

The relief described hereinbelow is **SO ORDERED**.

SIGNED this 29th day of March, 2022.




Robert D. Berger
United States Bankruptcy Judge

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

In re:

JOHN Q. HAMMONS FALL 2006, LLC, et al.,
Debtors.

Case No. 16-21142
Chapter 11
Jointly Administered

ORDER ON RECALCULATION AND REFUND OF QUARTERLY FEES

On November 29, 2021, this Court ordered the United States Trustee (the “UST”) and Debtors to submit a proposed order on the “recalculation of the quarterly Chapter 11 disbursement fees and a refund of overpayments” directed by the Tenth Circuit in *John Q. Hammons Fall 2006, LLC v. Office of the U.S. Trustee (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011 (10th Cir. 2021).¹ The

¹ ECF 3032.

parties did not reach an agreement, and each filed a response.² Debtors' response attached a proposed order, which the court deemed submitted under D. Kan. LBR 9074.1 as of January 4, 2022.³ On January 18, 2022, the UST objected to Debtors' submission and attached a different proposed order.⁴ On February 2, 2022, the UST filed a petition for writ of certiorari asking the Supreme Court to review the Tenth Circuit's decision.⁵

In accordance with the Tenth Circuit's decision, and in light of 28 U.S.C. § 2414 and the UST's petition for writ of certiorari, this Court enters the UST's proposed order as modified herein.

IT IS HEREBY ORDERED that within 30 days after Debtors file (including any amendments to) all overdue quarterly reports with disbursement data, the parties determine an agreed-upon amount at issue (the "**Potential Refund Amount**") and file a Joint Notice of Potential Refund Amount in this court.

IT IS FURTHER ORDERED that if the UST's petition for writ of certiorari is denied, the UST must pay Debtors the Potential Refund Amount within ninety days following the date such petition is denied.

IT IS FURTHER ORDERED that if the UST's petition for writ of certiorari is granted, the UST's obligation to pay Debtors shall be stayed pending the judgment

² ECF 3035; ECF 3036.

³ ECF 3037.

⁴ ECF 3039.

⁵ See *Office of the U.S. Trustee v. John Q. Hammons Fall 2006, LLC*, No. 21-1078 (S. Ct.). The Supreme Court has already granted certiorari in *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, No. 21-441 (S. Ct.), which presents the same question.

of the United States Supreme Court, and payment thereafter will be required only if consistent with the Supreme Court's judgment.

IT IS FURTHER ORDERED that this Order does not resolve any issues that may arise related to recovery for either party of post-judgment interest, costs, expenses, or fees. To the extent either party seeks such relief, they shall seek appropriate relief from this Court.

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