

**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.	)	
	)	
	)	
	)	

**DEBTOR’S MOTION FOR AN ORDER ESTABLISHING PROCEDURES  
FOR INTERIM COMPENSATION AND REIMBURSEMENT  
OF EXPENSES OF PROFESSIONALS AND COMMITTEE MEMBERS**

Pumpkin Patch LLC, the debtor and debtor in possession in the above-captioned case (the “Debtor”) files this motion (the “Motion”) seeking entry of an order for entry of an order pursuant to sections 105(a) and 331 of 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), establishing procedures for interim compensation and reimbursement of expenses for professionals, and respectfully represents as follows:

**JURISDICTION**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This matter is a “core” proceeding pursuant to 28 U.S.C. §157 (b)(2)(A), (N) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code.

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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.

## **BACKGROUND**

4. On the date of this Motion (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declaration, filed concurrently herewith and fully incorporated herein by reference.

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

## **RELIEF REQUESTED**

6. During the course of this case, the Debtor will seek approval of the employment of certain professionals to assist with the restructuring of its business, including Nixon Peabody LLP and Womble Carlyle Sandridge & Rice, PLLC, as its bankruptcy counsel. An Official Committee of Unsecured Creditors and other committees (collectively, the "Committee") may also be appointed in this case. If appointed, the Committee is likely to retain counsel and other professionals (collectively with the professionals outlined above, the "Professionals").

7. Pursuant to section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the Court permits.

8. By this Motion, the Debtor requests the entry of an order authorizing and establishing procedures for compensating and reimbursing the Professionals on a monthly basis, comparable to those procedures established in other chapter 11 cases filed in this district. Such an order would enable the Court, the U.S. Trustee and all other parties to effectively monitor the fees and expenses incurred by the Professionals in this case.

9. Specifically, the Debtor proposes that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:
- a. No earlier than the 10th day of each calendar month, each Professional seeking interim compensation and expense reimbursement shall file with the Court and serve a copy of its monthly invoice (the "Monthly Statement") for the prior month (the "Compensation Period") on: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 2nd Floor, 844 King Street, Wilmington, Delaware 19801, Attn: David Buchbinder, Esq.; (ii) the Debtor, Pumpkin Patch LLC, c/o Distribution Resources, 233001 54<sup>th</sup> Avenue South, Kent, Washington 98032; (iii) counsel to the Debtor, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10056, Attn: Joseph M. Gitto, Esq.; and Womble Carlyle Sandridge and Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801, Attn: Thomas M. Horan; (iv) counsel to any Committee appointed in the Debtor's case (collectively, the "Notice Parties"). All Monthly Statements shall comply with the timekeeping and detail requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the United States Trustee Fee Guidelines - Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (Appendix A to 28 C.F.R. § 58) (the "U.S. Trustee Fee Guidelines") and other applicable law. The first monthly fee applications filed by the Professionals may cover fees and expenses incurred from the Petition Date through July 31, 2009.
  - b. Each Notice Party will have 20 days after service and filing of a Monthly Statement to object thereto (the "Objection Deadline"). Upon the expiration of the Objection Deadline, the Debtor shall be authorized to pay each Professional an amount (the "Actual Monthly Payment") equal to the lesser of (i) eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses requested in the Monthly Statement (the "Maximum Monthly Payment"); and (ii) eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses not subject to an objection pursuant to subparagraph (c) below.
  - c. If any Notice Party objects to a Professional's Monthly Statement, it must file with the Court and serve on the affected Professional and each of the Notice Parties, a written objection (the "Objection"), which must be received by the affected Professional and the Notice Parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within 20 days after service of the Objection, the affected Professional may either: (i) file a motion seeking resolution of the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application

hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.

- d. Commencing with the period beginning on the Petition Date and ending on September 30, 2009, and at three-month intervals thereafter, or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve upon the Notice Parties an interim application (the “Interim Fee Application”) for Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Applications filed with respect to such three-month period (the “Interim Fee Period”). Each Professional must file its Interim Fee Application within 30 days after the end of the Interim Fee Period for which the application seeks allowance of fees and reimbursement of expenses and serve the Interim Fee Application on the Notice Parties. Each Professional must file its first Interim Fee Application on or before October 31, 2009, and the first Interim Fee Application should cover the Interim Fee Period from the commencement of this case through and including September 30, 2009. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted by the Professional or such requirement is waived by the Court after notice and hearing.
  - e. The Debtor shall request that the Court schedule a hearing on the outstanding Interim Fee Applications at least once every four months, or at such other intervals as the Court deems appropriate.
  - f. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the procedures set forth in this Order.
  - g. Neither: (a) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor (b) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.
10. The Debtor further requests that the Court limit the notice of hearings to consider interim and final fee applications to: (a) the Notice Parties, and (b) all parties who have filed a notice of appearance with the Clerk of this Court and requested notice under Bankruptcy Rule 2002. Such notice should reach the parties most active in this case and will save the expense of undue duplication and mailing.

11. The Debtor further requests that each member of the Committee (once appointed) be permitted to submit statements of out-of-pocket expenses (excluding Committee-member counsel expenses) and supporting vouchers to counsel for the Committee, which will collect and submit such requests for reimbursement in accordance with the foregoing procedure for monthly and interim compensation and reimbursement of Professionals.

12. The Debtor will include all payments made to Professionals in accordance with the compensation procedures in its monthly operating report identifying the amount paid to each Professional.

### **BASIS FOR RELIEF**

13. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under sections 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a cases under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title...

11 U.S.C. § 331.

14. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title ... shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules...

11 U.S.C. § 105(a).

15. Procedures comparable to those proposed in this Motion have been established in other chapter 11 cases. See, e.g., Joan Fabrics Corporation, Case No. 07-10479 (CSS) (Bankr. D. Del. 2007); New Century TRS Holdings, Inc., Case No. 07-10416 (KJC) (Bankr. D. Del.

2007); In re Pliant Corporation, Case No. 06-10001 (MFW) (Bankr. D. Del. 2006); In re Meridian Automotive Systems – Composites Operations, Inc., Case No. 05-11168 (MFW) (Banks. D. Del. 2005). Such an order will permit the Court, the Office of the United States Trustee, and all other interested parties to effectively monitor the fees and expenses incurred in this case.

16. Further, such procedures are needed not only to encourage the Professionals to provide services in connection with this chapter 11 case, but also to avoid having Professionals fund this case. In re Int'l Horizons, Inc., 10 B.R. 895, 897-98 (Bankr. N.D. Ga. 1981) (establishing procedures for monthly interim compensation). Appropriate factors to consider include “the size of [the] reorganization cases, the complexity of the issues included, and the time required on the part of the attorneys for the Debtors in providing services necessary to achieve a successful reorganization of the Debtors.” Id.; see also In re Mariner Post-Acute Network, Inc., 257 B.R. 723, 727-28 (Bankr. D. Del. 2000) (approving monthly interim compensation procedures for professionals, noting that, given the large quantity of time likely invested by professionals, their receiving payment only once every four months may impose an intolerable burden on them and may place them at a significant economic disadvantage to the professionals retained by the creditors). The Debtor submits that the procedures sought to be approved herein are appropriate considering these factors.

#### **NOTICE**

17. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtor’s thirty (30) largest unsecured creditors; (v) counsel to the Agent for the Debtor’s prepetition secured lenders; and (vi) all parties who have requested

service of all motions and pleadings pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

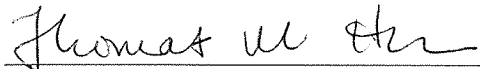
**NO PRIOR REQUEST**

18. No prior motion for the relief requested herein has been made to this or any other court.

**WHEREFORE**, the Debtor respectfully requests that the Court enter an order substantially in the form attached hereto approving interim compensation procedures on the terms and conditions set forth above, and granting such other and further relief as is just and proper.

Dated: June 29, 2009

**WOMBLE CARLYLE SANDRIDGE  
& RICE, PLLC**



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*Proposed Counsel for the Debtor and  
Debtor-in-Possession*

**Exhibit A**

Proposed Order

**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.	)	
	)	
	)	<b>Re: D.I.</b> _____
	)	

**ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR  
INTERIM COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS**

This matter having come before the Court on the Debtor’s Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and Committee Members (the “Motion”);<sup>2</sup> the Court having reviewed the Motion and finding that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) the relief requested in the Motion is warranted and is in the best interests of the Debtor, its estate and creditors; and (e) notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.

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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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Motion.

2. Except as may otherwise be provided in Court orders authorizing the retention of specific professionals, all Professionals may seek interim compensation in accordance with the following procedure:

- a. No earlier than the 10th day of each calendar month, each Professional seeking interim compensation and expense reimbursement shall file with the Court and serve a copy of its monthly invoice (the “Monthly Statement”) for the prior month (the “Compensation Period”) on: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 2nd Floor, 844 King Street, Wilmington, Delaware 19801, Attn: David Buchbinder, Esq.; (ii) the Debtor, Pumpkin Patch LLC, c/o Distribution Resources, 233001 54<sup>th</sup> Avenue South, Kent, Washington 98032; (iii) counsel to the Debtor, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10056, Attn: Joseph M. Gitto, Esq.; and Womble Carlyle Sandridge and Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801, Attn: Thomas M. Horan; (iv) counsel to any Committee appointed in the Debtor’s case (collectively, the “Notice Parties”). All Monthly Statements shall comply with the timekeeping and detail requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the United States Trustee Fee Guidelines - Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (Appendix A to 28 C.F.R. § 58) (the “U.S. Trustee Fee Guidelines”) and other applicable law. The first monthly fee applications filed by the Professionals may cover fees and expenses incurred from the Petition Date through July 31, 2009.
- b. Each Notice Party will have 20 days after service and filing of a Monthly Statement to object thereto (the “Objection Deadline”). Upon the expiration of the Objection Deadline, the Debtor shall be authorized to pay each Professional an amount (the “Actual Monthly Payment”) equal to the lesser of (i) eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses requested in the Monthly Statement (the “Maximum Monthly Payment”); and (ii) eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses not subject to an objection pursuant to subparagraph (c) below.
- c. If any Notice Party objects to a Professional’s Monthly Statement, it must file with the Court and serve on the affected Professional and each of the Notice Parties, a written objection (the “Objection”), which must be received by the affected Professional and the Notice Parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within 20 days after service of the Objection, the affected Professional may either: (i) file a motion seeking resolution of the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment

made to the affected Professional (the “Incremental Amount”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.

- d. Commencing with the period beginning on the Petition Date and ending on September 30, 2009, and at three-month intervals thereafter, or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve upon the Notice Parties an interim application (the “Interim Fee Application”) for Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Applications filed with respect to such three-month period (the “Interim Fee Period”). Each Professional must file its Interim Fee Application within 30 days after the end of the Interim Fee Period for which the application seeks allowance of fees and reimbursement of expenses and serve the Interim Fee Application on the Notice Parties. Each Professional must file its first Interim Fee Application on or before October 31, 2009, and the first Interim Fee Application should cover the Interim Fee Period from the commencement of this case through and including September 30, 2009. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted by the Professional or such requirement is waived by the Court after notice and hearing.
- e. The Debtor shall request that the Court schedule a hearing on the outstanding Interim Fee Applications at least once every four months, or at such other intervals as the Court deems appropriate.
- f. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the procedures set forth in this Order.
- g. Neither: (a) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor (b) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

3. Each member of the Committee or any other Court-appointed committee in this case is permitted to submit statements of out-of-pocket expenses (excluding Committee member counsel expenses) and supporting vouchers to Court-approved counsel to such Committee, which

shall collect and submit such members' requests for reimbursement in accordance with the procedures established in this Order.

4. Notice of any hearings to consider interim or final fee applications shall be sufficient if sent to: (a) the Notice Parties; and (b) all parties who have filed a notice of appearance with the Clerk of this Court and requested such notice.

5. All time periods referenced in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: Wilmington, Delaware

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

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The Honorable Brendan Linehan Shannon  
United States Bankruptcy Judge