

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

In re:

CP Liquidating, Inc., *et al.*,

Debtors.

Chapter 11

Case No., 13-10102 (KG)
(Jointly Administered)

Re: Docket Nos. 334, 338, 339, 357

**ORDER CONFIRMING OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
SECOND AMENDED JOINT PLAN OF LIQUIDATION OF CP LIQUIDATING, INC.,
CPW LIQUIDATING, INC. AND T436 LIQUIDATING, INC.**

This matter having been brought before the Court by the Official Committee of Unsecured Creditors (the "Creditors' Committee") in these chapter 11 cases, upon the filing of the *Official Committee of Unsecured Creditors' Second Amended Joint Plan of Liquidation of CP Liquidating, Inc., CPW Liquidating, Inc. and T436 Liquidating, Inc.* (the "Plan")¹ [Docket No. 334]; and this Court having considered (i) the Plan and all exhibits thereto, and (ii) the Certification of Balloting [Docket No. 361]; and the Court having taken judicial notice of the entire record of the Debtors' chapter 11 cases, including, without limitation, the *Order (I) Approving the Form and Manner of Notice of the Disclosure Statement Hearing; (II) Determining the Adequacy of the Disclosure Statement; (III) Establishing a Record Date and Voting, Objection, and Other Deadlines with Respect to Confirmation of the Creditors' Committee's Plan of Liquidation; (IV) Scheduling a Hearing on Confirmation of the Plan of Liquidation; (V) Approving (A) the Form and Manner of Notice of the Hearing on Confirmation and Related Matters and (B) the Deadline for Filing Confirmation Objections; (VI) Approving*

¹ All capitalized terms used in this Order but not defined herein shall have the meaning ascribed to such terms in the Plan.

the Solicitation Procedures; and (VII) Granting Certain Other Relief [Docket No. 338] (the “Disclosure Statement Order”); and the Creditors’ Committee having caused to be mailed by first class mail, postage prepaid, a copy of the Plan, the Disclosure Statement, the Disclosure Statement Order, the *Notice of (1) Approval of Disclosure Statement; (2) Hearing on Confirmation of Plan of Liquidation; (3) Deadline and Procedures for Filing Objections to Confirmation of Plan of Liquidation; (4) Record Date; and (5) Voting Deadline for Receipt of Ballots* [Docket No. 339], and *Notice of Filing of Plan Supplement Relating to Official Committee of Unsecured Creditors’ Second Amended Joint Plan of Liquidation of CP Liquidating, Inc., CPW Liquidating, Inc. and T436 Liquidating, Inc.* [Docket No. 357], and ballot to all creditors and holders of interests known to the Creditors’ Committee who are eligible to vote on the Plan as evidenced by the Certification of Balloting; and the Court having found that due and proper notice has been given with respect to the deadline and procedures set forth in the Disclosure Statement Order; and upon consideration of any objections to confirmation of the Plan; a hearing having been held before the Court on October 15, 2013 (the “Confirmation Hearing”); and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY FINDS THAT:

A. The Court has jurisdiction to confirm the Plan and all transactions contemplated thereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;

B. Confirmation of the Plan is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed;

C. The Plan satisfies each and every one of the relevant elements enumerated

in 11 U.S.C. § 1129(a) and (b);

D. The Creditors' Committee has complied with the Disclosure Statement Order;

E. All persons required to receive notice of the Disclosure Statement and the Plan have received proper, timely and adequate notice in accordance with the Disclosure Statement Order and have had an opportunity to appear and be heard with respect thereto. Such notice was proper under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the District of Delaware;

F. The votes with respect to confirmation of the Plan have been solicited and tabulated in good faith and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the District of Delaware;

G. The releases set forth in Article VIII of the Plan are appropriate and warranted under the facts and the law of this case. The Court also finds that the released parties have, directly and indirectly, made substantial contributions of assets to the Debtors' chapter 11 cases and plan confirmation. In addition, the Court also finds that without the releases set forth in Article VIII and the injunction in the Plan there is little likelihood that the Debtors would be able to successfully pursue confirmation and implementation of a plan. The Court finds that 100% of the creditors in Classes 2 and 3 that voted on the Plan have voted to approve the Plan. Finally, the Court finds that, while the classes of claims and creditors affected by the releases in Article VIII will not receive payment of substantially all of their claims, they will receive a greater distribution than if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

H. The Plan does not unfairly discriminate among different classes of claims

and interest holders and it is fair and equitable.

I. Any objections to confirmation of the Plan have been resolved, withdrawn, or overruled.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Confirmation of Plan and Approval of Stipulation of Settlement.** The Plan, a copy of which is annexed hereto as Exhibit "A", shall be and hereby is, confirmed. The Stipulation of Settlement dated June 12, 2013 entered into by and between the Debtors, the Creditors' Committee, the Lender, and the Buyer, the buyer of substantially all of the assets of the Debtors, a copy of which is annexed to the Plan, is hereby approved.

2. **Consummation of Plan.** In accordance with section 1142 of the Bankruptcy Code, the Debtors, Creditors' Committee, and the Liquidating Trustee are hereby authorized, empowered and directed, without further order of the Court, to issue, execute, deliver, file and record any document, and to take any action necessary or appropriate to implement, consummate and otherwise effectuate the Plan in accordance with its terms, and all Persons shall be bound by the terms and provisions of all such documents issued, executed and delivered by the Debtors or Creditors' Committee as necessary or appropriate to implement and/or effectuate the transactions contemplated by the Plan.

3. **Rejection of Executory Contracts and Unexpired Leases.** Upon the Confirmation Date, any executory contract or unexpired lease to which the Debtors were a party (other than those that have been previously rejected or assumed by prior Order of this Court or those as to which a motion seeking assumption is pending) is hereby rejected pursuant to 11 U.S.C. § 365.

4. **Administrative Expense Claims Bar Date.** All requests for payment of Administrative Expense Claims, other than Claims of Professionals or Claims of Lender, shall be filed with the Court within thirty (30) days from the entry of this Order (the "Administrative Expense Claims Bar Date"). Holders of Administrative Expense Claims that are subject to the

Administrative Expense Claims Bar Date shall submit requests for payment on or before such Administrative Expense Claims Bar Date or forever be barred from submitting any request on account of such Administrative Expense Claim.

5. **Applications for Professional Fees.** All applications by Professionals for compensation and reimbursement of expenses in connection with the Chapter 11 Cases prior to the Effective Date are Administrative Expense Claims and shall be filed with the Bankruptcy Court within thirty (30) days after the Effective Date. Any such application not filed within such time period shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The Court may extend the deadline for the filing of applications by Professionals for compensation and reimbursement of expenses in connection with the Chapter 11 Cases upon a motion and for cause shown.

6. **Cancellation of Instruments and Stock.** On the Confirmation Date of the Plan (i) all Interests in the Debtors; (ii) any and all stock options (including, but not limited to, all stock options granted to the Debtors' employees); (iii) any and all warrants; and (iv) any instrument evidencing or creating any indebtedness or obligation of the Debtors, except such instruments that are reinstated or amended and restated under the Plan, shall be canceled and extinguished. Additionally, as of the Confirmation Date, all Interests in the Debtors, and any and all warrants, options, rights or interests with respect to equity interests in the Debtors that have been authorized to be issued but that have not been issued shall be deemed canceled and extinguished without any further action of any party.

7. **Post-Effective Date Management of the Settlement Assets.** On the Effective Date or as soon thereafter as is reasonably practical, the Liquidating Trust shall take possession of the Settlement Assets. The Lender and counsel to the Creditors' Committee shall turnover any and all Settlement Funds in their possession to the Liquidating Trust in accordance with the terms of the Stipulation of Settlement. The Liquidating Trustee is hereby granted the authority to, and shall, in an expeditious but orderly manner, pursue, in his/her sole discretion, recoveries of the Chapter 5 Claims and Inventory Claims and shall deposit the recoveries or

settlements on account thereof into the account maintained by the Liquidating Trust, to be distributed in accordance with the Settlement and Plan, and not unduly prolong his tenure as Liquidating Trustee. The rights and duties of the Liquidating Trustee shall be set forth in the Liquidating Trust Agreement. On the Effective Date, the Settlement Assets shall be, or be deemed to have been, irrevocably transferred and assigned to the Liquidating Trust by each Debtor and/or the Creditors' Committee, to hold in trust for the benefit of all holders of Allowed Claims with respect to all the Debtors pursuant to the terms hereof and of the Liquidating Trust Agreement. Except as otherwise provided by the Plan or the Liquidating Trust Agreement, upon the Effective Date, title to the Settlement Assets shall pass to the Liquidating Trust free and clear of all Claims and Interests, in accordance with Section 1141 of the Bankruptcy Code. The Liquidating Trustee shall pay, or otherwise make distributions on account of, all Claims against all Debtors strictly in accordance with the Plan. The source of funds to consummate the Plan will be made available through the Settlement Account, together with any interest earned thereon, and all proceeds realized from the liquidation of the Chapter 5 Claims and Inventory Claims, if any (to the extent not already liquidated prior to the Effective Date). Effective no later than the Effective Date, the person set forth in the Liquidating Trust Agreement is hereby designated as the Liquidating Trustee with respect to each Debtor for whom the Plan is confirmed.

8. **Status of the Liquidating Trustee.** Effective on the Effective Date, the Liquidating Trustee shall be the representative of each Debtor's Estate as that term is used in section 1123(b)(3)(B) of the Bankruptcy Code and shall have the rights and powers provided for in the Bankruptcy Code in addition to any rights and powers granted herein. In his capacity as the representative of an Estate, the Liquidating Trustee shall be the successor-in-interest to each particular Debtor with respect to any action commenced by such Debtor prior to the Confirmation Date. All such actions and any and all other claims or interests constituting Assets, and all claims, rights and interests thereunder shall be retained and enforced by the particular Liquidating Trustee as the representative of such Estate pursuant to section 1123(b)(3)(B) of the

Bankruptcy Code. The Liquidating Trustee shall be a party in interest as to all matters over which the Court has jurisdiction. The Liquidating Trustee shall have the duties, responsibilities, authorities and powers set forth in the Liquidating Trust Agreement.

9. **Substantive Consolidation.** In connection with the implementation and consummation of the Plan, the Liquidating Trustee, except as expressly provided for herein and unless otherwise directed by the Creditors' Committee or by Order of the Court, shall take such steps as may reasonably be necessary to substantively consolidate the Settlement Assets and to otherwise effectuate a substantive consolidation and provide a distribution to a single set of creditors.

10. **Legal Binding Effect.** The provisions of the Plan shall bind all Holders of Claims and Interests and their respective successors and assigns, whether or not they accept the Plan.

11. **Moratorium, Injunction and Limitation of Recourse for Payment.** Except as otherwise provided in the Plan, the Final DIP Order, or the Stipulation of Settlement, from and after the Effective Date, all Persons who have held, hold, or may hold Claims against, or Interests in, the Debtors are permanently enjoined from taking any of the following actions against the Debtors, the Estates, the Creditors' Committee or their respective managers, officers, directors, shareholders, members, parents, affiliates, agents, attorneys, investment bankers, financial advisors, and other professionals, or any of their respective property or other assets on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding to enforce, attach, collect or recover in any manner any judgment, award, decree or order against the Debtors that arose prior to the Effective Date; (b) creating, perfecting or enforcing any Lien or encumbrance against Property of the Estates or Debtors; and (c) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein or in the Confirmation Order shall preclude any Persons from exercising their rights pursuant to and consistent with the terms of the Plan, the Final DIP

Financing Order, or the Stipulation of Settlement.

12. **Discharge.** Pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in the Plan, the Stipulation of Settlement, or the Final DIP Financing Order, the Distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, causes of action, and Interests in the Debtors or any of their assets or Property, regardless of whether any Property shall have been distributed or retained pursuant to the Plan on account of such Claims, causes of action, or Interests, including but not limited to, Claims, causes of action, and Interests that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (a) a Proof of Claim or Interest based upon such Claim, cause of action, or Interest is Filed or deemed Filed under section 501 of the Bankruptcy Code, (b) a Claim or Interest based upon such Claim, cause of action, or Interest is allowed under section 502 of the Bankruptcy Code, or (c) the Holder of such a Claim, cause of action, liability, lien, obligation, right, or Interest accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in the Debtors, subject to the occurrence of the Effective Date, except as otherwise specifically provided in the Plan, the Stipulation of Settlement, or the Final DIP Financing Order.

13. **Exculpation and Limitation of Liability.** Neither the Debtors, the Creditors' Committee, nor any of their respective members, employees, officers, directors, agents, representatives, affiliates, attorneys or any other professional persons employed by any of them, shall have or incur any liability to any holder of any Claim or Interest or any other entity for any act or omission in connection with or arising out of the Plan, or any other act or omission in connection with the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with the Plan, provided, however, that the foregoing shall not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a final order to have constituted gross negligence or willful misconduct. Any of the foregoing parties in all respects

shall be entitled to rely on the advice of counsel with respect to their duties and responsibilities in connection with the Plan. Notwithstanding any other provision of the Plan, no Holder of a Claim or Interest shall have any right of action against the Debtors, the Creditors' Committee, the Estates, or any of their respective managers, officers, directors, attorneys, investment bankers, financial advisors, and other professionals, or any of their respective property and assets for any act or omission occurring on or after the Petition Date in connection with, relating to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the property to be distributed under the Plan, except for acts or omissions which constitute willful misconduct or gross negligence.

14. **Objections to Claims.** Except upon further Order of the Court, objections to Claims shall be filed with the Court and served upon each holder of each of the Claims to which objections are made not later than ninety (90) days subsequent to the later of (i) the Effective Date; and (ii) the date such Claim is filed; provided, however, the Creditors' Committee or the Liquidating Trustee shall not object to Claims expressly deemed Allowed pursuant to the Plan, the Stipulation of Settlement, or prior order of the Court. Nothing contained herein shall limit the Creditors' Committee's, or the Liquidating Trustee's rights to object to Claims, if any, filed or amended after the Claims Objection Deadline. The Creditors' Committee or the Liquidating Trustee shall be authorized to, and shall resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment (in the Bankruptcy Court or such other court having jurisdiction) the validity, nature and/or amount thereof.

15. **Other Documents and Actions.** The Debtors, the Creditors' Committee, or the Liquidating Trustee may, and shall, execute such documents and take such other actions as are necessary to effectuate the transactions provided for in the Plan.

16. **Conditions to Effective Date.** The Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived: (a) that the Confirmation Order has been entered by the Court and has become final and

non-appealable, more than fourteen (14) days have elapsed since the Confirmation Date, no stay of the Confirmation Order is in effect and the Confirmation Order has not been reversed, modified or vacated; and (b) that the Liquidating Trustee is willing to serve in such capacity and the terms of his service and compensation shall have been approved by the Court at the Confirmation Hearing.

17. **Releases.** The Releases set forth in Article VIII of the Plan are hereby approved.

18. **Conflicts.** In the event of any conflict between the Stipulation of Settlement, this order, the Plan, the Disclosure Statement, or any documents related to any of the foregoing, the terms of the Stipulation of Settlement shall govern.


19. **Payment of United States Trustee Fees.** The Liquidating Trustee shall be responsible for making Distributions described in the Plan including paying for fees due to the United States Trustee based on Distributions made from the Settlement Account.

20. **Termination of Epiq Bankruptcy Solutions, LLC.** Epiq Bankruptcy Solutions, LLC (“Epiq”) is dismissed as an agent of this Court pursuant to 28 U.S.C. § 156(c) and as the Debtors’ claims and noticing agent in these cases. The Debtors’ agreement with Epiq is terminated and Epiq is released from all duties and responsibilities in these cases, except that within thirty days of entry of this Order, Epiq shall forward to the Liquidating Trust (a) an updated claims register, (b) a CD of all imaged claims, (c) an excel spreadsheet containing all claims information, (d) an updated Bankruptcy Rule 2002 service list, and (e) an updated creditor mailing list containing the names and addresses of all creditors. Should Epiq receive any mail regarding the Debtors’ cases after entry of this Order, Epiq shall collect and forward such mail no less frequently than monthly to the Liquidating Trust.

21. **Retention of Jurisdiction.** In accordance with the Article XII of the Plan, the Court hereby retains jurisdiction over all matters arising under, out of, or related to the Chapter 11 Cases and the Plan.

22. **Final Order.** This Order is a Final Order and the provisions of Federal Rule of Civil Procedure 62(a) and Bankruptcy Rule 7062 shall not apply to this Order, and the Debtors and Creditors' Committee are authorized to consummate the Plan immediately upon entry of this Order.

Dated: Oct 15 2013
Wilmington, Delaware


The Honorable Kevin Gross
United States Bankruptcy Judge