

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
GENERAL WIRELESS OPERATIONS	:	Case No. 17-10506 (BLS)
INC. DBA RADIOSHACK <u>et al.</u> , ¹	:	(Jointly Administered)
	:	
Debtors.	:	
	:	Hearing Date: December 20, 2017 at 11:00 a.m. (ET)
	:	Objection Deadline: December 15, 2017 at 4:00 p.m. (ET)

NOTICE OF HEARING REGARDING STIPULATION REGARDING MOTION FOR RELIEF FROM STAY TO EFFECTUATE RIGHT TO SETOFF AND RESOLUTION OF CLAIMS

PLEASE TAKE NOTICE that, on December 1, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Stipulation Regarding Motion for Relief from Stay to Effectuate Right to Setoff and Resolution of Claims* (the “Stipulation”) attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that any objections or other responses (collectively, “Objections”) to entry of an order approving the Stipulation must be filed on or before **December 15 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”) with the Clerk of the United States Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the Objection upon the following parties so as to be received on or before the Objection Deadline: (A) co-counsel to the Debtors: Jones Day, 77 West Wacker, Chicago, IL 60601, Facsimile 312-782-8585 (Attn: Mark A. Cody); (B) co-counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, DE 19899-1709, Facsimile: 302- 421-8390 (Attn: David M. Fournier); (C) the Office of the United States Trustee for the District of Delaware, 884 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Facsimile 302-573-6497 (Attn: Richard L. Schepacarter); (D) co-counsel to the Official Committee of Unsecured Creditors: Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10017, Facsimile 212-808-7897 (Attn: Eric Wilson and Jason R. Adams); and (E) co-counsel to the Official Committee of Unsecured Creditors: Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801-3062, Facsimile: 215-568-6603.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Stipulation will be held on **December 20, 2017 at 11:00 a.m. (ET)** before The Honorable Brendan L. Shannon, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom #1, Wilmington, Delaware 19801.

IF YOU FAIL TO RESPOND TO THE STIPULATION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

THE STIPULATION ON A FINAL BASIS WITHOUT FURTHER NOTICE OR OPPORTUNITY FOR A HEARING.

Dated: December 1, 2017
Wilmington, Delaware

Respectfully submitted,

/s/ David M. Fournier

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Attorneys for Debtors and Debtors-in-Possession

EXHIBIT 1

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

In re

GENERAL WIRELESS OPERATIONS
INC. DBA RADIOSHACK *et al.*¹

Debtors.

Chapter 11

Case No. 17-10506 (BLS)
(Jointly Administered)

Re: D.I. 1016

**STIPULATION REGARDING MOTION FOR RELIEF FROM STAY
TO EFFECTUATE RIGHT TO SETOFF AND RESOLUTION OF CLAIMS**

This Stipulation Regarding Motion for Relief from Stay to Effectuate Right to Setoff and Resolution of Claims (the "Stipulation") is entered into by and between United HealthCare Services, Inc. ("UHSI") and UnitedHealthcare Insurance Company ("UHIC" and together with UHSI, "United") and General Wireless Operations Inc. dba RadioShack (the "Debtor") on behalf of itself and the other Debtors in the above-captioned chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware, Case No. 17-10506 (BLS) (collectively, the "Debtors" and together with United, the "Parties"). This Stipulation is made in light of the following circumstances:

RECITALS

WHEREAS, the Debtor and UHSI were parties to an Administrative Services Agreement under Contract No. 905423 with an effective date of August 1, 2015 (the "ASA");

WHEREAS, the Debtor and UHIC were parties to a Stop Loss Policy under Policy Number GA-905423 with an effective date of August 1, 2015, as amended by Amendment No. 1

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to the Stop Loss Policy and Amendment No. 2 to the Stop Loss Policy (the "Stop Loss Policy");

WHEREAS, on March 8, 2017, the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") jointly administered under Case No. 17-10506-BLS;

WHEREAS, on July 17, 2017, United filed a proof of claim for \$1,378,650.17 [Claim No. 1986] (the "Claim");

WHEREAS, on or about October 2, 2017, United amended the Claim to further liquidate the amounts claimed by it in the amount of \$777,150.44, of which \$735,325.52 was claimed to be entitled to priority treatment under 11 U.S.C. § 507(a)(5) [Claim No. 2657, as further amended by Claim No. 2659] (the "Amended Claim");

WHEREAS, on August 31, 2017, United filed an administrative expense claim in the amount of \$724,362.74 [Claim No. 2547] (the "Admin Claim");

WHEREAS, on or about September 29, 2017, United amended the Admin Claim to further liquidate the amounts claimed by it in the amount of \$756,014.31 [Claim No. 2658] (the "Amended Admin Claim") and together with the Amended Claim, the "United Claims");

WHEREAS, the Amended Admin Claim is included in the Amended Claim in case such amounts were not allowed under 11 U.S.C. § 503(b), and so the aggregate claims asserted by United do not exceed \$777,150.44;

WHEREAS, on October 3, 2017, United filed its *Motion for Relief from Stay to Effectuate Right to Setoff* [D.I. 1016] (the "Setoff Motion"), pursuant to which United sought to lift the automatic stay under 11 U.S.C. §§ 362(d) and 553 to set off the following credits owed to the

Debtor against the amounts claimed to be owed by the Debtor to it as set forth in the United Claims (collectively, the "Credits"): (i) the \$148,644.83 Pre-Petition ASA Account Balance;² (ii) \$111,443.99 for the Post-Petition Stop Loss Credit; (iii) the Pharmacy Rebates; and (iv) \$21,490.08 in Fee Credits.

WHEREAS, subsequent to filing the Setoff Motion, United provided the Debtors with reports showing that (i) the Pharmacy Rebate accruing for July, August, and September 2017, which was payable in October 2017, totals \$152,753.28, and (ii) the Pharmacy Rebate accruing for October and November 2017, which is payable in January 2018, totals \$78,206.91;

WHEREAS, on October 26, 2017, the Court entered its *Findings of Facts, Conclusions of Law, and Order (I) Approving Debtors' (A) Disclosure Statement, (B) Solicitation of Votes and Voting Procedures, (C) Forms of Ballots, and (II) Confirming Modified First Amended Joint Plan of Reorganization of General Wireless Operations Inc. DBA Radioshack and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [D.I. 1117]* (the "Confirmation Order"), pursuant to which the Debtors' *Modified First Amended Joint Plan of Reorganization of General Wireless Operations Inc. DBA Radioshack and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [D.I. 1117-1]* (the "Plan") was confirmed;

WHEREAS, pursuant to Articles II and III of the Plan, allowed administrative expense claims under 11 U.S.C. § 503(b) and non-tax priority claims under 11 U.S.C. § 507(a) are to be paid in full;

WHEREAS, pursuant to Paragraph 44(a) of the Confirmation Order, United's right to setoff as set forth in the Setoff Motion was expressly preserved notwithstanding confirmation of the Plan; and

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Setoff Motion.

WHEREAS, the Parties now wish to resolve, compromise, and settle the Setoff Motion and the United Claims on the terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, the sufficiency of which is hereby expressly acknowledged by the Parties, the undersigned Parties hereby agree as follows:

1. Order Approving Settlement. The Parties shall jointly seek the Court's entry of a final, non-appealable order in substantially the form attached hereto as Exhibit A approving this Stipulation and granting the Setoff Motion as set forth below (the "Stipulated Order"). If the Court does not enter the Stipulated Order, the Parties shall be returned to their positions immediately prior to entering into this Stipulation.
2. Setoff of Credits. The Setoff Motion shall be granted to allow the Credits as set forth below to be set-off against the United Claims:

Credit	Amount
Pre-Petition ASA Account Balance	\$148,644.83
Post-Petition Stop Loss Credit	\$111,443.99
Pharmacy Rebates (July, August, and September 2017)	\$152,753.28
Pharmacy Rebates (October and November 2017)	\$78,206.91
Fee Credits	\$21,490.08
TOTAL:	\$512,539.09

3. Payment of the United Claims. Within fifteen days of the Court's entry of the Stipulated Order, the Debtors shall tender a payment to United in the total amount of \$234,611.35 (the "Settlement Payment") in satisfaction of the balance of the United Claims. The Settlement Payment shall be made to UnitedHealthcare Insurance Company by depositing the Settlement Payment into the bank account established for the Debtor out of which United is reimbursed under the ASA.

4. Expungement of the United Claims. Upon the entry of the Stipulated Order, application of the Credits as set forth in Paragraph 2 above, and the receipt of the Settlement Payment in good funds, all claims filed by or scheduled in favor of United in these cases, including without limitation the United Claims, shall be expunged from the claims register, and any administrative or priority claims of United shall be deemed fully satisfied in these cases. United shall neither hold nor have allowed any further administrative or priority claims in these cases.

5. Reservation of Rights. The Debtor reserves its right to any and all rebates or credits that may be due to it under the ASA, other than the Credits listed in Paragraph 2 above. Except for the resolution of the United Claims and the Setoff Motion as set forth herein, and except as set forth in paragraph 4, the Parties otherwise reserve all of their respective rights, claims, and causes of action against each other, and their defenses to the same.

6. Authority. The Parties warrant and represent that no other person or entity has, or has had, any interest in the claims resolved by this Stipulation, and that each of them has the sole right and exclusive authority to execute this Stipulation, and that each of them have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Stipulation. Each of the signatories hereto hereby further warrant that he/she has the authority to execute this Stipulation on behalf of the Party for whom he/she is signing.

7. Further Assurances. The Parties agree to take any and all actions, including the execution of any other documents or instruments, necessary to effectuate the settlement set forth in this Stipulation.

8. Entire Agreement; Modifications. This Stipulation sets forth the entire understanding of the Parties with respect to the subject matter hereof, and may not be modified, amended, or supplemented, except by a writing signed by each of the Parties hereto.

9. Binding Effect. This Stipulation shall be binding upon the Parties and their respective heirs, successors and assigns.

10. Waiver. Waiver of any breach of any provision of this Stipulation shall not be deemed as a waiver of any other breach of the same or of any other provision of this Stipulation.

11. Rules of Construction. The Parties agree that they have fully participated in the drafting of this Stipulation. The rule of law which provides that in interpreting written instruments ambiguities will be construed against the drafting party shall not be applicable to or used in resolving any dispute over the meaning of this Stipulation or any of its provisions.

12. No Undue Influence. The Parties acknowledge that each of them has obtained independent legal advice from counsel of its own selection; that each has been fully informed of its respective legal rights and obligations; and that each fully understands the meaning and effect of the provisions of this Stipulation. Having a full knowledge and understanding of the meaning and effect of the provisions of this Stipulation and their respective legal rights and obligations thereunder, each has signed this Stipulation freely and voluntarily; each Party enters into this Stipulation under its own free will, and no coercion, force, pressure or undue influence has been used against any Party in making this Stipulation either by any Party hereto or by any other person, persons or entity.

13. Severability. If any provision of this Stipulation is determined to be invalid or illegal for any reason whatsoever, the remaining terms shall, to the extent possible, continue in full

force and be construed in a manner which will enable the Parties to effectuate the intent and terms of this Stipulation.

14. Governing Law, Jurisdiction and Venue. This Stipulation shall be governed by and interpreted in accordance with the laws of the State of Delaware. The Parties consent to the Court retaining jurisdiction to resolve any dispute arising under the terms of this Stipulation.

15. Counterparts. This Stipulation may be signed upon any number of counterparts with the same effect as if the signatures of each counterpart were on the same instrument. A facsimile, electronic, or “.pdf” file of an originally-signed signature page shall serve as, and constitute, an originally-executed copy of such signature page.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Stipulation upon the dates indicated below.

Date: <u>12/1/17</u>	Date: <u>December 1, 2017</u>
Name: <u>[Signature]</u>	Name: <u>[Signature]</u>
Title: <u>Senior Associate General Counsel</u>	Title: <u>Bradford A. Tobin, SVP</u>
On Behalf of United HealthCare Services, Inc. (" <u>UHSI</u> ") and UnitedHealthcare Insurance Company (" <u>UHIC</u> ")	On Behalf of the Debtors

EXHIBIT A

IT IS HEREBY ORDERED THAT

1. The Motion is granted as set forth herein. The automatic stay is lifted under 11 U.S.C. §§ 362(d) and 553 to allow United to set-off the Credits² as set forth below against the United Claims:

Credit	Amount
Pre-Petition ASA Account Balance	\$148,644.83
Post-Petition Stop Loss Credit	\$111,443.99
Pharmacy Rebates (July, August, and September 2017)	\$152,753.28
Pharmacy Rebates (October and November 2017)	\$78,206.91
Fee Credits	\$21,490.08
TOTAL:	\$512,539.09

2. The Stipulation is approved in its entirety, and the Debtors are authorized to enter into the Stipulation and make the Settlement Payment as set forth therein.

3. Upon United's receipt of the Settlement Payment in good funds, the United Claims, the Claim and the Admin Claim shall be expunged.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation or enforcement of the Stipulation and this Order.

Dated: _____, 2017
Wilmington, Delaware

The Honorable Brendan L. Shannon
Chief United States Bankruptcy Judge

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.