

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LVB-OGDEN MARKETING, LLC,

Plaintiff,

v.

PATRICK L. MCCOURT, STEPHANIE
J. MCCOURT, DAVID S. BINGHAM,
SHARON BINGHAM, FRANCES P. GRAHAM,
CHRISTOPHER G. BINGHAM,
CHERISH BINGHAM a/k/a CHERISH
BURGESS, SCOTT F. BINGHAM,
KELLY BINGHAM, and BINGO
INVESTMENTS, LLC,

Defendants.

Case No. 09-CV-4518

Judge Harry D. Leinenweber

PLAINTIFF LVB-OGDEN MARKETING, LLC'S MOTION TO REVIVE JUDGMENT

Pursuant to Federal Rule of Civil Procedure 69(a) and Illinois Rules 735 ILCS 5/12-108 and 735 ILCS 5/2-1601, Plaintiff LVB-Ogden Marketing, LLC ("LVB") hereby moves to revive the judgment previously entered, a copy of which is attached, against defendants David S. Bingham, Sharon Bingham, Frances P. Graham, Christopher G. Bingham, Cherish Bingham a/k/a Cherish Burgess, Kelly Bingham, and Bingo Investments LLC (collectively, "the Bingham Defendants").

On September 29, 2010, a judgment was entered in the matter of *LVB-Ogden Marketing Corporation v. Patrick McCourt et al.* in which the Bingham Defendants were adjudged jointly and severally liable for \$70,944,423.10 plus post judgment interest at the rate of .49% per annum. *LVB-Ogden Marketing Corporation v. Patrick McCourt et al.*, No. 09 C 4518, Dkt. No.

78 (N.D. Ill. 2010). These damages now exceed \$73,345,435.06, which includes the entire amount of the original judgment plus at least \$2,401,011.96 accrued post judgment interest. To date, the entire amount of the judgment remains unsatisfied. Since the judgment was entered, LVB has incurred no less than \$378 in related costs and reserves all rights to seek any costs related to the above-captioned action.

Under Federal Rule of Civil Procedure 26, revival of judgments is governed by the law of the state in which the district court that entered the judgment is located. FED. R. CIV. P. 69(a). Accordingly, Illinois state law applies. In Illinois, the statute of limitations for enforcement of judgments is seven years. 735 ILL. COMP. STAT. 5/12-108. However, Section 12-108 allows for an exception where the judgment is revived pursuant to 735 ILL. COMP. STAT. 5/2-1601. *Id.* Section 2-1601 requires the movant to file a “petition filed in the case in which the original judgment was entered” in order to revive a prior judgment. 735 ILL. COMP. STAT. 5/2-1601 (2002). Furthermore, the motion seeking to revive a prior judgment must be sought “no later than 20 years after the date of entry of such judgment.” 735 ILL. COMP. STAT. 5/13-218 (2009).

WHEREFORE, for the reasons set forth above, LVB respectfully requests that the Court enter an order to revive the Judgment entered on September 29, 2010.

Dated: August 25, 2017

Respectfully submitted,

/s/ Tammy A. Tsoumas
Tammy A. Tsoumas (*Admitted Pro Hac Vice*)
Jonathan J. Faria (*Admitted Pro Hac Vice*)
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Attorneys for the LVB-Ogden Marketing, LLC

CERTIFICATE OF SERVICE

I, Tammy A. Tsoumas, an attorney, hereby certify that this 25 day of August, 2017, I electronically filed the foregoing **PLAINTIFF LVB-OGDEN MARKETING, LLC'S MOTION TO REVIVE JUDGMENT** with the Clerk of the Court using the CM/ECF system.

/s/ Tammy A. Tsoumas _____
Tammy A. Tsoumas

CERTIFICATE OF SERVICE BY MAIL

I, Amy D. Palafox, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Kirkland & Ellis LLP, 333 South Hope St., 29th Floor, Los Angeles, California 90071.

On August 25, 2017, I served the documents listed below on the interested parties in this action as follows:

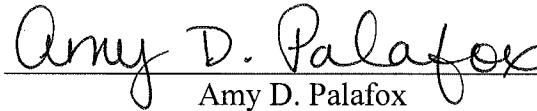
1. PLAINTIFF LVB-OGDEN MARKETING, LLC'S MOTION TO REVIVE JUDGMENT

☒ **[U.S. Mail]** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth herein. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

SEE ATTACHED SERVICE LIST

☒ (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2017, at Los Angeles, California.



Amy D. Palafox

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