EFiled: Mar 01 2024 10:52AM EST
Transaction ID 72214575
Case No. 2024-0199-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: SUMMIT NATURALS, INC., D/B/A HIGHKEY, ASSIGNOR, TO: HIGHKEY ABC, LLC, ASSIGNEE.	Case No.

VERIFIED PETITION FOR ASSIGNMENT
FOR THE BENEFIT OF CREDITORS

The assignee, HighKey ABC, LLC ("**Assignee**"), by and through its undersigned attorneys, hereby petitions the Court for an assignment for the benefit of creditors of the assets of Summit Naturals, Inc., d/b/a HighKey ("**Assignor**"), and in support hereof states as follows:

1. 10 Del. C. § 7381 confers jurisdiction on this Court in this case.

2. Assignor is a Delaware corporation with offices at 3505 Lake Lynda Drive, Suite 200, Orlando, Florida 32817.

3. Assignee is a Delaware limited liability company, which has offices in care of r^2 Advisors LLC ("**r^2**"), 1518 Blake Street, Denver, Colorado 80202. Assignee is a newly formed, wholly-owned subsidiary of r^2, a firm that, *inter alia*, specializes in corporate restructurings and interim management.

4. Assignor is indebted to creditors, unable to pay its debts, and desirous of providing for the payment of its debts to the extent possible through the process afforded under 10 Del. C. § 7381 et. seq.

A. Business Overview

5. Assignor was in the business of marketing and selling keto-friendly snacks—primarily cookies, crackers and other desserts—under the brand "HighKey". The company's mission was to change the way consumers eat by removing sugar and carbohydrates from well-known, comfort snacks like chocolate-chip cookies. Consumers could purchase HighKey snacks directly through the company's website or in wholesale retail stores, including Target, Walmart, and Whole Foods. The company marketed its products as a healthier snack alternative.[1]

B. Assignor's Secured Debt Obligations

6. Assignor's secured debt obligations are two-fold. First, on June 1, 2023, Assignor, as borrower, and Tasseo SNI Holdco, LLC, as lender ("**Tasseo**"), executed that certain Amended and Restated Credit and Security Agreement (as amended, supplemented or otherwise modified from time to time, the "**Tasseo Loan Agreement**"), whereby, among other things, Assignor's outstanding financial

1 *See, e.g.*, Daniel Boan, *People are loving these low-carb, keto-friendly cookies*, NBCUNIVERSAL TODAY.COM (Sept. 9, 2019, 2:56 P.M.), https://www.today.com/shop/people-are-loving-these-low-carb-keto-friendly-cookies-t162175; Mary Honkus, *Ryan Reynolds' Hilarious New HighKey Commercial Has Naughty Undertones: 'It Involves a Bit of a Wink'*, PEOPLE (Mar. 11, 2021, 2:25 P.M.), https://people.com/food/ryan-reynolds-hilarious-new-highkey-commercial/.

obligations under a credit agreement with Tasseo's predecessor were converted into a $4,104,054.63 term loan (the "**Tasseo Loan**"). The total principal balance outstanding as of the date of this Verified Petition is $4,104,054.63, plus accrued and unpaid interest with respect thereto and any additional fees, costs, and expenses owing under or in connection therewith. The Tasseo Loan Agreement grants Tasseo a security interest and lien on Assignor's right, title, and interest in, to and under the "Collateral" as defined in the Tasseo Loan Agreement, which generally consists of substantially all assets of Assignor, including cash, accounts receivable, inventory, equipment and proceeds of the sale of any collateral (the "**Tasseo Collateral**").

7. Second, as a result of a continuing liquidity crisis, and to provide necessary cash for the business, on July 7, 2023, Assignor, as borrower, Tasseo Consumer Ecosystem LP, as guarantor ("**Guarantor**"), and SG Credit Partners, Inc., a Delaware corporation, as lender ("**SGCP**"), executed that certain Loan and Security Agreement dated as of July 7, 2023 (as amended, restated, supplemented and otherwise modified from time to time, the "**SGCP Loan Agreement**"), whereby SGCP agreed to loan Assignor up to $3,000,000 based on the terms and conditions set forth therein in exchange for a security interest and lien on Assignor's right, title, and interest in, to and under the "Collateral" as defined in the SGCP Loan Agreement, which likewise generally consists of substantially all assets of Assignor (the "**SGCP Collateral**," and together with the Tasseo Collateral, the "**Collateral**").

The loan under the SGCP Loan Agreement matures on July 1, 2024. As of the date of this Verified Petition, the total amount owed under the SGCP Loan Agreement is $2,180,083.32.[2]

8. SGCP and Tasseo (together, the "**Secured Creditors**") each individually perfected their respective liens on the Collateral pursuant to properly filed UCC financing statements. In addition, pursuant to that certain Subordination Agreement between the Secured Creditors dated as of July 7, 2023, SGCP's security interest in the Collateral is senior to Tasseo's security interest in the Collateral.

C. Marketing and Sale of Assignor's Assets

9. In early 2022, Assignor engaged Piper Sandler Companies ("**Piper Sandler**") as its investment banker, to run a sale process for the sale of substantially all of Assignor's assets. Piper Sandler conducted a fulsome marketing process, contacting over fifty potentially interested parties. Despite Piper Sandler's robust efforts, only two non-binding, first rounds bids were received. Both bids were ultimately withdrawn by the prospective purchasers and, as a result, Assignor terminated the sale process.

10. Following the termination of the attempted 2022 sale process, Assignor engaged with numerous potential equity investors for a potential reorganization and

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[2] This amount reflects the remaining principal and accrued interest payments and mandatory fees due and owing under the SGCP Loan Agreement through maturity.

conducted an internal marketing process for a potential purchaser. When these efforts also proved unsuccessful, Assignor approached its three manufacturing partners regarding a potential transaction, including Creations Foods US, Inc. ("**Purchaser**"). As a result of these discussions, on December 9, 2023, Purchaser submitted a letter of intent to purchase substantially all of Assignor's assets.

11. On January 19, 2024, Assignor consummated the sale of substantially all of its assets to Purchaser (the "**Sale**") pursuant to an Asset Purchase Agreement (the "**APA**") with Purchaser. Pursuant to the APA, the purchase price for the Purchased Assets (as defined in the APA) is comprised of: (i) $1,700,000, which was paid at closing; (ii) up to $1,700,000 in deferred payments (the "**Deferred Purchase Price Payment**") to be paid to Assignor if Purchaser achieves certain milestones during the period from January 1, 2024 through and including June 30, 2025; and (iii) the Inventory Purchase Price, as defined below.

12. The price paid by Purchaser for Purchased Inventory (as defined in the APA) (the "**Inventory Purchase Price**") totals $1 million, half of which was paid at closing, $250,000 of which is due within sixty (60) days following closing, and the remaining $250,000 of which is due within ninety (90) days following closing. The Inventory Purchase Price is further subject to adjustment based on the inventory actually received by Purchaser, in accordance with the procedures set forth in the APA.

13. In addition to the foregoing, the APA also requires Purchaser to make quarterly royalty payments to Assignor of four percent (4%) of Net Sales (as defined in the APA) under the HighKey brand within thirty (30) days of the end of each calendar quarter (the "**Royalty Payments**"). The Royalty Payments will terminate upon the earlier of (i) satisfaction of the entire Deferred Purchase Price Payment; (ii) a Change in Control (as defined in the APA); or (iii) December 31, 2027.

14. The amounts paid upon the closing of the Sale permitted Assignor to pay its former senior secured lender, Abrams & Company, Inc., in full. The Secured Creditors consented to the Sale and released their liens on the assets purchased by Purchaser, retaining their respective liens on the proceeds of the Sale, including the Royalty Payments.

15. The Sale and APA were heavily negotiated and resulted in the best option for Assignor under the circumstances. Assignor was facing an immediate liquidity crisis and was not able to raise additional capital to fund ongoing operations under the circumstances. Assignor's board of directors undertook a fulsome process with Assignor's legal counsel to evaluate all potential restructuring and liquidation options and ultimately determined that the Sale followed by a wind-down of the business was the best option for Assignor under the circumstances. Following the closing of the Sale, Assignor ceased operating its business.

D. Circumstances Leading to General Assignment and Engagement of r^2 as Assignee

16. Prior to Assignor's execution of the General Assignment and related documents, Assignor's board of directors explored options to maximize value for its constituents. After evaluating such options, Assignor's board of directors determined that a general assignment for the benefit of creditors was the most appropriate and best option for Assignor's creditors and shareholders. A copy of the unanimous written consent of the board of directors (excluding exhibits, which are otherwise attached as separate exhibits to this Verified Petition) is attached hereto as **Exhibit A**.[3] Through the General Assignment, Assignee seeks to realize value for its estate from the collection of outstanding accounts receivable, including the proceeds of the Sale, for the benefit of Assignor's stakeholders.

17. To carry out the assignment, and after evaluating proposals from two different restructuring/financial advisory firms, on January 25, 2024, Assignor engaged r^2 to conduct an assignment for the benefit of creditors proceeding before this Court pursuant to the terms of a General Assignment to be entered by Assignor and a limited liability company formed by r^2 for the purposes of, *inter alia*, taking assignment of Assignor's remaining assets, collecting Sale proceeds and other

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[3] Assignor's stockholders likewise deemed it advisable and in the best interest of the company to pursue the General Assignment. A copy of the written consent of certain stockholders is attached hereto as **Exhibit B**.

accounts receivable, and otherwise carrying out the assignment process and winding down Assignor. Assignor engaged r^2 because of its extensive experience in turnaround management and business winddown, and serving in a fiduciary capacity for the benefit of creditors, including as assignee for the benefit of creditors both in Delaware and other jurisdictions. A copy of the engagement agreement (the "**$\mathbf{r^2}$ Engagement Agreement**") is attached hereto as **Exhibit C**.

18. Pursuant to the r^2 Engagement Agreement, r^2 received a retainer in the amount of $10,000 upon its engagement, which it will apply to its final invoice. Its fees will be incurred on an hourly basis in accordance with the fee schedule set forth in the r^2 Engagement Agreement, and it is entitled to reimbursement for any expenses that it incurs in connection with its work on this engagement.

E. The General Assignment and Cash Collateral Agreement

19. On February 2, 2024, Assignor and Assignee executed a certain General Assignment in which Assignor assigned all of its rights, title and interest in its remaining assets to Assignee (the "**General Assignment**"), a copy of which is attached to this Verified Petition as **Exhibit D.**

20. Assignee is currently managing Assignor's remaining assets and maintaining Assignor's books and records to preserve the value of Assignor's remaining assets, including cash and accounts receivable such as the Deferred Purchase Price Payment and Royalty Payments.

21. Moreover, to effectuate this assignment for the benefit of creditors proceeding, and as a result of the Secured Creditors' liens, Assignee requires the use of cash collateral. To this end, on February 2, 2024, Assignor, Assignee, and the Secured Creditors entered into a Cash Collateral Agreement (the "**Cash Collateral Agreement**"), a copy of which is attached hereto as **<u>Exhibit E</u>**.

22. Pursuant to the Cash Collateral Agreement, SGCP and Tasseo agree to Assignee's use of the Cash Collateral (as defined in the Cash Collateral Agreement) during the Forbearance Period (defined below) subject to the terms and conditions set forth in the Cash Collateral Agreement. The "Forbearance Period" is defined in the Cash Collateral Agreement to mean the period commencing on February 2, 2024, and ending on the Forbearance Termination Date, which (i) with respect to SGCP, is the earlier of July 1, 2024, or the date Assignee breaches any of its obligations under the Cash Collateral Agreement, and (ii) with respect to Tasseo, is the date Assignee breaches any of its obligations under the Cash Collateral Agreement. *See* Cash Collateral Agreement, § 2(c)(iii). Further, pursuant to the Cash Collateral Agreement (i) SGCP has a first lien against the Cash Collateral (as defined in the Cash Collateral Agreement) and the other assets being assigned and is forbearing from exercising its rights and remedies against Assignor and the Collateral during the Forbearance Period, (ii) Assignee is obligated to pay SGCP any proceeds received in excess of the Reserve (as defined in the Cash Collateral Agreement); and

(iii) the Secured Creditors reserve the right to exercise rights against the Cash Collateral and other assets in the event of a breach by Assignor of the terms and conditions of the Cash Collateral Agreement.

23. Under the Cash Collateral Agreement, Assignee will, *inter alia*, use the Cash Collateral in accordance with the budget attached as <u>Schedule A</u> to the Cash Collateral Agreement (the "**Budget**"). *Id.* at § 3(a)(3). Assignee will also maintain a cash reserve equal to the aggregate amounts required under the Budget to ensure that the Budget is funded throughout this assignment proceeding. *Id.* at § 3(a)(4).

F. Objectives of ABC Proceeding

24. As assignee of Assignor's assignment estate (the "**Assignment Estate**"), Assignee will endeavor to maximize value and administer the Assignment Estate in a manner that is aligned with the interests of the Assignment Estate's creditors and shareholders, including, without limitation, by liquidating Assignor's remaining assets, collecting remaining amounts owed under the APA (including the quarterly Royalty Payments and Deferred Purchase Price Payment), establishing a clear and orderly process for the submission of claims against Assignor and administering any distributions thereon in accordance with applicable law.

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WHEREFORE, Assignee requests that the Court assert jurisdiction over this matter pursuant to 10 Del. C. § 7381.

Dated: March 1, 2024
Wilmington, Delaware

Respectfully submitted,

SAUL EWING LLP

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