

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

SPORTS MARKETING, INC.,
d/b/a Team Choice,

Case No.: 8:09-bk-15305-CED
Chapter: 11

Debtor. _____/

CONFIRMATION ORDER

THIS CAUSE came on for hearing on January 20, 2010, to consider confirmation of the Plan of Reorganization dated November 5, 2009 (Doc. No. 121) and the Amendment to Plan (Doc. No. 161) (collectively, the “Plan”), filed by Sports Marketing, Inc. d/b/a Team Choice. After due and sufficient notice to all Creditors, holders of Equity Interests, and interested parties, and a hearing before this Court at which time the Court considered the proffers of counsel for the Debtor and the U.S. Trustee, the confirmation affidavit filed by the Debtor, the modifications made to the Plan in open court, and the late filed ballot accepting the Plan filed by the secured creditor, Lyons Financial d/b/a US Bancorp, the Court makes the following findings:¹

FINDINGS OF FACT

1. This Court has jurisdiction over the Debtor; the Debtor’s chapter 11 case; all of the Debtor’s property, contracts, and assets, wherever located; all Claims against and Equity Interests in the Debtor; and all Creditors of and holders of Equity Interests in the Debtor, pursuant to 28 U.S.C §1334.

2. On November 5, 2009, the Debtor filed its Plan and on November 17, 2009 its Amended Disclosure Statement (the “Disclosure Statement”). After notice and hearing, on November 20, 2009, this Court entered its Order Conditionally Approving the Disclosure Statement

¹ All capitalized terms used in this Order have the meanings fixed in this Order or, if not defined in this Order, the meanings ascribed to them in the Plan.

and Setting Hearing on Confirmation (Doc. No. 136) (the “Disclosure Statement Order”). By the Disclosure Statement Order, the Court approved the Debtor’s Disclosure Statement as meeting the “adequate information” standards by §1125 of the Bankruptcy Code.

3. Pursuant to the Disclosure Statement Order, the Debtor mailed copies of the Disclosure Statement, the Plan, notice of the confirmation hearing, and Ballots to all holders of Claims and Equity Security Interests and to certain other Creditors and parties in interest. Appropriate affidavits and certificates have been filed in the record evidencing such service. Accordingly, the Court hereby expressly finds that: (a) timely and proper notice of the Confirmation Hearing and the time fixed for filing objections to and Ballots on the Plan was given to all appropriate Creditors, holders of Equity Interest of the Debtor and all parties in interest in accordance with order of this Court; (b) such notice was adequate and sufficient to notify all appropriate Creditors, holders of Equity Interest of the Debtor and all parties in interest of the Confirmation Hearing and objection and voting deadlines as the Plan; and (c) such notice complied in all respects with the procedural orders of this Court, and otherwise satisfied the requirements of due process.

4. On January 20, 2010, the Court conducted a hearing to consider confirmation of the Plan in accordance with 11 U.S.C. §1129 (the “Confirmation Hearing”).

5. At the Confirmation Hearing, counsel for the Debtor proffered and presented evidence regarding various aspects of the Plan and the events leading up to the formulation of the Plan; the feasibility of the Plan; the absence of any meaningful, confirmable alternative to the transactions contemplated by the Plan; the likely effect of liquidation upon Creditors, holders of Equity Interest, and other interested parties; and the means for implementing distributions to Creditors pursuant to the Plan.

6. Pursuant to 11 U.S.C. §1123(b)(4) of the Bankruptcy Code the Debtor shall distribute the proceeds of amounts recovered among holders of claims or interest, as reflected or referenced in the Plan, or announced by the Debtor’s counsel at the Confirmation Hearing, which are fair and

equitable, reasonable and proper and is in the best interest of the Debtor's Estate and holders of Equity Interest.

7. The Debtor has acted in good faith and complied in all respects with 11 U.S.C. §1125 of the Bankruptcy Code; Bankruptcy Rules 3017, 3018, and 3019; all procedural orders of this Court; all other applicable provisions of the Bankruptcy Code; and all other applicable laws, rules and regulations.

8. The Plan complies with each of the applicable provisions of Title 11 of the United States Code (the "Bankruptcy Code"), including without limitation the provisions of 11 U.S.C. §1122 and §1123 of the Bankruptcy Code.

9. As required by 11 U.S.C. §1129(a)(2) of the Bankruptcy Code, the Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code. Without limiting the generality of the foregoing and by way of example, the Debtor has complied with the disclosure solicitation requirements of 11 U.S.C. §1125 and §1126 of the Bankruptcy Code. Further, the Court expressly finds that the Disclosure Statement and Plan contain adequate information and that no further disclosure is required by the Debtor in connection with the Plan.

10. The Debtor has acted in good faith in connection with the formulation and negotiation of the Plan and the various documents and agreements related to the Plan and in connection with the negotiation, execution and implementation of the Plan. Without limiting the generality of the foregoing and by way of example, the Plan has been negotiated in good faith, at arm's length, and not by means forbidden by law.

11. The identity and affiliation of the person who is to serve as the director or officer of the Reorganized Debtor under the Plan on the Effective Date has been fully disclosed and the appointment of such person to this office, is equitable and is consistent with the interests of the Creditors and holders of Equity Interest and with public policy.

12. No governmental regulatory commission now or has or will have after confirmation of the Plan jurisdiction over any rates of the Debtor or the Reorganized Debtor.

13. With respect to each impaired Class of Claims or equity Interests, each Claim or Equity Interest of such Class (a) has accepted the Plan, or (b) will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were to be liquidated under chapter 7 of the bankruptcy Code on such date.

14. Except to the extent that the holder of a particular Claim has agreed to a different treatment of its Claim, the Plan provides that with respect to a Claim of a kind specified in 11 U.S.C. §507(a)(2) or §507(a)(3), on the Effective Date of the Plan, the holder of such Claim will receive on account of such Claim cash equal to the Allowed Amount of such Claim.

15. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that with respect to a Claim of a kind specified in paragraphs (4) through (7) of 11 U.S.C. §507(a) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such Claim will receive on account of such Claim cash equal to the Allowed Amount of such Claim.

16. Classes 2, 3, 4A, 4B, 5, 6, 7, and 8, all of which are impaired, supported or have voted to accept the Plan.

17. Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor, the Reorganized Debtor, or any successor thereof under the Plan, except to the extent that such liquidation is provided for under the Plan. The plan is feasible.

18. All fees payable under 28 U.S.C. §1930 through the Effective Date are to be paid by the Debtor on the Effective Date of the Plan.

19. The Debtor has no “retiree benefits” (as the term is defined in 11 U.S.C. §1114 of the Bankruptcy Code) that are payable pursuant to §1114.

20. All transfers of property of the Plan will be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed business, or commercial corporation or trust.

21. Any modifications announced in open court will not have adversely affect the treatment of any Class of Creditors that has accepted the Plan and meet the requirements of 11 U.S.C. §1122 and §1123 of the Bankruptcy Code. No additional disclosure or solicitation is appropriate or necessary.

22. The Plan Confirmation Order, including without limitation the discharge, injunction, limitation of liability, and other provisions of the Plan, are binding upon any and all creditors and holders of Equity Interests and that all creditors and holders of Equity Interests received sufficient and proper notice, actual or constructive, of the Plan and the Confirmation Hearing, along with the supplemental notice of third party release and opportunity to object provided for herein.

23. All of the discharge, limitation of liability, and other related provisions of the Plan are fair, equitable, reasonable, and proper, are in the best interest of the Debtor’s Estate and creditors and holders of Equity Interests, and are a necessary and material condition precedent to the Plan.

24. The Plan provided sufficient notice to creditors that David Smith, individually, would be released from certain claims and further finds that the Release was appropriate in this case. The Debtor has agreed to provide supplemental notice to holders of Class 6 and Class 8 claims, that David Smith, a non-debtor will be personally released from any potential liability arising from such claims and with regards to any personal guarantees he made on behalf of the Debtor in favor of the aforementioned Class 6 and Class 8 claimholders (“Released Claims”). A copy of the Notice to Creditors Holding Class 6 and/or Class 8 Claims of the Release of David Smith, a Third Party Non-Debtor is attached hereto and incorporated herein as **Exhibit “A”** (“Notice”). As provided in the

Notice, the Holders of Class 6 and Class 8 claims who object to the release of David Smith will have until **February 17, 2010** to file a written objection with the Court regarding the same. The Notice satisfies the applicable notice and other requirements which are necessary to justify a third party release under the Bankruptcy Code and other applicable law, and resolves those issues set forth in the objection filed by the United States Trustee.

25. Additionally, on January 20, 2010, the Court held a hearing on the Amended Motion to Compromise Controversy filed by the Debtor relating to the settlement by and among Debtor, Charles Carpenter (“Carpenter”) and Fifth Third Bank (“Bank”) (Doc. No. 169) (the “Compromise Motion”). At the outset of the case, there was a dispute as to whether the fair value of the Debtor’s collateral was sufficient to fully satisfy both the secured claim of the Bank and Carpenter. However, as the case has progressed, the sale of certain inventory established that the fair value of the Debtor’s collateral was and is sufficient to support both the settlement terms agreed to by and among the Debtor, the Bank and Carpenter which are more fully set forth in the Compromise Motion and Carpenter’s and the Bank’s treatment under the Plan. As such, the Compromise Motion is in the best interest of creditors. The Compromise Motion shall be approved by separate order of this Court.

26. With respect to confirmation of the Plan, all other requirements of 11 U.S.C. §1129 of the Bankruptcy Code have been met.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED as follows:

1. The findings of fact set forth in this Confirmation Order are ratified and adopted as findings of this Court and are incorporated herein. To the extent any of the findings of fact set forth above are deemed to be conclusions of law, such findings of fact are hereby confirmed as conclusions of law.

2. The Plan is confirmed in all aspects.

3. The Debtor's officer, director, agents, attorneys, and authorized representatives are authorized, empowered, and directed, subject to the conditions set forth in the Plan, to take all such steps as may be necessary to effectuate and implement the Plan and the various settlements, agreements, and compromises referenced in the Plan.

4. Except as otherwise provided herein, upon the Effective Date, (i) any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the Debtor with respect to any debt discharged by this Confirmation Order, shall hereby be made null and void, and (ii) the commencement or condition of any action, the employment of process, or any act to collect, recover, or offset any debt, Claim, or Interest discharged by this Confirmation Order as a personal liability of the Debtor shall hereby be forever enjoined. Each holder of any Claim or Interest against the Debtor shall be enjoined permanently from taking any action against the Reorganized Debtor to Litigate, recover, enforce, adjudicate, collect, offset, levy upon or otherwise realize upon or obtain any relief with respect to any Claim or Interest, other than as expressly provided in the Plan.

5. In response to the U.S. Trustee's concerns, Holders of Class 6 and Class 8 claims, were noticed that David Smith, a non-debtor will be personally released from any potential liability arising from such claims and with regards to any personal guarantees he made on behalf of the Debtor in favor of the aforementioned Class 6 and Class 8 claimholders ("Released Claims"). As provided in the Notice, the Holders of Class 6 and Class 8 claims who object to the release of David Smith will have until **February 17, 2010** to file a written objection with the Court regarding the same.

6. On January 20, 2010, the Court held a hearing on the Compromise Motion. The Compromise Motion is in the best interest of creditors. The Compromise Motion shall be approved by separate order of this Court.

7. The provisions of the Plan and of this Confirmation Order are binding on the Debtor, each holder of a Claim or Interest against the Debtor, each other party in interest in these chapter 11 cases, whether or not the Claim or Interest is impaired under the Plan and whether or not the holder of such Claim or Interest has accepted the Plan.

8. The provisions of the Plan and of the Confirmation Order are binding on any person or entity that may in the future bring a claim against the Debtor or its successors for obligations arising before the execution of this Confirmation Order.

9. Except as otherwise provided under the Plan, all liens of any kind against any property of the estate of the Debtor are discharged, extinguished, removed, expunged, or otherwise disallowed as against all property of the estate of the Debtor.

10. On the Effective Date and consistent with 11 U.S.C. §1123(a)(5)(B) and other applicable law, all of the right and title to the Debtor's property shall be vested in the Reorganized Debtor.

11. As of the Effective Date, all outstanding Equity Interest in the Debtor shall be cancelled and extinguished. However, equity interests in the Reorganized Debtor shall be reissued to David Smith, Homer Cablish and Craig Carpenter in percentages equal to those held by the foregoing parties in the Debtor on the Petition Date.

12. Except as provided herein, the Debtor shall be discharged on the Effective Date from any and Claims, Debts, Liens, Cure Claims, encumbrances, contract rights, rights of setoff, or liabilities of any nature (whether contingent, fixed liquidated, un-liquidated, matured, un-matured or disputed) that arose from any acts or conduct of the Debtor occurring prior to the Effective Date.

13. All rights of holders of Claims of all Classes under the Plan, including without limitation, the right to receive distributions on account of such Claims, hereafter shall be limited solely to the right to receive such distributions and other treatment exclusively according to the Plan, the provisions of which shall be binding on such holders to the fullest extent provided by 11 U.S.C.

§1141(a) of the Bankruptcy Code. After the date thereof, the holders of such Claims shall have no further rights against the Debtor or Reorganized Debtor except as expressly provided in the Plan.

14. The Plan and its provisions shall be and hereby are binding upon the Debtor, the Debtor's estate, the Reorganized Debtor, any entity acquiring property under the Plan, all Creditors and all equity security holders of the Debtor, whether or not the Claim or Equity Interest of such Creditors or equity Security holders is impaired under the Plan and whether or not such Creditors or equity security holders have accepted the Plan.

15. Except as otherwise expressly provided in the Plan or in this Confirmation Order, as of the Effective Date, the provisions of the Plan relating to discharge and limitation of liability shall apply and are hereby incorporated by reference.

16. Any unexpired lease or executory contract that has not been expressly assumed by the Debtor on or prior to the date of entry of this Confirmation Order shall be deemed rejected. This Confirmation Order shall constitute an order of this Court approving and authorizing the rejection of each such lease and contract, pursuant to 11 U.S.C. §365 and §1123(b)(2) of the Bankruptcy Code.

17. The Plan is confirmed in its entirety. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall have no effect on the validity, binding effect, and enforceability of such provision and such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

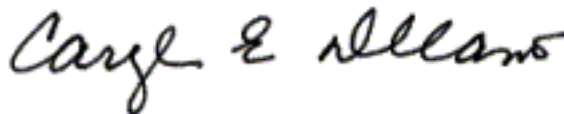
18. On the Effective Date of the Plan, the Debtor shall pay all quarterly fees due and owing to the United States Trustee through the Effective Date.

19. Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, until this case is closed, this Court shall retain the fullest and most extensive jurisdiction of this case that is permitted under applicable law, including that which is necessary to ensure that the purposes and intent of the Plan are carried out. Without limiting the generality of the foregoing, after confirmation of the Plan and until this case is closed, this Court shall retain

jurisdiction of this case, to be exercised at the discretion of the Court, for each of the specific purposes set forth in the Plan.

20. A Copy of this Confirmation Order shall be furnished to the registered filers via the Courts electronic noticing system. Notice of the entry of this Confirmation Order shall be adequate if served by the Debtor on all Creditors, holders of Equity Interests, and parties in interest in this case in accordance with Bankruptcy Rule 2002(f)(7).

DONE AND ORDERED on February 18, 2010.



Caryl E. Delano
United States Bankruptcy Judge

Copies to:
All CM/ECF notice parties in this case

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EXHIBIT A

In re:

Sports Marketing, Inc.
d/b/a Team Choice,

Case No.:8:09-bk-15305-CED
Chapter 11

Debtor.

**NOTICE TO CREDITORS HOLDING CLASS 6 and/or CLASS 8 CLAIMS OF THE
RELEASE OF DAVID SMITH, A THIRD PARTY NON-DEBTOR**

Sports Marketing, Inc., d/b/a Team Choice (“Debtor”) hereby provides notice to parties holding **Class 6 and/or Class 8** claims in the above-captioned Chapter 11 bankruptcy case (“Claimholders”) of the release of David Smith, an individual, non-debtor (“Smith”).

1. **The Debtor filed a Plan of Reorganization (“Plan”) wherein the Debtor requested that Smith, individually, be forever released from any guaranty or potential liability arising from or related to claims held by Claimholders (“Release”).**

2. On January 20, 2010 the Court held a confirmation hearing (“Confirmation Hearing”) at which time the Court confirmed the Plan.

3. At the Confirmation Hearing, the Court directed the Debtor to serve a notice (“Notice”) on all Claimholders advising the parties of the Release. You have received this Notice because a review of the books and records reveals that you may have a potential claim against Smith that will be released as a result of the confirmation of the Plan.

4. If you object to the Release, then you must file your written objection (“Objection”) **on or before February 17, 2010** with the Clerk of the Bankruptcy Court, at 801

North Florida Avenue, Tampa, Florida 33602, together with a copy to Richard J. McIntyre, Esquire, at 6943 East Fowler Avenue, Temple Terrace, Florida 33617. If an Objection is timely filed, then the Court shall schedule a hearing regarding the same.

5. If an Objection is not filed on or before February 17, 2010, then the Release shall become effective without further order of the Court.

Respectfully submitted,

/s/ Richard J. McIntyre

RICHARD J. McINTYRE, ESQUIRE

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(813) 899-6059 (Telephone)

(813) 899-6069 (Facsimile)

Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice to Creditors Holding Class 6 and/or Class 8 Claims of the Release of David Smith has been furnished via the Court's CM/ECF system or U.S. Mail to all parties in interest as set forth on the attached mailing matrix on this 28th day of January, 2010, or immediately thereafter.

/s/ Richard J. McIntyre

Attorney