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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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EARTHGRAINS BAKING COMPANIES, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SYCAMORE FAMILY BAKERY INC., )  
 )  
and )  
 )  
LELAND SYCAMORE, )  
 )  
Defendants. )

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Case No. 2:09-CV-523  
**ORDER APPOINTING RECEIVER FOR  
THE ASSETS OF  
SYCAMORE FAMILY, LLC**  
Honorable Dale A. Kimball

This matter is before the Court on Plaintiff's request for the appointment of a receiver of the Sycamore Family, LLC's assets (the "Assets") as a measure of relief in its Motion for Contempt Sanctions ("Motion") [Dkt. No. 419]. Based on the reasons set forth in the Motion, good cause appearing, and the reasons set forth in the court's November 2, 2018 Memorandum Decision and Order, the court granted EarthGrain's request for the appointment of a receiver in said November 2, 2018 Memorandum Decision and Order.

IT IS ORDERED THAT:

1. Utah Code Ann. § 48-3a-502 provides the Court with the authority to "(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and (b) make all other orders necessary to give effect to the charging order." Such powers may be invoked "[t]o the extent necessary to effectuate the collection of distributions pursuant to a charging order." *Id.*

2. Based on the Court's finding of contempt, it is necessary and appropriate to appoint a Receiver to control, maintain, and direct all financial aspects of Sycamore Family, LLC in order to ensure compliance with the Court's Charging Order. Dkt. No. 345.

3. Wayne Klein is appointed Receiver over the Assets ("Receiver"). The Court finds that Mr. Klein's extensive experience acting as a receiver makes him qualified to serve in this capacity, and his *curriculum vitae* is attached hereto as Exhibit A. Mr. Klein's proposed rate of \$250 per hour is approved.

4. Immediately upon the entry of this Order, Receiver shall take exclusive custody, control, and possession of the Assets, wherever situated, and shall manage, operate, and protect the Assets.

5. Receiver shall have all the powers and authority usually held by receivers and reasonably necessary to accomplish the purposes stated herein, including, but not limited to, the following powers, which may be exercised without further order of the Court:

a. Taking and maintaining possession of all documents, books, records, papers, and accounts relating to the Assets, including without limitation all operating accounts, escrow accounts, cash management accounts, insurance-proceed accounts, and/or other accounts relating to the Assets;

b. Opening new bank accounts in the name “Receiver for the Sycamore Family, LLC,” with the Receiver as the only authorized signatory and having sole power to make disbursements from such accounts or otherwise conduct transactions in such accounts;

c. Transferring to the new bank accounts controlled by the Receiver all funds belonging to the Sycamore Family, LLC;

d. Obtaining access to all financial records of the Sycamore Family, LLC, including records held by any accountants, all bank accounts of the Sycamore Family, LLC, and records of any bank accounts into which funds owed to the Sycamore Family, LLC have been deposited (including personal bank accounts of Jeri Sycamore);

e. Acting as a manager and assuming all powers that Leland Sycamore has or could exercise as a member or manager of Sycamore Family, LLC;

6. The Receiver shall:

a. Prepare an inventory that will be submitted to the parties identifying and listing the estimated value of the Assets. This shall include all assets that have been owned by the Sycamore Family, LLC since March 6, 2014;

b. Prepare an accounting listing the amount or value of all distributions to or for the benefit of any members of the Sycamore Family, LLC since March 6, 2014, including without limitation all distributions or transfers characterized as payment for tax liabilities, salary, wages, reimbursements, or loans. This shall also include a calculation of the value of non-cash benefits given to members of the Sycamore Family, LLC, including rent free or reduced rent residence in Sycamore Family, LLC properties. The Receiver shall provide a copy of this accounting to the parties;

c. Calculate the proportionate share of distributions that would be owed to Leland Sycamore commensurate with his 48% membership interest in the Sycamore Family, LLC based on any cash or non-cash distributions or benefits paid to or received by any member of the Sycamore Family, LLC since March 6, 2014. For example, if the holder of a 1% membership interest in the Sycamore Family, LLC had received cash or rent benefits totaling \$10,000 since March 6, 2014, Leland Sycamore's 48% membership interest entitles him to a distribution of \$480,000;

d. Notify all parties conducting business with the Sycamore Family, LLC that all amounts owed to the Sycamore Family, LLC shall henceforth be paid to the Receiver for deposit into bank accounts controlled by the Receiver;

e. Ensure that a copy of this Order is delivered to all members of the Sycamore Family, LLC;

f. Perform or engage others to perform a forensic accounting to determine amounts owed to the Sycamore Family, LLC that have been diverted improperly to recipients other than the Sycamore Family, LLC since March 6, 2014. If the Receiver identifies funds that have been diverted:

i. Funds that have been diverted to a recipient who is a member of the Sycamore Family, LLC shall be treated as a distribution to that member;

ii. The Receiver shall recover all funds owed to the Sycamore Family, LLC that have been paid or diverted to a recipient that is not a member of the Sycamore Family, LLC. If the recipient does not comply with the Receiver's demand to return funds, the Receiver may engage counsel to file suit to recover those funds. This may include actions against financial institutions who have improperly allowed deposits of funds belonging to the Sycamore Family, LLC into bank accounts not belonging to the Sycamore Family LLC. Alternatively, the Receiver may determine to treat such diverted funds as an imputed distribution to one or more members of the Sycamore Family LLC;

g. Maintain an accurate ledger or similar book of account showing all receipts, distributions, and other disbursements made by the Receiver;

h. Cooperate with and provide financial information to accountants chosen by the Sycamore Family, LLC necessary to allow the accountants to prepare accounting records (including income statements and balance sheets), tax returns, and other tax filings required to be filed by the Sycamore Family, LLC. This includes information from the forensic accounting that would allow the accountant to issue IRS Form 1099s to members of the Sycamore Family, LLC showing the amount of actual or imputed income to the members. If the Sycamore Family, LLC fails to designate an accountant to fulfill this role within 30 days of the date of this Order, the Receiver shall engage an accountant, after giving 15 days' notice to the parties of his intent to engage an identified accountant for this purpose; and

i. Employ attorneys, accountants, or other third-party consultants necessary to fulfill the duties assigned to the Receiver under this Order. The Receiver shall give at least 15

days' notice to the parties of his intent to engage identified attorneys, accountants, or consultants allowing for any of the parties to file an objection with the Court.

7. Jeri Sycamore or others that have been designated and approved as managers under the Sycamore Family, LLC's Operating Agreement shall be permitted to have operational control over the Assets. Jeri Sycamore shall be allowed to maintain operational control herself, designate (or retain existing) independent third parties or other members of Sycamore Family, LLC to manage operations, or designate the Receiver to assume operational control. Operational control by anyone other than the Receiver is subject to the requirements that:

a. All funds belonging or owed to the Sycamore Family, LLC shall be deposited into bank accounts controlled by the Receiver;

b. All Assets shall be employed for their highest and best use, including charging market rates for the use of Assets; and

c. Expenditures for the Sycamore Family, LLC shall be approved by and paid from bank accounts controlled by the Receiver. The Receiver shall approve all expenditures to third parties or members of the Sycamore Family, LLC that are reasonably necessary for maintenance of assets of the Sycamore Family, LLC and the operation of the Sycamore Family, LLC;

8. To the extent the Receiver determines sufficient cash is available in the bank accounts of the Sycamore Family, LLC, he shall pay to EarthGrains Baking Companies, Inc. ("EarthGrains") available cash representing distributions owed to Leland Sycamore with the distributions to be applied towards the amount of the judgment EarthGrains holds against Leland Sycamore.

9. The Receiver shall not distribute any funds to any member of the Sycamore Family, LLC until either:

a. The proportionate share of distributions owed to Leland Sycamore for the period since March 6, 2014, have been paid to EarthGrains; or

b. The amount of the EarthGrains judgment has been satisfied.

10. The Receiver shall honor all valid requests by members or managers of Sycamore Family, LLC to make additional distributions of cash, subject to the condition that no distributions shall be made to other members of the Sycamore Family, LLC until payment of all amounts representing Leland Sycamore's proportionate share of distributions since March 6, 2018, have been paid.

11. In the event that the Receiver determines that there are insufficient funds in the accounts of the Sycamore Family, LLC to satisfy EarthGrains' judgment in a reasonable time, he shall notify the parties and the court of his intent to seek leave from the court to initiate foreclosure proceedings pursuant to Utah Code Ann. § 48-3a-503(3) and the Court's Charging Order [Dkt. No. 345] for Leland Sycamore's membership interests in Sycamore Family, LLC to the extent necessary to satisfy EarthGrains' judgment.

12. The Receiver may file with this Court any motion or request for relief in connection with the receivership, including without limitation the foreclosure proceedings described in the previous paragraph, and shall serve such motion or request on all parties. The Court may grant any such relief requested by the Receiver, without any further notice or hearing, unless an objection thereto is filed with the Court and served on the Receiver and all parties within ten (10) business days after filing and service of the Receiver's motion or request. In the event of an objection that

is timely filed and served, the Receiver may file and serve a response thereto and, unless the matter is settled, the Court shall hear and decide the Receiver's motion or request.

13. The Receiver shall notify the parties and the Court if and when the amount of the judgment owed to EarthGrains has been satisfied and that the Receivership should be terminated. In that event, the Receiver shall propose a method for terminating the receivership estate and returning control over the Assets to the managers of the Sycamore Family, LLC within a reasonable time.

14. The Receiver shall notify the parties and the Court of any information he finds that any of the parties or any members of the Sycamore Family, LLC are failing to cooperate with the Receiver or are interfering with the Receiver's performance of his duties under this Order.

15. The Receiver shall send to the parties on a monthly basis invoices showing the amount of fees and expenses incurred by the Receiver. If no party has filed an objection with the Court within 15 days after receipt of the invoices, the Receiver is authorized to satisfy the invoices from the Assets. If an objection is filed, the Receiver shall refrain from paying the invoice to himself until the Court has ruled on the objection.

16. All members of the Sycamore Family, LLC, including Leland Sycamore, Jeri Sycamore, and their children, and all other interested parties who receive a copy of this Order, are hereby ordered to:

a. Cooperate with the Receiver in the performance of his duties authorized under this Order. This shall include promptly responding to inquiries, assisting in giving the Receiver control over all bank accounts and financial assets of the Sycamore Family, LLC, and turning over to the Receiver all funds received after the date of this Order;



- b. Not make any changes to the operating agreement of the Sycamore Family, LLC without the written consent of the Receiver;
- c. Not transfer, sell, encumber, dispose of, or otherwise impair any asset of the Sycamore Family, LLC without the written consent of the Receiver; and
- d. Provide notice to the Receiver of all notices given to members or managers of the Sycamore Family, LLC, including notices of meetings of members or managers, updates on activities of the Sycamore Family, LLC, and financial reports.

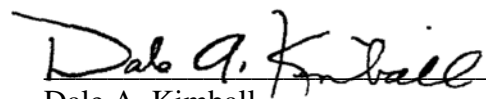
17. Managers of the Sycamore Family LLC shall be permitted to sell or liquidate assets of the Sycamore Family LLC in order to pay the proportionate share of post-March 6, 2014 distributions owed to Leland Sycamore, subject to written approval of the Receiver for any disposition of any of the Assets. The Receiver's approval shall not be unreasonably withheld. Factors the Receiver may consider in determining whether to approve the sale of assets are whether the sales are to unaffiliated third parties in arms' length transactions and the results of appraisals of the assets. The Receiver is authorized to use financial assets of the Sycamore Family, LLC to obtain appraisals of any assets proposed to be sold by members of the Sycamore Family, LLC;

18. The Receiver shall file a status update with the court after 180 days and then every 120 days thereafter.

19. The Receiver shall serve until further order of this Court.

Dated this 2d day of November, 2018.

BY THE COURT:

  
Dale A. Kimball  
United States District Judge