



ORDERED in the Southern District of Florida on July 6, 2017.

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

ORANGE PEEL ENTERPRISES, INC.,

Case No. 16-21023-EPK

Debtor.

Chapter 11

_____ /

**ORDER APPROVING DEBTOR’S SETTLEMENT
WITH ENVIRONMENTAL RESEARCH CENTER**

THIS MATTER came before the Court for hearing on June 28, 2017 upon the *Debtor’s Motion for Approval of Stipulation for Settlement with Environmental Research Center* [ECF No. 172] (the “Motion”) filed by Orange Peel Enterprises, Inc. (the “Debtor”). In the Motion, the Debtor requests approval of the *Stipulation for Settlement* (the “Stipulation”) between the Debtor and Environmental Research Center, Inc. A copy of the Stipulation is attached as Exhibit A to the Motion.

For the reasons stated on the record, and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. 172] is GRANTED.
2. The terms of the Stipulation are APPROVED.
3. All terms of the Stipulation are incorporated herein by reference and the parties are authorized and directed to comply in full with said terms.
4. The Court shall retain jurisdiction to interpret and enforce this Order and the Stipulation.

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Submitted by:

Eric Pendergraft
SHRAIBERG, LANDAU & PAGE, P.A.
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Eric Pendergraft is directed to serve copies of this Order upon all interested parties and to file a certificate of service with the Court.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

ORANGE PEEL ENTERPRISES, INC.,

Case No. 16-21023-EPK

Debtor.

Chapter 11

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STIPULATION FOR SETTLEMENT

This Stipulation for Settlement (the “**Stipulation**”) is made this 5th day of May, 2017, by and between (a) Orange Peel Enterprises (the “**Debtor**”) and (b) Environmental Research Center, Inc. (“**ERC**”). The Debtor and ERC may be hereinafter referred to as a “Party,” or together as the “Parties”.

WHEREAS, on or about June 10, 2016, ERC filed suit against the Debtor in the Superior Court of the State of California, County of San Francisco, Case No. CGC-16-552495 (the “**State Court Case**”);

WHEREAS, on August 9, 2016 (the “**Petition Dade**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, thereby initiating the above-captioned case (the “**Bankruptcy Case**”) in the above-captioned court (the “**Bankruptcy Court**”);

WHEREAS, on October 7, 2016 ERC filed Proof of Claim No. 4-1 in the Bankruptcy Case, asserting a general unsecured claim against the Debtor in the amount of \$194,000,000 (the “**Claim**”);

WHEREAS, on October 11, 2016 ERC filed Proof of Claim No.5-1 in the Bankruptcy Case, asserting a general unsecured claim against the Debtor in the amount of \$194,000,000 (the “**Duplicate Claim**”);

WHEREAS, the Debtor disputes the substantive validity of the Claim, and further contends that the Duplicate Claim is simply a duplicate of the Claim;

WHEREAS, on April 4, 2017, the Debtor filed objections to the Claim, ECF No. 153, and the Duplicate Claim, ECF No. 154, thereby requesting that both the Claim and the Duplicate Claim be stricken and disallowed in their entirety.

WHEREAS, on or about February 28, 2017, substantially all of the Debtor's assets were sold to a third-party buyer, with the Debtor retaining the net cash proceeds of such sale for the purpose of funding a Chapter 11 plan;

WHEREAS, the Debtor is in the final stages of drafting a Chapter 11 plan of liquidation (the "**Plan**") and an accompanying disclosure statement.

WHEREAS, Section 5.02 of the Plan provides for the treatment of holders of allowed general unsecured claims and permits such claimants to elect one of three treatment options, termed Elections A, B, and C;

WHEREAS, holders of allowed general unsecured claims treated under Section 5.02 of the Plan who choose Election C will receive—within ten days of the Effective Date, and in full and final satisfaction, settlement, release, and extinguishment of such allowed claims—a lump sum cash distribution in an amount equal to 0.0206185567010309% of the allowed amount of such claims;

WHEREAS, in order to avoid the uncertainties of litigation and the concomitant fees and expenses thereto, and without any of the Parties admitting any fault or liability, the Parties desire to settle the above-referenced controversy concerning the Claim and the Duplicate Claim, and the Debtor's dispute thereof and objections thereto;

NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

STIPULATION

1. **Recitals Incorporated:** Recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Stipulation.

2. **Allowance of Claim and Plan Treatment:** The Claim shall be treated in the Bankruptcy Case as an allowed general unsecured claim in the amount of \$194,000,000. The Duplicate Claim shall be disallowed and stricken in its entirety. For the avoidance of doubt, Claim No. 4-1 shall be allowed in its entirety, while Claim No. 5-1 shall be disallowed and stricken in its entirety, leaving ERC with a total allowed Claim of \$194,000,000. The Claim shall be treated under Section 5.02 of the Plan and ERC shall be required to elect Election C under the provisions of Section 5.02(b) the Plan. For avoidance of doubt, ERC shall be paid the cash sum of \$40,000, which is equal to 0.0206185567010309% of the value of the Claim, in full satisfaction, settlement and release of the Claim and any and all other claims ERC could assert against the Debtor, known or unknown. For purposes of this Stipulation, the term “Plan” includes any amended Plan filed by the Debtor which provides for an elective 0.0206185567010309% lump sum cash payment to holders of allowed general unsecured claims.

3. **Support of Plan:** ERC shall support, and timely vote in favor to accept, the Plan.

4. **Conditions Precedent:** The Parties agree that the enforceability of this Stipulation is subject to the Bankruptcy Court entering final and non-appealable orders: (i) approving this Stipulation (the “**Final Settlement Order**”); and (ii) confirming the Debtor’s Plan (the “**Final**

Confirmation Order”). In the event any condition does not occur, the Parties shall revert back to the position they were in prior to the execution of this Stipulation.

5. **Mutual General Release**: In exchange for the foregoing consideration, and other good and valuable consideration, the Debtor and ERC do hereby—for and on behalf of themselves and their successors, sureties, insurers, associated entities, affiliates, subsidiaries and assigns—release, remise, acquit, satisfy and forever discharge one another and each other’s successors, successors in interest, sureties, associated entities, affiliates, subsidiaries, assigns, heirs, representatives, employees, agents, officers, directors, members, insurers, re-insurers, and attorneys, of and from any manner of action and actions, causes, causes of action, defects, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, warranties, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, known or unknown, in law or in equity, which were raised or could have been raised from the beginning of the world to the date of execution of this Stipulation by the Parties, and excepting only the Parties’ respective obligations under this Stipulation. Notwithstanding the foregoing, this Stipulation in no way releases or waives any prospective or new claims arising from any breach of this Stipulation, or that may arise from future transactions between the Parties.

6. **Frustration of Purpose**: Neither of the Parties shall take any action to intentionally frustrate the purposes of this Stipulation.

7. **Non-Approval**: In the event either the Final Settlement Order or the Final Confirmation Order are not entered on a final and non-appealable basis, nothing herein shall be deemed a representation or admission by any Party as to any issue involved in this Bankruptcy

Case or in any other case or controversy involving the Parties, and this Stipulation will be deemed null and void.

8. **Fees and Costs**: Each of the Parties agrees to bear their own attorneys' fees and costs with respect to this Stipulation.

9. **Binding Effect**: This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

10. **Entire Agreement**: This Stipulation constitutes the entire agreement of the Parties hereto as to the subject matter hereof. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or that in any way restrict this Stipulation, and that all prior agreements or understandings within the scope of the subject matter of this Stipulation are, upon the entry of the Final Settlement Order, superseded, null and void.

11. **Amendments**: No waiver, modification or amendment of the terms of this Stipulation shall be valid or binding unless made in writing, signed by the Party to be charged and then only to the extent as set forth in such written waiver, modification, or amendment.

12. **Counterparts**: The Parties may execute this Stipulation in whole or counterparts, and execution of counterparts shall have the same force and effect as if the Parties had signed the same instrument. Signatures transmitted by facsimile shall have the same effect as original signatures.

13. **Choice of Law**: This Stipulation shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to its conflict of law principles.

14. **Best Efforts**: The Parties and their counsel shall use their best efforts to cause the Bankruptcy Court to approve this Stipulation and to effectuate the settlement of the stated terms and conditions set forth herein.

15. **Neutral Interpretation:** In the event any dispute arises among the Parties with regard to the interpretation of any term of this Stipulation, or any agreement attached hereto, all of the Parties shall be considered collectively to be the drafting Party and any rule of construction to the effect that ambiguities are to be resolved against the drafting Party and any rule of construction.

16. **Authority:** Each Party to this Stipulation warrants and represents that the person signing this Stipulation on its behalf is duly authorized to enter into this Stipulation on behalf of such Party. Each Party signing this Stipulation separately acknowledges and represents that this representation and warranty is an essential and material provision of this Stipulation and shall survive execution of this Stipulation.

17. **Retention of Jurisdiction:** The Bankruptcy Court shall retain jurisdiction over the Parties, subject matter, interpretation, effectuation, and enforcement of the terms of this Stipulation.

[signatures on following page]

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Stipulation to be effective as of the date set forth above.

ORANGE PEEL ENTERPRISES, INC.

By: 

Its: CEO

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 

Its: EXECUTIVE DIRECTOR