UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In Re:	**§**	**Chapter 7**
	§	
CENTRAL TEXAS MEDICAL	**§**	**Case No. 24-10011-smr**
SPECIALISTS, PLLC,	**§**	
	§	
Debtor.	**§**	

APPLICATION FOR RETENTION OF ACCOUNTANTS PURSUANT TO 11 U.S.C. § 327(a) AND § 328 AND FOR RELATED RELIEF

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely response is necessary for a hearing to be held.

TO THE HONORABLE SHAD M. ROBINSON, U.S. BANKRUPTCY JUDGE:

COMES NOW Randolph N. Osherow, Trustee, the duly appointed and acting trustee in the above-captioned bankruptcy case, and files this his *Application for Retention of Accountants Pursuant to 11 U.S.C. §327(a) and §328 and for Related Relief* (the "Application"), and in support thereof would respectfully show the Court as follows:

I. SUMMARY

1. The Trustee was appointed Chapter 7 trustee in the above-styled and numbered case (the "Bankruptcy Case"). The Trustee herein requests to authority to retain Whitley Penn LLP (the "Accountants") to be his accountant pursuant to 11 U.S.C. § 327(a) and §328, in particular to prepare tax returns for the bankruptcy estate and to submit and prosecute an Employee Retention Credit claim (the "Employee Retention Credit Claim"), for authority under 11 U.S.C. § 503(b) to pay any taxes that may be due as a result of any filed tax returns, and for authority to utilize interim compensation procedures with respect to Accountants. The employment will be bifurcated into

an hourly fee component and a success/contingency fee component based on two distinct scopes of work.

II. BACKGROUND AND REQUEST FOR RELIEF

1. On January 3, 2024 (the "Petition Date"), this case was filed under Chapter 7 of title 11 of the United States Code and the Trustee appointed as Chapter 7 trustee.

2. Included in the Estate is the Employee Retention Credit Claim. Based upon initial estimates, the Trustee has reason to believe that the Employee Retention Credit Claim could result in as much as $2,279,823.00 coming into the Estate.

3. The Trustee seeks to employ Whitley Penn LLP (the "Accountants") pursuant to 11 U.S.C. §§ 327(a) and 328 as his certified public accountants to prepare tax returns for the bankruptcy estate (the "Estate"), to submit and prosecute the Employee Retention Credit Claim, and to handle any accounting issues that may arise during this case, including but not limited to preparation of tax returns. The Trustee further requests that he be authorized under 11 U.S.C. § 331 to utilize interim compensation procedures with respect to Accountants.

4. It is in the best interest of the Estate that the Accountants be employed to advise the Trustee regarding accounting matters affecting the Estate, to prepare all necessary income tax returns for the Estate and to submit and prosecute the Employee Retention Credit Claim.

5. Prior to the filing of this Bankruptcy Case, Accountants handled preparing tax returns for the Debtor. Debtor paid Accountants a retainer of $19,025.00 to be applied to work done by Accountants. Prior to the Petition Date, Accountants applied $16,775.00 of that retainer to amounts owed them by Debtor; thus, Accountant remains in possession of $2,250.00 (the "Bankruptcy Retainer"). As part of the retention of Accountants, the Trustee proposes that

Accountants remain in possession of the Bankruptcy Retainer, with the same to be applied to amounts accruing post-Petition Date.

6. The Accountants represent no interest adverse to the Bankruptcy Estate. Attached hereto as **Exhibit 1 and Exhibit 2**, respectively, are the Disclosure of Compensation under 11 U.S.C. §329 and Bankruptcy Rule 2016(b) and the declaration of Jon Karp that the Accountants have no interest adverse to the Bankruptcy Estate.

7. No other professionals in the same profession have been previously employed pursuant to Court order in this case.

8. The Accountants will be compensated pursuant to the employment contracts attached hereto as **Exhibit 3** (the "Tax Return and General Work Contract") and **Exhibit 4** (the "Employee Retention Credit Contract"). Under the Tax Return and General Work Contract, Accountants will charge their normal hourly rates for preparing tax returns and handling any other matters for the Estate not specifically governed by the Employee Retention Credit Contract. The hourly rates charged are as follows: Senior Manager is $425.00, Senior Associate is $290.00, and Associate is $225.00. The Accountants will also be entitled to reimbursement for reasonable and necessary out-of-pocket expenses. Under the Employee Retention Credit Contract, the Accountants will receive $182,400.00 if they successfully recover for the Estate $2,279,823.00 in the form of an Employee Retention Credit Claim, or up to but not exceeding 8% in the event that the amount recovered on the Employee Retention Credit Claim is less than $2,279,823.00. Accountants' compensation for work done under the Employee Retention Credit contract will be under section 328 of the Bankruptcy Code.

9. The Bankruptcy Estate has substantial unencumbered cash on hand. In order to facilitate timely payment of invoices from Accountants without the cost of preparing potentially

numerous interim fee applications, the Trustee proposes that he be authorized to make interim payment of such interim invoices as Accountants may provide him by filing a Notice of Interim Accountant Fees on the Court's docket in substantially the form submitted herewith as **Exhibit 5**. Pursuant to this proposal by the Trustee, if no response to a Notice of Interim Accountant Fees is filed with the Court or served on the Trustee within twenty-one days of the filing of such Notice of Interim Accountant Fees, the Trustee shall be deemed to be authorized to make the interim payment provided for in the Notice of Interim Accountant Fees. Any such payments shall remain subject to disgorgement and shall not excuse Accountants from the requirement of obtaining final approval for their fees pursuant to 11 U.S.C. § 330.

10. No final compensation will be allowed or paid until a fee application has been filed and approved by the Court, pursuant to 11 U.S.C. §330 and the requirements of any other applicable case law.

4. Pursuant to 11 U.S.C. §503(b), the Trustee requests permission from the Court authorizing and approving the payment of any Estate taxes that may be due as a result of any filed tax returns.

5. The Accountants have their offices 8343 Douglas Avenue, Suite 400, Dallas, Texas 75225, telephone number 469.776.3558, fax 214.363.9303.

WHEREFORE, Randolph N. Osherow, Chapter 7 Trustee, prays that he be authorized to retain certified public accounts Whitley Penn, PLLC as his accountants in the above Chapter 7 proceeding, and for such other relief as is just.

Respectfully submitted,

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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COUNSEL FOR RANDOLPH N. OSHEROW, CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of April, 2024, I electronically filed this Application with the Clerk of Court using the CM/ECF system which will send notification of such filing to those receiving electronic service, or service was made by email as reflected below. The attached Notice of Employment is being served within two business days as reflected on the Service List appended to this Application.

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By:*/s/ Brian T. Cumings*
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