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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE MICHAEL B. KAPLAN
CASE NO. 14-24287 (MBK)

In re:

CRUMBS BAKE SHOP INC., *et al.*,¹

Debtors-in-Possession.

Chapter 11
(Jointly Administered)

HEARING DATE AND TIME:
October 31, 2014, at 10:00 a.m.

**ORAL ARGUMENT WAIVED UNLESS
OBJECTIONS TIMELY FILED**

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER CONVERTING
THEIR CHAPTER 11 PROCEEDINGS TO CHAPTER 7
PURSUANT TO 11 U.S.C. § 1112(a)**

PLEASE TAKE NOTICE that on October 31, 2014, at 10:00 a.m. or as soon thereafter as
counsel may be heard, the undersigned, attorneys for Crumbs Bake Shop, Inc., *et al.*,

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); Crumbs Holdings LLC (8045); 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).

(collectively, the “**Debtors**”), the within debtors and debtors-in-possession, shall move before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, at the United States Bankruptcy Court, Clarkson S. Fischer U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, for entry of an Order converting their Chapter 11 proceedings to Chapter 7 pursuant to 11 U.S.C. § 1112(a) (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the accompanying Application which sets forth the relevant factual and legal bases upon which the requested relief should be granted. A proposed Order granting the requested relief also is submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall: (i) be in writing, (ii) state with particularity the basis of the objection; and (iii) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with D.N.J. LBR 5005-1 and the Appendix thereto, *Administrative Procedures For Filing, Signing And Verifying Documents By Electronic Means* (the “**Administrative Procedures**”) (a copy of the aforementioned rule and the Administrative Procedures can be found at www.njb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties-in-interest, and shall be served in accordance with the service requirements of the Administrative Procedures, so as to be received no later than seven (7) days before the hearing date set forth above.

PLEASE TAKE FURTHER NOTICE that unless objections are timely filed, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a), and the relief requested may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that the undersigned waives oral argument unless objections to the Motion are timely filed.

Respectfully submitted,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Attorneys for Crumbs Bake Shop, Inc., *et al.*,

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

DATED: October 3, 2014

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE MICHAEL B. KAPLAN
CASE NO. 14-24287 (MBK)

In re:

CRUMBS BAKE SHOP INC., *et al.*,¹

Debtors-in-Possession.

Chapter 11
(Jointly Administered)

**DEBTORS' APPLICATION IN SUPPORT
OF ENTRY OF AN ORDER
CONVERTING THEIR CHAPTER 11
PROCEEDINGS TO CHAPTER 7
PURSUANT TO 11 U.S.C. § 1112(a)**

HEARING DATE AND TIME:
October 31, 2014, at 10:00 a.m.

TO: HONORABLE MICHAEL B. KAPLAN
United States Bankruptcy Judge

The Application of Crumbs Bake Shop, Inc., *et al.*, the within debtors and debtors-in-possession (collectively, the "Debtors"), by and through their counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully states as follows:

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); Crumbs Holdings LLC (8045); 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).

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted in support of the Debtors' motion for an Order converting their Chapter 11 proceedings to Chapter 7 pursuant to 11 U.S.C. § 1112(a) (the "Motion").

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

II. BACKGROUND

3. 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 businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. 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.

5. 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.

6. The Debtors commenced these proceedings with an eye toward an orderly liquidation of their remaining assets and the winding up of their affairs. On the Filing Date, the Debtors entered into a credit bid asset purchase agreement with Lemonis Fischer Acquisition Company, LLC (“**LFAC**”) for the sale of substantially all of their assets (the “**APA**”).

7. In connection with the execution of the APA and to implement the transactions contemplated thereby, on July 14, 2014, the Debtors filed a *Motion for an Order Pursuant to 11 U.S.C. §§ 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 6006: (1) Approving “Stalking Horse” Asset Purchase Agreement for the Sale of Substantially All the Debtors’ Assets; (2) Approving Bidding Procedures and Form, Manner and Sufficiency of Notice; (3) Scheduling (A) An Auction Sale and (B) a Hearing to Consider Approving the Highest and Best Offer; (4) Authorizing the Debtors to Sell Substantially all Their Assets Free and Clear of Liens, Claims, Encumbrances and Interests and to Assume and Assign Certain Related Executory Contracts and Unexpired Leases; and (5) Granting Other Related Relief* [Docket No. 22] (the “**Sale Motion**”).

8. On August 11, 2014, the Court entered a *Final Order (I) Authorizing the Debtors to Obtain Post-Petition Financing; (II) Authorizing the Debtors’ Use of Cash Collateral; and*

(III) *Granting Other Related Relief* [Docket No. 126] (the “Final DIP Order”). Pursuant to Paragraph 5 the Final DIP Order, LFAC, as DIP lender, agreed to fund up to \$25,000 to satisfy necessary Chapter 7 wind-up expenses.

9. On July 25, 2014, the Court entered an Order approving the bidding procedures aspect of the Sale Motion which contemplated an auction process. The Debtors did not receive any higher or better offers than the stalking horse bid from LFAC and, therefore, at a sale hearing held on August 26, 2014, requested authority to sell their assets to LFAC. The Court approved the sale and entered the *Order Under 11 U.S.C. §§ 105(a), 363 and 365 (I) Authorizing and Approving the Sale of Substantially All the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances and Interests, (II) Authorizing and Approving the Assumption and Assignment of Certain Unexpired Leases of Non-Residential Real Property in Connection With the Sale, and (III) Granting Related Relief* [Docket No. 195] (the “**Sale Order**”).

10. The Debtors closed on the APA with LFAC on August 29, 2014, consummating the transactions contemplated thereby. The Debtors no longer maintain active business operations and have only operated their businesses for the purpose of maximizing the value of the Debtors’ assets, resolving certain claims and winding down their affairs for the benefit of the Debtors’ creditors. The Debtors’ remaining assets include, among other things, potential causes of action including, among others, avoidance actions under the Bankruptcy Code. The Debtors have determined that the best interest of all creditors will best be served by converting these Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code so that a Chapter 7 trustee may investigate and pursue those causes of action to maximize recoveries while reducing the continuing costs of the administration of these estates.

III. RELIEF REQUESTED AND BASIS THEREFOR

11. The Debtors have sold substantially all of their assets, have no operating business to save and cannot propose a feasible plan of reorganization. Accordingly, the Debtors have no alternative but to convert their Chapter 11 proceedings to Chapter 7 pursuant to Section 1112(a) of the Bankruptcy Code, which provides:

The debtor may convert a case under this chapter to a cause under chapter 7 of this title unless –

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a cause under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a).

12. The legislative history for Section 1112(a) states that this subsection “gives the debtor the absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.” In re Schuler, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S. Rep. No. 989, 95th Cong., 2nd Sess. 117 (1978)). Other courts have also suggested that, provided the exceptions set forth in Section 1112(a) do not exist, a debtor has an absolute right to convert its case from Chapter 11 to Chapter 7. See In re Texas Extrusion Corp., 884 F.2d 1142, 1161 (5th Cir. 1988); In re Marrill Alarm Systems, Inc., 100 B.R. 606, 607 (Bankr. S.D. Fla. 1989); In re Dieckhaus Stationers of King of Prussia, Inc., 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (Section 1112(a) “gives the debtor an absolute right to convert”).

13. As a threshold matter, none of the limitations provided in Section 1112(a) on a debtor's right to convert is present because (i) the Debtors are debtors in possession, (ii) the case

was commenced by filing a voluntary petition for relief, and (iii) there have been no prior conversions. Furthermore, extreme or unusual circumstances do not exist that would warrant denial of this Motion.

14. Moreover, the Debtors currently do not have sufficient funds available to formulate and seek confirmation of a Chapter 11 plan, and the potential causes of action, while believed to have value, will take a long time to liquidate. It is the Debtors' judgment that in the particular circumstances of these Chapter 11 cases, the goal of maximizing the net recoveries to creditors will best be achieved through an orderly process that may be administered by a Chapter 7 trustee. The Official Committee of Unsecured Creditors agrees with the Debtors' decision to convert the Debtors' Chapter 11 cases to Chapter 7.

WHEREFORE, the Debtors respectfully request that the Court grant 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.
Attorneys for Crumbs Bake Shop, Inc., *et al.*

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

DATED: October 3, 2014

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A. A Professional Corporation Court Plaza North 25 Main Street P.O. Box 800 Michael D. Sirota, Esq. David M. Bass, Esq. Felice R. Yudkin, Esq. (201) 489-3000 (201) 489-1536 Facsimile Attorneys for Crumbs Bake Shop, Inc., <i>et al.</i> , Debtors-in-Possession	Case No. 14-24287 (MBK) Judge: Michael B. Kaplan Chapter 11 (Jointly Administered) Hearing Date and Time: October 31, 2014 at 10:00 a.m.
In re: CRUMBS BAKE SHOP INC., <i>et al.</i> , ¹ Debtors-in-Possession.	

**ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY CASES TO
CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The relief set forth on the following pages, numbered two (2) and three (3), is hereby
ORDERED.

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); Crumbs Holdings LLC (8045); 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).

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Debtor: CRUMBS BAKE SHOP, INC., *et al.*
Case No: 14-24287 (MBK)
Caption of Order: ORDER CONVERTING THE DEBTORS' CHAPTER 11
BANKRUPTCY CASES TO CASES UNDER CHAPTER 7 OF THE
BANKRUPTCY CODE

THIS MATTER having been opened to the Court by Crumbs Bake Shop, Inc., *et al.*, the within debtors and debtors-in-possession (the “**Debtors**”), by and through their counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., upon a motion (the “**Motion**”),² pursuant to Section 1112 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order: (a) converting the above-captioned Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code; and (b) directing the Office of the United States Trustee for the District of New Jersey (the “**U.S. Trustee**”) to appoint a Chapter 7 trustee; and it appearing that good and sufficient notice of the Motion having been provided as evidenced by the Affidavit of Service filed with the Court; and the Court having considered all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and other good cause having been shown,

² All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

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Debtor: CRUMBS BAKE SHOP, INC., *et al.*
Case No: 14-24287 (MBK)
Caption of Order: ORDER CONVERTING THE DEBTORS' CHAPTER 11
BANKRUPTCY CASES TO CASES UNDER CHAPTER 7 OF THE
BANKRUPTCY CODE

IT IS ORDERED as follows:

1. Pursuant to Section 1112(a) of the Bankruptcy Code, the Debtors' Chapter 11 cases are converted to cases under Chapter 7 of the Bankruptcy Code, effective as of _____, 2014 (the "**Conversion Date**").
2. The U.S. Trustee is directed to appoint a Chapter 7 trustee following the Conversion Date.
3. Upon the appointment of a Chapter 7 trustee, LFAC shall fund to the Chapter 7 trustee the sum of \$25,000 in accordance with Paragraph 5 of the Final DIP Order.
4. A true copy of this Order shall be served on all parties-in-interest within seven (7) days hereof.