

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FRED’S, INC., *et al.*

Debtors.¹

Chapter 11

Case No. 19-11984 (CSS)

Jointly Administered

Related Docket No.: 551

**STIPULATION, AGREEMENT, AND CONSENT ORDER BY AND AMONG THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS
AND THE PREPETITION LENDERS RESOLVING COMMITTEE CHALLENGE
RIGHTS UNDER FINAL DIP ORDER**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors and debtors in possession (the “Debtors”), Regions Bank (“Regions”), and Bank of America, N.A. (“BofA,” and collectively, with Regions, the “Prepetition Lenders”), Regions, as administrative agent for the Prepetition Lenders (Regions, in such capacity, “Prepetition Agent”), and each of Regions and BofA, in their respective capacities as co-collateral agents for the Prepetition Lenders (Regions and BofA, in all such capacities, collectively, with the Committee, the “Parties”) hereby stipulate and agree (the “Stipulation”) as follows:

RECITALS

A. On September 9, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Fred’s, Inc. (4010); Fred’s Stores of Tennessee, Inc. (9888); National Equipment Management and Leasing, Inc. (4296); National Pharmaceutical Network, Inc. (9687); Reeves-Sain Drug Store, Inc. (4510); Summit Properties-Jacksboro, LLC (9161); Summit Properties-Bridgeport, LLC (2200); and 505 N. Main Opp, LLC (5850). The Debtors’ address is 2001 Bryan Street, Suite 1550, Dallas, Texas 75201.

Court for the District of Delaware (the “Bankruptcy Court”). No trustee or examiner has been appointed in the Chapter 11 Cases.

B. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

C. On September 18, 2019, the Office of the United States Trustee appointed the Committee pursuant to § 1102 of the Bankruptcy Code.

D. On September 9, 2019, the Debtors filed the *Motion to (I) Authorize Debtors in Possession to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Grant Liens And Superpriority Claims to Postpetition Lenders Pursuant To 11 U.S.C. §§ 364 and 507; (III) Provide Adequate Protection To Prepetition Credit Parties, Summit Lender, and Cardinal Vendors; (IV) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507; and (V) Grant Related Relief* (the “DIP Motion”) [Docket No. 16].

E. On October 17, 2019, this Court entered the *Final Order Granting Debtors’ Motion to (I) Authorize Debtors in Possession to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Grant Liens and Superpriority Claims to Postpetition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Provide Adequate Protection to Prepetition Credit Parties, Summit Lender, and Cardinal Vendors; (IV) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507; and (V) Grant Related Relief* (the “Final DIP Order”) [Docket No. 338]. The DIP Credit Parties (as defined in the Final DIP Order) agreed to provide a \$35 million postpetition DIP Credit Facility on terms provided under the Postpetition Credit Agreement. All amounts outstanding under Prepetition Loan Agreement (as defined in the Final DIP Order) were “rolled-up” into amounts outstanding under the DIP Credit Facility.

F. Pursuant to the Prepetition Loan Agreement (as defined in the Final DIP Order) dated as of April 9, 2015, by and among Fred’s, Inc., Fred’s Stores of Tennessee, Inc., National Pharmaceutical Network, Inc., and Reeves-Sain Drug Store, Inc.,² as borrowers (collectively, the

² This entity became a borrower under the Credit Agreement pursuant to a *Joinder Agreement* dated April 10, 2015.

“Prepetition Borrowers”), 505 N. Main Opp, LLC,³ as guarantor (the “Guarantor”), and the Prepetition Lenders, the Prepetition Lenders committed to make loans and other financial accommodations to the Prepetition Borrowers consisting of revolving loans up to \$70 million subject to a borrowing base, including swingline and letter of credit subfacilities. The Prepetition Loan Agreement was amended twelve times prior to the Petition Date. All obligations of the Debtors arising under the Prepetition Loan Agreement (as defined in the Final DIP Order), as amended, are referred to as the “Prepetition Lender Debt” hereunder and in the Final DIP Order.

G. Pursuant to the security agreement dated as of April 9, 2015, as amended (the “Prepetition Security Agreement”), by and among the Prepetition Borrowers, the Guarantor, and the Prepetition Agent, each Prepetition Borrower and the Guarantor granted to the Prepetition Agent (for the benefit of the Prepetition Lenders) a continuing security interest in and lien upon (the “Prepetition Liens”) certain of the Debtors’ then-current and after-acquired assets and property, defined as the “Prepetition Collateral” in the Final DIP Order.

H. Prior to that certain *Second Amendment to Forbearance Agreement, Tenth Amendment to Credit Agreement, Fifth Amendment to Amended and Restated Addendum to Credit Agreement and Third Amendment to Security Agreement* dated July 1, 2019, among the Prepetition Borrowers, Guarantor, the Prepetition Agent, and Prepetition Lenders, the Prepetition Collateral (other than with respect to the Guarantor) consisted of substantially the same types of personal property collateral granted to Cardinal Health 110, LLC and Cardinal Health 112, LLC (together “Cardinal”) as described in those certain subordinated security agreements dated April 5, 2018, by and between Cardinal and the Prepetition Borrowers.

I. Pursuant to paragraph 23 of the Final DIP Order, the Committee investigated the scope of the Prepetition Collateral and the validity of liens and security interests of the Prepetition Credit Parties in the Prepetition Collateral. As a result of this investigation, the

³ This entity became a guarantor under the Credit Agreement pursuant to a *Joinder Agreement* dated November 27, 2018.

Committee is prepared to stipulate to the scope of the Prepetition Collateral and the validity of liens and security interests of the Prepetition Agent and Prepetition Lenders, as set forth herein.

THEREFORE, THE PARTIES HEREBY STIPULATE, CONSENT, AND AGREE as follows:

1. Subject to (i) paragraphs 2 and 3 below relating to the Excluded Assets (as defined below) that do not constitute Prepetition Collateral, and (ii) paragraphs 4 and 5 below relating to the Parties' assertions with respect to the Dublin Property (as defined below): (A) the Prepetition Agent and Prepetition Lenders hold legal, valid, enforceable, perfected, and non-avoidable liens and security interests in the Prepetition Collateral as of the Petition Date, and such liens are not subject to defense, claim, counterclaim, recharacterization, subordination, or avoidance; (B) the Prepetition Lender Debt constitutes the legal, valid and binding obligations of each Debtor as and to the extent provided in the Prepetition Loan Documents (as defined in the Final DIP Order), as applicable, enforceable in accordance with the terms of the applicable Prepetition Loan Documents; and (C) none of the Prepetition Lender Debt or any payments made to any Prepetition Lenders or applied to the Prepetition Lender Debt is subject to avoidance, subordination, recharacterization, recovery, attack, offset, counterclaim, defense or other claim of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

2. The Prepetition Collateral does not include and the Prepetition Lenders acknowledge that they do not have a prepetition mortgage on, security interest in, or lien on the following property of the Debtors (collectively, the “Excluded Assets”):

a. Those parcels of the Debtors’ real property described below:

Location of Real Property
1000 S Main St, McGregor, TX 76657
1009 N 3 rd Ave, Chatsworth, GA 30705
103 Dawson St, Marked Tree, AR 72365
103 Fourth Ave, Eastman, GA 31023
107 N Meridian St, Aberdeen, MS 39730
109 Duncan St, Water Valley, MS 38965
110 N Main St, Malvern, AR 72104

Location of Real Property
126 Main St W, New Albany, MS 38652
1301 N Illinois St, Harrisburg, AR 72432
1302 Highway 64E, Augusta, AR 72006
13210 N Wintzell Ave, Bayou La Batre, AL 36509
1324 W Keiser Ave, Osceola, AR 72370
1405 S Home St, Union City, TN 38261
148 W Van Dorn Ave, Holly Springs, MS 38635
1528 S Lafayette St, Shelby, TN 28152
1618 Delaware Ave, McComb, MS 39648
16280 Hwy 64, Somerville, TN 38068
1664 Middle Tennessee Blvd, Murfreesboro, TN 37130
1705 Malcolm Ave, Newport, AR 72112
1718 S Waukesha St, Bonifay, FL 32425
1755 Decherd Blvd, Decherd, TN 37324
17916 Highway 280, Dadeville, AL 36853
1960 Veterans Memorial Blvd, Europa, MS 39744
204 E Kelly St, Sylvester, GA 31791
2045 Hwy 45 Bypass, Trenton, TN 38382
2146 S Oates St, Dothan, AL 36301
218 S Whitworth Ave, Brookhaven, MS 39601
218 Watson Blvd, Daingerfield, TX 75638
22 S 8 th St, Fernandina Beach, FL 32034
2227 N Washington St, Forrest City, AR 72335
229 N Union St, Canton, MS 39046
230 E Gay St, Lebanon, TN 37087
2308 S Caraway Rd, Jonesboro, AR 72401
236 DeSoto Ave, Clarksdale, MS 38614
237 Woodland Dr, Forest, MS 39074
24 Camden Byp, Camden, AL 36726
2404 West Blvd, Chesterfield, SC 29709
2415 Fairview Blvd, Fairview, TN 37062
2544 Hwy 25 South, Fort Valley, GA 31030
2549 N Central Ave, Humboldt, TN 38343
2809 S Camden Rd, Pine Bluff, AR 71603
300 S Pearl St, Carthage, MS 39051
303 E Main St, Piggott, AR 72454
320 Highway 14 S, Yellville, AR 72687
401 E Lee St, Sardis, MS 38666
420 W Main St, Gallatin, TN 37066
4280 Getwell Rd, Memphis, TN 38118
4284 New Getwell Rd, Memphis, TN 38118
441 N 4 th St, Baldwyn, MS 38824
456 Highway 24 E, Centreville, MS 39631
475 Highway 6 E, Batesville, MS 38606
504 N 2 nd St, Booneville, MS 38829
505 N Main St, Opp, AL 36467
515 E Main St, West Point, MS 39773
518 E Greer St, Honea Path, SC 29654

Location of Real Property
520 Central Ave, Coldwater, MS 38618
601 N St Joseph, Morrilton, AR 72110
6027 Highway 67, Haskell, AR 72015
603 E Washington St, Hayti, MO 63851
603 Middleton Rd, Winona, MS 38967
605 N Henderson Blvd, Kilgore, TX 75662
605 S Jackson St, Starkville, MS 39759
606 E Broadway, West Memphis, AR 72301
611 Highway 65 S, Dumas, AR 71639
614 S Main St, Nashville, AR 71852
624 S Rock St, Sheridan, AR 72150
700 E Cherokee St, Wagoner, OK 74467
7105 Highway 305 N, Olive Branch, MS 38654
726 N Downing, Glennville, GA 30427
801 Hwy 77, Manila, AR 72442
804 Cleveland St, Headland, AL 36345
813 W Park Ave, Greenwood, MS 38930
905 Highway 278 E, Amory, MS 38821
912 N Chancery St, McMinnville, TN 37110

b. All of the assets of Debtor, National Equipment Management and Leasing, Inc.

3. The Prepetition Lenders do not hold a prepetition lien on or a prepetition security interest in any of the Excluded Assets and such assets are preserved for the benefit of the Debtors' estates. The Excluded Assets did not constitute security or collateral for the Prepetition Lender Debt as of the Petition Date.

4. On July 1, 2019, the Prepetition Agent recorded a Georgia Deed to Secure Debt, Security Agreement, Fixture Filing, and Assignment of Rents relating to the Debtors' real property located at 2815 Highway 257, Dublin, Georgia 31021, Dublin, Georgia (the "Dublin Property"), and on July 3, 2019, the Prepetition Agent recorded a second Georgia Deed to Secure Debt, Security Agreement, Fixture Filing, and Assignment of Rents against the Dublin Property (collectively, the "Dublin Security Deeds"). The Prepetition Lenders and Prepetition Agent assert that, upon filing, the Dublin Security Deeds created legal, valid, enforceable, perfected, and non-avoidable liens and security interests in the Dublin Property in favor of the Prepetition Lenders and that the Prepetition Collateral includes the Dublin Property, and that such liens, and

the granting thereof, are not subject to defense, claim, counterclaim, recharacterization, subordination, or avoidance in any manner whatsoever, pursuant to the Bankruptcy Code, applicable non-bankruptcy law, or otherwise. The Committee asserts that one or more bases may exist to challenge, avoid or otherwise invalidate the Dublin Security Deeds and the grant thereof, and accordingly the Prepetition Collateral does not include the Dublin Property.

5. In order to avoid the costs and uncertainty attendant upon resolving the Parties' dispute regarding whether the Prepetition Collateral includes the Dublin Property, the Parties hereby stipulate and agree that: (i) the stipulations and provisions of the Final DIP Order, including, without limitation, those contained in Paragraphs E and 23(c) thereof, are hereby affirmed and acknowledged by the Committee (excepting only with respect to whether the Prepetition Collateral includes the Dublin Property); (ii) this Stipulation makes no determination whether the Prepetition Collateral includes the Dublin Property and does not constitute an admission by any Party whether the Prepetition Collateral includes the Dublin Property; and (iii) upon execution of this Stipulation by all Parties, the Committee's Challenge Period⁴ shall be deemed to have expired with no Challenge having been timely filed or asserted, the Committee shall be barred from filing or asserting any Challenge, and, upon satisfaction of the final condition set forth in the Final DIP Order for Payment in Full to have occurred with respect to the Prepetition Lender Debt, the Prepetition Agent shall record appropriate releases of the Dublin Security Deeds.

6. The Prepetition Agent and Prepetition Lenders acknowledge and agree that they did not seek or obtain any notation of their asserted lien on any motor vehicle certificate of title relating to any of the Debtors' motor vehicles.

7. Each individual signing this Stipulation on behalf of any Party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that

⁴ Capitalized terms not otherwise defined in paragraph 5 herein shall have the meanings ascribed to such terms in the Final DIP Order.

he or she is counsel to such Party and in such capacity is authorized to execute this Stipulation on behalf of the Party indicated.

8. Each Party further represents and agrees that it has had the opportunity to consult with its respective attorneys regarding the Stipulation and that such counsel has had the opportunity to review this Stipulation; that it has carefully read and each fully understands all the provisions of this Stipulation; and that it is entering into this Stipulation voluntarily.

9. The Parties are relying on the representations made in this Stipulation and that such representations are true and correct.

10. This Stipulation shall be governed by and shall be interpreted in accordance with the Bankruptcy Code.

11. The Parties hereby acknowledge and agree that this Stipulation is entered into solely for the benefit of the Parties and neither this Stipulation nor the fact of its execution shall constitute any admission or acknowledgement of liability or wrongdoing on the part of any of the Parties.

12. The Bankruptcy Court shall retain exclusive jurisdiction to interpret, implement, and enforce the provisions of this Stipulation, and the Parties hereby consent to exclusive jurisdiction of the Bankruptcy Court with respect thereto.

13. This Stipulation shall not be modified, altered, amended, or vacated without the written consent of all Parties hereto, or court order.

14. This Stipulation may be executed in any number of counterparts, each of which shall be deemed an original and together constitute one and the same instrument.

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Dated: New York, New York
November 25, 2019


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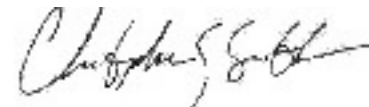
Attorney for Bank of America, N.A.

Dated: Boston, Massachusetts
November 25, 2019

SO ORDERED THIS __ DAY OF NOVEMBER, 2019

Dated: Wilmington, Delaware
November ____, 2019

HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY CHIEF JUDGE

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Dated: November 26th, 2019
Wilmington, Delaware

CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE