated: June 9, 2023
Wilmington, Delaware

/s/ Russell C. Silberglied

Russell C. Silberglied (No. 3462)
David T. Queroli (No. 6318)
Matthew P. Milana (No. 6681)
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: 1 (302) 651-7700
Fax: 1 (302) 651-7701
Email: silberglied@rlf.com
queroli@rlf.com

- and -

Dennis F. Dunne (*pro hac vice* pending)
Tyson Lomazow (*pro hac vice* pending)
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: 1 (212) 530-5000
Fax: 1 (212) 530-5219
Email: DDunne@Milbank.com
TLomazow@Milbank.com

*Proposed Co-Counsel to the
Debtors and Debtors in Possession*

EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
LUCKY BUCKS, LLC, <i>et al.</i>)	Case No. 23-10758 (KBO)
Debtors. ¹)	Re: Docket No. _____
)	
)	

ORDER APPROVING HOLDINGS SETTLEMENT AGREEMENT

Upon the *Motion for Entry of Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019 Authorizing and Approving Compromise And Settlement of Claims* (the “Motion”), which seeks approval of the Holdings Settlement Agreement² attached hereto as **Exhibit 1**; and this Court having reviewed the Motion and its contents, the Goldman Declaration, and the Holdings Settlement Agreement; and the Court finding that it has jurisdiction over this matter; and due notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court finding that the Holdings Settlement Agreement is fair, reasonable, and in the best interest of the estates as a whole, their creditors, and all parties in interest; and after due deliberation and due and sufficient cause appearing therefor,

THE COURT ORDERS THAT:

1. The Motion is granted.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal identification number, include: (i) Lucky Bucks, LLC (4376); (ii) Lucky Bucks HoldCo, LLC (0081), and (iii) Lucky Bucks Holdings LLC (3221). The Debtors’ primary mailing address is 5820 Live Oak Parkway, Suite 300, Norcross, Georgia 30093.

² Undefined capitalized terms have the same meaning as in the Motion.

2. The Holdings Settlement Agreement is approved pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019.

3. The Debtors are authorized and directed to execute, deliver, implement, and fully perform any and all obligations, instruments, documents, and papers and to take any and all action reasonably necessary or appropriate to consummate and fully execute the Settlement Agreement.

4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Settlement Agreement**”) is made by and among: (i) Lucky Bucks Holdings LLC, a Delaware limited liability company (“**Holdings**”), as debtor and debtor in possession; and (ii) each of the following, to the extent that such Person (as defined below) has executed and delivered signature pages in accordance with Section 6: TCFIII Luck Acquisition LLC, a Delaware limited liability company (“**Luck Acquisition**”), TCFIII Luck SPV LP, a Delaware limited partnership (“**Luck SPV**” and together with Luck Acquisition, collectively, the “**TCFIII Entities**”), Lucky Bucks Ventures, Inc., a Georgia corporation (“**LBVI**”), Seven Aces Holdings ULC, a British Columbia unlimited liability company (“**Seven Aces**”), 2786692 ONTARIO INC., an Ontario corporation (“**Ontario**”), Ryan C Bouskill Professional Corporation, an Ontario corporation (“**RCB**”), Stephanie Polito (“**Polito**”), Shafik Kassam (“**Kassam**”), and James Boyden (“**Boyden**”) (all of the foregoing Persons in this clause (ii) are collectively referred to herein as the “**Potential Defendants**” and each is individually referred to herein as a “**Potential Defendant**” and, upon executing and delivering signature pages in accordance with Section 6, each such Potential Defendant will become a “**Potential Defendant Party**” and all such Potential Defendants who so execute and deliver their respective signature pages in accordance with Section 6 are collectively referred to herein as the “**Potential Defendant Parties**”). Holdings and the Potential Defendant Parties are referred to hereinafter collectively as the “**Parties**,” and each a “**Party**.”

Recitals

WHEREAS, on the date hereof (the “**Petition Date**”), Holdings, along with Lucky Bucks, LLC, a Georgia limited liability company (“**Lucky Bucks**”), Lucky Bucks HoldCo, LLC, a Delaware limited liability company (“**HoldCo**” and together with Holdings and Lucky Bucks, collectively, the “**Debtors**”¹), will commence with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) voluntary cases (the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”);

WHEREAS, the Debtors anticipate that they will be authorized to continue to operate their businesses as debtors in possession, and that no trustee or examiner will be appointed in the Bankruptcy Cases;

WHEREAS, in November 2021 and January 2022, Holdings made certain distributions totaling approximately \$237.7 million (the “**Prepetition Distributions**”) that were directly and/or indirectly received by the Potential Defendants, among others;

WHEREAS, the board of managers of Holdings appointed an independent manager (the “**Independent Manager**”) to, among other things, investigate any Claims (as defined below) that Holdings may have against any of the Potential Defendants or any of the other Released Parties (as defined below) related to the Prepetition Distributions (including, without limitation, fraudulent transfer claims);

¹ The last four digits of each Debtor’s federal identification number are: (i) Lucky Bucks, LLC (4376); (ii) Lucky Bucks HoldCo, LLC (0081), and (iii) Lucky Bucks Holdings LLC (3221). The Debtors’ primary mailing address is 5820 Live Oak Parkway, Suite 300, Norcross, Georgia 30093.

WHEREAS, the Independent Manager is authorized to make recommendations to the board of managers of Holdings regarding the prosecution, settlement and abandonment of any Claims belonging to Holdings against any of the Potential Defendants or any of the other Released Parties (whether relating to any of the Prepetition Distributions or otherwise);

WHEREAS, the Independent Manager conducted an independent investigation regarding all Claims related to the Prepetition Distributions and was supported by competent legal and financial advisors (the “**Investigation**”);

WHEREAS, as of the Petition Date, (i) Holdings is the sole owner of and has the sole authority to dismiss and release any and all Released Claims (as defined below); (ii) none of the Released Claims have been sold, assigned, in any way encumbered, or otherwise transferred, in whole or in part, to any other Person, other than as currently contemplated with respect to that anticipated two-tranche Debtor-in-Possession Credit Facility among Holdings (as borrower), TCFIII Luck Holdings LLC, a Delaware limited liability company (“**TCFIII Luck**”) as lender and agent (the “**TCFIII DIP Facility**”) and Lucky Bucks as lender (the “**Lucky Bucks DIP Facility**”) and together with the TCFIII DIP Facility, the “**Holdings DIP Facility**”); (iii) no Person (other than Holdings) holds or has the right to pursue any Released Claims; and (iv) Holdings has obtained all necessary approvals to enter into this Settlement Agreement (subject to Bankruptcy Court approval);

WHEREAS, the Parties engaged in good-faith, arm’s-length settlement negotiations;

WHEREAS, as a result of such negotiations, the Parties have reached this Settlement Agreement, under which they desire to settle and compromise all Released Claims that were or could have been asserted by Holdings against any of the Potential Defendant Parties or any of the other Released Parties, on the terms and subject to the conditions set forth herein, to, among other things, avoid the cost and uncertainty of litigation;

WHEREAS, on the date hereof, the Debtors will file their chapter 11 plan (as the same may be amended from time to time, the “**Plan**”); and

NOW THEREFORE, for and in consideration of the covenants, representations, obligations, and releases set forth in this Settlement Agreement and other good and valuable consideration provided herein, the sufficiency of which is hereby acknowledged, each of the Parties, intending to be bound, agrees as follows:

1. **Recitals.** The Recitals above are contractual and are incorporated by reference as though fully set forth herein. For purposes of this Settlement Agreement, (a) “**Affiliate**” means, with respect to a particular Person, any other Person controlling, controlled by or under common control with such particular Person; (b) “**control**” means, with respect to any Person, the possession, directly or indirectly, of the power to direct the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise; and (c) “**Person**” means any individual, limited liability company, unlimited liability company, partnership, joint venture, corporation, professional corporation, trust, unincorporated organization, other entity or any government or any department or agency thereof.

2. **Court Approval.** The effective date of this Settlement Agreement shall be the date of entry of the 9019 Order (as defined below) by the Bankruptcy Court (“**Settlement Effective Date**”). Holdings shall seek, and use commercially reasonable efforts to obtain and defend, approval of this Settlement Agreement pursuant to a motion seeking entry of an order pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure approving of this Settlement Agreement (the “**Bankruptcy Rules**” and such order is referred to herein as the “**9019 Order**”) and shall request that such motion be heard prior to, or in conjunction with, the hearing to consider confirmation of the Plan. If such motion is denied by the Bankruptcy Court or the 9019 Order is reversed or vacated pursuant to a final, non-appealable order, then this Settlement Agreement shall automatically terminate and be null and void *ab initio*. During the period commencing on the Settlement Effective Date and ending on any termination of this Settlement Agreement pursuant to the immediately preceding sentence, Holdings shall not (and Holdings will cause all other Releasing Parties (as defined below), and undertake its best efforts to cause all other Persons who may seek to claim as, by, through or in relation to any of the Releasing Parties or any of the matters to be released by or on behalf of the Releasing Parties in this Settlement Agreement, not to) sue, or bring, assert or otherwise pursue against any Potential Defendant Party or any other Released Parties any Claim purported to be released pursuant to this Settlement Agreement. It is expressly understood and agreed that the immediately preceding sentence shall (i) automatically be superseded by Section 7 with respect to a particular Potential Defendant Party and all of such Potential Defendant Party’s other Released Parties at the Payment Time relating to such Potential Defendant Party and (ii) otherwise be deemed inapplicable to a particular Potential Defendant Party (and all of such Potential Defendant Party’s other Released Parties) if that Potential Defendant Party has failed to timely make a payment in accordance with Section 3.

3. **Payment.** Each Potential Defendant Party hereby agrees to pay, or have paid on such Potential Defendant Party’s behalf, such Potential Defendant Party’s portion of the Settlement Amount (as defined below) that is set forth across from such Potential Defendant Party’s name on **Exhibit A** attached hereto (but subject in the case of each of the Potential Defendant Parties to the last two sentences of Section 4, as applicable). For each Potential Defendant Party (other than Luck Acquisition and Luck SPV), fifty percent (50%) of each payment shall be due on the later of (i) the effective date of the Lucky Bucks, LLC chapter 11 plan (the “**Opco Plan Effective Date**”) and (ii) 10 days after the 9019 Order has become a Final Order (the date that such order becomes final, the “**Final Approval Date**”). The remaining balance of each payment from each such Potential Defendant Party shall be due no later than the later of (i) 90 days after the Opco Plan Effective Date and (ii) 10 days after the Final Approval Date. Such payments from Luck Acquisition and Luck SPV shall be due 10 days after the Final Approval Date. All payments shall be made by wire transfer to an account to be provided by Holdings on the Settlement Effective Date (but subject in the case of each of the Potential Defendant Parties to the last two sentences of Section 4, as applicable). “**Final Order**” means an order or judgment of the Bankruptcy Court, as entered on the docket in the Bankruptcy Case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or the new trial, reargument, or rehearing shall have been

denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; provided, however, that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, may be filed relating to such order shall not prevent such order from being a Final Order. “**Settlement Amount**” means \$15,000,000.

4. **Debtor-in-Possession Funding Obligations.** In accordance with the anticipated Holdings DIP Facility and the proposed orders authorizing and approving Holdings’ entry into the Holdings DIP Facility, which remains subject to Bankruptcy Court approval (the “**Holdings DIP Orders**”), TCFIII Luck and Lucky Bucks will have fully perfected *pari passu* senior secured liens on all of the assets of Holdings (other than with respect to any avoidance actions), provided that such security shall include liens on the proceeds and offspring of any Claims that Holdings may have against any of the Potential Defendants, any of the other Released Parties or any other Person (including, without limitation, the Settlement Amount). The aggregate amount owed to TCFIII Luck under the TCFIII DIP Facility immediately prior to the time that the TCFIII Entities make their payments under Section 3 shall automatically reduce on a dollar-for-dollar basis the portions of the Settlement Amount to be paid by the TCFIII Entities that are set forth on **Exhibit A** attached hereto as follows: 64.3685% of such dollar-for-dollar reduction shall be applied to the portion of the Settlement Amount to be paid by Luck Acquisition and 35.6315% of such dollar-for-dollar reduction shall be applied to the portion of the Settlement Amount to be paid by Luck SPV (or such other percentages as determined by TCFIII Luck and the TCFIII Entities), and such dollar-for-dollar reduction shall be in full and final satisfaction of TCFIII Luck’s claims under the TCFIII DIP Facility. The aggregate amount owed to Lucky Bucks under the Lucky Bucks DIP Facility shall (i) automatically reduce on a dollar-for-dollar basis the portions of the Settlement Amount to be paid by each Potential Defendant Party (other than Luck Acquisition and Luck SPV) by or on behalf of which such amounts were funded and (ii) such dollar-for-dollar reduction shall be in full and final satisfaction of Lucky Bucks’ claims under the Lucky Bucks DIP Facility.

5. **In the Event of a Breach by a Potential Defendant Party.** In the event of a breach of this Settlement Agreement by any Potential Defendant Party, such Potential Defendant Party’s liability for such breach shall be several and not joint. For the avoidance of doubt, a Potential Defendant Party is not liable for another Potential Defendant Party’s failure to make payment as required by Section 3 (but taking account of the last two sentences of Section 4 in the case of each of the Potential Defendant Parties, as applicable). Nothing in this Section 5 shall be construed to limit remedies available to Holdings in the event of a breach by a Potential Defendant Party.

6. **Joinder; No Admission of Liability.** A Potential Defendant may join and become a Potential Defendant Party that is bound to this Settlement Agreement by (i) executing and delivering its signature page to this Settlement Agreement to Holdings and (ii) executing and delivering to the Debtors a signature page to the Restructuring Support Agreement among the Debtors and the parties thereto, dated on or before the Petition Date, in each case of the immediately preceding clauses (i) and (ii), on or before the date that is six (6) business days after the Petition Date. Each of the Parties acknowledges and agrees that this Settlement Agreement is a compromise of the Released Claims, and neither the entering into of this Settlement Agreement, nor the performance of any of the obligations under this Settlement Agreement, shall be construed

as an admission of any wrongdoing or liability by any Party or that any Party has any liability to any other Party with respect to any of the Released Claims.

7. **Release.**

- (a) **Holdings' Release of Each Potential Defendant Party upon Payment.** Upon a particular Potential Defendant Party's timely payment to Holdings in accordance with Section 3 of the entire amount of such Potential Defendant Party's portion of the Settlement Amount that is set forth across from such Potential Defendant Party's name on **Exhibit A** attached hereto (but taking account of the last two sentences of Section 4 in the case of each of the Potential Defendant Parties, as applicable) (the time of such timely payment in full by such Potential Defendant Party is referred to as the "**Payment Time**"), Holdings, on behalf of itself, its estate and each and all of its and its estate's respective past, present and future successors and assigns and each Person asserting a Claim released hereunder either through or on behalf of any of the foregoing Persons referred to above in this Section 7(a) (including Holdings' estate) (Holdings, its estate and all of the foregoing other Persons referred to above in this Section 7(a) are collectively referred to herein as the "**Releasing Parties**" and each is referred to herein individually as a "**Releasing Party**"), does hereby fully, unconditionally and irrevocably release, relieve, waive, relinquish, remise, acquit and forever discharge (i) such Potential Defendant Party, (ii) each past, present and future Affiliate of such Potential Defendant Party (other than the Debtors), (iii) each past, present and future direct or indirect equity holder of any Person referenced in either of the immediately preceding clauses (i) or (ii) and each past, present and future Affiliate (other than the Debtors) of each such equity holder, (iv) each past, present and future predecessor, successor, heir, executor, estate, administrator, nominee, personal representative, agent and assign of any Person referenced in any of the immediately preceding clauses (i) through (iii) and (v) each past, present and future attorney, agent, advisor, director, advisory board member, manager, general partner, committee member, principal, officer, direct or indirect equity holder, representative, control Person and employee of any Person referenced in any of the immediately preceding clauses (i) through (iv) (and each other Person with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each of their respective past, present and future predecessors, successors, heirs, executors, estates, administrators, nominees, personal representatives, agents and assigns (all of the foregoing Persons referred to in the immediately preceding clauses (i) through (v) are collectively referred to herein as the "**Released Parties**" and each is referred to herein individually as a "**Released Party**") from, against and in respect of any and all past, present, and future claims, cross-claims, counterclaims, third-party claims, demands, liabilities, obligations, debts, liens, damages, losses, costs (including, without limitation, attorneys' fees and costs of defense and investigation), expenses, controversies, actions, rights, suits, assessments,

penalties, fines, charges, indemnities, guaranties, promises, commitments, appeals, defenses, omissions, contingencies, sums of money, judgments, executions and causes of action of any kind or nature whatsoever (whether known or unknown, foreseen or unforeseen, suspected or unsuspected, matured or unmatured, direct or indirect, fixed or contingent in contract, tort, by statute, at law, in equity or otherwise) (collectively, the “**Claims**”) that any Releasing Party may now own, hold, have or claim to have against such Potential Defendant Party or any of such Potential Defendant Party’s other Released Parties since the beginning of time through such Potential Defendant Party’s Payment Time to the extent arising out of, in connection with or relating to Holdings or any other Debtor (including, without limitation, to the extent arising out of or relating to any of the Prepetition Distributions, the management of any of the Debtors, the Bankruptcy Case, the business or contractual arrangements solely between Holdings, on the one hand, and a Released Party on the other hand, and/or the restructuring of the Debtors) (all of the Claims referred to above in this Section 7(a) are collectively referred to herein as the “**Released Claims**”). From and after such particular Potential Defendant Party’s Payment Time, Holdings, on its own behalf and on behalf of all of the other Releasing Parties, covenants that no Releasing Party will (and that Holdings will cause all other Releasing Parties and all other Persons who may seek to claim as, by, through or in relation to any of the Releasing Parties or any of the matters released by or on behalf of the Releasing Parties in this Settlement Agreement not to) sue, or bring, assert or otherwise pursue any Claim against, such Potential Defendant Party or any of such Potential Defendant Party’s other Released Parties on the basis of or in any way relating to any Released Claim (regardless of whether the release of any such Released Claim is enforceable under, or prohibited by, applicable law or otherwise). Notwithstanding the foregoing, it is expressly understood and agreed that nothing contained in this Section 7(a) shall release or relieve any obligations of any Potential Defendant Party (as applicable), or any rights of Holdings, under this Settlement Agreement. Without implication that the contrary would otherwise be true, it is expressly understood and agreed that neither Holdings nor any other Debtor shall constitute a Released Party of any Potential Defendant Party.

- (b) Without implication that the contrary would otherwise be true, it is expressly understood and agreed that each of the following is an Affiliate of each of the TCFIII Entities: (i) Southern Star Gaming, LLC, a Delaware limited liability company, (ii) Quantum Gaming Corp., a Delaware corporation, (iii) TCFIII Luck LP, a Delaware limited partnership, (iv) TCFIII Luck GP LLC, a Delaware limited liability company, (v) Trive Capital Luck Blocker LLC, a Delaware limited liability company, (vi) TCFIII Luck, (vii) Trive Capital Management LLC, a Delaware limited liability company, (viii) Trive Capital Holdings LLC, a Delaware limited liability company (“**TCH**”), (ix) each past, present and future investment vehicle, managed account or fund in which the general partner, member,

manager or the like thereof or the investment manager or advisor thereto is directly or indirectly controlled by TCH (each a “**Trive Fund**”) (including, without limitation, Trive Capital Fund III LP, a Delaware limited partnership, and Trive Capital Fund III-A LP, a Delaware limited partnership) and (x) each past, present and future “portfolio company” of each Trive Fund (other than the Debtors).

- (c) Holdings hereby represents and warrants on the date hereof, on the date on which each payment made hereunder occurs, and on the date that the Payment Time occurs with respect to each Potential Defendant Party that (i) there has been no assignment, transfer, sale, conveyance or other disposition by any Releasing Party of all or any portion of any Released Claim and (ii) the Releasing Parties are the sole owners and real parties-in-interest regarding all Released Claims.
- (d) Notwithstanding anything contained in this Settlement Agreement to the contrary, it is expressly understood and agreed that (i) neither LBVI, nor Seven Aces, nor Ontario, nor RCB, nor Polito, nor Kassam, nor Boyden nor any of their respective Released Parties (1) (solely for clarification purposes and without implication that the contrary would otherwise be true) shall be or shall constitute a Released Party of either of the TCFIII Entities or any of their respective Released Parties (which include, without limitation, all of the Affiliates of the TCFIII Entities that are expressly listed in Section 7(b)), (2) (solely for clarification purposes and without implication that the contrary would otherwise be true) are being released hereunder by either of the TCFIII Entities or any of their respective Released Parties or (3) shall be entitled to the benefit of any of the provisions of Section 7(a) in any manner until their respective applicable Payment Time, (ii) neither of the TCFIII Entities nor any of their respective Released Parties (which include, without limitation, all of the Affiliates of the TCFIII Entities that are expressly listed in Section 7(b)) (I) (solely for clarification purposes and without implication that the contrary would otherwise be true) are being released hereunder by LBVI, Seven Aces, Ontario, RCB, Polito, Kassam, Boyden or any of their respective Released Parties or (II) shall be entitled to the benefit of any of the provisions of Section 7(a) in any manner until the Payment Time occurs with respect to both TCFIII Entities as contemplated by the immediately following clause (iii) and (iii) the Payment Time for the TCFIII Entities shall not occur unless and until both of the TCFIII Entities have timely paid to Holdings in accordance with Section 3 the entire amount of their respective portions of the Settlement Amount that are set forth across from their respective names on **Exhibit A** attached hereto (but taking account of the second to last sentence of Section 4).
- (e) The waiver and release provided in this Settlement Agreement by Holdings, on its own behalf and on behalf of all of the other Releasing Parties, is intended to include both known and unknown claims. Holdings understands

that Holdings or any other Releasing Party may later discover Claims or facts that may be different than, or in addition to, those which Holdings or any other Releasing Party now knows or believes to exist with respect to the subject matter of this Settlement Agreement, and which, if known at the time of signing this Settlement Agreement, may have materially affected this Settlement Agreement or the decision of Holdings to enter into it. Nevertheless, Holdings hereby waives, on its own behalf and on behalf of all of the other Releasing Parties, any right or Claim that might arise as a result of such different or additional Claims or facts. Holdings has been made aware of, read, understands and has been fully advised by its attorneys as to the contents of the provisions of California Civil Code Section 1542 and any other similar state, federal or foreign law and hereby expressly waives, on its own behalf and on behalf of all of the other Releasing Parties, any and all rights, benefits and protections of such Section 1542 and each such other similar law, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

8. **Entire Agreement.** This Settlement Agreement, together with **Exhibit A** attached hereto, constitutes the complete understanding of the Parties solely with respect to the subject matter covered herein and therein and supersedes all other prior oral or written agreements between or among the Parties solely with respect to the subject matter contained herein and therein, provided that this Settlement Agreement shall be in addition to, and shall not be limited by, the Plan (including any similar provision of the Plan). This Settlement Agreement cannot be altered, amended, or modified in any respect, except by a writing duly executed by each Party. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving Party. Each Party understands, acknowledges and agrees that (a) the representations, warranties, covenants, agreements and undertakings of the other Parties set forth in this Settlement Agreement are the sole and exclusive representations, warranties, covenants, agreements and undertakings of the other Parties relating to or made in connection with the transactions contemplated by this Settlement Agreement, (b) no other Party makes, and no other Party has made, any promises, representations, warranties, covenants, agreements or undertakings, express or implied, in connection with the transactions contemplated by this Settlement Agreement (other than those expressly set forth in this Settlement Agreement) and such Party has not relied on and has not entered into this Settlement Agreement in reliance on, and hereby expressly disclaims, any promise, representation, warranty, covenant, agreement or undertaking not expressly contained in this Settlement Agreement and (c) no Person has been authorized by any other Party to make any promise, representation, warranty, covenant, agreement or undertaking relating to such other Party or otherwise in connection with the transactions contemplated by this Settlement Agreement (other than those expressly set forth in this Settlement Agreement) and, if made, none of such promises, representations, warranties, covenants, agreements or undertakings were relied upon by such Party and all of them are hereby expressly disclaimed by such Party. The representations, warranties,

agreements and covenants in this Settlement Agreement shall survive the execution and delivery of this Settlement Agreement and the consummation of the transactions contemplated hereby. The language used in this Settlement Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rules of strict construction will be applied against any Party. All dollar amounts referred to in this Settlement Agreement are in United States Dollars (“**U.S. Dollars**”), and all amounts actually paid under this Settlement Agreement (after giving effect to Section 4 to the extent applicable) shall be paid in U.S. Dollars. Except as otherwise expressly set forth in Section 5, the remedies provided in this Settlement Agreement shall be cumulative and in addition to all other remedies available under this Settlement Agreement, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief).

9. **Voluntary Act.** Each Party represents and warrants that such Party is authorized and empowered to execute, and perform its obligations under, this Settlement Agreement. Each of the Parties acknowledges that it has read this Settlement Agreement in its entirety, fully understand its terms, and voluntarily accepts the terms set forth herein. Further, each Party acknowledges that it has had an opportunity to consult with legal counsel and any other advisers of its choice with respect to the terms of this Settlement Agreement and it is signing this Settlement Agreement of its own free will.

10. **Attorneys’ Fees.** Each Party shall bear its own attorneys’ fees and costs relating to the negotiation and execution of this Settlement Agreement.

11. **Successors and Assigns; Third Party Beneficiaries.** This Settlement Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of each of the Parties. This Settlement Agreement is intended for the benefit of the Parties, each of the other Released Parties, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person (it being expressly understood and agreed that each of the other Released Parties, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns are intended to be, and shall be, a third-party beneficiary of this Settlement Agreement entitled to enforce the terms hereof). Except to the extent provided in the immediately preceding sentence, there are no third-party beneficiaries with respect to this Settlement Agreement.

12. **Execution in Counterparts.** This Settlement Agreement may be executed in identical counterparts and may be transmitted by email, each of which shall be deemed an original for all purposes. This Settlement Agreement may also be executed and delivered in any other manner permitted under the laws of the State of Delaware.

13. **Governing Law.** Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Settlement Agreement and all claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, arise out of, or relate to this Settlement Agreement or the negotiation, execution, or performance of this Settlement Agreement shall be governed by, and construed in accordance with, the procedural and substantive laws of the State of Delaware without regard to principles of conflicts or choice of laws or any

other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

14. **Jurisdiction.** Any action brought in connection with this Settlement Agreement shall be brought in the Court of Chancery of the State of Delaware (the “**Chancery Court**”) and any appellate court thereof (or, if the Chancery Court does not have jurisdiction over a particular matter, the Delaware Superior Court’s Complex Commercial Litigation Division located in New Castle County, Delaware and any appellate court thereof), and the Parties hereby irrevocably consent to the jurisdiction of such courts and waive any objections as to venue or inconvenient forum; *provided, however,* during the pendency of Holdings’ Bankruptcy Case, all legal proceedings pertaining to this Settlement Agreement shall be brought in the Bankruptcy Court; and *provided further, however,* if the foregoing Delaware courts do not have or will not exercise jurisdiction, the Parties consent to venue in the court where jurisdiction may be obtained. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR ARISING OUT OF THIS SETTLEMENT AGREEMENT.**


15. **Headings; Gender.** The headings of this Settlement Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Settlement Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Settlement Agreement instead of just the provision in which they are found.

16. **Severability.** If any provision of this Settlement Agreement is prohibited by applicable law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Settlement Agreement, *provided, however,* release or payment obligations herein between Holdings and any Potential Defendant Party may not be deemed amended without the consent of each Party adversely affected by such deemed amendment. The Parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Any Person having any rights under any provision of this Settlement Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Settlement Agreement (except as otherwise expressly set forth in Section 5) and to exercise all other rights granted by applicable law.

[Signature Pages Follow]

IN WITNESS WHEREOF, the below Parties have caused this Settlement Agreement to be executed as of June 8, 2023.

TCFIII LUCK ACQUISITION LLC

By: 

Name: Conner Searcy
Its: Manager

TCFIII LUCK SPV LP

By: Trive Capital Fund III GP LLC
Its: General Partner

By: Trive Capital Holdings LLC
Its: Managing Member

By: 

Name: Conner Searcy
Title: Managing Partner

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.

LUCKY BUCKS VENTURES, INC.

By: 

Name: Anil Damani

Title: President

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.

SEVEN ACES HOLDINGS ULC

By:  _____
Name: Manu Sekhri
Title: Authorized Signatory

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.

2786692 ONTARIO INC.

By: Hassan Ijaz

Name: Hassan Ijaz

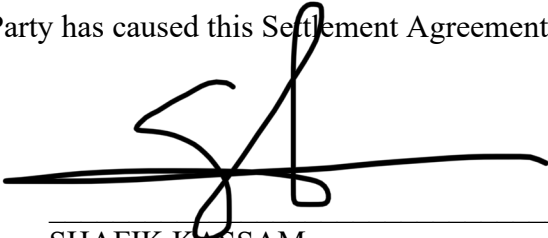
Title: Director

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.

RYAN C BOUSKILL PROFESSIONAL CORPORATION

By: 
Name: RYAN C BOUSKILL
Title: Director

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.



SHAFIK KASSAM

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.



JAMES BOYDEN

IN WITNESS WHEREOF, the below Party has caused this Settlement Agreement to be executed as of June 8th, 2023.



STEPHANIE POLITO

EXHIBIT A
SETTLEMENT PAYMENTS

Potential Defendant Party / Payor	Portion of Settlement Amount Owed
Luck Acquisition	\$5,149,480
Luck SPV	\$2,850,520
LBVI	\$4,337,548.04
Seven Aces	\$2,329,123.84
Kassam	\$12,362.83
Boyden	\$72,367.15
RCB	\$121,696.37
Ontario	\$96,152.34
Polito	\$30,749.43