

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

DREAMWELL, LTD.

Reorganized Debtor.<sup>1</sup>

Chapter 11

Case No. 23-90024 (CML)

**STIPULATION AND ORDER GRANTING  
JOSHUA BROOKS LIMITED RELIEF FROM THE PLAN INJUNCTION**

This stipulation and order (the “Stipulation”) is entered into by and among (i) Dreamwell, Ltd. (the “Remaining Debtor”), as debtor in possession in the above-captioned chapter 11 case, and on behalf of the Remaining Debtor’s reorganized debtor affiliates in closed chapter 11 cases (collectively, the “Debtors” or “Reorganized Debtors”), including for the avoidance of doubt, Serta Simmons Bedding, LLC (“SSB”), each through undersigned counsel, (ii) the Serta Simmons Class 6B Trust (the “Trust”), through undersigned counsel; and (iii) Joshua Brooks, (“Brooks” and collectively with the Trust, the Remaining Debtor, SSB and the other Reorganized Debtors, the “Parties” and each a “Party”), through undersigned counsel. The Parties hereby stipulate and agree as follows:

**RECITALS**

A. On January 23, 2023 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States

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<sup>1</sup> The last four digits of the Reorganized Debtor’s federal tax identification number are 2419. The Reorganized Debtor’s corporate headquarters and service address for the chapter 11 cases is 2451 Industry Avenue, Doraville, Georgia 30360. On September 7, 2023, the Bankruptcy Court entered the Final Decree and Order Closing Certain Cases (Case No. 23-90020, Docket No. 1262) closing the chapter 11 cases for Dreamwell, Ltd.’s Reorganized Debtor affiliates: Serta Simmons Bedding, LLC; Dawn Intermediate, LLC; National Bedding Company, L.L.C.; Serta International Holdco, LLC; Simmons Bedding Company, LLC; SSB Hospitality, LLC; SSB Logistics, LLC; SSB Manufacturing Company; SSB Retail, LLC; The Simmons Manufacturing Co., LLC; Tomorrow Sleep LLC; Tuft & Needle, LLC; and World of Sleep Outlets, LLC.

Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), and their chapter 11 cases were jointly administered as *In re Serta Simmons Bedding, LLC*, Case No. 23-90020 (DRJ).

B. On October 9, 2022, Brooks commenced an action in the Eleventh Judicial Court, Saint Charles County, State of Missouri styled *Joshua Brooks v Serta Simmons Bedding, LLC*, Cause No. 2211-CC00911 (the “Original State Court Action”). On November 10, 2022, the Original State Court Action was removed to the United States District Court for the Eastern District of Missouri, case no. 4:22-cv-01203 (the “Pending Action”). The Pending Action seeks damages arising out of alleged religious discrimination and retaliation in violation of the Missouri Human Rights Act suffered by Brooks beginning in or around October 2021, while Brooks was employed by SSB (the “Alleged Discrimination”). The Pending Action was filed prior to the Petition Date. On and from the Petition Date, until the Effective Date of the Debtors’ Plan (each as defined below), the Pending Action was stayed pursuant to 11 U.S.C. § 362.

C. On March 2, 2023, Brooks filed proof of claim number 20127 against SSB (“Claim 20127”). Claim 20127 was later amended by claim number 20421 on April 30, 2023 to assert a general unsecured claim for damages related to the Alleged Discrimination in the amount of \$2,232,460 (“Claim 24021”).<sup>2</sup>

D. On April 10, 2023, Brooks filed an additional charge of discrimination against SSB with the Missouri Commission on Human Rights and the Equal Employment Opportunity Commission. On December 15, 2023, Brooks commenced an action in the Eleventh Judicial Court, Saint Charles County, State of Missouri styled *Joshua Brooks v Serta Simmons*

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<sup>2</sup> Claim 20127 was expunged on October 17, 2024 pursuant to the *Order Sustaining Class 6B Trust’s Third Omnibus Objection to Certain Amended and Superseded Claims* (Docket. No. 179) on the grounds that the claim was amended and superseded by Claim 20421.

*Bedding, LLC*, Cause No. 23111-CC01293. On January 18, 2024, this Action was removed to the United States District Court for the Eastern District of Missouri, case no. 4:24-cv-00097 (the “Second Brooks Complaint”).

E. On May 15, 2023, Brooks filed *the Application of Joshua Brooks for Allowance and Payment of Administrative Expense Claim Pursuant to Bankruptcy Code Section 503(b)* [Case No. 23-90020, Docket No. 904] (the “Admin Expense Application”) relating to the Second Brooks Complaint. Brooks has also filed a further claim, Claim No. 20422, relating to the Second Brooks Complaint. Claim No. 20422 and the Second Brooks Complaint are not impacted by this Stipulation, and Second Brooks Complaint has never been stayed pursuant to 11 U.S.C. § 362 or for any other reason.

F. On July 17, 2023, the Bankruptcy Court entered the *Stipulation and Agreed Order in Connection with Application of Joshua Brooks for Allowance and Payment of Administrative Expense Claim Pursuant to Bankruptcy Code Section 503(b)* [Case No. 23-90020, Docket No. 1188], pursuant to which the Debtors and Brooks agreed to hold the Admin Expense Application in abeyance pending resolution of the Second Brooks Complaint.

G. Endurance Assurance Corporation, a subsidiary of Sompo International Holdings Ltd. (“Endurance”) issued the Debtors an insurance policy numbered MAP30001203702 and titled “Management Assurance Policy” covering, among other things, employment practices liability for the initial policy periods from August 1, 2021 through August 1, 2022 and August 1, 2022 through August 1, 2023 (as renewed, extended, amended, modified, endorsed or supplemented from time to time, the “Endurance Policy”). The Endurance Policy contains a \$350,000 self-insured retention (“Self-Insured Retention”). Prior to the Effective Date of the Plan, the Debtors incurred defense costs in relation to the Pending Action and Second Brooks Complaint in the amount of \$234,757.60. Although Brooks asserts that the Pending Action and Second

Brooks Complaint arise from independent causes of action with separate case numbers, Endurance has agreed for purposes of the Endurance Policy to treat the Pending Action and Second Brooks Complaint as related under the terms of the policy and a single Self-Insured Retention applies on account of both the Pending Action and Second Brooks Complaint. For liabilities in excess of the Endurance Policy, the Debtors maintained various excess and umbrella policies (collectively with the Endurance Policy, the “Insurance Policies”).

H. On June 14, 2023, the Bankruptcy Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors* (the “Confirmation Order”) [Case No. 23-90020, Docket No. 1071] confirming the *Second Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors* (as supplemented and otherwise amended, the “Plan”) [Case No. 23-90020, Docket No. 977].<sup>3</sup> The Plan became effective on June 29, 2023 (the “Effective Date”).<sup>4</sup>

I. The Insurance Policies were assumed by the relevant Debtors or Reorganized Debtors on the Effective Date pursuant to section 8.7(a) of the Plan.

J. Following the Effective Date, the Pending Action, along with the commencement of any other action with respect to the Alleged Discrimination, is enjoined by the injunction set forth in section 10.5 of the Plan (the “Plan Injunction”), subject to the express provisions of the Confirmation Order.

K. Pursuant to the Plan and Confirmation Order, on the Effective Date the Trust was established pursuant to the terms of the Class 6B Trust Agreement

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<sup>3</sup> Capitalized terms used but not defined in this Stipulation shall have the meaning ascribed thereto in the Plan.

<sup>4</sup> See *Notice of Effective Date of Second Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors*. Case No. 23 – 90020, Docket No. 1150.

(the “Trust Agreement”) and UMB Bank, N.A. was appointed trustee of the Trust.<sup>5</sup> The Trust is authorized, among other things, to administer the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to Other General Unsecured Claims.<sup>6</sup>

L. Pursuant to section 8.7(d) of the Plan, if an applicable insurance policy has a SIR, the holder of an Insured Litigation Claim shall have an Allowed Other General Unsecured Claim against the applicable Debtor’s Estate solely up to the amount of the SIR that may be established upon the liquidation of the Insured Litigation Claim, and such Holder’s recovery from the Trust shall be solely in the form of its distribution on account of such Allowed Other General Unsecured Claim in Class 6B under the Plan.<sup>7</sup>

M. The Parties were ultimately unable to resolve the Pending Action or Claims 20127 and 24021. Accordingly, the Parties have negotiated the terms of this Stipulation, consistent with the terms of the Plan.

N. In consideration of the foregoing, the Parties have agreed to, subject to approval of the Bankruptcy Court, (i) disallow in part, and cap in part, Claim 24021 as set forth herein; and (ii) modify, as applicable, the Plan Injunction to allow Brooks to continue the Pending Action nominally against SSB to pursue his rights in the Pending Action, which will liquidate the remaining claim, if any, and allow for Brooks to seek to recover amounts in excess of the Self-Insured Retention, if any, solely against applicable insurance proceeds subject to the terms and conditions set forth below.

**NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS**

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<sup>5</sup> The substantially final form of the Trust Agreement was filed on May 13, 2023 as part of the Plan Supplement. *See* Case No. 23-90020, Docket No. 869.

<sup>6</sup> *See* Plan, at §§ 5.1(b)(iii) and 1.73.

<sup>7</sup> The term “SIR” is defined in the Plan to include “self-insured retention, retained limit, deductible, or similar provision in any applicable insurance policy.” *Id.* at § 1.162. The Self-Insured Retention is classified and treated as a SIR under the Plan.

**STIPULATED AND AGREED, BY AND AMONGST THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:**

1. This Stipulation shall have no force or effect unless and until approved by the Bankruptcy Court (the “Stipulation Effective Date”).

2. Upon the Stipulation Effective Date, Claim 24021 shall be deemed amended and modified to assert a general unsecured claim against SSB in the amount of \$115,242.40 in satisfaction of the remaining portion of the applicable SIR (the “Remaining Brooks Claim”) and deemed allowed subject to, and in accordance with, paragraph 8 of this Stipulation.

3. Nothing in this Stipulation, or the allowance of the Remaining Brooks Claim as provided for herein, shall prevent or impair Brooks from pursuing the claims impacted by this stipulation nominally against SSB through the Pending Action or impair his ability to recover against the Insurance Policies.

***Plan Injunction***

4. Upon the Stipulation Effective Date, the Plan Injunction shall be modified for the sole and limited purpose of allowing Brooks to continue the Pending Action nominally against SSB, and against any other third-party defendants, but not, for the avoidance of doubt, against the Trust or any of the other Debtors or Reorganized Debtors in any capacity. Except with respect to distributions to be made by the Trust in connection with the Remaining Brooks Claim, the Trust shall not be obligated to: (i) pay any amounts owed or awarded in connection with the Pending Action, including, but not limited to, any monetary damages, insurance deductible, self-insured retention, or attorneys’ fees and expenses; (ii) participate or otherwise expend any resources, financially or otherwise, in the Pending Action, except to the extent a reasonable information or document request is made to the Trust by the Parties (of which the Trust alone possesses the information or document; (iii) comply with any insurance policy provisions

regarding the Pending Action; or (iv) pay or otherwise satisfy (a) any self-insured retention or deductible liability, (b) any obligation to post any security or deposit with an insurer pursuant to the terms of any insurance policy, (c) any defense costs, (d) any judgment, or (e) any other costs of any kind arising out of or related to the Pending Action, including, without limitation, costs associated with any discovery conducted in connection with the Pending Action. For the avoidance of doubt, in accordance with Section 8.7(d) of the Plan, the allowance of the Remaining Brooks Claim shall satisfy the Debtors' obligations under the Plan and satisfy any and all obligation, if any, to the Parties with regards to the Insurance Policies, Claim 24021, the Remaining Brooks Claim, the Pending Action and any other subject matter addressed by this Stipulation. For the further avoidance of doubt, this Stipulation shall not modify the terms of the Plan or the Insurance Policies and all rights, obligations, and defenses of, as applicable, the Debtors, Reorganized Debtors, Trust and Endurance are reserved.

5. Nothing in this Stipulation is intended or shall be deemed to: (i) preclude Brooks from pursuing the Pending Action against SSB as a nominal defendant or any third-party defendant that is not a Party to this Stipulation, and seeking recovery of such liquidated judgment from Endurance, or any other insurer providing coverage under the Insurance Policies, for amounts in excess of the Self-Insured Retention; (ii) restrict or impair Brooks from pursuing and collecting any amounts (a) in excess of the Self-Insured Retention from an insurer providing coverage under the Insurance Policies, or (b) that may be recovered from third-party defendants that are not a Party to this Stipulation; or (iii) preclude Endurance or any relevant insurer from asserting any claims or defenses in the Pending Action or under the Endurance Policy, any other insurance policy or applicable law. Additionally, nothing in this Stipulation is intended to be an amendment or modification of the Insurance Policies or the rights of Endurance. All of Endurance's, the Debtors', Reorganized Debtors' and the Trust's rights and defenses, if any, to the claims of Brooks

or under the Insurance Policies, Plan, Confirmation Order and applicable law, including without limitation, coverage defenses, or any such rights and defenses as between any of Endurance, the Debtors, Reorganized Debtors, and the Trust with respect to such documents or any recovery by Brooks are expressly reserved.

6. Except with respect to the Remaining Brooks Claim, Brooks may only collect upon a settlement or final judgment related to the Pending Action from Endurance, pursuant to the Endurance Policy, or from any other insurer providing coverage for the claims, pursuant to the Insurance Policies, the amount in excess of the Self-Insured Retention. Any limitations on recovery or collection set forth herein shall not apply in any way to Claim No. 20422 and the Second Brooks Complaint, except in accordance with the Endurance Policy following satisfaction of the SIR as provided for herein.

***Waiver of Claims against Debtors, Reorganized Debtors, and Trust***

7. Claim No. 20422, and all claims and rights of Brooks and the Debtors, Reorganized Debtors, and Trust associated therewith, if any, are not impacted by this Stipulation and are reserved by the respective parties, *provided, however*, for the avoidance of doubt, Claim No. 20422 shall not be entitled to a distribution or recovery from the Trust.

8. Subject to Paragraphs E, 6, and 7 of this Stipulation, on and from the Stipulation Effective Date, Brooks waives any and all claims against the Debtors and Reorganized Debtors other than the Remaining Brooks Claim and waives any right to, and shall take no action to, enforce, collect, liquidate, or recover upon any resulting settlement or judgment received in connection with the Pending Action or the Alleged Discrimination against the Trust, the Reorganized Debtors, or the property of any of the foregoing. Upon the allowance of the Remaining Brooks Claim in accordance with this Stipulation, the Remaining Brooks Claim shall be treated as an Allowed Class 6B Claim and be entitled to receive distributions from the Trust in

accordance with the terms of the Plan. Brooks acknowledges and agrees that no judgment or award of any kind is enforceable against or recoverable from the assets of the Trust, the Debtors, or the Reorganized Debtors, other than as provided herein and in the Plan and Confirmation Order solely with respect to the Remaining Brooks Claim. Moreover, Brooks, the Debtors, and the Reorganized Debtors confirm and acknowledge that any allowance of the Remaining Brooks Claim by the Trust shall not be evidence of and shall have no effect as to the amount or validity of the underlying Brooks' claim, and shall not be used in any res judicata argument, estoppel argument, or argument otherwise as to amount or validity of the underlying Brooks' claim.

9. The Debtors' claims and noticing agent is authorized to take all necessary actions to reflect the modifications to the Claim 24021 and allowance of the Remaining Brooks Claim as provided herein on the official claims register for the chapter 11 cases.

***Assumption of Risk***

10. Brooks assumes all risks with respect to coverage under the Insurance Policies and agree to hold the Trust, the Debtors and the Reorganized Debtors harmless with respect to any claim that may be asserted by any insurance carrier under the Insurance Policies on account of any deductible or self-insured retention, including the Self-Insured Retention, that must be satisfied prior to the payment to Brooks of any settlement by setting off any recovery by the amount of any such deductible or self-insured retention, including the Self-Insured Retention. For the avoidance of doubt, this paragraph does not modify any rights or obligations between the Debtors, Reorganized Debtors, and any insurance carrier.

***Conduct of Pending Action***

11. The Parties shall cooperate to ensure that any action commenced and/or any judgment obtained by Brooks in connection with the Pending Action may only be asserted

nominally against SSB and may not be asserted against any other Debtor, Reorganized Debtor, or the Trust except for the Remaining Brooks Claim, as set forth herein.

12. The Reorganized Debtors shall provide Brooks with reasonable access to such information as is reasonably appropriate to identify the extent of coverage available under any applicable insurance policy.

***Miscellaneous***

13. Except with respect to the Plan Injunction, nothing herein modifies or waives any of the rights and obligations of the Parties pursuant to the Plan, including, without limitation, pursuant to sections 5.1(b) and 8.7(d) of the Plan. The Parties rights and obligations under the Plan are reserved.

14. Except as otherwise expressly set forth herein, all other provisions of the Plan and the Plan Injunction shall remain in full force and effect until and unless terminated or modified by the Bankruptcy Court.

15. To the extent applicable, the Plan Injunction is hereby modified, if and to the extent necessary, to permit any insurer, including for the avoidance of doubt, Endurance, from which coverage is sought pursuant to Brooks' claims (or any third party administrator with respect to such claims) to administer, handle, defend, settle, and/or pay such claims in the ordinary course of business and without further order of the Bankruptcy Court.

16. Except as expressly set forth herein, nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, Reorganized Debtors or the Trust; (ii) a waiver or limitation of the Trust's, Reorganized Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (iii) a waiver of the Trust's or Reorganized Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law; (iv) an agreement or obligation to pay any claims; (v) a waiver of

any claims or causes of action which may exist against any creditor or interest holder; (vi) a waiver by the Trust or the Reorganized Debtors of rights to object to any and all proofs of claim; (vii) an admission of liability; or (viii) a waiver of any rights by Brooks regarding any claim or cause of action arising from or in relation to the Pending Action, other than as expressly set forth herein.

17. Brooks acknowledges that (i) under the terms and conditions of the Plan, Allowed Other General Unsecured Claims will not be paid in full, but rather shall receive a fractional recovery on such claims, the percentage of which will be based on, among other factors, funds available for distribution by the Trust; and (ii) in accordance with section 6.11(b) of the Plan, claimants receiving a distribution from the Trust will have 90 days to deposit any check issued on behalf of the Trust, notwithstanding any alternative deadline that may be printed on such check.<sup>8</sup>

18. Each Party acknowledges that it has had sufficient opportunity to seek its own legal counsel regarding insurance coverage for the Pending Action and the availability of insurance proceeds with respect thereto. Each Party further acknowledges that it is not relying on any representation, opinion, or advice of any Party regarding insurance coverage or availability of insurance proceeds with respect to the Pending Action, and Brooks shall have no rights against the Trust, the Debtors' or Reorganized Debtors' estates, or any affiliate of the foregoing, relating to insurance coverage or availability of insurance proceeds with respect to the Pending Action.

19. This Stipulation shall constitute the entire agreement and understanding of the Parties related to the subject matter herein and supersedes all prior agreements and understandings between the Parties.

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<sup>8</sup> The acknowledgement contained in paragraph 17 of this Stipulation is not intended to, nor shall it, limit, modify, amend or interpret the corresponding terms and conditions of the Plan, to which claimants should refer for the full text thereof.

20. The headings in this Stipulation are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

21. Each of the undersigned who executes this Stipulation by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such Party.

22. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copies, electronic copies, or facsimiles signed by the Parties here to be charged.

23. This Stipulation shall not be modified, altered, amended or vacated without the written consent of all Parties hereto or by further order of the Bankruptcy Court.

24. Notwithstanding the applicability of Bankruptcy Rule 4001(a)(3), the terms and provisions of this Stipulation shall be effective and enforceable immediately upon the Stipulation Effective Date and shall thereafter be binding upon the Parties hereto and their respective affiliates and successors.

25. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Texas, except to the extent that the Bankruptcy Code applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

26. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the day and year first below written.

Dated: December 5, 2024

By: /s/ Jason R. Adams

Jason R. Adams  
Kelley Drye & Warren LLP  
3 World Trade Center  
175 Greenwich Street  
New York, New York 10007

*Counsel to the Serta Simmons Class 6B Trust*

12/5/2024

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
DocuSigned by:  
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Dated: December 6, 2024

By: /s/ Gabriel A. Morgan

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*Attorneys for Reorganized Debtor*

12/5/2024

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Signed by:  
A35BCF1DEB9E4AA...

Joshua Brooks

**IT IS SO ORDERED**

Signed: \_\_\_\_\_, 2024

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CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE