United States Bankruptcy Court
Southern District of Texas
ENTERED
February 26, 2024
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (MI)**
Debtors.[1]	§	**Jointly Administered**

JOINT STIPULATION AND AGREED ORDER SETTING BRIEFING SCHEDULE REGARDING EXCULPATION UNDER DEBTORS' PLAN OF REORGANIZATION

Instant Brands Acquisition Holdings, Inc. and certain of its affiliates (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") pending before the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"), and the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") (each a "**Party**" and, collectively, the "**Parties**") hereby enter into this stipulation and agreed order (the "**Stipulation and Agreed Order**"):

WHEREAS, on January 11, 2024, the Court entered an order [Docket No. 924] (the "**Solicitation Order**") that, among other things, established certain dates and deadlines in connection with the solicitation and confirmation of the *Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization Plan of Instant Brands Acquisition Holdings Inc. and its Debtor Affiliates* [Docket No. 1146-1] (the "**Plan**");[2]

[1] The debtors and debtors in possession in the Chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the *Reply Memorandum of Law in Support of Final Approval and Confirmation of the Combined Disclosure*

WHEREAS, on February 6, 2024, the Debtors filed an initial form of proposed Confirmation Order [Docket No. 999] which included the following text that consensually resolved an informal objection to the Exculpation Provision raised by the U.S. Trustee: "Notwithstanding anything in Article XI.D to the contrary, the scope of claims listed in Article XI.D as being exculpated under the Plan is temporally limited to claims arising during the period between the Petition Date and the Effective Date";

WHEREAS, on February 8, 2024, the U.S. Trustee timely filed the *Limited Objection of United States Trustee to Combined Disclosure Statement and Joint Plan of Reorganization of Instant Brands Acquisition Holdings Inc. and its Debtor Affiliates* [Docket No. 1013] (the "**U.S. Trustee's Limited Objection**"), asserting that the inclusion of the Debtors' independent directors in the defined term "Exculpated Parties," Plan, Art. I.A.90, violates *Matter of Highland Cap. Mgmt., L.P. ("Highland")*, 48 F.4th 419 (5th Cir. 2022), *petition for cert. filed*, No. 22-631 (U.S. Jan. 5, 2023) (No. 22-631);

WHEREAS, on February 21, 2024, the Debtors filed their Confirmation Brief which, among other things, addressed the U.S. Trustee's Limited Objection;

WHEREAS, the Court held a hearing to consider Confirmation of the Plan on February 22, 2024 (the "**Combined Hearing**");

WHEREAS, at the Combined Hearing, the Court directed each Party to file a supplemental brief (each, a "**Supplemental Brief**" and, together, the "**Supplemental Briefing**") regarding the Exculpation Provision and the legal import of *Highland*, including the governance documents appointing the independent directors in *Highland* and the circumstances thereof;

Statement and Joint Chapter 11 Plan of Reorganization of Instant Brands Acquisition Holdings Inc. and its Debtor Affiliates [Docket No. 1117] (the "**Confirmation Brief**"), as applicable. The rules of interpretation set forth in Article I.B of the Plan shall apply hereto.

WHEREAS, on February 23, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Confirming the Joint Chapter 11 Plan of Reorganization of Instant Brands Acquisition Holdings Inc. and Its Debtor Affiliates and (II) Approving the Disclosure Statement on a Final Basis* [Docket No. 1146], which states that "[p]ursuant to the Bankruptcy Court's ruling at the Combined Hearing, the independent directors of the Debtors shall not be deemed "Exculpated Parties" pending further order of the Bankruptcy Court; *provided*, if the Court subsequently authorizes their exculpation, the exculpation will be effective as of the date of entry of this Order;" and

WHEREAS, the Parties have met and conferred and wish to enter into this Stipulation and Agreed Order setting a briefing schedule for the Supplemental Briefing.

NOW, THEREFORE, IT IS HEREBY AGREED AND STIPULATED, AND UPON APPROVAL BY THE COURT, IT IS ORDERED, THAT:

1. Each Party shall each file a Supplemental Brief as directed at the Combined Hearing by March 8, 2024. The Parties may attach or file, as exhibits to their respective Supplemental Brief, relevant record or docket materials from *Highland* or other authorities addressing the Exculpation Provision.

2. This Stipulation and Agreed Order is and shall be binding on the Parties and their successors and assigns, including the Reorganized Debtors.

Signed: February 26, 2024

Marvin Isgur
United States Bankruptcy Judge

Dated: February 26, 2024

Respectfully submitted,

UNITED STATES TRUSTEE REGION 7

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Counsel to the Debtors and Debtors in Possessior

cc: All counsel of record (via ECF)

Certificate of Service

I certify that, on February 26, 2024, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ David A. Trausch
David A. Trausch