

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
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QUIRKY, INC., *et al.*<sup>1</sup> :  
:  
Debtors. : Case No. 15-12596 (MG)  
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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
PURSUANT TO 11 U.S.C. § 1129 AND FED. R. BANKR. P. 3020  
CONFIRMING THE DEBTORS' FIRST AMENDED JOINT PLAN OF  
LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Quirky, Inc. (2873); Wink, Inc. (8826); and Undercurrent Acquisition, LLC (9692).

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Exhibits:

- A: Debtors' First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 449]
  
- B: Form of Notice of Entry of Confirmation Order, Occurrence of Effective Date, Administrative Expense Claim Bar Date and Rejection Damages Bar Date

Quirky, Inc. (“Quirky”) and its wholly-owned subsidiary debtors Wink, Inc. (“Wink”) and Undercurrent Acquisition, LLC (“Undercurrent”, and together with Wink, the “Subsidiary Debtors” and collectively with Quirky and Wink, the “Debtors”), having submitted (i) the *Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated June 20, 2016 (together with any subsequent modifications, the “Plan”) [Docket No. 449]; (ii) the *First Amended Disclosure Statement for Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated June 20, 2016 (together with any subsequent modifications, the “Disclosure Statement”) [Docket No. 451]; (iii) the *Amended Declaration of Michael Katzenstein in Support of Entry of an Order Confirming the Debtors’ First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (the “Katzenstein Declaration”) [Docket No. 446]; (iv) the *Certificate of Service of Paul H. Deutch*, sworn to on June 30, 2016 (the “Solicitation CoS”) [Docket No. 456]; (v) the *Memorandum of Law in Support of Entry of an Order Confirming The Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (the “Memorandum of Law”) [Docket No. 461]; (vi) the *Supplement to the Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated July 5, 2016 (the “Plan Supplement”) [Docket No. 455]; (vii) the *Certification of Paul H. Deutch of Rust Consulting/Omni Bankruptcy With Respect to Solicitation and Tabulation of Votes with Respect to the Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated July 13, 2016 (the “Voting Certification”) [Docket No. 469]; and the Bankruptcy Court<sup>2</sup> having previously entered the *Order Approving (I) Disclosure Statement, (II) Form and Manner of Notices, (III) Form of Ballots and (IV) Solicitation Materials and Solicitation Procedures* (the “Solicitation Procedures Order”) [Docket No. 448]; and a hearing pursuant to section 1128 of Title 11, United

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

States Code (the “Bankruptcy Code”) to consider confirmation of the Plan having been held before the Bankruptcy Court on July 15, 2016 (the “Confirmation Hearing”), after due notice to holders of Claims against and Equity Interests in the Debtors, and to other parties in interest, in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and the Bankruptcy Court having considered the Plan, the Disclosure Statement, the Katzenstein Declaration, the Solicitation CoS, the Memorandum of Law, the Plan Supplement, the Voting Certification, and other papers in support of the Plan and all objections and responses thereto; and the appearances of all interested parties having been noted in the record of the Confirmation Hearing; and the Bankruptcy Court having considered all of the evidence adduced and arguments of counsel at the Confirmation Hearing, and all of the proceedings had before the Bankruptcy Court; and upon the record of the Confirmation Hearing, the Bankruptcy Court having found and determined that the Plan is in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests, and that it should be confirmed as reflected by the Bankruptcy Court’s rulings made herein and at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor, the Court hereby FINDS, DETERMINES, AND CONCLUDES that:

**FINDINGS AND CONCLUSIONS**

The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

1. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a))

The Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to sections 157 and 1334 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to section 157(b)(2)(L) of title 28 of the United States Code. Venue of the Chapter 11 Cases is properly in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code. The Debtors are properly debtors under section 109 of the Bankruptcy Code. The Debtors are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code.

2. Commencement

On September 22, 2015 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. Following the Petition Date, the Debtors have operated their businesses and managed their financial affairs pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Burden of Proof

The Debtors, as plan proponents, have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of evidence.

4. Solicitation and Notice

Pursuant to the Solicitation Procedures Order, as evidenced by the Solicitation CoS, on June 29, 2016, the Debtors commenced their solicitation (the "Solicitation") of votes on the Plan by mailing<sup>3</sup> to the members of Class 1 and Class 4 (together, the "Voting Classes"), a package containing (a) the Confirmation Hearing Notice; (b) the Solicitation Procedures Order; (c) the

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<sup>3</sup> As authorized by the Solicitation Procedures Order, the Solicitation Package (defined herein) was sent to Community Members by e-mail for Community Members for whom the Debtors had email addresses, and mailed to Community Members for whom an email address was not available.

Plan; (d) the Disclosure Statement; and (e) Class 1 Ballot or Class 4 Ballot, as applicable, and (f) a self-addressed return envelope (collectively, the “Solicitation Package”). Transmittal and service of the Solicitation Package to holders of Class 1 and Class 4 claims was adequate and sufficient, and no other or further notice is or shall be required.

In addition, as permitted by the Solicitation Procedures Order, on June 29, 2016, holders of Class 2, Class 3 and Class 5 claims were mailed a package containing (a) the Confirmation Hearing Notice and (b) the Notification of Non-Voting Status for Class 2, Class 3 and Class 5, substantially in the form annexed to the Solicitation Procedures Motion as Exhibit E. Further, holders of Class 7 claims were mailed a package containing (a) the Confirmation Hearing Notice and (b) the Notice of Non-Voting Status-Class 7, substantially in the form annexed to the Solicitation Procedures Motion as Exhibit F. Finally, holders of unclassified claims<sup>4</sup> were mailed the Confirmation Hearing Notice. Transmittal and service of said materials to holders of Claims in Class 2, 3 and 5, Equity Interests in Class 7, and holders of unclassified claims was adequate and sufficient, and no other or further notice is or shall be required.

5. Voting

As evidenced by the Voting Certification, Class 1 and Class 4, which are the only classes entitled to vote on the Plan, have voted to accept the Plan.

6. Classes Deemed to Have Accepted the Plan

Class 2, Class 3 and Class 5 are unimpaired and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

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<sup>4</sup> With the exception of the Quirky Community Settlement, which the Debtors designated as unclassified because it does not constitute a “Claim”, as defined in section 101(5) of the Bankruptcy Code.



7. Classes Deemed to Have Rejected the Plan

Class 6 and Class 7 will not receive or retain any property under the Plan and are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

8. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1))

The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

9. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1))

In addition to the Administrative Expense Claims (other than professional fees and expenses), Priority Tax Claims, Professional Fee Claims, Statutory Fees, and Quirky Community Settlement, which need not be designated pursuant to section 1123(a)(1) of the Bankruptcy Code, the Plan designates six (6) classes of Claims and one (1) class of Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

10. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2))

Article III of the Plan specifies that Class 2, Class 3 and Class 5 are unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

11. Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3))

Article III of the Plan designates Class 1, Class 4, Class 6 and Class 7 as impaired. Article IV of the Plan specifies the treatment of the Claims in Class 1, Class 4, and Class 6 and the Equity Interests in Class 7, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

12. No Discrimination (11 U.S.C. § 1123(a)(4))

The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

13. Implementation of Plan (11 U.S.C. § 1123(a)(5))

Article V of the Plan provides adequate and proper means for the implementation of the Plan. In particular, section 5.01 of the Plan provides for the substantive consolidation of the Debtors' estates for purposes of voting, confirmation and distribution. Section 5.02 of the Plan provides for the appointment of a Plan Administrator to carry out the Plan and specifies the Plan Administrator's powers and duties. Article V of the Plan also provides for various other procedural and administrative mechanisms that will govern the implementation of the Plan. Article VI of the Plan provides procedures related to, *inter alia*, distributions, resolution of disputed claims, the means by which distributions will be transmitted, and the respective responsibilities of the Debtors and recipients of distributions with respect to tax reporting and withholding. The Debtors are authorized to implement the Plan in accordance with its terms.

14. Charter of Debtor (11 U.S.C. § 1123(a)(6))

Quirky and Wink are corporations and Undercurrent is a limited liability company; however, no equity securities or membership interests, as applicable, are being issued pursuant to the Plan, and therefore, section 1123(a)(6) of the Bankruptcy Code is not applicable.

15. Selection of Trustees, Member and Manager (11 U.S.C. § 1123(a)(7))

The Debtors do not currently, and will have no continued operations following confirmation of the Plan. From and after the Effective Date, the Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of directors and officers and

shall succeed to such powers as would have been applicable to the Debtors' officers and directors. The Debtors will continue in existence in their current form to implement the Plan. Accordingly, section 1123(a)(7) of the Bankruptcy Code is not applicable. To the extent that the appointment of the Plan Administrator implicates section 1123(a)(7) of the Bankruptcy Code, the appointment of Clingman & Hanger Management Associates LLC as Plan Administrator, which was selected by the Creditors' Committee, as agreed by the Debtors and Comerica in connection with the overall settlement that resulted in the Plan, is consistent with the interests of the Debtors' creditors.

16. Payment to Creditors from Personal Services (11 U.S.C. § 1123(a)(8))

The Debtors are not individuals; therefore, section 1123(a)(8) of the Bankruptcy Code is not applicable.

17. Additional Plan Provisions (11 U.S.C. § 1123(b))

The Plan's discretionary provisions are appropriate and are not inconsistent with the Bankruptcy Code.

18. Sale of Individual Property (11 U.S.C. § 1123(c))

The Debtors are not individuals; therefore, section 1123(c) of the Bankruptcy Code is not applicable.

19. Cure of Defaults (11 U.S.C. § 1123(d))

The Plan does not contemplate the curing of any default. Accordingly, section 1123(d) of the Bankruptcy Code is not applicable.

20. Plan Compliance with Bankruptcy Rule 3016(a)

The Plan is dated and identifies the entities submitting the Plan as the Debtors, thereby satisfying Bankruptcy Rule 3016(a).

21. The Debtors Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2))

The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

- a) The Debtors are proper debtors under section 109 of the Bankruptcy Code.
- b) The Bankruptcy Court has jurisdiction over the Chapter 11 Cases.
- c) Venue of these Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. § 1408.
- d) The Debtors are proper proponents of the Plan pursuant to section 1121(a) of the Bankruptcy Code.
- e) The Debtors have complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules in all respects, and with the Solicitation Procedures Order with respect to transmitting the Plan and the Disclosure Statement and related documents soliciting votes on the Plan.

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

The Plan has been proposed by the Debtors in good faith, with the legitimate and honest purpose of maximizing the value of the Debtors' Estates, thereby satisfying section 1129(a)(3) of the Bankruptcy Code.

23. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4))

In these Chapter 11 Cases, the only payments made by the Debtors' Estates for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, are to the retained professionals of the Debtors and the Creditors' Committee. The Plan requires such persons to file final applications for allowance of professional fees and reimbursement of expenses within 45 days after the Effective Date of the Plan. Accordingly, section 1129(a)(4) of the Bankruptcy Code is satisfied.

24. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5))

The Plan contemplates that a Plan Administrator will be appointed on the Effective Date and the Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable

to a board of directors and officers and shall succeed to such powers as would have been applicable to the Debtors' officers and directors. The appointment of the Plan Administrator is consistent with the interests of creditors and equity security holders and with public policy. The Plan contemplates that the Debtors will continue in existence until the closing of the Chapter 11 Cases or until the Plan Administrator dissolves the Debtors, and as such, there are no successors to any of the Debtors. The Plan relates solely to the Debtors and not to any other person or entity. In addition, no insider is to be employed or retained under the Plan.<sup>5</sup> Accordingly, section 1129(a)(5) of the Bankruptcy Code is satisfied.

25. No Rate Changes (11 U.S.C. § 1129(a)(6))

Section 1129(a)(6) of the Bankruptcy Code is not applicable because no governmental regulatory commission has jurisdiction over the Debtors' rates or any change thereof.

26. Best Interests of Creditors (11 U.S.C. § 1129(a)(7))

The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis provided as Exhibit B to the Disclosure Statement (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that each holder of an impaired Claim either has accepted the Plan or will receive or retain under the Plan, on account of such Claim, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. The docket of the Chapter 11 Cases does not reflect an election by any class pursuant to section 1111(b)(2) of the Bankruptcy Code.

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<sup>5</sup> The Plan Administrator will have the discretion to hire the Debtors' personnel on such terms as those personnel and the Plan Administrator agree.

27. Acceptance of Certain Classes (11 U.S.C. § 1129(a)(8))

Class 2 Claims (Other Secured Claims), Class 3 Claims (Priority Non-Tax Claims), and Class 5 Claims (Claims of Settling Noteholders) are unimpaired and are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Class 1 (Secured Claim of Comerica) and Class 4 (General Unsecured Claims) have voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code as set forth in the Voting Certification. Class 6 (Intercompany Claims) and Class 7 (Equity Interests) are not to receive or retain property under the Plan and are therefore conclusively presumed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Because not all impaired classes of claims and interests have accepted the Plan, the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met, thus requiring compliance with section 1129(b) of the Bankruptcy Code.

28. Treatment of Administrative, Non-Tax Priority Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9))

The treatment of Administrative Expense Claims pursuant to section 2.01 of the Plan complies with section 1129(a)(9)(A) of the Bankruptcy Code because the Plan provides for all Allowed Administrative Expense Claims (*i.e.*, claims arising under sections 507(a)(2) and 507(a)(3) of the Bankruptcy Code) to be paid in full. Specifically, the Plan provides that “[e]xcept to the extent any Person entitled to payment of an Allowed Administrative Expense Claim has received payment on account of such Claim prior to the Effective Date or agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Claim by the later of either (i) the Effective Date or as soon thereafter as is reasonably practicable, or (ii) the date that 14 days after the Administrative Expense Claim is Allowed.” Plan, § 2.01.

The treatment of Non-Tax Priority Claims under section 4.03 of the Plan complies with section 1129(a)(9)(B) of the Bankruptcy Code because the Plan provides for all Priority Non-Tax Claims (*i.e.*, claims arising under sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of the Bankruptcy Code), to be paid in full. Specifically, the Plan provides that “[e]xcept to the extent that a holder of an Allowed Priority Non-Tax Claim has agreed to a different treatment of such Claim, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to the Allowed Portion of such Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Claim becomes Allowed and (iii) the date for payment provided by any agreement or understanding between the Debtors and the holder of such Claim.” Plan, § 4.03.

The treatment of Priority Tax Claims under section 2.02 of the Plan complies with section 1129(a)(9)(C) of the Bankruptcy Code because the Plan provides for all Allowed Priority Tax Claims (*i.e.*, claims arising under sections 507(a)(8) of the Bankruptcy Code), to be paid in full. Specifically, the Plan provides that “[e]xcept to the extent any entity entitled to payment of any Allowed Priority Tax Claim has received payment on account of such Claim prior to the Effective Date, each Holder of an Allowed Priority Tax Claim shall be paid in full in cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Claim becomes Allowed and (iii) the date for payment provided by any agreement or understanding between the Debtors and the holder of such Claim, unless such Holder of an Allowed Priority Tax Claim agrees to different treatment.” Plan, § 2.02.

29. Acceptance by an Impaired Class (11 U.S.C. § 1129(a)(10))

Two Classes of Claims against the Debtors that are impaired under the Plan have accepted the Plan (Class 1 and Class 4), determined without including any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

30. Feasibility (11 U.S.C. § 1129(a)(11))

The feasibility requirement of section 1129(a)(11) of the Bankruptcy Code is not applicable, because substantially all of the Debtors' assets were sold or otherwise liquidated prior to proposal of the Plan. To the extent applicable, based upon reliable and credible evidence presented, the Debtors' Estates have sufficient assets on hand to implement the Plan as proposed. Therefore, section 1129(a)(11) of the Bankruptcy Code is satisfied.

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

All fees payable pursuant to section 1930 of Title 28 of the United States Code shall be paid on the Effective Date by the Debtors. All fees payable pursuant to section 1930 of Title 28 of the United States Code after the Effective Date shall be paid by the Plan Administrator on a quarterly basis until the Chapter 11 Cases are closed, converted, or dismissed. Therefore, section 1129(a)(12) of the Bankruptcy Code is satisfied.

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

The Debtors have no obligation to provide any retiree benefits, and accordingly, section 1129(a)(13) of the Bankruptcy Code does not apply.

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

The Debtors do not have any domestic support obligations, and accordingly, section 1129(a)(14) of the Bankruptcy Code does not apply.

34. Payment of Disposable Income (11 U.S.C. § 1129(a)(15))

The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code does not apply.



35. Transfer of Property by Nonprofit Entities (11 U.S.C. § 1129(a)(16))

The Debtors are not corporations or trusts that are not a moneyed, business or commercial corporation or trust. Accordingly, section 1129(a)(16) of the Bankruptcy Code does not apply.

36. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b))

Class 6 (Intercompany Claims) and Class 7 (Equity Interests) are impaired classes and are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Pursuant to section 1129(b) of the Bankruptcy Code, the Bankruptcy Court finds that the Plan does not discriminate unfairly and is fair and equitable with respect to Class 6 and Class 7. Specifically, with respect to Class 6 and Class 7 because: (i) no class junior to Class 6 or Class 7 is receiving or retaining any property under the Plan, and (ii) no class of equal rank to Class 6 or Class 7 is being afforded better treatment than Class 6 or Class 7. Thus, the Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding that section 1129(a)(8) of the Bankruptcy Code is not satisfied.

37. Confirmation of One Plan (11 U.S.C. § 1129(c))

The Plan is the only plan filed in these Chapter 11 Cases. Accordingly, section 1129(c) of the Bankruptcy Code is not applicable.

38. Principal Purpose of the Plan (11 U.S.C. § 1129(d))

The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. § 77(e)). Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

39. Good Faith Solicitation (11 U.S.C. § 1125(e))

The exculpation provisions set forth in section 9.03 of the Plan are consistent with section 1125(e) of the Bankruptcy Code because they are limited to the extent permitted by that section of the Bankruptcy Code.

40. Rejection of Contracts and Leases

The Plan's treatment regarding the rejection of executory contracts and unexpired leases in Article VII of the Plan is in compliance with the requirements of sections 365(b) and 1123(b)(2) of the Bankruptcy Code and is a reasonable exercise of sound business judgment, and in each case is in the best interests of the Debtors and the Estates.

41. Substantive Consolidation

The substantive consolidation of the Debtors' Estates for the purposes of voting, confirmation and distribution as provided for by section 5.01 of the Plan is a practical and cost-efficient resolution of the failure of the Debtors to observe corporate separateness and maintain separate books and records for the Debtors prior to the Petition Date.

42. Plan Settlement

In accordance with Bankruptcy Rule 9019, the Plan provides for the good faith compromise and settlement resolving the allocation of the Wink Proceeds and the Debtors' other remaining assets. The entry of this Confirmation Order constitutes the Bankruptcy Court's approval of the foregoing compromise and settlement embodied in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromise and settlement is in the best interests of the Debtors, their Estates, creditors, and other parties-in-interest, and is fair, equitable, and within the range of reasonableness. In reaching its decision on the substantive fairness of the compromise and settlement contained in the Plan, the Bankruptcy Court considered the following factors: (i) the balance between the litigation's possibility of success

and the settlement's future benefits; (ii) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (iii) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (iv) whether other parties in interest support the settlement; (v) the competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement; (vi) the nature and breadth of releases to be obtained by officers and directors; and (vii) the extent to which the settlement is the product of arm's length bargaining. See Motorola, Inc. v. Official Comm. Of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007). The Bankruptcy Court finds that these factors weigh in favor of approving the compromises and settlements embodied in the Plan.

43. Releases, Exculpation and Injunction Provisions

The Bankruptcy Court has jurisdiction under section 1334 of title 28 of the United States Code and authority under section 105 of the Bankruptcy Code to approve the injunctions or stays, injunction against interference with the Plan, releases, and exculpation set forth in the Plan, including in sections 9.02–9.07, respectively. The entry of this Confirmation Order constitutes the Bankruptcy Court's approval of the releases embodied in sections 9.02, 9.04 and 9.05 of the Plan pursuant to Bankruptcy Rule 9019 and satisfaction of the factors cited in Iridium set forth above, and the Bankruptcy Court's findings shall constitute its determination that such releases are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (b) in the best interests of the Debtors and all holders of Claims; (c) fair, equitable, and reasonable; and (d) approved after due notice and opportunity for hearing.

Those holders of Claims in Class 1 and Class 4 who cast ballots and who did not elect to opt out of the releases set forth in section 9.06 of the Plan were given due and adequate notice that they would be consenting to the releases set forth in section 9.06 of the Plan. Such releases were conspicuously noted in the Plan, Disclosure Statement, and the ballots. Accordingly, in light of all of the circumstances, the releases in section 9.06 of the Plan satisfy the applicable standards contained Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136 (2d Cir. 2005).

The exculpation provision of section 9.03 of the Plan is appropriately tailored to protect the Exculpated Parties from claims arising out of the Chapter 11 Cases and does not relieve any party of liability for fraud, gross negligence or willful misconduct.

The injunction set forth in section 9.07 of the Plan complies with section 524(e) of the Bankruptcy Code and is important to the overall objectives of the Plan to fully and finally resolve all claims against the Debtors in these Chapter 11 Cases.

Based upon the record of these Chapter 11 Cases and the evidence admitted at or prior to the Confirmation Hearing, the Bankruptcy Court finds that the releases, exculpation and injunction provisions set forth in Article IX of the Plan are consistent with the Bankruptcy Code and other applicable law.

44. Satisfaction of Confirmation Requirements

The Plan satisfies all applicable requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

45. Retention of Jurisdiction

The Bankruptcy Court may properly retain jurisdiction over the matters set forth in section 10.01 of the Plan and section 1142 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT:**

1. Confirmation

All objections to confirmation of the Plan are hereby overruled or are otherwise resolved by this order. The Plan, in the form annexed hereto as **Exhibit A** is hereby confirmed pursuant to section 1129 of the Bankruptcy Code.

2. Binding Effect

The Plan and its provisions shall be binding upon the Debtors, any Person acquiring or receiving property or a distribution under the Plan, and any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities (including without limitation all taxing authorities), whether or not the Claim or Equity Interest of such holder is impaired under the Plan, whether or not the Claim or Equity Interest is Allowed, and whether or not such holder or entity has accepted the Plan upon entry of the Confirmation Order.

The rights, benefits and obligations of any Person named or referred to in the Plan, or whose actions may be required to effectuate the terms of the Plan, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

Upon the Effective Date, the terms and provisions of the Plan and this Confirmation Order shall survive and remain effective after entry of any order which may be entered closing the Chapter 11 Cases, dismissing the Chapter 11 Cases or converting the Chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

3. Substantive Consolidation

The substantive consolidation of the Debtors' Estates, provided for in section 5.01 of the Plan, for the purposes of implementation and consummation of the Plan, including, without

limitation, for purposes of voting, confirmation and distribution is hereby approved in accordance with sections 105(a) and 1123(a)(5)(C) of the Bankruptcy Code, and on the Effective Date: (i) all assets and liabilities of the Debtors shall be treated as though they were merged solely for purposes of implementation and consummation of the Plan; (ii) no Distribution shall be made under the Plan on account of any Claims between and/or among any of the Debtors, as provided in section 4.06 of the Plan; (iii) for all purposes associated with confirmation of the Plan, including, without limitation, for purposes of tallying votes on the Plan, the Estates of the Debtors shall be deemed to be one consolidated Estate; (iv) each and every Claim filed or to be filed in the Chapter 11 Cases of the Debtors shall be deemed filed against the substantively consolidated Debtors, and shall be Claims against and obligations of the substantively consolidated Debtors; (v) to the extent any Creditor filed substantially similar claims against more than one of the Debtors based upon the same transaction, act or omission, such Creditor shall be deemed to have one (1) Claim against the debtor Quirky, Case No. 15-12596(mg) for voting and distribution purposes, and duplicative claims filed in the Chapter 11 cases of Wink (Case No. 15-12597(mg)) and Undercurrent (Case No. 15-12598(mg)) shall be deemed disallowed and expunged from the Claims Register maintained in the Chapter 11 Cases; (vi) to the extent any Creditor filed more than one (1) Claim against one or more of the Debtors based upon different transactions, acts or omissions, such claims shall be aggregated, and such creditor shall be deemed to have only one (1) Claim in the aggregate amount of filed claims for voting and distribution purposes; and (vii) any guaranty by one or more of the Debtors of the obligations of another Debtor will be eliminated and any claim filed against one or more of the Debtors based upon any guaranty shall be deemed disallowed and expunged from the Claims Register maintained in the Chapter 11 Cases.

Substantive consolidation shall not affect: (i) the legal and organizational structure of the Debtors; (ii) guarantees, liens, and security interests that are required to be maintained (A) under the Bankruptcy Code, or (B) pursuant to the Plan; (iii) distributions from any insurance policies or proceeds of such policies; or (iv) the dissolution of any of the Debtors after the Effective Date in accordance with the authority and discretion of the Plan Administrator as provided in the Plan.

In the event that the Plan cannot be consummated, each of the Creditors' Committee, on the one hand, and Comerica, on the other, reserve all of their rights with respect to the substantive consolidation of the Debtors' Estates, including with respect to the contemplation of any alternative Plan or liquidation process.

4. Plan Settlement

As an element of, and in consideration for, an overall negotiated settlement on the allocation of the Wink Proceeds, the provisions of the Plan shall, upon consummation, constitute a good-faith compromise and settlement, pursuant to Bankruptcy Rule 9019 among the Debtors, Comerica and the Creditors' Committee.

5. Injunction

The injunction provisions set forth in section 9.07 of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Bankruptcy Court or any other party.

On the Effective Date, Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date against the Debtors, their successors and assigns or any of their assets or properties shall be satisfied and released in full. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, on and after the Effective Date, all Parties and Entities are permanently enjoined, on account of any Claim

satisfied and released hereby, from: (i) commencing or continuing in any manner any action or other proceeding of any kind against any of the Debtors, their successors and assigns, and any of their assets and properties; (ii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Debtor, their successors and assigns, and any of their assets and properties; (iii) creating, perfecting or enforcing any encumbrance of any kind against any Debtor, their successors and assigns, and any of their assets and properties; (iv) asserting any right of setoff or subrogation of any kind against any obligation due from any Debtor, or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed Proof of Claim; or (v) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Cause of Action released or settled hereunder; provided, however, nothing in section 9.07 of the Plan shall prohibit any Person from taking actions to enforce any rights or obligations under or in connection with the terms of the Plan, or this Confirmation Order; provided further, however, nothing in this Confirmation Order or the Plan shall discharge, release, impair or otherwise preclude: (1) any liability to a governmental unit under environmental law that is not a Claim; (2) any Claim of a governmental unit arising on or after the Effective Date; (3) any valid right of set-off or recoupment of the United States against a Debtor; or (4) any liability of the Debtors under environmental law to any governmental unit as the owner or operator of property that such Debtor owns or operates after the Effective Date, except those obligations to reimburse costs expended or paid by a governmental unit before the Effective Date or to pay penalties owing to a governmental unit for violations of environmental laws or regulations that occurred before the Effective Date; provided that the Debtors reserve all of their rights and defenses under applicable law with respect to any such Claims or Liabilities.



Nor shall anything in the Plan: (i) enjoin or otherwise bar the United States or any governmental unit from asserting or enforcing, outside the Bankruptcy Court, any liability described as not discharged in the preceding sentence, provided that the Debtors reserve all of their rights and defenses under applicable law with respect to any such Claims or Liabilities; or (ii) divest any court of jurisdiction to determine whether any liabilities asserted by the United States or any governmental unit are discharged or otherwise barred by the Plan or the Bankruptcy Code; and provided further, however, nothing in this Confirmation Order or the Plan shall release or exculpate any non-Debtor, including any Releasees or Exculpated Parties, from any liability to the United States, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Releasees or Exculpated Parties, nor shall anything in the Plan enjoin the United States from bringing any claim, suit, action or other proceeding against the Releasees or Exculpated Parties for any liability whatsoever.

6. Releases and Exculpation

The releases set forth in Article IX of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Bankruptcy Court, any of the parties to such releases or any other party.

(a) Releases by the Debtors. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, for the good and valuable consideration provided by each of the Releasees, including, without limitation: (a) the waiver of certain claims and other settlements provided for in this plan; (b) the satisfaction and elimination of debt and all other good and valuable consideration paid pursuant to the Plan or otherwise; (c) the services of the Debtors' officers and directors in facilitating the expeditious implementation of the Wink Sale and Quirky Sale; and (d) the Settling Noteholders waiver and release of any and all rights to any

Distribution under the Plan, each of the Debtors hereby provides a full release, waiver and discharge to the Releasees (and each such Releasee so released shall be deemed released and discharged by the Debtors) and their respective properties from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place from the beginning of time through the Effective Date, including, without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates and further including those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing provisions of section 9.02 of the Plan shall have no effect on the liability of any Releasee that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

(b) The Plan Settlement Releases. In consideration of the settlement and compromise of Claims, Causes of Action, rights, interests and obligations against each other in relation to the Plan Settlement, and in consideration of the Settling Noteholders' agreement to waive their rights under the Subordinated Convertible Notes, each of the Debtors, Comerica, the Settling Noteholders (and/or their respective designees), and the Creditors' Committee (the "Plan Settlement Releasers") hereby fully release, waive and discharge any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, that they hold against each other (in their capacity as such) whether known or

unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances taking place from the beginning of time through the Effective Date, including, without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates and further including those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing provisions of section 9.04 of the Plan shall have no effect on the liability of any of the Plan Settlement Releasers that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

(c) Settling Noteholder Releases. In consideration of the Settling Noteholders agreement to waive their rights to payment or Distribution under the Subordinated Convertible Notes, and for other good and valuable consideration, each of the Debtors hereby provides to each of the Settling Noteholders a full release, waiver and discharge from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place from the beginning of time through the Effective Date, including without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates. Notwithstanding anything to the contrary herein, pursuant to California Civil Code § 1542, a general release does not extend to claims

which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the Debtors.

(d) Optional Releases by Holders of Claims.

Creditors Deemed to Have Accepted Releases: For good and valuable consideration, as of the Effective Date, a Creditor who votes and does not elect to opt out of the release provisions contained in section 9.06 of the Plan, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Releasees from any and all direct claims and causes of action held by such Creditor whatsoever, including pre-Petition Date claims and causes of action, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place after the Petition Date in any way related to the Debtors, the Chapter 11 Cases or the Plan.

Creditors Deemed to Have Opted Out of Releases: A Creditor who returned a ballot with the "Opt-Out" box checked on the ballot (whether or not the ballot is otherwise properly executed) shall be deemed to have opted out of the releases set forth in section 9.06 of the Plan.

The optional releases in section 9.06 of the Plan shall not be applicable with respect to: (i) holders of unclassified Claims; (ii) holders of Claims conclusively presumed to accept the Plan (*i.e.* Class 2, Class 3 and Class 5) and are not entitled to vote on the Plan; (iii) holders of Claims and Equity Interests deemed to reject the Plan (*i.e.* Class 6 and Class 7) and are not entitled to vote; and (iv) any holder of a Claim in an Impaired Class (*i.e.* Class 1 and Class 4) that does not submit a ballot to vote for or against the Plan.

(e) Exculpation. Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Person for any and all Claims and Causes of Action arising on or after the Petition Date, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, Plan Administrator Agreement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the Sale or the liquidation of the Debtors; provided, however, that the foregoing provisions of section 9.03 of the Plan shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above-referenced documents, and provided, further that no Exculpated Parties shall be exculpated from any liability resulting from any act or omission that limits the liability of any Person pursuant to N.Y. Comp. Codes R. & Regs. Tit. 22 Section 1200.8 Rule 1.8(h)(1) (2009) as determined by Final Order and any other statutes, rules or regulations dealing with professional conduct to which such professionals are subject; provided that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the generality of the foregoing, the Debtors, and their respective Professionals shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. For the avoidance of doubt, nothing in section 9.03 of the Plan shall be construed as a release of any Cause of Action against the

Releasees based upon any act or omission, transaction or other occurrence or circumstances existing or taking place prior to the Petition Date.

7. Notice of Entry of Confirmation Order, Occurrence of Effective Date, Administrative Expense Claim Bar Date and Rejection Damages Bar Date

Pursuant to Bankruptcy Rules 2002(f), 2002(k) and 3020(c), on or before the tenth (10th) day following the Effective Date, the Debtors shall electronically file with the Bankruptcy Court and serve notice of entry of this Confirmation Order and occurrence of the Effective Date by causing notice of entry of this Confirmation Order, occurrence of the Effective Date, Administrative Expense Claim Bar Date and Rejection Damages Bar Date (as defined in the Notice of Confirmation) in substantially the same form as attached hereto as **Exhibit B** (the “Notice of Confirmation”), to be delivered to (i) all known holders of Claims and Equity Interests (including those whose claims are unimpaired, as well as impaired, by the Plan), (ii) all known non-Debtor counterparties to executory contracts and unexpired leases, (iii) applicable taxing authorities, (iv) the U.S. Trustee, and (v) the United States (in accordance with Bankruptcy Rule 2002(j)) and all known parties in interest by first-class mail, postage prepaid; provided, however that this notice may be emailed to Community Members for whom the Debtors have email addresses. The notice described herein is adequate and no other or further notice is necessary. The form of Notice of Confirmation substantially in the form annexed hereto as **Exhibit B** is approved.

8. Retention of Jurisdiction

Following the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases to the maximum extent legally permissible, including, without limitation, for the following purposes:

a. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for

payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

b. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

c. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is party to or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including those matters related to any amendment to the Plan after the Effective Date pursuant to section 11.05 of the Plan, adding executory contracts or unexpired leases to the list of executory contracts and unexpired leases to be assumed;

d. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

e. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including, without limitation, Retained Causes of Action, and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Plan Administrator after the Effective Date, provided, however, that the Plan Administrator shall reserve the right to commence actions in all appropriate jurisdictions;

f. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan, Plan Supplement or the Disclosure Statement;

g. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Person's obligations incurred in connection with the Plan;

h. issue and enforce injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

i. resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article IX, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

j. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

k. resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and

1. enter an order and/or the decree contemplated in Bankruptcy Rule 3022 closing the Chapter 11 Cases.

9. Conflicts between Confirmation Order and Plan

In the event of a conflict between the terms of the Plan and any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, the terms of the Plan shall control over any such documents. In the event of a conflict between the terms of the Plan or any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the one hand, and the terms of this Confirmation Order, on the other hand, the terms of this Confirmation Order shall control. In the event of a conflict between the information contained in the Disclosure Statement, on the one hand, and the terms of the Plan, this Confirmation Order or any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the other hand, the Plan, this Confirmation Order or any contract, instrument, release or other agreement or document entered into in connection with the Plan (as the case may be) shall control.

10. Reference to and Validity and Enforceability of Plan Provisions

The failure to reference any particular provision of the Plan in this Confirmation Order shall not impair, prejudice, waive or otherwise affect the binding effect, enforceability or legality of such provisions, and such provisions shall have the same binding effect, enforceability or legality as every other provision of the Plan and this Confirmation Order. Each term and provision of the Plan, as it may have been altered or interpreted by the Bankruptcy Court, is valid and enforceable pursuant to its terms.



11. Final Order

This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

**IT IS SO ORDERED.**

Dated: July 15, 2016.  
New York, New York

/s/Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge

**Exhibit A**

**Debtors' First Amended Joint Plan of Liquidation Pursuant  
to Chapter 11 of the Bankruptcy Code**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
	:	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>QUIRKY, INC., et al.<sup>1</sup></b>	:	<b>Case No. 15-12596 (mg)</b>
	:	
<b>Debtors.</b>	:	
	:	
-----	X	

**DEBTORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: June 20, 2016

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Quirky, Inc. (2873); Wink, Inc. (8826); and Undercurrent Acquisition, LLC (9692).

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**DEBTORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE**

**INTRODUCTION**

Pursuant to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Quirky, Inc. ("Quirky"), Wink, Inc. n/k/a Wink Dissolution Corp. ("Wink"), and Undercurrent Acquisition, LLC ("Undercurrent"), and together with Wink, the "Subsidiary Debtors," and collectively with Quirky, the "Debtors") propose the following Debtors' First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the "Plan").

The Plan is fairly simple. The Debtors have liquidated substantially all of their assets through Bankruptcy Court-approved sale transactions and no longer maintain active business operations. Their Estates continue to be administered jointly for wind down purposes. As a result of the impending liquidation and the consolidation of operations, the Subsidiary Debtors' assets and liabilities will be substantively consolidated with Quirky's assets and liabilities by and for the purposes of this Plan, including, without limitation, for the purposes of voting and distribution with any intercompany or duplicate claims eliminated. Certain settlements will be implemented between and among major creditors as part of the Plan, including a settlement between Comerica and the Creditors' Committee. As part of the compromises contained in the Plan, certain funds will be set aside for the benefit of unsecured creditors and a Plan Administrator will be appointed to review, analyze and object to unsecured claims, or, as appropriate, continue the prosecution of those objections being pursued by the Debtors on the Effective Date, and to evaluate and potentially pursue the Retained Causes of Action and make Distributions to holders of Allowed Claims. Apart from the activity that will continue by the Plan Administrator, as set forth in the Plan, the Debtors' Estates will otherwise be wound down promptly following the Effective Date of the Plan. Reference is made to the First Amended Disclosure Statement for Debtors' First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code dated June 20, 2016 (together with all exhibits attached thereto or referenced therein, as the same may be amended, modified or supplemented the "Disclosure Statement") for a discussion of the Debtors' history, business, assets and liabilities, and for a summary and analysis of the Plan.

**ARTICLE I**

**DEFINITIONS, RULES OF INTERPRETATION, COMPUTATION OF TIME**

1.01 **Definitions.** As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

**"Administrative Expense Claim"** means any right to payment constituting a cost or expense of the Chapter 11 Cases under Sections 503(b), 507(a)(2), or 1114(e)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving one or more of the Estates, any actual and necessary costs and expenses of operating the business of the Debtors, any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their business or liquidation of their assets, any Professional Fees, and any fees or charges assessed against one or more of the Estates under Section 1930 of

Title 28 of the United States Code.

“**Administrative Expense Claim Bar Date**” shall have the meaning set forth in Section 2.01 of this Plan.

“**Administrative Expense Reserve**” means the Cash reserved for unpaid and accrued Administrative Expense Claims.

“**Affiliate**” has the meaning set forth in Section 101(2) of the Bankruptcy Code.

“**Allowed**” means, with respect to any Claim, the Claim or portion thereof that is not a Disputed Claim or Disallowed Claim: (a) for which a Proof of Claim was timely filed with the Bankruptcy Court, and as to which no Objection is interposed; (b) for which no Proof of Claim thereof was filed, to the extent that such Claim has been listed by the Debtors in one of their Schedules as liquidated in amount and not disputed or contingent as to liability, and as to which no Objection is interposed; (c) which arises from the recovery of property under Sections 550 or 553 of the Bankruptcy Code and is allowed in accordance with Section 502(h) of the Bankruptcy Code; (d) which is allowed under the Plan; or (e) which is allowed by a Final Order.

“**Avoidance Claims**” means any and all rights, claims, causes of action or rights to avoid any transfer or incurrence of debt that may be asserted or recovered by one or more of the Debtors in their respective capacities as debtor-in-possession pursuant to Chapter 5 of the Bankruptcy Code.

“**Bankruptcy Code**” means title 11 of the United States Code, as amended, in effect and applicable to the Chapter 11 Cases.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as promulgated by the Supreme Court of the United States, as amended, and any Local Rules of the Bankruptcy Court, as amended, in effect and applicable to the Chapter 11 Cases.

“**Business Day**” means any day other than a Saturday, Sunday or any legal holiday under federal law or the State of New York.

“**Cash**” means legal tender of the United States of America and equivalents thereof.

“**Causes of Action**” means all claims, actions, causes of action, choses in action, Avoidance Claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims and crossclaims of any of the Debtors, and/or their Estates that are or may be pending on the Effective Date or instituted by the Plan Administrator after the Effective Date against any Person, based in law or equity, whether direct, indirect, derivative or otherwise and whether asserted or unasserted as of the Effective Date.

“**Chapter 11 Cases**” or “**Cases**” means the Debtors’ cases under Chapter 11 of the Bankruptcy Code, jointly administered under Case No. 15-12596(mg) on the docket of the Bankruptcy Court.

“**Claim**” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“**Claims Objection Bar Date**” means the bar date for objecting to proofs of claim, which shall be one-hundred eighty (180) days after the Effective Date; *provided, however*, that the Plan Administrator may seek by motion additional extensions of this date from the Bankruptcy Court.

“**Claims Register**” means the register of Claims and Equity Interests maintained by Rust Consulting/Omni Bankruptcy.

“**Class**” means a class of Claims or Equity Interests, as described in Article III of this Plan.

“**Collateral**” means any property or interest in property of one or more of the Debtors’ Estates subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

“**Comerica**” means Comerica Bank.

“**Confirmation Date**” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

“**Confirmation Order**” means the order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

“**Consolidated Cash**” means all Cash, and/or other assets that may be reduced to cash, of the Debtors in the Estates as of or after the Effective Date of the Plan, except for the: (a) the Plan Settlement Consideration, (b) any Disputed Claim Reserve, (c) the Administrative Expense Reserve, (d) the Wink Sale Reserve Fund and (e) Quirky Community Settlement amount.

“**Creditor**” has the meaning ascribed to such term in Section 101(10) of the Bankruptcy Code.

“**Creditors’ Committee**” means the Official Unsecured Creditors’ Committee appointed by the United States Trustee in these Chapter 11 Cases pursuant to Section 1102 of the Bankruptcy Code, as it may be constituted from time to time.

“**Debtors**” shall have the meaning set forth in the Introduction of this Plan.

“**Disallowed**” means, when referring to a Claim, a Claim or any portion thereof, that (a) has been disallowed or expunged, in whole or in part, by a Final Order; (b) has been withdrawn by agreement between the Debtors or the Plan Administrator and the Holder thereof, in whole or in part; (c) has been withdrawn, in whole or in part, by the Holder thereof; (d) is listed in the Schedules as zero or as disputed, contingent or unliquidated and in respect of which a Proof of

Claim has not been timely filed or deemed timely filed pursuant to the Plan, the Bankruptcy Code or any Final Order of the Bankruptcy Court; (e) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the filed amount of any Proof of Claim; or (f) is evidenced by a Proof of Claim which has been filed, or which has been deemed to be filed under applicable law or order of the Bankruptcy Court or which is required to be filed by order of the Bankruptcy Court, but as to which such Proof of Claim was not timely or properly filed. In each case a Disallowed Claim is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

**“Disclosure Statement”** shall have the meaning set forth in the Introduction of this Plan.

**“Disputed Claim”** means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a Proof of Claim has been timely filed; (b) as to which a Debtor or the Plan Administrator has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, and this Plan; or (c) as otherwise disputed by a Debtor or Plan Administrator as provided for herein and in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order.

**“Disputed Claim Reserve(s)”** means the reserve funds created pursuant to Section 6.03 of the Plan.

**“Distribution”** means any payment of Cash called for under the Plan.

**“Effective Date”** means the first day after the conditions to effectiveness of the Plan provided in Section 8.01 hereof have been satisfied.

**“Equity Interests”** means any ownership interests in and with respect to one or more of the Debtors.

**“Estate(s)”** means one or more of the bankruptcy estates in these Chapter 11 Cases of the Debtors.

**“Exculpated Parties”** means, collectively, the Debtors, Charles Kwalwasser, Ed Kremer, the Creditors’ Committee and the individual members thereof (solely in their capacity as such), Comerica, and each of their respective Representatives (each of the foregoing in its individual capacity as such), provided, however, that the Exculpated Parties shall not include any directors or officers of the Debtors except for those specifically identified by name in this definition.

**“Final Cash Collateral Order”** means the order of the Bankruptcy Court entitled “Final Order (I) Authorizing Debtors To Use Cash Collateral, (II) Granting Adequate Protection, And (III) Granting Certain Related Relief” entered on October 23, 2015 [Docket No. 119].

**“Final Order”** means an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for reargument or rehearing will then be pending or as to which any right to appeal, petition for certiorari, reargument, or rehearing will have been

waived in writing, in form and substance, satisfactory to the Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court will have been determined by the highest court to which such order was appealed, or certiorari reargument or rehearing will have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing will have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed with respect to such order will not cause such order not to be a Final Order.

**“General Bar Date”** means February 29, 2016 at 5:00 p.m. prevailing Eastern Time in accordance with the *Order (i) Setting Bar Dates for Submitting Proofs of Claim, (ii) Approving Procedures for Submitting Proofs of Claim, (iii) Approving Notice Thereof, and (iv) Granting Related Relief* [Docket No. 291].

**“Governmental Bar Date”** means March 21, 2016 at 5:00 p.m. prevailing Eastern Time in accordance with the *Order (i) Setting Bar Dates for Submitting Proofs of Claim, (ii) Approving Procedures for Submitting Proofs of Claim, (iii) Approving Notice Thereof, and (iv) Granting Related Relief* [Docket No. 291].

**“General Unsecured Claim”** means any Claim other than a Priority Tax Claim, Priority Non-Tax Claim, a Secured Claim, an Equity Interest or an Administrative Expense Claim.

**“Holder”** means the holder of any Claim or Equity Interest.

**“Impaired”** means, when used in reference to a Claim or Equity Interest or a class thereof, a Claim or Equity Interest or class thereof that is impaired within the meaning of Bankruptcy Code Section 1124.

**“Initial Distribution Date”** means the date on which the Plan Administrator shall make an initial Distribution, which shall be a date selected by the Plan Administrator.

**“Intercompany Claims”** means any Claim asserted by one of the Debtors or its Estate against another of the Debtors or their Estates.

**“Lien”** has the meaning set forth in Section 101(37) of the Bankruptcy Code.

**“Maximum Class 1 Distribution Threshold”** means Cash Distributions made by the Plan Administrator to Comerica on accounts its Lien on Consolidated Cash, on or after the Effective Date in the aggregate amount of \$10,300,000.

**“Minimum Class 1 Distribution Threshold”** means Cash Distributions made by the Plan Administrator to Comerica on account of its Lien on Consolidated Cash, on or after the Effective Date in the aggregate amount of not less than \$9,950,000 based on projection made as of the filing of this Plan; provided, however, that to the extent that available Consolidated Cash is not sufficient to meet the Minimum Class 1 Distribution Threshold, Comerica shall agree to consider a reasonably necessary decrease in the Minimum Class 1 Distribution Threshold.

**“Objection”** means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, establish the priority of, expunge, subordinate, or estimate any Claim (including the resolution of any request for payment of any Administrative Expense Claim), or Equity Interest, other than a Claim or an Equity Interest that is Allowed.

**“Oversight Committee”** means the committee appointed as of the Effective Date pursuant to section 5.04 of this Plan.

**“Person”** shall have the meaning set forth in Section 101(41) of the Bankruptcy Code.

**“Petition Date”** means September 22, 2015, the date on which the Debtors filed the Chapter 11 Cases.

**“Plan”** means this Chapter 11 plan, either in its present form or as the same may be altered, amended or modified from time to time.

**“Plan Administrator”** means the individual or entity appointed as the Plan Administrator pursuant to Section 5.03 of this Plan.

**“Plan Administrator Agreement”** means the agreement between the Debtors, the Committee, and Comerica, on the one hand, and the Plan Administrator on the other, which shall be filed with the Bankruptcy Court as part of the Plan Supplement.

**“Plan Settlement”** means the settlement by and between Comerica, the Debtors and the Creditors’ Committee embodied in this Plan.

**“Plan Settlement Consideration”** means the following consideration: (a) \$1,400,000 in Cash, (b) seventy-five percent (75%) interest in any portion of the Wink Sale Reserve Fund that is eventually released, (c) the Retained Causes of Action, and (d) any Distributions otherwise entitled to be paid to Class 1 after the Maximum Class 1 Distribution Threshold has been attained.

**“Plan Settlement Fund”** means the portion of Plan Settlement Consideration reduced to Cash and maintained by the Plan Administrator at any point in time after the Effective Date of the Plan.

**“Plan Settlement Release”** means the releases set forth in Section 9.04 of this Plan.

**“Plan Settlement Releasers”** shall have the meaning ascribed in Section 9.04 of this Plan.

**“Plan Supplement”** means the compilation of documents and forms of documents, schedules and exhibits to the Plan to be filed with the Bankruptcy Court on notice to parties-in-interest, including the Plan Administrator Agreement. The Debtors shall file substantially complete versions of the materials comprising the Plan Supplement no later than five (5) Business Days before the deadline to object to the confirmation of the Plan.

**“Post Effective Date Fees and Expenses”** means the fees and expenses of the Plan Administrator and Professionals retained by the Plan Administrator.

**“Priority Non-Tax Claim”** means any Claim entitled to priority under Section 507(a)(1), (4), (5), (6), or (7) of the Bankruptcy Code.

**“Priority Tax Claim”** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**“Priority Claims Reserve”** means the portion of the Disputed Claim Reserve established by the Debtors, with the consent of Comerica, in an amount that is satisfactory to account for any asserted Priority Tax Claims or Class 3 Priority Non-Tax Claims, which in the aggregate exceed the amount of the Plan Settlement Fund as of the Effective Date, plus, to the extent not available from the Plan Settlement Fund, an additional \$100,000 available to the Plan Administrator for reconciliation of or Objections to Priority Tax Claims or Class 3 Priority Non-Tax Claims.

**“Pro Rata”** means the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of all Allowed Claims in such Class.

**“Professionals”** means the professionals retained by the Debtors, the Creditors’ Committee or the Plan Administrator under Bankruptcy Code Sections 327 or 1103 and to be compensated pursuant to Bankruptcy Code Sections 327, 328, 330, 331, or 503(b)(2), (4) or (5).

**“Professional Fees”** shall have the meaning set forth in Section 2.03 of this Plan.

**“Proof of Claim”** means a proof of claim filed in connection with the Chapter 11 Cases.

**“Quirky Community Settlement”** means the settlement by and between Comerica and the Creditor’s Committee, which resulted in the reservation and earmarking of Three Hundred Twenty Five Thousand Dollars (\$325,000) of the proceeds from the Quirky Sale in consideration of the transfer of the assets of the Quirky business free and clear of the interests of the members of the Quirky.com online community in accordance with the terms of paragraph 26 of the Quirky Sale Order.

**“Quirky Equity Interests”** means any Equity Interests held by Quirky.

**“Quirky Inventory Reserve”** means the fund set aside pursuant to the Quirky Sale Order for potential purchase price reduction in the event that the Debtors do not deliver all Quirky inventory agreed to as part of the Quirky Sale.

**“Quirky Proceeds”** means the net proceeds from the Quirky Sale after payment of all costs and expenses of the Quirky Sale and the segregation of the Quirky Community Settlement amount.

**“Quirky Sale”** means the sale of certain assets by Quirky to Q Holdings, LLC pursuant to the Quirky Sale Order.

“**Quirky Sale Order**” means that certain *Order Authorizing (i) the Sale of Certain of the Debtors’ Assets Related to the Quirky Business Free and Clear of All Claims, Liens, Liabilities, Rights, Interests And Encumbrances, (ii) the Debtors to Enter into and Perform Their Obligations Under the Asset Purchase Agreement, (iii) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases, and (iv) Granting Related Relief* [Docket No. 243], which approved the Quirky Sale.

“**Record Date**” means the record date for determining the holders of Claims that may be entitled to receive Distributions under the Plan on account of Allowed Claims. The Record Date shall be the date on which an order approving the Disclosure Statement is entered.

“**Releasees**” means, collectively, the Settling Noteholders and the Exculpated Parties.

“**Representatives**” means, with regard to any Person, its officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents and other representatives (including their respective officers, directors, employees, members and professionals), each of the foregoing in their capacity as such.

“**Retained Causes of Action**” means all Causes of Action to be retained by the Plan Administrator after the Effective Date, including, but not limited to, the Causes of Action identified on the Schedule of Retained Causes of Action, provided, however, the Retained Causes of Action shall not include those Causes of Action that were transferred pursuant to the Wink Sale or are released, compromised and/or settled prior to the Effective Date or otherwise pursuant to Article IX of this Plan.

“**Schedules**” means the Schedules of Assets and Liabilities, the List of Holders of Interests, and the Statement of Financial Affairs filed by each of the Debtors, as may be amended.

“**Schedule of Retained Causes of Action**” means the schedule, to be included as part of the Plan Supplement, listing the Retained Causes of Action.

“**Secured Claim**” means any Claim, to the extent reflected in the Schedules or a Proof of Claim as being secured and properly perfected, which is secured by a timely perfected Lien, as defined by Section 101(37) of the Bankruptcy Code, on collateral, to the extent of the value of the Estate’s interest in such collateral, as determined as of the relevant determination date.

“**Settling Noteholders**” means (i) GE Ventures LLC, (ii) RRE Ventures IV, L.P., (iii) RRE Leaders Fund, L.P., (iv) KPCB Holdings, Inc., as nominee for KPCB Digital Growth Fund, LLC and KPCB DGF Founders Fund, LLC, (v) Norwest Venture Partners XI, LP, (vi) The Marks Family Trust and (vii) AH Parallel Fund III, L.P. (for itself and as nominee for AH Parallel Fund III-A, L.P., AH Parallel Fund III-B, L.P., and AH Parallel Fund III-Q, L.P.), and (viii) each of their respective representatives, including, without limitation, their respective observers on the Debtors’ Board of Directors to the extent that such observer was an officer or employee of the entities identified in clauses (i)-(viii) of this definition (each an “Observer”) and designees on the Debtors’ Board of Directors (each a “Designee”), and any representative of an Observer or Designee, and each of their respective current and former members (including ex officio members), officers, director, principals, managers, employees, partners, attorneys,



financial advisors, accountants, investment bankers, investment advisors, professionals, consultants, agents, affiliates, and representatives (in each case in his, her, or its capacity as such).

“**Subordinated Convertible Notes**” means the unsecured convertible debt instruments issued by Quirky and due December 31, 2015 that were sold to nine (9) holders as of the Petition Date in the total principal amount of approximately \$36,800,000.

“**Subsidiary Debtor Equity Interests**” means the Equity Interests of one or more of the Subsidiary Debtors.

“**Substantive Consolidation**” means the consolidation of the assets and liabilities of the Subsidiary Debtors’ Estates into the assets and liabilities of Quirky in the manner further set forth in this Plan, including without limitation Section 5.01.

“**Tax Claim**” means any claim entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

“**Unimpaired**” means, when used in reference to a Claim or Equity Interest or a class thereof, a Claim or Equity Interest or a class thereof that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

“**Wink Proceeds**” means the net proceeds from the Wink Sale after payment of all costs and expenses of the Wink Sale.

“**Wink Sale**” means the sale of certain assets by Wink to Flextronics International USA Inc., pursuant to the Wink Sale Order.

“**Wink Sale Order**” means that certain *Order Authorizing (i) The Sale Of Certain Of The Debtors’ Assets Related To The Wink Business Free And Clear Of All Claims, Liens, Liabilities, Rights, Interests And Encumbrances, (ii) The Debtors To Enter Into And Perform Their Obligations Under The Asset Purchase Agreement, (iii) The Debtors To Assume And Assign Certain Executory Contracts And Unexpired Leases, and (iv) Granting Related Relief* [Docket No. 178], which approved the Wink Sale.

“**Wink Sale Reserve Fund**” means the portion of Wink Proceeds reserved in connection with the terms of the Wink Sale until November 20, 2016.

1.02 **Rules of Interpretation**. Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include both the singular and the plural and pronouns stated in the masculine, feminine or neuter gender will include the masculine, feminine and neuter. Unless otherwise specified, all section, article, schedule or exhibit references in the Plan are to the respective Section in, Article of, Schedule to, or Exhibit to, the Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. The rules of construction contained in Section 102 of the Bankruptcy Code will apply to the construction of the Plan. All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided. A term used herein that is not defined herein,

but that is used in the Bankruptcy Code, will have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Plan are for convenience of reference only and will not limit or otherwise affect the provisions of the Plan.

1.03 **Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) shall apply.

## **ARTICLE II**

### **TREATMENT OF UNCLASSIFIED CLAIMS**

2.01 **Administrative Expense Claims.** The deadline for filing an Administrative Expense Claim (other than post-petition operating expenses or professional fees) shall be thirty (30) days after mailing of notice of the occurrence of the Effective Date (the “Administrative Expense Claim Bar Date”). Except to the extent any Person entitled to payment of an Allowed Administrative Expense Claim has received payment on account of such Claim prior to the Effective Date or agrees to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Claim by the later of either (i) the Effective Date or as soon thereafter as is reasonably practicable, or (ii) the date that 14 days after the Administrative Expense Claim is Allowed.

2.02 **Priority Tax Claims.** Except to the extent any entity entitled to payment of any Allowed Priority Tax Claim has received payment on account of such Claim prior to the Effective Date, each Holder of an Allowed Priority Tax Claim shall be paid in full in cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Claim becomes Allowed and (iii) the date for payment provided by any agreement or understanding between the Debtors and the holder of such Claim, unless such Holder of an Allowed Priority Tax Claim agrees to different treatment. Distributions to Holders of Allowed Priority Tax Claims shall be made by the Plan Administrator, first from the Plan Settlement Fund, then from the Priority Claims Reserve, until all Allowed Priority Tax Claims are paid in full.

2.03 **Professional Fees.** All Professionals seeking payment of professional fees or reimbursement of expenses incurred through and including the Effective Date under Section 503(b)(2), (3), (4) or (5) of the Bankruptcy Code (“Professional Fees”) shall file their respective final applications on or before the date that is 45 days after the Effective Date. The Professional Fees that have been approved by Final Order of the Bankruptcy Court shall be paid from the Administrative Expense Reserve.

2.04 **Statutory Fees.** On the Effective Date, the Debtors shall make all payments required to be paid to the U.S. Trustee pursuant to Section 1930 of Title 28 of the United States Code. All fees payable pursuant to Section 1930 of Title 28 of the United States Code after the Effective Date shall be paid by the Plan Administrator on a quarterly basis until the Chapter 11 Cases are closed, converted, or dismissed.

2.05 **Quirky Community Settlement.** As soon as practicable after the Effective Date, in accordance with the terms of the Quirky Sale Order, the Plan Administrator shall distribute the proceeds of the Quirky Community Settlement.

**ARTICLE III**  
**DESIGNATION OF CLASSES**

3.01 **Classification.** Claims and Equity Interests are classified for all purposes, including voting, confirmation, and Distribution pursuant to the Plan, which Classes shall be mutually exclusive, as follows:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Secured Claim of Comerica	Impaired	Yes
Class 2	Other Secured Claims	Unimpaired	No (Conclusively Presumed to Accept)
Class 3	Priority Non-Tax Claims	Unimpaired	No (Conclusively Presumed to Accept)
Class 4	General Unsecured Claims	Impaired	Yes
Class 5	Claims of Settling Noteholders	Unimpaired	No (Conclusively Presumed to Accept)
Class 6	Intercompany Claims	Impaired	No (Deemed to Reject)
Class 7	Equity Interests	Impaired	No (Deemed to Reject)

3.02 **Substantive Consolidation of Classified Claims.** Except as specifically excluded herein, the Classification of claims under this Plan assumes implementation of the Substantive Consolidation contemplated by Section 5.01 of this Plan.

3.03 **Criterion of Class.** A Claim is in a particular Class only to the extent that the Claim qualifies within the description of that Class, and is in a different Class or Classes to the extent that the remainder of the Claim qualifies within the description of the different Class or Classes.

**ARTICLE IV**  
**TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

4.01 **Class 1: Secured Claim of Comerica.**

i. **Treatment.** On and after the Effective Date, Comerica, as holder of the only Class 1 Claim, and on account of its Lien on the Consolidated Cash pursuant to the terms of this Plan, shall receive one or more Distributions in Cash in an amount equal to (i) the Minimum Class 1 Distribution Threshold, plus (ii) twenty-five percent (25%) of the Wink Sale Reserve Fund, (iii) any undistributed portions of the Priority Claims Reserve remaining after all Allowed

Priority Tax Claims and Allowed Class 3 Priority Non-Tax Claims are paid in full, and (iv) any undistributed portions of the Administrative Expense Reserve remaining after all Allowed Administrative Expense Claims are satisfied in full. Notwithstanding anything to the contrary contained herein, at such time as the aggregate Distributions made to Comerica pursuant to this Section 4.01 are equal to the Maximum Class 1 Distribution Threshold, Comerica shall release its Lien on the Consolidated Cash and not be entitled to any further Distributions under this Plan, except for twenty-five percent (25%) of the Wink Sale Reserve Fund upon release, if any. For the avoidance of doubt, the distributable value of the Debtors over and above the Maximum Class 1 Distribution Threshold shall be available for Distributions to junior classes of Claims in accordance with the terms of the Plan.

ii. Comerica shall receive no further Distributions on account of any Claim which may otherwise exist based upon the deficiency of its Collateral. In consideration of the rights and obligations of Comerica compromised in accordance with the Plan Settlement, Comerica shall also receive the benefit of the Plan Settlement Release as set forth in Section 9.04 of this Plan.

iii. Voting. Class 1 is Impaired. Holders of Class 1 Secured Claims are therefore entitled to vote on the Plan.

#### 4.02 **Class 2: Other Secured Claims.**

i. Treatment. On the Effective Date or as soon thereafter as is reasonably practicable, any holder of a Class 2 Other Secured Claim shall receive (i) the net proceeds of the sale or other disposition of any collateral which is pledged as security for such Allowed Secured Claim and which remains in possession and control of the Debtors' Estates, to the extent such holder of an Allowed Secured Claim has not released its Lien; or (ii) such other, less favorable treatment as may be agreed to in writing by the holder of such Allowed Secured Claim and the Debtor. Any deficiency Claim which may arise on account of the lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 4 General Unsecured Claim.

ii. Voting. Class 2 is not Impaired. Holders of Class 2 Other Secured Claims are conclusively presumed to accept the Plan and, therefore, are not entitled to vote on the Plan.

#### 4.03 **Class 3: Priority Non-Tax Claims.**

i. Treatment. Except to the extent that a holder of an Allowed Priority Non-Tax Claim has agreed to a different treatment of such Claim, each such holder shall receive, in full satisfaction of such Claim, Cash in an amount equal to the Allowed Portion of such Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Claim becomes Allowed and (iii) the date for payment provided by any agreement or understanding between the Debtors and the holder of such Claim.

ii. Distributions to Holders of Allowed Class 3 Claims shall be made by the Plan Administrator, first from the Plan Settlement Fund, then from the Priority Claims Reserve, until all Allowed Class 3 Claims are paid in full.

iii. Voting. Class 3 is Unimpaired. Holders of Priority Non-Tax Claims are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote on the Plan.

4.04 **Class 4: General Unsecured Claims.**

i. Treatment. Class 4 consists of General Unsecured Claims that are asserted, filed or scheduled against any of the Debtors' Estates. Each Holder of an Allowed Class 4 Claim shall receive, in full and final satisfaction of such Allowed Claim, and subject to Sections 4.04(ii), (iii) and (iv) of the Plan, its *pro rata* share of any remaining portion of the Plan Settlement Fund, after satisfaction in full of Class 3 Claims.

ii. Distributions to Holders of Allowed Class 4 Claims shall be made by the Plan Administrator. Holders of Allowed Class 4 Claims shall receive their *pro rata* share of the Distributions set forth in this section based upon the total amount of all Allowed and Disputed Class 4 Claims pending at the time of such Distribution. No Distribution shall be made in respect of any Disputed Class 4 Claim. The *pro rata* portion of the funds applicable to each Disputed Class 4 Claim shall be withheld unless and until such Claim becomes an Allowed Claim. The *pro rata* portion of the funds withheld in respect of any Disputed Class 4 Claim which is subsequently Disallowed shall be distributed to Allowed Class 4 Claims pursuant to the terms of this Plan.

iii. The Plan Administrator shall make subsequent Distributions to Holders of Allowed Class 4 Claims to the extent there are sufficient funds available which are not required to be withheld for Disputed Claims and projected Post Effective Date Fees and Expenses. Subsequent Distributions will be made first to Holders of Disputed Class 4 Claims that have become Allowed Claims until they have received the same percentage on their claims as other Allowed Claims and then *pro rata* to all Holders of Allowed Class 4 Claims.

iv. The Plan Administrator shall continue to make Distributions to Holders of Allowed Class 4 Claims until all Allowed Class 4 Claims have been paid in full or until a final decree has entered in the Chapter 11 Cases. The timing and amount of Distributions to Holders of Allowed Class 4 Claims shall be made in the Plan Administrator's discretion.

v. Voting. Class 4 is Impaired. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

4.05 **Class 5: Claims of Settling Noteholders.**

i. Treatment. As of the Effective Date, the Settling Noteholders shall receive the benefit of the releases contained in Article IX of this Plan in consideration of their agreement to waive any right to payment or Distribution on account of the Subordinated Convertible Notes.

ii. Voting. Class 5 is not Impaired. Holders of Class 5 Claims of Settling Noteholders are therefore conclusively presumed to accept the Plan and, therefore, are not entitled to vote on the Plan.

4.06 **Class 6: Intercompany Claims.**

i. *Treatment.* On the Effective Date, the Intercompany Claims shall be deemed extinguished and released, and shall not receive any Distributions under the Plan.

ii. *Voting.* Class 6 Claims are Impaired. Holders of Class 6 Intercompany Claims are deemed to have rejected the Plan and, therefore, are not entitled to vote on the Plan.

4.07 **Class 7: Equity Interests.**

i. *Treatment.* Class 7 consists of the Equity Interests in the Debtors. On the Effective Date, the Class 7 Equity Interests shall be deemed extinguished and released and no Distributions shall be made on account of such Class 7 Equity Interests.

ii. *Voting.* Class 7 is Impaired. Holders of Class 7 Equity Interests are deemed to reject the Plan and, therefore, are not entitled to vote on the Plan.

4.08 **Cramdown.** Because certain Classes are deemed to reject and certain other Classes of Claims may fail to accept the Plan in accordance with Section 1126(c) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to any non-accepting, impaired Class.

**ARTICLE V**  
**IMPLEMENTATION OF PLAN; ESTABLISHMENT OF PLAN ADMINISTRATOR**

5.01 **Substantive Consolidation.**

i. The Debtors shall be substantively consolidated for the purposes of implementation and consummation of the Plan, including, without limitation, for purposes of voting, confirmation and distribution. On and after the Effective Date, pursuant to the Confirmation Order, (i) all assets and liabilities of the Debtors shall be treated as though they were merged solely for purposes of implementation and consummation of the Plan; (ii) no Distribution shall be made under the Plan on account of any Claims between and/or among any of the Debtors, as provided in Section 4.06 of the Plan; (iii) for all purposes associated with confirmation of the Plan, including, without limitation, for purposes of tallying votes on the Plan, the Estates of the Debtors shall be deemed to be one consolidated Estate; (iv) each and every Claim filed or to be filed in the Chapter 11 Cases of the Debtors shall be deemed filed against the substantively consolidated Debtors, and shall be Claims against and obligations of the substantively consolidated Debtors; (v) to the extent any Creditor filed substantially similar claims against more than one of the Debtors based upon the same transaction, act or omission, such Creditor shall be deemed to have one (1) Claim against the debtor Quirky, Case No. 15-12596(mg) for voting and distribution purposes, and duplicative claims filed in the Chapter 11 cases of Wink (Case No. 15-12597(mg)) and Undercurrent (Case No. 15-12598(mg)) shall be deemed disallowed and expunged from the Claims Register maintained in the Chapter 11 Cases; (vi) to the extent any Creditor filed more than one (1) Claim against one or more of the Debtors

based upon different transactions, acts or omissions, such claims shall be aggregated, and such creditor shall be deemed to have only one (1) Claim in the aggregate amount of filed claims for voting and distribution purposes; and (vii) any guaranty by one or more of the Debtors of the obligations of another Debtor will be eliminated and any claim filed against one or more of the Debtors based upon any guaranty shall be deemed disallowed and expunged from the Claims Register maintained in the Chapter 11 Cases.

ii. The substantive consolidation pursuant to this Section 5.01 of the Plan and the corresponding provisions of the Confirmation Order shall not affect: (i) the legal and organizational structure of the Debtors; (ii) guarantees, liens, and security interests that are required to be maintained (A) under the Bankruptcy Code, or (B) pursuant to this Plan; (iii) distributions from any insurance policies or proceeds of such policies; or (iv) the dissolution of any of the Debtors after the Effective Date in accordance with the authority and discretion of the Plan Administrator as provided in the Plan.

iii. In the event that the Plan cannot be consummated as contemplated herein, each of the Creditors' Committee, on the one hand, and Comerica, on the other, reserve all of their rights with respect to the substantive consolidation of the Debtors' Estates, including with respect to the contemplation of any alternative Plan or liquidation process.

5.02 **Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in these Chapter 11 Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect.

5.03 **Plan Administrator.**

a. *Appointment.* The Confirmation Order shall provide for the appointment of a Plan Administrator. The identity of the Plan Administrator will be disclosed in the Plan Supplement. The Plan Administrator shall have all the powers, authority and responsibilities specified in the Plan Administrator Agreement, including without limitation, the powers of a trustee under Sections 704 and 1106 of the Bankruptcy Code. The compensation for the Plan Administrator shall be as set forth in the Plan Administrator Agreement. From and after the Effective Date, the Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof, and shall succeed to such powers as would have been applicable to the Debtors' officers and directors. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. Accordingly, from and after the Effective Date, the Plan Administrator shall make all Distributions contemplated under this Plan and shall have the exclusive right to settle or compromise any Disputed Claim or Retained Causes of Action pursuant to the terms of the Plan Administrator Agreement.

b. *Powers and Duties.* In addition to any other powers described in this Plan, the powers and duties of the Plan Administrator consist of the following:

i. To take control of, preserve, and convert to Cash the Debtors' assets, subject to the terms of this Plan;

- ii. To administer and distribute the Quirky Community Settlement fund;
- iii. To investigate and prosecute all Retained Causes of Action;
- iv. To review and object to Claims filed against the Debtors;
- v. To abandon, discontinue, dismiss, amend, settle, compromise, negotiate or otherwise resolve all disputes, including all Retained Causes of Action;
- vi. To make Distributions on account of all Allowed Claims consistent with the terms of this Plan;
- vii. To pay expenses incurred in carrying out the powers and duties enumerated pursuant to this Plan, including professional fees incurred after the Effective Date;
- viii. To open and maintain bank accounts and deposit funds and draw checks and make disbursements in accordance with the Plan;
- ix. To effectuate any of the provisions in this Plan;
- x. At the appropriate time, to ask the Bankruptcy Court to enter the final decree;
- xi. To execute all documents appropriate to convey the Debtors' assets consistent with the terms of this Plan;
- xii. To retain persons and professionals to assist in carrying out the powers and duties enumerated pursuant to this Plan;
- xiii. To enter into contracts as necessary to assist in carrying out the powers and duties enumerated pursuant to this Plan; and
- xiv. To hire employees and/or terminate current employees of the Debtors.

c. No Liability. The Plan Administrator shall have no liability whatsoever for any acts or omissions in its capacity as Plan Administrator to the Debtors or holders of Claims against or Equity Interests in the Debtors other than for fraud, gross negligence or willful misconduct of the Plan Administrator. Each of the Debtors shall indemnify and hold harmless the Plan Administrator for any losses incurred in such capacity, except to the extent such losses were the result of the Plan Administrator's fraud, gross negligence, willful misconduct or criminal conduct.

d. Termination. The Plan Administrator's appointment shall terminate in accordance with the terms of the Plan Administrator Agreement.



5.04 **Oversight Committee.** On the Effective Date, the Oversight Committee shall be appointed by the Creditors' Committee and shall consist of at least two persons willing to serve on the Oversight Committee. The Oversight Committee may be composed of holders of General Unsecured Claims or such other parties in interest as the Creditors' Committee designates prior to the Effective Date, or the Oversight Committee designates after the Effective Date. The Plan Administrator shall consult with the Oversight Committee with respect to the administration of the Chapter 11 Cases as set forth in the Plan Administrator Agreement.

5.05 **Corporate Existence.** After the Effective Date, the Plan Administrator may decide to (i) maintain each Debtor as a corporation in good standing until such time as all aspects of the Plan pertaining to such Debtor have been completed, or (ii) at such time as the Plan Administrator considers appropriate and consistent with the implementation of the Plan pertaining to such Debtor (such as, for example, after all Distributions have been made by the Plan Administrator pursuant to the Plan), dissolve such Debtor and complete the winding-up of such Debtor without the necessity for any other or further actions to be taken by or on behalf of such dissolving Debtor or any payments to be made in connection therewith. The filing by each Debtor of its certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including, without limitation, any action by the stockholders or the board of directors of each such Debtor and expressly without the need to pay any filing fees or franchise or similar taxes in order to effectuate such dissolution; provided, that the foregoing does not limit the Plan Administrator's ability to otherwise abandon an interest in any Debtor if determined by the Plan Administrator to further the wind down of such Debtor's Estate. From and after the Effective Date, the Debtors shall not be required to file any document, or take any other action, to withdraw their business operation from any states in which the Debtors previously conducted their business.

5.06 **Effectuating Documents and Further Transactions.** Upon entry of the Confirmation Order, each of the Debtors or the Plan Administrator (as applicable), shall be authorized and are instructed to execute, deliver, file or record such contracts, instruments, releases, consents, certificates, resolutions, programs and other agreements and documents and take such actions as may be reasonably necessary or appropriate to effectuate, implement, consummate and further evidence the terms and conditions of this Plan, including, without limitation, implementing all settlements and compromises as set forth in or contemplated by this Plan, amending and restating the Debtors' constituent documents in accordance with the terms of this Plan, and performing all obligations under this Plan. As of the Effective Date, no member, partner or equity security holder of the Debtors shall take any action that affects, alters or creates any additional or incremental liability for or imputed to the Debtors.

5.07 **Vesting of Assets.** On the Effective Date the property of each of the Debtors' Estates shall be consolidated and deemed to be one Estate. As of the Effective Date, except as otherwise expressly provided in the Plan, all property of the Debtors shall be free and clear of all liens, claims and interests of Holders of Claims or Equity Interests.

5.08 **Creditors' Committee.** As of the Effective Date, the Creditors' Committee shall be dissolved and all members of the Creditors' Committee shall have no further rights or duties arising from such membership, provided, however, that the Creditors' Committee shall exist after such date with respect to all final applications for Professional Fees and the hearing regarding the same.

5.09 **No Discharge.** Pursuant to Bankruptcy Code Section 1141(d)(3), the Confirmation Order will not discharge the Debtors of any debts.

5.10 **Preservation of Setoff Rights.** On and after the Effective Date, rights of setoff pursuant to Bankruptcy Code Section 553 shall be preserved. After the Effective Date, such setoff may be exercised pursuant to agreement of the Plan Administrator, on the one hand, and the affected Creditor, on the other hand. Any disputes regarding the right of setoff shall be determined upon motion before the Bankruptcy Court.

5.11 **Preservation of Rights of Settlement Parties.** This Plan embodies a settlement among the Debtors, the Creditors' Committee, and Comerica. The rights and defenses of such parties shall be preserved through the Effective Date of the Plan, including, but not limited to, the Creditors' Committee's rights to challenge the Liens and Claims of Comerica contemplated by this Plan and Comerica's rights with respect to any such challenges. To the extent that the Plan cannot be consummated, the Debtors, the Creditors' Committee, and Comerica shall retain their respective claims, rights, and defenses as existed prior to the filing of this Plan.

**ARTICLE VI**  
**PROVISIONS REGARDING RESOLUTION OF CLAIMS**  
**AND GOVERNING DISTRIBUTIONS UNDER THE PLAN**

6.01 **Method of Distributions Under the Plan.**

a. **General Provisions; Undeliverable Distributions.** Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made by the Plan Administrator at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on Proofs of Claim filed by such holder or (b) the last known address of such holder if no Proof of Claim is filed or if the Debtors have been notified in writing of a change of address. If any Distribution is returned as undeliverable, the Plan Administrator may, in its discretion, make reasonable efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Plan Administrator deems appropriate, but no Distribution to any such holder shall be made unless and until the Plan Administrator has determined the then-current address of such holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Plan Administrator shall be returned to, and held in trust by, the Plan Administrator until the Distributions are claimed or are deemed to be unclaimed property under Section 347(b) of the Bankruptcy Code and as set forth in Section 6.01(c) hereof. The Plan Administrator shall have the discretion to determine how to make Distributions in the most efficient and cost-effective manner possible; provided, however, that its discretion may not be exercised in a manner inconsistent with any express requirements of the Plan or the Plan Administrator Agreement. On or about the time that the final Distribution is

made, the Plan Administrator may make a charitable donation with undistributed funds if, in the reasonable judgment of the Plan Administrator, the cost of calculating and making the final Distribution of the remaining funds exceeds the benefits to the holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to a Person not otherwise related to the Debtors or the Plan Administrator.

b. Minimum Distributions. Notwithstanding anything herein to the contrary, if a Distribution to be made to a holder of an Allowed Claim on the Initial Distribution Date or any subsequent date for Distributions would be \$25 or less in the aggregate, no such Distribution will be made to that holder unless a request therefor is made in writing to the Plan Administrator no later than twenty (20) days after the Effective Date. If the aggregate Distributions to any one Creditor are \$25 or less, such Distributions shall be deemed unclaimed property and shall revert in the Debtors' estates.

c. Unclaimed Property. Except with respect to property not Distributed because it is being held in a Disputed Claim Reserve, Distributions that are not claimed by the later of the expiration of six (6) months from the Effective Date or ninety (90) days after the date of a Distribution shall be deemed to be unclaimed property under Section 347(b) of the Bankruptcy Code and shall vest or revert in the Debtors' Estates, and the Claims with respect to which those Distributions are made shall be automatically cancelled. After the expiration of that period, the claim of any Person to those Distributions shall be deemed forfeited. Nothing contained in the Plan shall require the Plan Administrator to attempt to locate any holder of an Allowed Claim. All funds or other property that vests or reverts in the Debtors' Estates pursuant to this Article shall be distributed by the Plan Administrator to the other holders of Allowed Claims in accordance with the provisions of the Plan or the Plan Administrator Agreement.

d. Manner of Cash Payments Under the Plan or the Plan Administrator Agreement. Cash payments made pursuant to the Plan or the Plan Administrator Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the Plan Administrator or by wire transfer from a domestic bank, at the option of the Plan Administrator.

e. Time Bar to Cash Payments by Check. Checks issued by the Plan Administrator on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section 6.01(e) shall be made directly to the Plan Administrator by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of six (6) months from the Effective Date or ninety (90) days after the date of issuance thereof. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become the property of the Debtors as unclaimed property in accordance with Section 347(b) of the Bankruptcy Code and be distributed in accordance with the terms of this Plan.

f. Limitations on Funding of Disputed Claim Reserve. Except as expressly set forth in the Plan, neither the Debtors nor the Plan Administrator shall have any duty to fund the Disputed Claim Reserve.

g. Compliance with Tax Requirements. In connection with making Distributions under this Plan, to the extent applicable, the Plan Administrator shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Plan Administrator may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Plan Administrator to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six (6) months from the date of first notification to the holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as an undeliverable Distribution in accordance with Section 6.01(a) hereof.

h. No Payments of Fractional Dollars. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

i. Setoff and Recoupment. The Plan Administrator may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtors, the Estates or the Plan Administrator may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates or the Plan Administrator of any right of setoff or recoupment that any of them may have against the holder of any Claim.

6.02 Objections to Claims and Settlements. After the Effective Date, Objections to Claims may be made, and Objections to Claims made previous thereto shall be pursued only by the Plan Administrator and Comerica. The deadline for the Plan Administrator and/or Comerica to file Objections to Claims shall be 180 days after the Effective Date, subject to extension by motion to the Bankruptcy Court.

After the Effective Date, the Plan Administrator may settle any Disputed Claim where the proposed Allowed Claim is to be less than \$250,000 without notice and a hearing and without an order of the Bankruptcy Court, provided, however, that any proposed settlement of Priority Tax Claims or Class 3 Claims for which funds are being held in the Priority Claims Reserve shall be approved by Comerica prior to final settlement, which approval shall not be unreasonably withheld. All other settlements shall be subject to notice and a hearing pursuant to Section 102(1) of the Bankruptcy Code and Final Order of the Bankruptcy Court approving the settlement.

6.03 **Reserves for Disputed Claims.**

a. On the Initial Distribution Date and/or on the date of any subsequent Distributions, the Plan Administrator shall establish Disputed Claim Reserves for Disputed Claims against the Debtors, which Disputed Claim Reserves shall be administered by the Plan Administrator. The Plan Administrator shall reserve in Cash or other property, for Distribution on account of each Disputed Claim, the full amount of the Distribution that would have been made with respect to such Disputed Claim if it was then an Allowed Claim (or with respect to such lesser amount as may be estimated by the Bankruptcy Court in accordance with Section 6.04 hereof).

b. The Plan Administrator shall hold property in the Disputed Claim Reserves in trust for the benefit of the holders of Claims ultimately determined to be Allowed. Each Disputed Claim Reserve shall be closed and extinguished by the Plan Administrator when all Distributions and other dispositions of Cash or other property required to be made hereunder will have been made in accordance with the terms of the Plan. Upon closure of a Disputed Claim Reserve, all Cash or other property held in that Disputed Claim Reserve shall revert in and become unrestricted property of the Plan Administrator; provided, however, that with respect to the Priority Claims Reserve, any and all Cash that is not paid to or on account of an Allowed Priority Tax Claim or an Allowed Class 3 Claim shall be distributed to Comerica. Subject to the terms and provisions of Section 4.01 hereof, all funds or other property that vest or revert in the Plan Administrator pursuant to this section shall be (a) used to pay the fees and expenses of the Plan Administrator as and to the extent set forth in the Plan Administrator Agreement, and (b) thereafter distributed on a Pro Rata basis to holders of Allowed Claims.

6.04 **Claims Estimation.** The Plan Administrator may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code, regardless of whether the Plan Administrator previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time concerning any objection to any Claim, including during the pendency of any appeal relating to any such Objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism pursuant to this Plan or approved by the Bankruptcy Court.

6.05 **Disallowance of Claims.**

a. Except as otherwise agreed in writing, any and all Proofs of Claim filed after the General Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice or action, order or approval of the Bankruptcy Court, and holders of such Claims may not receive any Distributions on account of such Claims, unless on or before the Confirmation Date the Bankruptcy Court has entered an order deeming such Claim to be

timely filed, *provided, however*, that such Claims shall be deemed Allowed (unless Disputed) after the payment in full of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Priority Non-Tax Claims, and all Allowed General Unsecured Claims, with interest accrued from and after the Petition Date.

b. Any Claims held by any Person from which property is recoverable under Section 542, 543, 550 or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, provided that such cause of action is a Retained Cause of Action, shall be deemed disallowed pursuant to Section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any Distributions on account of such Claims until such time as such causes of action against that Person have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Person have been turned over or paid to the Debtors.

6.06 **Adjustment without Objection.** Any Claim or Equity Interest that has been paid or satisfied, or any Claim or Equity Interest that has been amended, superseded or disallowed by Final Order, may be adjusted or expunged on the Claims Register at the direction of the Debtors or the Plan Administrator, as applicable, without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

## ARTICLE VII **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.01 **Assumption or Rejection of Executory Contracts and Unexpired Leases.** Pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code and except as otherwise provided herein, all executory contracts and unexpired leases that exist between any of the Debtors and any party that have not been previously assumed in connection with the Quirky Sale Order or the Wink Sale Order or pursuant to any other order of the Bankruptcy Court shall be deemed rejected on the Effective Date.

7.02 **Claims Based on Rejection of Executory Contracts or Unexpired Leases.** Claims created by the rejection of executory contracts and unexpired leases pursuant to Section 7.01 hereof, or the expiration or termination of any executory contract or unexpired lease prior to the Effective Date, must be filed with the Bankruptcy Court and served on the Debtors and the Plan Administrator no later than thirty (30) days after mailing of notice of the Effective Date. Any Claim arising from the rejection of an executory contract or unexpired lease pursuant to Section 7.01 of this Plan for which a Proof of Claim is not timely filed within that time period shall be forever barred from assertion against the Estates, their successors and assigns, or their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article IV of the Plan.

7.03 **Insurance Policies.** Notwithstanding anything in the Plan to the contrary, the Debtors' director and officer liability insurance policies (the "D&O Policies") in effect on the Effective Date, and any agreements, documents or instruments related thereto, shall be continued. To the extent any or all of the Debtors' D&O Policies in effect on the Effective Date are considered to be executory contracts, then, notwithstanding anything contained in this Plan to the contrary, this Plan shall constitute a motion to assume such insurance policies. The entry of the Confirmation Order shall constitute approval of such assumption pursuant to Bankruptcy Code Section 365(a) and a finding by the Bankruptcy Court that each such assumption is in the best interest of the Debtors, the Estates and all parties in interest in these Chapter 11 Cases. The Plan Administrator shall be entitled to all rights and authorities of Debtors under any insurance policy that may be implicated with respect to the Retained Causes of Action. Nothing contained in this section shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any Person, including, without limitation, the insurer, under any of the Debtors' D&O Policies.

## **ARTICLE VIII** **EFFECTIVENESS OF THE PLAN**

### 8.01 **Conditions Precedent to Effectiveness.**

a. The Plan shall not become effective unless and until the following have been satisfied:

- i. The Confirmation Order has become a Final Order;
- ii. There is no stay or injunction in effect with respect to the Confirmation Order;
- iii. The Quirky Inventory Reserve has been settled and all funds to which the Debtors' are entitled have been released;
- iv. Comerica shall have voted to accept the Plan; and
- v. The Debtors have made available, for release to Comerica on the Effective Date, Cash in an amount equal to the Minimum Class 1 Distribution Threshold less the amount of the Priority Claims Reserve and any Administrative Claims Reserve.

b. Notwithstanding the foregoing, the Debtors reserve, in their sole discretion, the right to waive the occurrence of any condition precedent to the Effective Date or to modify any of the foregoing conditions precedent, except with respect to the conditions precedent set forth above in Article 8.01(a)(iii)-(v). Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

**ARTICLE IX**  
**RELEASE, INJUNCTIVE AND RELATED PROVISIONS**

9.01 **Compromise and Settlement.** Pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims, as well as a finding by the Bankruptcy Court that such compromise or settlement is fair, equitable, reasonable and in the best interests of the Debtors, the Estates and holders of Claims.

9.02 **Releases by the Debtors.** Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, for the good and valuable consideration provided by each of the Releasees, including, without limitation: (a) the waiver of certain claims and other settlements provided for in this plan; (b) the satisfaction and elimination of debt and all other good and valuable consideration paid pursuant to the Plan or otherwise; (c) the services of the Debtors' officers and directors in facilitating the expeditious implementation of the Wink Sale and Quirky Sale; and (d) the Settling Noteholders waiver and release of any and all rights to any Distribution under the Plan, each of the Debtors hereby provides a full release, waiver and discharge to the Releasees (and each such Releasee so released shall be deemed released and discharged by the Debtors) and their respective properties from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place from the beginning of time through the Effective Date, including, without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates and further including those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing provisions of this Section 9.02 shall have no effect on the liability of any Releasee that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in this Section 9.02 pursuant to Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (b) in the best interests of the Debtors and all holders of Claims; (c) fair, equitable and reasonable; and (d) approved after due notice and opportunity for hearing.

9.03 **Exculpation.** Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Person for any and all Claims and Causes of Action arising on or after the Petition Date, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the



Plan, the Disclosure Statement, Plan Administrator Agreement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the Sale or the liquidation of the Debtors; provided, however, that the foregoing provisions of this Section 9.03 shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above-referenced documents, and provided, further that no Exculpated Parties shall be exculpated from any liability resulting from any act or omission that limits the liability of any Person pursuant to N.Y. Comp. Codes R. & Regs. Tit. 22 Section 1200.8 Rule 1.8(h)(1) (2009) as determined by Final Order and any other statutes, rules or regulations dealing with professional conduct to which such professionals are subject; provided that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the generality of the foregoing, the Debtors, and their respective Professionals shall be entitled to and granted the protections and benefits of Section 1125(e) of the Bankruptcy Code. For the avoidance of doubt, nothing in this Section 9.03 shall be construed as a release of any Cause of Action against the Releasees based upon any act or omission, transaction or other occurrence or circumstances existing or taking place prior to the Petition Date.

9.04 The Plan Settlement Releases. In consideration of the settlement and compromise of Claims, Causes of Action, rights, interests and obligations against each other in relation to the Plan Settlement, and in consideration of the Settling Noteholders' agreement to waive their rights under the Subordinated Convertible Notes, each of the Debtors, Comerica, the Settling Noteholders (and/or their respective designees), and the Creditors' Committee (the "Plan Settlement Releasers") hereby fully release, waive and discharge any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, that they hold against each other (in their capacity as such) whether known or unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances taking place from the beginning of time through the Effective Date, including, without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates and further including those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing provisions of this Section 9.04 shall have no effect on the liability of any of the Plan Settlement Releasers that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in this Section 9.04 pursuant to Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby

released; (b) in the best interests of the Debtors and all holders of Claims; (c) fair, equitable and reasonable; and (d) approved after due notice and opportunity for hearing.

9.05 **Settling Noteholder Releases.** In consideration of the Settling Noteholders agreement to waive their rights to payment or Distribution under the Subordinated Convertible Notes, and for other good and valuable consideration, each of the Debtors hereby provides to each of the Settling Noteholders a full release, waiver and discharge from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place from the beginning of time through the Effective Date, including without limitation, those that any of the Debtors or the Plan Administrator would have been legally entitled to assert or that any holder of a Claim or other Person would have been legally entitled to assert for or on behalf of any of the Debtors or Estates. Notwithstanding anything to the contrary herein, pursuant to California Civil Code § 1542, a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the Debtors.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in this Section 9.05 pursuant to Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (b) in the best interests of the Debtors and all holders of Claims; (c) fair, equitable and reasonable; and (d) approved after due notice and opportunity for hearing.

9.06 **Optional Releases by Holders of Claims.**

**Creditors Deemed to Have Accepted Releases:** For good and valuable consideration, as of the Effective Date, a Creditor who does not elect to opt out of the release provisions contained in Section 9.06 of the Plan, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Releasees from any and all direct claims and causes of action held by such Creditor whatsoever, including pre-Petition Date claims and causes of action, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place after the Petition Date in any way related to the Debtors, the Chapter 11 Cases or the Plan.

**Creditors Deemed to Have Opted Out of Releases:** A Creditor who returned a ballot with the "Opt-Out" box checked on the ballot (whether or not the ballot is otherwise properly executed) shall be deemed to have opted out of the releases set forth in Section 9.06 of this Plan.

From and after the Effective Date, all Creditors who submitted ballots on the Plan but did not elect to opt out of the release provisions contained in this Section 9.06 of the Plan, are permanently enjoined from commencing or continuing in any manner against the Releasees, their successors and assigns, and any of their assets and properties, including but not limited to the Plan Administrator, any suit, action or other proceeding, on account of or respecting any claim, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

The Optional Releases in this section 9.06 of the Plan shall not be applicable with respect to: (i) holders of unclassified Claims; (ii) holders of Claims conclusively presumed to accept the Plan (*i.e.* Class 2, Class 3 and Class 5) and are not entitled to vote on the Plan; (iii) holders of Claims and Equity Interests deemed to reject the Plan (*i.e.* Class 6 and Class 7) and are not entitled to vote; and (iv) any holder of a Claim in an Impaired Class (*i.e.* Class 1 and Class 4) that does not submit a ballot to vote for or against the Plan.

9.07 **Injunction.** The rights afforded in the Plan and the treatment of all Claims in the Plan shall be in exchange for and in complete satisfaction of Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtors, their successors and assigns or any of their assets or properties. On the Effective Date, all such Claims against the Debtors shall be satisfied and released in full.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Parties and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim satisfied and released hereby, from:

- a. commencing or continuing in any manner any action or other proceeding of any kind against any of the Debtors, their successors and assigns, and any of their assets and properties;
- b. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Debtor, their successors and assigns, and any of their assets and properties;
- c. creating, perfecting or enforcing any encumbrance of any kind against any Debtor, their successors and assigns, and any of their assets and properties;
- d. asserting any right of setoff or subrogation of any kind against any obligation due from any Debtor, or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed Proof of Claim; or
- e. commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Cause of Action released or settled hereunder.

9.08 **Releases of Liens.**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Estates shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other security interest shall revert to the Debtors and the Plan Administrator.

9.09 **Liabilities to, and Rights of, Governmental Entities.**

As to the United States of America, its agencies, departments, or agents (collectively, the “United States”), nothing in the Plan shall limit or expand the scope of the release or injunction to which the Debtors are entitled to under the Bankruptcy Code. The release, injunction and exculpation provisions contained in the Plan are not intended and shall not be construed to bar the United States from, subsequent to entry of the Confirmation Order, pursuing any police or regulatory action, except to the extent those release and injunctive provisions bar a governmental unit from pursuing Claims.

Notwithstanding anything contained in the Plan to the contrary, nothing in the Plan or shall discharge, release, impair or otherwise preclude: (1) any liability to a governmental unit under environmental law that is not a Claim; (2) any Claim of a governmental unit arising on or after the Effective Date; (3) any valid right of set-off or recoupment of the United States against a Debtor; or (4) any liability of the Debtors under environmental law to any governmental unit as the owner or operator of property that such Debtor owns or operates after the Effective Date, except those obligations to reimburse costs expended or paid by a governmental unit before the Effective Date or to pay penalties owing to a governmental unit for violations of environmental laws or regulations that occurred before the Effective Date; provided that the Debtors reserve all of their rights and defenses under applicable law with respect to any such Claims or Liabilities. Nor shall anything in the Plan: (i) enjoin or otherwise bar the United States or any governmental unit from asserting or enforcing, outside the Bankruptcy Court, any liability described as not discharged in the preceding sentence, provided that the Debtors reserve all of their rights and defenses under applicable law with respect to any such Claims or Liabilities; or (ii) divest any court of jurisdiction to determine whether any liabilities asserted by the United States or any governmental unit are discharged or otherwise barred by the Plan or the Bankruptcy Code.

Moreover, nothing in the Plan shall release or exculpate any non-Debtor, including any Releasees or Exculpated Parties, from any liability to the United States, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Releasees or Exculpated Parties, nor shall anything in the Plan enjoin the United States from bringing any claim, suit, action or other proceeding against the Releasees or Exculpated Parties for any liability whatsoever.

9.10 **Preservation of Causes of Action.**

a. **Vesting of Causes of Action.**

i. Except as otherwise provided in the Plan or Confirmation Order, in accordance with Section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtors may hold against any Person shall vest upon the Effective Date in the Plan Administrator. Retained Causes of Action include, but are not limited to, (i) preference, fraudulent transfer and other avoidance claims pursuant to chapter 5 of the Bankruptcy Code and state law counterparts and (ii) state and common law claims for breach of fiduciary duty, as against former directors or officers of the Debtors for action or inactions occurring prior to the Petition Date. These claims shall be preserved and transferred to the Plan Administrator.

ii. Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Plan Administrator shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of the Plan Administrator Agreement and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in one or more of the Chapter 11 Cases.

b. **Preservation of All Retained Causes of Action Not Expressly Settled or Released.**

i. Unless a Retained Cause of Action against a holder or other Person is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtors and the Plan Administrator expressly reserve such Retained Cause of Action for later adjudication by the Debtors or the Plan Administrator (including, without limitation, Retained Causes of Action not specifically identified or described in the Plan Supplement or elsewhere or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances which may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan or Confirmation Order, except where such Retained Causes of Action have been released in the Plan or any other Final Order (including the Confirmation Order). In addition, the Debtors and Plan Administrator expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

ii. Subject to the immediately preceding paragraph, any Person to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, or leased equipment or property from the Debtors, should assume that any such obligation, transfer or transaction may

be reviewed by the Plan Administrator subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person has filed a Proof of Claim against the Debtors in the Chapter 11 Cases; (ii) the Debtors or Plan Administrator have objected to any such Person's Proof of Claim; (iii) any such Person's Claim was included in the Schedules; (iv) the Debtors or Plan Administrator have objected to any such Person's scheduled Claim; or (v) any such Person's scheduled Claim has been identified by the Debtors or Plan Administrator as disputed, contingent or unliquidated.

**ARTICLE X**  
**RETENTION OF JURISDICTION**

10.01 **Bankruptcy Court Jurisdiction.** The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Cases and this Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

a. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

b. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

c. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is party to or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including those matters related to any amendment to the Plan after the Effective Date pursuant to Section 11.05 hereof, adding executory contracts or unexpired leases to the list of executory contracts and unexpired leases to be assumed;

d. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

e. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including, without limitation, Retained Causes of Action, and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Plan Administrator after the Effective Date, provided, however, that the Plan Administrator shall reserve the right to commence actions in all appropriate jurisdictions;

f. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan, Plan Supplement or the Disclosure Statement;

g. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Person's obligations incurred in connection with the Plan;

h. issue and enforce injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

i. resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article IX, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

j. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

k. resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and

l. enter an order and/or the decree contemplated in Bankruptcy Rule 3022 closing the Chapter 11 Cases.

## **ARTICLE XI** **MISCELLANEOUS PROVISIONS**

11.01 **Effectuating Documents and Further Transactions.** The Plan Administrator is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any notes or securities pursuant to the Plan.

11.02 **Aid in Implementation of the Plan.** The Bankruptcy Court may direct the Plan Administrator, the Debtors and any other necessary party to execute or deliver or to join the execution or delivery of any instrument required to effect the Plan, and to perform any other act necessary to consummate the Plan.

11.03 **Post-Effective Date Fees and Expenses.** From and after the Effective Date, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, the reasonable fees and expenses of professional persons incurred after the Effective Date by the Plan Administrator shall be paid by the Plan Administrator, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

11.04 **Post-Effective Date Statutory Fees.** All fees payable pursuant to Section 1930 of Title 28 of the United States Code incurred after the Effective Date shall be paid in accordance with applicable law. The Plan Administrator shall submit quarterly post-confirmation reports.

11.05 **Amendment or Modification of the Plan.** Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtors, with the consent of Comerica and the Creditors' Committee, at any time before the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with Section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation by the Debtors or the Plan Administrator, as applicable, with the consent of Comerica and the Creditors' Committee (or the Plan Administrator if after the Effective Date), provided that the Plan as altered, amended, or modified satisfies the requirements of Sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under Section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments or modifications. Upon request by the Debtors or the Plan Administrator, as applicable, the Plan may be modified after substantial consummation with the approval of the Bankruptcy Court, provided that such modification does not affect the essential economic treatment of any Person that objects in writing to such modification. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

11.06 **Severability.** In the event that the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Equity Interests as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidness, or unenforceability of any such provision shall not limit or affect the enforceability and operative effect of any other provision of the Plan.

11.07 **Revocation or Withdrawal of the Plan.** The Debtors shall have the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtors revoke or withdraw the Plan before the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

11.08 **Allocation of Plan Distributions Between Principal and Interest.** To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.



11.09 **Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtors and the Holders of Claims and Equity Interests and their respective successors and assigns.

11.10 **Reservation of Rights.** Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by any Debtor or any Person with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) any Debtor with respect to the holders of Claims or Equity Interests or other parties in interest; or (2) any holder of a Claim or other party in interest prior to the Effective Date.

11.11 **Section 1146 Exemption.** Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

11.12 **Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

11.13 **Notices.** To be effective, all notices, requests and demands to or upon the Debtors or the Plan Administrator shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission or electronic mail, when received, addressed as follows:

*If to the Debtors: c/o Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036.*

*If to the Plan Administrator: At the address provided in the Plan Administrator Agreement, which shall be filed as part of the Plan Supplement.*

11.14 **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or the Plan, the laws of the State of New York applicable to contracts executed in such State by residents thereof and to be performed entirely within such State shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan.

11.15 **Preservation of Records**. The Plan Administrator shall preserve for the benefit of the Estates, all documents and files, including electronic data hosted on remote servers that are necessary to the prosecution of the Retained Causes of Action and claims resolution process (the "Retained Information"). After the Effective Date, the Plan Administrator shall preserve the Retained Information until the date that is one (1) year following the closing of the Chapter 11 Cases. On the Effective Date, the Plan Administrator shall be permitted to abandon (with or without destruction), any information that is not Retained Information.

[signature page follows]

Dated: New York, New York  
June 20, 2016

QUIRKY, INC.  
WINK, INC.  
UNDERCURRENT ACQUISITION, LLC

Debtors and Debtors-in-Possession

By: /s/ Charles Kwalwasser  
Charles Kwalwasser  
General Counsel, Chief Administrative Officer  
and Secretary of Quirky, Inc.

APPROVED AS TO FORM:

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ Sean C. Southard  
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*Conflicts Counsel for the Debtors and  
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-and-

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Michael A. Klein  
Max Schlan

*Counsel for the Debtors and  
Debtors in Possession*

**Exhibit B**

**Form of Notice of Entry of Confirmation Order, Occurrence of Effective Date,  
Administrative Expense Claim Bar Date and Rejection Damages Bar Date**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
:
  
In re :
  
: Chapter 11
  
QUIRKY, INC., *et al.*<sup>1</sup> :
  
:
  
Debtors. : Case No. 15-12596 (MG)
  
:
  
:
  
:
  
----- X

**NOTICE OF (I) ENTRY OF AN ORDER CONFIRMING THE DEBTORS’  
FIRST AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE; (II) OCCURRENCE OF  
EFFECTIVE DATE; (III) ADMINISTRATIVE EXPENSE CLAIMS BAR DATE  
AND (IV) REJECTION DAMAGES BAR DATE**

TO ALL CREDITORS, EQUITY INTEREST HOLDERS AND PARTIES IN INTEREST OF THE ABOVE DEBTORS, PLEASE TAKE NOTICE OF THE FOLLOWING:

Confirmation of the Plan. On July \_\_, 2016 (the “Confirmation Date”), the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered its *Findings of Fact, Conclusions of Law, and Order Pursuant to 11 U.S.C. §§ 1129 and Fed. R. Bankr. P. 3020 Confirming the Debtors’ First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”) [Docket No. \_\_\_\_]. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Plan or the Confirmation Order, as applicable. The Plan, the Disclosure Statement and the Confirmation Order are available by written request to Rust Consulting/Omni Bankruptcy, 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367 and can also be obtained free of charge at <http://omnimgt.com/quirky>. Parties with a PACER password may view such documents by accessing the Bankruptcy Court’s Electronic Filing System, which can be found at <http://www.nysb.uscourts.gov>, the official website of the Bankruptcy Court.

Effective Date. Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the effective date occurred on [\_\_\_\_], 2016 (the “Effective Date”).

Bar Date for Administrative Expense Claims. Pursuant to section 2.01 of the Plan, the deadline for filing an Administrative Expense Claim (other than post-petition operating expenses or professional fees) is [\_\_\_\_], 2016 (the “Administrative Expense Claim Bar Date”). Persons asserting a claim for Administrative Expenses that fail to file a claim on or before the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Quirky, Inc. (2873); Wink, Inc. (8826); and Undercurrent Acquisition, LLC (9692).

Administrative Expense Claim Bar Date shall be forever barred from asserting any such right to payment as against the Debtors or the Estates.

Bar Date for Rejection Damages. Pursuant to section 7.01 of the Plan, all executory contracts and unexpired leases that exist between any of the Debtors and any party that have not been previously assumed in connection with the Quirky Sale Order or the Wink Sale Order or pursuant to any other order of the Bankruptcy Court shall be deemed rejected on the Effective Date. All claims arising from the rejection of an executory contract must be filed no later than [\_\_\_\_\_] (the "Rejection Damages Bar Date"). Persons asserting a claim for rejection damages that fail to file a claim for rejection damages on or before [\_\_\_\_\_] shall be forever barred from asserting any such right to payment as against the Debtors or the Estates.

Dated: New York, New York  
[\_\_\_\_\_] , 2016

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ DRAFT

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