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Unsecured Creditors for Jagged Peak, Inc.

Electronically Filed September 2, 2020

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re: JAGGED PEAK, INC., A Nevada Corporation, Debtor.	Case No. 19-15959-mkn Chapter 11 **LEAD CASE** **Jointly Administered with:**
In re: TRADEGLOBAL, LLC, A Delaware limited liability company, Debtor.	Case No. 19-15960-mkn Chapter 11 **THIRD AND FINAL APPLICATION FOR ALLOWANCE OF FEES AND COSTS FILED BY BROWN RUDNICK LLP [MAY 1, 2020 TO AUGUST 25, 2020]**
In re: TRADEGLOBAL NORTH AMERICA HOLDING, INC., A Delaware corporation, Debtor.	Case No. 19-15961-mkn Chapter 11 **Hearing Date**: September 30, 2020 **Hearing Time**: 9:30 a.m. **Place:** Courtroom 2 300 Las Vegas Boulevard South Las Vegas, NV 89101
THIS FILING: ☐ Affects Specified Debtors **X** Affects All Debtors	

TO THE HONORABLE MIKE NAKAGAWA, UNITED STATES BANKRUPTCY JUDGE, THE DEBTORS AND THEIR COUNSEL, AND TO THE OFFICE OF THE UNITED STATES TRUSTEE:

Brown Rudnick LLP ("Brown Rudnick" or "Applicant"), counsel to the Official Committee of Unsecured Creditors (the "Committee") for the bankruptcy estate of Jagged Peak, Inc. ("Jagged Peak"), Trade Global, LLC ("TradeGlobal"), Tradeglobal North American Holding, Inc. ("TradeGlobal North America"), and Jagged Peak Canada, Inc. ("Jagged Peak Canada" or, collectively with Jagged Peak and TradeGlobal, the "Debtors"), hereby brings its Third and Final Application ("BR Final Application") for allowance of compensation and reimbursement of expenses as co-counsel for the Committee. By this Application, BR seeks final attorneys' fees of $102,751.00, and for reimbursement of expenses in the amount of $278.31 pursuant 11 U.S.C. § 330 for the four (4) month period of May 1, 2020, through August 25, 2020 (the "Reporting Period"). Applicant also seeks final approval of all fees and costs incurred, which were submitted as part of its previously set for interim approval, namely the: First Interim Application For Allowance Of Fees And Costs Filed By Brown Rudnick LLP [October 24, 2019 to December 31, 2019] [Docket No. 427]; and the Second Interim Application For Allowance Of Fees And Costs Filed By Brown Rudnick LLP [January 1, 2020 to April 30, 2020] [Docket No. 623].

In support of this Application, Brown Rudnick respectfully states as follows:

1. PROCEDURAL BACKGROUND

A. The Bankruptcy Filing

On September 9, 2016, Jagged Peak, Inc. filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. [Docket No. 1.]

B. Committee Formation and Applicant's Employment

On October 24, 2019, the Office of the United States Trustee (the "Trustee") for the District of Nevada filed an Appointment Of The Official Committee Of Unsecured Creditors For The Estates Of Jagged Peak, Inc. and TradeGlobal, LLC [Docket No. 158]. An amended appointment was filed on October 28, 2019 [Docket No. 177]. At the outset, the Committee was comprised of the following members: (1) DI Overnite, LLC; (2) Simple VMS, Inc.; (3) The Job

Center, LLC, (4) Supply One, Inc. and (5) Nesco Resource.[1] On October 24, 2019, the Committee selected Brown Rudnick as its proposed counsel, subject to Court approval. On December 26, 2019, this Court approved the retention of Brown Rudnick as attorneys for the Committee. [Docket No. 400.] A true and correct copy of the Order Granting Application For Order Pursuant to 11 U.S.C. §§ 327(A), 328, 330, 331, and 1103(A) Authorizing The Employment of Brown Rudnick LLP As Counsel To The Official Committee Of Unsecured Creditors, Effective As Of October 24, 2019 ("BR Employment Order"), is included with the attached Declaration of Cathrine M. Castaldi ("Castaldi Decl.") at Exhibit "1."

Brown Rudnick was retained to provide the following professional services for the Committee:

a. assisting and advising the Committee in its discussions with the Debtors and other parties-in-interest regarding the overall administration of these cases and related adversary proceedings;

b. representing the Committee at hearings to be held before this Court and communicating with the Committee regarding the matters heard and the issues raised as well as the decisions and considerations of this Court;

c. assisting and advising the Committee in its discussions with the Debtors' and other parties-in-interest regarding the Debtors' sale process;

d. assessing the sale process and developing, evaluating, structuring and negotiating the terms and conditions of a sale transaction;

e. reviewing and analyzing pleadings, orders, schedules, and other documents filed and to be filed with this Court by interested parties in these cases; advising the Committee as to the necessity, propriety, and impact of the foregoing upon these cases, and consenting or objecting to pleadings or orders on behalf of the Committee, as appropriate;

f. assisting the Committee in preparing such applications, motions, memoranda, proposed orders, and other pleadings as may be required in support of positions taken by the Committee, including all trial preparation as may be necessary;

[1] Upon sale of the Jagged Peak assets, several of the Committee members claims were fully satisfied via assumption of indebtedness by IDL, and those members left the Committee. The remaining Committee members are Simple VMS and The Job Center LLC.

g. conferring with the professionals retained by the Debtors and other parties-in-interest, as well as with such other professionals as may be selected and employed by the Committee;

h. coordinating the receipt and dissemination of information prepared by and received from the Debtors' professionals, as well as such information as may be received from professionals engaged by the Committee or other parties-in-interest in these cases;

i. participating in such examinations of the Debtors and other witnesses as may be necessary in order to analyze and determine, among other things, the Debtors' assets and financial condition, whether the Debtors have made any avoidable transfers of property, or whether causes of action exist on behalf of the Debtors' estates;

j. negotiating and, if necessary or advisable, formulating a plan of reorganization for the Debtors; and assisting the Committee generally in performing such other services as may be desirable or required for the discharge of the Committee's duties pursuant to Bankruptcy Code Section 1103.

See Application Authorizing Retention of Brown Rudnick LLP as Counsel For the Official Committee of Unsecured Creditors of Debtors, *nunc pro tunc* to October 24, 2019 [Docket No. 320.]

C. Sale of Debtors' Businesses

On November 20, 2019, this Court approved the sale of the Debtors' business assets. [Docket Nos. 343 and 345]. Accordingly, these bankruptcy cases are now liquidating cases, with Debtors no longer operating an ongoing business. A discussion of the sale and the Debtors' business operations should be detailed in the Debtors' application for compensation and reimbursement of expenses set for hearing concurrently with this Application.

D. Court Approved Procedure For Interim Compensation Pending Filing of Fee Applications

On December 6, 2019, the Court entered an Order Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals (the "Monthly Fee Order") [Docket No. 360]. Pursuant to the Monthly Fee Order, counsel submitted detailed monthly fee statements for the months of October 2019 through August 2020 (the "Interim Fee Statements") The Debtors have paid 80% of the amount of the Interim Fee Statements, except for

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the July and August Interim Fee Statements, which Applicant expects will be paid prior to the hearing on this Application.

Applicant filed its First Interim Application for Allowance of Fees and Costs ("First Interim Application") on January 14, 2020 seeking fees in the amount of $325,600.50 and $6,800.94 in costs, for the total sum of $332,401.44, filed on January 14, 2020 [Docket No. 427].

Applicant filed its Second Interim Application for Allowance of Fees and Costs ("Second Interim Application") on May 18, 2020 seeking fees in the amount of $331,701.50 and $4,604.42 in costs, for the total sum of $336,305.92 [Docket No 623]. Hearings on the First Interim Application and Second Interim Application were set for hearing and continued by Stipulation to September 30, 2020 and will be heard concurrently with this Application.[2]

E. No Agreement Regarding Sharing of Compensation

No understanding exists for the sharing of compensation received or to be received by Applicant for services rendered in this case, except that the compensation received herein will be shared among the partners and employees of Applicant.

F. Order Confirming Joint Chapter 11 Plan and Disclosure Statement

On August 4, 2020, an Order confirming the Joint Chapter 11 Plan of Liquidation of Jagged Peak, Inc., TradeGlobal, LLC, TradeGlobal North America Holding, Inc., Jagged Peak Canada, Inc. and the Official Committee of Unsecured Creditor was entered [Dkt 798].

On August 4, 2020, a Final Order Approving the First Amended Disclosure Statement in Support of the Joint Chapter 11 Plan of Liquidation of Jagged Peak, Inc., TradeGlobal, LLC,

[2] The First Interim Application was set for hearing on February 19, 2020 (the "Initial Hearing"). See Docket No. 427. Shortly before the Initial Hearing, the Estate Professionals entered into a Stipulation with Nespresso USA Inc. ("Nespresso") to continue the hearings to April 15, 2020 with all parties reserving their rights in the action. See Docket No. 496. The stipulation was approved by this Court on February 18, 2020. See Docket No. 498.

Subsequently, the Estate Professionals and Nespresso entered into an Amended Stipulation to Continue Hearing on Interim Approval of Fee Applications and Nespresso USA, Inc.'s Omnibus Objection to Fee Applications, and Reserving Rights. See Docket No. 774. The stipulation was approved by the Court on July 17, 2020 and the hearing on interim fee applications was continued to September 30, 2020. See Docket No. 774.

TradeGlobal North America Holding, Inc., Jagged Peak Canada, Inc. and the Official Committee of Unsecured Creditors was entered [Dkt 799].

2. PAYMENT AND REIMBURSEMENT REQUESTED

Brown Rudnick submits this final Application (a) for payment of reasonable compensation for actual, reasonable, and necessary professional services performed by it as counsel for the Committee during the Reporting Period , (b) for reimbursement of actual, reasonable, and necessary disbursements made to pay expenses incurred in representing the Committee during the Reporting Period, and for final approval of all fees and costs incurred as set forth in the First Interim Application and Second Interim Application. This Application is made pursuant to applicable provisions of the Bankruptcy Code and Bankruptcy Rules as well as applicable local Court and United States Trustee rules and guidelines. This is Brown Rudnick's third and final fee application.

During the Reporting Period, the Committee incurred fees of $102,751 for legal services rendered by Brown Rudnick, calculated at Brown Rudnick's usual and customary hourly rates as more specifically set forth herein, comprising 113 hours of professional time at a blended hourly rate of $909.30. In addition, Brown Rudnick made disbursements to pay expenses in the amount of $278.31 during this Reporting Period. The fees and disbursements sought to be paid or reimbursed in connection with this Application were actual, necessary, and reasonable, and benefited the Debtors' estates and creditors.

3. DESCRIPTION OF REASONABLE AND NECESSARY SERVICES RENDERED

The following provides a summary of the services rendered by Brown Rudnick during this Reporting Period. The Committee anticipates that the Debtors' professionals will provide a detailed narrative of the case. As the Court is aware, the Committee was appointed on the eve of a fast moving sale process and counsel had to quickly assimilate the Debtors' historical and current operations, the matters that lead to the chapter 11 bankruptcy filings and the necessity of a rapid sale of the Debtors' assets, as well as examining issues concerning the Debtors' existing and prior management as they related to the proposed sale and achieving fair value for the Debtors' assets. Once the sale process was concluded, Applicant was instrumental in negotiating a joint plan of

liquidation and negotiating resolution of disputes amongst the Estate, Singapore Post Ltd. and Nespresso and Nestle Canada. As a result of Applicant's efforts, along with those of other professionals, an estimated 80% of unsecured creditor claims against Jagged Peak were paid in full via assumption as a result of the sale; and general unsecured creditors at Trade Global are projected to receive at least 75% of their allowed claims. A full description of services performed and expenses incurred during this Reporting Period is reflected in the combined time records attached to the Castaldi Declaration as Exhibit "2." Applicant has categorized its services but recognizes that there may be some overlap.

A. Plan and Disclosure Statement

The Committee represents the primary constituency in these liquidating chapter 11 bankruptcy cases. In addition, Applicant worked with the Debtors, and other interested parties to formulate and confirm a plan of liquidation that provides a material benefit to unsecured creditors and should minimize ongoing expenses associated with these cases. Applicant also negotiated a termination of exclusivity with the Debtors as to the Committee, which facilitated the Committee's work on a consensual plan with the Debtors. As part of the plan process, Applicant engaged in extensive negotiations of a global settlement agreement with Singapore Post and Nespresso that, has resulted in a largely consensual plan of liquidation with a substantial return to creditors. As set forth above, creditors in these cases can anticipate a substantial recovery in a relatively short period of time. During the Reporting Period, Applicant spent 78 hours performing services related to Plan and Disclosure Statement. Applicant charged fees for these services in the amount of $69,397.50, which represents approximately 67.5% of the total fees charged for the Reporting Period. The blended hourly rate for services performed in this category is $889.71 per hour.

B. Case Administration

The services provided by Brown Rudnick in this category included review and analysis of joint administration, correspond with the Committee's other professionals, review of case documents to determine the impact on unsecured creditors, and telephone calls with counsel for the Debtors and coordinating transition to the Liquidating Trust. During the Reporting Period,

Applicant spent 1 hour performing services related to Case Administration. Applicant charged fees for these services in the amount of $1,000, which represents approximately 1% of the total fees charged for the Reporting Period.

C. Asset Disposition

During the Reporting Period, Applicant spent 1.3 hours performing services related to Asset Disposition. Primarily, Applicants activities related to evaluating the best mechanism by which to unburden the Estate of certain foreign subsidiaries. Applicant charged fees for these services in the amount of $1,300, which represents approximately 1.3% of the total fees charged for the Reporting Period.

D. Meetings of and Communications with Creditors

Applicant's services in this category included meetings and communications with the Committee, individual Committee members and creditors concerning ongoing progress in the case and the rapidly unfolding sale and plan process. During the Reporting Period, Applicant spent 1.80 hours performing services related to Meetings and Communications with Creditors. Applicant charged fees for these services in the amount of $1,504.00, which represents approximately 1.5% of the total fees charged for the Reporting Period. The blended hourly rate for services performed in this category is $835.56 per hour.

E. Fee/Employment Applications

The services provided by Brown Rudnick in this category included preparing and filing Brown Rudnick's First and Second Interim Application For Compensation and Reimbursement of Expenses, as well as complying with submission of monthly fee statements. Applicant also reviewed applications and fee statements filed by other Estate Professionals and was instrumental in negotiating reductions which will be reflected in final fee applications. During the Reporting Period, Applicant spent 12.30 hours performing services related to Fee/Employment Applications. Applicant charged fees for these services in the amount of $12,300.00, which represents approximately 12% of the total fees charged for the Reporting Period.

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F. Fee/Employment Objections

The services performed by Brown Rudnick in this category included review of Debtor fee applications and detailed fee statements and discussions with parties regarding voluntary fee reductions. During the Reporting Period, Applicant spent 8.10 hours performing services related to Fee/Employment Objections. Applicant charged fees for these services in the amount of $7,711.50, which represents approximately 7.5% of the total fees charged for the Reporting Period. The blended hourly rate for services performed in this category is $952.04 per hour.

G. Relief from Stay/Adequate Protection Proceedings

Applicant's services in this category consisted of evaluating the Cook relief from stay motion and negotiating the consensual order for relief. During the Reporting Period, Applicant spent 1.2 hours performing services related to Relief from Stay/Adequate Protection. Applicant charged fees for these services in the amount of $978.00, which represents approximately 1% of the total fees charged for the Reporting Period.

H. Other Contested Matters and Avoidance Action Analysis

Applicant assisted the Committee in negotiating a plan resolution, which included settlement of all claims by and between the Debtors, SingPost and Nespresso, as well as participating in strategic discussions regarding resolution of the FB Flurry claim and stay relief motions related to litigation against third parties. Applicant conferred with all relevant counsel in employing a strategy to advance these cases while minimizing the cost and expense associated with litigating certain claims. During the Reporting Period, Applicant spent 2.3 hours performing services related to Other Contested Matters and Avoidance Action Analysis. Applicant charged fees for these services in the amount of $2,152.00, which represents approximately 1.9% of the total fees charged for the Reporting Period. The blended hourly rate for services performed in this category is $929.52 per hour.

I. Business Operations

The services performed by Brown Rudnick in this category including a telephone conference regarding resolution of the subsidiary abandonment. During the Reporting Period, Applicant spent .20 hours performing services related to Business Operations. Applicant charged

fees for these services in the amount of $200.00, which represents approximately .2% of the total fees charged for the Reporting Period.

J. Claims Administration and Objections

Applicant spent significant time evaluating the claims of The Limited and negotiating a favorable resolution of that claim, which resulted in a nearly $4 million dollar reduction in claims. This resolution was documented after the Effective Date and is being implemented by the Liquidating Trust in accordance with the Plan. During the Reporting Period, Applicant spent 6.80 hours performing services related to Claims Administration and Objections. Applicant charged fees for these services in the amount of $6,208.00, which represents approximately 6.0% of the total fees charged for the Reporting Period. The blended hourly rate for services performed in this category is approximately $912.94 per hour.

4. DESCRIPTIVE AND DETAILED STATEMENT OF COSTS INCURRED

Attached and incorporated as Exhibit "2" is a combined schedule of time records, costs and expenses incurred or paid by Applicant during the Reporting Period but not yet reimbursed. Exhibit "5" is a summary schedule. Applicant believes and represents that the costs and expenses are reasonable under the circumstances of this case and the various pleadings filed by the Committee. During the Reporting Period, Applicant incurred unreimbursed expenses of $278.31 on behalf of the Committee for which Applicant seeks reimbursement. These expenses were actual expenses incurred in connection with the services rendered on behalf of the Committee. Expenses of this type are billed to and paid by Applicant's clients who pay monthly without contingency as to payment. Applicant has not included such expenses in its overhead and such expenses are not encompassed by its billing rates.

A. Messenger Services/Delivery

Applicant incurred $27.05 in expenses related to messenger services and delivery during the Reporting Period.

B. Telephone/Teleconferencing

Applicant incurred $47.46 in telephone charges during the Reporting Period primarily associated with long-distance calls to counsel, and conference calls with the Committee.

C. Document Copies

Applicant incurred the sum of $4.20 for in-house document reproduction expenses during the Reporting Period. All in-house document copies are made after the case name and attorney or law clerk's code number are keyed into a computer system which calculates the number of copies by page. All of the Applicant's Committee and Trustee clients are charged $0.10 per page for in-house document reproduction expenses.

D. Computer Research

Applicant incurred $278.31 in charges related to online computer research including Westlaw, Pacer, and other online research. These costs were incurred during the Reporting Period. Applicant does not use online services without first utilizing an internal library and other resources.

5. THE COURT HAS THE AUTHORITY TO, AND SHOULD, APPROVE THE APPLICATION IN ITS ENTIRETY

A. Amount of Current Request For Compensation And Reimbursement

As set forth above and in the attached exhibits, during the Reporting Period, Applicant incurred fees in the amount of $102,751.00 and incurred expenses in the amount of $278.31 on behalf of the Committee, for which Applicant seeks approval and payment in the total sum of $103,029.31.

B. Legal Points And Authorities

The Bankruptcy Code provides that the Court can authorize payment of reasonable and necessary compensation and reimbursement of expenses.

> (a) (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

Bankruptcy Code § 330.

The primary Ninth Circuit case discussing the test for determining a reasonable attorney's fee under Bankruptcy Code § 330 is *In re Yermakov*, 718 F.2d 1465 (9th Cir. 1983), which states: "The primary method used to determine a reasonable attorney fee in a bankruptcy case is to multiply the number of hours expended by an hourly rate." Id. at 1471. Elsewhere, this has been referred to as the "lodestar" or basic fee, which, if warranted, can be adjusted upward or downward. *In re Powerine Oil Co.*, 71 B.R. 767 (9th Cir. BAP 1986). Applicant believes, based upon the foregoing and upon the supporting declaration and exhibits attached hereto, that the fees and costs requested are entirely reasonable given the benefit conferred on the Estate's creditors as contemplated under Bankruptcy Code §§ 330.

The BR Employment Order was entered on December 26, 2019, and approved employment commencing on October 24, 2019, when Applicant was retained by the Committee. Applicant seeks payment pursuant to Bankruptcy Code §§ 330 and 331 for services performed after Applicant was retained on October 24, 2019, and prior to the December 26, 2019 employment approval order. Applicant respectfully requests final approval of compensation for the period beginning October 24, 2019. Applicant is unaware of any "per se prohibition, in the statute or precedential caselaw, against awarding reasonable compensation to an estate professional for actual and necessary services rendered to the estate prior to the date of court approval of retention. In re: Hector Benitez, No. 8-19-70230-REG, 2020 WL 1272258, at *5 (Bankr. E.D.N.Y. Mar 13, 2020). As such, Applicant respectfully requests compensation for the period from October 24, 2019.

6. RELIEF REQUESTED

WHEREFORE, Brown Rudnick prays that this Court enter its Order as follows:

1. Allowing as final $102,751.00 in compensation to Applicant in its capacity as counsel to the Committee for this Reporting Period;

2. Allowing as final $278.31 in reimbursement of costs and expenses to Applicant for this Reporting Period;

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3. Allowing as final $325,600.50 in compensation to Applicant in its and reimbursement of expenses in the amount of $6,800.94 as set forth in Applicant's First Interim Application For Allowance Of Fees And Costs Filed By Brown Rudnick LLP [October 24, 2019 to December 31, 2019] [Docket No. 427];

4. Allowing as final $329,012.00 in compensation to Applicant in its capacity as counsel to the Committee and $4,604.42 in reimbursement of expenses as set forth in Applicant's Second Interim Application For Allowance Of Fees And Costs Filed By Brown Rudnick LLP [January 1, 2020 to April 30, 2020] [Docket No. 623];

5. Authorizing payment to Applicant in accordance with the Court's Order; and

6. For such other and further relief as the Court deems proper.

DATED: September 2, 2020

Respectfully submitted,

BROWN RUDNICK LLP

By: Catherine M. Castaldi

CATHRINE M. CASTALDI
Attorneys for the Official Committee of
Unsecured Creditors for Jagged Peak, Inc.