

Hearing: September 24, 2024
10:00 a.m. Eastern Time

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RMB BAKERY LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-11422
(Jointly Administered)

**DECLARATION OF MARK RIMER IN SUPPORT OF CONFIRMATION OF THE
THIRD AMENDED JOINT PLAN OF REORGANIZATION OF
RM BAKERY, LLC, AND BKD GROUP LLC.**

I, Mark Rimer, pursuant to 28 U.S.C. § 1746, do hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge as of this 20th day of September 2024:

1. I am a member of the senior management of, and an investor in, both RM Bakery LLC, a Delaware limited liability company (“**RMB**”), and BKD Group LLC, a Delaware limited liability company (“**BKD**”), the debtors and debtors-in-possession herein (together, the “**Debtors**”), and am generally familiar with the Debtors’ day-to day-operations, business, financial affairs, and books and records. I offer this Declaration in support of Confirmation² of the Third Amended Joint Plan of Reorganization of RM Bakery, LLC, and BKD Group LLC [Docket No.410], as amended in the black-lined version filed on ECF today [Docket No.451] and by the oral comments and agreements made at the Confirmation Hearing (the “**Plan**”).

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification numbers, are: RM Bakery, LLC, Tax ID No.XX-XX7954 and BKD Group LLC, Tax ID No. XX-XX0624.

² All capitalized terms used here in the not shall have the meaning ascribed to them in the Plan.

Personal Background and Experience

2. I was born and raised in the United Kingdom and am a citizen of the United Kingdom. I have a bachelor degree from Bristol University in politics and economics. I have an MBA from New York University, and am a chartered accountant, which is the UK equivalent of being a CPA in the United States.

3. After receiving my undergraduate degree, I worked for a time as an accountant. After which, I joined a private equity firm in England which focused on emerging-market investments. I was the liaison between the fund and its portfolio companies, charged with increasing profits and finding other companies in emerging markets to combine with our portfolio companies to increase profitability. I travelled extensively and worked closely with our companies in Eastern Europe, Africa, and India, among other places. I worked at the private equity firm until 2009, when I moved to the United States to attend New York University.

4. As I was completing my MBA, I became associated with the Kuzari Group, which buys and invests in companies. In my position there, I have used my own funds to own or invest in multiple companies through the Kuzari Group, including the Debtors. As part of my work for the Kuzari Group, I have actively sought out investment opportunities, as well as managed companies which Kuzari owns or in which it has an investment.

Involvement with Debtors

5. In or around 2014, an affiliate of the Kuzari Group in which I invested acquired the Debtors. At the time of the acquisition, the Debtors were managed by Mr. Christian Mattheus. I had only a slight involvement with the Debtors, advising Mr. Mattheus. Mr. Mattheus and the Debtors soon parted ways, however.

6. When Mr. Mattheus left, I became involved in looking for his replacement, and was pivotal in finding his successor, Frederick Lebourg. Mr. Lebourg soon determined that the Debtors had to move to a larger facility in order to optimize their profitability and meet their debt service. As a result, I was heavily involved in helping Mr. Lebourg raise the money to move to our current premises at 220 Coster Street, The Bronx. After that, again, my involvement was slight, as, I mainly advised and supported Mr. Lebourg.

7. Mr. Lebourg left the Debtors employment in 2017, at which point I became more involved with the Debtors. Initially, I hired someone for business operations, a manager of the bakery, and a CFO. Such parties performed most of the day-to-day management with my supervision. Unbeknownst to me, the CFO, Norman Rich, was suffering from extreme mental illness. As a result of such mental illness, he hid bad news from management, failed to provide correct numbers to the management, and hid unpaid bills and unanswered lawsuits. When some of Mr. Rich's incorrect information started coming to light, Mr. Rich stopped coming into work, and eventually committed suicide, leaving the Debtors in a shambles. At that point, I took on the hands-on, day-to-day management of the Debtors in order to try to straighten out the Debtors and put them back on the path to profitability. Eventually, and in large part due to the significant impact of the Covid pandemic, I determined that this could only happen through the chapter 11 process.

8. I have worked tirelessly without compensation to reorganize the Debtors and put them on a good path moving forward. I believe there is no one more familiar with the business of the Debtors, their books and records, than myself, and I firmly believe that the plan of reorganization is feasible and will result over time in the success of the Debtors.

My Involvement with the Plan

9. From the first day we filed, my goal has been to seek a successful reorganization of the Debtors. To that end, I have brought new business opportunities to the Debtors, such as getting our product into Whole Foods; increasing the utilization of our physical plant, by subcontracting out certain shifts to other bakeries; reducing costs, and the like. In addition, I personally considered each executory contract to determine which contracts would be in the best interests of the Debtors and their estates to assume, and which to reject. I have also reviewed every claim filed in these Chapter 11 cases, and have been personally involved in many of the settlements negotiated with respect to same. I have personally negotiated with several different parties to buy or invest in the Debtors, many of which I negotiated. I am currently one of the principal parties of the entity which is providing the Exit Financing for the Debtors.

10. In addition, I personally have prepared the projections and liquidation analysis attached to the Disclosure Statement. I believe that my training and business background enabled me to properly develop same. It is part of my normal day-to-day function in business to do long-term planning for portfolio companies, such as is reflected in the projections, and I am often called upon to develop and/or vet projections of potential portfolio companies. Similarly, in making investment decisions, I often do my own liquidation analysis.

11. I believe that the assumptions used in preparing the projections in the Disclosure Statement are conservative. In the most current iteration of the Disclosure Statement, I have reduced the cash coming in for Exit Financing to \$1,250,000 from \$1,750,000. This accurately reflects that only \$1,250,000 of Exit Financing is firmly committed. While I expect that at least \$1,750,000 will be provided under the Exit Financing facility, I felt that the conservative approach was to use the minimum committed, and show that the Plan is feasible with the minimum amount

of committed Exit Financing. To the extent more financing comes in, it will provide an additional operational cushion to the Reorganized Debtor. Also, I have included the assumptions I used in preparing the projections, which I believe makes it easier for a hypothetical reasonable investor to vet the projections.

12. It is important to me that projections be conservative and clearly demonstrate that the Reorganized Debtor will be feasible going forward; because, I am using significant amounts of my own money to provide the necessary Exit Financing. After drilling down on the Debtors' operations, I believe that the projections are conservative, but realistic, and that they clearly show that the Plan is feasible and will not be followed by a need for further reorganization. I would not be investing in the Exit Financing if I did not have confidence that the Reorganized Debtor will not only survive, but will thrive.

13. In preparing the projections, I have also reviewed the means for implementation set forth in the Plan. I will be the officer in charge of implementing the Plan, and I believe that there are adequate means for implementation set forth in the Plan, and that the Plan is capable of being implemented on the terms set forth therein.

14. I should note that there has not been a need for projections concerning the Debtors prior to negotiating the Exit Financing and formulating the Plan. Accordingly, I cannot point to a track record of projecting the Debtors' operations accurately. I submit, however, that my track record in vetting projections and providing internal projections for potential portfolio companies, as well as my intimate knowledge of the operations of the Debtors and my personal stake in ensuring that the projections are attainable, enables me to prepare these projections with confidence. I have every confidence that the projections are realistic.

15. With respect to the liquidation analysis, I have looked at every asset of the Debtors, both tangible and intangible, and ascribed what I believe would be a reasonable value in a forced liquidation context. Central to my preparation of the liquidation analysis is an appraisal which RMB received prior to the Petition Date from the Glass Ratner firm as to the value of RMB's owned equipment, which is its largest asset. I have discounted the Glass Ratner appraisal by 35% to account for the facts that (a) the appraisal is based on a fair market value, and the equipment would be worth considerably less in a forced liquidation, and (b) the appraisal was received pre-Covid, and the hospitality industry has taken a huge hit from Covid, such that, the Debtors have seen a considerable decline in demand for used baking equipment since the pandemic, resulting in a decline in equipment value. This has been made clear to me as I negotiated the treatment of the Claims of our Secured equipment lenders to account for the decline in the value of their collateral. My experience tells me that a 35% discount is appropriate under the circumstances.

16. I believe that the liquidation analysis is a reasonable projection of what would happen in a forced liquidation. Importantly, the liquidation analysis shows that all creditors are under the Plan are receiving as much as they would in a liquidation. It also shows that equity would receive nothing in a liquidation. Accordingly, although they are not receiving anything under the Plan, they are receiving as much as they would in a liquidation. Furthermore, in my role as a principal of the entity providing the Exit Financing, I have made an opportunity available to all of the current equity holders to invest in the Reorganized Debtor through investing in the entity providing the Exit Financing. I believe that is a valuable opportunity, and would not be available absent Confirmation.

17. Besides the financial aspects, I have been intimately involved in shaping the Plan. I considered each executory contract and made a determination based on the business of the debtors

whether it was in the best interests of the Debtors to pursue or reject each contract. I also determined the cure amounts for each contract and help to prepare schedule of contracts to be assumed with a cure amounts. The cure amounts were very low – zero in most cases – because since these are our most important contracts, we have worked to keep them up to date, before and after the Petition Date. The schedule of executory contracts to be assumed was served on each counterparty to an executory contract, whether or not their contract was being assumed. I am happy to say that we did not receive a single objection to cure costs.

18. Similarly, I brought in appraisers and auctioneers to help determine the value of the collateral of the Class 5 Creditors holding Claims secured by equipment. I worked with counsel to develop the schedule of the collateral values, which was served on all Holders of Class 5 Claims. Again, we did not receive a single objection to the values of the collateral determining the amount of the Allowed Secured Claim.

19. I also was personally involved in many of the negotiations for the payment of Administrative Claims. The Plan provides for payment of all Administrative Claims in full, but I was able to negotiate that many of the Administrative Claims be paid over time, and this is an important feature of the Plan which contributes to the Reorganized Debtors' liquidity and cash flow. I believe that all of the settlements, which were negotiated at arm's length, are in the best interests of the Debtors, their estates, and their creditors.

20. Finally, I worked with counsel to devise the classification of Claims contained in the Plan. I believe that each Class of Claims is made up of substantially similar claims, and I understand that it is appropriate to classify secured claims first, then unsecured claims, then the unsecured claims of insiders, and equity last. This is the classification reflected in the Plan. With the help of counsel, I negotiated the treatment of many of the classes of Claims and/or individual

Claims within the Class. Claims of each Class are being treated the same, unless, a Claimant has agreed to a different treatment which is no better than what the rest of the Class is receiving. Most of the settlements where someone has agreed to a different treatment are for the purpose of allowing the Reorganized Debtor to stretch out the payments to enhance the Reorganized Debtor's liquidity and cash flow. I believe that these settlements, which were negotiated at arm's length and are fully disclosed in the Plan, are in the best interests of the Debtors, their estates and their creditors.

Exit Financing

21. The Exit Financing necessary for the Plan is being provided by Leaven Corporation, a Delaware corporation which I am in the process of forming ("**Leaven**"). The purpose of Leaven is to provide the Exit Financing to the Debtors. The funding of Leaven is coming from myself and my colleagues at the Kuzari Group. As of today, the initial funding of \$1,250,000 is committed, available, and ready to go. The loan documents have been negotiated by sophisticated parties with the aid of counsel at arm's length. Copies of the loan documents have been filed with the Court in the Plan Supplement, and I am prepared to enter into such loan documents in substantially the form contained in the Plan Supplement on behalf of Leaven once the conditions to the Effective Date set forth in the Plan have been met. With the availability of the Exit Financing, the Plan is feasible.

Solicitation and Voting.

22. Prior to the solicitation of acceptances, I reviewed every claim docketed or scheduled to help determine who should receive a ballot. Counsel then work with Epiq to personalize the ballots and ensure that each party entitled to receive a ballot, received one. During the last week of voting, the Debtors received a daily report from Epiq which we reviewed. We have relied upon Epiq's tabulation and certification vote, and I am very proud to say that they

determined that every single Creditor who voted, voted to accept the Plan. This is further proof to me that the Plan is in the best interests of creditors and should be confirmed.

Substantive Consolidation.

23. When Kuzari first acquired an interest in the Debtors, we conceived of BKD as a holding company, because, we anticipated acquiring additional companies to enhance the Debtors' business. BKD only acquired one other company, and this company was previously sold. Thus BKD no longer serves a useful purpose. Although we have Separate books and records for each of the Debtors at all times, on a practical basis they have always operated as one enterprise. Within the industry, that enterprise is known as "Leaven & Co.". Most creditors know that they are dealing with Leaven & Co., and don't know whether they are dealing with RMB or BKD.

24. At this point, BKD is merely a drain on the Debtors' limited resources, as it requires separate accounting, separate books and records, and a separate tax return, while serving no useful business purpose. I believe it is in the best interests of Debtors, their estates and all creditors to substantively consolidate the Debtors.

25. In addition to eliminating intercompany claims, it will eliminate the same claim being filed against both debtors, which would have allowed certain creditors to receive more than their debt and other creditors similarly situated.

Miscellaneous.

26. I think it is obvious that the plan has been hard-fought, and involves substantial negotiation between numerous creditors and classes of creditors. I was personally involved in many of the negotiations, and some are carried out by my counsel with my advice and consent. I believe that all of the negotiations which led to the filing of this Plan were conducted at arm's length and in good faith, with the sole purpose of creating a feasible plan. The fact that the majority

of our creditors voted to accept the plan unanimously, I believe demonstrates the Plan was proposed in good faith and is in the best interests of all creditors.

27. Throughout the Chapter 11 process, myself and Dan Wilczynski. were the two officers guiding the Debtors through this process, and the overwhelming support for the Plan shows that we were effective. I believe it is only because of the dedication of Dan and myself that this reorganization is possible; yet, as part of our negotiations with creditors, we have both agreed to cap our compensation going forward. Under these circumstances, I submit the choice of officers and managers set forth in the Plan is both consistent with the Bankruptcy Code and in the best interests of the Debtors, their estates, and their creditors.

28. I have also been involved in the negotiation of the releases set forth in the Plan. With respect to Pac West, we would not have been able to formulate a Plan absent a settlement with them, and a settlement would not have been possible without a release. Therefore, I considered the releases to and from Pac West to be critical parts of the Plan.

29. With respect to the Debtors' releases of officers, directors, agents, etc., while I do have a vested interest in such releases, on behalf of the Debtors, I believe this is fair and reasonable. I have worked for four years for free and invested a great deal of assets to make this reorganization possible, and Dan has worked at a below market salary for four years and shown immense dedication. Everything we did during these cases was done in good faith, and I believe the Debtors' Releasees are entitled to the narrow releases in the Plan. I cannot speak for everyone, but I am not sure I would have been for working for four years and no cost, absent the releases in the Plan. That said, I am not aware of any causes of action which currently exist against any directors, officers, managers of the Debtors.

30. Although we have strived to make the plan as tax effective as possible, as one of the architects of the Plan, I can assure you that tax avoidance was not a principal purpose of the Plan.

31. It is my understanding that the Plan complies with the Bankruptcy Code and has not been proposed by any means forbidden by law.

CONCLUSION

32. This Plan has been over four years in the making. It has involved numerous compromises, negotiations, and concessions, all of which were done in good faith to further one goal: reorganization. By reducing the Debtors' indebtedness and improving liquidity across the entire enterprise, the Plan preserves the Debtors' value as a going concern, which will, in turn, inure to the benefit of all stakeholders and position the Debtors for long-term success. There is no doubt in my mind that the plan has been proposed in good faith, is feasible, and is in the best interests of the Debtors, their estates, and their creditors. For these reasons, I urge this Court to confirm the Plan.

I, Mark Rimer, hereby declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: September 20, 2024
New York, New York

/s/ Mark Rimer
Mark Rimer of Behalf of
RM Bakery, LLC and BKD Group, LLC
Debtors and Debtors-in-Possession