

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

In re:

RESTAURANTS ACQUISITION I, LLC,¹

Debtor.

Chapter 11

Case No. 15-12406 (KG)

Related to Docket No. 5

**ORDER (I) AUTHORIZING EMPLOYMENT AND RETENTION
OF BMC GROUP, INC. AS CLAIMS AND NOTICING AGENT EFFECTIVE
NUNC PRO TUNC TO PETITION DATE AND (II) GRANTING RELATED RELIEF**

Upon consideration of the application (the “Application”)² of Restaurants Acquisition I, LLC (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), seeking entry of an Order (the “Order”), pursuant to section 156(c) of the Judicial Code, section 105(a) of the Bankruptcy Code, Local Rules 2002- 1(f) and 9013-1(m), and the Claims Agent Protocol instituted by the Clerk authorizing the employment and retention of BMC Group, Inc. (“BMC”) as the Claims and Noticing Agent in the Chapter 11 Case, effective *nunc pro tunc* to the Petition Date, all as more fully set forth in the Application; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Application is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and the Court having found that the Debtor’s notice of the

¹ The Debtor’s mailing address is 313 East Main Street, Suite 2, Hendersonville, TN and the last four digits of its tax identification number are 8761.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application or the First Day Declaration, as applicable.

Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Application and the First Day Declaration; and the Court having heard the statements in support of the relief requested in the Application at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Application is granted as set forth herein.
2. Notwithstanding the terms of the Engagement Agreement, a copy of which is attached to the Application, the Application is approved solely as set forth in this Order.
3. The Debtor is authorized to employ and retain BMC as the Claims and Noticing Agent, effective *nunc pro tunc* to the Petition Date, under the terms of the Engagement Agreement, and BMC is authorized and directed to perform the Claims and Noticing Services, and all related tasks as described in the Application; provided however, that the limitation of liability provision in the Limitations of Liability and Indemnification section of the Engagement Agreement shall be of no force or effect.
4. BMC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Chapter 11 Case and is authorized and directed to maintain official claims registers for the Debtor and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
5. BMC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

6. BMC is authorized to take such other action to comply with all duties set forth in the Application.

7. The Debtor is authorized to compensate BMC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by BMC and the rates charged for each, and to reimburse BMC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for BMC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

8. BMC shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Office of the U.S. Trustee, the Debtor, counsel for any official committee monitoring the expenses of the Debtor and any party-in-interest who specifically requests service of the monthly invoices.

9. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the undisputed fees and expenses of BMC under the Engagement Agreement as approved by this Order shall be an administrative expense of the Debtor's estate.

11. BMC may apply its retainer to all services rendered prepetition and BMC may hold its retainer under the Engagement Agreement during the Chapter 11 Case as security for the payment of fees and expenses under the Engagement Agreement.

12. The Debtor shall indemnify BMC under the terms of the Engagement Agreement, as modified by this Order.

13. BMC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

14. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify BMC, or provide contribution or reimbursement to BMC, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen from BMC's gross negligence, willful misconduct or fraud, (b) for a contractual dispute in which the Debtor alleges the breach of BMC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.)*, 315 F.3d 217 (3d Cir. 2003), or (c) settled prior to a judicial determination under (a) or (b), but determined by the Court, after notice and a hearing, to be a claim or expense for which BMC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

15. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Case (that order having become a final order no longer subject to appeal) or (b) the entry of an order closing the Chapter 11 Case, BMC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the Engagement Agreement as modified by this Order, including without limitation the advancement of defense costs, BMC must file a motion therefor with the Court, and the Debtor may not pay any such amounts to BMC before the entry of an order by the Court approving the payment. This paragraph is intended only to specify the period

of time under which the Court shall have jurisdiction over any request for fees and expenses by BMC for indemnification, contribution, or reimbursement, and is not a provision limiting the duration of the Debtor's obligation to indemnify BMC. All parties-in-interest shall retain the right to object to any demand by BMC for indemnification, contribution, or reimbursement.

16. In the event that BMC is unable to provide the services set out in this Order, BMC will immediately notify the Clerk and the Debtor's counsel and cause to have all original proofs of claim and computer information turned over to another Claims and Noticing Agent with the advice and consent of the Clerk and the Debtor's counsel.

17. BMC shall not cease providing claims processing services during the Chapter 11 Case for any reason, including nonpayment, without prior order of the Court.


18. After entry of an order terminating BMC's services, upon the closing of the Chapter 11 Case, or for any other reason, BMC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtor in connection therewith.

19. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

20. The Debtor and BMC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application and Engagement Agreement.

21. Notwithstanding any provision in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: December 4, 2015
Wilmington, Delaware


Honorable Kevin Gross
United States Bankruptcy Judge