



ENTERED
12/17/2020

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**VETERINARY CARE, INC.,
D/B/A VITALPET, et al.**

Debtors.¹

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Case No. 19-35736

Jointly Administered

**ORDER CONFIRMING THE FIRST AMENDED JOINT COMBINED
CHAPTER 11 PLAN AND DISCLOSURE STATEMENT OF
VETERINARY CARE, INC. AND TVET MANAGEMENT LLC**

On December 17, 2020, the Court conducted a hearing (the “Confirmation Hearing”) to consider Confirmation of the *First Amended Joint Combined Chapter 11 Plan and Disclosure Statement of Veterinary Care, Inc. and TVET Management LLC* [ECF # 442] (the “Plan”),² filed by the Debtors in the above-captioned jointly administered Bankruptcy Cases. Having considered the Plan, and based on the evidence presented at the Confirmation Hearing, the Debtors’ Ballot Summary [ECF # 484-3] (the “Ballot Summary”), the arguments and representations of counsel, and the entire record in the Bankruptcy Cases, the Court enters this order (the “Confirmation Order”) and makes the following findings of fact and conclusions of law (the “Findings of Fact and Conclusions of Law”) in support of Confirmation of the Plan pursuant to Bankruptcy Rule 7052, as made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

All Findings of Fact and Conclusions of Law announced by the Court at the Confirmation Hearing are incorporated herein by reference for all purposes to the extent not inconsistent

¹ The debtors in these chapter 11 cases (the “Bankruptcy Case(s)”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Veterinary Care, Inc. (3844) (“VCI”) and TVET Management LLC (1790) (“TVET,” and, collectively with VCI, the “Debtors”). The Debtors’ mailing address is 2700 Post Oak Blvd., 21st Floor, Houston, Texas 77056.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

herewith. Pursuant to Bankruptcy Rule 7052, to the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any of the following Conclusions of Law constitute Findings of Fact, they are adopted as such.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Introduction

1. On October 10, 2019 (the “VCI Petition Date”), an involuntary chapter 11 petition (“Involuntary Petition”) was filed against VCI in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”). On November 6, 2019, VCI filed an Answer to Involuntary Petition and Consent to Entry of Order for Relief and Reservation of Rights [ECF # 28] and, on November 8, 2019, the Court entered an order for relief commencing a bankruptcy proceeding under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). On November 18, 2019 (the “TVET Petition Date”), TVET filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Cases are being jointly administered. On November 27, 2019, the Court approved the Debtors’ retention of Douglas J. Brickley (“Brickley”) as Chief Restructuring Officer (the “CRO”). Subject to such appointment and pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors operated their business and managed their property as debtors in possession. On January 31, 2020, the United States Trustee Filed its *Notice of Appointment of Official Committee of Unsecured Creditors* [ECF # 176].

2. On November 4, 2020, the Debtors filed the Plan, which was then solicited with this Court’s authorization by the Debtors. The Court makes these Findings of Fact and Conclusions of Law with respect to Confirmation of the Plan.

B. Jurisdiction and Venue

3. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. Confirmation of this Plan is a core matter under 28 U.S.C. § 157(b). Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

C. Eligibility for Relief

4. The Debtors were and continue to be eligible for relief under section 109 of the Bankruptcy Code.

D. Solicitation Materials and Related Matters

5. On November 4, 2020, the Debtors filed their *Motion for Entry of an Order (I) Conditionally Approving the Joint Combined Plan; (II) Scheduling a Final Hearing on Confirmation of the Joint Combined Plan; (III) Approving the Form of Solicitation Materials; (IV) Establishing Procedures for Soliciting and Voting on the Joint Combined Plan; and (V) Granting Related Relief* [ECF # 443].

6. On November 13, 2020, the Court entered its *Order Granting Debtors' Motion for Entry of an Order (I) Conditionally Approving the Joint Combined Plan; (II) Scheduling a Final Hearing on Confirmation of the Joint Combined Plan; (III) Approving the Form of Solicitation Materials; (IV) Establishing Procedures for Soliciting and Voting on the Joint Combined Plan; and (V) Granting Related Relief* [ECF # 450] (the "Disclosure Statement Approval Order").

7. On November 16, 2020, Donlin, Recano & Company, Inc., as the Court approved solicitation and noticing agent, served the Solicitation Materials (as defined in the Disclosure Statement Approval Order). *See Affidavit of Service* [ECF # 459].

8. On December 9, 2020, the Debtors filed a *Notice of Filing Plan Supplement* [ECF # 468]. The Plan Supplement, including its materials, complies with the terms of the Plan and the

Disclosure Statement Approval Order, and the filing and notice of such Plan Supplement was good, sufficient and proper and in accordance with the Bankruptcy Code and Bankruptcy Rules, and no other or further notice or solicitation is required. The Plan and Plan Supplement have been negotiated in good faith at arm's length and shall, on and after the Effective Date, constitute legal, valid, binding, and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms. The Plan, including all transactions contemplated by the Plan and Plan Supplement, represents the exercise of the sound business judgment of the Debtors, and is in the best interests of the Debtors, Holders of Claims and Interests, and all parties in interest.

9. On December 16, 2020, the Debtors filed their *Notice of Filing Confirmation Materials* [ECF # 484], which included, among other things, the Ballot Summary. The procedures by which Ballots were received and tabulated was fair and properly conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order.

E. The Shareholder Settlement

10. As more fully described in the Plan, the Debtors entered into a settlement agreement (the "Shareholder Settlement") with Thomas, Van Pelt, VPSR, VP Midtown, and certain Series B equity owners. Entry of this Order shall constitute approval of the Shareholder Settlement under Bankruptcy Rule 9019.

F. The Petco Settlement

11. As more fully described in the Plan, on April 21, 2020, Petco Animal Supplies Stores, Inc., on behalf of itself and unnamed affiliates (collectively, "Petco"), filed Proof of Claim No. 29-1 (the "Petco Claim") against the Estates in the amount of \$14,474,174.39, based on alleged damages arising under the Master Veterinary Care Agreement dated August 2, 2019 ("Master VCA"). At a hearing held on September 11, 2020, the Court ruled that Petco's damages related to

the Petco Claim were capped at one million dollars (\$1,000,000) in the aggregate. The parties' rights, claims, and defenses as to the actual amount of such damages was preserved and reserved for future determination. The Debtors and Petco have since attended mediation and resolved this dispute (the "Petco Settlement"). The Petco Settlement was approved by Court order on December 17, 2020 [ECF # 490] (the "Petco Settlement Order"). Under the Petco Settlement, the Master VCA is terminated, and the Debtors shall pay \$560,000 to Petco in accordance with the Petco Settlement Order in full and final settlement of the Petco Claim and any unfilled claims. Entry of this Order shall constitute approval of the Petco Settlement under Bankruptcy Rule 9019.

G. Objections to Confirmation of the Plan and Disposition Thereof

12. The Debtors received two objections to the Plan which were subsequently withdrawn. The Burnet Central Appraisal District filed an objection at Docket No. which was withdrawn at Docket No. 461. Thomas filed a limited objection at Docket No. 470 which was withdrawn at Docket No. 488.

13. To the extent any objections arise and are not withdrawn or otherwise resolved, the record demonstrates by a clear preponderance of the evidence that the Plan should be confirmed, and the confirmation objections should be overruled.

H. Confirmation Hearing

14. On December 17, 2020 at 1:00 p.m. (prevailing Central Time), the Court held the Confirmation Hearing. At the Confirmation Hearing, the Debtors established the following record in support of Confirmation of the Plan: (a) all documents identified on the Debtors' Witness and Exhibit List filed in the Bankruptcy Cases in support of Confirmation; (b) the testimony at the Confirmation Hearing; (c) the evidence in respect of transmittal and service of the Solicitation Materials; (d) the Ballot Summary; (e) the statements and argument of counsel on the record at the

Confirmation Hearing; (f) all papers and pleadings Filed with the Court in support of, in opposition to, or otherwise in connection with confirmation of the Plan; and (g) (e) the entire record of the Bankruptcy Cases and the docket maintained by the clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before the Court during the pendency of the Bankruptcy Cases, as to all of which the Court takes judicial notice.

I. Applicable Confirmation Requirements

15. To confirm the Plan, the Debtors are required to demonstrate that the Plan satisfies the provisions of Bankruptcy Code section 1129 by a preponderance of the evidence. *See In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993), *cert. denied*, 510 U.S. 992 (1993).

i. 11 U.S.C. § 1129(a)(1) and (a)(2): Compliance with Title 11

16. The classification and treatment of Claims and Interests are described in Article IV of the Plan, and the Plan implementation procedures are described in Article V of the Plan. The classification of Claims and Interests described in the Plan satisfies the standards of section 1122 of the Bankruptcy Code, and the Plan complies with the applicable provisions of section 1123 of the Bankruptcy Code. The requirements of section 1129(a)(1) of the Bankruptcy Code are therefore satisfied. The Debtors have complied with the terms of the Disclosure Statement Approval Order, and the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules for the Southern District of Texas, and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas. As a result, the requirements of section 1129(a)(2) of the Bankruptcy Code are satisfied.

ii. 11 U.S.C. § 1129(a)(3): Plan Proposed in Good Faith

17. The Debtors have proposed the Plan with the legitimate and honest purpose of liquidating their financial affairs and making distributions to Holders of Claims and Interests. The Plan has not been proposed by any means forbidden by law. The Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code. The Plan is the result of good faith, arm's-length negotiations among the Debtors and Holders of Claims and Interests. Accordingly, the Plan has been proposed in good faith and not by any means forbidden by law as required by section 1129(a)(3) of the Bankruptcy Code.

iii. 11 U.S.C. § 1129(a)(4): Disclosure and Approval of Payments

18. Any payment made, or to be made, by the Debtors for services or for costs and expenses during or in connection with the Bankruptcy Cases, or in connection with the Plan and incident to the Bankruptcy Cases, has been approved by, or is subject to the approval of the Court as reasonable, as required by section 1129(a)(4) of the Bankruptcy Code.

iv. 11 U.S.C. § 1129(a)(5): Disclosure of Management and Payments to Insiders

19. The Debtors have adequately disclosed the identities of the directors and officers who are Insiders of the Debtors and have disclosed the identities of the individual proposed to serve as representative of the Liquidating Trust after the Effective Date of the Plan as required by section 1129(a)(5).

v. 11 U.S.C. § 1129(a)(6): Regulatory Rate Approval

20. The Plan does not provide for a "rate change" as contemplated by section 1129(a)(6) of the Bankruptcy Code, and therefore, section 1129(a)(6) does not apply to the Plan.

vi. 11 U.S.C. § 1129(a)(7): Best Interest of Creditors Test

21. The testimony presented by the Debtors' CRO in connection with the Confirmation Hearing and other evidence admitted at the Confirmation Hearing establish that the requirements of Bankruptcy Code section 1129(a)(7) are satisfied by the Plan. In accordance with this section, with respect to each impaired class of Claims or Interests, (a) each Holder of a Claim or Interest of such Class has either accepted the Plan, or (b) will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that the Holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. The requirements of section 1129(a)(7) of the Bankruptcy Code are therefore satisfied.

vii. 11 U.S.C. § 1129(a)(8): Acceptance of Plan by All Classes

22. Section 1129(a)(8) of the Bankruptcy Code requires that, with respect to each Class of Claims or Interests, such Class has either accepted the Plan or is not Impaired under the Plan. Classes 5 through 9 are Impaired under the Plan. Classes 8 and 9 were deemed to reject the Plan, and Classes 5 through 7 (collectively, the "Voting Classes") were entitled to vote on the Plan and, as depicted in the Ballot Summary, all Voting Classes voted to accept the Plan.

23. To the extent the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied, the Plan meets the "cramdown" requirements of section 1129(b) of the Bankruptcy Code. Specifically, the Plan is fair and equitable to the extent that the Holder of any Claim or Interest that is junior to the Claims of such Class will not receive or retain any property under the Plan on account of such junior Claim or Interest. Further, the Plan does not unfairly discriminate with respect to any Class of Claims or Interests because no Class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank. Accordingly, and

notwithstanding the non-acceptance by Impaired Classes of Claims described in the Ballot Summary, the Debtors' Plan meets the requirements to affect a "cramdown" consistent with the provisions of section 1129 of the Bankruptcy code.

viii. 11 U.S.C. § 1129(a)(9): Payment of Priority Claims

24. Section 1129(a)(9) of the Bankruptcy Code provides for the treatment of Claims entitled to priority under sections 507(a)(1)-(8) of the Bankruptcy Code. Under section 1129(a)(9)(A) of the Bankruptcy Code, Holders of section 507(a)(2) and (a)(3) Claims must receive Cash equal to the Allowed amount of such Claim. Section 1129(a)(9)(B) provides that, except to the extent the Holder of a Claim has otherwise agreed to a different treatment, Holders of section 507(a)(1) and (a)(4)-(a)(7) Claims must receive deferred Cash payments of a value equal to the Allowed amount of such Claims if the Class has accepted the Plan or, if not, Cash equal to the Allowed amount of such Claim. The Plan satisfies these requirements, and, therefore, complies with sections 1129(a)(9)(A) and (B) of the Bankruptcy Code.

25. Under section 1129(a)(9)(C) of the Bankruptcy Code, holders of claims under section 507(a)(8) or secured tax claims must receive regular installment payments in cash, (a) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim; (b) over a period ending not later than five (5) years after the date of the order for relief under Bankruptcy Code sections 301, 302 or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan. The Debtors' Plan satisfies such requirements and therefore complies with section 1129(a)(9)(C) of the Bankruptcy Code.

ix. 11 U.S.C. § 1129(a)(10): At Least One Impaired Class Has Accepted the Plan

26. Section 1129(a)(10) of the Bankruptcy Code provides that if one or more classes of claims is impaired under the plan, at least one impaired class must have accepted the plan, without

including any acceptance of the plan by any insider. Here, without including acceptance of the Plan by any Insider, Classes 5 through 7 have voted to accept the Plan. The Plan therefore satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

x. 11 U.S.C. § 1129(a)(11): Feasibility

27. The Plan contemplates liquidating and distributing all the Debtors' assets and, as such, there will be no need for further financial reorganization or liquidation. Accordingly, the Plan is feasible and complies with section 1129(a)(11) of the Bankruptcy Code.

xi. 11 U.S.C. § 1129(a)(12): Payment of Fees

28. The Plan provides that, until the Bankruptcy Cases are closed, all fees incurred under 28 U.S.C. § 1930(a)(6) will be paid by the Liquidating Trustee. Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

xii. 11 U.S.C. § 1129(a)(13): Retiree Benefits

29. The Debtors do not maintain a retirement plan as defined by section 1114 of the Bankruptcy Code, and therefore the Plan does not require the payment of retiree benefits.

xiii. 11 U.S.C. § 1129(a)(14): Domestic Support Obligations

30. The Debtors are not required to pay domestic support obligations, either under a judicial or administrative order or by statute, and therefore section 1129(a)(14) of the Bankruptcy Code is inapplicable.

xiv. 11 U.S.C. § 1129(a)(15): Objection to Plan Confirmation by a Holder of an Unsecured Claim

31. The Debtors are not individuals, and therefore section 1129(a)(15) of the Bankruptcy Code is inapplicable.

xv. 11 U.S.C. § 1129(a)(16): Restrictions on Transfers of Property by Nonprofit Entities

32. All three Debtors are moneyed businesses and limited liability companies, and therefore section 1129(a)(16) of the Bankruptcy Code is inapplicable.

xvi. 11 U.S.C. § 1129(b)

33. Under section 1129(b) of the Bankruptcy Code, the court “shall confirm the plan ... if the plan does not discriminate unfairly, and it is fair and equitable, with respect to each class of claims or interest is impaired under, and has not accepted, the plan.” *See* 11 U.S.C. § 1129(b). For purposes of section 1129(b), the Plan is fair and equitable to the extent that the Holder of any Claim or Interest that is junior to the Claims of such Class will not receive or retain any property under the Plan on account of such junior Claim or Interest. The Court finds that the Plan does not discriminate unfairly, is fair and equitable, and otherwise satisfied the elements of 1129(b) of the Bankruptcy Code.

xvii. 11 U.S.C. § 1129(d)

34. The primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act. As a result, the Plan complies with section 1129(d) of the Bankruptcy Code.

J. Conclusion

35. The Debtors have demonstrated Plan provisions comply with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, including sections 1122, 1123, and 1129 of the Bankruptcy Code, and are reasonable and appropriate.

36. The foregoing Findings of Fact and the Conclusions of Law constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to these proceedings by Bankruptcy Rule 9014. All additional findings of fact and conclusions of law

announced by the Court at the Confirmation Hearing in relation to Confirmation of the Plan, including the Court's rulings with respect to Confirmation, are hereby incorporated into this Confirmation Order. All Findings of Fact or Conclusions of Law constitute rulings of the Court and are part of this Confirmation Order and adopted as such.

II. ORDER

Based on the Findings of Fact and Conclusions of Law, the Court has determined that the Plan satisfies the applicable provisions of the Bankruptcy Code and should therefore be confirmed. It is therefore hereby **ORDERED** that:

A. Confirmation of the Plan and Approval of Plan Documents

37. The Plan is CONFIRMED in its entirety under section 1129 of the Bankruptcy Code, and all of the terms and conditions contained in the Plan are APPROVED. The Debtors and the Liquidating Trustee, as applicable, are authorized to implement the Plan in accordance with its terms and provisions.

38. The Plan Supplement, as filed with the Court, and as may be amended through and including the Effective Date, and such other certificates, documents, and instruments that may be necessary or appropriate to effectuate the transactions contemplated under the Plan, are APPROVED and deemed part of the Plan as if fully set forth therein.

B. Establishment of the Liquidating Trust

39. The Plan provides for the creation of the Liquidating Trust. Confirmation and effectiveness of the Plan shall effectuate the formation of the Liquidating Trust and shall be governed by the Liquidating Trust Agreement. The form and content of the Liquidating Trust Agreement attached hereto is approved and incorporated by reference herein.

40. John D. Cornwell shall serve as the Liquidating Trustee until death, resignation, discharge, or the appointment of a successor in accordance with the Liquidating Trust Agreement. In the exercise of his authority on behalf of the Liquidating Trust, the Liquidating Trustee will have certain responsibilities and powers, and shall administer the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries pursuant to the terms and conditions of the Plan, Liquidating Trust Agreement, and this Confirmation Order. In addition to the rights and duties provided in the Plan, Liquidating Trust Agreement, and this Confirmation Order, the Liquidating Trustee shall be entitled to all rights, privileges, and immunities provided under applicable non-bankruptcy law, including, but not limited to, all rights, privileges, and immunities provided to a trustee under Texas law.

C. Implementation of the Plan

41. Pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors or the Liquidating Trustee, as applicable, may take all actions as may be necessary or appropriate to effect any action described in, approved by, contemplated by, or necessary to effectuate the Plan and the Liquidating Trust.

42. All such actions taken or caused to be taken consistent with the terms of the Plan, Liquidating Trust Agreement, Shareholder Settlement, and Confirmation Order, including any such actions taken prior to the entry of the Confirmation Order, shall be deemed to have been authorized and approved by the Court without further order under any applicable laws or regulations.

43. On the Effective Date, except to the extent otherwise provided in the Plan, Plan Supplement, or Shareholder Settlement, all notes, instruments, certificates, and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or Liquidating

Trustee, if any, shall be deemed satisfied in full, cancelled, discharged, and of no force or effect. Holders of, or parties to, such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights provided pursuant to the Plan, Liquidating Trust Agreement, Shareholder Settlement, and this Confirmation Order.

D. Settlement of Claims and Controversies

44. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan, as supplemented by the Plan Supplement, the Shareholder Settlement, and the Petco Settlement, shall constitute a good faith compromise and settlement of all Claims and controversies relating to the rights that a Holder of a Claim or Interest may have with respect to such Claim or Interest or any distribution on account thereof. The entry of this Confirmation Order shall constitute the Court's approval, as of the Effective Date, of each of the compromises and settlements embodied in the Plan, Plan Supplement, Shareholder Settlement, and Petco Settlement, including the treatment of Claims and Interests under the Plan, and the Court's finding that all such compromises or settlements are: (i) in the best interest of the Debtors, their estates, and their respective creditors and stakeholders; (ii) fair, equitable and within the range of reasonableness; and (iii) satisfy the requirements of Bankruptcy Rule 9019 and Bankruptcy Code section 1123(b)(3)(A). The provisions of the Plan, including, without limitation, the Plan's release, injunction, exculpation and compromise provisions, are mutually dependent.

E. Effects of Confirmation of the Plan

45. The provisions of the Plan, Plan Supplement, Liquidating Trust Agreement, Shareholder Settlement, and this Confirmation Order are binding on the Debtors, the Liquidating

Trustee, each Holder of a Claim or Interest, each non-Debtor counterparty to an Executory Contract or Unexpired Lease with any Debtor, any other interested party in the Bankruptcy Cases, and each of the foregoing's respective agents, heirs, successors, and assigns, regardless of whether such Entity Filed a Proof of Claim or voted to accept the Plan.

46. Upon entry of this Confirmation Order, the Debtors, Liquidating Trustee, and their respective Directors and Officers, agents, attorneys, and Professionals, as applicable, are authorized and directed to effect any and all actions contemplated or required by the Plan or Plan Supplement. On and after the Effective Date, the Debtors, the Liquidating Trustee, and their respective Directors and Officers, agents, attorneys, and Professionals are authorized and directed to take all necessary and appropriate steps and corporate action to implement the terms of the Plan, regardless of whether such actions are specifically referred to in the Plan or this Confirmation Order.

47. Except as otherwise provided by the Plan or this Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims against or Interests in the Debtors and their Estates (including Retained Causes of Action), and the Liquidating Trust.

48. Except as otherwise provided in the Plan, this Confirmation Order, or separate Final Order of the Court, all injunctions or automatic stays provided for in the Bankruptcy Cases under sections 105 and 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the Effective Date.

49. Except as otherwise provided in section 1141(d)(43) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of this Confirmation Order, the provisions of the Plan and Liquidating Trust Agreement shall bind every Holder of a Claim

against or Interest in the Debtors and inure to the benefit of and be binding on such Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has voted to accept or reject the Plan.

F. Vesting of Assets Free and Clear of Liens, Claims and Encumbrances

50. On the Effective Date, the Liquidating Trust shall be deemed duly formed and the Debtors shall be deemed to have irrevocably transferred and assigned (in accordance with any applicable tax laws) to the Liquidating Trust, the Liquidating Trust Assets, to hold in trust for the benefit of all Holders of Allowed Claims with respect to the Debtor pursuant to the terms of the Plan and the Liquidating Trust Agreement. Except as otherwise provided in the Plan, Plan Documents, Liquidating Trust Agreement, or this Order, all property of the estate of the Debtors, including the Causes of Action, and any property acquired by the Debtors under the Plan, including any property to be transferred to the Liquidating Trust pursuant to the Shareholder Settlement, will vest in the Liquidating Trust, free and clear of all Claims, liens, Interests, charges, and other encumbrances. On and after the Effective Date and, in the case of a Secured Claim, upon satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date pursuant to the terms and conditions of the Plan, except as otherwise provided in the Plan, the Liquidating Trustee may use, acquire, or dispose of property, agree to and administer professional engagements, and compromise or settle any Claims, Interests, or Retained Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Failure to identify, include or describe a Cause of Action in the Plan, Disclosure Statement, and/or on the Schedule of Retained Causes of Action shall not constitute a waiver or release of such Cause of Action.

G. Discharge of the CRO; Wind-Down of the Debtors

51. On the Effective Date, the CRO shall be discharged and released from any further obligation or duty to the Debtors, and the Liquidating Trustee shall be deemed to have satisfied all liabilities for purposes of dissolution under applicable state law. The Liquidating Trustee shall be authorized, but not required, to execute and file all documents necessary to effectuate the dissolution of the Debtors.

H. Release of Liens

52. Except as otherwise provided in the Plan, the Shareholder Settlement, or in any contract, instrument, or other agreement or document entered into in connection with the Consummation of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security Interests shall revert to the Liquidating Trust and their successors and assigns.

53. Except as otherwise provided in the Plan, each Holder of a Secured Claim, or a Claim that is purportedly secured by any security interest or Lien shall, on or before the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, be authorized and directed to release to the Debtors, any collateral or other property of a Debtors (including any Cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably required or requested by the Debtors or Liquidating Trustee to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. To the extent any of the foregoing actions, whether arising prior to the Effective Date or thereafter, require action to be taken by the Holders or applicable agents for such Holders of Secured Claims, the Debtors or Liquidating Trustee, as applicable, may,

but is not required to, pay the reasonable and documented fees and expenses of the Holders or applicable agents for such Holder or such Secured Claims, without the need for any further application or notice to or action, order, or approval of the Court. No distributions under the Plan shall be made to or on behalf of any Secured Claim Holder required to release its Liens hereunder by the Liquidating Trustee unless and until such Holder complies with any outstanding demand that it execute and deliver to the Debtors or the Liquidating Trustee such release of Liens.

I. Provisions Related to Executory Contracts and Unexpired Leases

54. In accordance with Article VI of the Plan, all Executory Contracts and Unexpired Leases to which the Debtors are a party shall be deemed rejected under section 365 of the Bankruptcy Code unless they (i) were previously assumed or rejected by the Debtors; or (2) are subject to a motion to reject that is pending on the Confirmation Date, or (iii) were otherwise dealt with by the Plan or the Confirmation Order, or any other Order of the Court entered prior to the Effective Date.

55. Effective as of the Effective Date, the entry of this Order by the Bankruptcy Court shall constitute approval of the rejections and assumptions provided for in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or provided in a separate order of the Bankruptcy Court, rejections or assumptions of executory contracts and unexpired leases pursuant to the Plan are effective as of the Effective Date. Each executory contract and unexpired lease assumed pursuant to the Plan or by order of the Bankruptcy Court but not assigned to a third party before the Effective Date shall vest in, and be fully enforceable by, the Liquidating Trust in accordance with its terms, except as may be modified by the provisions of the Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or any applicable law.

56. As of the Effective Date, the Liquidating Trust shall assume all insurance policies, and such policies shall continue in full force and effect in accordance with their respective terms and applicable non-bankruptcy law, and Liquidating Trust shall remain liable for all obligations (including Claims) thereunder regardless of when such obligations (including Claims) arise or become due or liquidated as if the Bankruptcy Cases had not occurred. Consistent with the foregoing, any obligations that come due under the terms of such insurance policies after the effective time of the assumption shall be deemed to arise after the Effective Date, such that the Liquidating Trust shall not be released from any such obligations.

57. Any term of any policy, contract, or other obligation applicable to either Debtor shall be void and of no further force or effect to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any Entity based on any of the following: (i) the insolvency or financial condition of a Debtor (prior to the Effective Date); (ii) the commencement of the Bankruptcy Cases; or (iii) the Confirmation or Consummation of the Plan.

58. Unless otherwise provided by a separate Final Order of the Court, any Claim resulting from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall be Filed with the Court within thirty (30) days after the later of: (i) the date of an order of the Court (including this Confirmation Order) approving such rejection, (ii) the effective date of such rejection, or (iii) the Effective Date of the Plan. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, their property, or the Liquidation Trust without the need for any objection by the Reorganized Debtors or Liquidation Trustee, further notice to, or

action, order or approval of the Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Debtors' Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article IV of the Plan.

J. Effect of Confirmation; Limited Discharge of Claims Against and Interests in the Debtors

59. In consideration of the distributions made under the Plan, as of the Effective Date, this Confirmation Order shall operate as a general resolution with prejudice of all pending legal proceedings against the Debtors and their assets and properties and any proceedings not yet instituted against the Debtors or their assets and properties, except as otherwise provided in the Plan. Except as otherwise expressly provided in the Plan or this Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests are permanently enjoined, including and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors, Liquidating Trustee or the Liquidating Trust, or their property, with respect to any such Claim, (b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order with respect to any such Claim against the Debtors, Liquidating Trustee or Liquidating Trust, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors, Liquidating Trustee or the Liquidating Trust or their property with respect to such Claim, (d) asserting any right of subrogation of any kind against any obligation due to the Debtors, Liquidating Trustee or the Liquidating Trust or their property with respect to any such Claim, and (e) asserting any right

of setoff or recoupment against the Debtors, Liquidating Trustee or the Liquidating Trust or their property.

60. Upon Confirmation of the Plan, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of any Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or reinstatement of such Claim or Interest, as applicable, pursuant to the Plan and Liquidating Trust Agreement, shall be deemed to have consented to the injunction provisions set forth in the Plan.

61. The protections afforded under the Plan to and for Protected Persons are specifically hereby APPROVED. No Protected Person, the Liquidating Trustee, nor the employees, professionals, agents, and representatives of the Trust or the Liquidating Trustee (collectively the "Covered Persons"), shall be held liable for actions taken or omitted on behalf of the Trust or Liquidating Trustee, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Trust or Liquidating Trustee, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. All Persons dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee, and, subject to the preceding portions of this section, none of the Covered Persons shall have any personal obligation to satisfy any such liability except as expressly provided otherwise in the Plan.

K. Claims Resolution Procedures Approved and Disputed Claims Reserve

62. The procedures for resolving contingent, unliquidated, or Disputed Claims, as outlined in Article VII of the Plan, are hereby approved.

L. Professional Compensation

63. All requests for payment of Professional Compensation Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date shall be Filed no later than the Professional Compensation Claim Bar Date, consistent with the procedures under Article III of the Plan. Objections to Professional Compensation Claims must be Filed and served on the Debtors, the Liquidating Trustee and the Professional to whose application the objections are addressed no later than the Professional Compensation Claim Objection Deadline. The Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Court. Allowed Professional Compensation Claims shall be paid by the Debtors or Liquidating Trustee in Cash within ten (10) days of the entry of a Final Order allowing such Claims. For the avoidance of doubt, the Liquidating Trustee shall be responsible for paying all Allowed Administrative Claims and all Allowed Professional Compensation Claims.

M. Post-Confirmation Professional Fees and Expenses

64. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, but effective as of the Effective Date, the Debtors and the Liquidating Trustee, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for

services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

N. Retention of Causes of Action

65. Except as otherwise provided in the Plan or Liquidating Trust Agreement, nothing contained in the Plan, Liquidating Trust Agreement, or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law. Except as otherwise provided in the Plan, the Liquidating Trust shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Bankruptcy Cases had not been commenced, and all of the Debtors' legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Effective Date to the same extent as if the Bankruptcy Cases had not been commenced.

66. No Person or Entity may rely on the absence of specific reference to any Cause of Action in the Plan, Plan Documents, Liquidating Trust Agreement as any indication that the Liquidating Trustee will not pursue any and all available Causes of Action.

O. Setoffs and Recoupments

67. Except as expressly provided in the Plan, the Debtors or the Liquidating Trustee, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, offset or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all Claims, rights, and Causes of Action that such Debtors or Liquidating Trustee or its successors may hold against the Holder of such Allowed Claim pursuant to Article VII of the Plan;

provided, however, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtors or Liquidating Trust as to any Claims, rights, or Causes of Action that the Debtors or the Liquidating Trust may possess against such Holder. In no event shall any Holder of Claims against, or Interests in, the Debtors be entitled to recoup any such Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Liquidating Trust, as applicable, unless such Holder has actually performed such recoupment and provided notice thereof in writing to the Debtors or the Liquidating Trust on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

P. Rights of Destination Pet

68. Any rights, claims, causes of action, and defenses of Destination Pet, including those related to (i) the Asset Purchase Agreement dated February 20, 2020 by and between Destination Pet, LLC and the Debtors (as amended and supplemented), and (ii) the Transition Services Agreement dated as of March 24, 2020 by and between Destination Pet and the Debtors are preserved; provided that no claims or causes of action that are now barred shall be revived through the Plan or this Confirmation Order.

Q. Miscellaneous Confirmation Provisions

69. This Confirmation Order is in recordable form and shall be accepted by any filing or recording officer or authority of any applicable Governmental Unit for filing and recording purposes without further or additional orders, certifications, or other supporting documents. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan, the Plan Supplement, and this Confirmation Order.

70. Under section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan or the Plan Supplement, shall not be taxed under any law imposing a stamp tax or similar tax. The appropriate state or local government officials or agents are directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

71. To the extent that, under applicable non-bankruptcy law, any of the actions contemplated in the Plan would otherwise require the consent or approval of the Holders of Interests in the Debtors, this Confirmation Order shall constitute such consent or approval, and such actions shall be, and are deemed to have been, taken by unanimous action of the Holders of Interests in the Debtors.

72. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of the Plan and this Confirmation Order, and all other agreements and documents executed and delivered pursuant to the Plan, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

73. The Debtors and Liquidating Trustee, as applicable, shall have the right, to the fullest extent permitted by section 1142 of the Bankruptcy Code, to apply to the Court for an order, notwithstanding any otherwise applicable non-bankruptcy law, directing any appropriate Entity to execute and deliver an instrument or perform any other act necessary to implement the Plan, the Plan Documents, or the provisions of this Confirmation Order.

74. On and after the Effective Date, pursuant to sections 105 and 1142 of the Bankruptcy Code, the Court, except as otherwise provided in the Plan or in this Confirmation

Order, shall retain jurisdiction over all matters arising out of, and related to, the Bankruptcy Cases, including, but not limited to, jurisdiction over the matters set forth in Article XI of the Plan.

75. If any or all of this Confirmation Order is hereafter reversed, modified, or vacated by subsequent order of the Court or any other court, such reversal, modification, or vacation shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan before the Debtors or Liquidating Trustee receive written notice of any such order, nor shall such reversal, modification, or vacation of this Confirmation Order affect the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification, or vacation of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order before the effective date of such reversal, modification, or vacation shall be governed in all respects by the provisions of this Confirmation Order, the Plan, and all documents, instruments, and agreements related thereto or any amendments or modifications thereto.

76. The failure to include specifically any particular provision of the Plan in this Confirmation Order will not diminish the effectiveness of such provision, nor constitute a waiver thereof, it being the intent of the Court that the Plan is confirmed in its entirety.

77. The provisions of the Plan and this Confirmation Order, including the Findings of Fact and Conclusions of Law entered contemporaneously with this Confirmation Order, are nonseverable and mutually dependent.

78. All fees charged pursuant to 28 U.S.C. § 1930 shall be timely paid by each of the Reorganized Debtors for each quarter (including any fraction thereof) until the Bankruptcy Cases are converted, dismissed, or closed, whichever occurs first.

79. On the Effective Date, and following the payment of all amounts under the Plan required to be paid on the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

80. This Confirmation Order is a Final Order and the period in which an appeal must be Filed shall commence upon the entry hereof. The requirements under Bankruptcy Rule 3020(e) that an order confirming a plan is stayed until the expiration of fourteen (14) days after entry of the order are hereby waived. This Confirmation Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rule 3020(e), 6004(h), 6006(d), or 7062.

81. In the event of a conflict between the terms of this Confirmation Order, the Plan, the Liquidating Trust Agreement, and/or any other supporting document, the provisions of this Confirmation Order shall control. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent unless expressly stated by further order of the Court.

82. On the Effective Date, the Debtors shall file a notice of the occurrence of the Effective Date (the “Effective Date Notice”) with the Court. As soon as reasonably practicable after the occurrence of the Effective Date, the Debtors shall serve the Effective Date Notice on all Holders of Claims and Interests, the U.S. Trustee, and other parties in interest, by causing the Effective Date Notice to be delivered to such parties by first class United States mail.

Signed: December 17, 2020



Christopher Lopez
United States Bankruptcy Judge