Hearing Date: November 27, 2023 at 2:00 p.m. (EST)
Objection Deadline: November 20, 2023

PORZIO, BROMBERG & NEWMAN, P.C.
1675 Broadway
Suite 1810
New York, NY 10019
(212) 265-6888
(212) 957-3983 Facsimile
Brett S. Moore, Esq.
Kelly D. Curtin, Esq.
Counsel to Pacific Western Bank, Successor by Merger to Square 1 Bank

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter: 11
RM BAKERY LLC, *et al.*[1],	Case No. 20-11422 (MG)
Debtors.	(Jointly Administered)

NOTICE OF HEARING ON MOTION OF PACIFIC WESTERN BANK, SUCCESSOR BY MERGER TO SQUARE 1 BANK, TO CONVERT THESE CHAPTER 11 CASES TO CHAPTER 7 CASES

PLEASE TAKE NOTICE, that on **November 27, 2023 at 2:00 p.m.** (EST) a hearing (the "Hearing") will be held before the United States Bankruptcy Judge Martin Glenn, at the United States Bankruptcy Court, Southern District of New York, via Zoom for Government[2] from One Bowling Green, New York, New York 10004-1408, or soon thereafter as counsel can be heard to consider the motion (the "Motion") of Pacific Western Bank, Successor By Merger To Square 1 Bank ("PacWest") pursuant to 11 U.S.C. § 1112(b) for an order converting these Chapter 11 cases to Chapter 7 cases.

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0642).
[2] Participants are required to register their appearance by 4:00 p.m. the business day before any scheduled Zoom hearing using the Court's eCourt Appearances portal, located on the Court's website at https://www.nysb.uscourts.gov/ecourt-appearances.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion or the requested relief therein, if any, (i) shall be made in writing, (ii) shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, (iii) shall set forth the basis for the response or objection and the specific grounds therefore, and (iv) shall be filed with the Court electronically in accordance with General Order M-399 by registered users of the Court's filing system (the User's Manual for the Electronic Case Filing System can be found at http://www.nysb.uscourts.gov, with a copy emailed to the court at mg.chambers@nysb.uscourts.gov so as to be actually received no later than **November 20, 2023** (the "Objection Deadline"), and served upon the undersigned counsel for PacWest c/o Brett S. Moore and Kelly D. Curtin of Porzio, Bromberg & Newman, P.C., 1675 Broadway, Suite 1810, New York, NY 10019.

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter the Order granting the relief requested in the Motion without further notice or hearing.

Dated: November 2, 2023

By: */s/ Brett S. Moore*

PORZIO, BROMBERG & NEWMAN, P.C.
Brett S. Moore, Esq.
Kelly D. Curtin, Esq.
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter: 11
RM BAKERY LLC, *et al.*[1],	Case No. 20-11422 (MG)
Debtors.	(Jointly Administered)

MOTION OF PACIFIC WESTERN BANK, SUCCESSOR BY MERGER TO SQUARE 1 BANK, TO CONVERT THESE CHAPTER 11 CASES TO CHAPTER 7 CASES

TO THE HONORABLE MARTIN GLENN, CHIEF BANKRUPTCY JUDGE:

Pacific Western Bank, Successor by Merger to Square 1 Bank ("PacWest"), in connection with the above-captioned case of RM Bakery LLC, *et al.* ("RM Bakery" or the "Debtors"), by and through its proposed undersigned counsel, does hereby file this memorandum in support of motion (the "Motion") pursuant to 11 U.S.C. § 1112(b) for an order converting these chapter 11 cases to chapter 7 cases. In support thereof, PacWest respectfully submits the Certification of Humberto Espada, Senior Vice President and Managing Director of PacWest (the "Certification"), and states and alleges as follows:

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0642).

PRELIMINARY STATEMENT

1. During the three (3) years these cases have been pending, the Debtors have demonstrated a repeated inability to rehabilitate, while consistently failing to timely file monthly operating reports, operating with a negative cash flow, and incurring significant unpaid post-petition claims approaching $1 million in total. Although the Debtors have previously persuaded the Court, the United States Trustee, PacWest and other creditors to allow them an extended period of time to negotiate (and renegotiate) a path to emergence, they have languished in chapter 11 for years, and it still remains unclear whether a confirmable chapter 11 plan will ever be presented or is even feasible in light of the ever increasing administrative expenses. Moreover, given previous false-starts, the Debtors cannot credibly claim that they can resolve these cases in an efficient, cost-effective manner. Rather, a chapter 7 trustee is best positioned to handle remaining tasks required to bring these cases to an expeditious close and do so in a manner compatible with the best interests of all parties in interest. Accordingly, by this Motion, PacWest seeks the entry of an order converting these chapter 11 cases to chapter 7 cases.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. § 1112(b).

BACKGROUND

3. Over three (3) years ago, on June 15, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief (collectively, the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for

the Southern District of New York (the "Court"). No trustee or examiner has been appointed in these cases.

4. On June 18, 2020, the Debtors filed a cash collateral motion seeking, *inter alia*, authorization for DIP financing and use of cash collateral [Dkt. Nos. 7, 23].

5. On June 26, 2020, the cash collateral motion was approved on interim basis on June 26, 2020 (the "Interim CC Order") [Dkt. No. 33] and on a final basis on July 16, 2020 (the "Final CC Order") [Dkt. No. 57]. The Final CC Order obligates the Debtors to pay Pac West an adequate protection payment of $2,500 per month each month, in arrears, on the first day of each month, with the first payment due on August 1, 2020. See Final CC Order, Dkt. No. 57, ¶23.

The Debtors' Plan Efforts Have Been Stalled For Years

6. On September 24, 2021, the Debtors filed their Disclosure Statement [Dkt. No. 184] and Joint Plan of Reorganization [Dkt. No. 183] (the "Plan"). No hearing seeking approval of the Disclosure Statement was ever scheduled by the Debtors.

7. A year and half later, on April 20, 2023, the Debtors amended the Plan and filed a Second Amended Joint Plan of Reorganization [Dkt. No. 292] (the "Second Amended Plan"). No disclosure statement has been filed in support of the Second Amended Plan.

8. There are at least seventeen (17) "status" letters on the docket in these cases, which date back to November 12, 2021. See Dkt. Nos. 187, 188, 200, 210, 224, 248, 251, 259, 270, 273, 274, 318, 319, 320, 321, 323, 325. Many status letters set forth the Debtors' continued efforts to achieve a feasible plan, which in one form or another, essentially repeat continued efforts to obtain additional investors, merger partners and/or sale partners to position the Debtors to be in position to fund an exit from bankruptcy and fund payments to creditors under a to be determined amended plan. See id.

9. Most recently, on September 29, 2023, the Debtors filed a letter [Dkt. No. 323] (the "September 29th Letter") reflecting the significant amount of time these Debtors have attempted to emerge, but also reiterating the uncertainty of the Debtors' future. See September 29th Letter.

10. The September 29th Letter states, among other things:

> As we informed the Court ***at the last two status hearings***, the Debtors are continuing to work on a ***potential*** transaction with a strategic partner, which ***may*** include a sale of certain of the Debtors' assets. And as we stated in our last status letter, the Debtors believe ***if*** this transaction comes to fruition, it would be beneficial to the estate as it would ***potentially*** guarantee feasibility of a plan. . . [And the] Debtors are currently engaged in promising discussions . . . involving an equity investment in the Debtors to provide them exit financing to emerge from chapter 11.

See Dkt. No. 323 (emphasis added). The Debtors have been in "discussions" on an equity investment for years to no avail—the Debtors' status letter from two (2) years ago, November 12, 2021, similarly stated:

> Not knowing whether [the EIDL] loan will come through, the Debtor has also had fruitful conversations with several potential investors, and believes it will have an investor in place as soon as it knows the amount that will be needed, based on the potential EIDL loan. The Debtor will have a better handle on the investment, once it knows what is happening with the EIDL loan, but believes it will have sufficient financing to move forward on the confirmation of the Plan with or without the EIDL loan.

See Dkt. No. 187.

The Debtors' Timely Failure to File Monthly Operating Reports

11. The Debtors have routinely filed monthly operating reports late.[2] Currently, the docket indicates that monthly operating reports have been filed on behalf of the Debtors for June of 2020 through February of 2023 (for RM Bakery LLC) and May of 2023 (for BKD Group LLC).

[2] This has led to, among other things, this Court's March 22, 2022 order requiring the Debtors to file all outstanding monthly operating reports. See Dkt. No. 210.

12. Therefore, the Debtors are delinquent in filing reports on behalf of the operating debtor, RM Bakery LLC, for the last seven (7) months of March, April, May, June, July, August and September of 2023, and on behalf of BKD Group LLC for the last four (4) months of June, July, August and September of 2023.

13. Moreover, the September 29th Letter acknowledges that the Debtors are "not current in the filing of their Monthly Operating Reports" and "cannot afford to pay a financial advisor or other party to prepare operating reports." See September 29th Letter, Dkt. No. 323.

14. Although no operating reports for the operating debtor have been filed since February 2023 such that the Debtors' current cash flow is unknown, the most recent operating report for RM Bakery LLC from February 2023 reflects a net loss of $171,654.19 for the month and a cumulative loss of $4,192,446.39 since the bankruptcy filing date. [Dkt. No., 312 at p. 5-6 of 33]

Increased DIP Financing

15. On April 21, 2023, the Debtors filed a *Motion to Amend DIP Financing Order to Increase Amount* (the "Motion to Amend DIP") [Dkt. No. 294] and on May 3, 2023, the Motion to Amend DIP was approved on an interim basis, increasing the amount from $1 million to $1.056 million [Dkt No. 301], which was subsequently denied by the Court on May 31, 2023 [Dkt. No. 306].

16. On June 9, 2023, the Debtors filed a *Motion to Amend Final Order (i) Authorizing the Use of Cash Collateral, (ii) Granting Adequate Protection, (iii) Authorizing the Debtors to Obtain Postpetition Financing, (iv) Granting the Liens and Superpriority Claims to the DIP Lender, and (v) Modifying the Automatic Stay* (the "Second Motion to Amend DIP") [Dkt. No. 307], which was approved on a final basis on June 28, 2023 (the "Final Amended DIP Order")

[Dkt. No. 316]. The Final Amended DIP Order provides for an increase from $1.056 million to $1.5 million.

17. The DIP extension sources and uses document states that $10,000 of the $1.5 million was allotted for PacWest as a partial "catch-up" payment for its outstanding and unpaid adequate protection payments. See Second Motion to Amend DIP, Dkt. No. 307, at Ex. 3. Additionally, the consolidated 13-week cash flow forecast annexed to the Second Motion to Amend DIP, shows that PacWest was to also receive adequate protection payments in the amount of $2,500 on July 2, 2023, $5,000 on July 30, 2023 and $2,500 on August 27, 2023. See Second Motion to Amend DIP, Dkt. No. 307, at Ex. 1.

18. Despite the Court approving the Final Amended DIP Order, apparently at least some of the investors who were to fund the increased DIP loan backed out, and none of the scheduled adequate protections payments were made to PacWest. See Certification at ¶7. As of November 1, 2023, outstanding and unpaid adequate protections payments owed to PacWest will total $62,500, with no payments having been received since February 7, 2022 (which was a late payment on account of December 2021). See Certification at ¶8.

The Debtor Has Nearly $1 Million in Unpaid Post-Petition Obligations

19. On October 2, 2023, the Debtors filed a status report (the "October 2 Status Report") [Dkt. No. 324], indicating that **at least $936,084** in post-petition expenses are outstanding as of August 31, 2023. See October 2 Status Report.

20. Indeed, with respect to PacWest, despite the monthly payment obligations set forth in the Final CC Order and promises as set forth in the Second Motion to Amend DIP, PacWest has not received payment in approximately two (2) years, and the October 2 Status Report indicates

that $55,000 is owed as of August 31, 2023. See id. As noted above, that amount is now $62,500 as of the end of September 2023.

21. On October 6, 2023, the undersigned reached out to the Debtors' counsel to advise that PacWest would be filing the instant motion unless post-petition payment obligations were brought current by the end of October 2023. See Certification at ¶10. To date, no payment has been made. See id.

22. Moreover, the accuracy of October 2 Status Report with respect to the amount of unpaid post-petition taxes was subsequently called into question with the Debtors' counsel stating the following in a follow-up letter:

> [T]he Debtors represented to me that all post-petition taxes were paid based on their knowledge that there are unpaid post-petition taxes owed to the IRS that accrued in tax years 2020 and 2021, but that there are offsetting ERC credits for those same tax years. . . The Debtors assumed that the ERC credits could be applied to post petition taxes, and those ERC credits would offset. . . While the Debtors fully expect that their request to apply the ERC credits to post-petition taxes due will be acceptable to the IRS, there is, of course, no guarantee that either the IRS or the US Attorney will consent to this treatment. or the US Attorney will consent to this treatment.

See Dkt. No. 325. The letter does not disclose the amount of such tax liability. See id. Thus, the Debtors' post-petition tax liability is unknown, and may be greater than the $21,645.69 of post-petition taxes referenced in the September 29, 2023 letter.[3] Of note, a review of the claims register indicates that the IRS filed a proof of claim on February 13, 2023 in the amount of $472,000.67 (of which $380,253.36 is asserted as priority). See Case No. 20-11422-mg, Claim 18-4.

[3] It is unclear whether the $20,000.00 referenced in the October 2 Status Report is in addition to, or representative of the $21,645.69 referenced in the September 29th letter.

23. Most recently, on October 27, 2023, the Debtors' landlord[4] filed a notice on the docket indicating that October 2023 rent had not been paid and reiterating that because rent was not paid by the 12th of the month, the automatic stay should be deemed modified to permit Coster to pursue eviction proceedings without any further court order. See Dkt. No. 327. In response, the Debtor stated "that unfortunately, unbeknownst to management, when the wire was initiated, there was not quite enough money in the account to cover it. Accordingly, unbeknownst to management, the wire did not go through. . . the Debtors intend to pay the rent and the concomitant late fees on Monday. . . Eviction proceedings would appear to be a waste of time and money, as, the unpaid rent will be cured before the eviction proceedings are even started." [Dkt. No. 328].

ARGUMENT

A. The Standard for Conversion to Chapter 7 Under 11 U.S.C. § 1112(b)

24. Section 1112(b)[5] requires a court to convert a case to chapter 7 on request of a party in interest, after notice and a hearing, "for cause" so long as conversion (as opposed to dismissal) is in the best interests of both the creditors and the estate. 11 U.S.C.§ 1112(b)(1). Subsection (b)(4) contains sixteen examples of events that may constitute cause.

> (4) For purposes of this subsection, the term "cause" includes—
>
> (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
>
> (B) gross mismanagement of the estate;
>
> (C) failure to maintain appropriate insurance that poses a risk to

[4] 220 Coster, LLC ("Coster") is the landlord of the premises located at 220 Coster Street Bronx, NY 10474 pursuant to a lease between Coster and nondebtor affiliate of the Debtors, Kuzari Investor 27323 ("Kuzari"), which, in turn, subleases the property to RM Bakery LLC. Of significance, this is the third attempt Coster has made for "stay relief" on account of unpaid rent. On December 3, 2020, Coster filed a stay relief motion on the basis that Kuzari was in default of rent for October, November and December [Dkt. No. 120], which motion was partially settled via a stipulation dated January 12, 2021 [Dkt. No. 132]. On May 17, 2022, Coster filed a second stay relief motion [Dkt. No. 241] indicating that the Debtor had then fallen behind on rent for April and May of 2022, which motion was settled via a stipulation dated July 13, 2022 [Dkt. No. 269].

[5] Unless otherwise noted, section references herein are references to that section of the Bankruptcy Code.

> the estate or to the public;
>
> (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
>
> (E) failure to comply with an order of the court;
>
> (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
>
> (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
>
> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
>
> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
>
> (K) failure to pay any fees or charges required under chapter 123 of title 28;
>
> (L) revocation of an order of confirmation under section 1144;
>
> (M) inability to effectuate substantial consummation of a confirmed plan;
>
> (N) material default by the debtor with respect to a confirmed plan;
>
> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4). This list, however, is "not exhaustive" and courts are free to consider other factors. *See, e.g., In re Ameribuild Const. Mgmt., Inc.*, 399 B.R. 129, 131 n.3 (Bankr.

S.D.N.Y. 2009) (citing legislative history); *In re AdBrite Corp.*, 290 B.R. 209, 217 (Bankr. S.D.N.Y. 2003) ("A finding of cause is not limited to the grounds stated in 1112(b).").

25. The moving party has the burden of demonstrating cause for dismissal or conversion. *In re Loco Realty Corp.*, No. 09-11785 (AJG), 2009 WL 2883050, at *2 (Bankr. S.D.N.Y. June 25, 2009). Bankruptcy judges have wide discretion to determine whether cause exists to dismiss or convert a case under section 1112(b). *In re Kholyavka,* No. 08-10653 (DWS), 2008 WL 3887653, at *5 (Bankr. E.D. Pa. Aug. 20, 2008) (quoting H. Rep. 595, 95th Cong., 1st Sess. 405 (1977)).

26. Once a party establishes cause, a court must examine whether dismissal or conversion of a case under chapter 7 is in the best interests of the creditors and the estate. 7 COLLIER ON BANKRUPTCY ¶ 1112.04[6]. Courts have looked to multiple factors to determine which action better serves the interests of creditors and the estate. Collier identifies ten such factors:

> 1. Whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal.
>
> 2. Whether there would be a loss of rights granted in the case if it were dismissed rather than converted.
>
> 3. Whether the debtor would simply file a further case upon dismissal.
>
> 4. The ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors.
>
> 5. In assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise.
>
> 6. Whether any remaining issues would be better resolved outside the bankruptcy forum.

> 7. Whether the estate consists of a "single asset."
>
> 8. Whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests.
>
> 9. Whether a plan has been confirmed and whether any property remains in the estate to be administered.
>
> 10. Whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

Id. Moreover, section 1112(b)(2) states that the court must convert or dismiss for cause shown unless:

> (A) there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time; and
>
> (B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)–
>
> > (i) for which there exists a reasonable justification for the act or omission; and
> > (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2).

B. These Cases Should Be Converted Under Because There Is No Reasonable Prospect for Rehabilitation

27. Under section 1112(b)(4)(A), cause for conversion is established if there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). It is not enough just to show continuing loss to the estate; the moving party must also show the absence of a reasonable likelihood of rehabilitation. *In re 1031 Tax Grp., LLC*, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007) (citation omitted) (stating that a party moving under section 1112(b)(1) must establish both the "continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation").

28. As to the first prong, a "substantial or continuing loss to or diminution of the estate" can be demonstrated if the debtor has sustained a substantial loss following the commencement of

the case, or the debtor is operating with a sustained negative cash flow. *In re AdBrite Corp*., 290 B.R. at 215 (cause existed to convert the chapter 11 cases in part because of the debtor's negative post-petition cash flow and inability to pay current expenses); *In re 3868-70 White Plains Rd*., 28 B.R. 515, 518-19 (Bankr. S.D.N.Y. 1983) (cause existed to dismiss where the debtor's assets were fully collateralized and it had negative cash flow and an inability to pay current expenses). *In re Ntrl Plants & Lands Mgmt. Co., Ltd*., 68 B.R. 394, 395 (Bankr. S.D.N.Y. 1986) (converting chapter 11 case, in part, because the debtor was losing $60,000 per month in chapter 11); *In re Kanterman*, 88 B.R. 26, 28 (S.D.N.Y. 1988) (debtor lacked independent income and was not meeting postpetition obligations, including tax obligations).

29. Here, the Debtors continue to incur monthly losses. RM Bakery LLC's most recent Statement of Operations, which is included in its February 2023 operating report shows that the Debtors had a net loss of $171,654.19 for the month and a cumulative loss of $4,192,446.39 since the bankruptcy filing date. See Dkt. No., 312 at p. 5-6 of 33. Additionally, the Debtors' post-petition expenses are approaching $1 million. See October 2 Status Report, Dkt. No. 324.

30. As to the second prong,

> Rehabilitation, as used in section 1112(b)(1), does not mean the same thing as reorganization, as such term is used in chapter 11. Since a debtor can be liquidated in chapter 11, the ability to confirm a plan of reorganization is considerably different than reaching a firm, sound financial base.
>
> Rehabilitation of a debtor's estate implies the re-establishment of a sound financial basis, a concept which necessarily involves establishing a cash flow from which current obligations can be met. Reorganization, on the other hand, can involve simple liquidation and distribution of assets.

In re Kanterman, 88 B.R. at 29 (emphasis added). Here, the Debtors' continuing and uncertain business prospects do not justify the extended continuance of its reorganization efforts that have

languished without any discernable progress for years. This is particularly true given that the Debtors have not been able to keep up with their post-petition expenses and/or make progress on their plan—including in finalizing any "investment" opportunities. As a result of the Debtors' continuing financial losses and failed attempts to procure investments, there are simply not enough funds available to support these cases in chapter 11, let alone outside of it. Therefore, cause exists to convert these cases within the meaning of section 1112(b)(4).

C. These Cases Should Be Converted Because The Estates Are Administratively Insolvent

31. Although section 1112(b)(4) does not list administrative insolvency as cause to convert or dismiss a chapter 11 case, a court may still consider this factor. *See AdBrite*, 290 B.R. at 217 (*citing C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship)*, 113 F.3d 1304, 1311 (2d Cir. 1997)) ("Because the list of grounds for converting or dismissing a chapter 11 case under § 1112(b) is illustrative, not exhaustive, the court may consider other grounds and use its equitable powers to reach an appropriate result."). Courts have converted cases, in part, on the basis of administrative insolvency. *See, e.g.*, *In re Bartmann*, No. 03- 04975, 2004 WL 1057662, at *2 (10th Cir. B.A.P. May 10, 2004).

32. The Debtors already have nearly $1 million in unpaid post-petition expenses. If these cases were to proceed in chapter 11, the amount of unpaid professional fees would continue to grow, and it is unclear how much is owed to the United States Trustee's Office in light of the Debtors' continuous failure to timely file monthly operating reports. The Debtors also acknowledged that substantial tax claims may have not been included in its most recent estimate of outstanding and unpaid administrative claims. See Dkt. No. 325. Additionally, a review of the claims register indicates that the IRS filed a proof of claim on February 13, 2023 in the amount of

$472,000.67 (of which $380,253.36 is asserted as priority). See Case No. 20-11422-mg, Claim 18-4.

33. While cause exists to convert these cases to chapter 7 cases on the basis of administrative insolvency, the Court must also determine that conversion on this ground would be in the best interests of the estate and creditors. *See* 11 U.S.C. § 1112(b)(1). Insofar as administrative insolvency suggests a continued diminution in the value of the estate, conversion will help creditors achieve maximum economic value under the watchful eye of a chapter 7 trustee. Moreover, the mere hopes of the Debtors for an investment infusion or other conjectural transaction should not serve as a basis to continue to allow these cases to remain in chapter 11 at this time. This Court has held that the hopes of prevailing on potential litigation claims is not a sufficient basis to defeat a showing of cause to convert. *In re FRGR Managing Member LLC*, 419 B.R. 576, 583 (Bankr. S.D.N.Y. 2009).

34. Additionally, even if the Court were to determine that the estates are and will remain administratively solvent, conversion would still be warranted because there are continuing losses and no reasonable prospect for rehabilitation.

D. The Debtors' Failure to Move Forward with a Plan and Disclosure Statement Should Constitute Cause for Conversion

35. Section 1112(b)(4)(J) provides that "failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court" amounts to cause for conversion or dismissal. 11 U.S.C. § 1112(b)(4)(J). Although a disclosure statement and plan were filed on September 24, 2021, the Debtors never scheduled a hearing to seek approval of the Disclosure Statement for creditor solicitation. And although the Debtors filed a Second Amended Plan on April 20, 2023, the Debtors have not filed a corresponding disclosure statement to position the Debtors to move toward confirmation. Accordingly, neither of the filed plans present a

pathway for emergence. "While the complexity and nature of the case often dictate[s] its pace," it is equally clear that "a debtor cannot wallow in chapter 11. The debtor must prosecute his or her case to a prompt and successful conclusion through confirmation of a plan. Under section 1112(b)(2), the court may convert or dismiss the case if the debtor lacks the ability to formulate a plan or to carry one out." *In re Tornheim*, 181 B.R. 161, 164 (Bankr. S.D.N.Y. 1995) (citation omitted).

E. Conversion of These Cases Is More Appropriate Than Dismissal

36. It is within the Court's discretion to convert or dismiss a chapter 11 case, provided the best interests of the creditors and the estate are served. Here, it is more appropriate that the case be converted rather than dismissed. Several of the factors typically considered support conversion, namely the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors and the maximization of the estate's value as an economic enterprise. 7 COLLIER ON BANKRUPTCY ¶ 1112.04[7]. Indeed, conversion will give the chapter 7 trustee one year to commence the prosecution of avoidance claims, which will be beneficial in a case such as this one where there are number of nondebtor affiliates, related companies, and intercompany transactions and claims that should warrant further investigation. *See* 11 U.S.C. § 546(a)(1)(B). Accordingly, conversion to chapter 7 is in the best interests of the creditors and the bankruptcy estates.

37. Moreover, distributions (if any) to creditors will be more reliably (and economically) handled by a chapter 7 trustee who will be in a position to marshal and liquidate assets for the benefit of creditors, including the payment of outstanding United States Trustee fees and unpaid administrative expenses. Conversely, dismissal is not in the best interests of creditors because creditors will be forced to start (or, in some instances, restart) litigation and related

collection actions against these Debtors, and there will be no viable path to pay the outstanding and unpaid administrative expenses.

NOTICE

38. Notice of this Motion has been provided to the following parties and to their counsel, if known: (a) the Debtors, (b) the Office of the United States Trustee for the Southern District of New York, (c) all parties who have filed a request for notice under Bankruptcy Rule 2002 and (d) all creditors. In light of the nature of the relief requested herein, PacWest respectfully submits that no further notice of this motion is required.

CONCLUSION

WHEREFORE, for the reasons stated above, PacWest respectfully requests that the Court convert the chapter 11 Cases to chapter 7 cases, and grant such other and further relief as this Court deems just and proper.

Dated: November 2, 2023

By: */s/ Brett S. Moore*

PORZIO, BROMBERG & NEWMAN, P.C.
Brett S. Moore, Esq.
Kelly D. Curtin, Esq.
1675 Broadway
Suite 1810
New York, NY 10019
(212) 265-6888
(212) 957-3983 Facsimile
Counsel to Pacific Western Bank, Successor by Merger to Square 1 Bank

Hearing Date: November 27, 2023 at 2:00 p.m. (EST)
Objection Deadline: November 20, 2023

PORZIO, BROMBERG & NEWMAN, P.C.
1675 Broadway
Suite 1810
New York, NY 10019
(212) 265-6888
(212) 957-3983 Facsimile
Brett S. Moore, Esq.
Kelly D. Curtin, Esq.
Counsel to Pacific Western Bank, Successor by Merger to Square 1 Bank

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter: 11
RM BAKERY LLC, *et al.*[1],	Case No. 20-11422 (MG)
Debtors.	(Jointly Administered)

CERTIFICATION OF HUMBERTO ESPADA IN SUPPORT OF THE MOTION OF PACIFIC WESTERN BANK, SUCCESSOR BY MERGER TO SQUARE 1 BANK, TO CONVERT THESE CHAPTER 11 CASES TO CHAPTER 7 CASES

I, Humberto Espada, do hereby certify the following:

1. I am a Senior Vice President, Managing Director of Pacific Western Bank, which is the successor by merger to Square 1 Bank ("PacWest").

2. I submit this Certification in support of PacWest's motion pursuant to 11 U.S.C. § 1112(b) for an order converting the Chapter 11 cases of RM Bakery LLC, *et al.* ("RM Bakery" or the "Debtors") to Chapter 7 cases (the "Motion").[2]

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0642).
[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

3. Except as otherwise indicated herein, the facts set forth in this Certification are based upon my personal knowledge, my review of relevant documents, information provided to me, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and liabilities.

4. I am authorized to submit this Certification on behalf of PacWest. If called upon to testify, I would testify competently to the facts set forth in this Certification.

5. As set forth in the Motion, the Final CC Order obligates the Debtors to pay Pac West an adequate protection payment of $2,500 per month each month, in arrears, on the first day of each month, with the first payment due on August 1, 2020.

6. Additionally, the Second Motion to Amend DIP, which was approved via the Final Amended DIP Order provided for an increase of the Debtors' DIP financing from $1.056 million to $1.5 million and indicated that that $10,000 of the $1.5 million was allotted for PacWest as a partial "catch-up" payment for its outstanding and unpaid adequate protection payments. Further, per the consolidated 13-week cash flow forecast annexed to the Second Motion to Amend DIP, PacWest was to receive adequate protection payments in the amount of $2,500 on July 2, 2023, $5,000 on July 30, 2023 and $2,500 on August 27, 2023.

7. Despite the Court approving the Final Amended DIP Order, apparently at least some of the investors who were to fund the increased DIP loan backed out, and none of the scheduled adequate protections payments were made to PacWest.

8. As of November 1, 2023, outstanding and unpaid adequate protections payments owed to PacWest will total $62,500, with no payments having been received since February 7, 2022 (which was a late payment on account of December 2021).

9. Set forth below is a schedule of the missing payments, totaling $62,500.00 owed to PacWest as of today's date.

Amount	**Reference Period**	**Ck #**
$ 2,500.00	May 2021	Not Received
$ 2,500.00	June 2021	Not Received
$ 2,500.00	January 2022	Not Received
$ 2,500.00	February 2022	Not Received
$ 2,500.00	March 2022	Not Received
$ 2,500.00	April 2022	Not Received
$ 2,500.00	May 2022	Not Received
$ 2,500.00	June 2022	Not Received
$ 2,500.00	July 2022	Not Received
$ 2,500.00	August 2022	Not Received
$ 2,500.00	September 2022	Not Received
$ 2,500.00	October 2022	Not Received
$ 2,500.00	November 2022	Not Received
$ 2,500.00	December 2022	Not Received
$ 2,500.00	January 2023	Not Received
$ 2,500.00	February 2023	Not Received
$ 2,500.00	March 2023	Not Received
$ 2,500.00	April 2023	Not Received
$ 2,500.00	May 2023	Not Received
$ 2,500.00	June 2023	Not Received
$ 2,500.00	July 2023	Not Received
$ 2,500.00	August 2023	Not Received
$ 2,500.00	September 2023	Not Received
$ 2,500.00	October 2023	Not Received
$ 2,500.00	November 2023	Not Received
$62,500.00		

10. While Debtors have been delinquent in such payments, PacWest provided the Debtors with time and patience while continuing to reserve its rights. PacWest periodically inquired with the Debtors about the status of the payments, but until the instant motion, PacWest did not take any action requiring Court intervention. On October 6, 2023, upon my direction, PacWest's counsel reached out to the Debtors' counsel to advise that PacWest would be filing the instant Motion unless the outstanding and unpaid post-petition payment obligations were brought current by the end of October 2023. However, to date, no such payments were made by the Debtors.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: November 1, 2023

Humberto Espada

PORZIO, BROMBERG & NEWMAN, P.C.
1675 Broadway
Suite 1810
New York, NY 10019
(212) 265-6888
(212) 957-3983 Facsimile
Brett S. Moore, Esq.
Kelly D. Curtin, Esq.
Counsel to Pacific Western Bank, Successor by Merger to Square 1 Bank

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter: 11
RM BAKERY LLC, *et al.*[1],	Case No. 20-11422 (MG)
Debtors.	(Jointly Administered)

ORDER GRANTING MOTION OF PACIFIC WESTERN BANK, SUCCESSOR BY MERGER TO SQUARE 1 BANK, TO CONVERT THESE CHAPTER 11 CASES TO CHAPTER 7 CASES

Upon consideration of the Motion[2] of PacWest for an order converting these Chapter 11 Cases to Chapter 7 cases pursuant to 11 U.S.C. § 1112(b); and after notice and an opportunity for hearing, after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as provided herein.

2. Pursuant to section 1112 of the Bankruptcy Code, the Debtors' Chapter 11 Cases are hereby converted, effective as of the date (the "Effective Date") and time of entry of this Order, to cases under Chapter 7 of the Bankruptcy Code.

[1] The Debtors in these Chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0642).
[2] Capitalized terms utilized but not defined herein shall have the meanings given them in the Motion.

3. The Debtors shall turn over to the Chapter 7 trustee, once one is appointed, all records and property of their estates in their possession or control, as required by Rule 1019(4) of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules").

4. Within 14 days of the Effective Date, the Debtors shall file schedules of unpaid debts incurred after the filing of their voluntary petitions and before conversion of the Chapter 11 Cases, including the name and address of each holder of a claim as required by Bankruptcy Rule 1019(5)(A)(i).

5. Within 30 days of the Effective Date, the Debtors shall file and transmit to the United States Trustee a final report and account as required by Bankruptcy Rule 1019(5)(A)(ii).

6. A representative of the Debtors and, if requested by the Chapter 7 trustee, counsel to the Debtors in the Chapter 11 Cases, shall appear at the first meeting of creditors after conversion of the Debtors' cases to Chapter 7 pursuant to sections 341(a) and 343 of the Bankruptcy Code, and such representative shall be available to testify at such meeting.

7. The Debtors are hereby authorized and empowered to take all actions necessary to implement and effectuate the terms of this Order.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: _____, 2023
New York, New York

_____
HONORABLE MARTIN GLENN
CHIEF UNITED STATES BANKRUPTCY JUDGE