

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

A Professional Corporation

Court Plaza North

25 Main Street

P.O. Box 800

Hackensack, New Jersey 07602-0800

Michael D. Sirota, Esq.

David M. Bass, Esq.

Felice R. Yudkin, Esq.

(201) 489-3000

(201) 489-1536 Facsimile

Proposed Attorneys for Crumbs Bake Shop, Inc., *et al.*,

Debtors-in-Possession

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

Chapter 11

(Joint Administration Pending)

HEARING DATE AND TIME:

July _____, 2014, at __:__.m.

In re:

CRUMBS BAKE SHOP, INC., *et al.*,¹

Debtors-in-Possession.

ORAL ARGUMENT REQUESTED

**VERIFIED APPLICATION IN SUPPORT OF THE DEBTORS' MOTION FOR AN
ORDER: (A) AUTHORIZING THE DEBTORS TO CONTINUE USING THEIR
EXISTING CASH MANAGEMENT SYSTEM; (B) AUTHORIZING DEBTORS TO
CONTINUE USING THEIR BANK ACCOUNTS AND BUSINESS FORMS; AND (C)
WAIVING THE DEBTORS' COMPLIANCE WITH INVESTMENT GUIDELINES
UNDER 11 U.S.C. § 345(B)**

¹ 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 42nd 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).

TO: Honorable Judge of the
United States Bankruptcy Court

The Verified Application of 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:

INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtors’ motion for an Order: (a) authorizing the Debtors to continue using their existing cash management system; (b) authorizing the Debtors to continue using their bank accounts and business forms; and (c) waiving compliance with investment guidelines under 11 U.S.C. § 345(b) (the “**Motion**”). As set forth below, granting the Debtors the relief requested in the Motion is crucial to minimize expense and burden on the Debtors’ estates.

2. 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).

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

BACKGROUND

4. 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.

5. 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.

6. 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, PKP-Mystic Apparel, Pop!Gourmet Popcorn 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, Maryland and Virginia. For the fourth quarter ending December 31, 2013, CBS and its subsidiaries had consolidated assets of \$20 million and liabilities of \$19 million. 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.

7. In the ordinary course of business, the Debtors use an integrated, centralized cash management system (the "**Cash Management System**"). The Cash Management System enables the Debtors to (a) monitor closely the collection and disbursement of funds, (b) maintain control over the administration of their numerous bank accounts, and (c) forecast and report their cash position with greater certainty. The Cash Management System is monitored daily by the Debtors' Chief Financial Officer.

A. **The Debtors' Existing Bank Accounts and Flow of Funds in the Debtors' Management System**

8. As of the Filing Date, the Debtors maintain approximately thirty-five (35) active bank accounts (collectively, the “**Bank Accounts**”)² as follows:

Retail Location Depository Accounts: Except as set forth below, the Debtors maintain a separate deposit account for each of their individual retail locations. When the Debtors were operating, cash deposits were prepared at each of the Debtors' retail locations and picked up daily by a courier or armored car service that delivered the deposits to the applicable bank. The bank then credited each individual store account with the funds from the daily deposits. Similarly, Chase Paymentech, the Debtors' credit card processor, deposited credit card receipts into each of the Debtors' individual deposit accounts.

Cash Depository Account. Each store has a separate bank account except for six (6) of the Debtors' retail locations in New York which all deposited their cash receipts into a combined bank account titled the “Cash Depository.” The credit card receipts for those six (6) retail locations were also deposited into the “Cash Depository” account.

Holdings Main Depository Account. On a daily basis, the funds in the individual retail depository accounts and the “Cash Depository” account were swept to a main depository account maintained in the name of Holdings (the “**Holdings Depository Account**”).

Holdings Main Checking Account. On a daily basis, the funds in the Holdings Depository Account were swept into a main checking account also maintained in the name of Holdings (the “**Holdings Checking Account**”). The Holdings Checking Account is utilized to pay all accounts payable on behalf of all of the Debtors.

Holdings Payroll Account. This account is utilized to fund the Debtors' payroll obligations and is funded by the Holdings Main Checking Account.

² A schedule of the Bank Accounts is attached as **Exhibit A**. The Debtors believe **Exhibit A** contains a complete list of all the Debtors' bank accounts. In the event one or more bank accounts may have been omitted inadvertently from **Exhibit A**, such accounts also are included in the definition of Bank Accounts. Certain of the Bank Accounts are no longer utilized by the Debtors, but have not yet been closed.

Other Miscellaneous Accounts. The Debtors also maintain a bank account that was used to collateralize a letter of credit which were posted as security for certain of the Debtors' landlords. The Debtors also have FSA and OCA accounts related to employee reimbursements under employee benefit plans.

9. The Cash Management System is similar to those commonly employed by companies comparable to the Debtors because of the numerous benefits provided, including, the ability to (a) quickly create status reports on the location and amount of funds, allowing management to track and control corporate funds, (b) ensure cash availability and (c) reduce administrative expenses by facilitating the movement of funds.

B. The Debtors' Existing Business Forms and Checks

10. In the ordinary course of business, the Debtors use checks, correspondence and numerous other business forms including, but not limited to, invoices, purchase orders and envelopes (collectively, the "**Business Forms**").

RELIEF REQUESTED AND BASIS THEREFOR

A. Continued Use of the Cash Management System and Existing Bank Accounts Are Essential to the Debtors' Efforts in These Chapter 11 Cases

11. Upon filing their Chapter 11 proceedings, the Debtors became bound by the Operating Guidelines and Reporting Requirements for Chapter 11 Cases (the "**Operating Guidelines**") established by the Office of the United States Trustee for the District of New Jersey (the "**UST**"). Pursuant to the Operating Guidelines, the Debtors' "failure to comply with the operating and/or reporting requirements . . . may result in the dismissal or conversion of these case to cases under Chapter 7 of the Bankruptcy Code." The Operating Guidelines state that, upon filing their Chapter 11 petitions, the Debtors:

must immediately close all of [their] existing bank accounts and open new bank accounts which must be (i) designated as debtor in possession accounts ("**DIP Accounts**") and (ii) maintained subject to the following conditions:

a. All money of the bankruptcy estate[s] must be deposited in the DIP Accounts . . .

Operating Guidelines at ¶ 1, 2.

12. As set forth in the Ireland Affidavit, the Debtors have obtained debtor-in-possession financing from Lemonis Fischer Acquisition Company, LLC (“**LFAC**”) that will enable them to pursue an expedited sale of the Debtors’ assets pursuant to Section 363 of the Bankruptcy Code. LFAC is also serving as a stalking horse for the purchase of substantially all of the Debtors’ assets. In that regard, to minimize any further deterioration in the Debtors’ brand and goodwill and thereby maximize the value of the Debtors’ assets, the Debtors’ management and LFAC have discussed the possibility of the Debtors resuming their business operations pending a sale of their assets. In the event the Debtors were to quickly resume business operations (should that be the decision), it is imperative that the Cash Management System be in place. If the Debtors were required to open all new bank accounts and alter their existing Cash Management System (particularly in the short period of time prior to the anticipated sale of their assets), the Debtors’ ability to operate would be compromised. Simply, it would be unable collect and disburse funds consistent with how it conducted its business in the ordinary course prior to its recent shut down. Without that Cash Management System in place, the Debtors would be unable to monitor closely the flow of their cash and to continue operating in the manner to which it was accustomed and those the value of the Debtors’ assets would be unnecessarily jeopardized. Moreover, in the event that the Debtors do not resume operations, then there is no prejudice as little to no activity will occur in the vast majority of the accounts comprising the Cash Management System. Accordingly, the Debtors respectfully request that

the Court enter an Order authorizing the continued use of the Cash Management System and Bank Accounts.³

B. It is Appropriate for the Debtors to Continue Use of Existing Checks and Business Forms

13. As set forth above, in the ordinary course of business, the Debtors used checks and other business forms. To minimize expense to the Debtors' estates while management pursues a relatively quick sale process, the Debtors, as applicable, request authority to continue to use their business forms, substantially in the forms existing immediately before the Filing Date, without reference to their status as debtors-in-possession. Use of new business forms would greatly increase the Debtors' costs and add significantly to the administrative burdens of transitioning to operations in Chapter 11 and would serve little benefit as the Debtors transition the business toward the sale.

14. In the event the Debtors resume business operations, parties doing business with the Debtors undoubtedly will be aware of their status as debtors-in-possession as a result of the number of creditors involved and the likely publicity attendant to the Debtors' bankruptcy filings. In addition, all known creditors will be sent notices of the commencement of these cases. In light of the comprehensive notice that creditors will receive regarding the Debtors' Chapter 11 filings, the Debtors respectfully submit that changing business forms is both unnecessary and unduly burdensome. Notwithstanding the foregoing, to the extent any Debtor issues a check in these Chapter 11 proceedings, such Debtor shall stamp such check with a "DIP" reference.

³ The Debtors propose to maintain the Bank Accounts on an interim basis for the next sixty (60) days. If the UST does not file a written objection thereto before expiration of the sixty (60) day period, the accompanying Order provides that the Debtors shall be authorized to maintain and utilize the Bank Accounts post-petition on a permanent basis.

C. **Cause Exists for A Waiver of the Debtors' Compliance with Investment Guidelines of Section 345 of the Bankruptcy Code**

15. Section 345 of the Bankruptcy Code governs a debtor's deposits and investments of cash during a Chapter 11 case and authorizes deposits or investments of money "such as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," Section 345(b) of the Bankruptcy Code requires that the estate secure from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, unless the Court orders otherwise. In the alternative, the estate may require that the entity deposit governmental securities pursuant to 31 U.S.C. § 9303.⁴ 11 U.S.C. § 345(b).

16. Section 345(b) also expressly provides that a court may modify these requirements for cause. The Debtors submit that, under the existing circumstances, cause exists to authorize them to continue to deposit and invest cash in substantially the same manner as the Debtors invested such funds before the Filing Date.

17. It is within the Court's discretion to extend or waive the investment guidelines requirement under Section 345(b) of the Bankruptcy Code "for cause." 11 U.S.C. § 345(b); see also 140 Cong. Rec. H10752-01 (October 4, 1995) (Section 345(b) investment guidelines may be "wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, [but] can work to needlessly handcuff larger, more sophisticated debtors"). Courts have

⁴ This statute provides that where a person is required by law to give a surety bond, that person, in lieu of such surety bond, may provide a governmental obligation. 31 U.S.C. § 9303.

previously held that, in determining whether “cause” exists for the waiver, the court should consider the sophistication and size of the debtor’s business, the bank ratings of the financial institutions where the funds are held, the complexity of the debtor's bankruptcy case, and the reasonableness of the debtor's request for relief from Section 345 in light of the overall circumstances. In re Serv. Merchandise Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

18. Cause exists to grant a waiver of the requirements of Section 345 of the Bankruptcy Code for several reasons. The Debtors do not maintain any bank accounts that expose their funds to high levels of investment risk. The Debtors’ deposits are swept daily into the Holdings Main Checking Account which earns interest overnight. In light of the Debtors’ sophisticated and complex Cash Management System and their regular deposits and sweeps, it would be unnecessary and wasteful for them to be forced to incur the expense of obtaining a bond given the safeguards embedded in the Cash Management System. The Debtors submit their current practices provide sufficient protection for their cash and that it would be in the estates’ best interests for the Debtors to continue to follow these practices. The Bank Accounts are largely maintained at financially stable banking institutions and are insured by Federal Deposit Insurance Corporation (“**FDIC**”) insurance.⁵ Thus, requiring adherence to the strictures of Section 345(b) is unnecessary and would needlessly impede the administration of the Debtors’ cases.

19. For all the foregoing reasons and authorities, the Debtors believe that the relief requested herein is amply justified by the facts and circumstances of these cases.

⁵ FDIC insurance covers funds in deposit accounts, including checking and saving accounts, money market deposit accounts and certificates of deposit. The amount of FDIC insurance is \$250,000.

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.

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
David M. Bass
Felice R. Yudkin

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



JOHN D. IRELAND