

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN**

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In re:

GREEN BOX NA GREEN BAY, LLC,

Case No. 16-24179

Debtor.

Chapter 11

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**NOTICE OF HEARING ON PAPER HOLDCO, LLC'S MOTION TO DISMISS**

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TO: DEBTOR AND ALL PARTIES LISTED IN THE ACCOMPANYING  
CERTIFICATE OF SERVICE

**PLEASE TAKE NOTICE** that a hearing on Paper Holdco, LLC's Motion to Dismiss will be held on **November 1, 2017 at 10:00 a.m.** in the **United States Courthouse, Room 149, 517 East Wisconsin Avenue, Milwaukee, WI 53202**, before the United States Bankruptcy Judge Beth E. Hanan.

Dated: October 5, 2017

**WINTHROP & WEINSTINE, P.A.**

By: s/Christopher A. Camardello  
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Attorneys for Paper Holdco, LLC

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN**

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**PAPER HOLDCO, LLC'S MOTION TO DISMISS**

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Paper Holdco, LLC (“**Paper**”) respectfully moves the Court to dismiss this case for the reasons stated below. In support of its Motion, Paper states as follows:

**JURISDICTION**

This court has jurisdiction over this matter under 28 U.S.C. § 1334.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (M).

**BACKGROUND FACTS**

The Debtor commenced this case by filing a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on April 27, 2016 (the “**Petition Date**”).

On December 21, 2016, the Debtor filed its Third Amended Plan. [ECF No. 178.] The Third Amended Plan relied on a “roll-up” which was to close no later than March 31, 2017. *Id.* at p. 14. The “Effective Date” is defined in the Third Amended Plan as “no later than March 31, 2017.” *Id.* at p. 3. Before confirmation of the Third Amended Plan was before the Court, the Debtor filed a Revised Third Amended Plan. [ECF No. 183.] The Court confirmed the Revised Third Amended Plan [ECF No. 223] on February 17, 2017, which again contemplated the consummation of the roll-up by March 31, 2017.

The Debtor missed the March 31, 2017 date for completing the roll-up. Accordingly, on or about June 1, 2017, the Debtor moved the Court to approve a modification to the Revised Third Amended Plan such that the new contemplated roll-up deadline was September 30, 2017. [ECF No. 255.] The Court granted that motion by order dated August 15, 2017. [ECF No. 294.]

The Debtor's confirmed plan was dependent on the successful completion of the roll-up by September 30, 2017. September 30, 2017 has come and gone, and the Debtor has failed to obtain outside financing and has failed to complete the roll-up. In recent October 3, 2017 communications between Paper's counsel and the Debtor's counsel, it appears the roll-up has failed and will not occur. Paper also understands that the Debtor itself intends to seek dismissal of this case.

### **ARGUMENT**

For cause shown, a court shall dismiss a case or convert the case to chapter 7, whichever is in the best interests of creditors and the estate. 11. U.S.C. § 1112(b)(1). Section 1112(b)(4) contains a non-exhaustive list of grounds that constitute cause for dismissal. *In re Attack Props., LLC*, 478 B.R. 337, 344 (N.D. Ill. 2012). Section 1112(b)(4)(M) provides that cause exists for conversion or dismissal if the debtor is unable to "effectuate substantial consummation of a confirmed plan." 1112(b)(4)(N) further provides that cause exists for conversion or dismissal if a material default exists under a confirmed plan.

In this case, cause for conversion or dismissal exists under both 1112(b)(4)(M) and (N) because defaults have occurred under the Plan and the Debtor is unable to effectuate substantial consummation of the Plan.

Once cause is shown, “it is incumbent on the debtor to show that relief under section 1112(b) is not warranted.” *Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 518 (8th Cir. 2004) (quoting *In re Lizeric Realty Corp.*, 188 B.R. 499, 503 (Bankr. S.D.N.Y. 1995)); *Matter of Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994). The burden then shifts to the debtor to establish all of the grounds enumerated in section 1112(b)(2), namely, that: (1) unusual circumstances exist, (2) conversion or dismissal is not in the best interests of creditors or the estate, (3) there is a reasonable likelihood of plan confirmation within the time constraints of the Code, (4) the grounds for cause do not include continuing loss to the estate, (5) there is a reasonable justification for the act or omission of the debtor, and (6) the act or omission can be cured within a reasonable time. *In re Korn*, 523 B.R. 453, 465 (Bankr. E.D. Pa. 2014). A bankruptcy court has broad discretion to dismiss a chapter 11 case under section 1112(b). *Woodbrook*, 19 F.3d at 316.

The Debtor cannot satisfy its burden under 1112(b)(2). In fact, the Debtor has acknowledged that the Plan is no longer feasible; that it no longer intends to pursue execution of the Plan; and that the Debtor itself believes dismissal of this bankruptcy case is appropriate. Accordingly, this case should be dismissed for cause pursuant to 1112(b)(4)(M) and (N).

Dated: October 5, 2017

**WINTHROP & WEINSTINE, P.A.**

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Christopher A. Camardello, #1077922

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN**

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In re:

GREEN BOX NA GREEN BAY, LLC,            Case No. 16-24179

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**CERTIFICATE OF SERVICE**

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I, Theresa N. Cooke, certify that I caused a copy of the foregoing Notice of Hearing on Paper Holdco, LLC's Motion to Dismiss and Paper Holdco, LLC's Motion to Dismiss to be served upon the following individuals by electronic filing through ECF on October 5, 2017:

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- Daniel C. Beck    dbeck@winthrop.com, tcooke@winthrop.com
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I further certify that I caused a copy of the foregoing Notice of Hearing on Paper Holdco, LLC's Motion to Dismiss and Paper Holdco, LLC's Motion to Dismiss to be served upon the following individuals by U.S. Mail on October 5, 2017:

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s/Theresa N. Cooke  
Theresa N. Cooke, Legal Administrative  
Assistant