

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

<p>In re:</p> <p>FRIENDLY ICE CREAM CORPORATION, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 11-13167 (KG)</p> <p>Jointly Administered</p> <p><b>Hearing Date: Oct. 24, 2011 at 3 p.m. (ET)</b></p> <p><b>Objection Deadline: Oct. 17, 2011 at 4 p.m. (ET)</b></p>
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER ESTABLISHING PROCEDURES  
FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES  
FOR PROFESSIONALS AND OFFICIAL COMMITTEE MEMBERS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”) for entry of an order (the “Order”), substantially in the form attached hereto as Exhibit A, establishing procedures for interim compensation and reimbursement of expenses for professionals retained in these chapter 11 cases. In support of this Motion, the Debtors respectfully state as follows.<sup>2</sup>

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Friendly Ice Cream Corporation (3130); Friendly’s Restaurants Franchise, LLC (3693); Friendly’s Realty I, LLC (2580); Friendly’s Realty II, LLC (2581); and Friendly’s Realty III, LLC (2583). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 1855 Boston Road, Wilbraham, Massachusetts 01095.

<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ restructuring, are set forth in greater detail in the Declaration of Steven C. Sanchioni, Executive Vice President, Chief Financial Officer, Treasurer, and Assistant Secretary of Friendly Ice Cream Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions [Docket No. 3] (the “First Day Declaration”).

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are section 331 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”).

### **Background**

4. On October 5, 2011 (the “Petition Date”), each of the Debtors filed a petition with the Court under sections 101–1532 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 6, 2011, the Court entered an order authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Rule 1015(b) of the Bankruptcy Rules. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

5. The Debtors are a leading full-service, family-oriented restaurant chain and provider of ice cream products in the Eastern United States. As of the Petition Date, the Debtors’ operations include approximately 490 restaurants located in 16 states. In addition to their restaurant operations, the Debtors manufacture a complete line of premium ice cream products distributed to more than 7,000 supermarkets and other third party retail locations in 48 states. The Debtors and their affiliates maintain their national headquarters in Wilbraham,

Massachusetts, and, as of the Petition Date, employed over 10,000 workers across the country. In the first eight months of 2011, the Debtors generated \$329.7 million in revenue and \$8.6 million in adjusted EBITDA.

### **The Proposed Compensation Procedures**

6. The Debtors are seeking authorization to retain and employ various professionals (the “Debtor Professionals”), including: (a) Kirkland & Ellis LLP, as proposed restructuring co-counsel; (b) Pachulski Stang Ziehl & Jones LLP, as proposed restructuring co-counsel; (c) GA Keen Realty Advisors, as proposed real estate advisor; (d) Duff & Phelps Securities, LLC, as financial advisor; and (e) Zolfo Cooper, LLC, as bankruptcy consultants and special financial advisors.<sup>3</sup> The Debtors anticipate that they also may retain other professionals during the course of these chapter 11 cases as the need arises. Moreover, one or more official committees may be appointed to assist in these chapter 11 cases and, if so appointed, likely will retain counsel and other professionals in connection with these chapter 11 cases (together with the Debtors’ Professionals, the “Professionals”).<sup>4</sup>

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<sup>3</sup> The Court previously entered an order authorizing the Debtors to retain Epiq Bankruptcy Solutions, LLC (“Epiq”), as notice, claims, and balloting agent, under section 156(c) of title 28 of the United States Code and compensate Epiq under section 503(b) of the Bankruptcy Code. Because the Debtors are not seeking to retain Epiq under section 327 of the Bankruptcy Code, Epiq is not required to submit a fee application under sections 330 and 331 of the Bankruptcy Code.

<sup>4</sup> Contemporaneously herewith, the Debtors have filed a motion for authority to retain and compensate certain professionals employed in the ordinary course of its business (the “OCP Motion”). The OCP Motion seeks authority for the Debtors to continue to retain certain professionals in the ordinary course of business on terms substantially similar to those in effect before the Petition Date. If the OCP Motion is granted, the OCPs (as defined in the OCP Motion) would not be required to file individual retention applications and would be paid in full, subject to their respective prepetition arrangements, without the need for submission of fee applications, but subject to a monthly fee cap. As described more fully in the OCP Motion, any OCP seeking payment of fees and disbursements exceeding the monthly caps would be required to submit fee applications to all parties in interest.

7. The Debtors propose that the payment of compensation and reimbursement of expenses of the Professionals be governed by the following procedures (the “Compensation Procedures”):

- (a) As soon as is practicable at the discretion of the Professional, each Professional seeking compensation may file an application (a “Monthly Fee Application”) for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month and serve such Monthly Fee Application by hand or overnight delivery, on:
  - (i) Friendly Ice Cream Corporation, 1855 Boston Road, Wilbraham, Massachusetts 01095, Attn: Robert K. Sawyer;
  - (ii) proposed co-counsel for the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Ross M. Kwasteniet and Jeffrey D. Pawlitz;
  - (iii) proposed co-counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19899-8705, Attn: Laura Davis Jones;
  - (iv) The Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Richard L. Schepacarter; and
  - (v) proposed counsel to any official committee appointed in these chapter 11 cases (collectively, the “Notice Parties”).Any Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications will comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and applicable Third Circuit law.
- (b) Each Notice Party will have until **4:00 p.m., prevailing Eastern time, on the 20th day (or the next business day if such day is not a business day) following service of the Monthly Fee Application** (the “Objection Deadline”) to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. Upon the expiration of the Objection Deadline, a Professional may file a certificate of no objection with the Court with respect to the unopposed portion of the fees and expenses requested in its Monthly Fee Application (a “CNO”). After a CNO is filed, the Debtors are authorized and directed to pay the Professional an amount (the “Actual Monthly Payment”) equal to the lesser of: (i) 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Application (the “Maximum Monthly Payment”) and (ii) 80% of the fees and 100%

of the expenses requested in the applicable Monthly Fee Application that are not subject to an objection pursuant to subparagraph (c) below.

- (c) If any Notice Party wishes to object to a Professional's Monthly Fee Application, it must (i) file a written objection (each, an "Objection") with the Court on or before the Objection Deadline, and (ii) serve the Objection on the affected Professional and each of the other Notice Parties so that it actually is received by each of these 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, the affected Professional may either: (i) file a request with the Court for payment of the difference 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) Each Professional may submit its first Monthly Fee Application no earlier than November 15, 2011. This initial Monthly Fee Application will cover the period from the Petition Date through the end of October 2011. Thereafter, the Professionals may file Monthly Fee Applications in the manner described above.
- (e) At three-month intervals or such other intervals convenient to the Court (the "Interim Fee Period"), each of the Professionals may file with the Court and serve on the Notice Parties a request (each, an "Interim Fee Application Request") for interim Court approval and allowance of the compensation and reimbursement of expenses sought by such Professional in its Monthly Fee Applications, including any holdbacks, filed during the Interim Fee Period, pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application Request, which will be substantially in the form of **Exhibit 1** attached to **Exhibit A**, must include a brief description identifying: (i) the Monthly Fee Applications that are the subject of the request; (ii) the amount of fees and expenses requested; (iii) the amount of fees and expenses paid to date or subject to an Objection; (iv) the deadline for parties other than the Notice Parties to file objections (the "Additional Objections") to the Interim Fee Application Request; and (v) any other information requested by the Court or required by the Local Bankruptcy Rules. Objections, if any, to the Interim Fee Application Requests shall be filed and served upon the affected Professional and the Notice Parties so as to be **actually received on or before the 20th day (or the next**

**business day if such day is not a business day) following service of the applicable Interim Fee Application Request.**

- (f) The Debtors will request that the Court schedule a hearing on the Interim Fee Application Requests at least once every four months or at such other intervals as the Court deems appropriate. If no Objections are pending and no Additional Objections are timely filed, the Court may grant an Interim Fee Application Request without a hearing.
- (g) Each Professional may file and serve its first Interim Fee Application Request on or after January 15, 2012. The first Interim Fee Application Requests shall cover fees and expenses incurred from the Petition Date through and including December 31, 2011. Thereafter, each Professional may file and serve its Interim Fee Application Request as soon as is practicable at the discretion of the Professional following the end of each Interim Fee Period.
- (h) 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 Compensation Procedures. Any Professional that fails to file a Monthly Fee Application or an Interim Fee Application Request when due or permitted will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as a Monthly Fee Application or Interim Fee Application Request is submitted by the Professional. There will be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application Request in a timely manner.
- (i) Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

8. The Debtors further request that the Court limit service of the interim fee applications and the final fee application (collectively, the "Applications") to the Notice Parties. Subject to the Court's approval, other parties that have filed a notice of appearance with the clerk

of the Court and requested notice of pleadings in these chapter 11 cases will receive only notice of hearings on the Applications (collectively, the "Hearing Notices"). Serving the Applications and the Hearing Notices in this manner will permit the parties most active in these chapter 11 cases to review and object to the Professionals' fees and will save unnecessary duplication and mailing expenses.

9. The proposed procedures will enable the Debtors to closely monitor costs of administration, maintain a level of cash flow availability, and implement efficient management procedures. Moreover, these procedures will allow the Court and key parties in interest to insure the reasonableness and necessity of the compensation and reimbursement sought pursuant to such procedures.

#### **Relief Requested**

10. By this Motion, the Debtors seek entry of an order establishing an orderly, regular process for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals who are retained pursuant to sections 327, 328, or 1103 of the Bankruptcy Code that are required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, on terms that satisfy the requirements of Bankruptcy Rule 2016 and Local Bankruptcy Rule 2016-2.

11. In addition, the Debtors request entry of an order establishing procedures for reimbursement of reasonable out-of-pocket expenses incurred by members of any official committee formed in these chapter 11 cases.

#### **Basis for Relief**

12. 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 permitted by the court. *See* 11 U.S.C. § 331. In addition, section 105(a) of the

Bankruptcy Code authorizes the court to issue any order “necessary or appropriate to carry out the provisions of” the Bankruptcy Code, thereby codifying the bankruptcy court’s inherent equitable powers. 11 U.S.C. § 105(a).

13. In many complex cases in this district, courts have recognized that the permissive language of section 331 of the Bankruptcy Code, coupled with the court’s inherent power under section 105(a), provides authority for the entry of orders establishing procedures for monthly compensation and reimbursement of expenses of professionals. In fact, the proposed Compensation Procedures are similar to procedures implemented and approved in the following cases: *In re Stallion Oilfield Servs., Ltd.*, No. 09-13562 (Bankr. D. Del. Nov. 16, 2009); *In re Visteon Corp.*, No. 09-11786 (Bankr. D. Del. June 19, 2009); *In re Masonite Corp.*, No. 09-10844 (Bankr. D. Del. Apr. 14, 2009); *In re Hines Horticulture, Inc.*, No. 08-11922 (Bankr. D. Del. Sept. 9, 2008); *In re Pierre Foods, Inc.*, No. 08-11480 (Bankr. D. Del. Aug. 13, 2008); *In re Tropicana Entm’t, LLC*, No. 08-10856 (Bankr. D. Del. June 5, 2008); *In re Leiner Health Prods., Inc.*, No. 08-10446 (Bankr. D. Del. Apr. 4, 2008); *In re Wickes Holdings, LLC*, No. 08-10212 (Bankr. D. Del. Feb. 26, 2008); *In re Pope & Talbot, Inc.*, No. 07-11738 (Bankr. D. Del. Dec. 12, 2007); *In re Hancock Fabrics, Inc.*, No. 07-10353 (Bankr. D. Del. Apr. 13, 2007); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (Bankr. D. Del. Nov. 20, 2006); *In re J.L. French Auto. Castings, Inc.*, No. 06-10119 (Bankr. D. Del. Mar. 3, 2006).<sup>5</sup>

14. Crucial factors to consider in establishing interim compensation procedures include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of [the attorneys for the debtors] in providing services necessary to

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.



achieve a successful reorganization of the debtors.” *See, e.g., In re Int’l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (establishing procedures for monthly interim compensation). The significant size of these chapter 11 cases and the amount of time and effort that will be required from the Professionals to successfully reorganize the Debtors’ business justifies the Compensation Procedures requested herein. Indeed, such Compensation Procedures are necessary to ensure that the Professionals are fairly and timely compensated for their services in these chapter 11 cases and are not forced to bear undue financial burden or risk caused by delays in payment. The Debtors submit that the efficient administration of these chapter 11 cases will be significantly aided by establishing the foregoing Compensation Procedures. Accordingly, the relief requested is in the best interests of the Debtors’ estates, their creditors, and parties in interest.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

15. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of a property under Bankruptcy Rule 6004(h).

**Notice**

16. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors’ prepetition secured lenders and the agent for the Debtors’ proposed postpetition debtor in possession financing facility; (c) the indenture trustee for the Debtors’ prepetition unsecured noteholders; and (d) the top 20 unsecured creditors. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

17. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and granting such other further relief as is just and proper.

Dated: October 10, 2011  
Wilmington, Delaware

**PACHULSKI STANG ZIEHL & JONES LLP**



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