

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

In re

LUCKY BUCKS, LLC, *et. al.*,

Debtors.¹

Chapter 11

Case No. 23-10758 (KBO)

(Joint Administration Requested)

Objection Deadline:

TBD

Hearing Date:

TBD

**AD HOC GROUP OF HOLDINGS PIK NOTEHOLDERS' MOTION TO
CONVERT LUCKY BUCKS HOLDINGS LLC'S
CHAPTER 11 CASE TO A CHAPTER 7 CASE**

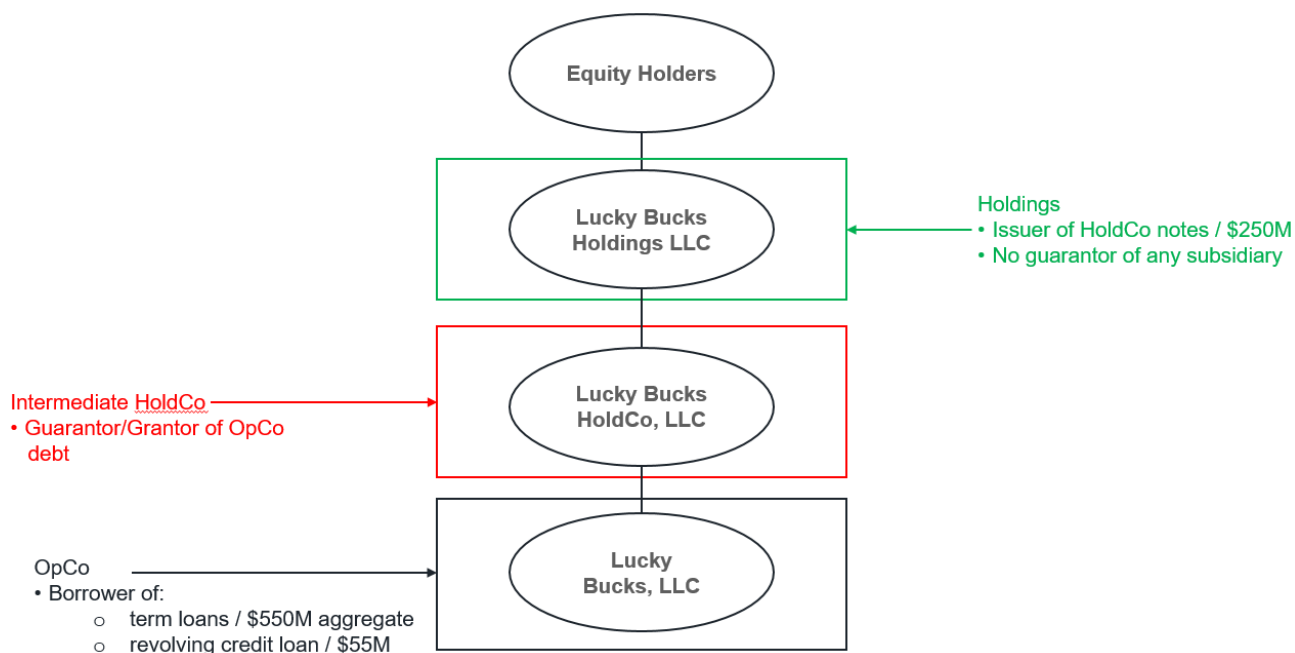
The Ad Hoc Group of Holdings PIK Noteholders (the “Ad Hoc Group”),² holders of 100% of the outstanding notes (“Holdings PIK Notes”) issued by Lucky Bucks Holdings LLC (“Holdings”), by and through its undersigned counsel, respectfully submits this motion (the “Motion”) for an Order, substantially in the form attached hereto as **Exhibit A**, pursuant to Bankruptcy Code section 1112(b), converting Holdings’ chapter 11 case to a case under chapter 7. In support of the Motion, the Ad Hoc Group states as follows:

PRELIMINARY STATEMENT

1. The Debtors’ corporate structure is simple. As illustrated below, Holdings is the sole owner of Lucky Bucks HoldCo, LLC (“Intermediate HoldCo”) which, in turn, is the sole owner of Lucky Bucks, LLC (“Lucky Bucks” or “OpCo”).

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 30071.

² The Ad Hoc Group is comprised of funds managed by BC Partners, CION Investment Corporation, First Trust Capital Management, Hamilton Lane Advisors, L.L.C., Marathon Asset Management LP, and Monarch Alternative Capital LP.



2. The Debtors concede they cannot confirm Holdings’ proposed chapter 11 plan (the “Holdings Plan”) without the acceptance of the class of Holdings PIK Noteholders, which comprise all of Holdings’ creditors. Disclosure Statement (D.I. 4) at 103³ (“Holdings has one impaired class of Claims and may not be permitted to reorganize without the support of such class”); *id.* at p. 109 (“Because Holdings only has one Impaired Class, if such Class rejects the Holdings Plan, Holdings will not be entitled to ‘cramdown’ the Holdings Plan”).

3. After reviewing the Debtors’ solicitation materials, all members of the Ad Hoc Group submitted online ballots to the Debtors’ Claims Agent rejecting the Holdings Plan, which the Debtors themselves acknowledge has no reorganization purpose and merely is “a plan of liquidation.” Disclosure Statement (D.I. 4) at 21 (emphasis added); *see also, e.g., id.* at 91 (“[T]he Holdings Plan is a plan of liquidation”).

³ For documents available on Pacer, this Motion cites to the page numbers supplied by Pacer (located at the top of the page), not by the document’s author (typically located at the bottom of the page).

4. Given this unanimous rejection, and Holdings’ lack of any business operations, employees⁴ or assets—other than worthless equity in Intermediate HoldCo and the claims Holdings retains against its equity holders and management (the “Holdings Claims”)—the Court should protect the Holdings estate from having to bear any further diminution or the expense associated with a futile chapter 11 case, and immediately convert Holdings to chapter 7 pursuant to Bankruptcy Code section 1112(b).

5. The Debtors and OpCo’s lenders (the “OpCo Lenders”)⁵ have every right to use chapter 11 to restructure the OpCo Debtors’ estates. By the same token, the OpCo Lenders and the Debtors’ insiders should not interfere with the administration of the Holdings estate and the only creditors who stand to gain anything from the prosecution, settlement, or release of the Holdings Claims (*i.e.*, the Ad Hoc Group). Indeed, the Debtors acknowledge they do not even need to confirm a plan at Holdings to reorganize OpCo and facilitate its emergence from chapter 11. Disclosure Statement (D.I. 4) at 1 (“[T]he OpCo Plan may be severed from the Holdings Plan, and the confirmation . . . of the OpCo Plan [will] proceed in the event the Holdings Plan . . . [is] not approved by the Bankruptcy Court In such event, the OpCo Debtors may emerge independently.”).

6. Why, then, have the Debtors, their insiders, and the OpCo Lenders gone to such lengths to put Holdings into chapter 11? The Debtors’ filings make clear it is not for any legitimate chapter 11 purpose.

⁴ See *Declaration of James Boyden in Support of Debtors’ Chapter 11 Petitions and First Day Relief* (D.I. 15) (“First Day Declaration”) at 17 (“The Company has approximately 37 hourly and salaried employees, **all of whom are employed by the OpCo Debtors**”) (emphasis added).

⁵ Capitalized terms not defined herein have the meanings given in the Disclosure Statement (D.I. 4).

7. Far from garden variety claims, the Holdings Claims represent valuable sources of recovery. The beneficial owners of the Debtors' equity, including Trive Capital ("Trive"), the Debtors' Chief Executive Officer, Manu Sekhri, and members of the Debtors' management team (collectively, the "Insiders"), made material representations about the fundamental nature of the Debtors' business that induced the Ad Hoc Group to purchase \$250 million of PIK notes (*i.e.*, the Holdings PIK Notes) less than two years ago. At the direction and control of the Insiders, Holdings immediately distributed the proceeds of the sale (\$250 million) as a dividend to enrich themselves.

8. OpCo owns and operates a coin-operated amusement machine ("COAM") business in the State of Georgia. The COAM business involves placing Lucky Bucks-branded machines at locations, such as gas stations and convenience stores, pursuant to written agreements between OpCo and the store operators. The machines allow customers to play games of chance and skill, and revenue from the machines is split between the store operator and OpCo.

9. To promote the sale of the Holdings PIK Notes, the Insiders, including Trive, made clear and unequivocal representations concerning OpCo's purportedly "stable," "exclusive" and "long term" contracts with the owners of the locations that housed OpCo's machines. But what became apparent shortly after the Ad Hoc Group had been induced by these representations to purchase the Holdings PIK Notes, is that these representations were untrue and that OpCo's contracts were largely illusory.

10. The Ad Hoc Group only learned that these representations were untrue after they bought the Holdings PIK Notes. Meanwhile, the Insiders, having run and owned the business for years and in possession of undisclosed data (including information on location-owner churn rate), knew all along the true, flimsy nature of the location-owner contracts. Less than one year after selling the Holdings PIK Notes and distributing \$250 million of proceeds to the Insiders, OpCo's

earnings fell off a cliff, and the number of Lucky Bucks machines that were actually generating revenue declined significantly, with the company losing over 40% of its machines over the last two years—a staggering reduction.

11. The Insiders blamed this dramatic decline on the allegedly unscrupulous sales tactics of their competitors, including the alleged payment of cash bribes to location owners to induce them to unplug their Lucky Bucks machines and replace them with the machines of competitors. They also contended they have no practical way to enforce their agreements with location owners who unplugged their Lucky Bucks machines because bringing lawsuits would make OpCo an unattractive partner in the eyes of the close-knit community of store operators and make it difficult to sign contracts with new store operators.

12. It strains credulity that the Insiders only learned about their competitors' tactics and the practical inability of OpCo to enforce its contracts after they received a \$250 million dividend, particularly because the Insiders knew (and did not disclose) that they were rapidly losing locations for Lucky Bucks machines even before they sold the Holdings PIK Notes. Rather, it is far more likely that the Insiders, realizing OpCo's business was an unsustainable house of cards, decided to cash out through a dividend funded by the Holdings PIK Notes.

13. If these facts are borne out, the \$250 million dividend payment by Holdings was an actual fraudulent conveyance and improper dividend under applicable Delaware law that Holdings can and should successfully claw back from the Insiders and any other recipients. And to the extent Holdings was insolvent at the time of, or rendered insolvent by, the sale of the Holdings PIK Notes, Holdings also would have a claim for constructive fraudulent transfer. In light of the false representations made to induce purchases of the Holdings PIK Notes, the Insiders cannot assert a ratification defense.

14. There is no doubt the Holdings Claims have value, so much so that the Insiders, eager for a release from the Holdings Claims, placed Holdings into chapter 11 **for the sole purpose of effectuating a purported settlement between Holdings and the Insiders**, despite the undeniable fact that Holdings has no prospect of reorganization. The Holdings Settlement Agreement (D.I. 16 at 27-45) constitutes an improper effort to settle and release these valuable Holdings Claims for the lowest possible amount, and over the objection of the sole beneficiaries of the Holdings Claims. With the active assistance and support of the OpCo Lenders, the Insiders effectively are trying to secure third-party releases from Holdings' creditors through a rule 9019 "settlement" with the Insiders.

15. Holdings' settlement strategy rests on the fatally flawed theory that the allegedly Independent Manager, handpicked by the Insiders and the law firm they hired, is sufficiently impartial to act simultaneously as an estate fiduciary for both Holdings and the OpCo Debtors. As evidenced by the form Consulting Agreement filed contemporaneously with these chapter 11 cases, the OpCo Lenders—the proposed future owners of the OpCo Debtors—determined they need to retain the existing management team to continue to operate the business after OpCo emerges from chapter 11. *See* First Day Declaration at Ex. A (Restructuring Support Agreement), Ex. A thereto (form of Consulting Agreement) at 115 & 127 (providing for payments of millions of dollars to management and other insiders for "consulting services" in exchange for their support of the OpCo Debtors' restructuring).

16. It also appears the Insiders who control Holdings and the hopelessly conflicted "Independent Manager," many of whom oversee and manage OpCo (including the OpCo CEO, himself evidently a recipient of millions of dollars in dividends at the heart of the Holdings Claims), conditioned their willingness to authorize the filing of chapter 11 petitions on the OpCo

Lenders' support for a process that facilitated the settlement and release of the Holdings Claims through the prosecution of a rule 9019 motion. Restructuring Support Agreement (D.I. 15) at 65-66 ("The Company Parties shall implement the Restructuring in accordance with the following milestones . . . d. On the Petition Date, Holdings shall file with the Bankruptcy Court the Holdings Settlement Motion.").

17. Tellingly, as a basis for entering into the Holdings Settlement he negotiated with the Insiders ostensibly on behalf of the Holdings' creditors, the "Independent Manager" cited the benefits that the Insiders employed at the OpCo Debtors would obtain from the Holdings Settlement. *Declaration of Neal P. Goldman in Support of Motion to Approve Compromise and Settlement of Claims* (D.I. 17) at 6 ("I recommended that the [Holdings] Board approve the Holdings Settlement, including, because, among other things, it . . . positions [OpCo's] business for rehabilitation by enabling key members of the management team to focus their attention on the restructuring process and returning the [OpCo] business to profitability"); *id.* at 5 ("[A] [Holdings] settlement could: . . . (iii) free members of the [OpCo] management team from distractions at a time when their focus and attention is pivotal to any rehabilitation of the business."). None of these considerations is at all relevant to Holdings and its creditors.

18. Even worse, Mr. Goldman knew that his "recommendation" of the Holdings Settlement could only pass with the affirmative vote of the Insider managers who are each putative defendants with respect to the very Holdings Claims that Mr. Goldman purportedly investigated. The board of managers (the "Conflicted Board") consists of Mr. Goldman and three insiders: Manu Sekhri (CEO), James Boyden (EVP) and Shafik Kassam (Director of Operations). Mr. Sekhri is or was a direct or indirect equity holder, who evidently received a substantial portion of the dividend paid from the proceeds of the investment made by the Ad Hoc Group. *See First Day*

Declaration (D.I. 15) at 2; *Motion for Entry of Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019 Authorizing and Approving Compromise and Settlement of Claims* (D.I. 16) (“Holdings Settlement Motion”) at 39, 45. The Ad Hoc Group understands that Trive, the Debtors’ private equity sponsor, appointed Mr. Boyd, and that Anil Damani, Lucky Bucks’ founder,⁶ appointed Mr. Kassam, to the Conflicted Board. All of these individuals signed the Restructuring Support Agreement and stand to collectively receive millions of dollars in the form of “consulting fees” if the OpCo Debtors confirm their chapter 11 plan.

19. Simply put, the Insiders and the OpCo Lenders, who want to fast-track these chapter 11 cases, have every incentive to settle the Holdings Claims and obtain a release for the Insiders at the lowest possible price, while the Ad Hoc Group—the only parties who stand to recover value from the Holdings Claims—have the opposite incentive because the Holdings Claims are their only source of recovery from Holdings. For this reason, the Holdings Claims cannot be investigated and settled by the same fiduciary wearing both Holdings and OpCo hats, and taking advice from the same law firm that, together, are all acting as agents for three separate debtor estates and, thus, are hopelessly conflicted.

20. Bankruptcy is not a rent-a-court: the Insiders and the OpCo Lenders cannot use the Court for one particular purpose, settling the claims of one debtor for the lowest possible value, and then discard the Holdings estate after it has been stripped of its only asset for a price determined by someone who has no incentive to maximize value. This tactic would turn the bankruptcy system on its head and abrogate the basic principles of corporate separateness that have

⁶ Mr. Damani, whom the Georgia Lottery Corporation barred from continuing to serve as an officer of OpCo because of his violations of Georgia gaming regulations, is also an indirect shareholder, who also evidently received a portion of the dividend. See First Day Declaration (D.I. 15) at 17, 22; Holdings Settlement Motion (D.I. 16) at 38, 45. The Debtors are seeking to have the reorganized OpCo pay Mr. Damani over \$3 million in “consulting fees.” First Day Declaration (D.I. 15) at 126.

formed the bedrock of the Bankruptcy Code. Indeed, the only creditors who can vote in favor of a chapter 11 plan at Holdings, as required by Bankruptcy Code section 1129(a)(10), are the members of the Ad Hoc Group—the only creditors in existence at Holdings—and they have voted to reject the Holdings Plan.

21. There is no dispute that Holdings is hopelessly insolvent and has no prospect of reorganization. The filing of a chapter 11 case for Holdings was not in good faith because it was filed for the sole purpose of impairing Holdings' sole assets (the Holdings Claims) over the objection of the only parties-in-interest that can lawfully recover value from them, and then summarily discard the carcass of the estate. As the Third Circuit has long held, "[a] debtor who attempts to garner shelter under the Bankruptcy Code . . . must act in conformity with the Code's underlying principles." *In re SGL Carbon Corp.*, 200 F.3d 154, 161-62 (3d Cir. 1999). Indeed, "two inquiries . . . are particularly relevant: (1) whether the petition serves a valid bankruptcy purpose[;] and (2) whether [it] is filed merely to obtain a tactical litigation advantage." *In re 15375 Mem'l Corp. v. BEPCO, L.P.*, 589 F.3d 605, 618 (3d Cir. 2009). Valid bankruptcy purposes include "preserving a going concern" or "maximizing the value of the [debtor's] estate[]." *Id.* at 619. Holdings' chapter 11 case accomplishes neither goal. Instead, the Debtors filed Holdings' bankruptcy case solely to approve an insider deal reached with themselves for the benefit of the Insiders and the OpCo Lenders, who have no claims whatsoever at Holdings, to the extreme detriment of Holdings' only creditors.

22. Because Holdings cannot consummate a confirmed plan and has no viable reorganization prospect or likelihood of rehabilitation, the Holdings chapter 11 case should be converted to one under chapter 7 pursuant to Bankruptcy Code 1112(b).

JURISDICTION

23. This Court has jurisdiction to hear this matter and enter a final Order granting the relief requested herein pursuant to 28 U.S.C. sections 1334 and 157(b)(2). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409. This matter is a core proceeding under 28 U.S.C. section 157(b)(2) upon which this Court has the authority to enter a final Order. The statutory and rule predicates for this Motion are 11 U.S.C. section 1112(b) and Bankruptcy Rules 1017 and 1019.

RELEVANT BACKGROUND

24. As noted above, OpCo operates a COAM business in the State of Georgia. In the Fall of 2021, the Insiders engaged in an offering of the Holdings PIK Notes. In the written offering materials, which included a specific section describing Trive's investment thesis, the Insiders represented that the Lucky Bucks business generated annual EBITDA of \$100.3 million and that OpCo had "long-term" and "exclusive" contracts with store operators, touting that an "[a]verage contract length of 11.7 years with an average residual contract length of 8.9 years" made their revenues "[h]ighly predictable," "[s]table," and "steady." Notably, at the time these representations were made, the number of previously-deployed Lucky Bucks machines was, in fact, rapidly declining, with a 5% reduction in the number of existing machines in the third quarter of 2021, and a further 6% reduction in the fourth quarter of 2021. The Insiders did not disclose any of this.

25. Based on these representations by the Insiders, in November 2021, the Ad Hoc Group (or their predecessors in interest) subscribed to the entirety of the Holdings PIK Notes. Substantially all the proceeds were immediately distributed as a dividend to equity holders,

including (directly or indirectly) to OpCo's current Chief Executive Officer, who is also a current manager and evidently a major (direct or indirect) equity holder.

26. After the dividend was paid, it became apparent that OpCo's business was experiencing a rapid and significant decline. With revenue dropping, OpCo defaulted on its own notes with an approximately \$550 million face value held by the OpCo Lenders. Thereafter, working with their private equity sponsor and majority shareholder Trive, all three Debtors appointed the allegedly Independent Manager, Neal Goldman, to join the Holdings board, which manages all three entities (because Intermediate HoldCo and OpCo are member managed). Working with the Debtors' counsel and without the benefit of an independent law firm to represent him, Mr. Goldman allegedly conducted an investigation into potential claims that the Debtors could bring, including of the HoldCo Claims. It is not clear if Mr. Goldman analyzed the nature of the misrepresentations made to the Ad Hoc Group.

RELIEF REQUESTED

27. By this Motion, the Ad Hoc Group requests entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Bankruptcy Code section 1112(b), converting Holdings' chapter 11 case to chapter 7, for cause. This Motion seeks no relief as to the OpCo Debtors.

BASIS FOR RELIEF REQUESTED

28. Bankruptcy Code section 1112(b)(1) provides, in pertinent part:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

29. Although “cause” is not defined in the Bankruptcy Code, section 1112(b)(4) provides a nonexclusive list of “causes” for conversion or dismissal. 11 U.S.C. § 1112(b); *In re Am. Capital Equip., LLC*, 688 F.3d 145, 162 n.10 (3d Cir. 2012) (noting that § 1112(b) is not exhaustive).⁷

30. If the movant establishes any basis for “cause,” the burden then shifts to the debtor to prove that it falls within the section 1112(b)(2) “unusual circumstances” exception to Bankruptcy Code section 1112(b)(1)’s mandatory conversion. The Third Circuit, however, instructs that “[c]ourts usually require the debtor do more than manifest unsubstantiated hopes for a successful reorganization.” *In re Brown*, 951 F.2d 564, 572 (3d Cir.1991) (citing *In re Canal Place Ltd. Partnership*, 921 F.2d 569, 577 (5th Cir.1991)). If cause to convert or dismiss is present,

⁷ Section 1112(b)(4) provides:

For purposes of this subsection, the term “cause” includes –

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate;
- (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
- (E) failure to comply with an order of the court;
- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;
- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

the Third Circuit has said that a court should then choose between conversion and dismissal based on “the best interest of creditors and the estate.” *In re Am. Capital Equip., LLC*, 688 F.3d at 161.

A. Cause Exists To Convert Holdings’ Case Under Section 1112(b)(4)(M).

31. Conversion is warranted where there is an “inability to effectuate substantial consummation of a confirmed plan.” 11 U.S.C. § 1112(b)(4)(M). A “debtor’s ability to effectuate a plan may well turn on practical considerations, including whether confirmation can be achieved.” *In re Babayoff*, 445 B.R. 64, 76 (Bankr. E.D.N.Y. 2011); *see also Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 515 n.2 (8th Cir. 2004) (discussing bankruptcy court’s skepticism about whether any plan would be confirmable as grounds for cause to convert) (citing *In re Fossum*, 764 F.2d 520, 521-22 (8th Cir.1985) (“A finding that the [debtors] were unable to effectuate any plan which would be confirmable is a proper basis for dismissal of the [debtors’] chapter 11 case.”)); *see also In re Lamar Estates, Inc.*, 6 B.R. 933 (Bankr. E.D. N.Y. 1980) (debtors’ inability to effectuate plans of reorganization sufficient cause to convert); *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 665 (Bankr. E. D. Pa. 2009) (same).

32. Here, there is no possibility that a plan can be confirmed for Holdings. The Ad Hoc Group holds all of Holdings’ debt and comprises Holdings’ only creditors. Its members will not vote to confirm a chapter 11 plan where the value of Holdings’ sole assets—the Holdings Claims—has purportedly been investigated and settled by the very same people who control OpCo, none of whom could benefit from the HoldCo claims they are purporting to settle. Absent an impaired accepting class of creditors, Holdings cannot confirm a chapter 11 plan. In the face of this impossibility, why did the Insiders and the OpCo Lenders agree to finance a futile chapter 11 case for Holdings? The documents they negotiated make it crystal clear: the goal is to coerce the Ad Hoc Group into accepting the Holdings Plan and related Holdings Settlement, including by using

the threat of a Holdings DIP funded by Trive and the OpCo Lenders to secure what are effectively third-party releases for Trive and the other Insiders on account of the Holdings Claims. Disclosure Statement (D.I. 4) at 8 (“Subject to the terms and conditions in the Restructuring Support Agreement, Trive and the OpCo Debtors shall provide the Holdings DIP Facility, which shall be in an amount not to exceed \$4 million in the aggregate. **The Holdings DIP Facility shall be satisfied from the proceeds of the Holdings Settlement Consideration prior to any payment to the Claims of the holders of the Holdings PIK Notes.**”) (emphasis added); Holdings Settlement Agreement (D.I. 15) at 317 (“[The Holdings DIP Lenders] will have fully perfected *pari passu* senior secured liens on all of the assets of Holdings . . . , **provided that such security shall include liens on the proceeds and offspring of any Claims that Holdings may have against any of the [Insider] Defendants . . .**”) (emphasis added).

33. The Debtors’ managers, each of whom serves as a fiduciary for different legal entities with different and completely independent capital structures, appear motivated to release and settle the Holdings Claims against the Insiders to facilitate the OpCo Lenders’ business objective, specifically, to reorganize OpCo with the cooperation of the Insiders as quickly as possible. This implicit bargain struck by the Conflicted Board and the OpCo Lenders, who have no interest in Holdings or the Holdings Claims, is that in exchange for entering into the chapter 11 process, the Insiders will attempt to settle and release the Holdings Claims against the Insiders for the lowest possible amount. Holdings Settlement Motion (D.I. 16).

34. This type of agreement costs the OpCo Lenders nothing—because the to-be-released claims belong to Holdings, not OpCo—but the OpCo Lenders secure the cooperation and commitment of management to continue to operate OpCo going forward. This hopelessly

conflicted arrangement might be good for OpCo and the OpCo Lenders, and it might also be good for the Insiders, but inflicts severe damage on Holdings and its only creditors (the Ad Hoc Group).

35. Holdings is a separate entity from OpCo and has no operations. Holdings has only one proper bankruptcy purpose: to maximize the value of the Holdings Claims against the Insiders and any other dividend recipients for the benefit of the Ad Hoc Group. Holdings' chapter 11 case, as managed and administered for the benefit of OpCo, the OpCo Lenders and the Insiders, fails to satisfy this bankruptcy purpose. *See In re LTL Mgmt., LLC*, 64 F.4th 84, 110 & 101 (3d Cir. 2023) (finding cause under 11 U.S.C. § 1112(b) where the debtor's bankruptcy case was not filed to "serve a valid bankruptcy purpose," including "preserv[ing] a going concern" or "maximiz[ing] the value of the debtor's estate").

36. In light of the conflicting interests between the Debtors' managers in their respective capacities as Holdings and OpCo fiduciaries, the Ad Hoc Group is unwilling to support a chapter 11 plan for Holdings. In these circumstances, a true fiduciary for Holdings and the Ad Hoc Group's interests—a chapter 7 trustee—should be appointed to investigate, value, pursue and, if appropriate, settle the Holdings Claims.

B. Cause Also Exists To Convert Under Section 1112(b)(4)(A).

37. Bankruptcy Code section 1112(b)(4)(A) provides that cause to convert a case includes "substantial or continuing loss or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). Two elements must be shown to satisfy section 1112(b)(4)(A): (1) whether the debtor has incurred substantial loss or is continuing to incur losses, or the estate is continuing to diminish; and (2) whether there is an absence of a reasonable likelihood of rehabilitation. *In re Gateway Access Sols., Inc.*, 374 B.R. 556, 562 (Bankr. M.D. Pa. 2007) ("First, the court must look at the track record of the Debtor to determine if it is suffering

losses or making gains. Second, the Court must determine whether rehabilitation is likely given the evidence presented at hearing.”). Both elements are met here.

38. *The first element* is satisfied because Holdings has no business operations, earns no revenue and its chapter 11 case will result in ongoing administrative expense that immediately puts Holdings in the red. Incurring legal fees and quarterly fees owed to the Office of the United States Trustee constitutes a “continuing loss” under section 1112(b)(4)(A). *See, e.g., In re FRGR Managing Member LLC*, 419 B.R. 576, 581 (Bankr. S.D.N.Y. 2009) (debtor “continues to incur quarterly U.S. Trustee fees as well as legal fees, causing a continuing loss to the estate”). *See also Loop Corp.*, 379 F.3d at 516 (“In the context of a debtor who has ceased business operations and liquidated virtually all of its assets, any negative cash flow—including that resulting only from administrative expenses—effectively comes straight from the pockets of the creditors. This is enough to satisfy the first element of [continuing loss to or diminution of the estate]”); *In re Great Am. Pyramid Joint Venture*, 144 B.R. 780, 791 (Bankr. W.D. Tenn. 1992) (“[W]hen no or substantially no business is left to reorganize, chapter 11 cases do not serve those purposes [of the Bankruptcy Code], and ‘cause’ exists [to convert the cases.]”); *see also In re Tracey Serv. Co.*, 17 B.R. 405, 410 (Bankr. E.D. Pa. 1982); *In re W.J. Rewolt Co.*, 22 B.R. 459, 461–62 (Bankr. E.D. Mich. 1982).

39. *For the second element*, “rehabilitation,” as the term is used in section 1112(b)(4)(A), means “to put back in good condition and reestablish on a sound basis.” *See In re BH S&B Holdings, LLC*, 439 B.R. 342, 347 (Bankr. S.D.N.Y. 2010). “Rehabilitation does not include liquidation,” but rather it “means to reestablish a business.” *In re 15375 Memorial Corp.*, 386 B.R. 548, 552 (Bankr. D. Del. 2008), *reversed on other grounds*, 400 B.R. 420 (D. Del. 2008) (reversing Bankruptcy Court’s denial of motion to dismiss). Here, Holdings ***has no*** business. First

Day Declaration (D.I. 15) at 1 (“Holdings is the non-operational parent of the OpCo Debtors.”). It was formed to issue debt and hold equity, and its sole continuing function is to recover on the Holdings Claims and pay back the Ad Hoc Group. Thus, there is no business to rehabilitate, and cause exists to convert Holdings’ chapter 11 case to chapter 7.

C. **Conversion is in the Best Interest of Holdings’ Creditors.**

40. Bankruptcy Code section 1112(b) states that in deciding between dismissal and conversion, this Court should choose the option that is “in the best interest of creditors and the estate.” 11 U.S.C. § 1112(b); *see also In re Am. Capital Equip., LLC*, 688 F.3d at 161. Conversion is warranted here.

41. Conversion would immediately place an independent fiduciary in control of the Holdings’ sole assets, the Holdings Claims. A chapter 7 trustee would be empowered to investigate, litigate and, if warranted, settle those claims to recover monies owed to Holdings by the Insiders and any other dividend recipients. *See In re Team Systems Int’l*, Case No. 22-10066, slip op. at 41 (Bankr. D. Del. Mar. 30, 2022) (concluding that conversion was in the best interest of the creditors where a chapter 7 trustee could pursue estate causes of action including insider wrongdoing).

CONCLUSION

42. For the foregoing reasons, the Ad Hoc Group respectfully requests this Court enter an order, substantially in the form attached hereto as **Exhibit A**, converting Holdings’ chapter 11 case into one under chapter 7. In the alternative, the Court should appoint a chapter 11 trustee, to protect and oversee Holdings’ assets.

NOTICE

43. Notice of this Motion has been or will be provided to: (i) the U.S. Trustee; (ii) the Debtors; (iii) each of the Debtors' creditors holding the twenty (30) largest unsecured claims as set forth in the list filed with the Debtors' petitions;⁸ (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) the Georgia Department of Revenue; (vii) the United States Attorney's Office for the District of Delaware; (viii) the Georgia attorney general; (ix) the Georgia Lottery Corporation; (x) counsel for the TL Ad Hoc Group; (xi) counsel to the RC Ad Hoc Group; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Ad Hoc Group of Holdings PIK Noteholders respectfully submits that no other or further notice is necessary.

WHEREFORE the Ad Hoc Group of Holdings PIK Noteholders respectfully requests the Court grant the relief requested herein, and such other and such other and further relief as is just and proper.

⁸ The Ad Hoc Group of Holdings PIK Noteholders will provide notice to those entities named on the Debtors' consolidated list of creditors holding the 30 largest unsecured claims pursuant to Local Rule 2002-1(b); however, because the Ad Hoc Group of Holdings PIK Noteholders is the only creditor at Holdings, there is no obligation to serve these additional notice parties pursuant to Bankruptcy Rule 2002(a)(4) which requires notice only to Holdings' creditors.

Dated: June 12, 2023
Wilmington, Delaware

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EXHIBIT A

Proposed Order

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

In re

LUCKY BUCKS, LLC, *et. al.*,

Debtors.¹

Chapter 11

Case No. 23-10758 (KBO)

(Joint Administration Requested)

Re: D.I. __

**ORDER CONVERTING LUCKY BUCKS HOLDINGS LLC’S CASE
FROM CHAPTER 11 TO CHAPTER 7**

Upon consideration of the *Ad Hoc Group of Holdings PIK Noteholders’ Motion to Convert Lucky Bucks Holdings LLC’s Chapter 11 Case to a Chapter 7 Case* (the “Motion”), for entry of an order converting Lucky Bucks Holdings LLC’s (“Holdings”) case to a case under chapter 7 of the Bankruptcy Code pursuant to Bankruptcy Code section 1112(b); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the “Hearing”); and the Court finding that the relief sought in the Motion is in the best interests of the Holdings, its estate, creditors and all parties in interest; and the Court having determined that the legal and

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 30071.

factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Holdings' case is CONVERTED to a case under chapter 7 of the Bankruptcy Code.
3. This Court shall retain jurisdiction with respect to all matters, claims, rights, or disputes arising from or related to the implementation of this Order.