

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SEQUENTIAL BRANDS GROUP, INC. *et al.*,

Debtors.

Chapter 11

Case No. 21-11194 (JTD)

(Jointly Administered)

Re: D.I. No. 501

**CERTIFICATION OF COUNSEL REGARDING MOTION OF BEN ARIE  
RELIEF FORM THE PLAN INJUNCTION TO PURSUE STATE COURT ACTION**

The undersigned counsel to Ben Arie (“Movant”) hereby certifies that:

1. On March 11, 2022, Movant filed the *Motion of Ben Arie for Relief from the Plan Injunction* (the “Motion”). Through the Motion, Movant desires to lift the Plan Injunction in order to continue the State Court Action<sup>1</sup> to recover against any applicable insurance proceeds.

2. The SBGI Liquidating Trust (the “Liquidating Trustee”) for the Debtors and Movant have agreed to the terms of a stipulation (the “Stipulation”) and revised proposed order, (the “Revised Proposed Order”), which provides Movant with limited relief from the Plan Injunction. A copy of the Stipulation is attached hereto as Exhibit “A”. The Revised Proposed Order is attached to the Stipulation as Exhibit “1”.

[Signature Page to Follow]

<sup>1</sup> Capitalized terms herein shall have the meanings ascribed to them in the Motion.



WHEREFORE, counsel respectfully requests that Court approve the Stipulation and enter the Revised Proposed Order at the Court's earliest convenience.

Dated: May 20, 2022

**JOYCE, LLC**

/s/ Michael J. Joyce

Michael J. Joyce (No. 4563)

1225 King Street

Suite 800

Wilmington, DE 19801

(302)-388-1944

[mjoyce@mjlawoffices.com](mailto:mjoyce@mjlawoffices.com)

*Counsel for Ben Arie*

## EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT  
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**STIPULATION PROVIDING BEN ARIE  
RELIEF FORM THE PLAN INJUNCTION TO PURSUE STATE COURT ACTION**

**Recitals**

A. On March 24, 2021, movant Ben Arie filed a complaint in the Supreme Court of New York County of Queens, Index No. 706856-2021 against debtor Sequential Brands (the “State Court Action”).

B. On August 31, 2021, (the “Petition Date”), each of the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware.

C. On January 3, 2022, the Debtors filed their *First Amended Joint Chapter 11 Plan of Liquidation of Sequential Brands Group, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. No. 380] (the “Plan”). On February 22, 2022, this Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the First Amended Joint Chapter 11 Plan of Liquidation of Sequential Brands Group, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 486] (the “Confirmation Order”).

D. The Confirmation Order appointed Drivetrain LLC as the as trustee of the SBGI Liquidating Trust (the “Liquidating Trustee”) for the Debtors, as of effective date of the Plan (the “Effective Date”). The Effective Date occurred on March 3, 2022.

E. Article VIII (D) of the Plan provides:

All Parties and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim, Cause of Action or Interest, from taking any of the following actions against, as applicable, any Estate, any Released Party, the Liquidating Trust, the Liquidating Trustee, their respective successors and assigns, and any of their respective assets and properties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Causes of Action or Interests, (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Released Parties (other than the Debtors) on account of or in connection with or with respect to any such Claims, Causes of Action or Interests, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Released Parties (other than the Debtors), or their respective property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Causes of Action or Interests, (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Released Parties (other than the Debtors) or against their respective property or estates on account of or in connection with or with respect to any such Claims, Causes of Action or Interests unless such Entity has timely asserted such setoff right before Confirmation in a Proof of Claim or document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim, Cause of Action or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise, and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Causes of Action or Interests released or settled pursuant to the Plan. Notwithstanding the foregoing, or any of the releases, discharges, injunctions or waivers set forth herein, nothing in the Plan or the Confirmation Order shall modify the rights, if any, of any counterparty to an unexpired lease of nonresidential real property to assert any right of setoff or recoupment that such counterparty may have under applicable bankruptcy or non-bankruptcy law, including, but not limited to, the ability, if any, of such counterparties to setoff or recoup a security deposit held pursuant to the terms of their unexpired lease with the Debtors or the Liquidating Trust (the “Plan Injunction”).

F. The prosecution and liquidation of Mr. Arie's claims against debtor Sequential Brands in the State Court Action have been delayed as a consequence of the Debtors' chapter 11 filings, the automatic stay provisions set forth in 11 U.S.C. §362(a) and the Plan Injunction.

G. On March 11, 2022, Mr. Arie filed the *Motion of Ben Arie for Relief from the Plan Injunction* (the "Motion"). Through the Motion, Mr. Arie desires to lift the Plan Injunction in order to continue the State Court Action to recover against any applicable insurance proceeds.

H. Subsequent to the filing of the Motion, counsel for the Liquidating Trustee contacted counsel for Mr. Arie, and, as a result of such communications, the parties were able to agree upon the terms set forth herein (the "Stipulation") providing Mr. Arie with limited relief from the Plan Injunction to (a) prosecute the State Court Action and (b) recover upon his prepetition claims against the Debtors (the "Claims") solely from any applicable insurance coverage proceeds.

ACCORDINGLY, THE PARTIES HEREBY STIPULATE AND AGREE  
THAT:

**Agreement**

1. Mr. Arie shall have limited relief from the Plan Injunction to proceed with the State Court Action against the Debtors for the purpose of pursuing and/or collecting any judgment or settlement from the proceeds of any applicable insurance coverage, provided that: (a) nothing contained herein shall be deemed a waiver of any rights or defenses to coverage of any insurer under any insurance policies issued to the Debtors that may be implicated by the State Court Action; (b) nothing herein shall be deemed or interpreted to expand the insurance

coverage or applicability of such coverage that may be available with respect to the State Court Action; and (c) any self-insured retention provisions of any such insurance policies shall remain in full force and effect, provided that the Debtors' estates shall have no obligation under any of the insurance policies to spend any money or incur any cost in the State Court Action.

2. In the event Mr. Arie obtains a judgment, award or settlement in the State Court Action, (i) Mr. Arie is authorized to collect such judgment, award or settlement solely from the Debtors' applicable insurance policies and any proceeds thereof (the "Insurance Proceeds") and (ii) such judgment, award or settlement shall be payable only out of applicable Insurance Proceeds to the extent any such proceeds are available.

3. Notwithstanding anything contained in the Stipulation, Mr. Arie waives the right to seek satisfaction of, and shall be permanently enjoined from seeking payment from the Debtors, the Debtors' estates and/or their successors of, any judgment, award, settlement, claim, distribution, self-insured retention, or any other payment amount including, without limitation, seeking payment of any judgment, award, settlement, claim or any other payment in the event insurance coverage is denied under any applicable insurance policy covering the Debtors for the Claims against the Debtors, the Debtors' estates, and successors.

4. Any claims that Mr. Arie has through the Debtors against their insurance providers or against any other individual or entity, including but not limited to any other individual or entity's insurance provider, as well as any defenses and claims the Debtors or their insurers have against the Movants, are unaffected by this Stipulation and are expressly preserved.

5. Except as otherwise expressly set forth herein, the Plan Injunction and automatic stay shall remain in full force and effect with respect to the Debtors and their estates.

6. Except as otherwise expressly set forth herein, nothing contained herein shall alter, expand or in any way effect the parties' respective rights under the Bankruptcy Code and other applicable law.

7. Each person signing this Stipulation, including but not limited to any person signing as counsel for a party, hereby represents and warrants that he or she has been duly authorized and has the requisite authority to enter into this Stipulation on behalf of and bind the party on whose behalf they so sign.

8. This Stipulation was the product of negotiations between the parties and any rule of construction requiring that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Stipulation.

9. The Bankruptcy Court shall retain exclusive jurisdiction over any issues arising from or relating to this Stipulation and its enforcement, and the State Court shall retain jurisdiction over the State Court Action.

10. This Stipulation shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of Delaware, without regard to Delaware's rules regarding conflict of laws.

11. This stipulation constitutes the entire agreement among the parties.



12. This stipulation may be executed by the Parties hereto in counterparts, each of which shall be deemed an original, and all of which together shall constitute the same instrument.

STIPULATED AND AGREED TO THIS 20<sup>th</sup> DAY OF MAY, 2022.

PACHULSKI STANG ZIEHL & JONES LLP JOYCE, LLC

/s/ Timothy P. Cairns

Laura Davis Jones (Bar No. 2436)  
Timothy P. Cairns (Bar No. 4228)  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Email: [ljones@pszjlaw.com](mailto:ljones@pszjlaw.com)  
[tcairns@pszjlaw.com](mailto:tcairns@pszjlaw.com)

*Counsel for the Liquidating Trustee*

/s/Michael J. Joyce

Michael J. Joyce (Bar No. 4563)  
1225 King Street, Suite 800  
Wilmington, DE 19801  
Telephone: (302) 388-1944  
Email: [mjoyce@mjlawofficers.com](mailto:mjoyce@mjlawofficers.com)

*Counsel for Ben Arie*

## EXHIBIT 1

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

In re:

SEQUENTIAL BRANDS GROUP, INC. *et al.*,  
  
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Chapter 11

Case No. 21-11194 (JTD)

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Re: D.I. No. \_\_\_\_\_

**ORDER APPROVING STIPULATION PROVIDING BEN ARIE  
RELIEF FORM THE PLAN INJUNCTION TO PURSUE STATE COURT ACTION**

Upon Consideration of the *Stipulation Providing Ben Arie Relief From The Plan Injunction To Pursue State Court Action*, (the “Stipulation”); and having determined that this Court has jurisdiction to enter this Order in accordance with 28 U.S.C. §§ 157 and 1334, the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and having determined that due and appropriate notice of the relief provided for herein has been given under the circumstances; and the Court having determined that the agreements set forth in the Stipulation are in the best interests of the Debtors, their estates, their creditors and other parties in interest; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Stipulation is hereby APPROVED.
2. The Plan Injunction is hereby modified solely to the extent set forth in the Stipulation. Except as set forth in the Stipulation, the Plan Injunction shall remain in full force and effect.

3. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order or the Stipulation.

4. This Order and the Stipulation shall become effective immediately upon entry of this Order notwithstanding anything in the Federal Rules of Bankruptcy Procedure or otherwise to the contrary.