

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

In re:

OLD BBP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12502 (LSS)

(Jointly Administered)

Hearing Date: September 10, 2020 at 10:00 a.m. (ET)

Objection Deadline: September 3, 2020 at 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF ORDERS (I) ESTABLISHING
DISMISSAL PROCEDURES, (II) AUTHORIZING DISMISSAL OF THE DEBTORS'
CHAPTER 11 CASES, AND (III) GRANTING RELATED RELIEF**

The above-captioned affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of (i) an order, substantially in the form attached hereto as Exhibit A (the “Dismissal Procedures Order”), establishing procedures for dismissal of the Debtors’ chapter 11 cases, and (ii) upon the filing of a certification of counsel stating that the conditions precedent to dismissal have been met, an order, substantially in the form attached hereto as Exhibit B (the “Dismissal Order”), pursuant to sections 105(a), 305(a), 349, 554 and 1112(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 1017(a) and 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 1017-2 and 2002-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) dismissing the Debtors’ chapter 11 cases and granting related relief. In support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Old BBP, Inc. (f/k/a Bumble Bee Parent, Inc.) (5118); Old BBH, Inc. (f/k/a Bumble Bee Holdings, Inc.) (1051); Old BBF, LLC (f/k/a Bumble Bee Foods, LLC) (0146); Old AF, LLC (f/k/a Anova Food, LLC) (2140); and Old BBC Corp. (f/k/a Bumble Bee Capital Corp.) (7816). The mailing address for the above-captioned Debtors is Old BBP, Inc., *et al.*, Attn: Albert Altro, Chief Wind Down Officer, Traverse LLC, 300 Spectrum Center Dr., Suite 400, Irvine, California 92618.

PRELIMINARY STATEMENT²

1. Having now successfully consummated the Sale and reached a global settlement with all Settling Parties, the Debtors are positioned for an orderly wind-down of their remaining business activities and these Chapter 11 Cases. The Debtors have determined that dismissal of the Chapter 11 Cases is the most efficient and cost-effective method of concluding these Chapter 11 Cases.

2. The Debtors believe that confirmation of a chapter 11 plan of liquidation is not feasible because they cannot establish that any potential taxes on the gain arising from the Sale, which would be entitled to administrative expense status, can be paid from the assets available to administrative expense claimants. Further, the Debtors do not have the funding for a chapter 11 plan process (including plan formulation and preparation, disclosure and solicitation, and plan confirmation) and to continue to administer their estates while that process plays out.

3. Conversion to chapter 7 is also not warranted. The Debtors have already successfully monetized their operating assets, and they have negotiated the transfer of certain estate-held claims and causes of action that the Committee has identified as potentially meritorious to a Creditors' Trust. As a result, there are no remaining material assets for a chapter 7 trustee to liquidate and distribute. Assuming that the Global Settlement Motion (being heard concurrently herewith) is granted, conversion to a case under chapter 7 of the Bankruptcy Code will merely add another layer of administrative costs with minimal attendant benefits. The few remaining corporate actions that need to be done—filing final tax returns and dissolving the Debtors' corporate existence (or analogous limited liability company actions)—do not require this Court's

² Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them in the body of this Motion.

or a chapter 7 trustee's oversight. The Debtors are cognizant of the Supreme Court's decision in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017) in seeking their requested relief, which is why any distributions to be made by the Creditors' Trust will strictly comply with the absolute priority rule.

4. For the reasons set forth below, dismissal is warranted under the Bankruptcy Code, and makes the most practical and economic sense given the circumstances of these Chapter 11 Cases.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief requested herein are sections 105(a), 305(a), 349, 554 and 1112(b) of the Bankruptcy Code, Bankruptcy Rules 1017(a) and 2002, and Local Rules 1017-2 and 2002-1.

BACKGROUND

I. General

7. On November 21, 2019 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are

authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On December 3, 2019, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the official committee of unsecured creditors (the “Committee”). No request has been made for the appointment of a trustee or an examiner.

II. The Sale of Substantially All of the Debtors’ Assets

9. As set forth in the *Declaration of Kent McNeil in Support of Chapter 11 Petitions and First-Day Motions* [Docket No. 17] (the “First-Day Declaration”), the Debtors commenced these Chapter 11 Cases to preserve and maximize the value of their businesses through the sale of substantially all of their assets as a going concern.

10. On the Petition Date, the Debtors filed a motion [Docket No. 31] (the “Sale Motion”), seeking, among other things, authority to designate certain affiliates of FCF Co., Ltd. (“FCF”) as stalking horse bidder and enter into a stalking horse asset purchase agreement with FCF (the “FCF APA”).

11. By order dated January 24, 2020 [Docket No. 326], the Court approved the sale of substantially all of the Debtors’ assets to FCF (the “Sale”), and the Sale closed on January 31, 2020 [Docket No. 369]. As part of the prepetition negotiations that resulted in the FCF APA and the Debtors’ debtor-in-possession financing, the Debtors obtained sufficient funding and other assurances of payment to satisfy the amounts incurred by the Debtors in the operation of their businesses through the closing of the Sale, plus a wind-down budget to administer these Chapter 11 Cases for a period of time following the Sale.

12. The Debtors, however, believe that the Sale may have resulted in a taxable gain attributable to the Debtors’ assets and further, that the resulting tax on that gain would be

substantial. While the Internal Revenue Service has been regularly noticed throughout these Chapter 11 Cases, including with respect to the Global Settlement Motion described below, it has not yet asserted any claims against the Debtors or otherwise opposed any of the relief requested in these Chapter 11 Cases.

III. The Global Settlement Stipulation and the Claims Process

13. Consummation of the Sale was by no means a small feat, as the Debtors were faced with strong opposition from the Committee, which spent significant time since its formation reviewing, among other things, the claims and causes of action being sold to FCF in the Sale, the liens and claims of the Debtors' lenders, and the prospects for unsecured creditor recoveries following the Sale. In addition, the Committee alleged that it or the Debtors' estates could assert potential causes of action against FCF in connection with certain prepetition relationships and interactions with the Debtors.

14. Because any delay in obtaining approval of, or closing, the Sale would have posed significant economic and execution risk, and was likely to result in costly, time-consuming, and value-destructive litigation among the key parties in these Chapter 11 Cases, the Debtors, along with the Committee and certain other parties (collectively, the "Settling Parties"), engaged in extensive negotiations in an effort to resolve the Committee's informal objections, and ultimately reached a global settlement in principle that permitted the Debtors to proceed with the Sale on a consensual basis. More specifically, prior to the hearing on the Sale Motion, the Debtors filed a *Notice of Filing of Principal Terms of Global Settlement Concerning Debtors' Sale Motion*, attaching the settlement term sheet as Exhibit A thereto [Docket No. 314], which allowed the sale hearing to go forward without delay and uncontested. The Settling Parties later formalized the principal terms of the settlement pursuant to a global settlement stipulation (the "Global Settlement

Stipulation”) that provides for, among other things, the creation of a trust (the “Creditors’ Trust”) for the benefit of all the Debtors’ creditors (the “Beneficiaries”), and provides for the possibility that the Beneficiaries may receive distributions on account of their claims against the Debtors. The Debtors’ term loan lenders also agreed to provide \$1.4 million of funding to the Creditors’ Trust to fund the administration and resolution of the causes of action transferred to the Creditors’ Trust.

15. The Debtors and the Committee jointly sought approval of the Global Settlement Stipulation by motion dated July 9, 2020 [Docket No. 621] (the “Global Settlement Motion”)³. On the same date, the Debtors filed a motion seeking, among other things, to establish bar dates to facilitate the administration of the Creditors’ Trust [Docket No. 622] (the “Bar Date Motion”).

16. The U.S. Trustee and Lion Capital (Americas), Inc. (“Lion Americas”) filed objections to the Global Settlement Motion [Docket Nos. 644 & 645, respectively] (together, the “Objections”), and collectively challenged, among other things, the Debtors’ ability to consummate the settlement outside of a chapter 11 plan, and the sufficiency of notice of the Global Settlement Motion.

17. In an effort to provide time to narrow the scope of, or otherwise resolve the Objections, the Debtors and the Committee sought to adjourn the hearing on the Global Settlement Motion and the Bar Date Motion by motion dated July 30, 2020 [Docket No. 653] (the “Motion to Adjourn”). The Court granted the Motion to Adjourn following a telephonic status conference held on July 31, 2020 [Docket No. 654].

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Global Settlement Motion.

18. Since that date, the Debtors and Committee have worked diligently and negotiated in good faith to determine the process by which the Debtors will conduct an orderly wind-down of their remaining business activities and these Chapter 11 Cases. The Debtors advised the Committee that it did not believe that a chapter 11 plan could be confirmed and, accordingly, determined that the instant request to dismiss these Chapter 11 Cases subject to, and following, approval of the Global Settlement Motion resulting in the formation of the Creditors' Trust, was the most appropriate course of action.

RELIEF REQUESTED

19. By this Motion, the Debtors respectfully request the entry of (i) the Dismissal Procedures Order, establishing procedures for dismissal of the Chapter 11 Cases, and (ii) upon the filing of a certification of counsel stating that the conditions precedent to dismissal have been met, the Dismissal Order, pursuant to sections 105(a), 305(a), 349, 554 and 1112(b) of the Bankruptcy Code, Bankruptcy Rules 1017(a) and 2002, and Local Rules 1017-2 and 2002-1, dismissing the Chapter 11 Cases and granting related relief.

20. The Debtors reserve the right to withdraw the request set forth in this Motion in the event that the Court does not approve the Global Settlement Stipulation.

BASIS FOR RELIEF REQUESTED

I. These Cases Must be Dismissed if “Cause” Exists under Section 1112(b) of the Bankruptcy Code.

21. Upon the request of a party in interest, section 1112(b)(1) of the Bankruptcy Code provides that, absent unusual circumstances, a court “shall” dismiss a chapter 11 bankruptcy case (or convert such case to a case under chapter 7) “for cause.” *See* 11 U.S.C. § 1112(b)(1). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) changed the

statutory language with respect to conversion or dismissal from permissive to mandatory.⁴ *See* H.R. Rep. No. 109-31(I), at 442, *reprinted in* 2005 U.S.C.C.A.N. 88, 94 (stating that the Act “mandate[s] that the court convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, if the movant establishes cause, absent unusual circumstances.”); *see also Nester v. Gateway Access Solutions, Inc. (In re Gateway Access Solutions, Inc.)*, 374 B.R. 556 (Bankr. M.D. Pa. 2007) (stating that the amendments to section 1112 limit the court’s discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause); *accord In re TCR of Denver, LLC*, 338 B.R. 494, 498 (Bankr. D. Colo. 2006) (“Congress has purposefully limited the role of this Court in deciding issues of conversion or dismissal, such that this Court has no choice, and no discretion, in that it ‘shall’ dismiss or convert a case under Chapter 11 if the elements for ‘cause’ are shown under 11 U.S.C. § 1112(b)(4).”).

22. The amendments to section 1112 thus limit the Court’s discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause. *In re 3 Ram, Inc.*, 343 B.R. 113, 119 (Bankr. E.D. Pa. 2006) (“Under new § 1112 when cause is found, the court shall dismiss or convert unless special circumstances exist that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate.”); *see also In re Broad Creek Edgewater, LP*, 371 B.R. 752, 759 (Bankr. D.S.C. 2007). For reasons set forth below, the Debtors submit that the Court should dismiss these Chapter 11 Cases because cause exists. Further, dismissal (and not conversion to a case under chapter 7) is in the best interests of the Debtors, their creditors, and their estates.

⁴ Prior to the enactment of BAPCPA, a bankruptcy court had the discretion, pursuant to its broad equitable powers, to dispose of a debtor’s case, including by means of dismissal. However, a court was not mandated to dismiss a case upon the showing of cause. H.R. Rep. No. 95-595, at 405 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963; S. Rep. No. 95-989, at 117 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787.

II. Cause Exists to Dismiss these Chapter 11 Cases Because the Debtors Have Ceased Business Operations and Have Insufficient Assets to Confirm a Plan.

23. Section 1112(b)(4) of the Bankruptcy Code provides a non-exhaustive list of sixteen grounds for dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(A)-(P). *See In re Gateway Access Solutions*, 374 B.R. at 561 (“Generally, such lists are viewed as illustrative rather than exhaustive, and the Court should ‘consider other factors as they arise.’”) (quoting *First Jersey Nat’l Bank v. Brown (In re Brown)*, 951 F.2d 564, 572 (3d Cir. 1991)); *In re 3 Ram, Inc.*, 343 B.R. at 117 (“While the enumerated examples of ‘cause’ to convert or dismiss a chapter 11 case now listed in § 1112(b)(4) have changed under BAPCPA, the fact that they are illustrative, [and] not exhaustive has not.”) (citation omitted); *accord Frieouf v. United States (In re Frieouf)*, 938 F.2d 1099, 1102 (10th Cir. 1991) (stating that section 1112(b)’s list is non-exhaustive).⁵

24. One such ground is the “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation,” which courts have interpreted to refer to the “debtor’s ability to restore the viability of its business.” 11 U.S.C. § 1112(b)(4)(A); *Loop Corp. v. U.S. Tr.*, 379 F.3d 511, 516 (8th Cir. 2004) (citations omitted); *In re 3 Ram*, 343 B.R. at 118 (“If [a] chapter 11 [debtor] cannot achieve . . . reorganization within the statutory requirements of the Bankruptcy Code, then there is no point in expending estate assets on administrative expenses . . .”).

25. In addition to the non-exhaustive list outlined by section 1112(b)(4), courts may consider the “totality of the circumstances” in determining whether sufficient cause exists. *See In*

⁵ In *In re TCR of Denver*, the court recognized the apparent typographical error in section 1112(b)(4) of the Bankruptcy Code. The sixteen illustrative examples of “cause” set forth in that section are linked by the word “and” after subsection (O). Accordingly, strict construction of the statute would require that a debtor establish all of the items constituting “cause” before a case can be dismissed by the court. The *TCR* Court held that Congress could not have intended to require a “perfect storm” of all sixteen circumstances listed before a case may be dismissed. *See In re TCR of Denver*, 338 B.R. at 498.

re SGL Carbon Corp., 200 F.3d 154, 160 (3d Cir. 1999) (the factors enumerated in section 1112(b)(4) are “not exhaustive and . . . a court may consider whether other facts and circumstances qualify as ‘cause.’”).

26. Courts may find sufficient cause if a debtor is unable to “effectuate a plan” or where there is not a “reasonable possibility of a successful reorganization within a reasonable period of time.” *In re Am. Capital Equip., LLC*, 688 F.3d 145, 161–62 n.10 (3d Cir. 2012) (“[T]he ‘inability to effectuate a plan’ remains a viable basis for dismissal[.]”); *see also Bronson v. Thompson (In re Bronson)*, Nos. AZ-12-1320-MkDJu, 08-00777, 2013 WL 2350791, at *8 (B.A.P. 9th Cir. May 29, 2013) (“When it becomes apparent to the court that the debtor will not be able to confirm and effectuate a plan within the foreseeable future, the bankruptcy court should . . . dismiss or convert.”). Inability to effectuate a plan arises when a debtor lacks the capacity to “formulate a plan or carry one out” or where the core for a workable plan of reorganization does not exist. *In re Preferred Door Co., Inc.*, 990 F.2d 547, 549 (10th Cir. 1993) (citing *Hall v. Vance*, 887 F.2d 1041 (10th Cir. 1989)).

27. As detailed above, the Debtors (i) have liquidated substantially all their assets in connection with the Sale, (ii) no longer conduct business, and (iii) have negotiated the transfer of any estate-held claims that have been identified as potentially having value. Since the closing of the Sale, the estates have existed to (i) meet the Debtors’ obligations in connection with the Global Settlement Stipulation, and (ii) effectuate an orderly exit from these Chapter 11 Cases. While doing so, the estates continue to accrue professional fees and quarterly U.S. Trustee fees pursuant to 28 U.S.C. § 1930 (the “Quarterly Fees”), which are paid as they become due and owing. There are no longer businesses to reorganize or assets to distribute (other than in accordance with the Global Settlement Stipulation), and thus no reason (or funds available) to pursue a plan of

reorganization or liquidation for the estates. Moreover, the Debtors believe that the potential tax-liabilities arising from the Sale could be substantial, and the Debtors are not in a position to offer evidence that sufficient value remains to satisfy the amount of these administrative tax obligations, which would be a requirement for confirmation of a chapter 11 plan.⁶ See 11 U.S.C. §§ 503(b)(1)(B) (affording administrative expense status to post-petition tax obligations) and 1129(a)(9)(A) (requiring payment of administrative expense claims in full, in cash as a condition to confirmation of a chapter 11 plan).

28. Finally, nothing in *Jevic* prohibits the structured dismissal of a chapter 11 cases where distributions follow the statutory priority scheme established by the Bankruptcy Code. See generally 137 S. Ct. 973. The propriety of “class-skipping” distributions made at the termination of a chapter 11 case without a valid bankruptcy purpose was the only issue addressed (and limited) by *Jevic*’s narrow holding. See 137 S. Ct. at 984-86; *id.* at 986 (“In short, we cannot find in the violation of ordinary priority rules that occurred here any significant offsetting bankruptcy-related justification”). *Jevic* does not result in the sweeping holding that a Court cannot permit the structured dismissal of a chapter 11 case *unless* the distributions at case termination result in payment in full of all administrative and priority claims.⁷

29. Indeed, this Court has previously approved structured dismissals of chapter 11 cases that resulted in administratively insolvent estates when the remaining assets were distributed in a manner that adheres to the Bankruptcy Code’s priority scheme. For example, in *In re Sunco Liquidation, Inc.*, this Court approved a structured dismissal where funds available to creditors

⁶ The Debtors have been paying administrative expenses in the ordinary course throughout these Chapter 11 Cases, and other than the potential tax-liabilities arising from the Sale, all known pre-closing administrative claims will be paid in full.

⁷ Section 1129(a)(9) of the Bankruptcy Code requires administrative and priority claims to be paid in full unless an affected creditor consents to a different treatment.

were insufficient to pay administrative and priority creditors in full, but were distributed in a manner that followed the statutory distribution scheme. In that case, the Court approved a structured dismissal that allowed the debtors to distribute about \$1.6 million of remaining funds to creditors even though administrative and priority claims were well in excess of that amount, including a \$3,593,130 allowed priority claim.⁸ Likewise, in *In re Golfsmith International Holdings, Inc.*, this Court approved a structured dismissal where amounts distributed, without class-skipping (which likely would have been prohibited by *Jevic*), were insufficient to pay in full administrative expense creditors. Specifically, as part of a settlement, funds were made available to the debtors to pay up to 50% of their allowed 503(b)(9) claims.⁹

30. Accordingly, the Debtors submit that cause exists to dismiss the Chapter 11 Cases pursuant to section 1112(b)(4) of the Bankruptcy Code and related relevant case law.

III. Dismissal is in the Best Interests of Creditors and the Debtors' Estates.

31. Once a court determines that cause exists to dismiss a debtor's chapter 11 case, the court must evaluate whether dismissal or conversion is in the best interests of the debtor's creditors and the estate. 11 U.S.C. § 1112(b); *see, e.g., Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 242 (4th Cir. 1994) ("Once 'cause' is established, a court is required to consider this second question of whether to dismiss or convert."); *In re Mazzocone*, 183 B.R. 402, 411 (Bankr. E.D. Pa. 1995). A variety of factors demonstrates that dismissal of these Chapter 11 Cases is in the best interest of the Debtors' estates and their creditors.

⁸ See Case No. 17-10561 (KG) (Bankr. D. Del.) [Docket No. 571] (Motion to Approve WARN Settlement and Allow \$3.5 million priority claim), [Docket No. 592] (Dismissal Motion), [Docket No. 689] (Declaration in Support of Dismissal), [Docket No. 706] (Dismissal Procedures Order), [Docket No. 759] (Order Approving WARN Settlement), and [Docket No. 865] (Dismissal Order).

⁹ See Case No. 16-12033 (LSS) (Bankr. D. Del.) [Docket No. 1161] (Settlement and Procedures Motion), [Docket No. 1162] (Dismissal Motion), [Docket No. 1245] (Settlement Approval Order), [Docket No. 1246] (Dismissal Procedures Order), and [Docket No. 1426] (Dismissal Order).

32. *First*, a dismissal of a chapter 11 case meets the “best interests of creditors” test where a debtor has nothing to reorganize and the debtor’s assets are fixed and liquidated. *See Camden Ordinance Mfg. Co. of Ark., Inc. v. U.S. Trustee (In re Camden Ordinance Mfg. Co. of Ark., Inc.)*, 245 B.R. 794, 799 (E.D. Pa. 2000) (reorganization to salvage business which ceased operations was unfeasible); *Royal Trust Bank, N.A. v. Brogdon Inv. Co. (In re Brogdon Inv. Co.)*, 22 B.R. 546, 549 (Bankr. N.D. Ga. 1982) (court dismissed chapter 11 proceeding in part where there was “simply nothing to reorganize” and no reason to continue the reorganization). The Debtors have nothing left to reorganize because they have sold substantially all of their assets pursuant to the Sale and they have no go-forward source of cash from which the Debtors could satisfy distributions to creditors pursuant to a chapter 11 plan or upon conversion of these Chapter 11 Cases to chapter 7. Further, if the Global Settlement Stipulation is approved, the remaining causes of action identified by the Committee as potentially having value will be transferred to the Creditors’ Trust to be monetized with such proceeds being distributed pursuant to the absolute priority rule.

33. *Second*, a court may find dismissal to be in the “best interests of the creditors” where a debtor demonstrates the ability to oversee its own liquidation. *See Camden Ordinance*, 245 B.R. at 798; *Mazzocone*, 183 B.R. at 412 (“Only when a Chapter 11 debtor has no intention or ability to . . . perform its own liquidation . . . should a debtor be permitted to remain in bankruptcy . . .”). Here, to the extent this factor is applicable to the facts and circumstances of these proceedings, the Debtors have already consummated the Sale to FCF and will have satisfied their obligations under the Global Settlement Stipulation in advance of dismissal. All that will remain are the corporate actions attendant to winding-down the Debtors’ corporate or company

existence, primarily filing final tax returns and corporate dissolution or limited liability company cancellation.

34. *Third*, dismissal is appropriate where, as here the alternative—conversion to a chapter 7 liquidation and appointment of a trustee—is (a) unnecessary and would provide no benefit to creditors, and (b) would impose significant additional administrative costs upon the Debtors’ estates without any meaningful source of funds to satisfy such costs.

35. Under the circumstances, a chapter 7 trustee would have no funds to satisfy additional claims arising after conversion to cases under chapter 7 of the Bankruptcy Code. Substantially all of the Debtors’ operating assets were sold pursuant to the Sale, and the remaining claims and causes of action held by the estates that may have value are being transferred to the Creditors’ Trust. The Debtors are not aware of any other remaining assets with material value that warrant keeping these Chapter 11 Cases open or the appointment of a chapter 7 trustee. As a result, creditors would not receive greater recoveries in a chapter 7 liquidation, and in fact, the costs of a chapter 7 liquidation likely would only result in further administrative insolvency for these cases.

36. *Finally*, courts have found that dismissal is in the “best interests of creditors” where an interested party, other than the debtor, supports the dismissal of the debtor’s chapter 11 case. *See Camden Ordinance*, 245 B.R. at 798; *In re Mazzone*, 183 B.R. 402, 414 (Bankr. ED. Pa. 1995), *aff’d*, 200 B.R. 568 (E.D. Pa. 1996) (factors weighed more heavily in favor of dismissal of chapter 11 case rather than conversion to chapter 7 where debtor and U.S. Trustee both favored dismissal). The Committee, which serves as a fiduciary representing the Debtors’ unsecured creditor body, has advised the Debtors that it would not oppose dismissal rather than conversion to chapter 7.

37. For these reasons, the Debtors submit that a dismissal pursuant to section 1112 of the Bankruptcy Code is in the best interest of the Debtors' creditors and their estates.

IV. In the Alternative, Dismissal of the Debtors' Chapter 11 Cases is Warranted under Section 305(a) of the Bankruptcy Code.

38. Cause also exists to dismiss the Chapter 11 Cases pursuant to section 305(a) of the Bankruptcy Code, which provides that the "court, after notice and a hearing, may dismiss a case under this title . . . at any time if—(1) the interests of creditors and the debtor would be better served by such dismissal or suspension . . ." *See* 11 U.S.C. § 305(a). *In re AMC Investors, LLC*, 406 B.R. 478, 487-88 (Bankr. D. Del. 2009).

39. Whether dismissal is appropriate under this provision is determined on a case by-case basis and rests in the sound discretion of the court. *In re Sky Grp. Int'l, Inc.*, 108 B.R. 86, 91 (Bankr. W.D. Pa. 1989). Many factors are considered, including: (a) the economy and efficiency of administration, (b) whether federal proceedings are necessary to reach a just and equitable solution, (c) whether there is an alternative means of achieving an equitable distribution of assets, and (d) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case. *AMC Investors*, 406 B.R. at 488.

40. Here, as described above, cause exists for dismissal under section 305 of the Bankruptcy Code. The Debtors have sold substantially all of their assets pursuant to the Sale. Moreover, the Debtors have negotiated the transfer of all potential claims held by the estates to the Creditors' Trust and do not believe that there are any additional potential recoveries that would warrant keeping these Chapter 11 Cases open for further administration. Under the circumstances, conversion to chapter 7 would impose additional administrative costs with no corresponding benefit to the Debtors' creditors or their estates. Thus, dismissal of these Chapter 11 Cases as set forth in this Motion, among other things, provides the most efficient, cost-effective method of

effectuating the wind-down of the Debtors' estates in a manner consistent with the Bankruptcy Code's priority scheme.

V. The Court Should Grant the Related Relief

A. The Court Should Approve the Proposed Dismissal Procedures.

41. In connection with the winding down of the Debtors' estates and the dismissal of these Chapter 11 Cases, the Debtors seek approval of certain procedures governing the time by which each professional in these Chapter 11 Cases must file a final fee application (each, a "Final Fee Application"), and a hearing date from the Court to resolve any potential disputes in connection with each Final Fee Application. Specifically, the Debtors request that each professional retained in these Chapter 11 Cases, within thirty (30) days of entry of the Dismissal Procedures Order (the "Final Fee Application Deadline"), file a Final Fee Application for: (a) professional fees and expenses incurred from the Petition Date up to and including September 15, 2020, and (b) estimated professional fees and expenses that are expected to be incurred from September 15, 2020 through the anticipated dismissal date; provided that each professional shall be required, by 4:00 p.m. (Eastern Time) on the date that is seven (7) days prior to the hearing on the Final Fee Application, to file a supplement to its Final Fee Application setting forth the actual fees and expenses incurred by such professional from September 15, 2020, up to and including the date of the filing.

42. As soon as reasonably practicable following the filing of a certification of counsel stating that the conditions precedent to dismissal have been met (the "Certification"), the Debtors request that the Court enter the Dismissal Order. Among other things, the Certification will verify that: (a) all Quarterly Fees owed in connection with these Chapter 11 Cases have been paid, including for the quarter in which the Dismissal Order will be entered; and (b) professional fees

incurred in these Chapter 11 Cases have been approved on a final basis (to the extent applicable) and paid up to the amount of funds available.

43. The Debtors will serve the Certification on the U.S. Trustee, the Committee, and all entities that have requested notice pursuant to Bankruptcy Rule 2002 (the “Notice Parties”), but will not send the Certification to the Debtors’ entire matrix of creditors and parties in interest, as such parties will receive reasonable notice of the proposed dismissal through notice of this Motion.¹⁰

B. The Court Should Authorize the Debtors to Abandon Their Remaining Books and Records

44. A debtor in possession may be authorized, upon notice and a hearing, to abandon estate property that is of little value to the estate or is otherwise burdensome to maintain, pursuant to section 554(a) of the Bankruptcy Code. As one bankruptcy court has noted, if a debtor “feels an asset is of inconsequential value and benefit to the estate or that is ‘burdensome to the estate,’ [the debtor] may abandon it.” *Reich v. Burke (In re Reich)*, 54 B.R. 995, 1004 (Bankr. E.D. Mich. 1985).

45. Here, the Debtors request that the Court authorize, but not direct, the Debtors to abandon their books and records pursuant to sections 105(a) and 554 of the Bankruptcy Code, or to transfer same to the Creditors’ Trust. As previously discussed, the Debtors sold substantially all of their assets, no longer have operating businesses, and are winding down their affairs. The Debtors believe that substantially all of their books and records were transferred to FCF as part of the Sale. To the extent any books and records remain, they will be of no value to the Debtors after dismissal of the Chapter 11 Cases. For those reasons, the Debtors submit that they should not

¹⁰ The Court has approved similar notice protocols in other dismissal contexts. See *In re RM Wind-Down Holdco LLC*, No. 18-11795 (MFW) (Bankr. D. Del. 11795) [Docket No. 635]; *In re The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 1, 2019) [Docket No. 1436].

incur potentially significant costs associated with maintaining and storing the books and records that have no value to their estates, and they should be authorized to abandon such books and records, or transfer them to the Creditors' Trust, as applicable.

C. The Court Should Provide for Continued Binding Effect of Prior Stipulations, Settlements, Rulings, Orders and Judgments

46. The dismissal of a chapter 11 case ordinarily vacates all orders previously entered by the bankruptcy court and restores all parties to the prepetition status quo. See 11 U.S.C. § 349(b). A bankruptcy court may, however, “for cause, order[] otherwise” *Id.* Courts in this jurisdiction have regularly allowed orders to be given continued effect after a dismissal, notwithstanding section 349 of the Bankruptcy Code. *See, e.g., In re RM Wind-Down Holdco LLC*, No. 18-11795 (MFW) (Bankr. D. Del. Feb. 18, 2020) [Docket No. 721] (giving continued effect to orders entered throughout the pendency of the chapter 11 cases, including sale orders); *In re Fuse Media, Inc.*, Case No. 19-10870 (KG) [Docket No. 304] (Bankr. D. Del. July 19, 2019) (giving continued effect to all prior orders); *In re The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 1, 2019) [Docket No. 1488] (same); *In re Sunco Liquidation, Inc.*, No. 17-10561 (KG) (Bankr. D. Del. Nov. 6, 2017) [Docket No. 865] (giving continued effect to orders entered throughout the pendency of the chapter 11 cases); *In re Old Towing Co.*, Case No. 17-10249 (LSS) (Bankr. D. Del. May 30, 2017) [Docket No. 381] (giving continued effect to 363 sale order and any releases, injunctions and successor liability provisions provided for in such sale); *In re TAH Windown, Inc.*, Case No. 16-11599 (MFW) (Bankr. D. Del. Jan. 13, 2017) [Docket No. 408] (giving orders, releases, and injunctions continuing effect); *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Mar. 4, 2016) [Docket No. 647] (giving continued effect to previously entered orders); *In re Coach Am Group Holdings Corp.*, Case No. 12-10010 (KG)

(Bankr. D. Del. May 31, 2013) [Docket No. 1568] (same); *In re ICL Holding Co.*, Case No. 12-13319 (KG) (Bankr. D. Del. Sept. 10, 2014) [Docket No. 1367] (same).

47. Given the circumstances of the Chapter 11 Cases, the Debtors submit that ample cause exists to allow all prior orders, releases, stipulations, settlements, rulings, and judgments entered by the Court during the Chapter 11 Cases to be given continued effect, notwithstanding the requested dismissal.

NOTICE

48. Notice of this Motion has been provided to: (a) the United States Trustee; (b) counsel to the ABL Agent and ABL DIP Agent; (c) counsel to the Term Loan Agent and Term Loan DIP Agent; (d) counsel to the Committee; (e) all parties that have requested notice pursuant to Bankruptcy Rule 2002; and (f) all of the Debtors' known creditors. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein, and such further relief as the Court may deem just and proper.

Dated: August 20, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ryan M. Bartley

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EXHIBIT A

Dismissal Procedures Order

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

In re:

OLD BBP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12502 (LSS)

(Jointly Administered)

Ref. Docket No. ____

**ORDER ESTABLISHING PROCEDURES FOR DISMISSAL OF THE DEBTORS'
CHAPTER 11 CASES AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of the Debtors for entry of an order (this "Order") pursuant to sections 105(a), 305(a)(1), 349, 554 and 1112(b) of the Bankruptcy Code, Bankruptcy Rules 1017(a) and 2002, and Local Rules 1017-2 and 2002-1, establishing procedures for dismissal of the Chapter 11 Cases and granting related relief; and this Court having found that it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having found and determined that the legal and factual bases set forth in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Old BBP, Inc. (f/k/a Bumble Bee Parent, Inc.) (5118); Old BBH, Inc. (f/k/a Bumble Bee Holdings, Inc.) (1051); Old BBF, LLC (f/k/a Bumble Bee Foods, LLC) (0146); Old AF, LLC (f/k/a Anova Food, LLC) (2140); and Old BBC Corp. (f/k/a Bumble Bee Capital Corp.) (7816). The mailing address for the above-captioned Debtors is Old BBP, Inc., et al., Attn: Albert Altro, Chief Wind Down Officer, Traverse LLC, 300 Spectrum Center Dr., Suite 400, Irvine, California 92618.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

the Motion establish just cause to grant the relief herein, which relief is in the best interests of creditors; and after due deliberation thereon; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. Any objections to the Motion not previously withdrawn, waived, or settled and all reservations of rights included therein, are hereby overruled with prejudice.
3. Following expiration of the Administrative Expense Bar Date and the General Bar Date (each as defined in that certain *Order (I) Establishing Bar Dates for Filing Proofs of Prepetition Claims, Including Section 503(b)(9) Claims; (II) Establishing the Administrative Expense Bar Date; and (III) Approving the Form and Manner of Notice Thereof* [Docket No. [●]] (the “Bar Date Order”), as applicable, the Claims Agent shall file with the Court a single claims register identifying all holders of Allowed Claims against the Debtors.
4. Within thirty (30) days of the entry of this Order (the “Final Fee Application Deadline”), each professional retained in the Chapter 11 Cases shall file a final fee application (each, a “Final Fee Application”) for (a) professional fees and expenses incurred from the Petition Date up to and including September 15, 2020, and (b) estimated professional fees and expenses that are expected to be incurred from September 15, 2020 through the anticipated dismissal date; provided that each professional shall be required to file by 4:00 p.m. (Eastern Time) on the date that is seven (7) days prior to the hearing on the Final Fee Application a supplement to its Final Fee Application setting forth the actual fees and expenses incurred by such professional from September 15, 2020, up to and including the date of the filing.
5. Parties will have until 4:00 p.m. (Eastern Time) on the date that is twenty-one (21) days after the Final Fee Application Deadline to file objections to the Final Fee Applications.

6. The Court will hold a hearing, if necessary, on _____, 2020, at _____:_____ (Eastern Time) to resolve any disputes related to the Final Fee Applications.

7. As soon as reasonably practical following the completion of (a) the filing of all monthly operating reports of the Debtors, including the report for the month in which the cases are to be dismissed; (b) the payment of all quarterly fees due and owing in the Chapter 11 Cases to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930, including those for the quarter in which the cases are to be dismissed (the "Quarterly Fees"); and (c) the payment of all professional fees and expenses approved on a final basis (to the extent applicable) up to the amount of funds available, the Debtors may file a certification of counsel (the "Certification"), which shall attach a proposed form of order dismissing the Chapter 11 Cases substantially in the form attached to the Motion as Exhibit B (the "Dismissal Order"). Among other things, the Certification shall include a verification that (a) all monthly operating reports of the Debtors, including the report for the month in which the cases are to be dismissed, have been filed; (b) all Quarterly Fees in the Chapter 11 Cases have been paid in full, including fees for all disbursements made through the date of the Certification; and (c) the professional fees incurred in the Chapter 11 Cases have been approved on a final basis (to the extent applicable) and paid up to the amount of funds available. The Debtors shall confer with the U.S. Trustee prior to filing the Certification, and shall indicate therein whether the U.S. Trustee concurs that all Quarterly Fees have been paid.

8. The Certification shall be served only on the Committee, the U.S. Trustee, and all entities that have requested notice pursuant to Bankruptcy Rule 2002, and no further notice regarding the dismissal of the Chapter 11 Cases shall be required.

9. Notwithstanding any provision of this Order to the contrary, the obligation of the Debtors to file monthly operating reports and to pay Quarterly Fees to the U.S. Trustee shall

continue until the date that these Chapter 11 Cases are dismissed pursuant to the provisions of this Order.

10. Debtors are authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Order.

11. This Order shall constitute findings of fact and conclusions of law and, notwithstanding the possible applicability of any provision of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain exclusive jurisdiction to hear any matters, or to resolve any disputes or controversies arising from, or related to interpretation and/or enforcement of this Order.

EXHIBIT B

Dismissal Order

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

In re:

OLD BBP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12502 (LSS)

(Jointly Administered)

Ref. Docket No. ____

ORDER DISMISSING THE DEBTORS' CHAPTER 11 CASES

This Court having entered that certain *Order Establishing Procedures for Dismissal of the Debtors' Chapter 11 Cases and Granting Related Relief* [Docket No. [●]] (the "Dismissal Procedures Order")²; and upon consideration of the certification of counsel (the "Certification") filed by the Debtors seeking entry of an order (this "Order") dismissing the Debtors' Chapter 11 Cases, effective as of the date hereof, in accordance with the Dismissal Procedures Order; and this Court having found that it has jurisdiction to consider the Certification and enter this Order pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice has been given and that no other or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Old BBP, Inc. (f/k/a Bumble Bee Parent, Inc.) (5118); Old BBH, Inc. (f/k/a Bumble Bee Holdings, Inc.) (1051); Old BBF, LLC (f/k/a Bumble Bee Foods, LLC) (0146); Old AF, LLC (f/k/a Anova Food, LLC) (2140); and Old BBC Corp. (f/k/a Bumble Bee Capital Corp.) (7816). The mailing address for the above-captioned Debtors is Old BBP, Inc., et al., Attn: Albert Altro, Chief Wind Down Officer, Traverse LLC, 300 Spectrum Center Dr., Suite 400, Irvine, California 92618.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Dismissal Procedures Order.

further notice is necessary; and after due deliberation and sufficient cause appearing therefore; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Debtors' Chapter 11 Cases are hereby dismissed pursuant to sections 105(a), 305(a), 349, 554 and 1112(b) of the Bankruptcy Code, Bankruptcy Rules 1017(a) and 2002, and Local Rules 1017-2 and 2002-1, effective upon entry of this Order.

2. Upon entry of this Order, the Debtors are authorized, but not directed, to abandon their remaining books and records, or transfer same to the Creditors' Trust *provided however*, that the Debtors shall retain certain tax records for a period of six (6) years from the entry of this Order.

3. The claims and noticing services provided by Prime Clerk in these Chapter 11 Cases shall be terminated upon completion of the services listed in paragraph 4 below. Thereafter, Prime Clerk shall have no further obligations to the Court, the Debtors, or any other party in interest with respect to the claims and noticing services in these Chapter 11 Cases.

4. Pursuant to Local Rule 2002-1(f)(ix), within fourteen (14) days of entry of this Order, Prime Clerk shall (i) forward to the Clerk of the Bankruptcy Court an electronic version of all imaged claims, (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. Prime Clerk shall also box and deliver all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

5. Notwithstanding section 349 of the Bankruptcy Code, all prior orders of the Court entered in these Chapter 11 Cases shall survive dismissal of these Chapter 11 Cases.

6. Upon entry of this Order, the Committee (a) shall dissolve and (b) its members and its legal and financial professionals shall be released and discharged from all further duties, responsibilities, and obligations relating to these Chapter 11 Cases.

7. The Debtors are authorized to take any and all steps necessary and appropriate to effectuate the terms of this Order.

8. This Order shall constitute findings of fact and conclusions of law and, notwithstanding the possible applicability of any provision of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain exclusive jurisdiction to hear any matters, or to resolve any disputes or controversies arising from, or related to interpretation and/or enforcement of this Order.