



Order Filed on December 22, 2014
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U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re:

CRUMBS BAKE SHOP, INC., *et al.*,

Debtors-in-Possession.

Case No.: 14-24287-MBK
(Jointly Administered)

Judge: Hon. Michael B. Kaplan

STIPULATION AND CONSENT ORDER

The relief set forth on the following pages, numbered two (2) through six (6) is hereby
ORDERED.

DATED: December 22, 2014


Honorable Michael B. Kaplan
United States Bankruptcy Judge

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WHEREAS, on July 11, 2014 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Bankruptcy Code, as amended (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of New Jersey (The “Bankruptcy Court”); and

WHEREAS, On July 24, 2014, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors of the Debtors estates (the “Committee”);

WHEREAS, prior to the Petition Date, the Debtors and Brand² Squared Licensing, a Division of Peppercomm (“BSL”), had entered into a certain Representation Agreement, dated April 4, 2014 (the “Representation Agreement”), pursuant to which, *inter alia*, BSL procured and administered various third-party licensing agreements from Coastal Foods Baking, LLC, Uncle Harry’s, Inc., Pop! Gourmet, Mystic Apparel, LLC, Pelican Bay, Leo’s Bakery and White Coffee Company (collectively, the “Licensees”), pursuant to which the Licensees sold various products utilizing intellectual property previously owned by the Debtors in consideration for specified royalties due therewith (“Licensing Agreements”); and

WHEREAS, on August 27, 2014, the Bankruptcy Court entered an Order approving the sale of substantially all the Debtors’ assets (the “Sale”), including intellectual property (the “Sale Order”) to Lemonis Fischer Acquisition Company, LLC (“LFAC”), and the closing of the sale occurred on August 29, 2014 (the “Closing Date”); and

WHEREAS, on November 3, 2014, the Bankruptcy Court entered a Memorandum Decision (the “Memorandum Decision”), finding, *inter alia*, that the Sale did not include or provide for the assumption or assignment of the Licensing Agreements, that the Debtors were entitled to all royalties payable subsequent to the Closing Date, and that all royalties that had not yet been paid to the Debtors as of the Closing Date constituted accounts receivable and, therefore, were part of the assets sold to and becoming the property of LFAC; and

WHEREAS, on November 7, 2014, the Bankruptcy Court entered an Order authorizing the rejection of the Representation Agreement, effective as of August 29, 2014; and

WHEREAS, on or about November 14, 2014, the Debtors filed a motion seeking entry of an order, *inter alia*, determining that BSL willfully violated the automatic stay and assessing damages related thereto (the “Stay Violation Motion”), and containing allegations related to certain royalties pertaining to the second quarter of 2014, which were delivered to LFAC and the commissions and expenses deducted from the gross royalties collected with respect to the second quarter of 2014; and

WHEREAS, on December 8, 2014, the Bankruptcy Court entered an Order authorizing the rejection of the Licensing Agreements; and

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WHEREAS, on or about December 3, 2014, BSL filed a cross-motion seeking entry of an order for recovery against LFAC; for allowance of administrative expenses pursuant to 11 U.S.C. § 503(b)(1), for preservation of assets of the estate; for allowance of administrative expenses and fees pursuant to 11 U.S.C. § 503(b)(3), for substantial contribution to the estates, against Debtors' counsel pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1927 (the "BSL Cross-Motion"); and

WHEREAS, on or about November 19, 2014, the Debtors served First Requests for the Production of Documents on a Licensee and BSL (the "Document Requests"); and

WHEREAS, on or about December 4, 2014, BSL filed a motion seeking entry of a protective order with respect to the Document Demands (the "Protective Order Motion"); and

WHEREAS, upon information and belief, one or more of the Licensees continued and continue to sell products utilizing the Debtors' intellectual property in the third and fourth calendar quarters of 2014 and, to the extent of such activity, are required pursuant to the Memorandum Decision to remit royalties emanating from such sales to the Debtors in accordance with and pursuant to the respective Licensing Agreements, notwithstanding any rejection of same by the Debtors; and

WHEREAS, upon information and belief, there remain royalties to be paid to the Debtors by one or more of the Licensees, but which have not been paid as of December 10, 2014 (the "Uncollected Royalties"); and

WHEREAS, the Debtors, the Committee and BSL desire to amicably resolve their claims and differences raised in the respective motions and cross-motion referenced above, all in accordance with the mutual terms contained herein and in consideration for the premises and the mutual terms and conditions described below.

Now, therefore, the Debtors, BSL, and the Committee stipulate and agree as follows:

1. The Stay Violation Motion, the BSL Cross-Motion, the Document Requests and the Protective Order Motion are hereby resolved in accordance with this Stipulation and Order and withdrawn, with prejudice.
2. BSL shall be entitled to pursue for collection on behalf of the Debtors' estates, as the estates' exclusive agent, Uncollected Royalties from the Licensees, for the second, third and fourth quarters of 2014, and, should any of the Licensees continue to market goods under the Debtors' name beyond 2014, for such period of time as such Licensee may do so for the duration of the terms of their respective Licensing Agreements, or until such time as BSL may determine, in its sole discretion, that further collection efforts are unwarranted as unlikely to economically produce a material economic benefit in light of the effort and expense necessary to pursue any remaining Uncollected Royalties, as to all collections pursued under this Stipulation and Order, or any individual instance of

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Uncollected Royalties. In the event of such election to discontinue its activities, then in that event, BSL shall notify the Debtors and Committee by email through their respective counsel, or their successor, as the case may be, and the Debtors or such successor will then be free to either engage a successor entity to pursue such efforts, or to engage in such efforts on their own behalf, as they may determine. Nothing herein is intended to limit the Debtors' or the Committee's fiduciary duties or otherwise limit the estates' rights to enforce any obligation with respect to any Licensee, and as provided in this stipulation and order.

3. All Uncollected Royalties shall, for the purposes of this Stipulation and Order, be deemed property of the Debtors' estates, subject to the provisions of Section 4, below.
4. Proceeds received by BSL from the collection of Unpaid Royalties shall be remitted as follows:
 - a. the first \$10,000 of any Uncollected Royalties collected pursuant to paragraph 2 shall be paid to the Debtors without any deduction for commissions or expenses by BSL;
 - b. subject to paragraph 4(a) above, all Uncollected Royalties shall be administered as follows: BSL shall retain ten percent (10%) of all such gross sums collected in full consideration for its efforts, including any out-of-pocket expenses that may be incurred in connection with such efforts, and the remaining ninety percent (90%) of such gross sums shall be remitted to the Debtors.
5. Other than with reference to the terms and conditions set forth in this Stipulation and Consent Order, the Estate Representatives (as such term is defined herein) and BSL shall have no further obligation to each other whatsoever and, for the avoidance of doubt, in no event shall this Stipulation and Order obligate BSL to collect any Uncollected Royalties from the Licensees.
6. BSL shall be authorized and empowered, as the Debtors' agent, to undertake any and all efforts and actions that BSL shall, in its reasonable discretion, deem to be appropriate, necessary, or desirable in connection with the collection of any Uncollected Royalties, including, without limitation, the compromise of any claim against any Licensee, for the remittance of Uncollected Royalties, without the need for further order of the Court. All such compromises shall be subject to the Debtors' sole and absolute discretion and approval.
7. For so long as BSL determines to pursue collection of the royalties on behalf of the Debtors' estates pursuant to the terms of this Stipulation and Order, all Licensees owing royalties to the Debtors pursuant to their respective Licensing Agreements are hereby directed to remit such royalties directly to BSL on behalf of the Debtors and to forward

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directly to BSL, the Debtors' counsel and Committee's counsel an accounting with respect to all sales occurring, including in the form of a certified royalty report and/or in accordance with such direction as the Licensees may receive from BSL and/or the Debtors.

8. Nothing in this Stipulation and Consent Order is intended to modify any obligation that such Licensees may have under their respective Licensing Agreements or under applicable law, including, without limitation, 11 U.S.C. § 365(n) and applicable non-bankruptcy law.
9. This Stipulation and Consent Order shall be binding upon all parties hereto and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Debtors' bankruptcy cases, any successor cases or upon dismissal or conversion of the Debtors' bankruptcy cases.
10. The Debtors and the Committee (the "Estate Representatives"), in consideration for the mutual terms, covenants and conditions contained herein, release and discharge BSL, its successors, officers, partners, affiliates, agents, representatives, attorneys and assigns (collectively, the "BSL Parties") from any and all actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, whether known nor unknown, contingent or non-contingent which the Estate Representatives, their respective predecessors, successors and assigns ever had, now have or hereafter can, shall or may have, for or relating from the beginning of the world to the entry of the execution of this so-ordered stipulation, including, but not limited to the claims set forth in the Stay Violation Motion, the BSL Cross-Motion, the Document Requests and the Protective Order Motion.
11. BSL, in consideration for the mutual terms, covenants and conditions contained herein, releases and discharges the Estate Representatives, its successors, officers, partners, affiliates, agents, representatives, attorneys and assigns (collectively, the "Estate Parties") from any and all actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, whether known nor unknown, contingent or non-contingent which BSL and its predecessors, successors and assigns ever had, now have or hereafter can, shall or may have, for or relating from the beginning of the world to the entry of the execution of this so-ordered stipulation, including, but not limited to the claims set forth in the Stay Violation Motion, the BSL Cross-Motion, the Document Requests and the Protective Order Motion.
12. The Court retains jurisdiction with respect to all matters arising from or related to this Stipulation and Consent Order.

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Dated: December 18, 2014

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