

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (___)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING DEBTORS TO PAY (I) PREPETITION EMPLOYEE
OBLIGATIONS, (II) PREPETITION WITHHOLDING OBLIGATIONS, AND
(III) POSTPETITION EMPLOYEE OBLIGATIONS IN THE ORDINARY COURSE,
AND (B) AUTHORIZING BANKS TO HONOR RELATED TRANSFERS**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby move (the “Motion”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an interim order substantially in the form annexed hereto as **Exhibit “A”** (the “Interim Order”) and a final order substantially in the form annexed hereto as **Exhibit “B”** (the “Proposed Orders”): (a) authorizing the Debtors, in their discretion, to continue to honor and pay (i) prepetition employee obligations as described more fully herein, (ii) prepetition federal, state and applicable foreign withholding obligations, and (iii) postpetition employee obligations in the ordinary course of the Debtors’ business, and (b) (i) authorizing all banks to honor the Debtors’ prepetition transfers for payment of any of the foregoing and (ii) prohibiting banks from placing

1. A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/AgileThought>. The Debtors’ address is 222 W. Las Colinas Boulevard, Suite 1650E, Irving, TX 75039.



holds on, or attempting to reverse, any transfer of funds on account of the foregoing. In support of this Motion, the Debtors submit the *Declaration of James S. Feltman, Chief Restructuring Officer of the Debtors., in Support of First Day Relief* (the “First Day Declaration”), filed contemporaneously herewith, and respectfully submit as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference of the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and rule bases for the relief requested herein are sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of the Bankruptcy Code and Rules 6003 and 6004(h) of the Bankruptcy Rules.

BACKGROUND

4. On the date hereof, (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). No trustee, examiner or creditors’ committee has been appointed in

these cases. The Debtors are operating their respective businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration.

RELIEF REQUESTED

6. Prior to the Petition Date, the Debtors incurred payroll and various other obligations and offered standard employee benefits funded by either the Debtors, their employees or both. The payroll and various other obligations as well as the standard employee benefits were designed to be an integral part of the compensation the Debtors' employees receive.

7. The Debtors, by this Motion, seek authority, in their discretion (and subject to the statutory caps contained in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (other than with respect to amounts owed to Employees upon termination under applicable law as discussed further below) and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder), to pay and honor, as the case may be, (i) all prepetition claims of Employees, including, but not limited to, claims for Wages, Overtime, and Temporary Employee Compensation, as applicable, and certain costs and disbursements related to the foregoing, (ii) any claims or payments pursuant to the Employee Benefit Plans, (iii) all Benefits Withholding Obligations (romanettes (i) through (iii) collectively, the "Employee Obligations"), and (iv) the Reimbursable Expenses. Notwithstanding the foregoing, nothing in this Motion seeks to authorize (1) the payment of any amounts in satisfaction of bonus or severance obligations subject to section 503(c) of the Bankruptcy Code; or (2) the Debtors to cash out unpaid vacation or leave time upon termination of an Employee, unless applicable state or foreign law requires such payment. Furthermore, payments of prepetition amounts owed on account of Employee Obligations and to Temporary Employees will be subject

to the statutory caps contained in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, other than with respect to amounts owed to Employees upon termination under applicable law as discussed further below.

8. In addition, the Debtors seek an order authorizing all banks and other financial institutions to receive, process, honor and pay any and all checks or wire transfers drawn on the Debtors' accounts with respect to payments described in this Motion. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may be dishonored and to reimburse any expenses that Employees may incur as a result of any bank's failure to honor a prepetition check.

FACTS RELEVANT TO THIS MOTION²

I. The Debtors' Workforce

9. The Debtors use a combination of onshore and nearshore delivery to provide digital transformation services to their clients. The Debtors have delivery centers across the United States, Mexico, Central America and South America. In addition, the Debtors send employees to client locations across the world.

10. The Debtors' business model primarily focuses on engaging with clients through the partnership of guilds and market units. The guilds are solution partners who harness digital expertise to build offerings and service. The market units help identify new client opportunities and signal the staffing demand, based on skill, location, and experience, to enable the guilds to supply the team with the right expertise for the particular project. Occasionally, the guilds will need to engage with third party vendors to help locate and supply additional talent for

2. This Motion provides a general overview of the Debtors' employment practices. These practices may differ by country and pursuant to applicable law from those described herein.

projects, and these individuals are labeled “Exports” by the Debtors. The Debtors currently employ over 300 Exports.

11. As of the Petition Date, the Debtors’ collective workforce is comprised of approximately 145 employees in the United States, 1,704 employees in Mexico, 41 employees in Argentina, 210 employees in Brazil, and 31 employees in Costa Rica. The Debtors also use the services of independent contractors to fulfill critical employment needs and to address fluctuations in demand or provide special skills required by the Debtors.

12. The Employees perform a variety of critical functions for the Debtors’ businesses, including, without limitation, accounting, administration, digital engineering, finance, human resources, information technology, operations, marketing, purchasing, research, and sales. Their skills and specialized knowledge and understanding of the Debtors’ infrastructure and operations, as well as their relationships with customers, vendors and other third parties, are essential to the Debtors’ continuing business operations.

II. Wages, Incentive Payments and Payroll Obligations

A. Wages

13. In the ordinary course of the Debtors’ businesses, the Debtors pay wages, salaries and compensation (“Wages and/or Overtime”) to their Employees on payroll schedules that differ by location. Employees in the US and Mexico are paid on a semi-monthly basis by direct deposit, check or wire transfer. Employees in the US are paid on or about the 15th and the last business day of the month. Employees in Mexico are either paid on or about the 10th and 25th, or on or about the 15th and the last business day of the month. Employees in Argentina are paid on the fourth working day of the following month. Employees in Brazil receive a salary advance on or about the 20th of the same month, corresponding to 40% of salary, and then receive the remaining 60% of salary on the 5th business day of the following month. Employees in Costa Rica

receive a salary advance on or about the 15th of the same month, corresponding to 40% of salary, and then receive the remaining 60% of salary on the last business day of the same month. Employees in the US, Mexico, and Costa Rica receive overtime after working 48 hours per week. Employees that work on Sunday are also paid 1.25% salary. The Debtors also provide a yearly bonus in amounts ranging from fifteen days of pay to an entire month.

14. The Debtors' gross payroll is approximately from \$9,000,000 to \$10,000,000 per month, excluding the Debtors' portion of the Payroll Taxes (as defined below) and other contributions. The Debtors generally fund payroll one to two days prior to a payroll date. As of the Petition Date, the Debtors estimate that they owe Employees an aggregate of approximately \$3,400,000 in accrued Wages and Overtime earned prior to the Petition Date (subject to the variability described above), and one Employee is owed in excess of the statutory cap under section 507(a)(4) of the Bankruptcy Code on account of such Wages and Overtime.

15. By this Motion, the Debtors request authority to pay Wages and Overtime accrued prepetition to their Employees, up to the statutory priority amount of \$15,150 per Employee (inclusive of other Employee Obligations that are subject to section 507(a)(4) of the Bankruptcy Code), other than with respect to amounts owed to Employees upon termination under applicable law as discussed further below which the Debtors seek authority to pay irrespective of these priority caps, and to continue to otherwise pay Employees in the ordinary course of business (and subject to and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder).

B. Bonus Plans

16. Certain of the Debtors also maintain various bonus plans. Employees in Mexico, Argentina, and Brazil receive a Christmas bonus. In Mexico, it is mandated by law that the Debtors pay at least 15 days' salary as a Christmas bonus, which is paid towards the end of the

calendar year.³ In Brazil and Argentina, Employees receive 30 days' pay total for a Christmas bonus, with an amount equal to 15 days' pay received in the middle of the year and once again at the end of the year.

17. In Mexico, Employees are also legally entitled to an annual vacation bonus, which is 25% of their daily salary multiplied against the number of their total number of PTO days.

18. Given the anticipated timeline of this case, the Debtors expect to consummate a sale transaction prior to the time that Christmas and annual bonuses would be owed but believe that such amounts are ordinary course expenses.

19. In the ordinary course of business, the Debtors also provide bonuses based on Employees' attendance and punctuality (the "Attendance & Punctuality Bonus"). The Debtors estimate that they owe approximately \$220,000 on account of the Attendance & Punctuality Bonus.

C. Exports

20. The Debtors engage with third parties to provide additional staff to help implement client projects (the "Exports"). The Debtors currently utilize over 300 Exports, which are all based in Mexico. The Debtors remit compensation for the Exports to these third party vendors, as well as payroll contributions, through the Debtors' accounts payable system ("Export Compensation"). The Debtors' average monthly spending on Export Compensation is approximately \$1,650,000.

3. Mexican law requires the Debtors to pay employees an amount equal to 15 days for Christmas bonuses if the employees remain employed by the Debtors on Christmas Day.

D. Independent Contractors

21. In addition to Employees, the Debtors contract with 45 independent contractors (the “Independent Service Providers”) who provide services that are essential to the Debtor’s ongoing business operations (the “Independent Services”). The services provided by the Independent Services Providers include product design, data monitoring, quality control, and cloud operations. The Independent Service Providers are critical to the Debtors’ operations, and they rely on the Debtors for their individual income.

22. The Independent Service Providers are paid through the Debtors’ respective accounts payable and not through the Debtors’ payroll. Nonetheless, if the Debtors are unable to pay the Independent Service Providers, the Debtors will lose the services, continuity and institutional knowledge of the Independent Service Providers, and the Debtors’ business operations will be severely and irreparably compromised.

23. By this Motion, the Debtors request authority to pay Independent Service Providers for obligations accrued prepetition, up to the statutory priority amount of \$15,150 per Independent Service Provider, and to continue to otherwise pay Independent Service Providers in the ordinary course of business (and subject to and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder).

E. Deductions and Withholdings

24. During each applicable pay period, the Debtors or their payroll processors, routinely deduct certain amounts from the Employee’s paychecks, including, without limitation, certain pre-tax and after-tax deductions payable to certain of the benefit plans discussed herein, such as an Employee’s share of health care benefits, insurance premiums, 401(k) and retirement contributions, savings and loan programs (the “Employee Contribution Amount”), flexible

spending account contributions, commuter benefits contributions, and other miscellaneous deductions (collectively, the “Employee Deductions”).

25. Furthermore, the Debtors are required by law to withhold from Wages amounts related to federal, state, local and foreign income taxes, social security and Medicare taxes, and other taxes imposed by applicable law for remittance to appropriate federal, state, local or non-U.S. taxing authority (the “Payroll Taxes”). The Debtors typically pay Payroll Taxes in 1-2 month arrears. As of the Petition Date, the Debtors estimate that they owe approximately \$2,500,000 in Payroll Taxes.

26. The Debtors hereby seek authority, in their discretion (and subject to and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder), to continue remitting the Employee Deductions and Payroll Taxes to the appropriate recipients as needed, including, without limitation, with respect to the most recent payroll period up to the Petition Date, and any prior period.

27. In addition, the Debtors’ Employees in Brazil are unionized. In exchange for benefits under the relevant collective bargaining agreement, Brazilian Employees are required to pay membership fees to a union. The cost of such membership dues are deducted from each Employee’s wages and are paid directly to the applicable union once per month. The Debtors seek authorization to remit any such prepetition union membership dues postpetition, and to the extent required, to continue making such prepetition union membership dues postpetition, and to the extent required, to continue making such remittances postpetition in the ordinary course of business.

F. Garnishments

28. In the ordinary course of processing payroll checks for their Employees, the Debtors may be required by law, in certain circumstances, to withhold from certain

Employees' wages amounts for various garnishments, such as tax levies, child support, and other court-ordered garnishments (collectively, the "Garnishments"). The Debtors then remit the Garnishments to the appropriate state agencies or relevant authorities. As of the petition date, the Debtors are not withholding any amounts on account of Garnishments.

G. Severance

29. In the ordinary course of business, the Debtors have guidelines pursuant to which they may offer severance payments to certain Employees whose employment has been involuntarily terminated (the "Severance Guidelines"). Severance Guidelines differ depending on the Debtors' location.

30. Under Mexican law, the Debtors, as the case may be, are mandatorily required to pay an amount equal to three months' salary as legal severance, as well as an additional amount equal to 20 days salary for each completed year of service to the employer. Pursuant to Mexican insolvency law (public policy law) and the Mexican Federal constitution, certain labor claims have priority over all other categories of claims. Once an Employee has worked for more than ten years, fulfilled the Mexican Social Security's requirements, and is over the age of 65, the Employee may request his or her retirement pension under Mexican law, which is tax-beneficial for the Employee. Brazil, Argentina, and Costa Rica have similar laws that require the payment of severance in amounts ranging up to four and five months' salary.

31. In Mexico, Brazil, Argentina, and Costa Rica, if an Employee leaves voluntarily, then the Debtors will also have to pay out Christmas bonuses prorated against the length of their employment for that year. In the U.S., Employees are not entitled to severance from the Debtors unless provided for in the Employee's contract.

32. There are approximately 90 former employees who are presently receiving severance payments from the Debtors. These former employees are presently owed severance

payments totaling an aggregate amount of approximately \$2,300,000. More than half of this amount, or approximately \$1,300,000, of the severance benefits is owed pursuant to Mexican labor law or the labor law of the local jurisdiction in which the Debtors operate in. Although given how the various statutory schemes are structured, the exact amount of severance of an individual Employee receives will vary significantly depending on the employee's tenure with the Company. The exact amount of severance an Employee receives will depend on the Employee's tenure with the Debtors and local severance laws. The Debtors anticipate that many, if not most, foreign employees would be entitled to severance pay in these foreign countries pursuant to applicable law in amounts that exceed the \$15,150 priority claim cap pursuant to section 507(a)(4) of the Bankruptcy Code. The Debtors are seeking authority to pay all such amounts due in order to comply with these legal requirements. Similar relief has been approved in other recent cases involving Mexican severance law issues. *See, e.g., In re Grupo Aeromexico, S.A.B. de C.V.*, No. 20-11563 (Docket Nos. 216, 645, 699) (Bankr. S.D.N.Y. July 30, 2020, Nov. 17, 2020, Dec. 7, 2020) (approving severance payments under Mexican law totaling over \$13.5 million, collectively).

33. The Debtors believe it is critical to maintaining the Employees' morale and loyalty that they be authorized to continue providing severance benefits to Employees who do not qualify as "insiders," as that term is defined in section 101(31) of the Bankruptcy Code, in the ordinary course of business after the Petition Date (the "Non-Insider Employees"). The Debtors further seek authority to pay postpetition the administrative portion of any Non-Insider Employee's severance claims under the Severance Program as such claims come due in the ordinary course, as well as for prepetition amounts. The Debtors cannot afford for such Non-Insider Employees to leave their jobs while the Debtors continue to need their services during this

critical process. Notably, it may be difficult for the Debtors to attract new employees of comparable quality and character. Moreover, even if otherwise available, new employees would lack the unique knowledge and historical perspective with respect to the Debtors possessed by the Non-Insider Employees. By granting the relief requested herein, the Debtors will be able to assure the Non-Insider Employees that they will continue to be entitled to receive the same benefits that they were entitled to receive prior to the Petition Date. The Debtors are not seeking authority to make any prepetition or postpetition payments to any insiders on account of the Severance Program.

III. Costs Incidental to Payroll

34. The Debtors incur costs incidental to Employee Wages, such as payments to parties for charges associated with the administration of the Wages and for other costs incident to the provision thereof (collectively, the “Processing Costs”). The Debtors process payroll for the US Employees through Paylocity Holding Corp. (“Paylocity”). The Debtors also engage Paylocity to manage the Payroll Tax filing process. Specifically, Paylocity calculates the amount of Payroll Tax required to be remitted each pay period, draws that amount from one of the Debtors’ bank accounts, and forwards the Payroll Taxes to the applicable Taxing Authorities. Fees paid to Paylocity total approximately \$12,000 monthly.

35. The Debtors also use software to keep time and attendance, as part of a larger suite of services under the OpenAir system. The Debtors have a two-year contract with OpenAir system, under which they still need to make three more payments of approximately \$240,000 each.

36. The Debtors hereby seek authority to pay any outstanding amounts owed to Paylocity. Payment of the unpaid Processing Costs is justified because the failure to pay any such amounts might disrupt the services of third-party providers that are essential to the timely payment

of Employees. By paying these Processing Costs, the Debtors will avoid disruptions of such services, ensuring that the Employees obtain all of their compensation without interruption. Accordingly, the Debtors hereby seek authority, but not direction, to continue remitting the Processing Costs to the appropriate third parties.

IV. Paid Time Off and Other Paid Leave

37. As part of their overall compensation, the Debtors offer Employees certain fixed amounts of paid leave. At all locations, the Debtors' paid time off policy provides paid leave for vacation, sick and personal days ("PTO"), accrued based upon the Employee's length of service to the Debtors or by law. Employees at all locations are allowed to carry over up to a week of vacation from one calendar year to the next calendar year. PTO accrued is calculated differently depending on the country in which the applicable Debtor's employee is located.

38. The Debtors also allow their Employees to take certain other leaves of absence for personal reasons, many of which are required by law ("Leaves of Absence," and along with PTO, collectively, "Paid Leave"). Leaves of Absence include family medical leaves, maternity and paternity leaves, military leaves, and jury duty, and they do not count toward an Employee's PTO. Any long term disability payments are paid to the employee directly by the Debtors third-party vendors, including Guardian, INS, Metlife, and Zurich, or by Caja Costarricense del Seguro Social (CCSS) if the Employee is located in Costa Rica.

39. By this Motion, the Debtors request authority to continue to honor their Paid Leave policies in the ordinary course of business and to honor all prepetition obligations up to the statutory cap related thereto, other than amounts owed to employees at termination pursuant to applicable law which the Debtors request authority to pay in the amount required to be paid under applicable law irrespective of the statutory cap, in a manner consistent with their prepetition practices.

V. Employee Benefit Plans

40. The Debtors have established certain benefit plans and policies for eligible Employees that provide, among other benefits, medical, dental and vision plans, life insurance, disability insurance, retirement plans and other benefits which are described in more detail below (collectively, including any administrative costs with respect thereto, the “Employee Benefit Plans”).⁴ These Employee Benefit Plans are provided through employer and third-party sponsored contributory and non-contributory benefit plans and voluntary coverage. The Debtors use Optavise to distribute benefits in the non-US locations, which cost the Debtors approximately \$2,000 per month.

41. A brief description of the Employee Benefit Plans is provided below:

A. Medical Plans

42. The Debtors sponsor various plans and policies pursuant to which Employees are provided with medical, dental and vision benefits depending on the jurisdiction where the Debtors operate several health and welfare benefit plans, including medical, dental, and vision coverage for certain of their Employees.

1. US Medical Plan

43. The Debtors offer eligible Employees in the United States medical benefits through a level-funded plan (the “US Medical Plan”) administered by The Cigna Group (“Cigna”). Employees are eligible to participate in the Medical Plan if they are full-time Employees working

4. In addition to the insurance programs discussed herein, the Debtors also maintain a workers’ compensation insurance policy, which is addressed in a separate motion titled *Debtors’ Motion For An Order (I) Authorizing the Debtors to (A) Continue Their Workers’ Compensation Programs and Their Liability, Property and Other Insurance Programs and (B) Pay Certain Obligations in Respect Thereof, and (II) Authorizing and Directing the Debtors’ Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations*, filed contemporaneously herewith.

at least thirty (30) hours per week. Currently, the Debtors provide benefits to approximately 133 Employees under the US Medical Plan.

44. The Debtors pay monthly premiums, and Cigna covers the costs for claims payments and associated administrative costs, but Employees are responsible for making their employee share of policy premium payments, satisfying the annual deductible and for paying copayments to a network provider. The Debtors also carry stop-loss coverage as part of the US Medical Plan. The Debtors pay approximately \$73,000 a month in premiums for the US Medical Plan.

45. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the US Medical Plan.

2. Mexico Medical Plans

46. The Debtors offer eligible Employees in Medico medical benefits through multiple plans (the “Mexico Medical Plans”) administered by Zurich and AXA. Under the Mexico Medical Plans, the amount of coverage under the depends on the particular scheme of the employee. The schemes are divided into four different categories, and assignment to a particular scheme depends on the role of the Employee. Currently, the Debtors provide benefits to approximately 1,410 Employees under the Mexico Medical Plans. The Debtors use the digital platform Tokapay to provide Employees approximately \$30 every month for medical expenses assistance.

47. The Debtors pay approximately \$137,000 per month in premiums on account of the Mexico Medical Plan.

3. Brazil Medical Plan

48. The Debtors offer eligible Employees in Brazil medical benefits through a plan (the “Brazil Medical Plan”) administered by Bradesco Seguro (“Bradesco”). Currently, there

are approximately 221 Employees under the Brazil Medical Plan. On average, the Debtors pay approximately \$75,000 per month in premiums on account of the Brazil Medical Plan.

4. Argentina Medical Plan

49. The Debtors offer eligible Employees in Argentina medical benefits through a plan (the “Argentina Medical Plan”) administered by Swiss Medical (“Swiss”). Currently, there are approximately 30 Employees under the Argentina Plan. On average, the Debtors have incurred approximately \$1,100 per month in connection with the Argentina Medical Plan.

5. Costa Rica Medical Plan

50. The Debtors offer eligible Employees in Costa Rica medical benefits through a plan (the “Costa Rica Medical Plan”) administered by INS (“INS”). Currently, the Debtors provide benefits to and approximately 18 Employees under the Costa Rica Medical Plan. On average, the Debtors have incurred approximately \$1,500 per month in connection with the Costa Rica Medical Plan.

B. Dental Plans

51. The Debtors offer level-funded dental benefits to eligible US Employees and their dependents through Cigna (the “Dental Plan”). Employees are eligible to participate in the Dental Plans if they are full-time Employees working at least thirty hours per week. Currently, the Debtors spend about \$11,000 per month with respect to the Dental Plan. The Debtors are required to pay for all costs arising under the Dental Plan, including claims payments and associated administrative costs, but Employees are responsible for making their employee share of policy premium payments, satisfying the annual deductible and for paying copayments to a network provider.

52. The Debtors also offer an optional dental assistance plan to Employees in Brazil through Bradesco (the “Brazil Dental Plan”). There are about 160 individuals under the Brazil Dental Plan, and costs are deducted from Employees’ Wages.

C. Vision Plan

53. The Debtors offer vision benefits to their eligible Employees and their dependents through a level-funded plan (the “Vision Plan”) administered by Sun Life Assurance Company of Canada (“Sunlife”). Employees are eligible to participate in the Vision Plan if they are full-time Employees working at least thirty hours per week. Such payments cost the Debtors approximately \$1,400 per month in the aggregate.

54. By this Motion, the Debtors seek authority (subject to and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder) to (a) pay all such amounts owed under the Health Plans to the extent that they remain unpaid on the Petition Date subject to the statutory caps contained in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (as applicable), (b) continue to provide the Health Plans in the ordinary course of business, (c) continue to honor the Debtors’ obligations under such benefit programs, including any premiums and administrative fees, and (d) pay any obligations in connection with the Health Plans in the ordinary course of business, including any premiums or administrative fees.

D. Other Insurance

55. The Debtors offer eligible Employees the disability insurance, including short-term disability insurance and long-term disability insurance (the “Disability Insurance Plans”). In the US, the short-term disability insurance plan provides eligible Employees 60% of an employee’s salary up to \$2,000 per Week for a maximum of twelve weeks. The long-term disability insurance plan provides Employees who elect coverage with 60% of an employee’s

salary up to \$10,000 per month. In Brazil, Employees are also offered a disability plan. In other foreign jurisdictions, the Debtors are statutorily required to make contributions to Disability Insurance Plans, which is done through payroll. Annually, the Debtors incur an aggregate total cost of approximately \$71,000 in connection with the Disability Insurance Plans.

56. Eligible Employees are also offered a basic and optional life insurance benefits, including Accidental Death & Dismemberment (“AD & D”) benefits (the “Life Insurance and AD & D Plans”). Coverage may depend on the specific location of the Debtors. In the US, the Life Insurance and AD & D Plans provide eligible employees an amount equal to the annual base earnings up to a maximum of \$300,000. In Mexico, the Life Insurance and AD & D Plans provide eligible Employees an amount that is equal to two years of salary, plus \$2,700 for funeral expenses, up to a maximum of four years of annual salary. In other foreign jurisdictions, life insurance is mandated by law and is provided by the Debtors. Currently, there are approximately 1,820 the Life Insurance and AD & D Plans costing the debtors approximately \$480,000 per year. As of the Petition Date, the Debtors estimate there are approximately \$43,000 in unpaid and outstanding premiums on account of the Disability Insurance Plans and Life Insurance and AD & D Plans.

E. Other Supplemental Insurance Programs

57. The Debtors’ Employees may also choose to enroll in certain other insurance policies, including auto, pet insurance, and legal and identity theft protection (collectively, the “Other Supplemental Insurance Programs”). As of the Petition Date, the Debtors estimate there are approximately \$6,800 in unpaid and outstanding premiums on account of the Other Supplemental Insurance Programs.

58. By this Motion, the Debtors seek authority to pay, in their discretion (and subject to and in accordance with any orders authorizing postpetition financing and the use of cash

collateral and the applicable budget thereunder), any and all prepetition amounts owed on account of the Other Supplemental Insurance Plans, and to continue their prepetition practices with respect to such benefits.

F. Flexible Spending Accounts/Health Savings Accounts

59. The Debtors offer Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts and health savings accounts (“Savings Accounts”) to pay for eligible out-of-pocket health care and dependent care expenses. Currently, approximately 150 Employees maintain Savings Accounts. The funds deducted from the Employees’ paychecks for contribution to the Savings Accounts are remitted to Wex, which administers claims and remits reimbursements to Employees. The Debtors pay Wex approximately \$200 per month to administer the Savings Accounts. The Debtors estimate that, as of the Petition Date, they are not currently holding anything in Savings Account deductions for remittance to Empower and do not owe any amounts on account of incurred, but unpaid, prepetition expenses in connection with the Savings Accounts.

G. COBRA

60. The Debtors pay in the ordinary course of business certain costs associated with the provision of COBRA extended group health benefits insurance coverage to certain former employees and their dependents (the “COBRA Coverage”). The Debtors’ COBRA Coverage is administered by Optavise for a fee that is included as part of the Debtors’ Paylocity compensation services bundle of (the “COBRA Program”). Under the COBRA Program, an Employee may elect to receive COBRA Coverage for the continuance of the Medical Plans, Dental Plan, and Vision Plan following their employment with the Debtors. As of the Petition Date, only 7 former employees currently receive COBRA. As of the Petition Date, the Debtors owe \$597 in unpaid and outstanding administrative fees on account of the COBRA Program.

H. 401(k) Plan

61. The Debtors maintain retirement savings plans for the benefit of eligible Employees in accordance with the requirements of section 401(k) of the Internal Revenue Code (the “401(k) Plan”). Approximately 125 Employees currently contribute to the 401(k) Plan. The 401(k) Plan is administered by Empower. The Debtors, on average, pay Empower approximately \$13,700 per month to administer the 40(k) Plan. Employees may contribute to the 401(k) Plan each year through salary deferrals up to the IRS limit. With respect to the 401(k) Plan, the Debtors also provide matching contributions to each Employee participant’s account under the 401(k) Plan up to 4.5% of an Employee’s compensation (the “Matching Contributions”).

62. The Debtors deduct contributions from Employees’ paychecks and remit contribution amounts to Empower. The approximate monthly amount withheld from such Employees’ paychecks for the 401(k) plan contributions is \$151,600. On average, the Debtors pay approximately \$64,711 per month in Matching Contributions. The Debtors estimate that they owe approximately \$13,000 in matching contributions under the 401(k) Plan has accrued and is unpaid by the Debtors as of the Petition Date.

63. By this Motion, the Debtors seek authority, in their discretion, to continue to honor their obligations with respect to the 401(k) Plan, including the Matching Contributions, in the ordinary course of their business.

I. Employee Contribution Accounts

64. Employee Contribution Account. The Debtors’ full-time employees in Mexico are afforded the option to participate in an annual “Savings Bank” program at the beginning of each year. As part of this program, participating employees voluntarily defer part of their compensation through monthly deductions, which are then deposited in the Employee Contribution Account. Once deposited, funds may either be loaned out to participating employees

or put into low-risk investments. At the end of the year, participating employees receive their deferred compensation in addition to their pro rata share of any returns from the loans and investments. At the beginning of the year, AgileThought Digital Solutions, S.A.P.I. de C.V. contributes \$300,000 Mexican pesos to the program, which amount is returned to the Company at the end of the year. Interest on AgileThought, S.A.P.I. de C.V.'s contribution is shared pro rata among the participating employees. The Debtor's pay fees on account of Employee Contribution Account averaging between \$2,500 to \$4,500 a month.

J. Other Employee Programs

65. In addition to the foregoing, the Debtors have in place miscellaneous practices, programs and policies that provide benefits and protections to various groups of Employees, including, but not limited to, food vouchers and remote work stipends. In Brazil, the Debtors provide eligible Employees with a Caju card (the "Caju Program"), pursuant to which the Debtors provide up to a maximum amount of \$808 per month for food allowance, home office, and other miscellaneous expenses. Currently, there are five 215 employees enrolled in the Caju Program, which costs the Debtors approximately \$86,000 per month. The Debtors also offer Employees in Mexico a remote work stipend in the approximate amount of \$24 per month to cover utilities (the "Remote Work Program"). Currently there are approximately 1,750 Employees in the Remote Work Program, which costs the Debtors approximately \$55,000 per month.

66. The Debtors also provide Employees in Mexico the ability to have access to discounted loans through agreements with Walat, Inmobiliaria Kaza para Todos, Multikrd de Mexico, and Monex Casa de Bolsa (the "Employee Loan Program"). Payments on the loans are deducted directly from the participating Employee's payroll. The Debtors do not pay any fees or incur other costs on account of the Employee Loan Program.

67. By this Motion, the Debtors seek authority, but not direction, to continue the Other Employee Programs and make any payments attributable to the Other Employee Programs, including any that accrued prepetition, in the ordinary course of business.

VI. Profit Sharing

68. The Debtors in Mexico are mandated by law to provide a profit sharing program (“PTU”) to eligible Employees. Currently, the Debtors pay approximately \$1,200,000 per year on account of PTU.

VII. Reimbursable Business Expenses

69. Business expenses incurred by Employees in the course of employment and in furtherance of the Debtors’ business are generally paid directly by the Employee and then charged to the Debtors in accordance with the Debtors’ reimbursement policy. The Debtors reimburse Employees for certain ordinary course expenses incurred within the scope of the Employees’ employment, including personal protection equipment, travel and other miscellaneous expenses (collectively, the “Business Expenses”).

70. As of the Petition Date, the Debtors are aware of approximately \$42,132 in accrued and unpaid Business Expenses awaiting payment. However, the Debtors anticipate that some Employees have not yet submitted their recent expense reports for accrued and unpaid Business Expenses.

71. Failing to reimburse employees for Business Expenses could have a negative effect on Employee morale and would cause those employees with outstanding Business Expenses to suffer undue hardship.

72. Accordingly, the Debtors seek authority, in their discretion, to (i) continue their prepetition practices with respect to the Business Expenses in the ordinary course of business, (ii) continue to pay the Business Expenses as they deem appropriate in their business judgment

(subject to and in accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder), and (iii) pay all prepetition amounts outstanding in connection with the Business Expenses.

BASIS FOR RELIEF

I. Sufficient Cause Exists for the Court to Authorize the Debtors to Pay Employee Obligations and Employee Benefits

73. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims of employees against a debtor for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$15,150 per individual. 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees’ claims for contributions to certain employee benefits plans are also afforded priority unsecured status to the extent of \$15,150 per employee covered by such plan, less any amount paid pursuant to Bankruptcy Code section 507(a)(4). 11 U.S.C. § 507(a)(5).

74. Furthermore, section 363(b)(1) of the Bankruptcy Code provides that, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

75. The Debtors believe that many of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any of the Debtors' general unsecured obligations may be satisfied. Moreover, as stated above, many of the Debtors' severance and other obligations are mandatory under applicable law in the jurisdictions in which those Debtors do business. The Debtors must pay such amounts in order to comply with applicable foreign law, irrespective of the statutory priority cap imposed by sections 507(a)(4) of the Bankruptcy Code. Accordingly, the relief requested will affect only the timing of the payment of these priority obligations and should not prejudice the rights of general unsecured creditors or other parties in interest.

76. The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh and New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits while acknowledging that there is judicial power to "authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor"); *see also In re Just For Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that Bankruptcy Code section 105(a) "provides a statutory basis for the payment of prepetition claims" under the doctrine of necessity and noting that the Supreme Court, the United States Circuit Court of Appeals for the Third Circuit, and the District Court of Delaware all accept the authority of the bankruptcy court

“to authorize the payment of prepetition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan). The rationale for the “doctrine of necessity” is consistent with the paramount goal of chapter 11 – “facilitating the continued operation and rehabilitation of the debtor” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

77. The Debtors submit that, as set forth above, payments made in connection with the Employee Obligations and Employee Benefits are justified by the facts and circumstances of the Chapter 11 Cases. Courts in this and other districts have ruled that the standard for approval under section 503(c)(3) of the Bankruptcy Code – that the programs are justified by the facts and circumstances of the case – is essentially the same as the standard for similar transactions under section 363(b)(1) of the Bankruptcy Code: the business judgment standard. *See, e.g., In re Global Home Prods., LLC*, 369 B.R. 778, 783-84 (Bankr. D. Del. 2007) (reviewing incentive plans under the business judgment standard); *In re Dana Corp.*, 358 B.R. 567, 584 (Bankr. S.D.N.Y. 2006) (reviewing bonus plans under the business judgment standard). Thus, payments in connection with Employee Obligations and Employee Benefits are allowed under section 503(c)(3) of the Bankruptcy Code because they represent the exercise of the Debtors’ sound business judgment under section 363 of the Bankruptcy Code and are in the best business interest of the Debtors’ estates and their creditors.

78. In these cases, any delay or failure to pay Employee Obligations and Employee Benefits could irreparably damage the Employees’ morale, dedication, confidence and

cooperation and could adversely affect the Debtors' relationship with the Employees at a time when the Employees' support is critical. The Debtors simply cannot risk the substantial harm to their businesses that would inevitably attend any decline in their Employees' morale. Such relief allows the Debtors to focus on maximizing value for the benefit of their estates and creditors. Under these circumstances, approval of the requested relief is appropriate.

79. Absent an order granting the relief requested herein, the Employees could suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question may be needed to enable certain of the Employees to meet their own personal financial obligations. Imposing such hardship on the Employees could undermine the Debtors' stability, perhaps irreparably, because it could cause otherwise loyal Employees to seek other employment alternatives. In addition, it would be inequitable to require the Employees to bear personally the cost of any Business Expenses they incurred prepetition on behalf of the Debtors with the understanding that they would be reimbursed.

80. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors, as the relevant Taxing Authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations. Moreover, Payroll Taxes withheld from an Employee's wages on behalf of an applicable Taxing Authority are held in trust by the Debtors. Therefore, these Payroll Taxes are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 60-61 (1990) (concluding that withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate).

81. The Debtors do not seek to alter any of the Employee Benefits at this time. This Motion is intended only to permit the Debtors, in their discretion (but subject to and in

accordance with any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder), to (i) make payments consistent with existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code and (ii) continue to honor practices, programs, and policies with respect to their Employees, insofar as such practices, programs, and policies were in effect as of the Petition Date. Payment of all Employee Benefits in accordance with the Debtors' prepetition business practices is in the best interests of the Debtors' estates, their creditors and all parties in interest and will enable the Debtors to continue to operate their businesses in an economic and efficient manner and to conduct a successful reorganization without disruption. The Debtors' Employees are central to their businesses and are vital to these Chapter 11 Cases, and failure to pay the Employee Benefits would have a detrimental impact on the Debtors and their efforts to preserve and maximize value for their stakeholders. The total amount sought to be paid herein is modest compared with the magnitude of the Debtors' overall business and the importance of the Employees to the Debtors' operations during these Chapter 11 Cases.

82. In other chapter 11 cases, courts in this district have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein. *See, e.g., In re Stanadyne, LLC*, No. 23-10207 (TMH) (Bankr. D. Del. Feb. 22, 2023); *In re Kabbage, Inc.*, No. 22-10951 (CTG) (Bankr. D. Del. Oct. 6, 2022); *In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW) (Bankr. D. Del. Mar. 18, 2021).

83. Accordingly, by this Motion, the Debtors seek authority, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to continue to provide Employee Benefits and pay Employee Obligations, at their discretion, as they become due and owing during the pendency

of these cases and to continue, uninterrupted, all practices, programs and policies with respect to the Debtors' Employees, insofar as such practices, programs and policies were in effect as of the Petition Date.

II. Request for Authority for Banks to Honor and Pay Checks Issued and Electronic Funds Transfers Requested to Pay Employee Obligations

84. The Debtors request that the Court authorize all banks to receive, process, honor and pay any and all checks drawn or electronic funds transfers requested to pay Employee Obligations, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors also seek authority to issue new postpetition checks, or effect new electronic funds transfers, on account of such claims to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

III. The Payment of Severance to Non-Insider, Employees is in the ordinary Course of Business and Is a Reasonable Exercise of the Debtors' Business Judgment that Complies with Section 503(c) of the Bankruptcy Code

85. The Debtors submit that paying severance falls well within the ordinary course of the Debtors' business. The Debtors' business necessarily includes periodically hiring and firing many Employees, which then also necessarily includes periodically paying severance to such Employees pursuant to Mexican labor laws in the various other countries the Debtors operate in. Here, the non-insider, Employees are receiving what they are otherwise statutorily required to receive. The severance scheme is entirely in line with what is required by Mexican labor law or other foreign labor laws. Consequently, the Debtors respectfully submit that payment of severance to non-insider, Employees is within the ordinary course of the Debtors' business and permitted under Section 363(c) of the Bankruptcy Code.

86. Alternatively, if severance payments are not in the ordinary course of their business, approval is still warranted under sections 105(a) and 363(b) of the Bankruptcy Code.

87. Courts routinely hold that transactions should be approved under section 363(b) when they are supported by the reasonable judgment of the Debtors' management. Section 363(b) is a broad provision, vesting significant discretion in the bankruptcy court. The Second Circuit has adopted a flexible approach to the application of section 363(b). *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.3d 1063 (2d Cir. 1983) ("To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor [her] orders to meet differing circumstances. This is exactly the result a liberal reading of § 363(b) will achieve").

88. Section 105(a) of the Bankruptcy Code further provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Pursuant to section 105(a), bankruptcy courts have broad equitable powers. *In re Prudential Lines Inc.*, 928 F.2d 565 (2d Cir.), *cert. denied*, 502 U.S. 821, 112 S.Ct. 82, 116 L. Ed. 2d 55 (1991). *See, e.g., Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process").

89. Payment The Debtors respectfully submit that approval of severance to non-insiders is warranted under sections 363(b) and 105(a) of the Bankruptcy Code.

THE MOTION SATISFIES BANKRUPTCY RULE 6003

90. Bankruptcy Rule 6003 provides that to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may grant certain forms of relief during the

twenty-one (21) days immediately following the filing date. As described herein and in the First Day Declaration, the Debtors' Employees are integral to their operations. Failure to satisfy the Debtors' obligations with respect to their Employees in the ordinary course of business during these cases will jeopardize the Employees' loyalty and trust, possibly causing Employees to leave the Debtors' employment; such a departure of vital employees would severely disrupt the Debtors' operations at this critical juncture. Moreover, the Employees rely on their compensation, benefits, and reimbursement of expenses to pay their living expenses, and it could be financially ruinous if the Debtors cannot pay them in the ordinary course of business. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of certain prepetition obligations related to the Employees.

WAIVER OF BANKRUPTCY RULE 6004(h)

91. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, paying the Employee Obligations and maintaining Employee Benefits is necessary to prevent irreparable damage to the Debtors' business operations and, therefore, the value of the Debtors' businesses. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

DEBTORS' RESERVATION OF RIGHTS

92. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any potential claims

under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

93. Notice of the hearing of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the holders of the twenty largest unsecured claims against the Debtors on a consolidated basis; (iii) counsel for Blue Torch Finance LLC, as administrative agent and collateral agent for the prepetition first lien lenders and the postpetition lenders; (iv) counsel for GLAS Americas LLC, as the administrative agent for the 2L Lenders; and (v) all the parties that have requested notice in this proceeding pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

94. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 28, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Jeremy W. Ryan

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Proposed Counsel for the Debtors and Debtors-in-Possessions

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC,¹

Debtors.

Chapter 11

Case No. 23-11294 (___)

(Jointly Administered)

Re: D.I. _____

**INTERIM ORDER (A) AUTHORIZING DEBTORS TO PAY (I) PREPETITION
EMPLOYEE OBLIGATIONS, (II) PREPETITION WITHHOLDING OBLIGATIONS,
AND (III) POSTPETITION EMPLOYEE OBLIGATIONS IN THE ORDINARY
COURSE, AND (B) AUTHORIZING BANKS TO HONOR RELATED TRANSFERS**

Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Bankruptcy Rules 6003 and 6004(h), seeking entry of an order: (a) authorizing, but not directing, the Debtors to continue to honor and pay (i) prepetition employee obligations as described more fully in the Motion, (ii) authorizing the Debtors to pay severance to certain non-insider, Employees; (iii) prepetition federal and state withholding obligations, (iv) postpetition employee obligations in the ordinary course, and (b) authorizing all banks to honor the Debtors’ prepetition transfers for payment of any of the foregoing and prohibiting banks from placing holds on, or attempting to reverse, any transfers on account of the foregoing; and upon the *Declaration of James S. Feltman, Chief Restructuring Officer of the Debtors, in Support of First*

1. A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/AgileThought>. The Debtors’ address is 222 W. Las Colinas Boulevard, Suite 1650E, Irving, TX 75039.

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

Day Relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, the Court hereby ORDERS that:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The Debtors are authorized, in their discretion, to continue to honor and pay all prepetition Employee Obligations in the ordinary course of business as they come due; provided, however, that payments made to any single Employee, Temporary Employee or Independent Contractor on account of prepetition Employee Obligations pursuant to this Order on account of obligations incurred prior to the Petition Date shall not exceed \$15,150, except for amounts that the Debtors are obligated to pay to Employees at termination pursuant to applicable law, which the Debtors are authorized to pay in full in the amounts required by such applicable law; provided further, however, that payments on account of prepetition Employee Obligations and prepetition amounts owing to the Temporary Employees and Independent Contractors shall not exceed \$7,000,000 pending entry of a final order.

3. The Debtors are authorized, in their discretion, to continue to honor and pay all Reimbursable Expenses, including any such prepetition expenses up to an aggregate amount of \$50,000 pending entry of a final order.

4. The Debtors are authorized, in their discretion, to honor and continue their programs, policies and practices, with respect to the Employee Obligations and Temporary Employees and Independent Contractor that were in effect as of the Petition Date, in the ordinary course of business.

5. The Debtors are authorized, in their discretion, to pay any obligations in connection with the Health Plans in the ordinary course of business, including any premiums or administrative fees.

6. All of the Debtors' banks are authorized to receive, process, honor and pay any and all checks or electronic transfers drawn on the Debtors' payroll and general disbursement accounts related to Employee Obligations, Reimbursable Expenses, and Temporary Employees, authorized by this Order, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

7. To the extent that any employment or related agreements may be deemed executory contracts within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time seek authority to assume such contracts, and no relief is granted in respect thereof.

8. The Debtors are authorized, but not directed, to pay severance, as described in the Motion.

9. Nothing in this Order shall be deemed to authorize the payment of any severance payments to insiders of the Debtors or that are otherwise subject to sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code.

10. Notwithstanding anything to the contrary herein, the Debtors are authorized to pay all Payroll Taxes to the applicable taxing authorities.

11. Notwithstanding anything in this Order to the contrary, the relief granted herein shall be subject to the orders authorizing postpetition financing and the use of cash collateral and any applicable budget thereunder.

12. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

13. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

15. A final hearing to consider the relief requested in the Motion shall be held on _____, _____ at _____ (**Prevailing Eastern Time**) and any objections or responses to the Motion shall be in writing, filed with the Court, and served so as to be actually received by: (i) the U.S. Trustee; (ii) the proposed attorneys for the Debtors; (iii) counsel to the Administrative Agent; and (iv) attorneys for any official committee then-appointed in these cases, on or prior to _____, _____ at **4:00 p.m. (Prevailing Eastern Time)**. If no objections are filed to the Motion, the Court may enter the final order without further notice or hearing.

16. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC,¹

Debtors.

Chapter 11

Case No. 23-11294 (___)

(Jointly Administered)

Re: D.I. _____

**FINAL ORDER (A) AUTHORIZING DEBTORS TO PAY (I) PREPETITION
EMPLOYEE OBLIGATIONS, (II) PREPETITION WITHHOLDING OBLIGATIONS,
AND (III) POSTPETITION EMPLOYEE OBLIGATIONS IN THE ORDINARY
COURSE, AND (B) AUTHORIZING BANKS TO HONOR RELATED TRANSFERS**

Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Bankruptcy Rules 6003 and 6004(h), seeking entry of an order: (a) authorizing, but not directing, the Debtors to continue to honor and pay (i) all prepetition employee obligations as described more fully in the Motion, (ii) all prepetition federal and state withholding obligations, (iii) postpetition employee obligations in the ordinary course, and (b) authorizing all banks to honor the Debtors’ prepetition transfers for payment of any of the foregoing and prohibiting banks from placing holds on, or attempting to reverse, any transfers on account of the foregoing; and upon the *Declaration of James S. Feltman, Chief Restructuring*

1. A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/AgileThought>. The Debtors’ address is 222 W. Las Colinas Boulevard, Suite 1650E, Irving, TX 75039.

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

Officer of the Debtors, in Support of First Day Relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, the Court hereby ORDERS that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, in their discretion, to continue to honor and pay all prepetition Employee Obligations in the ordinary course of business as they come due.
3. The Debtors are authorized, but not directed, to pay all prepetition amounts owing to the Temporary Employees and Independent Contractors for their services in the ordinary course of business as they come due.
4. No payment to, or on behalf of, any individual Employee or Temporary Employee or Independent Contractor on account of prepetition Employee Obligations shall exceed the amounts afforded priority status by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, except for amounts that the Debtors are obligated to pay to Employees at termination pursuant to

applicable law, which the Debtors are authorized to pay in full in the amounts required by such applicable law.

5. The Debtors are authorized, in their discretion, to continue to honor and pay all Reimbursable Expenses, including any such prepetition expenses.

6. The Debtors are authorized, in their discretion, to honor and continue their programs, policies and practices, with respect to the Employee Obligations that were in effect as of the Petition Date, in the ordinary course of business.

7. The Debtors are authorized, in their discretion, to pay any obligations in connection with the Health Plans in the ordinary course of business, including any premiums or administrative fees.

8. All of the Debtors' banks are authorized to receive, process, honor and pay any and all checks or electronic transfers drawn on the Debtors' payroll and general disbursement accounts related to Employee Obligations and Reimbursable Expenses, authorized by this Order, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

9. To the extent that any employment or related agreements may be deemed executory contracts within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time seek authority to assume such contracts, and no relief is granted in respect thereof.

10. The Debtors are authorized, but not directed, to pay severance, as described in the Motion.

11. Nothing in this Order shall be deemed to authorize the payment of any severance payments to insiders of the Debtors or that are otherwise subject to sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code.

12. Notwithstanding anything to the contrary herein, the Debtors are authorized to pay all Payroll Taxes to the applicable taxing authorities.

13. Notwithstanding anything in this Order to the contrary, the relief granted herein shall be subject to the orders authorizing postpetition financing and the use of cash collateral and any applicable budget thereunder.

14. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

16. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.