

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
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CORPORATE RESOURCE SERVICES, INC., *et al.*,¹ : Case No. 15-12329 (MG)
:
: (Jointly Administered)
:
Debtors. X

**STIPULATION AND ORDER BY AND
BETWEEN CHAPTER 11 TRUSTEE AND WELLS FARGO
BANK, N.A. CONCERNING CERTAIN PAYMENT OBLIGATIONS**

This stipulation and agreed order (the “Stipulation”) is made by and entered into by and between, James S. Feltman, not individually but solely in his capacity as Chapter 11 trustee (the “Trustee”) of each of (a) Corporate Resource Services, Inc., and its affiliated debtors (collectively, “CRS” or the “CRS Debtors”) and (b) TS Employment, Inc. (“TSE”), and Wells Fargo Bank, N.A. (“Wells Fargo,” and together with the Trustee, the “Parties”):

RECITALS

The Bankruptcy Cases

WHEREAS on July 23, 2015 (the “CRS Petition Date”), the CRS Debtors commenced voluntary cases 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; and

¹ The CRS Debtors in these chapter 11 cases, along with the last four digits of each such debtor’s federal tax identification number, are: (1) Corporate Resource Services, Inc. (1965); (2) Accountabilities, Inc. (5619); (3) Corporate Resource Development Inc. (1966); (4) Diamond Staffing Services, Inc. (7952); (5) Insurance Overload Services, Inc. (9798); (6) Integrated Consulting Services, Inc. (2385); (7) The CRS Group, Inc. (1458); and (8) TS Staffing Services, Inc. (8647).

WHEREAS, on February 2, 2015 (the “TSE Petition Date”), TSE commenced a voluntary case under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York; and

WHEREAS, in addition to his role as Trustee in these Chapter 11 cases, Mr. Feltman also serves as the Chapter 11 trustee (the “TSE Trustee”) of TSE in TSE’s Chapter 11 case, which is an affiliated case pending before this Court (Case No. 15-10243); and

WHEREAS on July 27, 2015, the TSE Trustee filed his *Application to Transfer Venue of the Debtors’ Cases to the Southern District* [TSE Doc No. 127] (the “Venue Application”) seeking to transfer venue of these Chapter 11 cases from the District of Delaware to the Bankruptcy Court for the Southern District of New York (the “Court”), and on August 18, 2015, the Court entered an order granting the Venue Application; and

WHEREAS on September 25, 2015, the Court entered an order approving the United States Trustee’s appointment of James S. Feltman as the trustee for the Debtors in the above-captioned Chapter 11 cases, (the “Trustee”) [Doc. No. 148], and on October 1, 2015, the Trustee filed his *Acceptance of Appointment Pursuant to Bankruptcy Rule 2008* [Doc. No. 149]; and

WHEREAS Domaine Chandon, Inc. (“Chandon”) was a customer of Debtor Accountabilities, Inc. until approximately March 2015; and

WHEREAS Chandon mistakenly paid the Wells Fargo for work that was not performed by the Debtors after such time that Chandon ceased conducting business with Accountabilities, Inc.; and

WHEREAS on September 21, 2015, Chandon filed *Domain Chandon Inc.’s Motion for Entry of an Order Granting Relief from the Automatic Stay* (the “Stay Relief”

Motion”) [Doc No. 140], wherein Chandon asserts that Wells Fargo is in possession of funds that are property of Chandon; and

WHEREAS on December 4, 2015, the Trustee filed the *Chapter 11 Trustee’s Limited Response to Domaine Chandon, Inc.’s Motion for Entry of an Order Granting Relief from the Automatic Stay* [Doc. No. 191]; and

WHEREAS on December 11, 2015, Wells Fargo filed the *Joinder of Wells Fargo Bank, National Association to the Chapter 11 Trustee’s Limited Response to Domaine Chandon, Inc.’s Motion for Entry of an Order Granting Relief from the Automatic Stay* [Doc. No. 200]; and

**November Stipulation and
Chandon Disputed OAP**

WHEREAS prior to the Petition Date, Wells Fargo and CRS entered into a series of account purchase agreements and amendments pursuant to which, among other things, Wells Fargo agreed to make loans to CRS up to the aggregate principal amount of approximately \$80 million and to provide CRS with various financing and collection services and accommodations (the “Financing Facility”); and

WHEREAS on November 2, 2015, the Trustee initiated an adversary proceeding against Wells Fargo stylized as *James S. Feltman, Not Individually but Solely in his Capacity as Chapter 11 Trustee of the Estate of Corporate Resource Services, Inc. et. al.*, Case No. 15-01391 (MG) seeking the turnover of certain funds then held by Wells Fargo which Wells Fargo asserted it had a right to hold under certain indemnity and other provisions in the Financing Facility and applicable law; and

WHEREAS on November 24, 2015, the Court so ordered a stipulation (the “November Stipulation”)² [AP Dkt. No. 21] between the Parties resolving the adversary proceeding and memorializing an agreement that resulted in, among other things, (i) the return of a portion of the approximately \$2.8 million in Excess Funds then held by Wells Fargo; (ii) an agreement to allow Wells Fargo to retain \$1.5 million of Wells Fargo Retained Cash Collateral as adequate protection for its alleged security interest under the Financing Facility; (iii) the creation of a Stipulation Reserve Account not to exceed \$1.5 million funded through the retention by the Trustee of fifteen percent (15%) of future monies collected and retained up to the first \$10 million of such monies; and (iv) establishment of a mechanism for the resolution of Disputed OAP; and

WHEREAS, Exhibit A to the November Stipulation provided that there was \$58,157.84 of Disputed OAP related to CRS customer, Chandon; and

WHEREAS after good-faith reconciliation of outstanding Chandon invoices, Chandon now asserts that it inadvertently paid \$85,315.89 to Wells Fargo, which sum was then applied against obligations owing by CRS to Wells Fargo under the Financing Facility; and

WHEREAS, after reviewing materials provided by Chandon, Wells Fargo and the Trustee agree that Chandon erroneously paid the amount of \$85,315.89 to Wells Fargo; and

WHEREAS the \$85,315.89 paid by Chandon to Wells Fargo is not property of the Debtors, their estates, or Wells Fargo; and

² Capitalized terms used herein but not otherwise defined shall take the meanings ascribed to such terms in the November Stipulation.

WHEREAS the Trustee and Wells Fargo have determined that the \$58,157.84 of Disputed OAP should be returned to Chandon (and the Trustee disclaims any interest in such Disputed OAP associated with Chandon); and

WHEREAS Wells Fargo has determined that the remaining \$27,158.05 (the “Chandon Excess Amount”) was applied by Wells Fargo, prior to entry into the November Stipulation, to amounts then outstanding under the Financing Facility; and
Unpaid TSE Payroll Tax

WHEREAS prior to the Petition Date and the Trustee’s appointment, CRS and Wells Fargo entered into a stipulation with the TSE Trustee on June 25, 2015 [TSE Dkt. No. 121] (the “June Stipulation”), which provides that “CRS and Wells Fargo shall remain obligated to the [TSE] Trustee to fund any reasonable and substantiated payroll or payroll-related obligations, including the out-of-pocket costs of payroll tax returns”; and

WHEREAS, TSE has approximately \$170,000 in post-petition state unemployment taxes (“SUTA”) under-withheld (which SUTA includes penalties and interest) due for 2015 (the “Unpaid Payroll Taxes,” and together with the Chandon Excess Amount, the “Payment Obligations”); and

**Dispute Over Funding of
Payment Obligations**

WHEREAS the Trustee asked Wells Fargo to pay the Payment Obligations and charge such amounts against the Wells Fargo Retained Cash Collateral, which the Trustee believes are payable under previous stipulations; and

WHEREAS Wells Fargo acknowledges that the Payment Obligations are due and owing, but disputes the contention that it is required to fund such amounts because, among other reasons, the Debtors’ estates now have sufficient funds to pay such amounts without additional cash from Wells Fargo; and

WHEREAS to avoid any litigation over these issues, the cost of which would likely exceed the Payment Obligations (particularly since Wells Fargo would likely assert disputed indemnity rights in connection with at least some costs associated with such a litigation), the Parties have reached a consensual agreement with regard to the funding of the Payment Obligations;

NOW, THEREFORE, Wells Fargo and the Trustee hereby stipulate, consent and agree that:

Reservation of Rights

1. For the avoidance of doubt, the agreement reflected herein relates solely to the Unpaid Payroll Taxes and the Chandon Excess Amount, and, except as expressly provided herein, nothing herein amends or modifies, or shall be construed to modify or amend, the November Stipulation, the June Stipulation (or any other Stipulation).

Additionally, except as otherwise expressly provided in this Stipulation, the Trustees and Wells Fargo expressly reserve all their respective rights to make any claims, objections, or motions in connection with the funds addressed in the November Stipulation, the June Stipulation (or any other Stipulation), or any other assets of the CRS estates, and by entering into this Stipulation are not waiving any arguments or rights concerning any such matters.

Payment Obligations

2. The CRS estate will make payment from Debtor funds to TSE to permit the TSE estate to satisfy the Unpaid Payroll Taxes. Consistent with the June Stipulation, TSE will have no obligation to the CRS estate for the amount of the Unpaid Payroll Taxes. The CRS estate will pay the Chandon Excess Amount (\$27,158.05). Because such funds for the Payment Obligations are coming directly from the CRS Debtors'

estates, the Parties agree that the Trustee will not be required to contribute to the Stipulation Reserve Account an amount equal to the Payment Obligations (the aggregate amount of the Payment Obligations is approximately \$197,000).

3. Thus, for the avoidance of doubt, the Trustee will not be required to make any contributions to the Stipulation Reserve Account on account of the next \$1.33 million in future monies collected and retained by the Trustee (\$197,000 is 15% of \$1.33 million) (the “Excluded Amounts”). Additionally, the maximum amount the Trustee may be obligated to contribute to the Stipulation Reserve Account shall be reduced by \$197,000. Consequently, following Court approval of this Stipulation, the maximum amount the Trustee may be required to deposit in the Stipulation Reserve Account shall not exceed \$1.3 million.

4. The Trustee shall track the Excluded Amounts, and account for the Excluded Amounts in the monthly reporting the Trustee provides to Wells Fargo pursuant to paragraph 15 of the November Stipulation.

5. The Trustee shall pay \$27,158.05 to Chandon within fourteen (14) days of entry by the Bankruptcy Court of an Order approving this Stipulation (including by “so ordering” such Stipulation).

6. Subject to the terms of this Stipulation, Wells Fargo shall remit the \$58,157.84 of Disputed OAP related to Chandon listed on Exhibit A of the November Stipulation to Chandon within fourteen (14) days of entry by the Bankruptcy Court of an Order approving this Stipulation (including by “so ordering” such Stipulation).

7. Chandon is a third party beneficiary of this Stipulation and shall have the right and standing to enforce the payment described in paragraphs 2, 5 and 6 of this

Stipulation before the Bankruptcy Court (to the extent such paragraphs concern payments to Chandon).

Release by Chandon

8. Chandon hereby agrees that upon its receipt of all funds to be transferred to it pursuant to this Stipulation, Chandon on behalf of itself, its heirs, representatives and assigns, does hereby fully, finally, absolutely, unconditionally, and irrevocably waive, release, remise and discharge Wells Fargo Bank, the Trustee, the Debtors, their estates, and each of their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, partners, subsidiaries, predecessors, successors, employees, attorneys and agents (the “Releases”) from any and all actions, claims, causes of action, covenants, contracts, controversies, agreements, promises, suits, debts, obligations, liabilities, accounts, sums of money, accounts, bills, reckonings, damages, defenses, or demands and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “Chandon Released Claim” and collectively, “Chandon Released Claims”) of every name and nature, known or unknown, suspected or unsuspected, asserted or unasserted, both at law and in equity, which Chandon, or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releases or any of them for, upon, or by reason of any nature, cause or thing whatsoever which arises at any time on or prior to the day and date of this Stipulation.

9. Chandon hereby stipulates acknowledges and agrees that the releases set forth above in Paragraph No. 8, above, may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding

which may be instituted, prosecuted or attempted in breach of the provisions of such releases.

Miscellaneous

10. Notwithstanding anything to the contrary contained herein, all funds to be transferred by Wells Fargo in accordance with this Stipulation shall be subject to Wells Fargo completing its customary due diligence with respect to the transmission of any such funds, including, without limitation, receipt by Wells Fargo of valid wiring or remittance instructions, and confirmation of the ownership of the account into which such funds are to be transferred.

11. This Stipulation may not be modified, amended, or vacated other than by a signed writing executed by the Parties or by order of the Court.

12. Each person who executes this Stipulation on behalf of a party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such party.

13. Neither this Stipulation, nor any statement made or action taken in connection with the negotiation of this Stipulation, shall be offered or received in evidence or in any way referred to in any legal action, negotiation, or transaction among or between the Parties or among or between any of the Parties and Wells Fargo, other than as may be necessary to (a) obtain approval of and enforce this Stipulation or any dispute hereunder or (b) seek damages or injunctive relief in connection therewith. The Parties hereby further acknowledge and agree that neither this Stipulation nor any statement or action taken by any Party in connection with this Stipulation shall imply, constitute, or establish (either on their own or when considered together with any other

statement, stipulation, or action) a precedent, acknowledgement, acceptance or course of dealing among the Parties with respect to the OAP, Disputed OAP, or any other matter.

14. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and evidence of this Stipulation may be exchanged by fax or by electronic transmission of a scanned copy of the signature pages or by exchange of originally signed documents, each of which shall be as fully binding on the party as a signed original.

15. The terms set forth in this Stipulation and any agreements reached between the Parties to this Stipulation are the product of a compromise. The terms of this Stipulation relate only the transactions specifically described and resolved in the Stipulation and the terms of this Stipulation (or the actions performed as a result of this Stipulation) shall have no precedential or evidentiary value with regard to any further claims or disputes that may arise in the future.

[concluded on the following page]

16. The Parties hereby irrevocably and unconditionally agree that the Court shall retain exclusive jurisdiction to interpret, implement, and enforce the provisions of this Stipulation.

Dated: New York, New York
March 15, 2016

WELLS FARGO BANK, N.A.

/s/Daniel F. Fiorillo

OTTERBOURG P.C.

Jonathan N. Helfat
Richard G. Haddad
Daniel F. Fiorillo
230 Park Avenue
New York, New York 10169
(212) 661-9100

Dated: New York, New York
March 15, 2016

Acknowledged and Agreed to by:

DOMAINE CHANDON, INC.
(solely as to paragraphs 5 through 10)

/s/Ilan D. Scharf

PACHULSKI STANG ZIEHL & JONES LLP

Ilan D. Scharf
780 Third Avenue
New York, New York 10017
(212) 561-7700

Dated: New York, New York
March 15, 2016

JAMES S. FELTMAN

Not Individually But Solely in His
Capacity as Chapter 11 Trustee of
Corporate Resource Services, Inc. and TS
Employment, Inc.

/s/ Steven S. Flores

TOGUT, SEGAL & SEGAL LLP

Albert Togut
Steven S. Flores
Kyle J. Ortiz
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000

SO ORDERED this **6th day of April, 2016**
in New York, New York

/s/Martin Glenn

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE