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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
CASE NO. 14-

In re:

CRUMBS BAKE SHOP, INC., *et al.*,<sup>1</sup>

Debtors-in-Possession.

Chapter 11

(Joint Administration Pending)

**HEARING DATE AND TIME:**

July \_\_\_\_\_, 2014, at \_\_:\_\_.m.

**ORAL ARGUMENT REQUESTED**

**VERIFIED APPLICATION IN SUPPORT OF MOTION FOR AN ORDER:**

**(I) AUTHORIZING THE DEBTORS TO (A) SATISFY AND, TO THE EXTENT APPLICABLE, DIRECTING ANY PAYROLL BANKS TO HONOR, PRE-PETITION GROSS SALARIES, PAYROLL TAXES AND RELATED OBLIGATIONS TO OR FOR THE BENEFIT OF THE DEBTORS' EMPLOYEES, AND (B) HONOR, IN THEIR DISCRETION, PRE-PETITION SICK, VACATION, PERSONAL, AND SIMILAR THEMED DAYS; AND (II) GRANTING OTHER RELATED RELIEF**

TO: Honorable Judge of the  
United States Bankruptcy Court

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's tax identification number are: Crumbs Bake Shop, Inc. (5274) ("CBS"); Crumbs Holdings LLC (8045) ("Holdings"); Crumbs 42<sup>nd</sup> Street II, LLC (5913); Crumbs Broad Street, LLC (5319); Crumbs Broadway LLC (2653); Crumbs Federal Street, LLC (9870); Crumbs Garment Center LLC (5142); Crumbs Grand Central LLC (5030); Crumbs Greenvale LLC (6562); Crumbs Greenwich, LLC (3097); Crumbs Hoboken, LLC (5808); Crumbs II, LLC (5633); Crumbs Larchmont, LLC (8460); Crumbs Lexington LLC (0286); Crumbs Park Avenue LLC (5273); Crumbs Retail Bake Shops, LLC (f/k/a Crumbs Fulton Street, LLC) (0930); Crumbs Stamford, LLC (8692); Crumbs Third Avenue LLC (6756); Crumbs Times Square LLC (1449); Crumbs Union Square LLC (8629); Crumbs Union Station LLC (6968); Crumbs West Madison, LLC (5017); Crumbs Woodbury LLC (2588).

The Verified Application Crumbs Bake Shop, Inc., *et al.*, the within debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully represents:

**I. INTRODUCTION AND JURISDICTION**

1. This Verified Application is submitted in support of the Debtors’ motion for an Order: (i) authorizing the Debtors to (A) satisfy and, to the extent applicable, directing any payroll banks to honor pre-petition gross salaries, payroll taxes and related obligations to or for the benefit of the Debtors’ employees (the “**Pre-Petition Employee Compensation Obligations**”), and (B) honor, in their discretion, pre-petition sick, vacation, personal, and similar themed days; and (ii) granting other related relief (the “**Motion**”).

2. The Debtors use Payroll Network, Inc. (“**Payroll Network**”) to process the payroll for their employees. The Debtors maintain a payroll account at JP Morgan Chase Bank, N.A. for the payment of all obligations including payroll and ensure that sufficient funds are available to satisfy all gross payroll and related employee obligations in a timely manner. Accordingly, neither the Debtors’ banks nor Payroll Network will be prejudiced by an Order directing them to honor the Pre-Petition Employee Compensation Obligations.

3. In addition, granting the requested relief will minimize the personal hardship the Debtors’ employees and their families will suffer if the Pre-Petition Employee Compensation Obligations are not honored as a result of the Chapter 11 filings, and will maintain employee morale at this critical juncture to enhance the likelihood the Debtors’ limited remaining employees will stay with the Debtors and assist them in achieving an expedited sale of their assets.

4. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

## **II. BACKGROUND**

6. On July 11, 2014 (the “**Filing Date**”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code. Since the Filing Date, the Debtors have remained in possession of their assets and continued management of their business as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. A detailed description of the Debtors’ business and the facts precipitating the filing of the Debtors’ Chapter 11 proceedings are set forth in the Affidavit of John D. Ireland in support of the Debtors’ various “First Day Motions” (the “**Ireland Affidavit**”). Those facts are incorporated herein by reference.

8. As set forth in the Ireland Affidavit, before ceasing operations on July 7, 2014, the Debtors were one of the largest, most recognizable brand name cupcake specialty retailers in the United States. While cupcakes comprised a majority of their sales, the Debtors also offered other baked goods, including push up pops, cakes, cookies, pastries, scones, croissants, brownies and muffins as well as hot and cold beverages. The Debtors offered these products through retail stores, an e-commerce division, catering services and a wholesale distribution business. Additionally, the Debtors licensed the Crumbs brand to third parties such as BJ’s Wholesale Club, White Coffee and Pelican Bay. Before ceasing operations, the Debtors operated 49 stores in New York, New Jersey, Illinois, Washington, D.C., Connecticut, Massachusetts, Delaware, Pennsylvania, Rhode Island, New Hampshire, Maryland and Virginia. For the fourth quarter ending December 31, 2013, CBS and its subsidiaries had consolidated assets of \$20,004,000 and

liabilities of \$19,000,000. Given their severe liquidity constraints, limited available cash and to avoid incurring liabilities they could not pay, the Debtors were forced to cease operations on July 7, 2014. The Debtors filed these Chapter 11 cases to pursue a sale of their assets through Section 363, which they believe will maximize value for the benefit of all stakeholders.

**A. The Debtors' Workforce**

9. Before ceasing operations, the Debtors employed approximately 455 employees consisting of full-time salaried and hourly employees (collectively, the “**Terminated Employees**”). As of the Filing Date, the Debtors employed only nine (9) full-time salaried employees (the “**Current Employees**” which together with the Terminated Employees, are referred to as the “**Employees**”).<sup>2</sup>

10. The Current Employees include the Debtors' Chief Executive Officer, Chief Operating Officer, Corporate Compliance Officer, Financial Compliance Officer, License Coordinator, Payroll Coordinator and accountants. The Current Employees' valuable skill sets, indispensable institutional knowledge and industry expertise and overall understanding of the Debtors' operations make the Current Employees critical to the success of these Chapter 11 cases.

**B. The Debtors' Employee Compensation Obligations**

11. Before ceasing operations, in the ordinary course of business, the Employees were paid bi-weekly, *i.e.*, on every other Friday for the prior two (2) week period Monday through Sunday. To facilitate the payments to the Employees, the Debtors' payroll account at JP Morgan Chase, N.A. (“**Chase**”) was automatically debited by Payroll Network for net payroll

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<sup>2</sup> All but one of the Employees are employed by Holdings. John D. Ireland, the Debtors' Chief Financial Officer is employed by CBS.

obligations on the Wednesday before each payroll for those Employees that received direct deposit. Payroll for Employees that received manual checks was drawn on the Debtors' payroll account.

12. On July 9, 2014, the Debtors funded with Payroll Network the entire payroll due to be paid to Employees on July 11, 2014 for the period June 23, 2014 through July 7, 2014 (the "**July 11<sup>th</sup> Pre-Petition Payroll**").<sup>3</sup> Thus, in addition to funding the amounts for direct deposit to Payroll Network (which the Debtors ordinarily did), to ensure that the Employees would be timely paid, the Debtors also advanced to Payroll Network sums sufficient to pay Employees that received manual checks, and Payroll Network issued those manual checks. Therefore, all payroll checks and direct deposits for the July 11<sup>th</sup> Pre-Petition Payroll will be drawn on a bank account maintained by Payroll Network rather than the Debtors (and, thus, there is no need to direct Chase to honor the payments to the Employees on account of the July 11<sup>th</sup> Pre-Petition Payroll).

13. In addition to the sums due the Employees for their services rendered while the Debtors operated, after ceasing operations, the Debtors' store managers worked an additional day to ensure that the stores were properly closed and that all cash in the stores was properly deposited into the Debtors' accounts. The Debtors' district managers also worked an additional two (2) days to facilitate the orderly cessation of operations. As a result, the store managers and district managers are collectively owed approximately \$20,000 for the pre-petition period (the "**Pre-Petition Manager Payroll**"). The Debtors expect to pay the Pre-Petition Manager Payroll on July 18, 2014.

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<sup>3</sup> Included within the July 11<sup>th</sup> Pre-Petition Payroll were amounts due for those Employees that worked on the day the Debtors ceased operations, which would have ordinarily been included in a payroll that would have been disbursed July 25, 2014.

14. Moreover, the next scheduled payroll for Mr. Ireland, the Debtors' CFO (and the only CBS employee) is July 18, 2014, covering the period June 30, 2014 through July 13, 2014. As of the Filing Date, the Debtors will have incurred Pre-Petition Employee Compensation Obligations to Mr. Ireland for the period June 30, 2014 through and including July 10, 2014, for a total of eleven (11) pre-petition days (the "**Pre-Petition Ireland Payroll**"). Mr. Ireland's total payroll for each payroll period is \$8,653.85.

15. The next scheduled payroll for the Current Employees (other than Mr. Ireland) is July 25, 2014, for the period July 8, 2014 through July 20 2014, for a total of there (3) pre-petition days. The total amount of that payroll will be approximately \$37,000.00 (the "**Pre-Petition Current Employee Payroll**", which together with the Pre-Petition Manager Payroll and Pre-Petition Ireland Payroll are collectively the "**Pre-Petition Payroll**").

16. Based on the Debtors' books and records and historical payroll obligations, they do not believe any Employee is owed more than the \$12,475.00 priority cap for pre-petition wages and salaries. See 11 U.S.C. § 507(a)(4).

**C. Gross Payroll Deductions, Taxes and Governmental Withholdings**

17. Upon the culmination of each payroll cycle, Payroll Network deducts certain amounts from Employees' paychecks to account for (i) pre- and after-tax deductions pursuant to employee benefit plans (described below under "**Employee Benefits**"), (ii) federal, state and local tax withholdings laws and (iii) other, such as garnishments, transportation, charitable contributions and child support (collectively, the "**Employee Withheld Amounts**").

18. The Debtors are required by law to withhold from an Employee's wages amounts related to federal and state taxes, social security and Medicare taxes (collectively, the "**Trust Fund Taxes**"), and to remit the Trust Fund Taxes to the appropriate taxing authorities

(collectively, the “**Taxing Authorities**”). Withholding taxes for the Debtors’ employees are calculated and withheld from payroll by Payroll Network for each payroll. Additionally, the Debtors are obligated to match from their own funds the social security and Medicare taxes and to remit to the Taxing Authorities, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively, the “**Employer Payroll Taxes**” and, together with the Trust Fund Taxes, the “**Payroll Taxes**”). Before ceasing operations, the Payroll Taxes totaled approximately \$125,000 per payroll period. The Payroll Taxes are automatically withdrawn from the Debtors’ operating account by Payroll Network one day before the applicable payroll and transmitted to the Taxing Authorities. Payroll tax variances are collected by Payroll Network or credited to the Debtors quarterly. For the first quarter of 2014, the Debtors owed an additional \$3,436 of Payroll Taxes which has been paid.

19. Notwithstanding the timing of the bankruptcy filings, all Employee Withheld Amounts were withheld and remitted to the appropriate third parties. In addition, after the Filing Date, the Debtors will be required to withhold from the Pre-Petition Payroll the Employee Withheld Amounts, which, in turn, Payroll Network will have to forward to the applicable third party recipients.

**D. Employee Expense Reimbursements**

20. The Debtors maintain a formal employee expense reimbursement policy for travel and business related expenses (the “**T&E Policy**”). Pursuant to the T&E Policy, if an Employee incurs expenses related to travel or miscellaneous business expenses (the “**T&E Expenses**, collectively), he or she must submit an expense reimbursement report. Approved reimbursements are paid by ACH to the Employee’s approved account. As of the Filing Date,

the Debtors believe outstanding Expense Reimbursements are nominal and less than \$5,000 in total.

**E. Employee Benefits for Current Employees**

21. The Debtors maintain an employee benefit policy pursuant to which Current Employees are provided with certain specific sick/personal time, vacation, bereavement, jury duty and holiday pay (collectively, the “**Total Benefit Days**”) as well as other benefits enumerated below (the “**Other Employee Benefits**”), and offer their Current Employees the opportunity to participate in various insurance and other company sponsored programs (the “**Company Sponsored Programs**” and, together with the Total Benefit Days and Other Employee Benefits, the “**Employee Benefits**”). The Employee Benefits are as follows:

1. Medical, Vision and Dental Insurance Plans

22. The Debtors provide medical benefits to the Current Employees through a plan administered by United Healthcare. The Debtors’ annual contribution to medical benefits through United Healthcare was approximately \$529,018.70 based on 2013 billings.

Additionally, the Debtors offer dental and vision insurance administered by United Healthcare to the Current Employees.

23. Costs of medical, dental and vision coverage, as well as prescription drug plans, are shared between the Debtors and Current Employees. As of the Filing Date, the Debtors reasonably estimate that they have no outstanding share of these costs.

2. Severance

24. Certain of the Debtors' Employees have severance agreements within their respective employment agreements.<sup>4</sup> Currently, the Debtors are not making payments as part of any severance package or agreement.

3. 401(k) Retirement Savings Plan

25. The Debtors do not sponsor an ERISA qualified 401(k) retirement savings plan for eligible Employees.

4. Vacation, Personal and Sick Leave

26. The Debtors maintain paid time off ("**PTO**") policies (collectively, the "**PTO Policies**") for (1) full time benefit eligible exempt corporate employees (the "**Corporate Exempt Employees PTO Policy**"); and (2) corporate non-exempt employees ("**Corporate Non-Exempt PTO Policy**"). Pursuant to the PTO Policies, the Current Employees earn PTO days on the first day of each month after 30 days of employment through October 31<sup>st</sup>. The PTO accrual period for the PTO Policies is based on the calendar year (January 1<sup>st</sup> through October 31<sup>st</sup>). Pursuant to the PTO Policies, beginning every January 1<sup>st</sup>, eligible employees begin to accrue vacation on a basis of 1/10<sup>th</sup> of the total vacation amount for each complete month worked from January 1<sup>st</sup> through October 31<sup>st</sup>. Employees must work through the last working day of a month in order to accrue vacation for that month. Pursuant to the PTO Policies, PTO days must be taken within the same year they are accrued and may not be carried over to the following year. Accrued PTO time that is not taken in the year is forfeited by the employee.

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<sup>4</sup> Currently these include Robin Sepe, Senior Vice President of Human Resources, entitled to six (6) months pay if terminated within the first three (3) years of employment, and Edward Slezak, Senior Vice President and General Counsel, entitled to six (6) months pay if terminated without cause.

i. Corporate Exempt PTO Policy and Corporate Non-Exempt PTO Policy

27. The Corporate Exempt PTO Policy applies to all full time benefit eligible exempt corporate employees. The Corporate Non-Exempt PTO Policy applies to all full time hourly benefit eligible corporate employees. Monthly earnings are determined based on years of service with the Debtors and credited in accordance with the following schedule:

<b>YEARS OF SERVICE</b>	<b>PTO DAYS</b>	<b>MONTHLY ACCRUAL</b>
<b>Corporate Employees</b>		
Less than 12 months	Up to 15 days	1.5 days per month
1-4 years	15 days	1.5 days per month
5-9 years	20 days	2 days per month
<b>Executive Level Employees (VP level and above)</b>		
Less than 12 months	Up to 23 days	2.3 days per month
1+ years	23 days	2.3 days per month

28. The corporate office is closed for certain observed holidays. All full time corporate employees receive holiday pay for the following holidays: New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving and Christmas Day.

29. The Debtors do not have a formal sick policy for the Current Employees. The corporate sick time policy is on the honor policy. Attendance, however, is tracked by the Debtors.

6. Flexible Spending and Health Savings Accounts

30. The Debtors offer their Employees the opportunity to participate in a Flexible Spending Account (“FSA”) and Health Savings Account (“HSA”) programs by allowing them to

set aside a portion of their pre-tax earnings to pay for qualified medical expenses. The Debtors do not contribute to the employee FSA program, however it does contribute to the HSA program. Annual contributions for single coverage are \$1,000 and \$2,000 for other coverage, totaling approximately \$56,000 annually. Given the timing of the bankruptcy filings, it is possible that certain of the FSA or HSA deductions may have been withheld from the Pre-Petition Payroll, but the Debtors did not fund the reimbursement requests as of the Filing Date. Thus, the Debtors seek authority for the Debtors to transmit any such deductions to the FSA or HSA Plan Administrator. The Debtors estimate reimbursements of approximately \$16,000 and \$22,000 are currently outstanding under the FSA and HSA plans, respectively. As of the Filing Date, the Debtors reasonably estimate that they do not have any obligations to fund into the HSA plan.

7. Life, Accidental Death and Dismemberment, and Long Term Disability Insurance

31. The Debtors provide \$10,000 of Life, accidental death and dismemberment for all salaried employees. The Debtors' contribution to this insurance program totals approximately \$485 per year. As of the Filing Date, the Debtors reasonably estimate they have no unpaid obligations under the life, accidental death and dismemberment insurance programs.

8. Short and Long Term Disability

32. The Debtors make available to the employees short and long term disability benefits. The program carrier is First UNUM Life Insurance Company. These benefits are completely voluntary and no contribution is made by the Debtors.

9. Workers' Compensation

33. In the ordinary course of business, the Debtors maintain workers' compensation insurance for the benefit of their employees. For the current policy year, which began on December 31, 2013, the Debtors have purchased workers' compensation insurance, with policies

issued to Crumb Bake Shops Inc. by Twin City Fire Insurance Co. (the “**Crumbs Bake Shop Policy**”) and to Crumbs Holdings, LLC by Hartford Insurance Company of the Midwest (the “**Crumbs Holdings Policy**,” collectively the “**Current Workers’ Comp Policies**”). The Current Workers’ Comp Policies cover the period December 31, 2013 through December 31, 2014 and are fully-insured policies that provide for \$1,000,000 of coverage per incident. The monthly premiums payable for the Crumbs Bake Shop Policy and for the Crumbs Holdings Policy are \$1,304 and \$251,226, respectively. The Debtors are current on their premium payments. With respect to existing and potential future workers’ compensation premiums, the Debtors seek authority to address and satisfy premiums arising in the ordinary course of business.

34. Because the Debtors’ Current Workers Comp Policy is a fully-insured plan, the Debtors reasonably believe that they currently have no potential exposure for workers’ compensation claims.

### **III. RELIEF REQUESTED AND BASIS THEREFOR**

#### **THE COURT SHOULD AUTHORIZE THE DEBTORS TO PAY OR OTHERWISE HONOR THEIR PRE-PETITION OBLIGATIONS TO OR FOR THE BENEFIT OF THEIR EMPLOYEES**

35. Given the timing of the Debtors’ Chapter 11 filings, the Pre-Petition Payroll and Payroll Taxes constitute pre-petition obligations of the Debtors. The Debtors seek an Order authorizing payment by the Debtors of, and directing the Debtors’ banks to honor payments for, the Pre-Petition Payroll, and the Payroll Taxes, as well as authority to continue paying and/or

otherwise honoring the other ordinary Employee Benefits enumerated above (*i.e.*, as defined above, the Pre-Petition Employee Compensation Obligations).<sup>5</sup>

36. The Debtors submit the relief sought herein is authorized pursuant to Section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,” and further justified by the Court’s broad equitable powers under Section 105 of the Bankruptcy Code.

37. Section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .” the Bankruptcy Code. As one court observed:

The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W. R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989). Accord In re Lehigh & N.E. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (quoting In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (the “necessity of payment” doctrine permits immediate payment of claims to creditors who will not supply services or material essential to the debtor’s

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<sup>5</sup> The Debtors’ request for authority to honor the Pre-Petition Employee Compensation Obligations is not intended to convert the Employees’ claims for Pre-Petition Employee Compensation Obligations to administrative expense obligations of the Debtors or to obligate the Debtors in any way to compensate the Employees for Employee Benefits in cash. In addition, this request is not intended to be an assumption of (or authorization to assume) any of the employee compensation, benefits or reimbursement policies, plans or programs of the Debtors, or any written agreement any employee might have with the Debtors, pursuant to Section 365 of the Bankruptcy Code.

business until their pre-petition claims are paid)). Application of the “necessity of payment” doctrine here establishes the Debtors should be authorized to honor their Pre-Petition Employee Compensation Obligations. See Friedman’s Inv. v. Roth Staffing Cos., L.P. (In re Friedman’s Inc.), No. 09-50364, 2011 WL 5975283 at \*3 (Bankr. D. Del. Nov. 30, 2011) (“Put simply, [t]he doctrine of necessity stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a pre-petition obligation where such payment is critical to the reorganization process”) (internal quotations and citation omitted).

38. First, if the Debtors are not authorized to pay their outstanding pre-petition obligations to the Current Employees, their relationship with the Current Employees will be adversely affected and the Current Employees’ morale, dedication, confidence, and cooperation might be compromised irreparably. The Current Employees’ support for the Debtors’ efforts during these cases is critical and cannot be jeopardized. Allowing the Debtors to satisfy the Pre-Petition Employee Compensation Obligations, including honoring their Employee Benefits in the ordinary course, will instill confidence in the Current Employees that the Debtors are in a position to satisfy, and intend to satisfy, their post-petition payroll and related obligations and will ensure the Debtors have a sufficient support system in which to operate and that the Debtors can successfully execute their pronounced strategy in Chapter 11.

39. Equally important, absent an Order granting the relief requested in the Motion, the Employees will suffer significant financial hardship. Denying them their pre-petition salaries would be detrimental and unjust, especially in today’s challenging economic times.

40. The amount to be paid to any Employee for the pre-petition period will not exceed the \$12,475.00 cap contained in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. In addition, payment of the Debtors’ pre-petition payroll obligations will not prejudice other

creditors of the Debtors' estates as the Employees are entitled to priority status under Section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to such obligations and payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B). Moreover, the Debtors' prepetition senior lender and DIP lender consent to the payments sought herein.

41. With respect to the Payroll Taxes, the payment of such taxes also will not prejudice the Debtors' other creditors as the relevant Taxing Authorities generally would hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations and are entitled to payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(C). Moreover, the portion of the Payroll Taxes withheld from the Employee's wages on behalf of the applicable Taxing Authority (as well as the other deductions) are held in trust by the Debtors. As such, that portion of the Payroll Taxes (as well as the other deductions) is not property of the Debtors' estates under Section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990).

42. Lastly, the Debtors are obligated by law to maintain the Workers Compensation Insurance to ensure timely and efficient payment and/or reimbursement to their employees. Therefore, the ability to honor all workers' compensation obligations in the ordinary course of business is indispensable to the continued operation of the Debtors.

43. Pursuant to Rule 6003 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Filing Date if the relief is necessary to avoid immediate and irreparable harm. See Fed. R. Bankr. P. 6003. The Debtors submit that the facts described herein demonstrate that the relief requested in this Motion is necessary to avoid immediate and

irreparable harm to the Debtors' business operations and the value of the Debtors' estates, and that Bankruptcy Rule 6003 has been satisfied to permit such payments.

44. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the Motion and such other relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
Proposed Attorneys for Crumbs Bake Shop, Inc., *et al.*,  
Debtors-in-Possession

By: /s/ Michael D. Sirota  
Michael D. Sirota, Esq.  
David M. Bass, Esq.  
Felice R. Yudkin, Esq.

DATED: July 11, 2014

**VERIFICATION**

John D. Ireland, of full age, certifies as follows:

1. I am the Chief Financial Officer of the within debtors and debtors-in-possession (the "**Debtors**"). As such, I have full knowledge of the facts set forth in and am duly authorized to make this Verified Application on the Debtors' behalf.

2. I have read the foregoing Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.

3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: July 11, 2014

  
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JOHN D. IRELAND