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Hearing Date: February 21, 2017 at 2:00 p.m. (Prevailing Eastern Time)
Objection Deadline: February 14, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	: Chapter 11
	: :
TOISA LIMITED, <i>et al.</i> ,	: Case No. 17-10184 (SCC)
	: :
Debtors. ¹	: (Jointly Administered)
	: :
-----X	

**DEBTORS' MOTION FOR ORDER UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

Toisa Limited and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby submits this motion (the "Motion") for entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), pursuant to sections 105(a) and 331 of title 11 of the United States Code (the "Bankruptcy Code"), establishing procedures for interim compensation and reimbursement of professional expenses during these cases. In

¹ The Debtors are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.



support of this Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 331, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

BACKGROUND

3. On January 29, 2017 (the "Petition Date"), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Debtors' Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

4. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in these Chapter 11 Cases. As of the date hereof, no creditors' committee has been appointed.

5. The factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to these Chapter 11 Cases is set forth in the *Declaration of Robert Hennebry Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 3] (the "First-Day Declaration").

6. The Debtors are in the process of filing or will soon file: (i) a motion for an order authorizing the employment of Togut, Segal & Segal LLP as their general bankruptcy counsel; and (ii) a motion for an order authorizing the employment of Scura Paley Securities LLC as the Debtors' financial advisor and investment banker. The Debtors may seek to retain other professionals to assist it in this case as the need arises (collectively, the "Debtors' Professionals"). In addition, certain statutory committees of unsecured creditors or otherwise may be appointed in these cases by the United States Trustee ("Statutory Committees"), and may retain counsel, and possibly other professionals, to assist them (collectively with the Debtors' Professionals, the "Chapter 11 Professionals").

7. As detailed below, the proposed procedures set forth herein will permit each Chapter 11 Professional to file a month fee statement with the Court and serve the same on the Debtors, the United States Trustee, and counsel to any Statutory Committees for fees, services rendered and expenses incurred by each Professional during the immediately preceding month (the "Compensation Period").

RELIEF REQUESTED

8. Pursuant to sections 105(a) and 331 of the Bankruptcy Code, the Debtors seek entry of an order establishing a process for the allowance and payment of compensation and reimbursement for the Chapter 11 Professionals whose retentions are approved by the Court pursuant to sections 327 and 1103 of the Bankruptcy Code, and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. The Debtors seek to establish a mechanism by which Chapter 11 Professionals may be reimbursed for expenses incurred in the performance of their duties.

BASIS FOR RELIEF

9. Under section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if this Court permits. Accordingly, the Debtors request the establishment of procedures (a) for compensating and reimbursing the Chapter 11 Professionals on a monthly basis and (b) governing the interim and final fee application process. In addition, pursuant to section 503(b)(3)(F) of the Bankruptcy Code, the Debtors seek to establish a mechanism by which members of Statutory Committees, if any, may be reimbursed for expenses incurred in the performance of their duties.

10. The specific relief requested by the Debtors conforms substantially with Bankruptcy Rule 2016, standing General Orders M-412 and M-447 of the Bankruptcy Court for the Southern District of New York, and Local Rule 2016-1, which establishes procedures for monthly compensation and reimbursement of expenses of professionals.

11. Accordingly, the Debtors propose that the interim payment of compensation and reimbursement of expenses to the Chapter 11 Professionals be permitted as follows:

- (a) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Chapter 11 Professional shall serve a monthly statement (a "Monthly Fee Statement") by electronic mail, hand, or overnight delivery, on (1) the Debtors, c/o Brokerage and Management Corporation, NY Agency of Marine Management Services, M.C., 40 Wall Street, New York, NY 10005; (2) proposed counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn.: Frank A. Oswald, Esq. and Brian F. Moore, Esq. (frankoswald@teamtogut.com and bmoore@teamtogut.com); (3) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick

Street, Suite 1006, New York, New York 10014, Attn: Paul Schwartzberg, Esq. (paul.schwartzberg@usdoj.gov); and (4) counsel for any Statutory Committees (collectively, the "Notice Parties");

- (b) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Chapter 11 Professional shall file a Monthly Fee Statement with the Court; provided, however, a courtesy copy need not be delivered to the Court because this Motion is not intended to alter the fee application requirements outlined in section 330 and 331 of the Bankruptcy Code. Chapter 11 Professionals shall still be required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules;
- (c) Each Monthly Fee Statement must contain a list of the individuals – and their respective titles (e.g., attorney, accountant, or paralegal) – who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred, and contemporaneously maintained time entries for each individual in increments of tenths (1 / 10) of an hour unless otherwise ordered by the Court;
- (d) If any party in interest has an objection to the compensation or reimbursement sought in a particular Monthly Fee Statement, such party shall, by no later than the thirty- fifth (35th) day following the month for which compensation is sought (the "Objection Deadline"), file with the Court and serve upon the professional whose Monthly Fee Statement is objected to, and the other persons designated to receive statements in paragraph (a), a written "Notice Of Objection To Fee Statement," setting forth the nature of the objection and the amount of fees or expenses at issue;
- (e) At the expiration of the Objection Deadline, the Debtors shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Fee Statement to which no objection has been served in accordance with paragraph (d) without further order of the Court;
- (f) If a Notice of Objection To Fee Statement is filed, the Debtors shall withhold payment of only that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements

in the percentages set forth in paragraph (e) unless the professional whose statement is objected to seeks an order from the Court, upon notice and a hearing, directing payment to be made;

- (g) If the parties to an objection are able to resolve their dispute following the filing of A Notice of Objection to Fee Statement and if the party whose Monthly Fee Statement was objected to files (a) a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the Monthly Fee Statement which is no longer subject to an objection;
- (h) All objections that are not resolved by the parties or Court order, shall be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court (see paragraph (j), below);
- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- (j) Approximately every one hundred twenty (120) days, but no more than every one hundred fifty (150) days, each of the professionals shall serve and file with the Court an application for interim (an "Interim Fee Application") or final (a "Final Fee Application") Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order when due shall (1) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court, and (2) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;
- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not

disqualify a professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court; and

- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any professionals.

12. The Debtors further request that the Court limit service of interim fee applications and the final fee application (collectively, the "Applications") to the Notice Parties. The Debtors further request that all other parties that have filed a notice of appearance with the Clerk of this Court and requested notice of pleadings in the Chapter 11 Cases shall be entitled to receive only notice of hearings on the Applications (the "Hearing Notices"). Serving the Applications and the Hearing Notices in this manner will permit the parties most active in this case to review and object to the Professionals' fees and will save unnecessary duplication and mailing expenses.

13. The Debtors submit that establishing procedures for compensation and reimbursement of expenses will enable parties in interest to monitor closely the costs of administration, maintain a level cash flow, and implement efficient cash management procedures. The Debtors submit that these procedures are in the best interests of the Debtors, their estates, and their creditors and will leave sufficient liquidity in the Chapter 11 Cases to meet all obligations proposed herein. Moreover, courts in this district have routinely granted to business debtors the same or substantially similar relief to that requested in this Motion. *See, e.g., In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. May 12, 2016); *In re The Great Atlantic & Pacific Tea Company, Inc.*, Case No. 15-23007) (Bankr. S.D.N.Y. Sept. 2, 2015); *In re Chassix Holdings, Inc.*, Case No. 15- 10587 (Bankr. S.D.N.Y. April 14, 2015); *In re Dewey & LeBoeuf LLP*, Case No. 12-12321 (MG) (June 15, 2012); *In re General Maritime Corp., et al.*,

Case No. 11-15285 (MG) (Bankr. S.D.N.Y. Dec. 12, 2011); *In re Tronox Incorporated, et al.*, Case No. 09-10156 (ALG) (Bank. S.D.N.Y. Jan. 13, 2009); *In re Dana Corp., et al.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 29, 2006); *In re Musicland Holding Corp., et al.*, Case No. 06-10064 (SMB) (Bankr. S.D.N.Y. Jan. 27, 2006); *In re Refco Inc., et al.*, Case No. 05-60006 (RDD) (Bankr. S.D.N.Y. Nov. 21, 2005); *In re Delphi Corp., et al.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Nov. 4, 2005); *In re Winn-Dixie Stores, Inc., et al.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Mar. 15, 2005); *In re Fortunoff Fine Jewelry and Silverware, LLC, et al.*, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008).

NOTICE

14. Notice of this Motion shall be given to: (a) the United States Trustee for the Southern District of New York; (b) the Debtors' material prepetition secured lenders; (c) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in these Chapter 11 Cases; (d) the Internal Revenue Service; and (e) any such other party entitled to notice pursuant to Local Bankruptcy Rule for the United States Bankruptcy Court for the Southern District of New York 9013-1(b). The Debtors submit that no other or further notice need be provided.

NO PRIOR REQUEST

15. No prior request for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

DATED: New York, New York
February 3, 2017

TOGUT, SEGAL & SEGAL LLP,
Proposed Counsel to the Debtors and Debtors in Possession
TOISA LIMITED, *et al.*,
By:

/s/Brian F. Moore
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One Penn Plaza, Suite 3335
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EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
TOISA LIMITED, *et al.*, : Case No. 17-10184 (SCC)
Debtors. : (Jointly Administered)
-----X

**ORDER UNDER BANKRUPTCY CODE SECTIONS 105(a) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion (the "Motion") of the Debtors for entry of an order (the "Order"), pursuant to sections 105(a) and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), and standing General Orders M-412 and M-447 of the Bankruptcy Court for the Southern District of New York, authorizing and establishing procedures for interim compensation and reimbursement of expenses for Chapter 11 Professionals; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court

¹ The Debtors are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

² Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Motion.

is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Application is **GRANTED** to the extent provided herein.
2. Except as may otherwise be provided in orders of this Court

authorizing the retention of specific professionals, all professionals in this case may seek interim compensation in accordance with the following procedures:

- (a) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Chapter 11 Professional shall serve a monthly statement (a "Monthly Fee Statement") by electronic mail, hand, or overnight delivery, on (1) the Debtors, c/o Brokerage and Management Corporation, NY Agency of Marine Management Services, M.C., 40 Wall Street, New York, NY 10005; (2) proposed counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn.: Frank A. Oswald, Esq. and Brian F. Moore, Esq. (frankoswald@teamtogut.com and bmoore@teamtogut.com); (3) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Paul Schwartzberg, Esq. (paul.schwartzberg@usdoj.gov); and (4) counsel to any Statutory Committees (collectively, the "Notice Parties");
- (b) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Chapter 11 Professional shall file a Monthly Fee Statement with the Court; provided, however, a courtesy copy need not be delivered to the Court because this Motion is not intended to alter the fee application requirements outlined in section 330 and 331 of the Bankruptcy Code. Chapter 11 Professionals shall still be required to serve and file interim and final applications for approval of fees

and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules;

- (c) Each Monthly Fee Statement must contain a list of the individuals – and their respective titles (e.g., attorney, accountant, or paralegal) – who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred, and contemporaneously maintained time entries for each individual in increments of tenths (1 / 10) of an hour unless otherwise ordered by the Court;
- (d) If any party in interest has an objection to the compensation or reimbursement sought in a particular Monthly Fee Statement, such party shall, by no later than the thirty- fifth (35th) day following the month for which compensation is sought (the “Objection Deadline”), file with the Court and serve upon the professional whose Monthly Fee Statement is objected to, and the other persons designated to receive statements in paragraph (a), a written “Notice Of Objection To Fee Statement,” setting forth the nature of the objection and the amount of fees or expenses at issue;
- (e) At the expiration of the Objection Deadline, the Debtors shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Fee Statement to which no objection has been served in accordance with paragraph (d) without further order of the Court;
- (f) If a Notice of Objection To Fee Statement is filed, the Debtors shall withhold payment of only that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e) unless the professional whose statement is objected to seeks an order from the Court, upon notice and a hearing, directing payment to be made;
- (g) If the parties to an objection are able to resolve their dispute following the filing of A Notice of Objection to Fee Statement and if the party whose Monthly Fee Statement was objected to files (a) a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the Monthly Fee Statement which is no longer subject to an objection;
- (h) All objections that are not resolved by the parties or Court order, shall be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court (see paragraph (j), below);

- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- (j) Approximately every one hundred twenty (120) days, but no more than every one hundred fifty (150) days, each of the professionals shall serve and file with the Court an application for interim (an "Interim Fee Application") or final (a "Final Fee Application") Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order when due shall (1) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court, and (2) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;
- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court; and
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any professionals.

3. Service of the Applications may be limited to the Notice Parties.

4. All other parties who have filed a notice of appearance with the

Clerk of this Court and requested notice of pleadings in these Chapter 11 Cases shall be entitled to receive only Hearing Notices.

5. Each professional may seek, in its first request for compensation and reimbursement of expenses pursuant to this Order, compensation for work

performed and reimbursement for expenses incurred during the period beginning on the date of the professional's retention and ending on March 31, 2017.

6. The amount of fees and disbursements sought shall be set out in U.S. dollars (if the fees and disbursements are to be paid in foreign currency, the amount shall be set out in U.S. dollars and the conversion amount in the foreign currency, calculated at the time of the submission of the application).

7. The Debtors shall include all payments to professionals on their monthly operating reports, detailed so as to state the amount paid to each professional.

8. Any party-in-interest may object to requests for monthly payment made under this order on the grounds, among other things, that the Debtors have not timely filed monthly operating reports or remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or that manifest exigency exists, by seeing further order of this Court. Otherwise this order shall continue and shall remain in effect during the pendency of this case.

9. Any and all further notice of the relief requested in the Application shall be, and hereby is, dispensed with and waived; provided however, that the Debtors must serve a copy of this order on the Notice Parties.

10. All time periods referenced in this order shall be calculated in accordance with Bankruptcy Rule 9006(a).

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: New York, New York
February __, 2017

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE