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*Proposed Conflicts Counsel to the Debtors
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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Truvo USA LLC, *et al.* : Case No. 10- 13513 (AJG)
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Debtors. : Joint Administration Pending
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**APPLICATION OF THE DEBTORS PURSUANT TO SECTIONS 327(a) AND 328(a)
OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO EMPLOY AND
RETAIN JENNER & BLOCK LLP AS CONFLICTS COUNSEL FOR THE DEBTORS**

Truvo USA LLC (“TUSA”), Truvo Parent Corp. (“Truvo Parent”), Truvo Intermediate LLC (“PIK Borrower”), Truvo Subsidiary Corp. (“HY Notes Issuer”) and Truvo Acquisition Corp. (“TAC”, and together with Truvo USA, Truvo Parent, PIK Borrower and HY Notes Issuer, the “Debtors”), as debtors and debtors in possession, file this application (the “Application”), for the entry of an order substantially in the form attached hereto as Exhibit B, authorizing the employment and retention of Jenner & Block LLP (“Jenner & Block”) as conflicts counsel for the Debtors. In support of this Application, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in this Application are sections 327(a), 328(a), 329, and 504 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Federal Rules of Bankruptcy Procedure 2014, 2016, and 5002 (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

Background

3. On the date hereof, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the date and time of such filing, the “Petition Date”),

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 has been appointed in the Debtors’ cases.

5. Simultaneously with the filing of this Motion, the Debtors have sought an order of joint administration pursuant to Rule 1015(b) of the Bankruptcy Rules that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

6. A description of the Debtors’ corporate structure and businesses, as well as the circumstances leading up to the filing of these chapter 11 cases, can be found in the First Day Declaration.¹

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the First Day Declaration.

Relief Requested

7. By this Application, the Debtors seek authorization to employ and retain Jenner & Block as conflicts counsel to the Debtors. In support of this Application, the Debtors submit the Declaration of Vincent Lazar (the "Lazar Declaration"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

8. The retention of Jenner & Block under the terms described herein is appropriate under the sections 327(a), 328(a) and 1107(b). Section 327(a) provides:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys ... that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a). Section 327(a) sets out a general two-part test that requires professionals working for the debtor to (1) hold no interest adverse to the estate, and (2) be disinterested persons. *See* 11 U.S.C. § 327(a); *see also In re AroChem Corp.*, 176 F.3d 610, 620 (2d Cir. 1999).

9. Section 327(a) is limited by subsection (c). Subsection (c) provides that a person is "not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c); *see also* 11 U.S.C. § 1107(b) (a person is not disqualified for employment under section 327 solely because of such person's employment by or representation of the debtor before the commencement of the case). Section 327(c) prevents disqualification merely because of the professional's prior representation of or employment by a creditor. *See AroChem*, 176 F.3d at 621 (citing *In re Interwest Business Equip.*, 23 F.3d 311, 316 (10th Cir. 1994)).

10. In evaluating an application to employ counsel, a bankruptcy court “should exercise its discretionary powers over the approval of professionals in a manner which takes into account the particular facts and circumstances surrounding each case and the proposed retention before making a decision.” *Id.* at 621 (quoting 3 Lawrence P. King, *et al.*, COLLIER ON BANKRUPTCY, ¶ 327.04[1][a] (15th ed. rev. 1998)). The bankruptcy court should consider “the protection of the interests of the bankruptcy estate and its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding.” *Id.* (internal quotations omitted).

11. Contemporaneously herewith, the Debtors are applying to retain Cleary Gottlieb Steen & Hamilton LLP (“Cleary Gottlieb”) as attorneys under a general retainer to represent them in these Chapter 11 Cases. It is anticipated that there may be matters with respect to which Cleary Gottlieb cannot represent the Debtors because of an actual or perceived conflict. The Debtors seek court approval to employ and retain Jenner & Block as their conflicts counsel in connection with these Chapter 11 Cases to handle matters that the Debtors may encounter which are not appropriately handled by Cleary Gottlieb and other professionals because of a potential conflict of interest or, alternatively, which can be more efficiently handled by Jenner & Block. This will avoid unnecessary litigation and reduce the overall expense of administering these Chapter 11 Cases. Pursuant to section 327(a) of the Bankruptcy Code, the Debtors request that the Court approve the retention of Jenner & Block under a general retainer, as their attorneys, to perform services that will be necessary during these Chapter 11 Cases in accordance with Jenner & Block’s normal hourly rates and policies in effect when Jenner & Block renders the services or incurs the expenses.

Scope of Services

12. Subject to the Court's approval, Jenner & Block will render professional services to the Debtors for certain discrete matters, which may include, but are not limited to the following matters where Cleary Gottlieb may not be able to act as a result of an actual or perceived conflict of interest or where the Debtors or Cleary Gottlieb have requested that Jenner & Block:

- (a) advise the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their business and properties;
- (b) attend meetings and negotiate with representatives of creditors and other parties in interest;
- (c) take necessary action to protect and preserve the Debtors' estates, including any necessary action in connection with the motion for temporary restraining order filed concurrently herewith, prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the estates;
- (d) prepare motions, applications, answers, orders, appeals, reports and papers necessary to the administration of the Debtors' estates;
- (e) take any necessary action on behalf of the Debtors to obtain approval of a disclosure statement and confirmation of one or more chapter 11 plans;
- (f) advise the Debtors in connection with any potential sale of assets;
- (g) appear before the Court, any appellate courts and the United States Trustee, and protect the interests of the Debtors' estates before those Courts and the United States Trustee;
- (h) perform any other necessary legal services and provide other necessary legal advice to the Debtors in connection with these Chapter 11 Cases.

Jenner & Block has indicated its willingness to render the necessary professional services described above as conflicts counsel.

13. Jenner & Block will perform the duties of counsel to the Debtors on all matters where Cleary Gottlieb cannot perform such services, and while certain aspects of the representation will necessarily involve both Cleary Gottlieb and Jenner & Block, the services that Jenner & Block will provide will be complementary rather than duplicative of the services to be performed by such bankruptcy and reorganization counsel. The Debtors are very mindful of the need to avoid duplication of services, and appropriate procedures will be implemented to ensure that there is minimal duplication of effort as a result of Jenner & Block's role as conflicts counsel.

Compensation

14. In accordance with section 330(a) of the Bankruptcy Code, Jenner & Block will seek compensation for attorneys' fees and paraprofessionals' fees at its normal hourly billing rates in effect for the period in which such services are performed, and will seek reimbursement of necessary and reasonable out-of-pocket expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and Orders of this Court. Presently, the hourly rates for the professionals expected to work on this matter range from \$525 to \$825 for partners, \$325 to \$555 for associates, \$230 to \$275 for paralegals, and \$160 to \$170 for project assistants. As set forth in the Lazar Declaration filed in support of the Application, the hourly rates described above are subject to periodic adjustments to reflect economic and other conditions. Other attorneys or paralegals may from time to time serve the Debtors in the matters for which Jenner & Block's retention is sought. The Debtor submits that such rates are reasonable and should be approved by the Court subject to a determination of the amount to be paid to Jenner & Block upon application for allowance.

15. In addition to the hourly rates set forth above, Jenner & Block will request, subject to the Court's approval, reimbursement for all actual out-of-pocket expenses incurred by Jenner & Block on the Debtors' behalf, such as photocopying services, printing, delivery charges, filing fees, postage, travel expenses, computer research time and other disbursements. All requests for reimbursement of expenses will be consistent with the United States Trustee Fee Guidelines and the requirements established by this Court.

16. Jenner & Block intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in these Chapter 11 Cases in accordance with the Bankruptcy Code and Rules, the Local Rules of this Court, and such other and further Orders as the Court may direct.

Basis for Relief

17. This Court should approve the Debtors' request to employ Jenner & Block as their conflicts counsel because Jenner & Block does not hold any interest adverse to their estates and is a disinterested person, and because Jenner & Block's retention is in the best interests of the Debtors' estates.

A. Jenner & Block Holds No Interest Materially Adverse to the Debtors' Estates.

18. Jenner & Block has advised the Debtors that, as set forth in more detail in the Lazar Declaration and subject to any exceptions contained therein or in the exhibits thereto, Jenner & Block does not hold or represent in these proceedings any interests adverse to the Debtors, or to their estates in matters upon which Jenner & Block is to be engaged. All information with respect to Jenner & Block's connections with the Debtors, their creditors, or any other parties in interest herein, or their respective attorneys or accountants, or the United States Trustee, with respect to the matters as to which Jenner & Block is to be employed is set forth in the Lazar Declaration.

19. The Debtors have been informed that Jenner & Block will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise and, if any new relevant facts or relationships are discovered, Jenner & Block will supplement its disclosure to this Court. *See* Lazar Declaration at ¶ 22.

B. Jenner & Block is a Disinterested Person.

20. Under section 101(14) of the Bankruptcy Code, a “disinterested person” is one who: (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason. 11 U.S.C. § 101(14).

21. To the best of the Debtors’ knowledge, and except as disclosed in the Lazar Declaration, the Debtors believe Jenner & Block is a “disinterested person” as that phrase is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

C. Jenner & Block’s Retention is in the Best Interests of the Debtors’ Estates.

22. The Debtors have selected Jenner & Block as their attorneys because of the firm’s general experience and knowledge, including its expertise in business reorganizations under chapter 11 of the Bankruptcy Code and in sophisticated and complex litigation and transactional matters. In addition, Jenner & Block possesses extensive expertise, experience and knowledge practicing before this and other bankruptcy courts.

23. The employment of Jenner & Block under a general retainer is appropriate and necessary to enable the Debtors to faithfully execute their duties as debtors and debtors in possession, and to implement the restructuring and reorganization of the Debtors.

Notice

24. Notice of the Motion has been given via facsimile, electronic transmission, hand delivery or overnight mail to (i) the Office of the United States Trustee for the Southern District of New York; (ii) each of the Debtors' twenty (20) largest unsecured creditors; (iii) counsel to J.P. Morgan Europe Limited as Security Agent under the Intercreditor Agreement and as Senior Agent under the Senior Facility Agreement, (iv) Bank of New York as Trustee under the Notes Indenture, (v) Wilmington Trust (London) Limited as Administrative Agent under the PIK Loan Agreement; (vi) counsel to the Coordinating Committee of Senior Lenders; (vii) counsel to the Elliott Lender (as defined in the Plan Support Agreement); (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; and (x) the United States Department of Justice. In addition, the Chambers of the Judge assigned to preside over these cases is being served in hand. In light of the exigencies of the circumstances and the potential harm to the Debtors, their estates, and other parties in interest that will ensue if the relief requested herein is not granted, the Debtors submit that no other notice need be given.

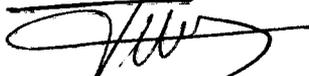
No Prior Request

25. No previous motion for the relief requested in this Application has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached hereto as Exhibit B; and (iii) grant such other and further relief as it deems just and proper.

Dated: July 1, 2010
New York, New York

TRUVO USA LLC and certain of its affiliates



Marc C. F. Goegebuer
Director and Chief Financial Officer, Truvo USA LLC