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COUNSEL FOR DEBTORS AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
BUDDY MAC HOLDINGS, LLC, *et al.*,	§	Case No. 25-34839-mvl11
Debtors.[1]	§	(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING AND DIRECTING THE PAYMENT OF COMMISSIONS EARNED BY SRB CAPITAL, LLC FOR EMPLOYEE RETENTION CREDIT REFUNDS

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txnb.uscourts.gov/ no more than twenty-four (24) days after the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket no more than twenty-four (24) days after the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter at a setting to be provided by the Court in Courtroom #2, 14th Floor, Earle Cabell Federal Building, 1100 Commerce Street, Dallas, TX 75242. You may participate in the hearing either in person or by an audio and video connection.

[1] A complete list of the Debtors in these chapter 11 cases is available at: https://dm.epiq11.com/case/buddyshome/info. The Debtors' service address is 400 E. Centre Park Blvd., Suite 101, DeSoto, Texas 75115.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 650-479-3207, access code 2301 476 1957. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Larson's home page. https://us-courts.webex.com/meet/larson The meeting code is 23014761957. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the "Electronic Appearance" link on Judge Larson's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

Buddy Mac Holdings, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (including the Initial Debtors and the Subsequent Debtors (each as defined herein), collectively, the "Debtors"), hereby file this *Motion for Entry of an Order Authorizing and Directing the Payment of Commissions Earned by SRB Capital, LLC for Employee Retention Credit Refund* (the "Motion") and, in support hereof, respectfully state as follows:

I. RELIEF REQUESTED

1. The Debtors respectfully request entry of an order, substantially in the form attached hereto (the "Proposed Order"), authorizing and directing the payment of commissions earned by SRB Capital, LLC ("SRBC") under an agreement (the "Agreement")[2] with Debtor Buddy Mac Holdings, LLC by which SRBC: (a) determined whether the Debtor(s) were eligible for an Employee Retention Credit ("ERC") against the Debtors' payroll taxes as part of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"); and (b) provided information necessary for the preparation of certain documents needed for recovery of ERC payments, including assistance in preparation of IRS Form 941-X (Adjusted Employer's

[2] A true and correct copy of the Agreement is attached as **Exhibit 1** hereto.

QUARTERLY Federal Tax Return or Claim for Refund). In support hereof, the Debtors respectfully state as follows:

II. JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), and (O).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested in this Motion are sections 105(a), 363, 503(b), and 541(a) of title 11 of the United States Code (the "Bankruptcy Code" or "Code").

III. BACKGROUND

A. Chapter 11 Cases

5. On or about December 4, 2025 (the "Initial Petition Date"),[3] Buddy Mac Holdings, LLC and its debtor affiliates identified on the attached Schedule I (the "Initial Debtors") each filed a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code. The date of each Initial Debtor's chapter 11 petition is set forth on Schedule I.

6. On December 19, 2025, the United States Trustee for the Northern District of Texas (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee") in the Initial Debtors' cases [ECF #86].

7. On January 25, 2026 (the "Subsequent Petition Date"), the additional affiliates of Buddy Mac Holdings, LLC set forth on Schedule II (the "Subsequent Debtors") filed voluntary

[3] Buddy Mac One, LLC, BMH One RE, LLC, BMH 95 RE Caruthersville, LLC, and BMH 96 RE Marion, LLC, each filed their chapter 11 petitions Court on December 1, 2025; however, reference to the "Initial Petition Date" means December 4, 2025, except as otherwise expressly stated herein.

petitions in this Court under chapter 11 of the Bankruptcy Code. The Initial Debtors and Subsequent Debtors are collectively referenced as the "Debtors," and each as a "Debtor."

8. The Debtors' chapter 11 cases are jointly administered, for procedural purposes only, under the above-captioned lead case of Buddy Mac Holdings, LLC, Case No. 25-34839-mvl11 [ECF Nos. 32 and 187]. The Debtors continue to operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

B. Debtors' Business Operations

9. The Debtors rented and sold furniture, electronics, appliances, and other merchandise to customers on a rent-to-own basis. The Initial Debtors and Subsequent Debtors operated forty-six (46) rent-to-own stores (each, a "Store" and collectively, the "Stores"), thirty-two (32) of which were operated by Initial Debtors.

10. Additional information regarding the Debtors' business history, capital structure, and circumstances leading to these chapter 11 cases is set forth in the *Declaration of William I. MacDonald* and the *Declaration of Mark Shapiro* [ECF Nos. 12-13] (the "Initial Declarations") and in the *Supplemental Declaration of Mark Shapiro* and the *Supplemental Declaration of William I. MacDonald* [ECF Nos. 169 and 171] (the "Supplemental Declarations," and together with the Initial Declarations, the "First Day Declarations").

C. The Employment Retention Credit Recovery

11. The ERC is a refundable tax credit available to certain eligible corporate entities (including tax-exempt organizations) that had employees during and were affected by the COVID-

19 pandemic.[4] Qualified businesses and tax-exempt organizations include those that experienced the required decline in gross receipts during 2020 or the first three quarters of 2021.[5]

12. After reviewing the program's eligibility requirements, the Debtors believed that they qualified for the tax credits. To facilitate the application and qualification process, the Debtors (specifically Buddy Mac Holdings, LLC ("Holdings"))[6] entered into the Agreement with SRBC executed on or about July 18, 2023, under which the parties worked together toward the goal of recovering ERCs approved by the IRS. Generally, the Agreement required SRBC to review the Debtors' eligibility and payroll qualifications and run an analysis of the Debtors' payroll. Agreement, at 1-2. SRBC then provided an Opinion Letter,[7] an Allocation Report (which is a detail of the employee wages listed by employee), and a Process Control Certificate;[8] and issued a Form 941-X and filing instructions to the Debtors. Agreement at 2.

13. In exchange for such services, SRBC was to bill the Debtors and receive payment in accordance with Appendix A to the Agreement. The payment structure provided that SRBC would receive 15% of ERC Refund (the "Commission"), due when first IRS check arrived, or a one-time cash discount rate of 10% of ERC refund available for 15 calendar days after BMH-HR receives SRBC's invoice. *See* Agreement at 8 (Appendix "A" Professional Fees, Payment Terms, Billing Rate).

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[4] *See* https://www.irs.gov/coronavirus/employee-retention-credit, last visited February 5, 2026.

[5] *See* https://www.irs.gov/coronavirus/employee-retention-credit#eligibility, last visited February 5, 2026.

[6] The Debtors' employees are hired through Subsequent Debtor BMH-HR, LLC ("BMH-HR"), a wholly-owned subsidiary of Holdings. The ERC application documents were submitted by or under BMH-HR, who administers (through ADP) all wages and compensation paid to Employees, as well as the Employee Benefits programs. *See Declaration of Mark Shapiro in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Shapiro Declaration"), ECF No. 13 at ¶ 34.

[7] **Exhibit 2**.

[8] **Exhibit 3**.

14. In October 2023, BMH-HR submitted Forms 941-X to the IRS for each of the quarters in 2021 referenced below.

15. BMH-HR subsequently received payment via check from the IRS (the "ERC Refunds"), as follows:

(a) $2,582,941.10 dated March 25, 2025 for Q1 2021;

(b) $2,615,317.32 dated November 4, 2025 for Q2 2021; and

(c) $3,249.319.19 dated January 13, 2026 for Q3 2021.

16. BMH-HR received each of the ERC Refunds prior to the Subsequent Petition Date, including BMH-HR's petition. However, the Debtors have not yet paid SRBC its final Commission payment due in the amount of $370,804.37.

17. Under applicable state law, SRBC holds an equitable lien on the fees earned on a contingency basis under the Agreement because the SRBC performed all obligations under the Agreement and the Debtors received the ERC funds. In addition, payment of the Commission is an appropriate exercise of the Debtors' business judgment, and for the reasons set forth below, satisfies the standard for approval of the Commissions on a post-petition basis under section 363(b) of the Bankruptcy Code.

IV. BASIS FOR RELIEF

A. Texas Law Imposes an Equitable Trust on SRBC's Share of the ERC Refunds

18. SRBC is entitled to payment of the Commissions earned when the ERC Refunds were paid to the Debtors by the IRS, as applicable nonbankruptcy law imposes an equitable lien on such proceeds. Under Texas law, the party holding payment rights under a contingency fee agreement receives a legal and equitable interest when the contingency occurs. *See, e.g., Payne v. Bowers (In re Pickens)*, 2019 Bankr. LEXIS 3020 at *17 (Bankr. E.D. Tex. Sept. 27, 2019) (holding that a party with a contingent interest in a recovery "does not receive a legal or equitable

interest pursuant to a contingency fee contract *until the contingency occurs.*" (emphasis added)) (citing *Marre v. U.S.*, 117 F.3d 297, 307 (5th Cir. 1997)). Here, SRBC's right to the Commissions under the Agreement was contingent upon and arose when BMH-HR received a check from the IRS for the ERC Refunds. *See* Exhibit 1 at p. 8. The contingency thus occurred for purposes of payment to SRBC when the Debtors received the check dated January 13, 2026, before the Subsequent Debtors' petition date.

19. The right to compensation under a contingency fee arrangement is a property right governed by state law. *See In re Willis*, 143 B.R. 428, 431 (Bankr. E.D. Tex. 1992) (recognizing that a right to compensation under a contingency fee arrangement is a property right governed by state law) (citing *Barnhill v. Johnson*, 503 U.S. 393 (1992)). In Texas, when a claim upon which a contingency fee is based is liquidated and reduced to a fixed recovery, counsel securing the recovery is entitled to an equitable lien on the recovery securing payment of its services. *Id.* at 432 (citing *Tarrant County Hosp. Dist. v. Jones*, 664 S.W.2d 191, 195-96 (Tex. App.—Fort Worth 1984, no writ); s*ee also Floyd v. Dykeswill, Ltd. (In re Dykeswill, Ltd.)*, 365 B.R. 683, 687-88 (S.D. Tex. 2007) (interest of holder of contingency fee claim vests upon settlement of claim). Failing to pay a contingency fee that matured prior to the BMH-HR petition date would be "inequitable and will not be condoned." *Willis*, 143 B.R. at 433.

20. Contingency fee recoveries are also governed by the "common fund doctrine," which recognizes that "one who accomplishes the creation of a fund for the benefit of another is entitled to reimbursement therefrom for the reasonable costs thereby incurred …" *Id.* (citing *Haynes v. Rederi A/S Alladin*, 362 F.2d 345, 351 (5th Cir. 1966); *Cappel v. Adams*, 434 F.2d 1278, 1279 (5th Cir. 1970) and *Knebel v. Capital Nat'l Bank*, 518 S.W.2d 795, 799 (Tex. 1974)). In *Willis*, the Court applied the common fund doctrine to allow recovery of fees out of settlement

proceeds "in preference and priority over other claimants rather than as a general unsecured creditor of Debtor's estate." *Willis,* 143 B.R. at 434.

21. Here, SRBC's efforts to obtain the ERC Refunds provided a direct benefit to the Debtors. Without SRBC's services and oversight of the ERC application process, including analyzing the Debtors' eligibility and qualifications for the ERC Refunds, and preparation of the necessary IRS forms and other documents, the Debtors would not have been able to receive the full benefits of the ERC.

22. The Debtors therefore request the entry of an order authorizing the payment to SRBC of all amounts due and owing pursuant to the Agreement in accordance with that contract. Doing so will not violate any payment priority scheme because SRBC's claim to the Commission is secured and excluded from Phonix's DIP Collateral. Further, payment to SRBC will prevent the unjust enrichment of the estate and its creditors.

B. Payment of the Commissions Is a Proper Exercise of the Debtors' Business Judgment Under Section 363(b) and 105(a) of the Bankruptcy Code

23. As noted above, the Debtors assert that SRBC's Commissions payable from the ERC Refund currently held by the Debtors are not "property of the estate" as contemplated by section 541(a). Nevertheless, even if the Court were to find that the entire ERC Refund currently held by the Debtors constitutes "property of the estate," the Debtors respectfully request that they be authorized and directed to pay the Commissions pursuant to sections 363(b) and 105(a) of the Code.

24. Section 363(b) provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate …" 11 U.S.C. § 363(b). Courts, including the Fifth Circuit, uniformly hold that debtors-in-possession must justify the proposed transaction, "[t]hat is, for the debtor-in-possession or trustee

to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business." *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (citations omitted); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y 1989) (stating that "[t]he debtor must articulate some business justification, other than the mere appeasement of major creditors, for using, selling or leasing property outside the ordinary course of business, before the court may permit such disposition under § 363(b)."") (citations omitted); *Off. Comm. of Unsecured Creditors v. Bouchard Transp. Co. (In re Bouchard Transp. Co.)*, 74 F.4th 743, 750 (5th Cir. 2023) (finding that the "business judgment standard" is "less exacting and gives the debtor more discretion . . . based on merely 'sound business reasons.'"") (citations omitted).

25. In addition, section 105(a) of the Code provides that the bankruptcy court may "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." In *Ionosphere Clubs, supra*, the bankruptcy court found that section 105(a) empowers the court "to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor" and that such ability "is not a novel concept."

26. Here, the Debtors satisfy the business judgment standard and have a valid business justification for payment of the Commissions to SRBC for at least three reasons. First, payment of the Commission to SRBC is a contractual obligation for services that produced significant value to the estate. The total amount paid to the Debtors as ERC Refunds is almost $8.5 million, before payment of the Commissions to SRBC. At bottom, SRBC's services resulted in a direct, identifiable, and material benefit to the Debtors and the estate.

27. Second, the Debtors wish to maintain the relationship with SRBC, in the event that any issues or concerns arise in conjunction with the ERC Refunds, including any potential IRS inquiries or audits. While the Debtors believe that to be highly unlikely, working with SRBC would be critical in responding to such inquiries.

28. Third, payment of the Commission to SRBC will avoid future litigation in this Court regarding both the nature and the amount of SRBC's claim, and the concomitant (and unnecessary) expenditure of estate resources.

29. Accordingly, the Debtors request the entry of an order authorizing and directing BMH-HR and the Debtors to pay SRBC all unpaid Commissions due from the ERC Refunds in accordance with the terms of the Agreement.

V. NOTICE

11. Notice of this Motion will be provided to all parties receiving notices in this case via the Court's CM/ECF system and all parties on the Claims Agent's Master Service List. The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

VI. PRAYER

WHEREFORE, the Debtors request that this Court enter the order, substantially in the form of Proposed Order attached hereto, granting the relief requested herein and granting such other and further relief as this Court may deem just and proper.

Dated: March 4, 2026

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

/s/ John J. Kane

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COUNSEL FOR DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 4, 2026, a true and correct copy of the foregoing Motion, together with all exhibits and attachments hereto, was filed with the Court and served via (i) the Court's CM/ECF system upon all parties registered to receive such electronic service in this bankruptcy case and (ii) by the Debtors' service agent on the Master Service List.

/s/ John J. Kane

John J. Kane