IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
YOGAWORKS, *et al.*,	)	Case No. 20-12599 – KBO
	)	
Debtors.[1]	)	(Jointly Administered)
	)	
	)	**Hearing Date: November 30, 2020 at 10:00 a.m. (ET)**
	)	**Response Deadline: November 10, 2020 at 4:00 p.m. (ET)**

DEBTORS' MOTION FOR ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS

YogaWorks, Inc., a Delaware corporation ("YogaWorks"), and Yoga Works, Inc., a California corporation ("Yoga Works" and collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), pursuant to 11 U.S.C. §§ 105(a) and 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 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") establishing procedures for the interim compensation and reimbursement of expenses of professionals during this case. In support of the Motion, the Debtors respectfully represent:

BACKGROUND

1. On October 14, 2020 (the "Petition Date"), the Debtors each filed their voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number is (1) YogaWorks, Inc., a Delaware corporation (9105); and (2) Yoga Works, Inc., a California corporation (0457).

District of Delaware (the "Court"). The Debtors continue to operate their business and manage their properties as debtors in possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

2. Information regarding the Debtors' business operations and capital structure is set forth in the *Declaration of Brian Cooper in Support of First Day Motions* [D.I. 11] (the "First Day Declaration").

JURISDICTION

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The statutory predicates for the relief sought herein are sections 105 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rule 2016-1.

RETENTION OF PROFESSIONALS

5. The Debtors will shortly be filing motions to employ certain professionals under section 327(a) of the Bankruptcy Code. In addition, any appointed committee will retain counsel, and perhaps other professionals, all of whom (the "Professionals") would also be subject to the procedures set forth in this Motion.

RELIEF REQUESTED

6. Section 331 of the Bankruptcy Code authorizes professional persons to submit applications for interim compensation and reimbursement of expenses every one hundred and twenty (120) days "or more often, if the Court permits." 11 U.S.C. § 331. In addition, Section

105(a) of the Bankruptcy Code authorizes the Court to issue any order "that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

7. Specifically, the Debtors propose that, except as otherwise provided in an order of the Court authorizing the retention of a particular Professional, the Professionals be permitted to seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (collectively, the "Compensation Procedures"):

(a) No earlier than the 2nd day of each calendar month, each Professional seeking interim compensation may file an application (the "Monthly Fee Application"), pursuant to section 331 of the Bankruptcy Code, for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during any previous month or months (the "Compensation Period") and serve a copy of such Monthly Fee Application on the following parties: (i) the Debtors: YogaWorks, 2215 Main Street, Santa Monica, CA 90405 (Attn: Brian Cooper); (ii) proposed counsel to the Debtors, Cozen O'Connor, 1201 North Market Street, Suite 1001, Wilmington, DE 19801, Attn: Thomas J. Francella, Jr., Tfrancella@cozen.com and Thomas M. Horan, Thoran@cozen.com, and Shulman Bastian Friedman & Bui LLP, 100 Spectrum Center Drive; Suite 600 Irvine, CA 92618 Attn: Alan Friedman, afriedman@shulmanbastian.com and Melissa Davis Lowe, mlowe@shulmanbastian.com; (ii) counsel to the DIP lender, Randy Michelson, Esq., Michelson Law Group, 220 Montgomery Street, Suite 2100, San Francisco, CA 94104 (randy.michelson@michelsonlawgroup.com); (iii) counsel to Great Hill Equity Partners V, LP, Matthew A. Clemente, Esq. and William Curtin, Esq., Sidley Austin, One South Dearborn Street, Chicago, IL 60603 (mclemente@sidley.com and wcurtin@sidley.com); (v) counsel to any statutory committee appointed in this case; and (vi) Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman, Benjamin.A.Hackman@usdoj.gov) (each a "Notice Party" and collectively, the "Notice Parties"). Any Professional that does not file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application for a particular month or months. All Monthly Fee Applications shall comply with the Bankruptcy Code, the Bankruptcy Rules, applicable Third Circuit law and the Local Rules of the Court. Each Notice Party will have 10 days after service of a Monthly Fee Application to object thereto (the "Objection Deadline"). Upon the expiration of the Objection Deadline, a Professional may file a

certificate of no objection with the Court, after which the Debtors shall be authorized to pay each Professional an amount (the "Actual Interim Payment" equal to the lesser of: (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Application (the "Interim Payment"); and (ii) 80% of the fees and 100% of the expenses not subject to an objection pursuant to subparagraph (b) below.

(b) If any Notice Party objects to a Professional's Monthly Fee Application, it must file a written objection (an "Objection") with the Court and serve it on the affected Professional and each of the Notice Parties on or before the Objection Deadline; provided, however, that on written notice to the other Notice Parties, the applicable Professional may agree to extend such objecting party's 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 within 20 days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Interim Payment and the Actual Interim Payment made to the affected Professional (the "Incremental Amount"); or (ii) forgo 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 beginning on the Petition Date and ending on January 31, 2021 (or sooner, should the confirmation date of a plan of reorganization be scheduled) and at three-month intervals or at such other intervals convenient to the Court, each of the Professionals may file with the Court and serve on the Notice Parties a request (an "Interim Fee Application Request") 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 Request 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, including Local Rule 2016-2. An Interim Fee Application may be filed with the Court and served upon the Notice Parties within 45 days after the end of the applicable Interim Fee Period. Objections, if any, to an Interim Fee Application shall be filed with the Court and served upon the affected Professional and each of the Notice Parties on or before the 15th day following service of the applicable Interim Fee Application.

(d) To the extent applicable in these chapter 11 cases, the Debtors shall request that the Court schedule a hearing on Interim Fee Application Requests approximately once every four months, or at such other

intervals as the Court deems appropriate.

(e) The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses.

(f) Neither: (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses; nor (ii) the filing of or failure to file an Objection, shall bind any party in interest or the Court with respect to the allowance of 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.

8. The Debtors request that the Court limit service of the Monthly Fee Applications, Interim Fee Applications, final fee applications and Hearing Notices (as defined below) as follows: (a) the Notice Parties shall be entitled to receive the Monthly Fee Applications, Interim Fee Applications, final fee applications, and notices of any hearing thereon (the "Hearing Notices"); and (b) the parties in interest requesting notice pursuant to Bankruptcy Rule 2002 shall be entitled to receive only the Hearing Notices. Providing notice of fee applications in this manner will permit the parties most active in these chapter 11 cases to monitor the fees and expenses incurred by Professionals and will avoid unnecessary duplication and mailing expenses.

BASIS FOR RELIEF REQUESTED

9. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

> A trustee, an examiner, a debtors' 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.

11 U.S.C. § 331. Absent an order of this Court, section 331 of the Bankruptcy Code limits Professionals rendering services in these chapter 11 cases to payment of fees and expenses only three times per year.

10. Congress' intent in enacting section 331 of the Bankruptcy Code is expressed unequivocally in the House and Senate Reports accompanying enactment of the Bankruptcy Code:

> The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments. The court is authorized to allow and order disbursement to the applicant of compensation and reimbursement that is otherwise allowable under section 330.

H.R. Rep. No. 595, 95th Cong. 1st Sess. 330 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 41-42 (1978).

11. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that "[t]he 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). As set forth below, courts regularly have entered orders, in accordance with section 105(a) of the Bankruptcy Code, establishing procedures providing for the interim compensation and expense reimbursement of professionals on a monthly basis. "Courts have generally recognized that in large cases it is appropriate to allow payment of professionals more frequently." In re Mariner Post-Acute Network, Inc., 257 B.R. 723, 727 (Bankr. D. Del. 2000). Factors generally considered by the courts in determining whether such relief is warranted include "the size of [the] reorganization case, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtor." In re International Horizons, Inc., 10 B.R. 895, 897-98 (Bankr. N.D. Ga. 1981). In considering these

factors, courts have determined that interim compensation procedures are appropriate to avoid having the professionals fund the Debtors' reorganization proceedings. See id. at 897.

12. It is respectfully submitted that proposed procedures will enable the Court and key parties-in-interest to ensure the reasonableness of the compensation and reimbursement sought pursuant to such procedures on a more regular basis.

NOTICE

13. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the DIP lender, Randy Michelson, Esq., Michelson Law Group, 220 Montgomery Street, Suite 2100, San Francisco, CA 94104; (d) counsel to Great Hill Equity Partners V, LP, Matthew A. Clemente, Esq. and William Curtin, Esq., Sidley Austin, One South Dearborn Street, Chicago, IL 60603; (e) counsel to any committee appointed in this case and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form attached hereto as Exhibit A, establishing procedures for the interim compensation and reimbursement of expenses of Professionals during this case, and granting such other and further relief as the Court deems just and proper.

Dated: October 21, 2020.
Wilmington, Delaware

COZEN O'CONNOR

/s/ Thomas J. Francella, Jr

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