

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
KONA GRILL, INC.,	)	Case No. 19- 10953 ()
)	
Debtor.)	
_____)	
In re:	)	Chapter 11
)	
KONA RESTAURANT HOLDINGS, INC.,	)	Case No. 19- 10954 ()
)	
Debtor.)	
_____)	
In re:	)	Chapter 11
)	
KONA SUSHI, INC.	)	Case No. 19- 10955 ()
)	
Debtor.)	
_____)	
In re:	)	Chapter 11
)	
KONA MACADMIA, INC.	)	Case No. 19- 10956 ()
)	
Debtor.)	
_____)	
In re:	)	Chapter 11
)	
KONA TEXAS RESTAURANTS, INC.	)	Case No. 19- 10957 ()
)	
Debtor.)	
_____)	
In re:	)	Chapter 11
)	
KONA GRILL INTERNATIONAL HOLDINGS, INC.	)	Case No. 19- 10958 ()
)	
Debtor.)	
_____)	

In re:	)	Chapter 11
)	
KONA BALTIMORE, INC.	)	Case No. 19- 10959 ()
)	
Debtor.)	
)	
In re:	)	Chapter 11
)	
KONA GRILL INTERNATIONAL, INC.	)	Case No. 19- 10960 ()
)	
Debtor.)	
)	
In re:	)	Chapter 11
)	
KONA GRILL PUERTO RICO, INC.	)	Case No. 19- 10961 ()
)	
Debtor.)	
)	

**DEBTORS’ MOTION FOR ORDER DIRECTING JOINT ADMINISTRATION
OF RELATED CHAPTER 11 CASES FOR PROCEDURAL PURPOSES ONLY**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby move (the “Motion”) the Court for the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), authorizing and directing the joint administration of the Debtors’ related chapter 11 cases for procedural purposes only. In support of this Motion, the Debtors state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*,

dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 1015(b), and Local Rule 1015-1.

Background

4. On the date hereof (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has been appointed in the Debtors’ chapter 11 cases.

5. The factual background regarding the Debtors, including their current and historical business operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration of Christopher J. Wells in Support of First Day Pleadings* (the “First Day Declaration”) filed concurrently herewith and fully incorporated herein by reference.

Relief Requested

6. By this Motion, the Debtors seek entry of an order directing the joint administration of their chapter 11 cases and the consolidation thereof for procedural purposes only. The Debtors also request that the caption of their chapter 11 cases be modified to reflect their joint administration as follows:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
KONA GRILL, INC., et al.,¹) Case No. 19- 10953 (____)
)
) (Jointly Administered)
Debtors.)

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Kona Grill, Inc. (6690); Kona Restaurant Holdings, Inc. (6703); Kona Sushi, Inc. (4253); Kona Macadamia, Inc. (2438); Kona Texas Restaurants, Inc. (4089); Kona Grill International Holdings, Inc. (1841); Kona Baltimore, Inc. (9163); Kona Grill International, Inc. (7911); and Kona Grill Puerto Rico, Inc. (7641). The headquarters and service address for the above-captioned Debtors is 15059 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254.

7. In addition, the Debtors request that the Court direct the Clerk of this Court (the “Clerk”) to make a notation substantially similar to the following on the docket of each Debtor:

An order (the “Joint Administration Order”) has been entered in this case directing the joint administration of the chapter 11 cases listed below for procedural purposes only. The docket in Case No.19-10953 (____) should be consulted for all matters affecting this case. The following chapter 11 cases are jointly administered pursuant to the Joint Administration Order: Kona Grill, Inc., Case No. 19-10953 (____); Kona Restaurant Holdings, Inc., Case No. 19-10954 (____); Kona Sushi, Inc., Case No. 19-10955 (____); Kona Macadamia, Inc., Case 19-10956 (____); Kona Texas Restaurants, Inc., Case 19-10957 (____); Kona Grill International Holdings, Inc., Case 19-10958 (____); Kona Baltimore, Inc., Case 19-10959 (____); Kona Grill International, Inc., Case 19-10960 (____); and Kona Grill Puerto Rico, Inc., Case 19-10961 (____).

8. Finally, the Debtors request that the Court permit use of a combined service list and correspondingly combined notices.

Basis For Relief

9. Bankruptcy Rule 1015(b) provides that, if two or more petitions are pending in the same court by or against a debtor and an affiliate, joint administration is permissible. *See* Fed. R. Bankr. P. 1015(b). Additionally, Rule 1015-1 of the Local Rules permits entry of such an order without notice or a hearing so long as the Debtors demonstrate that such treatment is warranted.

10. Joint administration is warranted in these chapter 11 cases because (a) the Debtors' financial affairs and business operations are closely related and (b) such administration will ease the administrative burden on the Court and other parties.

11. With respect to the proximity of relations, the Debtors are under common ownership and management. They also share many creditors and parties in interest. As a result, joint administration will prevent duplicative efforts and unnecessary expenses, without any risk of prejudice.

12. Joint administration is generally non-controversial, and courts in this district routinely order joint administration in cases with multiple related debtors. *See, e.g., In Re The Walking Company Holdings, Inc.*, No. 18-10474 (LSS) (Bankr. D. Del. March 8, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) (directing joint administration of chapter 11 cases); *In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Oct. 4, 2017) (same); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D.

Del. July 6, 2017) (same); *In re Wet Seal, LLC (2017)*, No. 17-10229 (CSS) (Bankr. D. Del. Feb. 3, 2017) (same).¹

13. The Debtors anticipate that numerous notices, applications, motions, other pleadings, hearings, and orders in these cases will affect all of the Debtors. With nine affiliated debtors, each with its own case docket, the failure to administer these cases jointly would result in numerous duplicative pleadings filed for each issue and served upon separate service lists. Such duplication of substantially identical documents would be extremely wasteful and would unnecessarily overburden the Clerk with the volume of paper.

14. Joint administration will permit the Clerk to use a single general docket for all of the Debtors' cases and to combine notices to creditors and other parties in interest of the Debtors' respective estates. Joint administration also will protect parties in interest by ensuring that such parties in interest in each of the Debtors' respective chapter 11 cases will be apprised of the various matters before the Court in all of these cases.

15. The Debtors request that the official caption to be used by all parties in all pleadings in the jointly administered cases be in the form set forth in paragraph 6 of this Motion.

16. The Debtors submit that use of the simplified caption, without reference in the caption to the additional Debtors and their states of incorporation, will eliminate cumbersome and confusing procedures and ensure a uniformity of pleading identification.

17. The rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of these cases inasmuch as the relief sought is purely

¹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

procedural and is in no way intended to affect substantive rights, nor shall such relief be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors. Each creditor and party in interest will maintain whatever rights it has against the particular estate in which it allegedly has a claim or right. Indeed, the rights of all creditors will be enhanced by the reduction in costs resulting from joint administration. The Court also will be relieved of the burden of entering duplicative orders and keeping duplicative files. Supervision of the administrative aspects of these chapter 11 cases by the Office of the United States Trustee also will be simplified.

No Previous Request

18. No previous motion or application for the relief sought herein has been made to this or any other court.

Notice

19. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) Key Bank National Association and Zions Bank, (c) parties asserting liens against the Debtors' assets, and (d) the Debtors' thirty largest unsecured creditors on a consolidated basis. As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter an order:

- (a) authorizing the joint administration of the Debtors' cases for procedural purposes only,
- (b) directing the Clerk to make the docket entries set forth herein, and (c) granting such other and further relief as is proper.

Dated: April 30, 2019

PACHULSKI STANG ZIEHL & JONES LLP



Jeremy V. Richards (CA Bar No. 102300)

James E. O'Neill (DE Bar No. 4042)

John W. Lucas (CA Bar No. 271038)

919 N. Market Street, 17th Floor

Wilmington, DE 91899

Tel: (302) 652-4100

Fax: (302) 652-4400

E-mail: jrichards@pszjlaw.com

joneill@pszjlaw.com

jlucas@pszjlaw.com

Proposed Attorneys for Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
KONA GRILL, INC.,) Case No. 19- 10953 ()
)
Debtor.)

In re:) Chapter 11
)
KONA RESTAURANT HOLDINGS, INC.,) Case No. 19- 10954 ()
)
Debtor.)

In re:) Chapter 11
)
KONA SUSHI, INC.) Case No. 19- 10955 ()
)
Debtor.)

In re:) Chapter 11
)
KONA MACADMIA, INC.) Case No. 19- 10956 ()
)
Debtor.)

In re:) Chapter 11
)
KONA TEXAS RESTAURANTS, INC.) Case No. 19- 10957 ()
)
Debtor.)

In re:) Chapter 11
)
KONA GRILL INTERNATIONAL) Case No. 19- 10958 ()
HOLDINGS, INC.)
)
Debtor.)

In re:	)	Chapter 11
)	
KONA BALTIMORE, INC.	)	Case No. 19- 10959 (___)
)	
Debtor.)	
)	
In re:	)	Chapter 11
)	
KONA GRILL INTERNATIONAL, INC.	)	Case No. 19- 10960 (___)
)	
Debtor.)	
)	
In re:	)	Chapter 11
)	
KONA GRILL PUERTO RICO, INC.	)	Case No. 19- 10961 (___)
)	
Debtor.)	
)	

**ORDER AUTHORIZING JOINT ADMINISTRATION OF
RELATED CHAPTER 11 CASES FOR PROCEDURAL PURPOSES ONLY**

Upon consideration of the motion (the “Motion”)¹ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) seeking entry of an order (this “Order”) pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 authorizing and directing the joint administration of the Debtors’ related chapter 11 cases for procedural purposes only; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the

¹ Capitalized terms not defined herein retain the meaning assigned to them in the Motion.

relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court finding that: (a) the Debtors are "affiliates" within the meaning of section 101(2) of the Bankruptcy Code; (b) the joint administration of the Debtors' cases for procedural purposes is appropriate pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is hereby granted as set forth herein.

2. The above-captioned chapter 11 cases are hereby consolidated for procedural purposes only and shall be jointly administered by this Court. Nothing contained in this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the captioned cases, and this Order shall be without prejudice to the rights of the Debtors to seek entry of an order substantively consolidating their respective cases.

4. The caption of the jointly administered cases shall read as follows:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
KONA GRILL, INC., et al.,¹) Case No. 19- 10953 ()
)
) (Jointly Administered)
Debtors.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Kona Grill, Inc. (6690); Kona Restaurant Holdings, Inc. (6703); Kona Sushi, Inc. (4253); Kona Macadamia, Inc. (2438); Kona Texas Restaurants, Inc. (4089); Kona Grill International Holdings, Inc. (1841); Kona Baltimore, Inc. (9163); Kona Grill International, Inc. (7911); and Kona Grill Puerto Rico, Inc. (7641). The headquarters and service address for the above-captioned Debtors is 15059 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254.

5. In addition, the Debtors request that the Court direct the Clerk to make a notation substantially similar to the following on the docket of each Debtor:

An order (the "Joint Administration Order") has been entered in this case directing the joint administration of the chapter 11 cases listed below for procedural purposes only. The docket in Case No.19-10953 () should be consulted for all matters affecting this case. The following chapter 11 cases are jointly administered pursuant to the Joint Administration Order: Kona Grill, Inc., Case No. 19-10953 (); Kona Restaurant Holdings, Inc., Case No. 19-10954 (); Kona Sushi, Inc., Case No. 19-10955 (); Kona Macadamia, Inc., Case 19-10956 (); Kona Texas Restaurants, Inc., Case 19-10957 (); Kona Grill International Holdings, Inc., Case 19-10958 (); Kona Baltimore, Inc., Case 19-10959 (); Kona Grill International, Inc., Case 19-10960 (); and Kona Grill Puerto Rico, Inc., Case 19-10961 ().

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE