

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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FUHU, INC., *et al.*,¹ : Case No. 15-12465 (CSS)

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Debtors. : Jointly Administered

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: Committee’s Objection Deadline: Dec. 28, 2015 at 4:00 p.m. ET

: Hearing Date: December 30, 2015 at 9:30 a.m. ET

: Related to Docket Nos. 3, 40 & 147

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**STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
WITH RESPECT TO MOTION OF DEBTORS FOR ENTRY OF A FINAL ORDER (A)
AUTHORIZING USE OF CASH COLLATERAL, (B) CONFIRMING DEBTORS’
ABILITY TO SELL INVENTORY, AND (C) GRANTING ADEQUATE PROTECTION
TO SECURED CREDITORS**

The Official Committee of Unsecured Creditors (the “Committee”) of Fuhu, Inc. and its debtor affiliates (collectively, the “Debtors”), by and through its proposed counsel, hereby submits this statement (the “Statement”) with respect to the *Motion of Debtors for Entry of a Final Order (A) Authorizing Use of Cash Collateral, (B) Confirming Debtors’ Ability to Sell Inventory, and (C) Granting Adequate Protection to Secured Creditors* (the “Cash Collateral Motion,” D.I. 3), and respectfully represents as follows:

¹ The Debtors, together with the last four digits of each Debtor’s tax identification number, are: Fuhu, Inc. (7896); Fuhu Holdings, Inc. (9761); Fuhu Direct, Inc. (2180); and Nabi, Inc. (4119). The location of the headquarters is 1700 E. Walnut Avenue, Suite 500, El Segundo, CA 90245.



PRELIMINARY STATEMENT²

The Debtors' lenders should not be permitted to put a nail in the coffin of these estates so that they can attempt to liquidate the Debtors' inventory – without the cloud, “paper weights,” as this Court has described them. At the second interim cash collateral hearing, the Debtors demonstrated that the lenders were adequately protected, albeit thinly, but protected nonetheless. The Committee submits that any updates to the Debtors' projections in the intervening period should not change the Court's conclusion. The Debtors have an opportunity to preserve their business and the jobs of their employees, and because the lenders continue to be adequately protected, the Debtors should be permitted to use cash collateral to do that.

While the Committee supports the Debtors' use of cash collateral, it has identified various aspects of the Second Interim Cash Collateral Order which should be modified prior to entry of any final order, the most significant of which is that the Budget should provide for payment of all administrative costs and expenses of these estates, including amounts necessary for the Committee to fulfill its statutory duties.

BACKGROUND

The Debtors' Prepetition Capital Structure

1. The Debtors are parties to a credit facility with Obsidian Agency Services, Inc., as agent for Tennenbaum Special Situations Fund IX, LLC and Tennenbaum Special Situations IX-O, L.P. (collectively, “Tennenbaum”) dated May 27, 2015 (the “Prepetition Credit Agreement”). The Debtors maintain that the obligations under the Prepetition Credit Agreement are secured by a first priority security interest in substantially all of the assets of the Debtors other than accounts

² Capitalized terms used but not defined in the Preliminary Statement shall have the respective meanings ascribed to them in this Statement or the Second Interim Cash Collateral Order, as applicable.

receivable, as well as a second priority security interest in the Debtors' accounts receivable. As of November 25, 2015, Tennenbaum asserted that approximately \$6.5 million was outstanding under the Prepetition Credit Agreement, comprised of approximately \$5.4 million in principal, approximately \$65,000 in accrued interest, a yield-enhancement fee of \$400,000 and an early-termination fee of \$700,000.³

2. LSQ Funding Group, L.C. ("LSQ") factored certain of the Debtors' accounts receivable under a Factoring and Security Agreement dated April 21, 2015. According to the Debtors, LSQ holds a first priority security interest in all of the Debtors' receivables, although it factored only a limited subset of those receivables. As of the Petition Date, approximately \$1.3 million was owed to LSQ on account of the factored receivables.

3. The Debtors may have granted two related suppliers, Fusing International, Inc. and Hon Hai Precision Industry Co., Ltd. (collectively, "Foxconn") purchase money security interests in approximately 35,000 tablets sold by Foxconn to the Debtors in October, 2015. According to the Debtors, the outstanding balance owed to Foxconn from that transaction is approximately \$2 million.

4. On or about December 4, 2015, Mattel, Inc. ("Mattel") made a loan to the Debtors to provide funding necessary to permit the Debtors to complete their preparations for the commencement of the chapter 11 cases (the "Mattel Loan"). According to the Debtors, \$300,000 is owed on account of this loan, which is secured by substantially all of the Debtors' assets. Upon information and belief, the Mattel Loan is junior in priority to the debt held by Tennenbaum and LSQ.

³ As noted below, the Committee reserves all of its rights to challenge any of the purportedly secured debt owed by the Debtors including, but not limited to, the Tennenbaum yield-enhancement fee and early termination fee.

5. The Debtors have substantial unsecured debt, estimated to total at least \$135 million.

The Bankruptcy Cases

6. On December 7, 2015 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

7. On December 16, 2015, the Committee was appointed in these cases by the Office of the United States Trustee for the District of Delaware, consisting of the following seven members: (i) D&H Distributing Co.; (ii) 24-7 Intouch Inc.; (iii) Hon Hai Precision Industry Co., Ltd.; (iv) Morgan Stanley; (v) Scott Miller, for himself and in his capacity as proposed class representative, C.D. Cal. Case # 2:14-cv-06119-CAS-AS; (vi) Trend Power Limited; and (vii) Wistron Corporation. That same day, the Committee selected Cooley LLP as its proposed lead counsel and Ballard Spahr LLP as its proposed Delaware counsel. On December 18, 2015, the Committee selected PricewaterhouseCoopers as its proposed financial advisor.

The Stalking Horse Agreement

8. On the Petition Date, the Debtors filed the *Motion for Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Operating Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving Bid Protections, and (D) Approving*

Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “Bid Procedures Motion”).⁴

9. Pursuant to the terms of the Asset Purchase Agreement by and among the Debtors and Mattel dated as of December 15, 2015, the Debtors seek to sell substantially all of their operating assets to Mattel, subject to higher and/or otherwise better offers.

The Debtors’ Proposed Use of Cash Collateral

10. On the Petition Date, the Debtors filed the Cash Collateral Motion.

11. On December 9, 2015, the Court entered the *Interim Order (A) Authorizing Use of Cash Collateral, Confirming Debtors’ Ability to Sell Inventory, Granting Adequate Protection to Pre-Petition Lenders, and (B) Setting a Final Hearing* (D.I. 40).

12. Tennenbaum, LSQ and D&H Distributing Co. have each filed objections to the Cash Collateral Motion (D.I. 34, 77 and 124).

13. On December 15, 2015, the Debtors filed a consolidated response to the objections filed as of that date (the “Cash Collateral Response,” D.I. 105).

14. On December 16, 2015, Tennenbaum filed a reply in support of its objection to the Cash Collateral Motion (D.I. 126).

15. The Court held hearings concerning the Debtors’ proposed use of cash collateral on December 9, 2015 and December 17, 2015 (the “Hearings”).

16. On December 21, the Court entered the *Second Interim Order (A) Authorizing Use of Cash Collateral, Confirming Debtors’ Ability to Sell Inventory, Granting Adequate*

⁴ Contemporaneously herewith, the Committee has submitted a limited objection to the Bid Procedures Motion (the “Bid Procedures Limited Objection”).

Protection to Pre-Petition Lenders, and (B) Setting a Final Hearing (the “Second Interim Cash Collateral Order,” D.I. 147).

STATEMENT

17. The Committee appreciates that the use of cash collateral is hotly contested in these cases. Indeed, the Court heard approximately 5 hours of testimony on the issue of adequate protection less than 2 weeks ago. The Committee and its advisors have worked closely with the Debtors to understand the Budget, as updated, and the assumptions underlying it, and the Committee is confident in the Debtors’ projections. The Committee submits that the Debtors’ lenders are adequately protected, as they were less than 2 weeks ago, and that this Court should permit the Debtors to use cash collateral on a final basis.

18. If the Court approves the Debtors’ use of cash collateral on a final basis, the Committee submits that the following be incorporated into any final order entered by this Court:

- It is unclear whether the Budget provides sufficient funding for the administration of these cases. By way of example, the Committee needs sufficient funding in order to fulfill its statutory duties, and Committee member expenses must be compensable.⁵
- Any sale proceeds should not be payable to TCP Agent or the TCP Lenders prior to the Allowance Date. The Committee understands that TCP Agent seeks payment of a \$700,000 early termination fee and a \$400,000 yield-enhancement fee, and the Committee fully intends to investigate whether or not such fees are properly payable in these cases.
- The Committee should receive advance notice of any Budget amendment and an opportunity to object. (Second Interim Cash Collateral Order, ¶ 3.)
- The Committee should receive copies of any reporting which the Debtors provide to TCP Agent, the TCP Lenders and the other Pre-Petition Lenders, when such

⁵ By way of example, the Budget line item for the Debtors’ counsel and financial advisor is \$1,598,500, whereas the line item for the Committee’s professionals is \$240,000 (i.e., approximately 15% of the amount allocated to the Debtors’ professionals).

reporting is provided to those parties. (Second Interim Cash Collateral Order, ¶ 11.)

- The preservation of the Debtors' rights to object to any claim, pursue any Avoidance Action or otherwise seek appropriate relief against the Pre-Petition Lenders should likewise extend to the Committee. (Second Interim Cash Collateral Order, ¶ 13(b).)
- Any amounts should not be payable to LSQ prior to the earlier of (i) Allowance Date, and (ii) the date that the Committee and the Debtors confirm they will not file a Challenge with respect to the obligations owing to LSQ.

RESERVATION OF RIGHTS

19. The Committee incorporates by reference the arguments in the Cash Collateral Motion and Cash Collateral Response, as well as arguments made by the Debtors at the Hearings and in the Committee's Bid Procedures Limited Objection. In addition, the Committee reserves the right to raise additional issues with the Debtors' proposed use of cash collateral at the hearing on the same.

WHEREFORE, the Committee respectfully requests entry of an order (i) granting the Debtors' use of cash collateral as set forth herein, and (ii) granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 28, 2015
Wilmington, Delaware

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*Proposed Counsel for the Official
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CERTIFICATE OF SERVICE

I, Leslie C. Heilman, Esquire hereby certify that on this 28th day of December, 2015, I caused a true and correct copy of the foregoing Statement of the Official Committee of Unsecured Creditors with respect to Motion of Debtors for Entry of a Final Order (A) Authorizing Use of Cash Collateral, (B) Confirming Debtors' Ability to Sell Inventory, and (C) Granting Adequate Protection to Secured Creditors to be served on the individuals listed below in the manner indicated.

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Dated: December 28, 2015
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/s/ Leslie C. Heilman

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