IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re CB HOLDING CORP., *et al.*, Debtors.	Chapter 11 Case No. 10-13683 (MFW) (Jointly Administered) **Hearing Date: February 23, 2012 at 2 p.m.** **Objections Due: February 17, 2012, at 4 p.m.**

UNITED STATES TRUSTEE'S OBJECTION TO CONFIRMATION OF DEBTORS' MODIFIED FIRST AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Roberta A. DeAngelis, the United States Trustee for Region 3 ("U.S. Trustee"), by and through her undersigned attorneys, hereby submits this Objection to Confirmation of Debtors' Modified First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the "Amended Plan")[Dkt. No. 1168], and in support of that objection states as follows:

PRELIMINARY STATEMENT

1. A chapter 11 plan may not be confirmed unless the Court can find that the plan complies with the provisions of 11 U.S.C. § 1129(a). A plan proponent bears the burden of proof with respect to each and every element of 11 U.S.C. § 1129 (a). *See In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001). As discussed below, the Amended Plan is not confirmable for two independent reasons. First, the Amended Plan contains certain release, injunctive and exculpation provisions that are contrary to applicable law in this District, including the standards set forth by this Court in *In re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011), and which effectively provides a discharge of these liquidating Debtors, in contravention of the provisions of the Bankruptcy Code.

2. The Amended Plan also should not be confirmed because it does not comply with § 1129 (a)(12), which requires the Debtors to have paid all quarterly U.S. Trustee fees, or for the plan to provide that such fees will be paid by the effective date. The Debtors currently owe $272,301.16 in quarterly fees, and the Amended Plan does not provide that such fees will be paid by the Effective Date.

3. For these reasons, as detailed below, the U.S. Trustee respectfully requests that confirmation of the Debtors' Amended Plan be denied.

JURISDICTION

4. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine this objection.

5. Pursuant to 28 U.S.C. § 586(a)(3), the "U. S. Trustee is charged with administrative oversight of the bankruptcy system in this District. Such oversight is part of the "U. S. Trustee's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that the "U. S. Trustee has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the "U. S. Trustee as a "watchdog").

6. Under 11 U.S.C. § 307, the U. S. Trustee has standing to be heard on the issues raised by this objection.

BACKGROUND

7. On or about November 18, 2010 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession under 11 U.S.C. §§ 1107, 1108.

8. On or about December 1, 2010, the U.S. Trustee appointed an Official Committee of Unsecured Creditors in these cases.

9. On January 4, 2012, the Debtors filed their Amended Plan and accompanying Disclosure Statement.

10. On January 5, 2012, the Court approved the Disclosure Statement for the Amended Plan.

Facts Relevant to the Release/Injunctive/Exculpation Provisions in the Amended Plan

11. The Amended Plan includes broad releases by the Debtors and their estates (the "Debtor Releases"), and by third parties (the "Third Party Releases"), as well as a general injunction, and an exculpation provision. A copy of the pages of the Amended Plan including these provisions, as well as the relevant definitional sections of the Amended Plan, is annexed hereto as Exhibit A.

12. Section X. E. of the Amended Plan provides releases by the Debtors and their Estates of all "Released Parties," which is defined to include all "Debtor Releasees" and all "Third Party Releasees." *See* Plan, § 113. "Debtor Releasees" in turn includes numerous non-Debtors, including but not limited to, the Debtors' current and former directors and officers, employees, stockholders, subsidiaries, affiliates, principals, agents, advisors, attorneys and other professionals. *See* Plan, § 36. The term "Third Party Releasees" includes the Pre-Petition Lenders, DIP Facility Lender, Second Lien Noteholders, the Creditors Committee and

its members, and each such person's current and former directors, officers, employees, stockholders, subsidiaries, affiliates, and professionals, among others. *See* Plan, § 135.

13. Section X.F. of the Plan sets forth Third Party Releases. As with the Debtors' Releases, the Third Party Releases are in favor of all "Released Parties," which includes all "Third Party Releasees" and all "Debtor Releasees." The Plan provides that only creditors and holders of interests who vote in favor of the Plan will be releasing any claims. However, even with such consent, certain groups of released parties, including the Debtors' current and former directors and officers, as well as the Debtors' affiliates and subsidiaries, should not be included among those receiving Third-Party Releases when they have not provided any contribution to the Amended Plan or other consideration in exchange for such releases.

14. Section X.B of the Plan is titled as a general injunction provision. However, the first and second sentences of this section do not provide injunctive relief. Rather, they set forth releases to be given by all creditors and other parties that are much broader than what is set forth in the Third Party Release provisions of section X.F of the Amended Plan. Unlike the Third Party Release provisions in X.F., the releases set forth in section X.B. are being provided not just by those creditors who vote in favor of the Plan, but rather by all creditors and interest holders. In addition, certain portions of section X.B. of the Plan act as a discharge of the Debtors, by providing that the distribution under the plan are made in full satisfaction of all existing debts, claims and interest against the Debtors, and that creditors shall have no further recourse against the Debtors.

15. Section X.D of the Amended Plan sets forth an exculpation provision that covers not just fiduciaries of the Debtors estates, but also the following other parties: "Debtors,

the Estates, the Liquidating Trust, the Liquidating Trustee [who has not yet begun to serve], the Administrative Agent, the Pre-Petition Lenders, the DIP Facility Lender, the Second Lien Noteholders, [and all] of their respective present or former officers, directors, shareholders, members, employees advisors, professionals, attorneys or agents acting in such capacity or their respective affiliates." Plan, § X.D. The exculpation clause covers not just post-petition activity, but also pre-petition activity by parties to receive the exculpation.

Facts Relevant to the Calculation of U.S. Trustee Fees Owed

16. There are 72 separate Debtors. Certain of the Debtors had sold their restaurants (called "stores"), and were no longer operating as of the Petition Date. The remaining Debtors continued to operate until their assets were sold in asset sales that took place pursuant to section 363 of the Bankruptcy Code during the course of these bankruptcy cases.

17. Based on the profit and loss ("P & L") statements filed by the Debtors as part of their monthly operating reports ("MORs"), 27 of the 72 Debtors owned stores that operated during at least some portion of the period between the Petition Date and January 31, 2012 (the "27 Operating Debtors"). *See* Declaration of Karen Starr ("Starr Dec."), Bankruptcy Analyst with the U.S. Trustee's Office, annexed hereto as Exhibit B, at ¶¶ 8.

18. Despite there being 27 Debtors that owned stores that operated post-petition, for the period from the Petition Date through January 31, 2012, all but one of the Debtors paid only the minimum U.S. Trustee fees. The remaining Debtor, Charlie Brown's Acquisition Corp., appears to have paid U.S. Trustee fees based on the total disbursements made by or on behalf of all of the Debtors. *See* Starr Decl., ¶ 9.

19. From the Petition Date through January 31, 2012, the Debtors paid a total of $217,800.00 in U.S. Trustee fees. However, for this same period, the Debtors actually owed $488,100.00 in U.S. Trustee fees, plus $2,001.16 in assessed interest, leaving a balance of $272,301.16 currently due. *See* Starr Dec., ¶ 9.

20. The following information, among other, shows that the 27 Operating Debtors were separate operating entities and should be treated as such for the purpose of calculating U.S. Trustee quarterly fees:

a. The Statements of Financial Affairs (Question 1 – Income from operation of business) filed in the cases of each of the 27 Operating Debtors show dollar amounts for sales revenue.

b. The Statements of Financial Affairs (Question 20 – Inventories) filed in the cases of each of the 27 Operating Debtors indicate dollar amounts of inventory for each such Debtor.

c. Schedule B (Personal Property) filed in the case of each of the 27 Operating Debtors indicates dollar amounts for petty cash, for furniture and equipment used in the business, and for inventory for each such Debtor.

d. The Debtors prepared MORs with P & L statements for each individual store location.

e. The 2008 Consolidated U.S. Corporate Income Tax Return for CB Holding Corp. and Subsidiaries for the fiscal year ended September 27, 2009 (the most current tax return available when these cases were filed), as prepared by PriceWaterhouseCoopers, includes consolidating schedules for both the balance sheet and taxable income. The consolidating balance sheets show cash, inventories, furniture and equipment, intangible assets, and intercompany receivables/payables for 24 of the 27 Operating Debtors. The consolidating

schedule of taxable income shows sales, cost of goods sold, and operating expenses for those same 24 of the 27 Operating Debtors. The other 3 of the 27 Operating Debtors were not included in the tax return, presumably because they are limited liability companies (LLCs), which are disregarded entities for federal income tax purposes.

See Starr Dec., ¶ 11.

BASIS FOR RELIEF

A. The Amended Plan's Releases, Injunctions and Exculpation Provisions Are Impermissible Under Applicable Law

21. There are numerous ways in which the Debtors Releases, Third Party Releases, injunctions, and exculpations set forth in the Amended Plan are contrary to the standards set forth by this Court in *In re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011), and other applicable law in this District, as detailed below.

1. Releases by the Debtors and Their Estates

22. Section X. E. of the Amended Plan provides broad releases by the Debtors and their Estates of many parties, including but not limited to, the Debtors' current and former directors and officers, employees, stockholders, subsidiaries, affiliates, principals, agents, advisors, attorneys and other professionals, and the Pre-Petition Lenders, DIP Facility Lender, Second Lien Noteholders, the Creditors Committee and its members, and each such person's current and former directors, officers, employees, stockholders, subsidiaries, affiliates, and professionals, among others. *See* Plan, §§ 113, 36 and 135. Under the Amended Plan, all such persons and entities would be granted releases from the Debtors and their estates, thereby preventing the Liquidating Trustee from being able to pursue any claims against such parties.

23. Pursuant to this Court's decision in *Washington Mutual*, the five factors set forth in In re *Zenith Elecs. Corp.,* 241 B.R. 92,110 (Bankr. D. Del 1999) and *In re Master Mortgage Inv. Fund, Inc.,* 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994) must be considered with respect to each person or entity that the Debtors release. Those factors are as follows:

i. identity of interests between debtor and non-debtor releasee, so that a suit against the non-debtor will deplete the estate's resources (e.g. due to debtor's indemnification of non-debtor);

ii. substantial contribution to the plan by non-debtor;

iii. necessity of release to the reorganization;

iv. overwhelming acceptance of plan and release by creditors; and

v. payment of all or substantially all of the claims of the creditors and interest holders under the plan.

Washington Mutual, 442 B.R. at 346 (citing *Zenith*, 241 B.R. at 110 (citing *Master Mortgage*, 168 B.R. at 937)).

24. Neither the Disclosure Statement nor the Amended Plan sets forth how any of the above elements are met for the vast majority of parties who are receiving releases from the Debtors and their estates. The Amended Plan does reference the wavier of the second lien note claims, and the Unsecured Creditor Settlement entered into by the Pre-Petition Lenders, both of which arguably could be viewed as contributions to the plan. However, neither the Amended Plan nor the Disclosure Statement address whether or how any of the other four *Zenith/Master Mortgage* elements are satisfied for the Second Lien Noteholders or the Pre-Petition Lenders. Among other things, element "v" – payment of all or substantially all

of the claims of the creditors and interest holders under the plan – clearly will not be met, as the unsecured creditors will, at best, receive distributions of approximately 1% of their claims.

25. The Amended Plan and the Disclosure Statement also do not indicate what, if any, "substantial contribution" is being made by the many other parties the Debtors are releasing, such as their present and former officers and directors, shareholders, employees, and professionals, except that the Plan makes a general assertion that such persons "facilitat[ed] the expeditious implementation of the Plan and the Liquating Trust and the associated transactions." Plan, § X.E. Such an assertion is not sufficient for the Debtors to meet their burden of proof that the *Zenith/Master Mortgage* elements have been satisfied for each of these parties to be released.

26. In *Washington Mutual*, the Court found impermissible certain releases given to a number of groups that are also to be released by the Debtors in the Amended Plan in the present case. There, the Court determined that the release of the debtors' directors, officers and professionals were not justified. Although the Court determined that the first of the *Zenith/Master Mortgage* factors may have been met (identity of interests), the other four factors were not. The Court commented that, with respect to their post-petition activities, the directors, officers and professionals of the debtors and the committee were receiving exculpations, which were sufficient, and releases were "unnecessary, duplicative and exceed the limits of what they are entitled to receive." 442 B.R. at 350. The same is true here.[1]

[1] The releases of the Debtors' directors and officers and employees is especially problematic in this case because the Debtors did assert, and settle, claims against certain of its former officers. If the Liquidating Trustee later determines that the Estates have claims against any of the other officers, directors or employees of the Debtors, such claims would not be able to be pursued under the Debtor Releases.

27. In *Washington Mutual*, the Court also rejected the debtors' release of the Unsecured Creditors Committee and its members, determining that, under *Zenith/Master Mortgage* factors, they do not qualify for a release from the debtors, although a limited exculpation would be acceptable. 442 B.R. at 348. The same is true here.[2]

28. The Debtors have the burden of justifying the validity of the Debtor Releases for each and every party to be released. Because an evidentiary predicate is necessary to approve the Debtor Releases, the U.S. Trustee reserves argument on this issue until the record at the confirmation hearing is closed.

2. **Third Party Releases**

29. Section X.F. of the Plan sets forth Third Party Releases. As was the case with the Debtors' Releases, the Third Party Releases are in favor of all "Released Parties," which includes all "Third Party Releasees" and all "Debtor Releasees." The Plan provides that only creditors and holders of interests who vote in favor of the Plan will be releasing any claims, and to that extent it is consistent with this Court's decision in *Washington Mutual*.[3] However, even with such consent, this Court in *Washington Mutual* placed certain limits on third party releases, as set forth below.

30. The Court in *Washington Mutual* did not allow third party releases of affiliates, because no evidence had been offered as to who the affiliates were or why they should get a discharge without filing their own bankruptcy cases. 442 B.R. at 354. Similarly, here the Debtors' "affiliates" and "subsidiaries" are included in the definition of "Debtor

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[2] Counsel for the Unsecured Creditors Committee has indicated to trial counsel to the U.S. Trustee that the Committee would not oppose omitting the releases in its favor, provided the Committee remains included in the exculpation provision.

[3] *See* Plan section 114 ("Releasing Parties" defined to include every Person "that has held, holds or may hold a Claim or Equity Interest that votes to accept the Plan").

Releasees," which means they would be among those who would be released under the Third Party Release provision of section X.F. of the Plan. The Debtors have not identified whether they have any non-debtor "affiliates" or "subsidiaries," but if they do, such entities should not effectively get a discharge without filing their own bankruptcy cases. 11 U.S.C. §524(e) ("discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt").

31. In addressing third party releases of the debtors' officers and directors in *Washington Mutual,* this Court held as follows:

> [T]here is no basis for granting third party releases of the Debtors' officers and directors , even if limited to post-petition activity. The only 'contribution' made by them was in the negotiation of the Global Settlement and the Plan. Those activities are nothing more than what is required of directors and officers of debtors in possession (for which they have received compensation and will be exculpated); they are in sufficient to warrant such broad releases of any claims third parties may have against them.

442 B.R. at 354. The same is true here.

32. Under *Washington Mutual,* the Third Party Releases in the present case should not extend to non-debtor affiliates and subsidiaries, the Debtors' directors and officers, or any other non-debtor person or entity that did not make a substantial contribution to the Plan, or otherwise provide consideration for their release.

3. **General Injunction**

33. Section X.B of the Plan is titled as a general injunction. However, the first and second sentences of this provision do not provide injunctive relief. Rather, they set forth releases to be given by all creditors and other parties in interest that are much broader than what is set forth in the Third Party Release provisions of section X.F of the Amended Plan.

Unlike the Third Party Release provisions, the releases set forth in section X.B. are not limited to those creditors who vote in favor of the Plan. Rather, the releases are binding on all creditors and interest holders. In addition, the release acts as a discharge of the Debtors, because they provide that the distributions under the plan are made in full satisfaction of all existing debts, claims and interest against the Debtors, and that creditors shall have no further recourse against the Debtors.

34. The language of the fourth sentence of section X.B (which begins "All Holders of Liens, Claims, and/or Equity Interests") is also problematic because it enjoins creditors and others from pursuing claims not just against the property to be distributed under the Plan and the Liquidating Trust, but against all "the property of any of the Debtors." This language also acts as a discharge of the Debtors.

35. The Debtors in these cases are not entitled to a discharge. Under section 1141(d)(3) of the Bankruptcy Code, the confirmation of a plan does not discharge a debtor if:

> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
>
> (B) the debtor does not engage in business after consummation of the plan; and
>
> (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3).

36. The title of the Amended Plan indicates that it is a liquidating plan. The Debtors will not be engaged in business after the plan is consummated. Since the Debtors are not individuals, they would not be entitled to a discharge if the case were a chapter 7. *See* 11 U.S.C. § 727(a)(1).

37. In *In re Bigler, L.P.*, 442 B.R. 537 (Bankr. S.D. Tex. 2010), the Court rejected an injunctive provision similar to the one in the case at bar, holding that:

> The injunction is inappropriate as applied to the Debtors because a liquidating Chapter 11 plan may not provide for the discharge of the debtor. § 1141(d)(3). An injunction preventing the post-confirmation prosecution of claims would certainly operate as a discharge of the Debtors. Accordingly, it is impermissible under the Code. For the same reasons, actions against property of the Estate may not be enjoined after the confirmation of a liquidating plan. § 1141(c) & (d)(3).

Id. at 545-46. The same is true here.

4. **Exculpation**

38. Section X.D of the Amended Plan includes an exculpation provision that is in favor of not just fiduciaries of the Debtors' estates, but also other parties, including the "Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee (who has not yet started to serve), the Administrative Agent, the Pre-Petition Lenders, the DIP Facility Lender, the Second Lien Noteholders, [and all] of their respective present or former officers, directors, shareholders, members, employees advisors, professionals, attorneys or agents acting in such capacity or their respective affiliates." Plan, § X.D. In addition, the exculpation covers pre-petition as well as post-petition activity.

39. As stated by this Court in *Washington Mutual,* an "exculpation clause must be limited to the fiduciaries who have served during the chapter 11 proceedings: estate professionals, the Committee and their members, and the Debtors' directors and officers." *Washington Mutual,* 442 B.R. at 350-51; *see also PWS Holding Corp*, 228 F.3d 224, 246 (3d Cir. 2000). The exculpation also must be limited to post-petition activities of such fiduciaries in the bankruptcy case. *Washington Mutual*, 442 B.R. at 350, *citing PWS*, 228 F.3d at 246 (the creditors' committee, its members and estate professionals may be exculpated under a plan *for their actions in the bankruptcy case*, except for willful misconduct or gross negligence).

40. The Exculpation Clause in the Amended Plan includes many parties other than estate fiduciaries, and also covers both pre-petition periods as well as post-petition. As such it does not meet the requirements for an exculpation clause under *Washington Mutual* and *PWS.*

B. The Plan Should Not be Confirmed Due to the Debtors' Failure to Pay Quarterly U.S. Trustee Fees Due and Owing

41. Under 11 U.S.C. § 1129(a)(12), a plan cannot be confirmed unless "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan."

42. As set forth in the Starr Declaration, the Debtors currently owe $272,301.16 in unpaid U.S. Trustee fees, which are payable under section 1930 of title 28. *See* Starr Dec., ¶ 9. The Plan makes no provision for these fees to be paid on the effective date of the plan. Therefore, the Plan cannot be confirmed. *See* 11 U.S.C. § 1129(a)(12).

43. Pursuant to 28 U.S.C. § 1930(a)(6), a quarterly fee must be paid to the U.S. Trustee "in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed," or closed. 28 U.S.C. § 1930(a)(6); *see United States Trustee v. Gryphon at the Stone Mansion, Inc.*, 166 F.3d 552, 554 (3d Cir. 1999).

44. As the fee owed in a particular quarter is determined solely by operation of statute, it is not subject to the agreement of the parties, nor is it subject to adjustment by the courts. *See, e.g., Walton v. Jamko, Inc. (In re Jamko, Inc.*), 240 F.3d 1312, 1314 (11th Cir. 2001) (noting that calculation of fee is mandated by statute); *Office of the U.S. Trustee v. Hays Builders, Inc. (In re Hays Builders, Inc.)*, 144 B.R. 778, 779 (W.D. Tenn. 1992).

45. In cases that are jointly administered pursuant to Federal Rule of Bankruptcy Procedure 1015(b), the U.S. Trustee may allow the debtors to file a single consolidated operating report every month. Jointly administered cases each remain separate cases, however, and there is no statutory authority whereby the U.S. Trustee can waive the requirement that each Chapter 11 case must report and pay fees on its disbursements.

46. Quarterly fees are calculated upon "disbursements," and range from a minimum of $325 when disbursements total less than $15,000 to a maximum of $30,000 when disbursements total $30 million or more. *See* 28 U.S.C. § 1930(a)(6). Section 1930(a)(6) imposes no limitation on the source of the "disbursements" to be used in calculating quarterly fees, and it imposes quarterly fees "on each case under chapter 11." As a result, "disbursements" are not simply limited to payments made by a debtor from its own account, or merely the payment of the expenses of operating a debtor's business, but includes any and all disbursements made by, or on behalf of, a debtor. *See In re Genesis Health Ventures, Inc.*, 402 F. 3d 416 (3d Cir. 2005).

47. In *Genesis Health*, as in the present case, certain of the debtors held disbursing accounts that were used to pay the various financial obligations of all the debtors, such as accounts payable, payroll and taxes. *See id.* at 419. As is the case here, in calculating their quarterly fees, the *Genesis Health* debtors treated all disbursement as having been made by those debtors who held the disbursing accounts from which the payments had been made. If instead the disbursements had been attributed to those debtors for whom the disbursements were made, as the U.S. Trustee asserted they should, the quarterly fees would have been many times what the debtors actually paid. *Id*. The U.S. Trustee objected to the debtors' plan on

this basis. The Bankruptcy Court agreed with the U.S. Trustee's position and ordered the debtors to pay the deficiency. The District Court affirmed. *Id.* at 420.

48. The Third Circuit agreed with the Bankruptcy Court and the District Court, holding that, "[p]ayments made on behalf of a debtor, *whether made directly or indirectly through centralized disbursing accounts*, constitute that particular debtor's disbursements for the purpose of quarterly fees calculations under § 1930(a)(6)." *Id.* at 422 (emphasis added).

49. This Court's decision in *In re Charter Behavioral Health Systems, LLC,* 292 B.R. 36 (Bankr. D. Del .2003)(Walrath, J.) is consistent with *Genesis Health.* In *Charter Behavioral*, as in *Genesis Health* and the present case, the debtors used a centralized cash management system by which one of the debtors paid all of the expenses of the other debtors. *See* 292 B.R. at 44. The debtors argued, as they do here, that in calculating the amount of quarterly fees due the word "disbursement" set forth in 28 U.S.C. § 1930(a)(6) means who writes the check. The U.S. Trustee argued that the term means the payment of an expense of a debtor, regardless of who writes the check. *Id.*

50. This Court held that, "the plain language of the statute supports the UST argument that the word disbursement includes, as to the individual Debtors, the payment of their operating expenses." *Id*. As the Court explained:

> [T]the proper interpretation of the term "disbursements" is whose expense is being paid. In most instances, it will be the entity that is legally obligated on the debt. But in some instances it may be necessary to determine *who benefited by the expense*. For example, if debtor X is the tenant under a lease, both the legal obligation and the expense for the rent due under that lease would be X's. Where, however, one debtor is listed as the tenant under a lease and another debtor is the one actually using the facility, it is the latter whose expense it is and the latter who should be charged with the UST fee for the payment of that expense.

Id. at 48 (emphasis added).

51. Thus, under both *Genesis* and *Charter Behavioral*, it does not matter in the present cases which of the Debtor entities is making payments to vendors, or which of the Debtor entities has contracts with those vendors; if goods or services are being purchased for the benefit of a store owned by a particular Debtor, then those disbursements are considered disbursements of that particular Debtor for purposes of calculating quarterly fees. The same is true with respect to payroll. Even if a single Debtor issues checks for the payroll of all employees working in all stores owned by all other Debtors, the disbursements are properly attributed to the Debtors that own the stores in which the employees work, because those Debtors are the ones benefiting from their employees being paid.

52. Using the P&L statements prepared by the Debtors for each individual store, which were included in the Debtors' MORs, the Office of the U.S. Trustee has calculated that the Debtors owe $ 272,301.16 in quarterly fees, plus interest, through January 31, 2012. The Debtors have refused to pay these fees, and the Plan makes no provision for their payment by the Effective Date. Therefore, the Plan should not be confirmed, as it fails to comply with 11 U.S.C. § 1129 (a)(12).

CONCLUSION

53. As detailed above, the Amended Plan is not confirmable because it contains release, injunctive and exculpation provisions that are contrary to applicable law in this District, and which effectively provide a discharge of these Debtors in contravention of the provisions of the Bankruptcy Code. The Amended Plan also is not confirmable because it does not comply with 11 U.S.C. § 1129 (a)(12), due to the Debtors' failure to pay all quarterly fees.

54. The U. S. Trustee leaves the Debtors to their burden and reserves any and all rights, remedies and obligations to, *inter alia*, complement, supplement, augment, alter

and/or modify this objection, file an appropriate Motion and/or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery.

WHEREFORE, the U. S. Trustee respectfully requests that this Court issue an order denying confirmation of the Amended Plan, and/or granting such other relief as this Court deems appropriate, fair and just.

Dated: February 17, 2012
Wilmington, Delaware

Respectfully submitted,

ROBERTA A. DeANGELIS
UNITED STATES TRUSTEE

By: */s/ Juliet Sarkessian*
Juliet Sarkessian, Esquire
Trial Attorney
United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
(302) 573-6491
(302) 573-6497 (Fax)

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
CB HOLDING CORP., et al.,[1]	)	Case No. 10-13683 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	

DEBTORS' MODIFIED FIRST AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown's Acquisition Corp. (8367); Charlie Brown's at Clifton, Inc. (7309); Charlie Brown's Mark Corp. (3569); Charlie Brown's Montclair, Inc. (4223); Charlie Brown's 1981, Inc. (7781); Charlie Brown's of Allentown, L.L.C. (8420); Charlie Brown's of Alpha, Inc. (9083); Charlie Brown's of Berwyn, LLC (3347); Charlie Brown's of Blackwood, L.L.C. (5698); Charlie Brown's of Bloomsburg, LLC (3326); Charlie Brown's of Brielle, Inc. (8115); Charlie Brown's of Carlstadt, Inc. (6936); Charlie Brown's of Chatham, Inc. (2452); Charlie Brown's of Commack LLC (4851); Charlie Brown's of Denville, Inc. (1422); Charlie Brown's of East Windsor, LLC (2747); Charlie Brown's of Edison, Inc. (8519); Charlie Brown's of Egg Harbor Twp., LLC (none); Charlie Brown's of Franklin, LLC (5232); Charlie Brown's of Garden City, LLC (7440); Charlie Brown's of Hackettstown, L.L.C. (7493); Charlie Brown's of Harrisburg, LLC (1085); Charlie Brown's of Hillsborough, Inc. (0344); Charlie Brown's of Holtsville, LLC (0138); Charlie Brown's of Jackson, LLC (3478); Charlie Brown's of Lacey, L.L.C. (6282); Charlie Brown's of Lakewood, Inc. (0156); Charlie Brown's of Langhorne, LLC (3392); Charlie Brown's of Lynbrook LLC (2772); Charlie Brown's of Maple Shade, Inc. (0404); Charlie Brown's of Matawan, Inc. (8337); Charlie Brown's of Middletown LLC (7565); Charlie Brown's of Oradell, Inc. (0348); Charlie Brown's of Pennsylvania, Inc. (6918); Charlie Brown's of Piscataway, LLC (8285); Charlie Brown's of Reading, LLC (1214); Charlie Brown's of Scranton, LLC (9817); Charlie Brown's of Selinsgrove, LLC (6492); Charlie Brown's of Springfield, LLC (9892); Charlie Brown's of Staten Island, LLC (1936); Charlie Brown's of Tinton Falls, Inc. (6981); Charlie Brown's of Toms River, LLC (5492); Charlie Brown's of Union Township, Inc. (8910); Charlie Brown's of Trexlertown, LLC (6582); Charlie Brown's of Wayne, Inc. (4757); Charlie Brown's of West Windsor, Inc. (0159); Charlie Brown's of Williamsport LLC (8218); Charlie Brown's of Woodbury, Inc. (0601); Charlie Brown's of York, LLC (0980); Charlie Brown's of Yorktown, LLC (7855); Charlie Brown's Restaurant Corp. (7782); Charlie Brown's Steakhouse Fishkill, Inc. (9139); Charlie Brown's Steakhouse Woodbridge, Inc. (1906); Charlie Brown's, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What's Your Beef V, Inc. (4719). The Debtors' address is 1450 Route 22 West, Mountainside, NJ 07092.

28. *Compensation and Benefits Programs* means any savings plans, profit-sharing plans, pension or retirement plans (including, but not limited to, any plans qualified under Internal Revenue Code § 401(a)), healthcare plans, disability plans, benefit plans, life, accidental death, and dismemberment insurance, and any similar plans maintained by any of the Debtors for the benefit of any of their employees at any time, but specifically excluding any Insurance Policies and the Vested Insurance Agreements or any collateral or security related thereto.

29. *Confirmation* means the entry of the Confirmation Order by the Bankruptcy Court, subject to all of the conditions specified in Article IX of the Plan having been satisfied or waived pursuant to Section IX.C of the Plan.

30. *Confirmation Date* means the date upon which the Confirmation Order is entered on the docket of the Bankruptcy Court.

31. *Confirmation Hearing* means the hearing held by the Bankruptcy Court, pursuant to Bankruptcy Code § 1128, to consider Confirmation of the Plan, as the same may be adjourned or continued from time to time.

32. *Confirmation Order* means the order of the Bankruptcy Court confirming the Plan.

33. *Consummation* means the occurrence of the Effective Date.

34. *Creditors Committee* means the committee of unsecured creditors appointed in the Chapter 11 Cases by the United States Trustee, pursuant to Bankruptcy Code § 1102, on or about December 1, 2010 (ECF No. 95), as constituted from time to time.

35. *CRG* means CRG Partners Group, LLC, in its capacity as the Debtors' restructuring advisors and as having provided the Chief Restructuring Officer.

36. *Debtor Releasees* collectively means: the Debtors and their respective predecessors, successors, and assigns and each of their current and former officers and directors, employees, stockholders, members, subsidiaries, affiliates, principals, agents, advisors, financial advisors, attorneys, accountants, investment bankers, consultants, underwriters, appraisers, representatives, and other Professionals, in each case in their respective capacities as such, and any Person claimed to be liable derivatively through any such Person, other than Messrs. Michael Mulligan, Russell D'Anton, and Michael D'Anton and their respective family members or relatives or any entity in which they may have an ownership, partnership, shareholder, membership, pecuniary, or other interest and except as otherwise set forth in the Plan.

37. *Debtors' Releases* shall have the meaning ascribed thereto in Section X.E of the Plan.

38. *DIP Facility* means the debtor-in-possession financing arrangement and financial accommodations between the Debtors and the DIP Facility Lender, as approved by the Bankruptcy Court pursuant to the terms and conditions set forth in the DIP Facility Order, as the

106. *Professional Fee Bar Date* shall have the meaning ascribed thereto in Section II.A.(b) of the Plan.

107. *Professional Fee Escrows* shall have the meaning ascribed thereto in Section II.A.(b) of the Plan.

108. *Proof of Claim* means any written statement timely and properly completed and filed in the Chapter 11 Cases, in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and/or any applicable order of the Bankruptcy Court by a Creditor in which such Creditor sets forth the amount purportedly owed and sufficient detail to identify the basis for a Claim.

109. *Pro Rata* means proportionately, so that with respect to an Allowed Claim, the ratio of (a)(i) the amount of property distributed on account of a particular Allowed Claim to (ii) the amount of that particular Allowed Claim is the same as the ratio of (b)(i) the amount of property distributed on account of all Allowed Claims of the Class in which the particular Allowed Claim is included to (ii) the amount of all Allowed Claims in that Class.

110. *Purchaser(s)* means the purchaser(s) under the respective Asset Purchase Agreement(s).

111. *Rejected Contract Claim Bar Date* means the date that is *30 days after the date of filing and service of a notice of the occurrence of the Effective Date*, which notice shall state the deadline by which Rejection Claims must be filed.

112. *Rejection Claim* means any Claim for amounts due as a result of the rejection of any Executory Contract pursuant to Bankruptcy Code § 365 that is rejected by the Debtors under Article VII of the Plan, *which Claim must be filed by the Rejected Contract Claim Bar Date.*

113. *Released Parties* means all Entities, including all Debtor Releasees and all Third-Party Releasees, granted a release by the Debtors in Section X.E of the Plan or by the Releasing Parties in Section X.F of the Plan.

114. *Releasing Parties* collectively means all Released Parties (including the DIP Facility Lender, the Administrative Agent, the Pre-Petition Lenders, the Creditors Committee, the Second Lien Noteholders, and all other Debtor Releasees and Third-Party Releasees) and each and every other Person that has held, holds, or may hold a Claim or Equity Interest that votes to accept the Plan.

115. *Sale Closing Date* means the date that all components of a particular Sale or a portion thereof fully closes in accordance with the terms of the applicable Sale Order and Asset Purchase Agreement.

116. *Sales* collectively means all of the Debtors' sales of assets under the terms of the applicable Sale Orders, including liquor license sales, closed restaurant location sales, and the

135. *Third-Party Releasees* collectively means: (a) the Pre-Petition Lenders and the DIP Facility Lender, solely in their respective capacities as such; (b) the Administrative Agent, solely in its capacity as such; (c) the Creditors Committee and the members thereof, solely in their respective capacities as such; (d) the Second Lien Noteholders; (e) with respect to each of the foregoing Persons, and except as otherwise set forth in the Plan, such Person's predecessors, successors, and assigns, and current and former directors, officers, employees, stockholders, members, subsidiaries, affiliates, principals, agents, advisors, financial advisors, attorneys, accountants, investment bankers, consultants, underwriters, appraisers, representatives, and other professionals, in each case in their respective capacities as such; and (f) any Person claimed to be liable derivatively through any Person referred to in clauses (a), (b), (c), (d), or (e) of this definition.

136. *Transferred Causes of Action* means all Causes of Action, including, but not limited to, D&O Claims, that (i) have not been released in the Plan or pursuant to the Confirmation Order, the DIP Facility Order, or any other order of the Bankruptcy Court and (ii) do not otherwise constitute assets acquired by, or transferred to, any of the Purchasers or any other non-Debtor party prior to the Effective Date and the products and proceeds thereof.

137. *Transferred Property* means, except as otherwise set forth in the Plan or in the Confirmation Order, (i) any and all Avoidance Actions and other Transferred Causes of Action and any products or proceeds thereof; (ii) the Office Shared Proceeds; (iii) the D&O Shared Proceeds (to the extent available); (iv) the Sharing Percentage Recovery; (v) the Plan Fund; and (vi) all other remaining unliquidated property and Assets of the Debtors or the Estates (including any Preserved Collateral), other than (a) any collateral securing an Other Secured Claim that is to be distributed to the Holder of such Claim in the manner provided in Section III.B.2 of the Plan, (b) any assets that were the subject of any of the Sales or any other sale or transfer approved pursuant to a Final Order of the Bankruptcy Court or was otherwise subject to a motion to sell or transfer pending as of the Effective Date, or (c) any other Assets that were otherwise previously duly transferred, sold, distributed, waived, abandoned, or disposed of as of the Effective Date.

138. *Unimpaired* means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is not Impaired.

139. *United States Trustee* means the United States Department of Justice, Office of the United States Trustee for Region 3.

140. *Unsecured Creditor Settlement* shall have the meaning ascribed thereto in Section IV.K of the Plan.

141. *Utility Companies* means those Persons who, in connection with the operation of the Debtors' businesses and the Debtors' management of their properties, supplied or provided electricity, water, sewer, telephone, communications, trash collection, and/or other services of this general character to any of the Debtors prior to the Effective Date.

principles of equitable subordination, Bankruptcy Code § 510, contractual agreement, the DIP Facility Order (with respect to the Other Assets Resolution Consideration), or otherwise, and any and all such rights are not settled, compromised, or released pursuant to the Plan.

B. General Plan Injunction

Except as may otherwise be provided in the Plan or in the Confirmation Order, upon the occurrence of the Effective Date, the rights afforded and the payments and distributions to be made under the Plan shall be in complete exchange for, and in full and unconditional settlement, satisfaction, and release of, any and all existing debts, Claims, and Equity Interests of any kind, nature, or description whatsoever against the Debtors or any of the Debtors' Assets or other property and shall effect a full and complete release and termination of all Liens, security interests, or other Claims, Equity Interests, interests, or encumbrances upon all of the Debtors' Assets and property except for the security interests and Liens preserved in favor of the Pre-Petition Lenders pursuant to Section III.B.(1)(d) of the Plan. No Creditor or Equity Interest Holder of the Debtors nor any other Person may receive any distribution from the Debtors, the Estates, the Liquidating Trustee, the Liquidating Trust, or their respective Assets or seek recourse against the Debtors, the Estates, the Liquidating Trustee, the Liquidating Trust, or any of their respective Assets, except for those distributions expressly provided for under the Plan. All Persons are precluded from asserting against any property that is to be distributed under the terms of the Plan any Claims, obligations, rights, Causes of Action, liabilities, Liens, or Equity Interests based upon any act, omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, other than to the extent expressly provided for in the Plan or the Confirmation Order, whether or not (a) a Proof of Claim or proof of Equity Interest based upon such debt or Equity Interest (as applicable) is filed or deemed filed under Bankruptcy Code § 501; (b) a Claim or Equity Interest based upon such debt or Equity Interest (as applicable) is allowed under Bankruptcy Code § 502; or (c) the Holder of a Claim or Equity Interest based upon such debt or Equity Interest (as applicable) has voted to accept the Plan or is deemed to have accepted the Plan under Bankruptcy Code § 1126(f). ***All Holders of Liens, Claims, and/or Equity Interests arising prior to the Effective Date shall be permanently barred and enjoined from asserting against the Debtors, the Estates, the Liquidating Trustee, the Liquidating Trust, or their respective Assets any of the following actions on account of such Claim or Equity Interest: (a) commencing or continuing in any manner any action or other proceeding on account of such Lien, Claim, or Equity Interest against property to be distributed under the terms of the Plan or the property of any of the Debtors, the Estates, the Liquidating Trustee, or the Liquidating Trust, other than to enforce any right to distribution with respect to such property under the Plan; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, Lien, or order against any of the property to be distributed under the terms of the Plan or the property of any of the Debtors, the Liquidating Trustee, or the Liquidating Trust, other than as permitted under subclause (a) of this sentence; (c) creating, perfecting, or enforcing any Lien, claim, or encumbrance against any property to be distributed under the terms of the Plan or the property of any of the Debtors, the Liquidating Trustee, or the Liquidating Trust; (d) asserting any right of setoff or subrogation of any kind, directly or indirectly, against any***

obligation due the Debtors, the Liquidating Trustee, the Liquidating Trust, or any of their respective Assets or any other property of the Debtors or the Liquidating Trust, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; and (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

C. Terms of Existing Injunctions or Stays

Unless otherwise provided in the Plan, all injunctions and stays provided for in the Chapter 11 Cases pursuant to Bankruptcy Code §§ 105, 362, and 525, and otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. *The Confirmation Order shall permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively, or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities released pursuant to the Plan.*

D. Exculpation

NEITHER THE DEBTORS, THE ESTATES, THE LIQUIDATING TRUST, THE LIQUIDATING TRUSTEE, THE CREDITORS COMMITTEE AND ITS MEMBERS SOLELY IN THEIR CAPACITIES AS MEMBERS OF THE CREDITORS COMMITTEE AND NOT IN ANY OTHER CAPACITY, THE ADMINISTRATIVE AGENT, THE PRE-PETITION LENDERS, THE DIP FACILITY LENDER, THE SECOND LIEN NOTEHOLDERS, NOR ANY OF THEIR RESPECTIVE PRESENT OR FORMER OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, ADVISORS, PROFESSIONALS, ATTORNEYS, OR AGENTS ACTING IN SUCH CAPACITY OR THEIR RESPECTIVE AFFILIATES, SHALL HAVE OR INCUR ANY LIABILITY (WHETHER ARISING UNDER CONTRACT, TORT, OR FEDERAL OR STATE SECURITIES OR EMPLOYMENT AND/OR LABOR LAWS OR REGULATIONS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, NOW EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE) TO, OR BE SUBJECT TO ANY RIGHT OF ACTION BY, THE DEBTORS, THE LIQUIDATING TRUST, THE LIQUIDATING TRUSTEE, OR ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST, OR ANY OTHER PARTY-IN-INTEREST IN THESE CHAPTER 11 CASES, OR ANY OF THEIR RESPECTIVE AGENTS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, FINANCIAL ADVISORS, PROFESSIONALS, ATTORNEYS, OR AFFILIATES, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY PRE-PETITION OR POST-PETITION ACT TAKEN OR OMITTED TO BE TAKEN OR ANY OTHER TRANSACTION, EVENT, OR OCCURRENCE IN ANY WAY CONNECTED WITH, ARISING FROM, OR RELATING TO (A) THE DEBTORS, (B) THE CHAPTER 11 CASES OR THE COMMENCEMENT OR ADMINISTRATION THEREOF, (C) THE DISCLOSURE STATEMENT, THE PLAN (EITHER PRIOR TO CONFIRMATION OR APPROVAL OF SAME OR AS THE SAME MAY BE CONFIRMED OR OTHERWISE APPROVED BY THE BANKRUPTCY COURT), INCLUDING THE NEGOTIATION AND FORMULATION THEREOF, OR ANY ORDERS

OF THE BANKRUPTCY COURT RELATED THERETO (INCLUDING THE CONFIRMATION ORDER), AND THE DOCUMENTS NECESSARY TO EFFECTUATE THE PLAN (INCLUDING THE LIQUIDATING TRUST AGREEMENT) OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (D) THE SOLICITATION OF ACCEPTANCES AND REJECTIONS OF THE PLAN AND THE RELEASES AND WAIVERS PROVIDED FOR IN THE PLAN, (E) THE IMPLEMENTATION AND ADMINISTRATION OF THE PLAN AND THE LIQUIDATING TRUST, (F) THE DISTRIBUTION OF PROPERTY UNDER THE PLAN (INCLUDING WITH RESPECT TO THE PRESERVED COLLATERAL), (G) ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN, THE LIQUIDATING TRUST, OR THE CHAPTER 11 CASES, (H) THE SALES, INCLUDING THE NEGOTIATION AND CONSUMMATION THEREOF, AND THE SALE ORDERS, OR (I) ANY OTHER ORDER OF THE BANKRUPTCY COURT ENTERED IN THE CHAPTER 11 CASES, EXCEPT FOR ANY LIABILITY ARISING FROM CONDUCT CONSTITUTING FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER.

E. Releases by the Debtors and the Estates

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE CONFIRMATION DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE (SUCH THAT THE DEBTORS, THE LIQUIDATING TRUSTEE AND THE LIQUIDATING TRUST, OR ANY OTHER PARTY ACTING ON BEHALF OF THE ESTATES SHALL NOT RECEIVE OR OTHERWISE BE ENTITLED TO ASSERT ANY CLAIM OR CAUSE OF ACTION RELEASED HEREUNDER), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES (INCLUDING THE WAIVER OF THE SECOND LIEN NOTE CLAIMS AND OTHERWISE PURSUANT TO THE UNSECURED CREDITOR SETTLEMENT), THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE SATISFACTION AND RELEASE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID AND TRANSACTIONS UNDERTAKEN (INCLUDING THE CREATION AND FUNDING OF THE LIQUIDATING TRUST) PURSUANT HERETO; (2) THE UNSECURED CREDITOR SETTLEMENT; AND (3) THE SERVICES OF THE DEBTORS' PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS, PROFESSIONALS, ATTORNEYS, SHAREHOLDERS, AND ADVISORS IN FACILITATING THE EXPEDITIOUS IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST AND THE ASSOCIATED TRANSACTIONS CONTEMPLATED HEREBY AND BY THE LIQUIDATING TRUST AGREEMENT, EACH OF THE DEBTORS, IN THEIR INDIVIDUAL CAPACITIES AND AS DEBTORS-IN-POSSESSION, RELEASE AND SHALL BE DEEMED TO HAVE PROVIDED A FULL RELEASE TO EACH RELEASED PARTY (AND EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FULLY RELEASED BY THE DEBTORS AND THE ESTATES) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING OR OTHERWISE

ASSERTABLE AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THE ESTATES, INCLUDING THOSE THAT ANY OF THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (DERIVATIVELY OR OTHERWISE) ON BEHALF OR IN THE NAME OF ANY OF THE DEBTORS OR ANY OF THE ESTATES; PROVIDED, HOWEVER, THAT NOTHING IN THE PLAN SHALL RELEASE OR BE DEEMED TO RELEASE LIABILITY OF ANY PERSON ARISING FROM CONDUCT CONSTITUTING FRAUD OR WILLFUL MISCONDUCT, AS DETERMINED BY A FINAL ORDER.

Notwithstanding anything contained in the Plan to the contrary, the Plan does not release the D&O Claims or any Avoidance Actions or any other Causes of Action, whether direct, derivative, or otherwise, that the Debtors, the Estates, or the Liquidating Trustee have or may have now or in the future solely to the extent that any such claims or actions are against any Non-Released Parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtors' releases provided for in this Section X.E (the "*Debtors' Releases*"), which include by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtors' Releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties (including the waiver of the Second Lien Note Claims and otherwise pursuant to the Unsecured Creditor Settlement); (2) a good-faith settlement and compromise of the claims released by the Debtors hereby; (3) in the best interests of the Debtors, the Estates, and all Holders of Claims and Equity Interests; (4) fair, equitable, and reasonable under the circumstances of these Chapter 11 Cases; (5) given and made after due notice and an opportunity for a hearing; *and (6) a bar to any of the Debtors' or the Liquidating Trustee's asserting any claim or cause of action released pursuant to this Section X.E.*

F. Releases by the Releasing Parties

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE CONFIRMATION DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS ALSO A THIRD-PARTY RELEASEE) SHALL PROVIDE A FULL RELEASE (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) TO ALL OF THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING OR OTHERWISE ASSERTABLE AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR

EMPLOYMENT AND/OR LABOR LAWS OR REGULATIONS, OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THE ESTATES, INCLUDING THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES OR THE PLAN. **NOTWITHSTANDING ANYTHING IN THE PLAN TO THE CONTRARY, THE PLAN DOES NOT RELEASE THE D&O CLAIMS OR ANY CLAIMS, AVOIDANCE ACTIONS, OR OTHER CAUSES OF ACTION, WHETHER DIRECT, DERIVATIVE, OR OTHERWISE, THAT THE RELEASING PARTIES MAY HAVE NOW OR IN THE FUTURE AGAINST ANY NON-RELEASED PARTIES, OR ANY LIABILITY OF ANY PERSON ARISING FROM CONDUCT CONSTITUTING FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER.**

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases provided for in this Section X.F, which include by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties (including the waiver of the Second Lien Note Claims and otherwise pursuant to the Unsecured Creditor Settlement); (2) a good-faith settlement and compromise of the claims released in this Section X.F; (3) in the best interests of the Debtors, the Estates, and all Holders of Claims and Equity Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and an opportunity for a hearing; *(6) a bar to any of the Releasing Parties' asserting any claim released pursuant to this Section X.F; and (7) be deemed to have been entered into consensually, by virtue of the applicable Releasing Party's having voted to accept the Plan.*

ALL RELEASING PARTIES SHALL BE FOREVER PRECLUDED FROM ASSERTING ANY OF THE CLAIMS RELEASED PURSUANT TO THIS SECTION X.F AGAINST ANY OF THE RELEASED PARTIES OR ANY OF THE RELEASED PARTIES' RESPECTIVE ASSETS. TO THE EXTENT THAT ANY RELEASING PARTY RECEIVES MONETARY DAMAGES FROM ANY RELEASED PARTY ON ACCOUNT OF ANY CLAIM RELEASED PURSUANT TO THIS SECTION X.F, SUCH RELEASING PARTY HEREBY ASSIGNS ALL OF ITS RIGHT, TITLE, AND INTEREST IN AND TO SUCH RECOVERY TO THE RELEASED PARTIES AGAINST WHOM SUCH MONEY IS RECOVERED.

G. Injunction Related to Releases.

The Confirmation Order will enjoin, and shall be deemed to enjoin, permanently the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to the Plan (including the releases set forth in this Article X).

H. Limits to Release and Exculpation Provisions

Notwithstanding anything to the contrary in the Plan or in the Confirmation Order, nothing in the Plan (including anything set forth in Article X of the Plan) shall or shall be

deemed to (i) constitute a release, discharge, or waiver by any Debtor, Estate, Releasing Party, the Liquidating Trustee, the Liquidating Trust, or any other Person of, or (ii) impose any injunction against the enforcement of, any claim or cause of action or any potential claim or cause of action against Messrs. Michael Mulligan, Russell D'Anton, or Michael D'Anton and their respective family members or relatives or any entity in which they may have an ownership, partnership, shareholder, membership, pecuniary, or other interest. In addition, nothing in the Plan or the Confirmation Order shall or shall be deemed to constitute a release, discharge, or waiver by (i) any Professional of any Professional Fee Claim against the Debtors, the Estates, or any other party or (ii) any of the Pre-Petition Lenders of any claim or cause of action that any of them may have against any other Pre-Petition Lender.

I. Indemnification of Debtors' Officers and Directors.

Pursuant to an indemnity agreement to be executed between the Debtors and the Administrative Agent in form and substance acceptable to the parties thereto, the Administrative Agent shall indemnify and hold harmless all officers and directors of any of the Debtors serving as of October 1, 2010, or at any time thereafter, in an aggregate amount of up to $500,000 (the "*Indemnity Amount*"), with respect to all costs of defense, settlements, and/or payments upon any judgments that may be entered against any such parties, in connection with certain causes of action, claims, liabilities, losses, expenses, and damages asserted against any such officer or director on account of, or otherwise arising out of or in connection with their relationship with the Debtors.

ARTICLE XI.
MISCELLANEOUS

A. Settlement of Claims and Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good-faith compromise of all claims or controversies relating to the contractual, legal, and other rights that a Holder of a Claim may have with respect to any Allowed Claim or any distribution to be made on account thereof. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of this compromise and settlement of all such claims or controversies, and the Bankruptcy Court's finding that such compromise and settlement is in the best interests of the Debtors, the Estates, and Holders of Claims and Equity Interests, a proper exercise of the Debtors' business judgment, and is fair, equitable, and reasonable. The entry of the Confirmation Order shall also constitute the Bankruptcy Court's approval of the Unsecured Creditor Settlement.

B. Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date, to the extent required by applicable law, or, if not required to be paid on or prior to the Effective Date, by the Debtors or the Liquidating Trustee as soon as practicable following the

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re CB HOLDING CORP., *et al.*, Debtors.	Chapter 11 Case No. 10-13683 (MFW) (Jointly Administered) **Hearing Date: February 23, 2012 at 2 p.m.** **Objections Due: February 17, 2012, at 4 p.m.**

DECLARATION OF KAREN E. STARR, BANKRUPTCY ANALYST, IN SUPPORT OF UNITED STATES TRUSTEE'S OBJECTION TO CONFIRMATION OF DEBTORS' MODIFIED FIRST AMENDMENT JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, Karen E. Starr, of full age, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Bankruptcy Analyst for the Office of the United States Trustee, Region 3, District of Delaware, and I have full knowledge of the facts set forth herein.

2. I have a Bachelor of Science degree in Accounting from the University of Delaware. I have been employed as a Bankruptcy Analyst for the Office of the United States Trustee for approximately two years. Prior to my employment with the Office of the United States Trustee, I was employed as a Certified Public Accountant with several accounting firms for over twenty years. I have been licensed as a Certified Public Accountant in the State of Delaware since 1982.

3. On November 30, 2010, I, together with Jeffrey Heck, another bankruptcy analyst with the Office of the U.S. Trustee, conducted an Initial Debtor Interview ("IDI") with representatives of the Debtors. Present at that meeting and representing the Debtors were the following: Edmund Schwartz, Chief Financial Officer of the Debtor, Gary Lembo and Craig Boucher of CRG Partners, Christopher Samis, Esquire, of Richards Layton & Finger, and Maya

Peleg, Esquire, of Cahill Gordon & Reindel. The purpose of the IDI is to obtain an understanding of the financial background of the Debtors, to explain the reporting required of the Debtors, and to discuss the U.S. Trustee quarterly fees.

4. Regarding U.S. Trustee quarterly fees, we discussed how the amount of the fee owed is substantiated by the Monthly Operating Reports ("MORs"), which the Debtors are required to file. The MORs must include a schedule of cash receipts and disbursements, which reflect cash disbursements made by the Debtors during the subject month.

5. The Debtors' representatives explained that the Debtors do not maintain separate bank accounts for each individual Debtor. Rather, the Debtors utilize a centralized cash management system in the ordinary course of business to enable them to manage their cash and to meet their obligations in a timely and efficient manner. All of the bank accounts are in the name of a single debtor, Charlie Brown's Acquisition Corp. The Debtors' representatives indicated that it would be extremely time-consuming for the Debtors to specifically allocate each disbursement to each individual Debtor. Therefore, we agreed instead to allocate the disbursements based on the profit and loss statements, as set forth below, to provide a reasonable estimate of the cash disbursements per Debtor as required by the MORs.

6. The U.S. Trustee operating guidelines require that a separate statement of operations be submitted for each of the individual Debtors in each MOR. The Debtors' representatives explained that the Debtors do not maintain profit and loss statements by Debtor entity, but rather by individual store locations. Individual Debtors may own one, two, or more stores. All revenues and direct expenses are recorded by store, and no administrative expenses from Charlie Brown's Acquisition Corp. are pushed to the individual stores. The Debtors' representatives agreed to provide me with a list of which stores were owned by which Debtor

entity, and subsequently did provide me with that list. We agreed to the submission of profit and loss statements by individual store location, rather than by Debtor entity. We further agreed to allow the Debtors to submit a consolidated schedule of cash receipts and disbursements in each MOR.

7. The Debtors have filed each of their MORs with a single schedule of cash receipts and disbursements, and separate profit and loss statements for each of the individual store locations, which is consistent with our discussions at the IDI. For the purpose of calculating U.S. Trustee fees, and as agreed, disbursements were based on the direct expenses of the individual stores as shown on their separate profit and loss statements. To determine the U.S. Trustee fees owed by a particular Debtor, I added up the direct expenses of each of the individual stores owned by that Debtor. For these calculations I used the corporate chart provided by the Debtors that set forth which individual stores were owned by each Debtor. To determine what administrative expenses would be attributed to Charlie Brown's Acquisition Corp., I subtracted out the total of all direct expenses associated with individual stores from the total aggregate disbursements of all the Debtors as per the schedule of consolidated cash receipts and disbursements. The remainder was estimated to be administrative expenses of Charlie Brown's Acquisition Corp.

8. Based on the foregoing allocation method, I determined that 27 of the 72 Debtors (the "27 Operating Debtors") owe more than the minimum U.S. Trustee fees for at least some portion of the period from the commencement of these cases through January 31, 2012. The remaining 45 Debtors owe the minimum U.S. Trustee fees. The U.S. Trustee fees billed through January 31, 2012 (covering the period through December 31, 2011) total $488,100.00, plus $2,001.16 in assessed interest through January 31, 2012.

9. For the period from the commencement of the case through January 31, 2012, all but one of the Debtors paid only the minimum U.S. Trustee fees. The remaining Debtor, Charlie Brown's Acquisition Corp., appears to have paid U.S. Trustee fees based on the total disbursements made by all of the Debtors. During this period, the Debtors paid a total of $217,800.00 out of the amount actually owed, which is $488,100.00 plus $2,001.16 in assessed interest, leaving a balance of $272,301.16 due and owing.

10. Trial counsel to the U.S. Trustee in these cases, Juliet Sarkessian, and I had a number of conversations with Debtors' counsel regarding payment of the outstanding U.S. Trustee fees. In those conversations, Debtors' counsel stated that the amount of fees the Debtors paid was calculated based on the fact that Charlie Brown's Acquisition Corp. paid the expenses of all Debtors. The Debtors' counsel also stated that the Debtors, other than Charlie Brown's Acquisition Corp., should not be treated as operating entities, even though such Debtors owned restaurants that were operating during the course of these bankruptcy cases.

11. The following information shows that the 27 Operating Debtors were separate operating entities and should be treated as such for the purpose of calculating U.S. Trustee quarterly fees:

a. The Statements of Financial Affairs (Question 1 – Income from operation of business) filed in the cases of each of the 27 Operating Debtors show dollar amounts for sales revenue.

b. The Statements of Financial Affairs (Question 20 – Inventories) filed in the cases of each of the 27 Operating Debtors indicate dollar amounts of inventory for each such Debtor.

c. Schedule B (Personal Property) filed in the cases of each of the 27 Operating Debtors indicates dollar amounts for petty cash, for furniture and equipment used in the business, and for inventory for each such Debtor.

d. The Debtors prepare MORs with profit and loss statements for each individual store location.

e. The 2008 Consolidated U.S. Corporate Income Tax Return for CB Holding Corp. and Subsidiaries for the fiscal year ended September 27, 2009 (the most current tax return available when these cases were filed), as prepared by PriceWaterhouseCoopers, includes consolidating schedules for both the balance sheet and taxable income. The consolidating balance sheets show cash, inventories, furniture and equipment, intangible assets, and intercompany receivables/payables for 24 of the 27 Operating Debtors. The consolidating schedule of taxable income shows sales, cost of goods sold, and operating expenses for those same 24 of the 27 Operating Debtors. The other 3 of the 27 Operating Debtors were not separately included in the tax return, presumably because they are limited liability companies (LLCs), which are disregarded entities for federal income tax purposes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 16, 2012

/s/ Karen E. Starr
Karen E. Starr