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Chapter 11 Trustee

FILED & ENTERED

SEP 30 2022

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY ghaltchi DEPUTY CLERK

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

CHERRY MAN INDUSTRIES, INC.,

Debtor and Debtor in Possession

Case No.: 2:22-bk-11471-NB

Chapter 11 Case

ORDER APPROVING APPLICATION OF CHAPTER 11 TRUSTEE TO EMPLOY RADBOD AND ASSOCIATES INC. AS BOOKKEEPER AND FOR THE PURPOSES OF PREPARING AN EMPLOYEE RETENTION TAX CREDIT STUDY PURSUANT TO 11 U.S.C. §§ 327, 328 AND 330

[No Hearing Required]

On September 2, 2022, Hamid R. Rafatjoo, the Chapter 11 Trustee (the "Trustee") of the bankruptcy estate of Cherry Man Industries, Inc. filed that certain *Application Of Chapter 11 Trustee To Employ Radbod And Associates Inc. As Bookkeeper And For The Purposes Of Preparing An Employee Retention Tax Credit Study Pursuant To 11 U.S.C. §§ 327, 328 and 330* (the "Application") (Doc 401), and the Statement of Disinterestedness (dkt. 403), pursuant to sections 327(a), 328(a), 363 and 1103(a) of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Central District of California (the "Local Rules") for an order authorizing the Trustee to retain Radbod and Associates Inc. ("Radbod") as the Trustee's bookkeeper and for the purpose of providing professional services in connection with an Employee Retention Tax Credit Study; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, no opposition to the Application having been filed; and it appearing that no other or further notice need be provided; and it appearing to the Court that the said Application and the relief sought therein under the circumstances of the case is in the best interest of the estate and should be approved, it is, therefore, ORDERED that:

1. The Application is granted.

2. Pursuant to sections 327, 328, 363 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, the Trustee is authorized to employ and retain Radbod for the purposes set forth in the Application, effective as of August 16, 2022.

3. Radbod shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the services it provides to the Trustee, as set forth in the Application and in compliance with the applicable provisions of the Bankruptcy

Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court.

4. With respect to Service 1[1], the Trustee is authorized to pay to Radbod from estate funds a retainer in the amount of $20,000 (the "Service 1 Retainer"). Radbod is authorized to draw down upon the Service 1 Retainer to pay for all fees and costs incurred in connection with Service 1 on a monthly basis, with all such fees and costs remaining subject to final approval of the Court pursuant to a final fee application. Additionally, the Trustee is authorized to pay Radbod from estate funds for any fees and costs incurred in connection with Service 1 and in excess of the Service 1 Retainer, on a monthly, interim basis, without further Court approval, provided that all such fees and costs shall remain subject to final approval of the Bankruptcy Court pursuant to a final fee application.

5. With respect to Service 2, the Trustee is authorized to pay to Radbod from estate funds a flat fee of $8,500 for each quarterly period for which Radbod conducts an employee retention tax creditors study as provided in the Application, with 50% of the total flat fee due upon entry of this Order, and 50% due prior to the filing of Form 941-X with the Internal Revenue Service.

6. Notwithstanding anything to the contrary in the Application, Radbod shall not seek reimbursement of any fees or costs arising from the defense of any of Radbod's fee applications in this chapter 11 case.

7. The Trustee and Radbod are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

IT IS FURTHER ORDERED that, notwithstanding any other provisions, the following of Judge Bason's standard terms apply: (a) approval of fees and expenses on a final basis only per 11 U.S.C. § 330(a) – no lien or superpriority claim is allowed (except as explicitly allowed –

[1] Capitalized terms not otherwise defined have the same meaning ascribed to such terms in the Application.

e.g., realtor commissions on court-approved sales), except that the "flat fees" described in the Application are hereby approved as provided in 11 U.S.C. § 328(a); (b) maximum 2 hours per day of non-working time for hourly-billed matters (*e.g.,* travel, or waiting for matter to be called) absent an adequate explanation; (c) **no buyers' premium** for auctioneers; (d) **no dual agency**; (e) all matters relating to the professional's engagement, compensation and costs shall be resolved in this court, notwithstanding any provisions for arbitration, choice of venue, or the like, and (f) any indemnification, limitation of damages or the like is ineffective. *See generally In re Circle K Corp*., 279 F.3d 669 (9th Cir. 2002) *and* 11 U.S.C. § 327(a) (professionals may not "hold or represent an interest adverse to the estate").

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Date: September 30, 2022

Neil W. Bason
United States Bankruptcy Judge