

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

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In re: : Chapter 11  
: :  
ALSET OWNERS, LLC, *et al.*,<sup>1</sup> : Case No. 09-11960 (BLS)  
: (Jointly Administered)  
Debtors. :  
----- : **Hearing: July 7, 2009 @ 11:30 a.m. (ET)**  
 : **Objections: June 30, 2009 @ 4:00 p.m. (ET)**

**MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 331 FOR  
ENTRY OF ORDER ESTABLISHING PROCEDURES FOR INTERIM  
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Alset Owners, LLC and its debtor affiliates (collectively, the “Debtors”), debtors and debtors in possession in the above-captioned cases, hereby move this Court (the “Motion”) for entry of an order, pursuant to sections 105(a) and 331 of title 11 of the United States Code (the “Bankruptcy Code”), establishing procedures for the payment of interim compensation and reimbursement of expenses of professionals. In support of the Motion, the Debtors respectfully represent:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code.

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<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

## **BACKGROUND**

3. On June 5, 2009 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these chapter 11 cases, and no official committee of unsecured creditors has been established to date.

5. A thorough description of the Debtors and the events leading up to the Petition Date are set forth in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the “Declaration”).<sup>2</sup>

6. The Debtors are the largest franchisee of Checkers Drive-In Restaurants, Inc., the national franchisor of the Rally’s and Checkers’ restaurant chains. Specifically, Debtors Altes, LLC and Setla, LLC operate Rally’s restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan, LLC operated Checkers restaurants in Michigan but has recently ceased operations there.

7. At their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally’s or Checkers brand in six states, and had over 2,500 employees. The competitive atmosphere, as well as the rise in food and labor costs, among other things, led the Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 77 restaurants, down from their peak of about 120 restaurants in 2007.

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

## **RETENTION OF PROFESSIONALS**

8. The Debtors, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, have filed or intend to file applications seeking to employ Blank Rome LLP as general bankruptcy counsel, Praetorian Group, Inc. as sales advisor, and CRG Partners Group, LLC as restructuring advisors. Other professionals, may also be retained by the Debtors' estates from time to time.

## **RELIEF REQUESTED**

9. By this Motion, the Debtors request entry of an order authorizing and establishing procedures for compensating and reimbursing professionals on a monthly basis, on terms that satisfy the requirements of Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). Such an order would enable the Court, the Office of the United States Trustee (the "U.S. Trustee") and all other parties in interest to monitor effectively and efficiently the fees and expenses incurred by professionals employed in these cases.

10. Section 105(a) of the Bankruptcy Code provides, in relevant part, that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

11. 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.

12. Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the professionals be structured as follows:

- (a) No earlier than the 15th day of each calendar month, each professional seeking interim compensation shall file an application (the "Monthly Fee

Application”), pursuant to section 331 of the Bankruptcy Code, for interim compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the “Compensation Period”) and serve a copy of such Monthly Fee Application on: (i) Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432, Attn: Leonard Levitsky; (ii) Counsel for the Debtors, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, Attn: Michael Z. Brownstein, and Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell, (iii) Counsel for Checkers Drive-In Restaurants, Inc., Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attn: Diane Meyers, Esq.; (iv) the Office of the United States Trustee, 844 King Street, Suite 2313, Wilmington, Delaware 19801, Attn: Jane Leamy; and (v) and counsel to any official creditors’ committee appointed in these cases (collectively, the “Notice Parties”). All Monthly Fee Applications shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of this Court, and any other orders entered by this Court. Each Notice Party will have twenty (20) days after service of a Monthly Fee Application to object (the “Objection”) thereto (the “Objection Deadline”). An Objection must be filed with the Court and served on the affected professional and the Notice Parties so that it is received by the Court and the Notice Parties on or before the Objection Deadline. Upon the expiration of the Objection Deadline, the professional may file a certificate of no objection with the Court after which the Debtors are authorized and directed to pay each professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Application (the “Maximum Interim Payment”) and (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection pursuant to subparagraph (b) below.

- (b) If an Objection is timely filed, 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 and serve a response to the Objection, together with a request for payment of the difference, if any, between the Maximum Interim Payment and the Actual Interim 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.
- (c) Beginning with the period starting on the Petition Date and ending on August 31, 2009, and covering three-month intervals thereafter, each of

the professionals must file with the Court and serve on the Notice Parties an Interim Fee Application for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during such period (the "Interim Fee Period"). The Interim Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. Each professional must file its Interim Fee Application within 45 days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses or not less than 20 days prior to the hearing on such Interim Fee Application. Only amounts approved by the Court in connection with any Interim Fee Application shall be paid to the extent such amounts were not previously paid pursuant to a Monthly Fee Application.

- (d) The Debtors shall request that the Court schedule periodic hearings on Interim Fee Applications at such intervals as the Court deems appropriate.
- (e) 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.

13. Neither (i) the payment of or the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of future interim or final applications for compensation and reimbursement of expenses of professionals. All fees and expenses paid to professionals are subject to disgorgement until final allowance by the Court. The Debtors further request 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 and request for notice with the Clerk of this Court. Such notice should reach the parties most active in these cases and will save the expense of undue duplication and mailing.

14. The Debtors further request that each member of the Committee, if and when a Committee is appointed, be permitted to submit statements of expenses and supporting vouchers to counsel for the Committee, who will collect and submit such requests for reimbursement in

accordance with the foregoing procedure for monthly and interim compensation and reimbursement of professionals, provided however, that any Committee member's request for reimbursement of attorneys' fees must be brought by separate application and scheduled for hearing upon proper notice.

15. The Debtors will include all payments made to professionals in accordance with the compensation procedures in their monthly operating reports identifying the amount paid to each of the professionals.

16. As already noted, procedures for compensating and reimbursing court-approved professionals are routinely established in other chapter 11 cases in this District. Such procedures are necessary to avoid having professionals fund the reorganization case. The Debtors submit that the procedures sought herein are appropriate considering the above factors, and that such procedures should be approved in these cases.

#### **NOTICE**

17. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the Debtors' 30 largest unsecured creditors, (c) Textron Financial Corporation; (d) counsel for Checkers Drive-In Restaurants, Inc., and (e) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

#### **NO PRIOR REQUEST**

18. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

Dated: June 19, 2009

**BLANK ROME LLP**

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