

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
PUMPKIN PATCH LLC, <sup>1</sup>	)	Case No. 09-12200 (BLS)
	)	
Debtor.	)	
	)	

**APPLICATION OF THE DEBTOR FOR ENTRY OF AN ORDER APPROVING THE  
NUNC PRO TUNC EMPLOYMENT AND RETENTION OF  
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC AS COUNSEL FOR THE DEBTOR**

Pumpkin Patch LLC, as debtor and debtor in possession (the “Debtor” or “Pumpkin Patch”), respectfully submits this application (the “Application”) for the entry of an Order, pursuant to sections 327(a) and 328 of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the *nunc pro tunc* employment and retention of Womble Carlyle Sandridge & Rice, PLLC (“Womble Carlyle”) as counsel, effective as of June 29, 2009. In support of the Application, the Debtor also submits the declaration of Thomas M. Horan, annexed hereto as Exhibit A (the “Horan Declaration”), and respectfully represents as follows:

**BACKGROUND**

1. On the date of this Application (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor is set forth in detail in the Declaration of Maurice Prendergast in Support of Chapter

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<sup>1</sup> The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

11 Petition and Various First Day Applications (the “Prendergast Declaration”), filed concurrently herewith and fully incorporated herein by reference.<sup>2</sup>

2. The Debtor continues to operate its business and manages its properties as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

### **JURISDICTION**

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

1. Pursuant to this Application, the Debtor seeks authority to retain Womble Carlyle as its counsel regarding all matters related to the Case.

2. The Debtor selected Womble Carlyle because of its extensive experience and knowledge of bankruptcy matters and this Court’s Local Rules and practices, and believes Womble Carlyle is well qualified to represent the Debtor in this Case.

### **WOMBLE CARLYLE’S ROLE**

3. Subject to the control and further order of this Court, the professional services that Womble Carlyle will render to the Debtor may include, but shall not be limited to, the following:

- (a) providing legal advice regarding the Debtor’s powers and duties as a debtor in possession under the Bankruptcy Code;
- (b) taking all necessary or appropriate actions to protect and preserve the Debtor’s estate, including the prosecution of actions on the Debtor’s behalf, the defense of any actions commenced against the Debtor, the negotiation of disputes in which the Debtor is involved, and the preparation of objections to claims filed against the Debtor’s estate;
- (c) preparing on behalf of the Debtor, as debtor in possession, all necessary or appropriate motions, applications, answers, orders, reports, and other

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

papers in connection with the administration of the Debtor's estate;

- (d) negotiating and preparing on behalf of the Debtor any plan of reorganization and all related documents; and
- (e) performing all other necessary legal services in connection with this Case.

4. The Debtor believes that it is necessary to employ counsel to render professional services to the Debtor as described above so that the Debtor may properly fulfill its duties under the Bankruptcy Code. Further, the Debtor believes that Womble Carlyle is well qualified to handle the legal work required in this chapter 11 case.

#### **WOMBLE CARLYLE'S CONNECTIONS IN THESE CASES**

5. The Debtor has reviewed the Horan Declaration, including all of the "connections" (as such term is used in Bankruptcy Rule 2014(a)) to this case disclosed therein.

6. Notwithstanding any such connections, the Debtor believes that Womble Carlyle is a disinterested person, and does not hold or represent an interest adverse to the Debtor's estate with respect to the matters for which Womble Carlyle is to be employed, as required by section 327(a) of the Bankruptcy Code.

#### **WOMBLE CARLYLE COMPENSATION**

7. With respect to restructuring matters, the Debtor initially paid Womble Carlyle the amount of a \$20,000 retainer and advance (the "Retainer") to be held as on-account cash for the advance payment of prepetition professional fees and expenses incurred and charged by Womble Carlyle in its representation of the Debtor, the balance of which would become an evergreen retainer for professional fees and expenses incurred and charged by Womble Carlyle in its representation of the Debtor upon the commencement of this chapter 11 case (the "On-Account Cash").

8. Pursuant to the engagement agreement (the “Engagement Agreement”) between Pumpkin Patch and Womble Carlyle, and subject to any orders of the Court, to the extent that reconciliation of the amount of the prepetition invoices (the “Reconciliation Amount”) is less than the Retainer, Womble Carlyle has indicated that it will hold the full amount of the difference as a postpetition evergreen retainer to be applied against any amounts approved by the Court in connection with any Womble Carlyle final fee application in these cases.

9. Womble Carlyle proposes to render its services on an hourly fee basis according to its customary hourly rates in effect when the services are rendered. It is anticipated that the lead Womble Carlyle attorney who will represent the Debtor is Thomas M. Horan (an associate member of the firm whose current hourly rate is \$325), with day-to-day support from other firm attorneys, including, without limitation, Mark L. Desgrosseilliers (a member of the firm whose current hourly rate is \$425). Womble Carlyle paraprofessionals and legal assistants will provide additional supporting legal services on behalf of and as directed by the Debtor in connection with the matters herein described. The following hourly rates for Womble Carlyle attorneys and paraprofessionals are currently in effect, but are subject to periodic adjustments: attorney rates are \$210 to \$ 700 per hour and paraprofessionals rates are \$125 to \$250 per hour.<sup>3</sup>

10. Womble Carlyle’s policy is to request reimbursement of its actual and necessary out-of-pocket expenses incurred in connection with providing legal services. Among other things, Womble Carlyle charges its clients for telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, photocopying charges, travel expenses, after-hours taxi expenses, expenses for working meals or overtime/after-hours meals, computerized research, transcript costs, and secretarial overtime. The Debtor has been assured

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<sup>3</sup> Periodically, but no less frequently than once each calendar year, Womble Carlyle reviews its hourly rates and revises them consistent with market conditions.

that Womble Carlyle will charge the Debtor for these expenses at rates consistent with charges made to other Womble Carlyle clients, and subject to the guidelines of the United States Trustee.

11. Womble Carlyle will maintain detailed records of fees earned and expenses incurred in connection with the rendering of the legal services described above, in accordance with applicable rules and guidelines.

12. Pursuant to section 328(a) of the Bankruptcy Code, the Debtor may retain its counsel pursuant to reasonable terms and conditions. The Debtor believes that the hourly rates and expense policies of Womble Carlyle, which are applied to other Womble Carlyle clients, all as specifically described above, constitute fair and reasonable terms and conditions for the retention by the Debtor of Womble Carlyle as counsel in accordance with section 328(a) of the Bankruptcy Code.

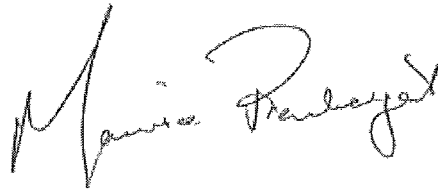
13. The Debtor requests that Womble Carlyle be allowed compensation for its services and reimbursement for its expenses in accordance with sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016, upon submission of appropriate applications therefor in compliance with all applicable orders, rules and guidelines, subject to the review and approval of this Court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Order annexed hereto as Exhibit B approving the Debtor's *nunc pro tunc* engagement and retention of Womble Carlyle as counsel, effective as of June 29, 2009, and that the Court grant the Debtor such other and further relief as it deems just and proper.

Dated: June 29, 2009

PUMPKIN PATCH LLC  
Debtor and Debtor in Possession

A handwritten signature in black ink, appearing to read "Maurice Prendergast". The signature is written in a cursive, flowing style.

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Maurice Prendergast  
Chief Executive Officer



Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

3. I am fully familiar with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and I am sufficiently competent to handle whatever might foreseeably be expected of the Debtor’s counsel in this matter.

4. Insofar as I have been able to ascertain, except as described herein, the other members, counsel, and associates of Womble Carlyle and I are disinterested persons within the meaning of section 101(14) of the Bankruptcy Code, have no interest adverse to and no connections to Pumpkin Patch LLC (the “Debtor”), the Debtor’s estate, its creditors or any other party in interest herein or their respective attorneys and accountants.<sup>2</sup> Although Womble Carlyle from time to time has represented and in the future may represent various entities that are creditors of the Debtor or otherwise had or have an interest in this case in matters wholly unrelated to this case, Womble Carlyle will not represent those creditors or parties in connection with the above-captioned case (the “Case”), absent further disclosure and to the extent that would be permissible under the Bankruptcy Code.

**WOMBLE CARLYLE’S CONFLICT CHECK SYSTEM**

5. In connection with preparing this Declaration, Womble Carlyle submitted the names of certain names of individuals or entities that may be parties-in-interest in this case (the “Parties-in-Interest”) for review in the computerized conflict database system maintained by Womble Carlyle. Other entities were added to this list based upon our review of the initial

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<sup>2</sup> Womble Carlyle appears in numerous cases involving a substantial number of creditors and parties-in-interest. Womble Carlyle is reviewing the parties-in-interest in this proceeding and will make every effort to disclose all connections to these parties as they become known to Womble Carlyle. Although it is not possible to guarantee that each and every connection is disclosed, Womble Carlyle will file additional and supplemental disclosure statements in the event Womble Carlyle becomes aware of any additional connections. In addition, it is possible that some creditors or parties-in-interest herein are creditors or parties-in-interest with de minimus interest in other cases in which Womble Carlyle plays a role.

papers filed in this case. Womble Carlyle maintains and systematically updates its conflict check system in the regular course of business of the firm, and it is the regular practice of the firm to make and maintain these records. The conflict check system maintained by Womble Carlyle is designed to include every matter on which the firm is now or has been engaged, the entity for which the firm is now or has been engaged, and in each instance, the identity of related parties and adverse parties and the attorney in the firm that is knowledgeable about the matter. It is the policy of Womble Carlyle that no new matter may be accepted or opened within the firm without completing and submitting to those charged with maintaining the conflict check system the information necessary to check each such matter for conflicts, including the identity of the prospective client, as well as related and adverse parties. Accordingly, the database is regularly updated for every new matter undertaken by Womble Carlyle.

6. The Parties-in-Interest which Womble Carlyle submitted to its conflict database include:

- (a) The Debtor;
- (b) The professionals that the Debtor has sought authority to employ in this case;
- (c) The Debtor's known officers and directors;
- (d) The Debtor's banks;
- (e) The Debtor's equityholders;
- (f) The unsecured creditors of the Debtor;
- (g) The U.S. Trustee's office; and
- (h) Other creditors creditors.

**WOMBLE CARLYLE'S RELATIONSHIP WITH  
PARTIES IN INTEREST IN UNRELATED MATTERS**

7. Exhibit 1 contains a list of the Parties-in-Interest or their affiliates that Womble Carlyle has represented, currently represents, or is or were adverse to in matters wholly unrelated to the Debtor and its estate. As disclosed in Exhibit 1, Womble Carlyle and its partners, counsel, and associates have in the past represented, currently represent, and may in the future represent entities that are creditors of the Debtor, or other parties in interest in the Case in matters unrelated to this case.

8. Further, Womble Carlyle appears in cases, proceedings, and transactions involving a substantial number of different attorneys, accountants, financial consultants, and investment bankers, some of which now or may in the future represent creditors or parties-in-interest in this case.

9. Womble Carlyle has not agreed to share (a) any compensation it may receive with another party or person, other than with the partners and associates of Womble Carlyle, or (b) any compensation another person or party has received or may receive.

10. Womble Carlyle agrees to charge, subject to this Court's approval in accordance with section 330(a) of the Bankruptcy Code, the Firm's standard hourly rates for work of this nature and for this type of matter, plus its customary reimbursements as charged to bankruptcy and non-bankruptcy clients.

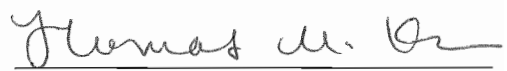
11. The rates set forth above are subject to periodic review and adjustment and are set at a level designed to fairly compensate Womble Carlyle for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is Womble Carlyle's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone, telecopier and other charges, mail and express and overnight mail charges, special or hand delivery

charges, photocopying charges, travel expenses, expenses for “working meals,” computerized research, transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime. Womble Carlyle will charge the Debtor’s estate for these expenses in a manner and at rates consistent with charges made generally to Womble Carlyle’s other clients. Womble Carlyle believes that it is fairer to charge these expenses to the clients incurring them than to increase the hourly rates and spread the expenses among all clients. Womble Carlyle will seek reimbursement of its expenses as allowed pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and Orders of this Court.

12. Womble Carlyle received a \$20,000 retainer and advance (the “Retainer”) from the Debtor as security for payment of the firm’s fees and expenses for professional services to be performed relating to the preparation for and prosecution of this Case. As to the Retainer balance as of the Petition Date Retainer, Womble Carlyle’s retention terms with the Debtor provide for maintaining the Retainer on an “evergreen” basis, such that it would not be applied to postpetition fees and expenses of the firm until the conclusion of the firm’s engagement.

13. Based upon the information available to me, and except as otherwise described herein, Womble Carlyle holds no interest adverse to the Debtor, its estate, or creditors as to the matters in which it is to be employed. I believe Womble Carlyle is a “disinterested person” as defined in section 101(14) of the Bankruptcy Code.

Executed on this 29th day of June, 2009.

  
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Thomas M. Horan

# **EXHIBIT 1**

<b><u>Party-in-Interest</u></b>	<b><u>Relationship to Womble Carlyle</u></b>
FedEx Ground Package Systems	Current client
DLA Piper US LLP	Current client
Simon Property Group, Inc.	Former client
Yahoo! Inc.	Current client
Accountemps	Former client
ADT Security Services, Inc.	Former client
American Express	Current client
Arrowhead	Former client
Cingular Wireless	Former client
Commonwealth of Virginia	Former client
Covad Communications	Former client
Dominion Virginia Power	Former client
Mercer Global Advisors	Former client
OfficeMax	Current client
County of Orange	Current client
Pacific Gas & Electric Company	Former client
Paxar Americas Inc.	Former client
Prudential Group Insurance	Former client
Reliant Energy	Former client
Spartan Services Inc.	Former client
Sprint	Former client; Womble Carlyle attorneys Thomas M. Horan and Ericka F. Johnson represented Sprint in unrelated matters while each was employed by a firm other than Womble Carlyle
Tacoma Public Utilities	Click! Cable TV, a telecommunications division of Tacoma Public Utilities, is a current client
UPS	Womble Carlyle attorneys Thomas M. Horan and Ericka F. Johnson represented UPS in unrelated matters while each was employed by a firm other than Womble Carlyle
Waste Management, Inc.	Former client
Wells Fargo Bank, N.A. and Wells Fargo Credit Cards	Wells Fargo Bank, N.A. is a current client
Wachovia Bank, N.A. and Wachovia Visa Gift Card	Wachovia Bank, N.A. is a current client
Westfield Group	Womble Carlyle attorney Kim Costello represented the Westfield Group in unrelated matters while employed by a firm other than Womble Carlyle



2. Pursuant to Bankruptcy Code sections 327(a), 328, and 329, the Debtor, as debtor and debtor in possession, is authorized to employ and retain Womble Carlyle as its bankruptcy counsel under a general retainer, effective as of the Petition Date, in accordance with the Application and Engagement Agreement.<sup>2</sup>
3. Womble Carlyle shall be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the United States Trustee Fee Guidelines, and any orders entered in these cases governing professional compensation and reimbursement for services rendered and charges and disbursements incurred.
4. Womble Carlyle is authorized to apply the amounts presently held as the On-Account Amount to pay any fees, charges and disbursements relating to services rendered to the Debtors prior to the Petition Date that remain unpaid as of such date (the "Final Billed Amount"). Any On-Account Amount remaining after such payment of the Final Billed Amount shall be held by Womble Carlyle and applied against their postpetition final fee application (the "Final Fee Application") when filed and approved by the Court, until such On-Account Amount is fully depleted. In the event that the remaining On-Account Amount exceeds the unpaid portion of the Final Fee Application approved by the Court, Womble Carlyle shall remit such excess to the Debtor or its successor.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

5. This Court shall retain exclusive jurisdiction to construe and enforce the terms of the Application, the Engagement Agreement, and this Order.

Dated: Wilmington, Delaware

\_\_\_\_\_, 2009

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The Honorable Brendan Linehan Shannon  
United States Bankruptcy Judge