

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

In re:

HDC HOLDINGS II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Proposed Hearing Date:

December 12, 2024 at 10:00 a.m. (ET)

Proposed Obj. Deadline:

December 12, 2024 at 10:00 a.m. (ET)

**DEBTORS' MOTION FOR AN ORDER (I) CONVERTING THEIR CHAPTER 11
CASES TO CASES UNDER CHAPTER 7; (II) ESTABLISHING A DEADLINE
FOR FILING FINAL CHAPTER 11 FEE APPLICATIONS; AND
(III) GRANTING RELATED RELIEF**

HDC Holdings II, LLC and its debtor-affiliates (collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), hereby submit this motion (this “Motion”) for (a) entry of an order (the “Initial Order”, substantially in the form attached hereto as **Exhibit A**) authorizing Debtors to submit under certification of counsel an order (the “Conversion Order,” substantially in the form attached hereto as **Exhibit B**), upon the conclusion of the Store Closing Sales (defined below) and other disposition efforts, (i) converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (as defined below), effective as of the entry of the Conversion Order (the “Conversion Date”), (ii) establishing a deadline for filing final chapter 11 fee applications and

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: HDC Holdings II, LLC (2013); HDC Holdings III, LLC (3296); CCM Capital Assets, LLC (9451); Channel Control Merchants, LLC (3319); Dirt Cheap I, LLC (9433); CCM Support Services, LLC (2059); CCM Wholesale SE, LLC (7219); Channel Control Merchants of Texas, LLC (8091); Creative Sales Solutions, LLC (1691); Dirt Cheap Arkansas, LLC (0244); Dirt Cheap Building Supplies, LLC (0880); Dirt Cheap of Georgia, LLC (0269); Dirt Cheap of Louisiana, LLC (0067); Dirt Cheap SE, LLC (4928); Dirt Cheap Tennessee, LLC (1273); Treasure Hunt, LLC (9393); CCM Wholesale, LLC (7219); Channel Control Merchants of California, LLC (9011); and CAL Support Services, LLC (2859). The Debtors’ headquarters are located at 6892 US Hwy 49 North, Hattiesburg, Mississippi 39402.

setting a hearing thereon, and (iii) granting related relief; and (b) for entry of the Conversion Order upon its submission under certification of counsel consistent with the terms of the Initial Order.

In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction to consider this matter under 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief requested herein are section 1112(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rule 1017(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 2002-1.

BACKGROUND

5. On October 10, 2024 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue

to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On October 23, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) [D.I. 60]. No request has been made for the appointment of a trustee or examiner.

7. As described initially in the *Declaration of Jeffrey Martin in Support of Chapter 11 Petitions and Requests for First Day Relief* [D.I. 2] (the “First Day Declaration”), the Debtors commenced these Chapter 11 Cases to maximize value of their assets through the orderly wind down of the Debtors’ business and operations. Accordingly, at the outset of these proceedings, the Debtors sought and obtained Court authority to implement store closing sales (such sales, the “Store Closing Sales”)² and, consistent therewith, the Debtors have been liquidating their inventory at their brick and mortar locations and distribution centers during the course of these Chapter 11 Cases.³ As of the filing hereof, the Debtors have concluded such sales at approximately forty four (44) stores and surrendered the subject real properties back to applicable landlords. The Debtors paid December rent for any locations that remained opened and operating as of December 1, 2024.

8. To, among other things, facilitate the Store Closing Sales, the Debtors sought Court authority to utilize cash collateral to fund the administrative costs of these Chapter 11 Cases, and, on November 25, 2024, the Court entered that certain *Final Order (I) Authorizing*

² On November 12, 2024, the Court entered that certain *Order (I) Approving Debtors’ Motion for Order Approving Key Employee Retention Plan; and (II) Granting Related relief* [D.I. 147] (the “KERP Order”). The KERP Order approved certain non-insider retention bonuses that were contemplated to encourage pivotal employees to remain employed with the Debtors through the conclusion of the Store Closing Sales, subject to certain terms and conditions.

³ On November 25, 2024, the Court entered that certain *Final Order Authorizing (I) the Debtors to Assume the Agreement, (II) the Conduct of the Store Closing Sales, with Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances, (III) Customary Bonuses to Employees of Closing Stores and Distribution Centers, and (IV) Related Relief* [D.I. 179] (the “Store Closing Order”).

the Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 503 and 507; and (III) Granting Related Relief [D.I. 178] (the “Final Cash Collateral Order”). The Final Cash Collateral Order was heavily negotiated by the Debtors with various interested parties, including the Committee and the Prepetition Secured Parties, and memorializes a number of resolutions reached with such parties with respect to, among other things, (i) payment of Stub Rent, (ii) a mechanism to reserve for estimated 503(b)(9) Claims and the establishment of the 503(b)(9) Escrow Account, and (iii) and the creation of the Texas Taxing Reserve (collectively, the “Cash Collateral Resolutions”).⁴ When entered on November 25, 2024, the Final Cash Collateral Order authorized the Debtors to use certain cash collateral pursuant to the Budget and the terms thereof, through and including the week ending December 22, 2024, to allow the Debtors to monetize their remaining assets while preserving an opportunity to consummate a potential going concern transaction that would allow the Debtors’ business to go forward on smaller scale (the “Potential Transaction”). The Committee and the Prepetition Secured Parties consented to entry of the Final Cash Collateral Order on these terms to allow the Debtors additional runway to exhaust all viable forms of recovery for the estates. As disclosed to the Court, it was contemplated, by all parties, that these Chapter 11 Cases would likely need to convert to cases under chapter 7 of the Bankruptcy Code no later than December 22, 2024, absent a material change in circumstances.

9. After entry of the Final Cash Collateral Order, however, the Debtors determined that the Potential Transaction was not feasible and, in turn, pivoted to identifying an appropriate date to convert these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. As noted above, the Debtors have concluded the Store Closing Sales at all but twenty-two

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Final Cash Collateral Order or the First Day Declaration, as applicable.

(22) stores as of the filing hereof and anticipate concluding all ongoing Store Closing Sales no later than approximately December 15, 2024. While there may be remaining inventory to liquidate and other assets to sell (including real property) as of the anticipated date of conversion, the cost of maintaining these Chapter 11 Cases further—most notably with respect to payroll, taxes and professional fees—outweigh the anticipated benefits that would be realized were these Chapter 11 Cases to remain open for an extended period of time. After reaching this conclusion, the Debtors consulted with the Prepetition Secured Parties and the Committee, presented their analysis that supported conversion of these Chapter 11 Cases on the timeline set forth herein, and advised such parties of their intent to file this Motion. The Debtors believe that a chapter 7 trustee will be best positioned to monetize the Debtors’ remaining assets in an efficient and cost-effective manner.

10. The Debtors are seeking to have this Motion heard at the omnibus hearing scheduled for December 12, 2024 at 10:00 a.m. (ET). The Debtors anticipate that, prior to submitting the Conversion Order under certification of counsel, the Debtors will have met their obligations with respect to the Cash Collateral Resolutions and, further, that all employees will have been paid for their postpetition services through their respective dates of termination, and payments authorized by the KERP Order similarly made.⁵

11. Given that the Debtors have determined that conversion is in the best interest of these estates at this time and there is no viable path to a plan of reorganization or liquidation or unencumbered cash available to administer these Chapter 11 Cases, the Debtors seek conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

⁵ The Debtors anticipate that any remaining employees will be terminated effective as of no later than approximately December 20, 2024.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of (a) the Initial Order authorizing the Debtors to submit the Conversion Order under certification of counsel after the conclusion of the Store Closing Sales and other disposition efforts, and (b) the Conversion Order (i) converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code effective as of the Conversion Date, (ii) establishing a deadline for filing final chapter 11 professional fee applications and setting a date for a hearing thereon, and (iii) granting related relief.

BASIS FOR RELIEF

13. Section 1112(a) of the Bankruptcy Code provides that a debtor may convert a case to chapter 7 as a matter of right. *See* H.R. Rep. No. 95-595, 1st Sess. 405 (1977) (“Subdivision (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case”); S. Rep. No 95-989, 95th Cong., 2d Sess. 117 (1978) (same); *see also Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142 (5th Cir. 1988) (“[A] debtor has the absolute right to convert [its] Chapter 11 case to a Chapter 7 case”). There are only three circumstances where a debtor is precluded from exercising that right: (i) the debtor is not a debtor in possession; (ii) the case was originally commenced as an involuntary case under chapter 11; or (iii) the case was converted to a case under chapter 11 other than at the debtor's request. 11 U.S.C. § 1112(a). None of those exceptions is applicable in these Chapter 11 Cases. Therefore, the Debtors are entitled, as an absolute right, to convert these Chapter 11 Cases to cases under chapter 7.

14. The Debtors submit that conversion of these Chapter 11 Cases to cases under chapter 7 is in the best interests of the Debtors’ estates and creditors. Despite their good faith efforts, the Debtors do not believe that it is possible to consummate a Potential Transaction at this time, and the potential benefits of remaining in chapter 11 are, in the Debtors’ business

judgment, offset, at minimum, by the costs that these estates would otherwise incur. Accordingly, the Debtors' only options are conversion or dismissal. As there remain assets to be administered, the Debtors believe that a chapter 7 trustee will be well-positioned to liquidate any remaining assets and make decisions in connection therewith.

15. The Debtors further request that the Court establish a deadline of forty-five (45) days after the Conversion Date for professionals retained by the Debtors and the Committee to file their final fee applications and statements (the "Final Fee Bar Date"). This will enable the Debtors' estates to definitively determine the final amounts owed to professionals for chapter 11 expenses prior to such amounts being paid out of the escrow account established in connection with the Final Cash Collateral Order. The Debtors also request that the Court establish a hearing date (the "Fee Hearing") to consider approval of final fee applications, at the Court's earliest convenience, subsequent to the Final Fee Bar Date.

NOTICE

16. Notice of this Motion has been or will be provided, via overnight delivery or email, to: (i) the U.S. Trustee; (ii) counsel for BMO Bank, N.A.; (iii) counsel for Hancock Whitney Bank; (iv) proposed counsel to the Committee; and (v) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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CONCLUSION

WHEREFORE, the Debtors respectfully request entry of (a) the Initial Order, substantially in the form attached hereto as **Exhibit A**, (i) granting the relief requested herein and (ii) granting such other relief as is just and proper, and (b) the Conversion Order once submitted under certification of counsel, consistent with the Initial Order.

Dated: December 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

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Counsel to the Debtors and Debtors in Possession

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

In re:

HDC HOLDINGS II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Proposed Hearing Date:

December 12, 2024 at 10:00 a.m. (ET)

Proposed Objection Deadline:

December 12, 2024 at 10:00 a.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the *Debtors’ Motion for an Order (I) Converting their Chapter 11 Cases to Cases Under Chapter 7; (II) Establishing a Deadline for Filing Final Chapter 11 Fee Applications; and (III) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **December 12, 2024 at 10:00 a.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION HAS BEEN REQUESTED TO BE HELD ON DECEMBER 12, 2024 AT 10:00 A.M. (ET) BEFORE THE HONORABLE THOMAS M. HORAN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 3RD FLOOR, COURTROOM NO. 7, WILMINGTON, DELAWARE 19801.

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PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: December 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

Michael R. Nestor (No. 3526)
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Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Initial Order

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

In re:

HDC HOLDINGS II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Ref. Docket No. ____

**ORDER (I) AUTHORIZING THE DEBTORS TO SUBMIT THE CONVERSION
ORDER UNDER CERTIFICATION OF COUNSEL UPON THE CONCLUSION
OF THE STORE CLOSING SALES AND OTHER DISPOSITION EFFORTS AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for the entry of an order (this “Order”), pursuant to section 1112(a) of the Bankruptcy Code: (a) authorizing the Debtors to submit the Conversion Order at the conclusion of the Store Closing Sales and other disposition efforts; and (b) entry of the Conversion Order (i) converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (ii) establishing a deadline for filing final chapter 11 fee applications, and (iii) granting related relief; and this 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 as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and proper and adequate

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² Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

notice of the Motion and the hearing thereon having been given under the circumstances; and it appearing that no other or further notice being necessary; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to submit the Conversion Order, substantially in the form attached to the Motion as Exhibit B, under certification of counsel and request its entry without further notice or hearing upon (a) the conclusion of the Store Closing Sales or (b) such other time as the Debtors, in consultation with the Agent, Hancock Whitney Bank, and the Committee, respectively, deem prudent under the circumstances.
3. Nothing in this Order or the conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code shall affect or modify the findings or terms of the Final Cash Collateral Order or any order of this Court (or documents related thereto) entered during these Chapter 11 Cases, including the Store Closing Order and the Final Cash Collateral Order, and all rights and remedies in connection with such orders shall be preserved in their entirety.
4. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

EXHIBIT B

Conversion Order

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

In re:

HDC HOLDINGS II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Ref. Docket Nos. ____

**ORDER (I) CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES
UNDER CHAPTER 7; (II) ESTABLISHING A DEADLINE FOR FILING FINAL
CHAPTER 11 FEE APPLICATIONS; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for the entry of an order (this “Order”), pursuant to section 1112(a) of the Bankruptcy Code: (i) converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; (ii) establishing a deadline for filing final chapter 11 fee applications; and (iii) granting related relief; and this 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 as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and this Court having

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² Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

previously entered that certain *Order (I) Authorizing the Debtors to Submit the Conversion Order Under Certification of Counsel Upon the Conclusion of the Store Closing Sales and Other Disposition Efforts and (II) Granting Related Relief* (the “Initial Order”); and the Initial Order having authorized the Debtors to seek entry of this Order under certification of counsel (the “Certification of Counsel”); and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having reviewed the Certification of Counsel; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. Effective as of the date of the entry of this Order, these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code.
3. Professionals shall file final statements and applications for compensation (including, without limitation, fees and expenses that are not the subject of any previous application, and any “holdback” retained in accordance with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* [D.I. 115]) (collectively, the “Fee Applications”) on or before 4:00 p.m. (ET) on the date that is forty-five (45) days after entry of this Order. Objections, if any, to a Fee Application must be filed and served on counsel to the Debtors and the party filing such Fee Application, so as to be actually received on or before the date that is fourteen (14) days after the subject Fee Application is filed. A hearing on such filed final Fee Applications shall be held before this Court on _____, 2025 at ____:____.m. (ET) (the “Fee Hearing”).

4. To the extent that the Court approves a Fee Application following entry of this Order, all amounts owed for professional fees and expenses approved under any such Fee Application shall be paid as follows: (a) first, from each professional's retainer to the extent such retainer exists; and (b) second, from the escrow account maintained by Young Conaway Stargatt & Taylor, LLP to satisfy amounts owed for professional fees and expenses.

5. The Debtors and their advisors shall:

(a) within seven (7) days of entry of this Order, turn over to the chapter 7 trustee appointed in the chapter 7 cases all records and property of the estates under their custody and control as required by Bankruptcy Rule 1019(4);

(b) within fourteen (14) days of entry of this Order, as required by Bankruptcy Rule 1019(5), file a schedule of unpaid debts incurred after the Petition Date and before the Conversion Date, which schedule shall include the name and address of each creditor holding any such debt; and

(c) within thirty (30) days of entry of this Order, as required by Bankruptcy Rule 1019(5), file and transmit a final report and account to the U.S. Trustee.

5. The Committee shall be dissolved upon entry of this Order; *provided*, however, that following entry of this Order, the Committee shall continue in existence and have standing and a right to be heard only for the limited purpose of applications, and any relief related thereto, for compensation and requests for allowance and payment of fees and expenses of professionals retained by the Committee.

6. Nothing in this Order or the conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code shall affect or modify the findings or terms of the Final Cash Collateral Order or any order of this Court (or documents related thereto) entered during these Chapter 11 Cases, including the Store Closing Order and the Final Cash Collateral Order, and all rights and remedies in connection with such orders shall be preserved in their entirety.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.