UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

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| LILY'S TRANSPORTATION CORP., BERNADINO'S BAKERY INC., HILLCREST FOODS, INC., AND RYDER TRUCK RENTAL, INC., | ) | |
| *Petitioner-Creditors*, | ) | Docket No. 21-10168 |
| v. | ) | |
| KOFFEE KUP BAKERY, INC. | ) | |
| *Debtor*. | ) | |

**STATE OF VERMONT'S MOTION AND SUPPORTING MEMORANDUM FOR ORDER PERMITTING RECEIVER TO PAY EMPLOYEE PAYROLL OBLIGATIONS**

The State of Vermont, through the Vermont Attorney General, respectfully submits this motion and memorandum to support Debtor Koffee Kup Bakery, Inc. in this matter. As explained below the receiver should be permitted to pay approximately $838,299.00 in outstanding payroll obligations to Debtor's laid-off employees because: (1) the employee payroll obligations are not part of the bankruptcy estate since the equitable circumstances support a constructive trust; (2), even if part of the bankruptcy estate, then bankruptcy law recognizes certain circumstances in which payment of an outstanding payroll obligation is appropriate and equitable; (3) receivership law and equity compel payment of the employee payroll obligations; and (4) the "fair and honest marketplace" principles of Vermont's Consumer Protection Act support the same outcome.

## MEMORANDUM OF LAW

### I. Background

On April 26, 2021, Koffee Kup Bakery, Vermont Bread Company and Superior Bakery (collectively hereafter "Koffee Kup") terminated their business operations due to lack of funds. This included the termination of approximately 440 employees, the majority of which reside in Vermont. Koffee Kup then entered into a voluntary receivership, under the jurisdiction of Vermont Superior Court, Civil Division, Judge Samuel Hoar, Docket No. 21-CV-01064 (hereafter "the Receivership Docket"). The court appointed Ronal Teplitsky, a New York accountant, to act as the Receiver in that matter (hereafter "the Receiver").

At the time of Koffee Kup's insolvency, the employees had accrued and were owed approximately $821,862.00 in combined vacation and paid time off obligations (hereafter "PTO").

However, as a result of the Receivership, Koffee Kup was deprived of its ability to pay the PTO. *Roberts v. W.H. Hughes Co.,* 86 Vt. 76, 83 A. 807, 815 (1912) ("The appointment of a receiver over a corporation generally suspends all corporate action, and deprives its officers and agents of all authority over its property").

Thus, Koffee Kup worked with both its creditors and the Receiver in the Receivership Docket to arrange payment of certain obligations. Those creditors included the petitioners in this bankruptcy action: Lily's Transportation Corp., Bernadino's Bakery Inc., Hillcrest Foods, Inc., and Ryder Truck Rental, Inc.[1]

The mater of the employee PTO was debated extensively for weeks, with numerous hearings and opportunities to be heard. On July 14, 2021, a final hearing was held in the

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[1] Those creditors had all moved to intervene in the Receivership Docket and Judge Hoar allowed them to participate in hearings and state their positions without ruling on their party status.

Receivership Docket. At that time, the parties discussed and agreed to payment of the employee PTO. Importantly, all of the Petitioner-Creditors in this petition expressly agreed and did not object to the PTO payment. Judge Hoar then entered an order approving payment of the PTO, which also included additional interest ($16,437). *See* attached Exhibit A, Entry Order and Motion, July 15, 2021, granting Koffee Kup's "Motion to Approve Receivers Payment of Urgent Payroll Deductions" (hereafter "PTO Order"). Thus, the Vermont Civil Division ordered approval of payment to the the Koffee Kup employees of $821,862, plus $16,437 in interest, for a total of $838,299.

Subsequent to the July 15 PTO Order, the Receiver attempted to pay the employee PTO of $838,299, but, according to his account, was blocked by technical difficulties with the payment processor. As recently as August 11th, the Receiver stated that he was reprocessing the PTO and that it should be completed on August 19, 2021. *See* attached email from Justin Heller, counsel for Receiver, "RE: PTO Calculations 6-17-21" [Exhibit B at 2].

However, on August 16, 2021, Petitioner-Creditors filed this action, and apparently notified the Receiver. As of August 19, 2021, the Receiver stated that as a result of the filing of this bankruptcy case, he is stayed from processing the employee PTO unless the bankruptcy court modifies the stay to permit payment. Exhibit B at 1. At this time, the employee PTO amount of $838,299 remains in the custody and control of the Receiver.

## II. The State's Interests

First, the State has an interest in protecting the "the health and well-being—both physical and *economic*—of its residents in general." *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 215 (2d Cir. 2013) (emphasis added). *See also Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 603 (1982) (noting the "set of interests that the

State has in the well-being of its populace," including "economic" interests); *In re Keurig Green Mountain Single-serve Coffee Antitrust Litig.*, No. 14-MD-2542 (VSB), 2021 WL 1393336, at *3 (S.D.N.Y. Apr. 13, 2021) (granting intervention to state Attorneys General to intervene in a pending multidistrict class action and holding that states have a "*parens patriae* interest in protecting the economic well-being of their citizens.").

Second, the State has an interest in ensuring a fair and "honest marketplace" under the Vermont Consumer Protection Act ("CPA"). *State of N. Y. by Abrams v. Gen. Motors Corp.*, 547 F. Supp. 703, 707 (S.D.N.Y. 1982); *State v. Int'l Collection Serv., Inc.*, 156 Vt. 540, 543, 594 A.2d 426, 429 (1991) (citing the CPA's "broader" purpose "to protect the public"). The CPA was enacted "to protect the public" from "unfair or deceptive acts or practices." 9 V.S.A. § 2451. The Vermont Attorney General is authorized to enforce the CPA. *Id.* § 2458.

These interests coalesce together in this matter to ensure both that: (1) Vermont employees are protected and their economic well-being is redressed; and (2) Vermont businesses and those receivers acting on their behalf are held to their obligations to ensure a fair and honest marketplace.

## III. Argument

This Court should allow payment of the PTO for four reasons. *First*, under the circumstances here, the PTO belongs to the employees, and the court should find that it is subject to a constructive trust and is not part of the bankruptcy estate. *Second*, to the extent that the PTO is considered part of the Debtor's estate and subject to bankruptcy law provisions, the Court should permit payment of the PTO under certain exceptions to the bankruptcy provisions. *Third*, the receivership laws and circumstances of this case compel payment of the PTO to ensure a fair and equitable distribution. *Fourth*, paying the PTO is consistent with the broad

remedial mandates of Vermont's Consumer Protection Act. To the extent Petitioner-Creditors now object to the PTO, after consenting to it, the State raises the "unclean hands" doctrine. *Savage v. Walker*, 2009 VT 8, ¶ 10, 185 Vt. 603, 969 A.2d 121 ("one who seeks relief in equity must come to the court with clean hands.").

### A. The Court Should Find that the Employee PTO Is Subject to a Constructive Trust and Is Not Part of the Bankruptcy Estate.

"A constructive trust is an involuntary equitable trust created as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner." *In re Real Estate Associates Ltd. Partnership Litig.*, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002).

A constructive trust "is determined by state law." *In re Howard's Appliance Corp.*, 874 F.2d 88, 93 (2d Cir. 1989); *Id.* (bankruptcy court "must look to state law, therefore, to determine whether to impose a constructive trust on property within the debtor's possession").

Under Vermont law, "[t]he circumstances under which a court may impose a constructive trust are broad and highly contextual." *Shattuck v. Peck*, 2013 VT 1, ¶ 11, 193 Vt. 123, 127, 70 A.3d 922, 925 (2013). The Vermont Supreme Court has explained that:

> A court may impose a constructive trust when a party obtains some benefit that they cannot, in good conscience, retain.... Courts may employ constructive trusts to avoid unconscionable results and to prevent unjust enrichment. Unjust enrichment, in turn, rests on the principle that one should not be allowed to enrich himself unjustly at the expense of another. The inquiry is whether, in light of the totality of circumstances, it is against equity and good conscience to allow a party to retain what is sought to be recovered. It must be a realistic determination based on a broad view of the human setting involved.

*Shattuck*, 2013 VT 1, ¶ 11 (quotations omitted and citing *Weed v. Weed*, 2008 VT 121, ¶ 17, 185 Vt. 83, 968 A.2d 310).

Property on which a constructive trust is imposed is excluded from the bankruptcy estate. "That is, the bankruptcy estate does not include "property of others in which the debtor ha[s] some minor interest such as a lien or bare legal title.'" *In re Howard's*, 874 F.2d at 93 (quoting *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 n.8 (1983)); *see also id.* ("Indeed, the Supreme Court has declared that, while the outer boundaries of the bankruptcy estate may be uncertain, 'Congress plainly excluded property of others held by the debtor'") (quoting *Whiting Pools*, 462 U.S. at 205 n.10) (emphasis added).

Applied here, the "equity and good conscience" compels a conclusion that the employee PTO already belongs to them and is being unjustly held by the Receiver (who stands in the shoes of the Debtor Koffee Kup). *Shattuck*, 2013 VT 1, ¶ 11. The PTO Order was in effect as of July 15, 2021, thus creating in the employees their right and ownership to the PTO. *See, e.g., Town of Huntington v. Town of Charlotte*, 15 Vt. 46, 50 (1843) ("[a] judgment must, of necessity, take effect from the time it is rendered"); *In re Forant*, 331 B.R. 151, 159-60 (Bankr. D. Vt. 2004) (bankruptcy court held that "the issuance of the divorce judgment effectively created a constructive trust over husband's accounts for the benefit of wife.").

The question is not whether the Receiver is acting cautiously or appropriately now, in light of the bankruptcy petition, but simply whether "he can now, with a safe conscience, *ex aequo et bono*, retain [the money]." *McGann v. Capital Savings Bank & Trust Co.*, 117 Vt. 179, 189, 89 A.2d 123, 130 (1952). The answer is "no." In fact, the Receiver had been attempting to deposit the PTO for weeks (as recently as August 11th), and would have succeeded if not for the payment processor's technical glitches. Exhibit B at 2.

Further, to the extent that the Petitioner-Creditors in this action oppose the PTO now, after agreeing to it in the PTO Order, that would constitute "unclean hands" and should operate to bar such conduct. *Shattuck*, 2013 VT 1, ¶ 16 ("Ordinarily where parties are *in pari delicto* a court of equity will not afford relief ") (quotation omitted); *see also In re Estate of Bruner*, 338 F.3d 1172, 1178 (10th Cir.2003) (holding that, under *in pari delicto* doctrine, "a party may not obtain equitable relief by proving inequitable conduct in which he participated").

Therefore, a "realistic determination" of this situation is that the PTO is not part of the Debtor Koffee Kup's estate. *Shattuck*, 2013 VT 1, ¶ 11. The PTO money left the station as of July 15. To analogize it further, if the PTO were a vehicle that had been sold and was stopped at a roadblock while being driven down a road to its new owner, the law would still recognize that vehicle as rightfully belonging to the purchaser, and would not require the vehicle to be legally returned to the prior owner. The fact that we are dealing with intangible money is not different: "[i]n such situations, equity works to disallow the retention of the money." *Legault v. Legault*, 142 Vt. 525, 529, 459 A.2d 980, 983 (1983) (applying constructive trust to husband's contributions to joint marital account).

In sum, the totality of the circumstances here, including the state court's issuance of the PTO Order with the agreement of the creditors who filed this bankruptcy case, and the Receiver's thwarted efforts to deliver the PTO to the employees, inexorably demonstrates that the PTO rightfully "belongs to the beneficiary" employees, and it "never becomes a part of the bankruptcy estate." *In re Kennedy & Cohen, Inc.*, 612 F.2d 963, 965 (5th Cir. 1980). This Court should declare so.

**B. Even If the Court Declines to Impose a Constructive Trust, it Should Permit Payment of the PTO in Accordance with Applicable Bankruptcy Code Provisions.**

If the court declines to impose a constructive trust and the PTO funds are part of the bankruptcy estate, then there are additional bankruptcy provisions that support the PTO payment by the Receiver. Specifically, this Court should issue an order authorizing payment of the PTO by the Receiver under 10 U.S.C. 543(a); or because the ministerial payment by the Receiver of the previously agreed-upon PTO does not fall within the automatic stay provisions of 11 U.S.C. § 362 (or if so, it should be relieved from the automatic stay provisions). Each is discussed in turn.

1. Section 543(a) of the Bankruptcy Code. This section provides that a "custodian with knowledge of the commencement of a case under [the Bankruptcy Code] may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property." Further, Section 543(b)(1) provides that a custodian shall "deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case."[2] The term "custodian" includes a "receiver or trustee of any property of the debtor, appointed in a case or proceeding not under [the Bankruptcy Code]." 11 U.S.C. § 101(11)(A).

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[2] The Code imposes no time limit for the custodian's delivery (turnover) of the property, and the turnover typically takes place following a request for turnover which has not yet been made in this case. *See In re Powers Aero Marine Services, Inc.,* 42 B.R. 540, 542 (S.D. Tex. 1984).

However, the Bankruptcy Code authorizes the Court to excuse compliance with these provisions under the circumstances here. Section 543(d)(1) authorizes the bankruptcy court, "[a]fter notice and hearing" to excuse compliance with the requirements of Sections 543(a) and (b), "if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody or control of such property."

In applying this standard, courts have considered the following non-exclusive list of factors: (1) whether there will be sufficient income to fund a successful reorganization; (2) whether the debtor will use the turnover property for the benefit of the creditors; (3) whether there has been mismanagement by the debtor; (4) whether or not there are avoidance issues raised with respect to property retained by a receiver, because a receiver does not possess avoiding powers for the benefit of the estate; and (5) the fact that the bankruptcy automatic stay has deactivated the state court receivership action. *In re R & G Properties, Inc., No. 08-10874,* 2008 W.L. 4966774, at *9, (D. Vt. Nov. 21, 2008)*;* *In re Dill*, 163 B.R. 221, 225 (E.D.N.Y. 1994). Further, Section 105 of the Bankruptcy Code, which authorizes the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," provides the court broad equitable power in applying other provisions of the Code. *See In re Roebling, LLC,* 336 B.R. 172, 174-76 (E.D.N.Y 2005).

Applying those factors here supports paying the PTO now. For one, it is in the interest of the creditors: obviously the employee creditors, but also the remaining Petitioner-Creditors who had previously agreed to it; and so it is certainly not contrary to their interest. Next, this is a Chapter 7 liquidation and there is no possibility of a successful reorganization,

and so turnover of the PTO is not needed for that purpose. Further, the Receivership Docket had already concluded that the PTO should be paid but that litigation is arguably now "deactivated" due to the bankruptcy filing. Thus, applying the "broad equitable" review of this situation, *In re Roebling,* 336 B.R. at 174-76, this Court, pursuant to § 543(d)(1), should excuse compliance with any otherwise applicable provision of §§ 543(a) or 543(b)(1) in order to allow payment of the PTO.

2. Section 362 of the Bankruptcy Code. This section provides that the filing of an involuntary bankruptcy petition under Section 303 of the Code, operates as a stay of, among other things:

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; or
> . . .
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a).

The State does believe the automatic stay applies here. By its terms, the stay is directed only at actions of creditors and at the commencement or continuation of judicial proceedings. No further action of the PTO creditors or anyone acting on their behalf is required for the PTO to be paid. Nor is any further action required in the state court litigation. The state court's PTO Order authorized the Receiver to pay the PTO, the Receiver has

already tried to pay the PTO, and apparently remains willing to try again. The former employees need only accept payment—and courts have held that mere acceptance of payment does not violate a bankruptcy stay. *Pertuso v. Ford Motor Credit Co.,* 233 F.3d 417, 424 (6th Cir. 2000) ("a secured creditor's acceptance of voluntary payments does not run afoul of the automatic stay as long as the payments have not been induced improperly").

The State thus asks this Court to find that the stay does not apply to the merely ministerial act of the Receiver's payment of PTO and the employees' receipt of such payment. Or, if this Court determines that the stay applies, then it should grant relief from the stay pursuant to 11 U.S.C. § 362(d).

Section 362(d) provides that "[o]n request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section . . . (1) for cause . . . ." The Code does not define cause and the courts have considered a wide range of factors in determining whether there is cause for granting relief from the stay. *See In re Sonnax Industries, Inc.,* 907 F.2d 1280, 1286 (2d Cir. 1990).

These factors include: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of

judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. *Id.* Not all of these factors will be relevant in a particular case. *See Id.* "The 'decision of whether to lift the stay [is committed] to the discretion of the bankruptcy judge.'" *Id.* (quoting *Holtkamp v. Littlefield (in re Holtkamp),* 699 F.2d 505, 507 (7th Cir. 1982).

Applied here, these factors (numbered to match the sequence above) also militate in favor of lifting the automatic stay, if applicable, to permit payment of PTO because: **(1)** it would resolve a straightforward issue that was already agreed to by the parties involved here; **(4)** the state Superior Court which has jurisdiction over receivership has considered the matter and authorized payment; **(7)** there is no prejudice to all of the creditors who have agreed; **(10)** it furthers judicial economy by resolving a potential and narrow issue in this court, and is consistent with the state Superior Court's resolution; **(11)** there is no need for any trial in the state Superior Court, since that court has already authorized payment; **(12)** and lastly, the balance of harms favors paying PTO, since the other Petitioner-Creditors agreed, payment would have been made but-for a processing snafu, and perhaps most importantly, the Koffee Kup employees continue to be harmed by not receiving their duly-owed PTO. *See Matter of Oil Spill by the Amoco Cadiz,* 954 F.2d 1279, 1331 (7th Cir. 1992) ("Money today is not a full substitute for the same sum that should have been paid years [or months] ago."). Thus, the PTO should be paid now.

C. **The Receiver Has a Fiduciary Duty to Pay the PTO to Benefit the Employees.**

A receivership "is an extraordinary remedy to be resorted to only where some injury to property can be avoided in no other way." *Chambers v. Blickle Ford Sales, Inc.*, 313 F.2d 252, 260 (2d Cir. 1963).

Vermont law recognizes there are circumstances where a receivership can apply to a corporation like Koffee Kup. *See, e.g.*, 11A V.S.A. § 14.32(c) (appointing a receiver when corporation may apply for judicial dissolution and providing that: "the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.").

In this situation, Koffee Kup has separately applied for a voluntary dissolution, but the principles are similar. Receiver Teplitsky has already been "authorized by the court" to dispose of the PTO assets. Exhibit A. Further, payment of the PTO is consistent with the Receiver's role as a fiduciary and his responsibilities to the employees. "A receiver, as 'an officer or arm of the court,' is a trustee with the highest kind of fiduciary obligations. He owes a duty of strict impartiality, of 'undivided loyalty,' to all persons interested in the receivership estate, and must not 'dilute' that loyalty." *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (2d Cir. 1946). *See also Cmty. Nat. Bank v. Med. Ben. Adm'rs, LLC*, 2001 WI App 98, ¶ 8, 242 Wis. 2d 626, 633–34, 626 N.W.2d 340, 343–44 ("a receiver has a fiduciary duty to all parties with an interest in the receivership estate").

Paying the employee PTO is thus consistent with the Receiver's responsibility and duty on behalf of the employees. Put another way, to allow the PTO to be placed back into a general pool of assets to be re-divided under the bankruptcy stay, after the PTO was already litigated, agreed on, and ruled on as being necessary to pay now, could constitute a breach of the

Receiver's loyalty duty to the employees. *See Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991–92 (2d Cir. 1946) ("A receiver who has strayed from his duty to the injury of anyone interested in the estate can and should be surcharged").

### D. Paying the PTO Is Consistent with Vermont's Consumer Protection Act.

The Vermont Consumer Protection Act ("CPA" or "the Act") prohibits "unfair or deceptive acts or practices in commerce." 9 V.S.A. § 2453(a). The Vermont Attorney General is authorized to enforce the CPA directly. 9 V.S.A. § 2458(a). The CPA is a remedial statute, to be interpreted liberally to accomplish its purposes. *Carter v. Gugliuzzi*, 168 Vt. 48, 52, 716 A.2d 17, 21 (1998) ("The express statutory purpose of the Act is to protect the public against unfair or deceptive acts or practices . . . . Its purpose is remedial, and as such we apply the Act liberally to accomplish its purposes.") (internal quotation marks omitted). One of the purposes of the CPA is "to encourage fair and honest competition" among businesses. 9 V.S.A. § 2451.

Under the CPA, it is an unfair act to violate the "public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness." *Christie v. Dalmig, Inc.,* 136 Vt. 597, 601, 396 A.2d 1385, 1388 (1979) (quoting *FTC v. Sperry & Hutchinson Co.* ("Sperry"), 405 U.S. 233, 244 n.5 (1972)).

As applied to this matter, it is the position of the Attorney General's Office that there is a clear public policy of requiring payment of all accrued and vested PTO to all terminated employees. *See* 21 V.S.A. § 342 (requiring "wages" to be paid to all employees within 72 hours of their termination); *Cole v. Green Mountain Landscaping, Inc.*, No. 2:09-CV-5, 2009 WL 2179657 (D. Vt. July 22, 2009) (interpreting section 342 and vacation time, and holding that:

"The plain meaning of section 342(b)(2) requires all employer debts to be discharged within seventy-two hours of termination, which includes accrued vacation time.") (emphasis added).

Additionally, Vermont courts recognize that the CPA "is designed not merely to compensate consumers for actual monetary losses resulting from fraudulent or deceptive practices in the marketplace, but more broadly to protect citizens from unfair or deceptive acts in commerce ... and to encourage a commercial environment highlighted by integrity and fairness." *Anderson v. Johnson*, 2011 VT 17, ¶ 7, 189 Vt. 603 (2011).

The Attorney General's strong interest in ensuring a fair marketplace would be thwarted if the Koffee Kup employees were denied their rightful PTO due to the Petitioner-Creditors' filing of an involuntary bankruptcy petition in an apparent attempt to claw back the PTO that was already litigated in the Receivership Docket and agreed to by them. *See, e.g., State of N. Y. by Abrams*, 547 F. Supp. at 707 (discussing the State's "interest in securing an honest marketplace for all consumers"); *People ex rel. Spitzer v. Grasso*, 42 A.D.3d 126, 149-51 (N.Y. 2007), aff'd, 11 N.Y.3d 64, 893 N.E.2d 105 (2008) (noting "the Attorney General had a responsibility to bring this action to ensure that the [stock] Exchange was being operated in a fair and honest manner.").

Therefore, the accrued PTO should be paid to the Koffee Kup employees in accordance with the principles of Vermont's Consumer Protection Act.

## IV. Conclusion

In sum, the State respectfully requests that this Court enter an order expressly allowing the Receiver to follow the prior Entry Order in the Receivership Docket, and immediately pay $838,299 for Koffee Kup's employee PTO.

**COMPLIANCE WITH LOCAL RULE 9013-1**

Pursuant to Vt. LBR 9013-1(b), the undersigned attorney contacted counsel for all parties to obtain agreement on the relief requested and represents that as of the time of this filing: (1) Debtor Koffee Kup consented to this request and payment of the PTO; and (2) the Petitioner-Creditors did not respond to the State's request (but they did receive and acknowledge it).

Dated: August 27, 2021

Respectfully submitted,

STATE OF VERMONT

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by: /s/ *Justin E. Kolber*

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## **CERTIFICATE OF SERVICE**

This is to certify that on August 27, 2021, I served a copy of the foregoing *Memorandum of Law* via electronic mail to all parties as follows:

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