

Michael F. Thomson (#9707)
Peggy Hunt (#6060)
John J. Wiest (#15767)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111-2176
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: thomson.michael@dorsey.com
hunt.peggy@dorsey.com
wiest.john@dorsey.com

Attorneys for Michael F. Thomson, Chapter 11 Trustee

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

In re:

THE FALLS EVENT CENTER LLC,

Debtor.

Bankr. Case No. 18-25116

Chapter 11

The Honorable R. Kimball Mosier

**MOTION FOR AN ORDER (I) ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR RETAINED
PROFESSIONALS, AND (II) GRANTING RELATED RELIEF**

Pursuant to 11 U.S.C. §§ 105(a), 330, and 331, and Fed. R. Bankr. P. 2016(a), Michael F. Thomson, duly appointed Chapter 11 Trustee (“Trustee”) in the above-captioned bankruptcy case, by and through counsel, submits this motion (“Motion”) for entry of an Order (i) authorizing and establishing procedures for the interim compensation and reimbursement of expenses of Retained Professionals (as defined below) and (ii) granting such further relief as requested herein or as is otherwise necessary or appropriate. In support of the Motion, the Trustee states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

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

II. GENERAL BACKGROUND

3. On July 11, 2018, The Falls Event Center LLC (“Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Docket No. 1.

4. The Official Committee of Unsecured Creditors (“Committee”) was formed on July 27, 2018. Docket No. 28.

5. On November 27, 2018, the Court approved the Trustee’s appointment as Chapter 11 Trustee of the Debtor. Docket No. 214.

6. The Trustee has filed applications to retain: (i) Dorsey & Whitney LLP as Trustee’s attorney [Docket No. 224], which the Court approved on December 18, 2018 [Docket No. 237]; (ii) The Claro Group, LLC as financial advisors and consultants to the Trustee [Docket No. 246], which the Court approved at the hearing held on January 22, 2019; and (iii) Rocky Mountain Advisory, LLC, as accountants to the Trustee [Docket No. 246], which the Court approved at the hearing held on January 22, 2019 (collectively, the “Trustee’s Professionals”). The Committee filed an application to retain Holland & Hart, LLP as attorney [Docket No. 37], which the Court approved on August 10, 2018 [Docket No. 48] (“Committee’s Professionals”). The Trustee may also retain other professionals during the course of the Chapter 11 Case as the need arises.

7. Pursuant to Sections 105(a), 330, and 331 of the Bankruptcy Code, the Trustee seeks entry of an order establishing an orderly, regular process for the allowance and payment of compensation and reimbursement for the Trustee's Professionals and Committee's Professionals whose retentions are approved by the Court pursuant to Sections 327 or 1103 of the Bankruptcy Code (the "Retained Professionals") and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code. The procedures would apply only to fees and expenses incurred since the appointment of the Trustee in this case.

8. The Trustee believes that establishing orderly procedures for payment of the Retained Professionals will streamline the administration of this case and otherwise promote efficiency for the Court, the Office of the United States Trustee for the District of Utah (the "U.S. Trustee"), and all parties in interest. Specifically, a streamlined process for serving interim fee applications and the notices thereof is in the best interest of the Debtor and its bankruptcy estate because it will facilitate efficient review of the Retained Professionals' fees and expenses while saving the estate copying and mailing expenses.

9. The Trustee proposes that the monthly payment of compensation and reimbursement of expenses of the Retained Professionals (the "Compensation Procedures") be structured as follows:

- a. On or before the 15th day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each Retained Professional seeking compensation pursuant to the Compensation Procedures as approved by the Court will serve a monthly fee statement ("Monthly Fee

Statement”), by electronic mail, hand delivery, or by first class mail on (i) the Trustee, (ii) Trustee’s Counsel, (iii) the Office of the United States Trustee for the District of Utah, and (iv) the Committee’s Counsel (collectively, the “Notice Parties” and, each, a “Notice Party”).

- b. On or before the 15th day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each Retained Professional seeking compensation and/or reimbursement shall file its Monthly Fee Statement with the Court.
- c. For those Retained Professionals who bill based on time, each Monthly Fee Statement must contain a list of the individuals and their respective titles (*e.g.*, attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of 1/10 of an hour, and a reasonably detailed breakdown of the expenses incurred.
- d. Each Notice Party will have 10 days after the receipt of the Monthly Fee Statement to review such statement and, in the event that the Notice Party has an objection to the compensation or reimbursement sought in a particular statement, the Notice Party shall, by no later than the 10th day following the receipt of the Monthly Fee Statement (“Objection Deadline”), serve upon the Retained Professional whose statement is objected to and the other Notice Parties, a written “Notice of Objection to Fee Statement” setting forth the nature of the objection and the specific amount of fees or expenses in dispute.

- e. At the expiration of the Objection Deadline, the Trustee may promptly pay (i) 80% of the undisputed fees and (ii) 100% of the undisputed expenses identified in each Monthly Fee Statement to which no objection has been served in accordance with paragraph (d).
- f. If the Trustee receives an objection to a particular Monthly Fee Statement, he shall withhold payment of that portion of such statement to which the objection is directed and promptly may pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e).
- g. Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice of Objection to Fee Statement, and if the Retained Professional whose Monthly Fee Statement was objected to serves on all Notice Parties a statement indicating that the objection is withdrawn and describing the terms of the resolution, then the Trustee may promptly pay, in accordance with paragraph (e), that portion of the Monthly Fee Statement which is no longer subject to an objection.
- h. All objections that are not resolved by the parties shall be preserved and presented to the Court at the next hearing on an interim or final fee application scheduled in accordance with paragraph (j).
- i. The service of a Notice of Objection to Fee Statement in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any

party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.

- j. No later than fifteen (15) days after the close of each calendar quarter, each of the Retained Professionals shall, regardless of whether Monthly Fee Statements have been filed and served during the applicable period, serve on the Notice Parties and file with the Court an application for interim or final Court approval and allowance, pursuant to Sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested (collectively, "Applications").
- k. No notice of hearing should be filed by Retained Professionals in connection with any Monthly Fee Statement or Application, as the Trustee will schedule a hearing at which all Applications will be heard. The notice of hearing will be filed and served in accordance with applicable law by the Trustee after the deadline for filing Applications set forth in paragraph (j) above, and shall provide notice of the amount of fees and expenses requested and an objection deadline. Any of the Trustee's Professionals unable to file its own Application with the Court shall deliver to the Trustee's counsel a fully executed copy with original signatures, along with service copies, three (3) days before the filing deadline. The Trustee's counsel will file and serve such Application.
- l. Any Retained Professional who fails to file a Monthly Fee Statement for a particular month will waive the right to receive payment on a monthly basis for

that month, and may submit invoices for that month as part of its quarterly Application. All Monthly Fee Statements shall comply with the Bankruptcy Code and the Bankruptcy Rules.

- m. Any Retained Professional who fails to file a quarterly Application within the time set forth in paragraph (j) shall be ineligible to receive further monthly payments of fees or expenses under any approved Compensation Procedures until further order of the Court and may be required to disgorge any fees paid since retention or the last fee application, whichever is later.
 - n. The pendency of an objection that a payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Retained Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
 - o. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Retained Professional.
10. The proposed Compensation Procedures apply to fees and expenses incurred by Retained Professionals after March 1, 2018, or an earlier date approved by the Court. Fees and expenses incurred for the period of November 27, 2018, the date of the Trustee's appointment, through March 31, 2019, should be included in an Application filed and served on the Notice Parties by no later than April 15, 2019.

11. The Committee's Professionals must file and serve on the Notice Parties its Application and any Application for Committee expenses for the period of July 27, 2018, when the Committee was formed, through November 26, 2018, prior to February 15, 2019. Notice of such Applications will be served on the Notice Parties either (i) with the Trustee's notice of hearing related to the Trustee's Professionals' first Applications filed under paragraph 10 above or, (ii) upon request of the Committee's Professionals to the Trustee and in the Trustee's sole discretion, in a separate notice of hearing filed by March 1, 2019.

12. Rocky Mountain Advisory, LLC must file and serve on the Notice Parties its Application for the period of August 27, 2018 through November 26, 2018, prior to February 15, 2019. Notice of such Applications will be served on the Notice Parties either (i) with the Trustee's notice of hearing related to the Trustee's Professionals' first Applications filed under paragraph 10 above or, (ii) upon request of Rocky Mountain Advisory, LLC to the Trustee and in the Trustee's sole discretion, in a separate notice of hearing filed by March 1, 2019.

13. Payment of allowed fees and expenses pursuant to the proposed Compensation Procedures or upon approval of any Application will be within the sole discretion of the Trustee taking into account, among other things, cash available to pay the fees and expenses.

III. RELIEF REQUESTED

14. The Trustee respectfully requests entry of an Order (i) authorizing and establishing the proposed Compensation Procedures for the interim compensation and reimbursement of expenses of Retained Professionals and (ii) granting such further relief as requested herein or as is otherwise necessary or appropriate.

IV. BASIS FOR RELIEF

15. The authority for establishing procedures for interim compensation and reimbursement of expenses of professionals is found within Section 331 of the Bankruptcy Code, which provides, in relevant part:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 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 case 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. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.¹

16. Thus, 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 in the bankruptcy court permits.² The underlying purpose of Section 331 of the Bankruptcy Code is to provide financial relief to court-appointed professionals engaged in protracted bankruptcy proceedings and cases, so that these professionals do not have to endure unexpected delays before receiving compensation.³ Indeed, “[c]ourts have generally recognized that in large cases it is appropriate to allow payment of professionals more frequently.”⁴

17. Additionally, 11 U.S.C. § 105(a) authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

¹ 11 U.S.C. § 331.

² *Id.*

³ See *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 858 (9th Cir. 2004); *In re Tri-State Ethanol Co., LLC*, No. 03-10194, 2007 Bankr. LEXIS 2388, at *8 (Bankr. D.S.D. July 10, 2007).

⁴ *In re Mariner Post-Acute Network*, 257 B.R. 723, 727 (Bankr. D. Del. 2000).

18. The Trustee believes that the proposed Compensation Procedures will enable him and other core parties in interest to closely monitor costs of administration, maintain level cash flow availability and implement efficient cash management procedures. Moreover, the Compensation Procedures will allow the Court and key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought by the Retained Professionals.

19. The Trustee respectfully submits that the efficient administration of this case will be significantly aided by establishing the proposed Compensation Procedures. Absent streamlined compensation procedures, the professional fee application and review process could be exceptionally burdensome to the Trustee, the Retained Professionals, the Court, and other parties. By contrast, under the proposed Compensation Procedures, the mechanism for payment of Retained Professionals' fees will be simplified. Accordingly, the relief requested is in the best interest of the Debtor, its estate, and its creditors.

20. Courts in this district have approved similar relief to that requested herein.⁵

⁵ *In re Naartjie Custom Kids*, Case No. 14-29666 (WTT) (Bankr. D. Utah December 23, 2014) [Docket No. 334]; *In re Randall*, Case No. 10-37546 (JTM) (Bankr. D. Utah Dec. 20, 2010) [Docket No. 340]; *In re Waterford Funding, LLC*, Case No. 09-22584 (RKM) (Bankr. D. Utah March 20, 2009) [Docket No. 303].

V. CONCLUSION

WHEREFORE, pursuant to 11 U.S.C. §§ 105(a), 330 and 331, the Trustee respectfully requests the entry of an Order (i) authorizing and establishing procedures for interim compensation and reimbursement of expenses of professionals and (ii) granting related relief.

DATED this 7th day of February 2019.

DORSEY & WHITNEY LLP

/s/ Michael F. Thomson
Michael F. Thomson
Peggy Hunt
John J. Wiest
*Attorneys for Michael F. Thomson, Chapter
11 Trustee*

CERTIFICATE OF SERVICE, BY NOTICE OF ELECTRONIC FILING

I hereby certify that on the 7th day of February, 2019, I electronically filed the foregoing with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- ames W. Anderson jwa@clydesnow.com, jritchie@clydesnow.com; atrujillo@clydesnow.com
- Megan K Baker baker.megan@dorsey.com, long.candy@dorsey.com
- David P. Billings dbillings@fabianvancott.com, jwinger@fabianvancott.com; mdewitt@fabianvancott.com
- Ryan C. Cadwallader rcadwallader@kmclaw.com, tslaughter@kmclaw.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Thomas E. Goodwin tgoodwin@parrbrown.com, nmckean@parrbrown.com
- Oren Buchanan Haker oren.haker@stoel.com, jennifer.lowes@stoel.com; daniel.kubitz@stoel.com; docketclerk@stoel.com; rene.alvin@stoel.com; kc.harding@stoel.com
- Mark E. Hindley mehindley@stoel.com, rnoss@stoel.com; slcdocket@stoel.com
- Alan C. Hochheiser ahochheiser@mauricewutscher.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com
- Michael R. Johnson mjohanson@rqn.com, docket@rqn.com; dburton@rqn.com
- Peter J. Kuhn tr Peter.J.Kuhn@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- David H. Leigh dleigh@rqn.com, dburton@rqn.com; docket@rqn.com
- Ralph R. Mabey rmabey@kmclaw.com
- Jessica G. McKinlay mckinlay.jessica@dorsey.com, Segovia.Maria@dorsey.com
- Elaine A. Monson emonson@rqn.com, docket@rqn.com; pbrown@rqn.com
- John T. Morgan tr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Ellen E Ostrow eeostrow@hollandhart.com, intaketeam@hollandhart.com; lahansen@hollandhart.com
- Chad Rasmussen chad@alpinalegal.com, contact@alpinalegal.com
- Michael S. Steck michael@clariorlaw.com
- Mark S. Swan mark@swanlaw.net
- Richard C. Terry richard@tjblawyers.com, cbcecf@yahoo.com
- Michael F. Thomson thomson.michael@dorsey.com, montoya.michelle@dorsey.com; ventrello.ashley@dorsey.com
- Michael F. Thomson tr thomson.michael@dorsey.com, UT17@ecfcbis.com; montoya.michelle@dorsey.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Brent D. Wride bwride@rqn.com, docket@rqn.com; pbrown@rqn.com

CERTIFICATE OF SERVICE – MAIL, OTHER

I hereby certify that on this 7th day of February, 2019, I caused to be served a true and correct copy of the foregoing as follows:

Mail Service – By regular first class United States Mail, postage fully pre-paid, addressed to:

Richard N. Bauer
1789 Bella Lago Drive
Clermont, FL 34711-4634

Bexar County
C/o David G. Aevoet
Linebarger Goggan Blair & Sampson, LLP
711 Navarro St, Ste 300
San Antonio, TX 78205

Albert B Clark
696 East 1220 North
Orem, UT 84097

Richard W. Johnston
6855 S. Havana St. #275
Centennial, CO 80112-3813

Jones Lang LaSalle Americas, Inc.
200 East Randolph Drive
Attention: Regional Counsel
Chicago, IL 60601

Meilin Liu
2601 Blanding Avenue, C307
Alameda, CA 94501-1579

State of Oregon
Department of Revenue
955 Center St NE
Salem, OR 97301-2555

The Claro Group, LLC
711 Louisiana Street, Suite 2100
Houston, TX 77002

/s/ Erin Johnson