

LOWENSTEIN SANDLER LLP

Kenneth A. Rosen, Esq.
Nicholas B. Vislocky, Esq.
1251 Avenue of the Americas, 17th Floor
New York, New York 10020
(212) 262-6700 (Telephone)
(212) 262-7402 (Facsimile)

-and-

65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)

Proposed Counsel to the Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Binder & Binder – The National Social Security
Disability Advocates (NY), LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 14-23728 (___)

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
DEBTORS TO EMPLOY AND COMPENSATE PROFESSIONALS
UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their counsel, submit this motion (the “Motion”), for entry of an

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: (1) Binder & Binder - The National Social Security Disability Advocates (NY), LLC (1450); (2) SSDI Holdings, Inc. (3038); (3) Binder & Binder - The National Social Security Disability Advocates LLC (8580); (4) Binder & Binder - The National Social Security Disability Advocates (AZ), LLC (5887); (5) Binder & Binder - The National Social Security Disability Advocates (CA), LLC (1456); (6) Binder & Binder - The National Social Security Disability Advocates (CO), LLC (0945); (7) Binder & Binder - The National Social Security Disability Advocates (CT), LLC (0206); (8) Binder & Binder - The National Social Security Disability Advocates (FL), LLC (1455); (9) Binder & Binder - The National Social Security Disability Advocates (GA), LLC (4768); (10) Binder & Binder - The National Social Security Disability Advocates (IL), LLC (1457); (11) Binder & Binder - The National Social Security Disability Advocates (MD), LLC (3760); (12) Binder & Binder - The National Social Security Disability Advocates (MO), LLC (2108); (13) Binder & Binder - The National Social Security Disability Advocates (NJ), LLC (1454); (14) Binder & Binder - The National Social Security Disability Advocates (NC), LLC (1460); (15) Binder & Binder - The National Social Security Disability Advocates (OH), LLC (7827); (16) Binder & Binder - The National Social Security Disability Advocates (PA), LLC (1453); (17) Binder & Binder - The National Social Security Disability Advocates (TX), LLC (1458); (18) Binder & Binder - The National Social Security Disability Advocates VA, LLC (7875); (19) Binder & Binder - The National Social Security Disability Advocates (WA), LLC (0225); (20) Binder & Binder - The National Social Security Disability Advocates (LA), LLC (8426); (21) Binder & Binder - The National Social Security Disability Advocates (MI), LLC (8762); (22) Binder & Binder - The National Social Security Disability Advocates (DC), LLC (5265); (23) The Rep for Vets LLC (6421); (24) National Veterans Disability Advocates LLC (dba The Rep for Vets LLC) (7468); and (25) The Social Security Express Ltd. (4960) (together, the “Debtors”).

order authorizing the Debtors to employ and compensate professionals utilized in the ordinary course of their business as of the Petition Date (defined below). In support of this Motion, the Debtors rely upon and incorporate by reference the Declaration of William A. Brandt, Jr. Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Chapter 11 Petitions and First Day Motions (the “First Day Declaration”) filed simultaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION, VENUE, AND STATUTORY PREDICATES

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a), 327, and 330 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq* (as amended, the “Bankruptcy Code”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Southern District of New York (the “Local Rules”).

BACKGROUND

3. On December 18, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

4. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors (“Creditors Committee”) has been appointed in the Chapter 11 Cases.

5. The factual background regarding the Debtors, including their operations, their capital and debt structure, and the commencement of these Chapter 11 Cases is more fully described in the First Day Declaration, which is deemed fully incorporated herein by reference.

BACKGROUND RELEVANT TO THE MOTION

6. Prior to the Petition Date, the Debtors utilized certain professionals to assist them on a day-to-day basis (the “Ordinary Course Professionals”). Services provided by these professionals include, among other things, specialized non-bankruptcy advice. A list of the Ordinary Course Professionals that the Debtors seek to employ pursuant to this Motion is attached hereto as **Exhibit A**.

7. The Debtors desire to continue to employ certain Ordinary Course Professionals to render services to the Debtors’ estates similar to those services the Ordinary Course Professionals rendered before the Petition Date and, if necessary, to retain any additional Ordinary Course Professionals as may be necessary during the pendency of the Chapter 11 Cases.²

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 327, and 330 of the Bankruptcy Code, authorizing the retention of those Ordinary Course Professionals identified on **Exhibit A** to this Motion, as of the Petition Date, without the submission of separate employment applications, declarations, and the issuance of separate retention orders for each such individual professional.³

9. The Debtors also seek, pursuant to the procedures described below, authority to (a) employ additional Ordinary Course Professionals not listed on **Exhibit A** and (b) compensate all Ordinary Course Professionals.

² The proposed ordinary course retention and payment procedures set forth herein would not apply to those non-Ordinary Course Professionals for which the Debtors have filed or will file separate applications for approval of employment and retention.

³ The Debtors reserve their right to argue that, pursuant to sections 363 and 365 of the Bankruptcy Code, they do not need a court order to hire or retain certain Ordinary Course Professionals.

A. Summary of Proposed Procedures

10. The Debtors request authority, but not direction, to pay each Ordinary Course Professional, without a prior motion to the Court, 100% of the fees incurred and disbursements requested per month, up to the sum identified for each Ordinary Course Professional in **Exhibit A** (the “Ordinary Course Professional Fee Cap”).⁴ However, the Debtors will not make such payment without receipt of an appropriate invoice setting forth, in reasonable detail, the nature of the services provided and disbursements incurred by the Ordinary Course Professional.

11. In the event that an Ordinary Course Professional’s fees and disbursements exceed the Ordinary Court Professional Fee Cap, then such Ordinary Course Professional must file a fee application with this Court for approval of such fees and expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the Fee Guidelines promulgated by the Executive Office of the United States Trustee, and any *Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals* entered in the Chapter 11 Cases (the “Interim Compensation Order”).

12. In addition, within thirty (30) calendar days of the later of the entry of an order granting this Motion or the engagement of such professional by the Debtors, each Ordinary Course Professional, including those listed on **Exhibit A**, will complete a declaration substantially in the form annexed hereto as **Exhibit B** (the “Declaration”). Through the Declaration, an Ordinary Course Professional will certify that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which such professional is to be employed.

⁴ This proposed cap is based on the maximum amount of fees expected to be earned by an Ordinary Course Professional in any one month, but does not represent what the Debtors expect to be typically incurred by an Ordinary Course Professional on a monthly basis. The Debtors anticipate, on average, that the cumulative Ordinary Course Professional fees will not exceed \$60,000 per month.

13. The executed Declaration will be filed on the docket and served upon: (i) the Office of the United States Trustee for the Southern District of New York; (ii) a Creditors' Committee, if applicable; and (iii) those parties who have filed a notice of appearance and request for service of pleadings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

14. The Debtors propose that the Notice Parties be given fourteen (14) calendar days after receipt of a Declaration to object ("Objection") to the retention of the applicable Ordinary Course Professional (the "Objection Deadline") and that any such Objection be served upon the Debtors, the relevant Ordinary Course Professional, and the Notice Parties. If no Objection is submitted prior to the Objection Deadline, the Debtors request that the employment, retention, and compensation of the Ordinary Course Professional be approved without further order of the Court. If an Objection is asserted by the Objection Deadline and such Objection cannot be resolved within fourteen (14) calendar days, the Debtors will schedule the matter for a hearing before the Court and the Debtors will have the right to file a reply with respect to any Objection prior to the scheduled hearing.

15. In certain situations, including with respect to the Ordinary Course Professionals listed on Exhibit A, an Ordinary Course Professional may need to commence work on matters that require immediate attention before this Motion is approved and/or before the procedures set forth herein can be strictly adhered to. Accordingly, upon the expiration of the Objection Deadline for each such professional, the Debtors request that they be permitted to compensate such Ordinary Course Professional effective as of the date of commencement of the work provided to the Debtors, provided that such employment, retention, and compensation otherwise complies with this Motion.

16. Although certain of the Ordinary Course Professionals may hold prepetition unsecured claims against the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals holds or represents an interest adverse to the Debtors, their creditors, or other parties-in-interest on the matters for which they are proposed to be employed. Thus, all of the Ordinary Course Professionals proposed to be retained would meet, if applicable, the requirements of section 327(e) of the Bankruptcy Code.

17. The Debtors submit that the employment of the Ordinary Course Professionals and the payment of monthly compensation, on the basis set forth above, are in the best interests of their estates and creditors. The relief requested will save the estates the substantial expenses associated with applying separately for the employment of each professional. Further, the requested relief will avoid additional fees for the preparation and prosecution of interim fee applications. Likewise, the procedures outlined above will relieve the Court and the United States Trustee of the burden of reviewing numerous fee applications involving relatively small amounts of fees and expenses, while ensuring the appropriate oversight of the Debtors' use of the Ordinary Course Professionals.

BASIS FOR RELIEF

18. Section 327(a) of the Bankruptcy Code provides that a debtor may employ certain professionals that do not hold any interests adverse to the estate and are disinterested. Section 327(e) of the Bankruptcy Code permits a debtor to employ an attorney, who has previously represented the debtor, to represent the debtor for a special purpose "other than to represent [the debtor] in conducting the case," provided that attorney does not hold an interest adverse to the estate with respect to its proposed representation of the debtor. The Court may award reasonable fees and expenses to a professional subject to the foregoing sections of the Bankruptcy Code upon notice and a hearing. 11 U.S.C. § 330.

19. The Debtors submit that the retention of the Ordinary Course Professionals and the payment of compensation and reimbursement amounts owed to them, on the basis set forth herein, is in the best interest of their estates and other parties in interest. Courts in this District have granted similar relief in other chapter 11 cases. *See, e.g., In re Metro Affiliates, Inc.*, Case No. 13-13591 (SHL) (Docket No. 182) (Bankr. S.D.N.Y. Dec. 3, 2013); *In re LightSquared Inc.*, Case No. 12-12080 (SCC) (Docket No. 123) (Bankr. S.D.N.Y. Jun. 11, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Docket No. 366) (Bankr. S.D.N.Y. Feb. 15, 2012); and *In re The Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Docket No. 506) (Bankr. S.D.N.Y. Jan. 13, 2011).

NOTICE

20. Notice of this Motion has been given to (i) Counsel to Capital One Bank, N.A., McCarter & English, LLP, Four Gateway Center, 100 Mulberry St., Newark, New Jersey 07102, Attn: Joseph Lubertazzi, Jr. (jlubertazzi@mccarter.com); (ii) Counsel to US Bank National Association, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Kenneth J. Ottaviano (kenneth.ottaviano@kattenlaw.com); (iii) Stellus Capital Investment Corporation, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: Stephen E. Gruendel (stevegruendel@mvalaw.com); (iv) the Debtors' twenty largest unsecured creditors; (v) the Office of the United States Trustee for the Southern District of New York; (vi) the Internal Revenue Service; and (vii) those parties who have filed a notice of appearance and request for service of pleadings in the chapter 11 case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: December 19, 2014

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

Kenneth A. Rosen, Esq.

Nicholas B. Vislocky, Esq.

1251 Avenue of the Americas, 17th Floor

New York, New York 10020

(212) 262-6700 (Telephone)

(212) 262-7402 (Facsimile)

-and-

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-2400 (Facsimile)

*Proposed Counsel to the Debtors and Debtors-in
Possession*