

Dated: July 29, 2011



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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10 IN THE UNITED STATES BANKRUPTCY COURT
 11 FOR THE DISTRICT OF ARIZONA

12 In re:

13 SOUTHWEST SEAFOOD
 14 SHOPPES, LLC.

No. 4:11-BK-14185-JMM

(Chapter 11)

15 Debtors.

16 STIPULATED ORDER DENYING
 17 (1) MOTION TO MODIFY THE AUTOMATIC
 18 STAY TO PERMIT LONG JOHN SILVER'S,
 19 INC. TO INITIATE LITIGATION AND
 20 (2) MOTION TO DISMISS OR CONVERT
 21 TO CHAPTER 7 CASE AND VACATING
 22 ORDER REJECTING DEBTOR'S FRANCHISE
 23 AGREEMENT WITH LONG JOHN
 24 SILVER'S, INC. (DOC. NO. 65)

25 Long John Silver's, Inc. ("LJS") having filed a Motion to Modify the Automatic Stay to Permit
 26 Long John Silver's Inc., to Initiate Litigation ("Motion for Relief From Stay") and a Motion to Dismiss
 27 or Convert to Chapter 7 Case ("Motion to Dismiss or Convert"), and it appearing to the Court that cause
 28 does not exist to modify the automatic stay to permit LJS to pursue its remedies under the Franchise
 Agreements against the Debtor, Southwest Seafood Shoppes, LLC ("Debtor") in another forum; and the
 Court further holding that cause does not exist at this time to dismiss or convert Debtor's case to a case
 under Chapter 7 of the Bankruptcy Code.

IT IS HEREBY ORDERED that the Motion for Relief From Stay to permit LJS to pursue its
 remedies under the Franchise Agreements against the Debtor in another forum is denied.

IT IS FURTHER ORDERED that the Debtor's Motion to Reject the Franchise Agreements
 is granted;

IT IS FURTHER ORDERED that Franchisee immediately comply with the Post-Termination

1 Obligations under the Franchise Agreements, including, without limitation:

2 1. Discontinuing the use of any and all service marks, trademarks, and trade names of LJS and
3 the use of any and all signs, menu board inserts, point of sale materials, and printed goods bearing such
4 marks or names or any reference thereto;

5 2. Renovating or refurbishing the restaurant sufficiently to eliminate any possibility of confusion
6 in the mind of the public that the restaurants are in any manner connected with LJS or any of its licensed
7 restaurants by changing the building interior and exterior color schemes and removing glass, light
8 fixtures, and other items bearing any of the trade dress, marks, symbols, color schemes, or identifications
9 of LJS and removing any marks, symbols, color schemes, or identifications that are similar to those of
10 LJS, including characteristically designed roof or building features.

11 3. Ceasing operating or doing business under any name or in any manner that might tend to give
12 the general public the impression that the franchise with LJS is still in force or that Franchisee is in any
13 way still connected with LJS or authorized to use LJS's trademarks;

14 4. Disconnecting telephone service for any numbers used by Debtor as an LJS-branded
15 restaurant;

16 5. Returning to LJS all materials containing, in whole or in part, any trade secrets, confidential
17 materials, operating instructions, or business practices;

18 6. Ceasing making, using, or availing itself of any trade secrets, trademarks of, or information
19 imparted by LJS, and not disclosing or revealing any such other information or any portion thereof to
20 others; and

21 **IT IS FURTHER ORDERED** that any claims that Debtor used LJS's trademarks and service
22 marks in violation of the Franchise Agreements and the Lanham Act, any claims that Debtor is
23 prohibited from operating a competing restaurant, and any other claims by LJS against Debtor shall be
24 resolved in the Bankruptcy Case or by adversary proceeding.

25 **IT IS FURTHER ORDERED** that the Motion to Dismiss or Convert is denied without
26 prejudice.

27 DATED, SIGNED, AND ORDERED ABOVE
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1 The Parties have stipulated that the Order Rejecting Debtor's Franchise Agreement with
2 Long John Silver's, Inc., Under 11 U.S.C. §365(a) and Local Rule 6006-1(a), entered on July 14,
3 2011 at Docket Number 65 is vacated.

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5 /s/ Jonathan M. Saffer (with permission)

6 Jonathan M. Saffer, Esq.
7 Attorney for Long John Silver's Inc.

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9
10 /s/ Eric S. Sparks
11 Eric S. Sparks, Esq.
12 Attorney for Southwest Seafood Shoppes, LLC.

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