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Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 10-

Chapter 11

In re:

ZAYAT STABLES, LLC,

Debtor-in-Possession.

**NOTICE OF MOTION FOR AN ORDER
(A) AUTHORIZING DEBTOR TO
MAINTAIN CERTAIN ACTIVE BANK
ACCOUNTS AND CONTINUE USE OF
ITS EXISTING BUSINESS FORMS, AND
(B) APPROVING THE DEBTOR'S CASH
MANAGEMENT SYSTEM**

HEARING DATE AND TIME:

February __, 2010, at __: __ .m.

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application for Expedited Consideration of First Day Matters served herewith, on the __ day of February, 2010, at ____ .m., or as soon thereafter as proposed counsel may be heard, the undersigned, proposed counsel for Zayat Stables, LLC, the within debtor and debtor-in-possession (the "Debtor"), shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, 50 Walnut Street, Third Floor, Newark, NJ 07102, for entry of an Order (a) authorizing

the Debtor to maintain certain active bank accounts and to continue use of its existing business forms, and (b) approving the Debtor's cash management system (the "Motion").

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the Affidavit of Ahmed Zayat in support of "First Day Motions," and the accompanying Verified Application, which sets forth the relevant factual and legal bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also being submitted.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be presented in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters.

PLEASE TAKE FURTHER NOTICE that unless objections are timely presented, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a) and the relief requested may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that the undersigned requests oral argument on the return date of the Motion.

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed Attorneys for Zayat Stables, LLC,
Debtor-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine

DATED: February 3, 2010

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 10-

Chapter 11

In re:

ZAYAT STABLES, LLC,
Debtor-in-Possession.

**VERIFIED APPLICATION IN SUPPORT
OF THE DEBTOR’S MOTION FOR AN
ORDER (A) AUTHORIZING DEBTOR
TO MAINTAIN CERTAIN ACTIVE
BANK ACCOUNTS AND CONTINUE
USE OF ITS EXISTING BUSINESS
FORMS, AND (B) APPROVING
DEBTOR’S CASH MANAGEMENT
SYSTEM**

HEARING DATE AND TIME:
February __, 2010, at __: __ .m.

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

The Verified Application of Zayat Stables, LLC, the within debtor and debtor-in-
possession (the “Debtor”), by and through its proposed counsel, Cole, Schotz, Meisel, Forman &
Leonard, P.A., respectfully states as follows:

I. INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtor's motion for an Order (a) authorizing the Debtor to maintain certain active bank accounts and to continue use of its existing business forms, and (b) approving the Debtor's cash management system (the "Motion"). As set forth below, granting the Debtor the relief requested in the Motion is crucial to the Debtor's ability to operate its business during this Chapter 11 proceeding without interruption.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

II. BACKGROUND

4. On February 3, 2010 (the "Filing Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, the United States Code (the "Bankruptcy Code"). Since the Filing Date, the Debtor has remained in possession of its assets and continued management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of the Debtor's business and the facts precipitating the filing of the Debtor's Chapter 11 proceeding are set forth in the Affidavit of Ahmed Zayat in support of the Debtor's various "First Day Motions." Those facts are incorporated herein by reference.

6. The Debtor maintains three bank accounts for use in its operations (one account at Bank of America, N.A. and two accounts at Fifth Third Bank). A schedule of the Debtor's bank accounts (the "Debtor Accounts") is attached as **Exhibit A**.

7. To control the Debtor's funds effectively, the Debtor also maintains a cash management system that is reviewed and monitored by, among others, the Debtor's internal accounting staff.

8. The Cash Management System may be summarized as follows:

(i) Operating Account No. 9504647669 held at Bank of America, N.A. (the "Operating Account"): All receipts, including, but not limited to, horse race winnings, horse sale proceeds, and stud fees, are received in the Operating Account. All payables, including, but not limited to, day-to-day business operations, horse trainers, and payroll are paid by check and wire from the Operating Account.

(ii) Money Market Account No. 7880700760 held at Fifth Third Bank ("Fifth Third"): This account is subject to an account control agreement with Fifth Third and the funds in this account are collateral under the Debtor's pre-Filing Date secured credit facility with Fifth Third.

(iii) Checking Account No. 7380727409 held at Fifth Third: This account is used to service the Debtor's pre-Filing Date prepetition credit facility with Fifth Third including, but not limited to, draws and payments of principal and interest.

III. RELIEF REQUESTED AND BASIS THEREFOR

9. Upon filing its Chapter 11 proceeding, the Debtor became bound by the Operating Guidelines and Reporting Requirements for Chapter 11 Cases (the "Operating Guidelines") established by the Office of the United States Trustee for the District of New Jersey (the "UST"). Pursuant to the Operating Guidelines, the Debtor's "failure to comply with the operating and/or reporting requirements . . . may result in the dismissal or conversion of this case to a case under Chapter 7 of the Bankruptcy Code." The Operating Guidelines state that, upon filing its Chapter 11 petition, the Debtor:

must immediately close all of [their] existing bank accounts and open new bank accounts which must be (i) designated as debtor in possession accounts ("DIP Accounts") and (ii) maintained subject to the following conditions:

a. All money of the bankruptcy estate[s] must be deposited in the DIP Accounts . . .

Operating Guidelines, p. 1, ¶ 2.

10. If the Debtor was required to open all new bank accounts and alter its existing cash management system, there likely would be a disruption in the Debtor's ability to collect and disburse funds in the ordinary course of its operations. Such a disruption would negatively impact the Debtor's ability to make a smooth transition into Chapter 11.

11. The Debtor respectfully requests that the Court enter an Order authorizing its continued use of the Debtor Accounts, rather than opening new debtor-in-possession accounts.¹ The Debtor also requests that this Court enter an Order authorizing it to continue its pre-petition cash management system described above. Granting this relief will facilitate a smooth and orderly transition of the Debtor's operations into Chapter 11 and minimize the disruption to its business affairs.

12. In addition to maintaining its cash management system, the Debtor requests that, as a way of minimizing expense to the estate, it be authorized to continue to use its correspondence and business forms including, but not limited to, invoices, purchase orders, checks, letterhead, envelopes and other business forms (collectively, the "Business Forms"), substantially in the forms existing immediately before the Filing Date, without reference to its status as a debtor-in-possession. The Debtor proposes that, in the event it needs to purchase new business forms during the pendency of the Chapter 11 case, such forms will include a legend referring to the Debtor's status as a "debtor-in-possession."

¹The Debtor proposes to maintain the Debtor Accounts on an interim basis for the next sixty (60) days. If the UST does not file a written objection thereto before expiration of the sixty (60) day period, the accompanying Order provides that the Debtor shall be authorized to maintain and utilize the Debtor Accounts post-petition on a permanent basis.

13. If the Debtor is not permitted to maintain and utilize its cash management system and continue to use its existing Business Forms, the Debtor and its estate will be prejudiced by:

(a) the resulting disruption in the ordinary financial affairs and business operations of the Debtor;

(b) a delay in the administration of its estate; and (c) the unnecessary cost to the estate to set up new systems and print new business forms.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order granting the Motion and such other relief as the Court deems just and appropriate under the circumstances.

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed Attorneys for Zayat Stables, LLC,
Debtor-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine

DATED: February 3, 2010

VERIFICATION

AHMED ZAYAT, of full age, certifies as follows:

1. I am the sole member and officer of Zayat Stables, LLC, the within debtor and debtor-in-possession (“Debtor”). As such, I have full knowledge of the facts set forth in, and am duly authorized to make this Application on the Debtor’s behalf.

2. I have read the Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.

3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: February 3, 2010

/s/ Ahmed Zayat

AHMED ZAYAT

EXHIBIT A

I. ZAYAT STABLES, LLC ACCOUNTS

| Fifth Third Bank – PO Box 630900 – Cincinnati, OH 45263-0900 | | |
|---|--------------------|----------------------|
| <u>Legal Entity</u> | <u>Account No.</u> | <u>Account Type</u> |
| Zayat Stables, LLC | #7380727409 | Checking Account |
| Zayat Stables, LLC | #7380700760 | Money Market Account |
| | | |
| Bank of America – PO Box 53150 – Phoenix, AZ 85072-3150 | | |
| <u>Legal Entity</u> | <u>Account No.</u> | <u>Account Type</u> |
| Zayat Stables, LLC | 9504647669 | Checking Account |
| | | |
| | | |

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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Case No. 10-

Chapter 11

**ORDER (A) AUTHORIZING DEBTOR TO MAINTAIN CERTAIN ACTIVE BANK
ACCOUNTS AND CONTINUE USE OF ITS EXISTING BUSINESS FORMS, AND (B)
APPROVING DEBTOR'S CASH MANAGEMENT SYSTEM**

The relief set forth on the following pages, numbered two (2) and three (3), is hereby
ORDERED.

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Debtor: ZAYAT STABLES, LLC
Case No: 10-
Caption of Order: ORDER (A) AUTHORIZING DEBTOR TO MAINTAIN CERTAIN
ACTIVE BANK ACCOUNTS AND CONTINUE USE OF ITS
EXISTING BUSINESS FORMS, AND (B) APPROVING DEBTOR'S
CASH MANAGEMENT SYSTEM

THIS MATTER having been opened to the Court by Cole, Schotz, Meisel, Forman & Leonard, P.A., proposed counsel to Zayat Stables, LLC, the within debtor and debtor-in-possession (the "Debtor"), upon motion for entry of an Order (a) authorizing the Debtor to maintain certain active bank accounts and continue use of its existing business forms, and (b) approve the Debtor's cash management system (the "Motion"); and it appearing that good and sufficient notice of the Motion was provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having considered all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any, and the Court having determined that the relief set forth herein is warranted and is in the best interests of the Debtor, its estate and creditors; and for other good cause having been shown,

IT IS ORDERED as follows:

1. The Debtor is hereby authorized, on an interim basis for the next sixty (60) days, to maintain, in its sole discretion, (i) the Debtor Accounts,¹ and (ii) its cash management system, as described in the Verified Application submitted in support of the Motion. If the Office of the United States Trustee ("UST") does not file a written objection within sixty (60) days from the date hereof, the Debtor shall be authorized to maintain and utilize the Debtor Accounts on a

¹ Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Verified Application submitted in support of the Motion.

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Debtor: ZAYAT STABLES, LLC
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permanent basis. If the UST files a written objection within the sixty (60) day period, the Court will schedule the matter for a hearing. In such event, the Debtor shall be authorized to maintain the Debtor Accounts, and shall be excused from opening debtor-in-possession accounts, pending further Order of the Court.

2. The Debtor is authorized to continue using its existing Business Forms without alteration or change.

3. A true copy of this Order shall be served on all parties-in-interest by regular mail within seven (7) days hereof.