

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

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In re:	)	
	)	Chapter 11
	)	
NPPI Holdings, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 09-11547 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<u>Hearing</u> : November 17, 2009 at 3:30 p.m. (ET)
	)	<u>Objection Deadline</u> : November 10, 2009 at 4:00 p.m. (ET)

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**DEBTORS' MOTION FOR ORDER (I) CONVERTING CASES TO  
CHAPTER 7; AND (II) SETTING BAR DATE FOR FILING FINAL CHAPTER 11  
FEE APPLICATIONS AND ESTABLISHING A HEARING DATE THEREON**

NPPI Holdings, Inc. and its subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, submit this motion (the "Motion") for the entry of an order pursuant to sections 105, 331 and 1112 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 1017, 1019, 2002 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) converting the Debtors' cases to cases under chapter 7 of the Bankruptcy Code, effective as of the date of entry of an order approving this Motion; and (ii) setting a date that is no more than thirty (30) days after the date of entry of an order approving this Motion as the date by which chapter 11 professionals must file final fee applications seeking payment from the Debtors' estates, in accordance with this Court's order approving interim compensation procedures (the "Interim Compensation Order"), and setting a date for a hearing on such final fee applications. In support of this Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are: NPPI Holdings, Inc (9391); NPPI, Inc. (4534); NPPI Sub 1, LLC (3446); NPPI Sub 2, LLC (4435); NPPI Sub 3, LLC (2652); and NPPI Sub 4, LLC (2740). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 10 W. Market Street, Suite 1400, Indianapolis, Indiana 46204.

## **PRELIMINARY STATEMENT**

1. The Debtors and the Committee (as defined below) have determined that there are few, if any, material unencumbered funds to be obtained for the benefit of general unsecured creditors. The Debtors and the Committee believe that these estates can be wound down and administered most efficiently by confirming the independent establishment and management of the GUC Trust (as defined below) to distribute certain funds available to general unsecured creditors, coupled with a conversion of these cases to chapter 7 and administration of the remaining estate assets by a chapter 7 trustee.

2. In order to administer the GUC Trust, the Committee is seeking by separate motion (the “GUC Trust Motion”), authority for the Debtors, the Committee and the proposed trustee for the GUC Trust (the “GUC Trustee”) to enter into an agreement (the “GUC Trust Agreement”) for the limited purposes of distributing the funds in the GUC Trust (the “GUC Trust Funds”) solely for the benefit of general unsecured creditors (and not the Term A Agent and/or the Term A Lenders), and reconciling creditor claims.

## **JURISDICTION**

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

4. The statutory and legal predicates for the relief sought are sections 105, 331 and 1112 of the Bankruptcy Code and Bankruptcy Rules 1017, 1019, 2002 and 9013.

## **BACKGROUND**

### **A. Introduction**

5. On May 5, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are jointly administered. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On May 14, 2009, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102(a)(1) of the Bankruptcy Code (the “Committee”).

6. A description of the Debtors’ business, the reasons for commencing these chapter 11 cases and the initial relief sought from the Court on the Petition Date is set forth in the *Declaration of Keith A. Maib, Chief Financial Officer of Norwood Promotional Products Holdings, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed on the Petition Date and incorporated by reference as though fully set forth herein.

### **B. Sale of Substantially All of the Debtors’ Assets**

7. As described in detail in the First Day Declaration, the Debtors commenced these chapter 11 cases to effectuate a going-concern sale of their business to the stalking horse purchaser (the “Stalking Horse”) or to a higher and better bidder emerging from a competitive bidding process and chapter 11 auction. To that end, the Debtors filed a motion with the Court [Docket No. 21] (the “Sale Motion”) for (a) entry of an order (the “Bid Procedures Order”) approving, among other things, bidding procedures to facilitate an orderly sale process

and procedures for assuming and assigning executory contracts and unexpired leases and (b) entry of an order (the “Sale Order”) approving, among other things, the sale of substantially all of the Debtors’ assets and authorizing the Debtors to assume and assign executory contracts and unexpired leases. The Bid Procedures Order was entered on May 21, 2009 [Docket No. 101].

8. In accordance with the Bid Procedures Order, the Debtors filed a schedule listing the contracts and leases proposed to be assumed and assigned and corresponding cure amounts, if any, with the Court on June 2, 2009, which was supplemented and amended several times [Docket Nos. 158, 176, 188, 191] (as amended, modified or supplemented from time to time in accordance with the Bid Procedures Order, the “Assumption and Assignment Schedule”); and provided notice of same to counterparties thereto.

9. Following an extensive marketing process, a chapter 11 auction was held on June 18, 2009, from which Norwood Promotional Products, LLC (f/k/a Brickyard Acquisition, LLC) (the “Purchaser”) emerged as the successful bidder. In addition to finalizing numerous other Sale-related items, after the auction but prior to the sale hearing, based on the information then-available to the Purchaser, the Debtors and the Purchaser identified the contracts and leases, including those listed on the Assumption and Assignment Schedule, that the Purchaser wished to assume as part of the Sale and the APA. The schedule of the contracts and leases designated by the Purchaser as those to be assumed under the APA as part of the Sale is annexed as Exhibit B to the Sale Order.

10. After the sale hearing held on June 19, 2009, the Court entered the Sale Order [Docket No. 242] by which the Court, among other things: (a) approved the consummation of the sale (the “Sale”) and the Asset Purchase Agreement dated June 18, 2009, between the

Debtors and the Purchaser [Docket No. 238] (together with any exhibits, schedules, agreements, documents and instruments related thereto, as each of the same may have been and may further be amended, modified or supplemented from time to time in accordance with their terms, the “APA”); and (b) authorized and directed the Debtors to assume and assign the Purchased Contracts (as defined in the APA) to the Purchaser consistent with the terms of the APA. In accordance with the APA, the Sale closed on July 3, 2009 (the “Closing”).<sup>2</sup>

**C. Resolving Issues Surrounding the Term A Agent’s Ability to Credit Bid**

11. Prior to entry of the Bid Procedures Order, the Bank of New York Mellon, as the Term A Agent (the “Term A Agent”) had indicated an interest in credit bidding on the Debtors’ assets. In connection therewith, the Term A Agent filed an objection to entry of the Bid Procedures Order because, among other things, the proposed Bid Procedures Order required the Term A Lenders to submit a cash deposit despite their intention to credit bid pursuant to section 363(k) of the Bankruptcy Code. In response to the objection, the Bid Procedures Order was amended to provide that the Term A Agent was deemed a Qualified Bidder (as defined in the Bid Procedures Order) without the need to provide a cash deposit to the extent that the relevant bid included payment, in cash, for certain obligations as of the Sale’s closing.

12. Prior to the Auction (as defined in the Bidding Procedures Order), the Committee filed its (i) Motion of the Official Committee of Unsecured Creditors Pursuant to Sections 105 and 363(k) of the Bankruptcy Code for an Order Prohibiting or Temporarily Disallowing Setoff Rights With Respect to the Term A Lenders’ Ability to Credit Bid or, in the Alternative, Requiring an Amount Equal to the Purchase Price to be Deposited in an Escrow Account Until the Date the Challenge is Resolved [Docket No. 192] (the “Credit Bid Disallowance Motion”) and (ii) Motion for Temporary Restraining Order and Preliminary

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning set forth in the Sale Order or APA.

Injunction [Docket No. 200] (the “TRO/Preliminary Injunction Motion”), filed in connection with the Committee’s Complaint to Avoid and Preserve Liens and Security Interest for the Benefit of the Estate and for Related Injunctive and Declaratory Relief [Docket No. 199] (the “Complaint”) (Adv. Pro. No. 09-51059). These pleadings essentially challenged the validity and amount of the Term A Agent’s liens and sought to prohibit the Term A Agent from credit bidding during the Auction.

13. Thereafter, the Debtors (as to certain issues), the Term A Agent, and the Committee (the “Term A Settlement Parties”) entered into negotiations regarding, among other things, the validity of the liens held by the Term A Agent, the ability of the Term A Agent to credit bid its secured claim at the Auction, and the distribution of the Sale proceeds. On June 16, 2009, the parties entered into a stipulation resolving these issues (the “Term A Settlement Stipulation”), which was approved by the Bankruptcy Court on the same day [Docket No. 230]. A copy of the Term A Settlement Stipulation is attached hereto as Exhibit A.

#### **D. Allocation of Sale Proceeds**

14. Pursuant to the Term A Settlement Stipulation, the Term A Agent was granted an Allowed Secured Claim in these chapter 11 cases in the amount of \$133,856,031. In turn, the Term A Agent waived any recovery or distribution it otherwise would be entitled to on account of any deficiency claim relating to the Mezzanine Agreement. The Term A Settlement Stipulation also set forth a distribution schedule for Sale Proceeds, which included, among other things, (i) satisfaction of (a) the outstanding DIP Credit Agreement Obligations, (b) the break-up fee (as defined in the Bidding Procedures Order), (c) L/C collateralization, (d) professional fees/success fees, (e) estate wind-down and administrative claims, and (ii) a direct distribution of

certain proceeds to unsecured creditors (excluding the Term A Agent and/or Term A Lenders, on account of any deficiency claim or otherwise).

15. Following the Sale Closing, the Selling Debtors, the Committee, the DIP Lender, and the Term A Agent entered into a settlement stipulation (the “Committee Settlement Stipulation”), a copy of which is attached hereto as Exhibit B, which resolved, among other things, distribution of Sale Proceeds earmarked for general unsecured creditors as set forth in the Term A Settlement Stipulation. The Bankruptcy Court approved the Committee Settlement Stipulation on July 13, 2009 [Docket No. 319].

16. Upon the closing of the Sale, the DIP Lender was satisfied in full. Additionally, pursuant to the Committee Settlement Stipulation, (i) the Term A Lenders received payment on July 15, 2009 of \$99,525,627.20, (ii) the Committee received an amount equal to \$2,027,300 for the benefit of general unsecured creditors in accordance with the Term A Settlement Stipulation, and (iii) the DIP Lender made a gift to the holders of the general unsecured creditors in the amount of \$10,000 (the “DIP Lender Gift”).

#### **E. Continuing Term A Dispute**

17. Subsequent to entry into, and Court approval of, the Term A Settlement Stipulation and the Committee Settlement Stipulation, the Term A Lenders asserted further disputes regarding distributions owing to the Term A Lenders. Specifically, the Term A Lenders have asserted that (i) the Debtors have “over-accrued” professional fees in excess of \$1.5 million, (ii) the initial distribution of sale proceeds was miscalculated by approximately \$918,500; and (iii) \$900,000 should be forthcoming to the Term A Lenders as a result of certain waivers of fees by Houlihan Lokey Howard & Zukin Capital, Inc.

18. The Debtors, the Committee and the Term A Lenders currently are negotiating a settlement stipulation to address the disputes described above and hope to file a motion seeking approval of this settlement stipulation contemporaneously with (or shortly after) filing this Motion. It is expected that certain additional funds will be reallocated by the Term A Lenders for the sole and exclusive benefit of unsecured creditors, and not for the benefit of the Term A Agent and/or the Term A Lenders.

**F. The GUC Trust**

19. As a result of the negotiations among the Debtors, the Committee, the Term A Lenders and the DIP Lender, the Committee has received amounts totaling \$2,027,300, which currently are held in an escrow account by the Committee's financial advisors, CBIZ Mahoney Cohen ("CBIZ"). This amount, together with the DIP Lender Gift and any additional funds reallocated by the Term A Lenders, will constitute the "GUC Funds" (which the Committee anticipates will total \$2,337,000 and which amount includes a reallocation of \$300,000 from the Term A Lenders ). Upon entry of an order approving the GUC Trust Motion (the "GUC Trust Order"), pursuant to the GUC Trust Agreement, CBIZ will transfer the GUC Funds to a trust (the "GUC Trust") to be held and distributed solely the GUC Trustee.

20. The Debtors, in consultation with the Committee, have determined that no significant additional assets are likely to be available to fund the GUC Trust. Indeed, the Committee has determined – and the Debtors agree – that there are few, if any, material unencumbered funds to be obtained for the benefit of general unsecured creditors. The Debtors and Committee believe that these estates can be wound down and administered most efficiently by confirming the independent establishment and management of the GUC Trust coupled with a



conversion of these cases to chapter 7 and administration of the remaining estate assets by a chapter 7 trustee.

### **RELIEF REQUESTED**

21. By this Motion, the Debtors seek entry of an order pursuant to section 1112(a) of the Bankruptcy Code: (i) converting these cases to chapter 7, effective as of the date of entry of an order approving this Motion; and (ii) setting a bar date for filing final chapter 11 professional fee applications seeking payment from the Debtors' estates, and establishing a date for a hearing thereon.

### **BASIS FOR RELIEF REQUESTED**

#### **A. Conversion Is In the Best Interests of the Debtors, Their Estates, Creditors and Other Parties in Interest**

22. Section 1112(a) of the Bankruptcy Code governs the conversion of chapter 11 cases to cases under chapter 7. That section provides that:

- (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless --
  - (i) the debtor is not a debtor-in-possession;
  - (ii) the case originally was commenced as an involuntary case under this chapter; or
  - (iii) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Because subdivisions (i), (ii) and (iii) of section 1112(a) are inapplicable here, the Debtors may convert these cases to chapter 7 cases as a matter of right. See In re Dieckhaus Stationers of King of Prussia Inc., 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (“[Section 1112(a)] by its terms gives the debtor an absolute right to convert, unless the case is governed by one of the enumerated exceptions.”); In re Schuler, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990)

(same). The Debtors submit that timely conversion of these cases to chapter 7 is warranted, and is in the best interests of the Debtors' estates and creditors.

23. As noted above, pursuant to the Sale Order, the Debtors have liquidated a substantial portion of their assets. Moreover, since the Petition Date, the Debtors have rejected the majority of their unnecessary leases and terminated most of their employees. The proceeds of the Sale are held by the estates for the benefit of creditors, but presently such proceeds remain subject to the claims of certain creditors of the Debtors' estates. While the Debtors believe that some limited additional amounts may ultimately be available for distribution to general unsecured creditors, the uncertainty attendant with the current disputes with the Term A Lenders, coupled with the budgeting constraints for a chapter 11 process and other potentially significant administrative and priority claims, have lead to the conclusion that such further efforts would be best pursued by a chapter 7 trustee.

24. Because the Debtors have liquidated or disposed of most of their non-cash assets, and have no ongoing business operations, there is no reasonable likelihood of their rehabilitation. Moreover, given the uncertainties outlined above, the Debtors are likely unable to effectuate a plan of reorganization and believe that the best interests of their estates will be served by converting these cases to chapter 7.

#### **B. Bar Date for Professional Fee Expenses**

25. The Debtors further request that the Court establish a bar date, no more than thirty (30) days after entry of an Order approving this Motion, for chapter 11 professionals to file their final fee applications (the "Final Fee Bar Date"). This will enable the Debtors' estates to definitively know the final amount owed to professionals for chapter 11 expenses. Although the Debtors expect that professional fees will be paid in full pursuant to the

professional fee escrow, the professionals reserve their rights to recover any fees and expenses in excess of the professional fee escrow from other estate assets; provided, however, that such other estate assets will not include the GUC Trust Funds.

26. In order for the Court to be able to approve the final fee applications of chapter 11 professionals, the Debtors request that the Court establish a hearing date at such time after the Final Fee Bar Date as is convenient to the Court's calendar.

**NOTICE**

27. The Debtors have provided or will provide notice of this Motion to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the agent for the Debtors' postpetition lenders; (d) counsel to the agent for the lenders under each of the Debtors' prepetition credit facilities; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) counsel to the Purchaser; (h) any persons who have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (i) all other creditors and interest holders in these chapter 11 cases. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**CONCLUSION**

28. The Debtors submit that entry of an order approving this Motion is appropriate and in the best interests of the Debtors, their estates, creditors and other parties in interest.

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and such further relief as is necessary or appropriate.

Dated: October 28, 2009  
Wilmington, Delaware

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STARGATT & TAYLOR, LLP**



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