

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
STICKY’S HOLDINGS LLC, <sup>1</sup>	)	Case No. 24-10856 (JKS)
Debtors.	)	

**STICKY FINGERS RESTAURANTS LLC’S OBJECTION TO  
SUBCHAPTER V DEBTORS’ PLAN OF REORGANIZATION AND  
RESERVATION OF RIGHTS**

Sticky Fingers Restaurants, LLC (“SFR”), creditor and party-in-interest herein, hereby files this objection (“Objection”) to the Subchapter V Debtor’s Plan of Reorganization (“Plan”) filed by Sticky’s Holdings LLC and its affiliated debtors (collectively, the “Debtors”) and in support of thereof respectfully states as follows:

**PRELIMINARY STATEMENT**

1. While benefitting financially from infringing upon and using a name that was the same or substantially similar to that of SFR during the time period leading up to the filing of these Subchapter V Cases, the Debtors have now filed a plan that: (1) has questionable feasibility, (2) delays any repayment or distribution to its unsecured creditor constituency until three (3) years after the Plan’s Effective Date, (4) only projects two (2) quarterly payments to unsecured creditors in the total amount of \$56,123 on a pro rata basis for unsecured claims that are in excess of

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Sticky’s Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky’s BK I LLC (0423); Sticky’s NJ I LLC (5162); Sticky Fingers VII LLC (1491); Sticky’s NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky’s NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky’s WC I LLC (0427); Sticky’s Franchise LLC (5232); Sticky’s PA GK LLC (7496); Sticky’s Corporate LLC (5719); and Sticky’s IP LLC (4569).



\$650,000<sup>2</sup>, (5) fails to provide projections that sufficiently detail the Debtors' operations in order for interested parties to determine if the Plan commits the Debtors' projected disposable income to make Plan payments, and (6) contains overly broad release, injunction and exculpation provisions, regardless of the "Opt-Out" provision, creating impermissible third-party releases.

2. The Plan should be amended to more fulsomely set forth the anticipated recovery to the unsecured creditor constituency and the Plan's projections should be supplemented with additional detail to evidence that all of the Debtors' projected disposable income is being committed to make payments under the Plan. Moreover, the Plan payout period should be extended to five (5) years and the Plan should attach projections that extend through a five (5) year payout period so that creditors and parties-in-interest are able to determine if the Plan complies with the applicable provisions of §§ 1190 and 1191 of the Bankruptcy Code.

### **RESERVATION OF RIGHTS**

3. For purposes of complete disclosure, we note that SFR's principal and a representative of the Debtor have been engaged in settlement communications in an attempt to resolve SFR's claim against the Debtors, but a resolution has not been reached as of the date of the filing of this objection and reservation of rights. While a request was made for an extension of the confirmation objection deadline, the Debtors denied the extension request.

### **BACKGROUND**

4. SFR is the owner of the trademark "Sticky Fingers" for restaurant, bar and catering services and operates restaurants in Tennessee and South Carolina, commonly referred to as

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<sup>2</sup> The Plan on page 2 notes that claims were asserted against the Estates in the amount of \$110,000,000 which amount appears to include SFR's up to \$96,000,000 claim assessed by its expert which claim is currently unchallenged. The Plan then states the Debtors' belief that the universe of unsecured claims is significantly less, totaling approximately \$650,000.

“Sticky Fingers”. SFR is the plaintiff in the Pre-Petition IP Litigation<sup>3</sup>, a trademark infringement litigation filed against Sticky’s Holdings LLC that was pending in the United States District Court for the Southern District of New York, Case No. 22-cv-5606. SFR asserted claims for trademark infringement in violation of the Lanham Act, unfair competition and other related claims based on the Debtors’ willful misuse of SFR’s trademark, “Sticky Fingers.” It is irrefutable that the Debtors willfully infringed on SFR's highly valuable and unique trademark - "Sticky Fingers" - by calling its chicken finger business "Sticky Fingers" or "Sticky's" to build their restaurant business. The Debtors did so in the face of several Office Action Letters issued by the USPTO for substantially similar marks that made it clear that it infringed SFR's mark and another registered mark for "Sticky". The claims asserted in the Pre-Petition IP Litigation derive from, amongst other things, the Debtors’ use of a name that is the same or substantially similar to SFR’s trademark, “Sticky Fingers”.

5. It is SFR’s understanding that the Debtors own the trademark “Stickys. The Finger Joint” for restaurant, catering and take away food services and operates or operated its restaurants using the name “Stickys Finger Joint” and more recently “Sticky’s”.

6. Fact Discovery in the Pre-Petition IP Litigation concluded at the end of 2023 and the Pre-Petition IP Litigation was at the expert phase when the Debtors commenced these cases. SFR’s expert report was due by April 4, 2024; Debtors’ expert report was due by April 25, 2024; and SFR’s rebuttal report was due by May 3, 2024. SFR timely produced its expert report which was attached to the proofs of claim SFR filed against each of the Debtors<sup>4</sup>. SFR’s expert report

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

<sup>4</sup> SFR respectfully refers the Court to the filed proofs of claim and attachments thereto and incorporates them as if fully set forth herein.

established SFR having a claim of up to \$96 million based on the Debtors' gross sales from 2013 to 2022 (not including treble damages for willful infringement, interest, legal fees and costs).

7. Debtors' expert report was due on April 25, 2024, and, if produced, would have contained the deductions needed in order for SFR's expert to arrive at a final damages number pursuant to the Lanham Act.

8. Rather than submit its own expert report, just minutes before a court conference in the Pre-Petition IP Litigation scheduled for April 25, 2024, the Debtors commenced these cases. As a result, the District Court entered an order staying the Pre-Petition IP Litigation and the final determination of any damages in SFR's favor. Clearly, the Debtors' liability to SFR was a major factor in its decision to seek the protections afforded by the Bankruptcy Code.

9. The Debtors filed their cases on April 25, 2024. The Debtors filed the Plan on July 24, 2024. According to the Plan, "the Debtors will devote all of their projected Disposable Income toward the payment of Creditors." The Plan contains three (3) classes of claims and one (1) class of interests. Class 3 General Unsecured Claims are the only impaired class entitled to vote to accept or reject the Plan. According to the Plan, General Unsecured Claims are to receive "[P]ro rata payment in quarterly installments from Disposable Income commencing in Q3 2027 and ending on the Last Distribution Date."

10. Based on the Plan as filed, it is inconclusive if the Debtors are devoting all of their projected Disposable Income to pay their creditors and if the Plan is feasible based on the projections attached to the Plan as Exhibit B. To the extent the Plan is confirmed in its current form, unsecured creditors will see an inconsequential return. SFR, who has spent years and hundreds of thousands of dollars litigating the Pre-Petition IP Litigation, will receive next to nothing on its infringement claims while the Debtors will in all likelihood escape liability for

willful infringement of SFR's trademark and have no obligation to repay creditors after the proposed three (3) year payout period concludes, a result that is neither fair nor equitable to SFR and the entire unsecured creditor constituency.

### **ARGUMENT**

11. Bankruptcy Code §1191(d) defines “Disposable Income” as “the income that is received by the debtor and that is not reasonably necessary to be expended...(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.”

12. Section 1191(b) of the Bankruptcy Code provides that a nonconsensual plan must not “discriminate unfairly” and must be “fair and equitable” in order to be confirmed. The “fair and equitable” requirement under the Subchapter V provisions of the Bankruptcy Code require that a plan “provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan...” 1191(c) (2)(A).

13. The projections attached to the Plan propose to pay creditors \$944,666 over a period of three (3) years of which \$844,666 is the projected “discretionary income”. However, the itemized expenses and overhead costs set forth in the projections are not sufficiently detailed to determine if the expenses and costs are necessary for the operation of the Debtors’ restaurant business.

14. Further, the Plan and projections do not provide or otherwise account for the Debtors’ potential to either (1) earn additional revenue or (2) reduce costs and expenses from those projected.

15. In addition, the Plan and projections commit to only a three (3) year payout period where administrative and priority creditors will be paid in full, over time, on a quarterly basis while unsecured creditors receive no distributions until the 3<sup>rd</sup> quarter of 2027, and at that point in time, a negligible sum.

16. The Plan as proposed provides for quarterly payments over a 3-year period to the unimpaired Class 1 SBA Secured Claim, the unimpaired Class 2 Other Secured Claims, Administrative Claims in the aggregate projected amount of \$881,843 and Priority Claims in the aggregate projected amount of \$6,700. Payments to the impaired Class 3 General Unsecured Claims are projected to receive only two (2) payments: a payment in the third quarter of 2027 in the aggregate amount of \$4,679 and a payment in the 4<sup>th</sup> quarter of 2027 in the aggregate amount of \$51,445. The Plan makes no other funding commitment to the unsecured creditor class, whose filed claims are in excess of \$2,171,000 without attributing any amounts to SFR's claim which still needs to be adjudicated (whether via final adjudication of the Pre-Petition IP Litigation or final determination of its filed proofs of claim). The Plan is otherwise silent as to the percentage distribution or what unsecured creditors can anticipate receiving on account of their claims.

17. Any income the Debtors earn over and above the projected discretionary income and after subtracting necessary expenditures fits within the definition of "Disposable Income" as contained in the Bankruptcy Code and therefore must be included with Plan payments and creditor distributions. Otherwise, the Plan cannot be deemed fair and equitable.

18. The Plan must be clear that any potential additional disposable income not otherwise captured in the projections is committed to Plan payments. The Plan must ensure that any excess disposable income, including if there is additional revenue or new revenue streams that create disposable income, reduced costs that create disposable income or, as another example,

recovery on Avoidance Actions, is properly committed to make payments under the Plan. To deny creditors the benefit of future income or excess income is inequitable and provides a windfall to the Debtors.

19. In addition to the failure to clearly set forth that all disposable income will be used to fund Plan payments, there is also no explanation provided by the Debtors as to why the Plan should be confirmed without a commitment from the Debtors to pay its creditors for a five (5) year period. Considering the Plan is proposing that \$881,843 be paid to administrative claims and only \$56,123 to Class 3 General Unsecured Claims, some additional distribution is warranted to be made to the holders of allowed unsecured claims, which class, according to the filed claims register alone, aggregates at least \$2,171,000<sup>5</sup> (not including any amounts due SFR or any of the purported insider creditors) in unsecured obligations.

20. The insubstantial sums projected to be paid to unsecured creditors raises a more concerning issue, namely whether the Plan as proposed is even viable and if the Debtors have the financial wherewithal to fund the required Plan payments.

21. Section 3.1 of the Plan provides that “the Debtors believe that the Debtors will have enough Cash on hand on the Effective Date of the Plan to pay all the Claims and expenses that are entitled to be paid on the date”. The Plan continues in that same section to provide that “the projections attached hereto as **Exhibit B** demonstrate the Debtors’ ability to make all of the

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<sup>5</sup> This sum is taken from aggregating the amount of filed general unsecured claims on the Debtors’ claims register, not including SFR’s claim or the claims of Jonathan Sherman, who SFR understands to be an insider creditor. This sum has not been reconciled with the Debtors schedules. As set forth in footnote 2, the Plan on page 2 notes that claims were asserted against the Debtors in the amount of \$110,000,000 and then states the Debtors believe that the universe of unsecured claims is significantly less, totaling approximately \$650,000. It is not known if this \$650,000 sum includes the approximately \$576,000 judgment obtained by ELK33 East 3<sup>rd</sup> LLC against certain of the Debtors in the Corporate Office Litigation but it certainly does not account for damages if SFR prevails on its claim. Even assuming Debtors’ assertion of \$650,000 in unsecured claims is accurate, this amounts to no appreciable payment to general unsecured claims while administrative creditors will have been paid \$881,843.

payments due both on the Effective Date, the First Distribution Date and thereafter.” Notably, however, the Plan and the projections do not identify or otherwise account for what cash the Debtors have on hand, which according to the July operating reports aggregates approximately \$454,076.22<sup>6</sup> or what payments are required to be made on the Effective Date and from what source. According to the Plan Supplement, there is \$435,883.88 in cure amounts due for contracts and leases the Debtors intend to assume which amounts are not accounted for in the Plan or the projections. Also, the projections do not appear to account for the \$48,857 in “Other Secured Claims” to be paid in accordance with the Plan.

22. All of this information that is not currently provided in the Plan must be disclosed in order for there to be a proper evaluation of the Debtors’ Plan and a determination as to whether the Plan is fair and equitable and confirmable.

23. Finally, SFR believes the overly broad release, injunction and exculpation provisions, regardless of the “Opt-Out” provision, create impermissible third-party releases. SFR does not agree to any release to the extent such release limits any of SFR’s rights to pursue any claims for future trademark infringement and similar claims based on the Debtors’ post-confirmation operations if future claims arise.<sup>7</sup>

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<sup>6</sup> It is unclear how this figure reconciles with the Debtors July 2024 operating reports which show unpaid post-petition obligations as of July 31, 2024 of \$270,155.50.

<sup>7</sup> Section 6.10 references the “liquidation” of the Debtors, not reorganization.



**CONCLUSION**

24. The Debtors' Plan as currently proposed is insufficiently detailed and not fair and equitable and should not be confirmed.

WHEREFORE, SFR requests that confirmation of the Plan be denied and for such other relief as the Court deems just and appropriate.

Dated: August 28, 2024

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By: /s/ Jeffrey M. Carbino  
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*Attorneys for Sticky Fingers Restaurants LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2024, I served or caused to be served the *Sticky Fingers Restaurants LLC's Objection To Subchapter V Debtors' Plan Of Reorganization and Reservation of Rights* to be made (i) upon the parties on the Service List, via electronic mail, and upon all ECF participants in these cases through the Court's ECF Noticing System, at their respective email addresses registered with the Court.

/s/ Jeffrey M. Carbino  
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