

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re USA DISCOUNTERS, LTD., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 15-11755 (CSS) (Jointly Administered)
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DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO BANKRUPTCY CODE SECTION 105(a) AND BANKRUPTCY RULE 9019, APPROVING THE FINAL CONSENT JUDGMENT BETWEEN USA DISCOUNTERS, LTD. AND JULIE ANN MEADE, ADMINISTRATOR OF THE COLORADO UNIFORM CONSUMER CREDIT CODE

USA Discounters, Ltd. ("USA Discounters") and its affiliated debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving the proposed settlement memorialized in a final consent judgment (the "Consent Judgment")² entered into by and between USA Discounters and Julie Ann Meade, as Administrator of the Colorado Uniform Consumer Credit Code (the "Colorado Administrator"). In support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: USA Discounters, Ltd. (5123); USA Discounters Holding Company, Inc. (8192); and USA Discounters Credit, LLC (3128). The Debtors' address is 6353 Center Drive, Building 8, Suite 101, Norfolk, Virginia, 23502.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Consent Judgment.

I. JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Cases and the Motion 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of 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 judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are Bankruptcy Code section 105(a) and Bankruptcy Rule 9019.

II. BACKGROUND

4. On August 24, 2015 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code.

5. 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. On September 1, 2015, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors for these Cases (the “Committee”). *See* Docket No. 73.

6. USA Discounters’ business operations previously included (i) seven retail jewelry stores located in five states, all of which used the “Fletcher’s Jewelers” brand; and (ii) twenty-

four other retail stores using the “USA Living” brand, which sold electronics, appliances, furniture, and other consumer products. As a result of the Debtors’ prepetition and postpetition wind-down efforts, USA Discounters no longer operates any retail store locations.

7. A substantial percentage of the products sold by USA Discounters prior to the Petition Date were purchased through consumer financing provided by USA Discounters through revolving or retail installment sales contracts, which contracts included a purchase price, an interest component, and certain charges and fees, all of which created an anticipated revenue stream payable to USA Discounters (collectively, the “Receivables”). As of the Petition Date, USA Discounters ceased all credit sales, but continues to service and collect the Receivables.

8. Compliance with the Colorado Uniform Consumer Credit Code, C.R.S. §§ 5-6-101, *et seq.* (the “UCCC”) is enforced by Colorado’s UCCC Administrator (the “Colorado Administrator”). Prior to the Petition Date, the Colorado Administrator began investigating USA Discounters’ business practices. On July 13, 2015, the Colorado Administrator, through the Colorado attorney general, filed a lawsuit against USA Discounters alleging noncompliance with the UCCC, which lawsuit remains pending in District Court for the City and County of Denver, Colorado (the “Colorado Court”) and is styled *Meade v. USA Discounters, Ltd.*, Case No, 2015CV032520 (the “Colorado Litigation”).

9. More specifically, in the Colorado Litigation, the Colorado Administrator alleges that USA Discounters violated various provisions of the UCCC and seeks injunctive relief against further violations, injunctive relief against collecting the Receivables, damages, civil penalties, and other relief. The Colorado Litigation, which had been set for trial on June 6, 2016, is being held in abeyance pending consideration of the Consent Judgment by this Court.

10. On February 22, 2016, the Colorado Administrator timely filed a proof of claim against USA Discounters in the amount of \$15,629,828.66 for restitution, civil penalties, and attorneys' fees and costs in respect of the Colorado Litigation. *See* Claim No. 165.

11. More detailed factual background regarding the Debtors and the commencement of these Cases is set forth in the *Declaration of Timothy W. Dorsey in Support of First Day Motions* [Docket No. 3] filed on the Petition Date.

III. RELIEF REQUESTED

12. By this Motion, the Debtors request that the Court enter an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing USA Discounters to enter into the Consent Judgment appended as **Exhibit 1** to the Proposed Order and approving the terms of the proposed settlement memorialized therein.

A. The Consent Judgment

13. As qualified in its entirety by the full text of the Consent Judgment, the following is a summary of the material terms of the Consent Judgment:³

- a) **Release of Claims:** Subject to certain conditions set forth in the Consent Judgment, the Consent Judgment is a complete settlement and release of all claims under the UCCC on behalf of the Colorado Administrator against USA Discounters and its directors, employees, managers, and officers (as well as the officers and directors of debtor USA Discounters Holding Company, Inc.), whether past or present, in each case solely in their capacity as such, that were asserted or could have been asserted under the UCCC, that arose prior to entry of the Consent Judgment, and that relate to or are based upon the acts or practices

³ The description of the Consent Judgment contained herein is for convenience of reference only and does not supplement or alter the terms or conditions of the Consent Judgment.

which are the subject of the Complaint in the Colorado Litigation. *See* Consent Judgment ¶ 10.

b) **Liability:** USA Discounters neither admits nor denies any wrongdoing, and is agreeing to the Consent Judgment only for settlement purposes. *Id.* ¶ 12.

c) **Preservation of Law Enforcement Action:** The Consent Judgment does not preclude the Colorado Administrator from pursuing any non-released claims, including any law enforcement action with respect to any acts or practices of USA Discounters not covered by the Consent Judgment or any acts or practices in which USA Discounters engages after entry of the Consent Judgment. *Id.* ¶ 13.

d) **Injunctive Relief:** USA Discounters is immediately and permanently enjoined from violating any provision of the UCCC. Upon entry of the Consent Judgment by the Colorado Court, USA Discounters will cease and desist from certain practices with respect to Colorado consumers identified in the Consent Judgment. Within thirty (30) days of entry of the Consent Judgment by the Colorado Court, USA Discounters will adjust account balances for certain Colorado consumers and will take other specified corrective actions. Within forty-five (45) days of entry of the Consent Judgment by the Colorado Court, USA Discounters will provide updated reports to credit bureaus and revised notices to certain consumers. *Id.* ¶¶ 24–33.

e) **Monetary Provisions:** Within thirty (30) days of entry of the Consent Judgment, USA Discounters will afford specified debt relief to Affected Consumers. More specifically, for all judgments arising from lawsuits filed in Virginia against a Colorado consumer, USA Discounters will provide debt relief

of sixty percent (60%) of the judgment at the time it was issued (which will result in downward adjusted balances on unsatisfied judgments, not to go below \$0). In addition, the Colorado Court will immediately enter judgment for a civil penalty against USA Discounters in the amount of one million dollars (\$1,000,000), which will then be reflected in the amended proof of claim discussed below. *Id.* ¶¶ 34–36.

f) **Amendment of Proof of Claim:** Promptly following the effectiveness of the Consent Judgment, the Colorado Administrator will file an amended proof of claim in the amount of the above-referenced one million dollar (\$1,000,000) penalty, which claim shall be deemed allowed in such amended amount as a general, non-priority unsecured claim against USA Discounters' bankruptcy estate. The Colorado Administrator will not file, assert, or otherwise pursue any other or further claims in these Cases, whether unsecured, secured, priority, administrative, or otherwise. *Id.* ¶¶ 11, 35.

g) **Attorney Fees and Costs:** Each party to the Colorado Litigation shall bear its own attorney fees and costs. *Id.* ¶ 23.

IV. BASIS FOR RELIEF

14. The Debtors respectfully submit that the terms of the Consent Judgment are fair and reasonable and that approval of the Consent Judgment is in the best interests of the Debtors, their creditors, and the estates.

A. **The Consent Judgment Should be Approved Pursuant to Section 105(a) and Bankruptcy Rule 9019(a)**

15. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this

title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019 provides, in pertinent part, that “on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bank. P. 9019.

16. “The federal courts have a well-established policy of encouraging settlement to promote judicial economy and limit the waste of judicial resources.” *Russian Standard Vodka (USA), Inc. v. Allied Domecq Spirits & Wine USA, Inc.*, 523 F. Supp. 2d 376, 384 (S.D.N.Y. 2007); *see also, e.g., U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 27–28 (1994) (discussing the general utility of settlement vis-à-vis judicial economy). The force of this established federal policy is particularly acute in the bankruptcy context, where compromises and settlements are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Indeed, in order to “minimize litigation and expedite the administration of the bankruptcy estate ‘compromises are favored in bankruptcy.’” *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 COLLIER ON BANKRUPTCY ¶ 9019.03[1] (15th ed. rev. 1993)); *see also In re Penn. Cent. Transp. Co.*, 596 F.2d 1102 (3d Cir. 1979); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *In re Culmtech, Ltd.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990).

17. The decision to approve a proposed settlement is committed to the discretion of the bankruptcy court, “which must determine if the compromise is fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). In exercising that discretion, the Third Circuit has stated that courts should consider “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest

of the creditors.” *In re Martin*, 91 F.3d at 393; *see also Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006); *In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243 (D. Del. 1998). The proponent of a settlement is *not* required to demonstrate “that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is ‘within the reasonable range of litigation possibilities.’” *In re World Health*, 344 B.R. at 296 (internal citations and quotation marks omitted); *see also, e.g., Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (Sotomayor, J.) (“[I]n assessing the fairness of the settlement, a judge does not have to be convinced that the settlement is the best possible compromise or that the parties have maximized their recovery”); *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (“[T]he court does not have to be convinced that the settlement is the best possible compromise.”).

18. Although the Court should give weight to the reasonable views of all parties in interest during the 9019 process, “objections do not rule. It is well established that compromises are favored in bankruptcy.” *In re Lee Way Holding Co.*, 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990). In fact, courts generally accord deference to the recommendations of the estate’s representative when considering negotiated agreements. *See, e.g., Official Comm. of Unsecured Creditors v. James Talcott, Inc. (In re Int’l Distrib. Ctrs., Inc.)*, 103 B.R. 420, 423 (S.D.N.Y. 1989).

19. Here, the Debtors respectfully submit that the Consent Judgment falls well within the reasonable range of litigation possibilities, and that consideration of the *Martin* factors demonstrates that the terms of the Consent Judgment are fair and reasonable; approval of the Consent Judgment is in the best interests of the estates.

20. First, the Debtors submit that the terms of the Consent Judgment fall well within the reasonable range of litigation possibilities. The parties, both of which are ably represented by sophisticated legal counsel, negotiated the Consent Judgment in good faith and at arm's length literally on the eve of trial, after extensive discovery and pretrial briefing before the Colorado Court, which previously had denied the Colorado Administrator's motion for partial summary judgment. USA Discounters' management has reviewed and considered the terms of the Consent Judgment, balanced the advantages and disadvantages of settlement, and has reasonably determined that, under the circumstances of these Cases, entering into the proposed settlement with the Colorado Administrator to fully and finally resolve the Colorado Litigation is a sound exercise of business judgment and is in the best interests of USA Discounters, its estate, and its creditors.

21. Turning to the first *Martin* factor, the probability of success in the Colorado Litigation, the Debtors submit that there exists a *bona fide* and highly contested dispute between USA Discounters and the Colorado Administrator concerning the legality and propriety of USA Discounters' business practices under the UCCC. Although USA Discounters firmly denies any wrongdoing in connection with the violations alleged by the Colorado Administrator, USA Discounters acknowledges that any trial involves inherent risk and that success in the Colorado Litigation cannot be guaranteed. An adverse judgment in the Colorado Litigation could expose USA Discounters' estate to potentially significant claims, thereby diluting the recoveries of general unsecured creditors. *See, e.g.*, Claim No. 165 (asserting an unsecured claim in excess of \$15 million in connection with the Colorado Litigation). In view of this risk and uncertainty, and the amounts at stake, USA Discounters submits that the terms of the Consent Judgment are fair and reasonable. Specifically, in addition to various provisions for injunctive relief, the Consent

Judgment provides that the Colorado Administrator will file an amended proof of claim in the amount of \$1 million (or approximately 6.4% of the initially asserted amount). *See* Consent Judgment ¶¶ 11, 35. This amount represents a clearly superior outcome for USA Discounters' creditors as compared to a potential adverse judgment in the Colorado Litigation and a corresponding claim, potentially in excess of \$15 million, against USA Discounters' estate.

22. Considering the next relevant *Martin* factor,⁴ the Colorado Litigation is a complex matter, which, absent approval of the Consent Judgment, would likely proceed to a protracted trial that would require significant time, attention, and resources from USA Discounters and its management. Litigating such a trial would impose significant incremental administrative costs on USA Discounters' estate and would distract USA Discounters' management from other important tasks that require attention, such as negotiating the resolution of other regulatory investigations, brokering plan-related settlements, and prosecuting and soliciting support for a confirmable chapter 11 plan that will bring these Cases to an orderly, value-maximizing conclusion. As such, the complexity of the Colorado Litigation and the expense, inconvenience, and delay necessarily attending it militate in favor of approving the Consent Judgment, which expeditiously resolves the Colorado Litigation in a cost effective manner.

23. Finally, approval of the Consent Judgment advances the paramount interests of creditors. The Consent Judgment protects creditors by capping the Colorado Administrator's claim at a fraction (approximately 6.4%) of the amount initially sought. The Consent Judgment further advances the interests of all creditors by avoiding the incremental administrative costs of defending the trial in the Colorado Court and by sidestepping the need for USA Discounters to expend additional estate resources litigating the allowance and estimation of the Colorado

⁴ The second *Martin* factor, the likely difficulties in collection, is not relevant here, as USA Discounters is a defendant, rather than a plaintiff in the Colorado Litigation.

Administrator's claim in these Cases. Moreover, the settlement of the Colorado Litigation resolves one of the open contingencies in these Cases and signals to creditors and parties in interest that the Debtors are indeed committed to working in good faith toward resolution of the remaining open contingencies that have thus far blocked the Debtors' path to prosecution of a chapter 11 plan.

24. Accordingly, the Debtors respectfully submit that the Consent Judgment is fair, reasonable, and in the best interests of the estates and should therefore be approved under Bankruptcy Rule 9019 and Bankruptcy Code section 105(a).

V. NOTICE

25. The Debtors will provide notice of this Motion to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) the Prepetition Agent; (iv) the office of the attorney general for the state of Colorado; (v) the Colorado Administrator; and (vi) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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VI. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: June 29, 2016



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