

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:

Case No: 09-19921-BKC-RAM

Psystar Corporation,

Chapter: 11

Debtor.

DEBTOR'S MOTION TO VOLUNTARILY DISMISS CASE

COMES NOW the Debtor/Debtor in Possession, Psystar Corporation, (the "Debtor") by and through undersigned counsel, and files this Motion to Voluntarily Dismiss Case (the "Motion"), and respectfully requests that this Honorable Court enter an order, pursuant to Bankruptcy Code § 1112 (b) and Rules 1017 and 9014 of the Federal Rules of Bankruptcy Procedure, granting a voluntary dismissal of this Chapter 11 case. In Support of this Motion, the Debtor respectfully states as follows:

BACKGROUND

1. On May 21, 2009, (the "Petition Date") the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to manage its affairs and property as debtor-in -possession pursuant to sections 1107 (a) and 1109 of the Bankruptcy Code.
2. No creditors' committee, trustee or examiner has been appointed in this case.
3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The statutory predicates for the relief requested herein are Section 1112(b) of the Bankruptcy Code and Rules 1017 and 9014 of the Federal Rules of Bankruptcy Procedure.

THE ESTATE

5. Debtor is a retail store conducting its business solely on the internet. It does not have a store front location but its main center of operation is located in Doral, Florida

6. Debtor manufactures and distributes computers tailored to customer choosing. As a part of its devotion to supporting customer choice, Debtor supports a wide range of operating systems including Microsoft Windows XP and XP 64-bit, Windows Vista and Vista 64-bit, Linux (32 and 64-bit kernels), and the Mac OS.

7. On July 3, 2008 Apple, Inc., filed a law suit in District Court for the Northern District of California.

8. Due to the weakened economy and the cost of litigation, Debtor had no alternative but to commence these Chapter 11 proceedings. Debtor's sales have been greatly affected by the decrease in consumer spending. The financial crisis has also caused creditors to tighten up their terms and become more demanding for immediate payment. Debtor's vendors due to their own financial problems are not being able to supply all necessary items to allow Debtor to produce their product, thus, forcing Debtor to pay higher prices for parts in order to fulfill customer orders in a timely manner and to assure satisfaction with the product. These factors seriously contribute to the Debtor not being able to turn a significant profit in each sale.

CHAPTER 11 PROCEEDING

9. As of the Petition Date, it was Debtor's intention to restructure its operations to be able to produce a more profitable product and that way be able to meet its obligations and continue the litigation in the Northern District of California.

10. One of Debtor's largest creditors is the California law firm representing Debtor in Apple's laws suit. Debtor was not able to reach an agreement with this Creditor.

11. On June 5, 2009, Apple filed its motion for relief from stay. On June 17, 2009, Apple's motion for relief from stay was granted.

12. In light of Debtor's inability to reach an agreement with its California counsel and the Court's granting Apple's motion for relief from stay, Debtor will not be able to restructure its operation and continue with the California litigation while in Chapter 11.

RELIEF REQUESTED

13. Section 1112(b)(1) of the Bankruptcy Code provides as follows:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1)

14. Section 1112(b)(4) sets forth a list of sixteen (16) non-exclusive factors that may constitute cause to dismiss a chapter 11 case. See generally, Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.), 749 F.2d 670, 674 (11th Cir.1984) (citing H.R. Rep. No. 595, 95 Cong., 1st Sess. 406 (1977) ("The court will be able to consider other factors as they arise, and use its equitable powers to reach an appropriate result in individual cases")).

15. Courts may use their equitable power to consider each individual case, and should consider the totality of the circumstances in determining whether to grant a motion to dismiss, See, e.g. In re Yukos Oil Co., 321 B.R. 396, 400 (Bankr. SD Tex. 2005) (dismissing case for cause, "using a 'totality of circumstances' approach, which applies to all Chapter 11 cases").

16. Based on the existence of cause under Section 1112(b)(4)(A), and the totality of the circumstances relating to this chapter 11 case, as more fully set forth herein, the Debtor respectfully requests that this Court dismiss the Debtor's chapter 11 case without prejudice.

BASIS FOR RELIEF

17. In light of the automatic stay being lifted, Debtor is obligated to continue defending Apple's action in the Northern District of California.

18. To remain in bankruptcy, Debtor will need to expend significant time and effort, and incur substantial fees and costs. For example, Debtor is require to prepare and file financial statements, monthly operating reports, post confirmation quarterly reports, trustee quarterly fees, and continue the defending Apple's action in the Northern District of California..

19. Dismissal is further warranted because conversion of this case to a proceeding under chapter 7 would not be in the best interest of the creditors. Conversion will liquidate Debtor's operation and the creditors will lose their opportunity to be paid. In addition, Debtor would not be able to go forward with its counter claim against Apple.

20. The significant costs of remaining in bankruptcy proceeding impose a substantial and continuing loss to or diminution of the estate in the absence of a reasonable likelihood of rehabilitation. See 11 U.S.C. § 1112(b)(4)(A). Based on the foregoing, and the totality of the circumstances, Debtor submits that cause exists to dismissing this case, and that such dismissal is in the best interest of creditors.

ADMINISTRATIVE MATTERS

21. Because Debtor operated since the Petition Date, Debtor represents and affirms that all unpaid post-petition expenses or claims shall be paid as condition of dismissal of this case.

22. Debtor represents and affirms that it shall pay any fees owing to the United States

Trustee as a condition of dismissal of this case.

WHEREFORE Debtor respectfully requests that this Court enter an order, pursuant to Section 1112(b) of the Bankruptcy Code, granting a voluntary dismissal of this case and such other and further relief as the Court deems just and proper.

Dated: June 26, 2009

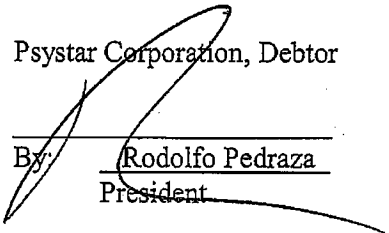
CERTIFICATE OF ADMISSION

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all ECF registered users herein via CM/ECF, and by regular first class United States mail on all other interested parties on June 29th, 2009.

Psystar Corporation, Debtor

By: 
Rodolfo Pedraza
President

Respectfully,

/s/ Lazaro Lopez
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