

compensation, and reimbursable employee expenses and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto; and (b) granting related relief. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing within approximately 30 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter 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. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and 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.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

5. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. Concurrently with

the filing of this Motion, the Debtors requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

Background

6. Information about the Debtors' business and the events leading to the commencement of these chapter 11 cases can be found in the First Day Declaration, filed contemporaneously herewith and incorporated herein by reference.

The Debtors' Workforce

7. As of the Petition Date, the Debtors employ approximately 538 employees and contractors, including, approximately 122 full time salaried employees, approximately 157 full time hourly employees, approximately 245 part-time employees, approximately 3 temporary employees (serviced by two staffing agencies), and approximately 11 independent contractors (collectively, the "Employees"). The Employees perform a variety of functions critical to the preservation of value and the administration of the Debtors' estates. In many instances, the Employees include personnel who are intimately familiar with the Debtors' businesses, processes, and systems, and who cannot be easily replaced. Without the continued, uninterrupted services of the Employees, the ability of the Debtors to maximize the value of their estates will be materially impaired.

8. Additionally, many of the Employees rely on their compensation and benefits to pay their daily living expenses. Thus, the Employees will be exposed to significant financial constraints if the Debtors are not permitted to continue paying the Employees' compensation and providing the Employees with health and other benefits. Consequently, the Debtors respectfully

submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Employee Compensation and Benefits

9. To minimize the personal hardship the Employees could suffer if prepetition Employee-related obligations are not paid when due or as expected and to maintain stability in the Debtors' workforce during the administration of the Debtors' chapter 11 cases, the Debtors, by this motion, seek authority, but not direction, to: (a) pay and honor certain prepetition claims relating to, among other things, wages, salaries, and other compensation, payroll services, federal and state withholding taxes and other amounts withheld (including garnishments, Employees' share of insurance premiums, and taxes), reimbursable expenses, health insurance, retirement health and related benefits, workers' compensation benefits, and certain other benefits that the Debtors have historically provided in the ordinary course (collectively, the "Employee Compensation and Benefits"); and (b) pay all costs incident to the Employee Compensation and Benefits.

10. Subject to approval from the Court, the Debtors intend to continue their prepetition Employee Compensation and Benefits in the ordinary course. Out of an abundance of caution, the Debtors further request confirmation of their right to modify, change, and discontinue any of their Employee Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course during these chapter 11 cases in the Debtors' sole discretion and without the need for further Court approval, subject to applicable law.

11. By this Motion, the Debtors seek authority to make the following payments related to prepetition amounts owed on account of the Employee Compensation and Benefits:

Employee Obligation	Interim Amount	Final Amount
Employee Compensation, Gross Wages and Tips	\$240,000	\$240,000
Withholding Obligations	\$97,000	\$97,000
Payroll Processing Fees	\$1,500	\$1,500
Reimbursable Expenses	\$3,000	\$3,000
Employee Benefits Programs	\$580,000	\$580,000
Total	\$921,500	\$921,500

I. Employee Compensation and Withholding Obligations.

A. Unpaid Compensation.

12. In the ordinary course, the Debtors incur obligations to their Employees for, among other things, gross wages, salaries, overtime, bonus programs, and other obligations described herein (collectively, the “Employee Compensation”). The Debtors’ historical average monthly gross Employee Compensation, including gross wages and salaries, tips, and related compensation, has been approximately \$1.7 million. As of the Petition Date, the Debtors estimate that they owe less than \$240,000 on account of Employee Compensation earned by Employees prior to the Petition Date (the “Unpaid Compensation”), the vast majority of which will come due within the first 30 days of these chapter 11 cases. Employees, excluding contractors, are paid through the payroll 7 days in arrears. Contractors are paid through accounts payable 14 days in arrears. As described above, loss of the Unpaid Compensation that the Employees are owed could cause such Employees to experience financial hardship. In light of the substantial benefit the Employees will continue to provide to the Debtors’ estates, the Debtors wish to avoid imposing such a hardship.

13. Accordingly, by this motion the Debtors seek authority, but not direction, to pay their Employees any Unpaid Compensation in the ordinary course and consistent with past practice and to continue the Employee Compensation in the ordinary course. For the avoidance of doubt,

by this motion the Debtors do not seek to pay Unpaid Compensation, if any, to any Employee in excess of the \$13,650 priority wage cap imposed by section 507(a)(4) of the Bankruptcy Code.

B. Withholding Obligations.

14. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of health care benefits and insurance premiums, 401(k) contributions, legal protection, legally ordered deductions, and miscellaneous deductions (collectively, the "Deductions"), and forward such amounts to various third-party recipients. In addition to the Deductions, certain federal and state laws require that the Debtors withhold certain amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "Employee Payroll Taxes") for remittance to the appropriate federal, state, or local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds, which are included in gross Employee Compensation. In addition, the Debtors pay, based upon a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (the "Payroll Taxes"). The Employee Payroll Taxes and Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities at the same time the Employees' payroll checks are disbursed.

15. As of the Petition Date, the Debtors estimate that they will have unpaid Deductions and Payroll Taxes (together, the "Withholding Obligations") outstanding of approximately \$97,000, of which approximately \$97,000 will come due during the interim period. By this

motion, the Debtors seek authority, but not direction, to pay in a manner consistent with historical practice any unpaid Withholding Obligations and to continue to honor the Withholding Obligations in the ordinary course during the administration of these chapter 11 cases.

C. Payroll Processing.

16. The Debtors' pay periods are weekly running Sunday to Saturday. Pay is made in arrears on the following Friday. The Debtors pay their payroll processor, Ceridian HCM, Inc., monthly and fund the accounts with the appropriate amounts on Tuesday in advance for the upcoming pay period. The payroll processor issues checks and initiates direct deposit ACHs that are drawn on the Debtors' payroll account on the date of payment. As of the Petition Date, the Debtors estimate they owe approximately \$1,500 to their payroll processor on account of payroll services for the upcoming month and retroactive administrative fees for prior months (the "Unpaid Payroll Processing Fees"), with approximately \$1,500 coming due within the interim period. By this motion, the Debtors seek authority, but not direction, to pay the Unpaid Payroll Processing Fees in the ordinary course and consistent with past practice and to continue payroll processing in the ordinary course during the administration of these chapter 11 cases.

D. Reimbursable Expenses.

17. Prior to the Petition Date and in the ordinary course, the Debtors reimbursed Employees or paid credit card invoices on behalf of Employees for approved expenses incurred on behalf of the Debtors in the scope of their employment (the "Reimbursable Expenses"). Employees who pay for their own Reimbursable Expenses up front apply for reimbursement of Reimbursable Expenses by submitting the expenses through an expense processor, Concur. Additionally, some Reimbursable Expenses are paid with American Express corporate cards and submitted through Concur. Managers review and approve the Reimbursable Expenses. Once they

have determined that the charges are for legitimate reimbursable business expenses, the Debtors reimburse Employees directly for upfront expenses and remit payment to American Express for corporate card purchases. The Debtors also reimburse Employees for monthly cell phone use, totaling approximately \$1,100 each month. The Debtors' inability to reimburse such expenses could impose hardship on such individuals, where such individuals otherwise incurred obligations for the Debtors' benefit. As of the Petition Date, the Debtors estimate that they owe less than \$3,000 in aggregate Reimbursable Expenses, approximately \$3,000 of which would come due within the interim period.

18. Employees incurred the Reimbursable Expenses as business expenses on the Debtors' behalf and with the understanding that such expenses would be reimbursed. Accordingly, to avoid harming Employees who incurred the Reimbursable Expenses and who may become personally liable for such expenses, the Debtors request authority, but not direction, to pay the Reimbursable Expenses and to continue to pay the Reimbursable Expenses in the ordinary course.

II. Employee Benefits Programs.

19. The Debtors offer their Employees the ability to participate in a number of insurance and benefits programs, including, among other programs, medical, employee assistance, life and disability insurance, vision, dental, legal protection, retirement plans, and other employee benefit plans including, but not limited to, those described below (collectively, the "Employee Benefits Programs").

20. As described above, failure to continue the Employee Benefits Programs could cause Employees to experience severe hardship. In light of the substantial benefit the Employees have provided and will continue to provide to the Debtors' estates, the Debtors wish to avoid

imposing such a hardship. Accordingly, by this motion, the Debtors seek authority, but not direction, to: (a) pay any unpaid amounts due with respect to the Employee Benefits Programs; and (b) continue to provide Employee Benefits Programs in the ordinary course during the administration of these chapter 11 cases. As of the Petition Date, the Debtors estimate that they owe approximately \$580,000 on account of the Employee Benefits Programs, excluding amounts collected from employees for their portion of premiums but not yet remitted to the insurers, \$580,000 of which will come due within the interim period. The most significant Employee Benefits Programs are described in greater detail below.

A. Health Benefit Plans.

21. The Debtors offer their Employees who are regularly scheduled to work 30 or more hours per week the opportunity to participate in a number of health benefit plans (collectively, the “Health Benefit Plans”). These Health Benefit Plans are administered in-house by the Debtors. Specifically, the Debtors provide the following:

- Healthcare Plan: The Debtors health plan is provided by Blue Cross Blue Shield. Premiums for the policy are shared between the employees and the company. Discovery Benefits provides COBRA benefits, of which 100% of administrative costs are employer paid. Finally, Puerto Rico Employee health plans are 100% employer paid for the employee portion, which is offered through Triple-S Salud. Employees are 100% responsible for dependent premiums. In total, the company portion is approximately \$160,000/month.
- Dental. The dental program is provided by Delta Dental. Premiums for the policy are shared approximately 25% by the employees and 75% by the company. The company portion is approximately \$9,500/month.
- Vision. The vision program is provided by EyeMed. Premiums for the policy are shared approximately 55% the employees and 45% by the company. The company portion is approximately \$800/month.

- Life & Disability. The life insurance and disability program is provided by Cigna. In Puerto Rico, the life insurance and disability plans are provided by Triple-S Vida. Premiums for both policies are paid for 100% by the company, totaling approximately \$8,900/month.
- MetLegal Protection. The legal protection program is provided by MetLife. Premiums for the policy are 100% employee paid.
- HSA/FSA. The Debtors offer employees either a Health Savings Account or Flexible Savings Account (but not both) which are administered by London Health. The company pays approximately \$400/month in admin fees for these plans.

B. Workers' Compensation and Other Insurance Programs.

1. Workers' Compensation.

22. The Debtors provide workers' compensation insurance for their Employees at the statutorily required level for each state in which they have Employees (collectively, and as described herein, the "Workers' Compensation Program"). The Hartford Insurance Company currently provides these benefits to the Debtors' Employees pursuant to certain workers' compensation insurance policies (the "Workers' Compensation Policies"). The Debtors pay approximately \$136,000 annually for maintaining the Workers' Compensation Program. The Debtors pay approximately \$98,000 annually for Employees outside of California and pay approximately \$38,000 annually for California Employees.

23. The Debtors must continue the claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.³ The Debtors request to continue their

³ Certain of the Debtors' Workers' Compensation Programs may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this

Workers' Compensation Program in the ordinary course. The authorization to satisfy any unpaid premiums relating to such programs is addressed in the *Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered Into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (II) Granting Related Relief*, which is filed contemporaneously with this Motion.

C. Retirement Plans.

24. The Debtors maintain a retirement savings plan for the benefit of their Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the "401(k) Plan"). The 401(k) Plan is provided by Fidelity and is administered by Fidelity. The 401(k) Plan allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code and provides matching contributions 100% up to the first 4% of employee deferrals. The Debtors fund the matching portion weekly with the normal payroll funding. As of the Petition Date, the Debtors believe they owe matching contributions totaling approximately \$11,900 on account of 401(k) employee contributions that have been collected by the Debtors from their Employees and have not yet been remitted to the appropriate recipients. The 401(k) Plan requires the Debtors to make a recordkeeping and administrative fee quarterly of approximately \$1,300.

Motion, the Debtors request authority to continue the Workers' Compensation Programs postpetition, including making any changes to current policies and practices that become necessary.

D. Paid Time Off.

25. The Debtors provide sick and vacation time to their Employees who are schedule to work 20 hours or more per week as a paid time off benefit (the “Paid Time Off”). The amount of Paid Time Off available to a particular Employee and the rate at which Paid Time Off accrues is generally determined by the Employee’s length of service. When an Employee elects to take Paid Time Off, that Employee is paid his or her regular hourly or salaried rate. Employees are entitled to a cash payment for unused accrued Paid Time Off in the event that such Employee is terminated from the Debtors’ employment. The Debtors’ Paid Time Off cycle begins on February 1 of each year and ends on January 31st of each year. Remaining Paid Time Off balances do not roll over and are reset on February 1st of each year, with the exception of California employee’s, who are paid out any unused accrual Paid Time Off balance at fiscal year-end. Corporate employee's Paid Time Off balances are front loaded on February 1st. Part time retail employees must accrue Paid Time Off based on hours worked. As of the Petition Date, the Debtors estimate that approximately \$410,000 in Paid Time Off has been earned by Employees. By this Motion, the Debtors seek authority, but not direction, to pay any “cash out” amounts due with respect to earned but unused, accrued Paid Time Off for terminated Employees and to continue the Paid Time Off policies in the ordinary course. For the avoidance of doubt, by this motion the Debtors do not seek to pay any Employee in excess of the \$13,650 priority cap imposed by section 507(a)(4) of the Bankruptcy Code.

Basis for Relief

I. Authority to Honor the Employee Compensation and Benefits Obligations Is Warranted Under the Facts of These Chapter 11 Cases.

26. Section 363 of the Bankruptcy Code provides, in relevant part, that “[

27. [t]he [debtor], 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). Under section 363(b), courts require only that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that the debtor show a “sound business purpose” to justify its actions under section 363 of the Bankruptcy Code) (internal citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring a “good business reason” for a sale under section 363 of the Bankruptcy Code); *In re Adelpia Commc’ns Corp.*, No. 02-41729 (REG), 2003 WL 22316543, at *30 (Bankr. S.D.N.Y. Mar. 4, 2003) (requiring a “good business reason” for disposition of assets outside of the ordinary course in bankruptcy); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983) (same). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

28. Further, section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “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). The Court may use its power under section 105(a) to authorize payment of the Employee Compensation and Benefits under the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992).

29. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Motor Coach Indus. Int’l, Inc.*, No. 08-12136, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying stay pending appeal on grounds that there is no serious basis to challenge doctrine of necessity in the Third Circuit); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–26 (Bankr. D. Del. 1999) (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to the continued operation of business).

30. The Debtors believe that enterprise value will be materially impaired by postpetition workforce instability. The relief requested in this motion is, therefore, a necessary element of the Debtors’ efforts to preserve value for their stakeholders. Absent approval of the relief requested in this motion, key employees may face significant financial hardship and other risks and could be forced to seek alternative employment opportunities. Ultimately, the maximization of value of the Debtors’ estates is inextricably tied to their workforce. The Debtors cannot readily replace their human capital without significant efforts - which may not be successful given the overhang of these chapter 11 cases - and the employees are critical to the Debtors’ ability

to continue operations and otherwise administer their chapter 11 cases. Paying the Employee Compensation and Benefits is thus necessary for the Debtors to avoid unnecessary recruitment and related costs, and to avoid certain operating risks related to the administration of these chapter 11 cases. Accordingly, payment of the Employee Compensation and Benefits is warranted under section 363(b) and the doctrine of necessity.

31. Further, certain of the Employee Compensation and Benefits are entitled to priority under section 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Thus, granting the relief sought in this motion is likely to only affect the timing of such payments to Employees, and should not negatively affect recoveries for general unsecured creditors.

32. Courts in this district have recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested here. *See, e.g., In re Highpoint Resources Corp.*, No. 21-10565 (CSS) (Bankr. D. Del. March 16, 2021) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Town Sports Int'l, LLC*, No. 20-12168 (CSS) (Bankr. D. Del. Sept. 16, 2020) (same); *In re Extraction Oil and Gas, Inc.*, No. 20-10548 (Bankr. D. Del. July 13, 2020) (same); *In re APC Automotive Technologies Intermediate Holdings, LLC*, No. 20-11466 (CSS) (Bankr. D. Del. June 4, 2020) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Mar. 30, 2020) (same).⁴

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

II. Payment of Certain Employee Compensation and Benefits Obligations Is Required by Law.

33. As set forth herein, the Debtors also seek authority to pay Deductions and Payroll Taxes to the appropriate entities and taxing authorities. These amounts generally represent Employee earnings that taxing authorities, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including certain Employee contributions to the Employee Compensation and Benefits programs and child support and alimony payments, are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on the Employees' behalf. *See* 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request authority to transmit the Deductions and Payroll Taxes to the proper parties in the ordinary course.

34. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all amounts that may be owed under the Workers' Compensation Program, therefore, is crucial to the administration of these chapter 11 cases.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.

35. Section 362(a) of the Bankruptcy Code operates to stay “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” 11 U.S.C. § 362(a)(1).

36. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers' compensation claims in the appropriate judicial or administrative forum. Staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the employees.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

37. The Debtors have sufficient funds to pay the amounts described in this motion during the chapter 11 cases through the anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Employee Compensation and Benefit obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

38. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, authorizing the Debtors to pay the Employee Compensation and Benefits and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ ability to administer their estates at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to preserve and maximize the value of the Debtors’ estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

39. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Orders is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all

such liens. If the 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 as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

40. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

41. The Debtors will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (c) counsel to the Consenting Sponsor; (d) counsel to the agent under the Debtors' secured credit facilities; (e) all parties asserting liens against the Debtors' assets; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for all states in which the Debtors conduct business or have conducted business; and (j) any party that requests service pursuant to Bankruptcy Rule 2002. As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Local Rule 9013-1(m)(iv). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

42. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Orders granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: June 9, 2021
Wilmington, Delaware

/s/ Domenic E. Pacitti

KLEHR HARRISON HARVEY BRANZBURG LLP

Domenic E. Pacitti (DE Bar No. 3989)
Michael W. Yurkewicz (DE Bar No. 4165)
Sally E. Veghte (DE Bar No. 4762)
919 North Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193
Email: dpacitti@klehr.com;
myurkewicz@klehr.com;
sveghte@klehr.com

- and -

Morton R. Branzburg (*pro hac vice* pending)
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-3007
Facsimile: (215) 568-6603
Email: mbranzburg@klehr.com

- and -

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (*pro hac vice* pending)
Allyson B. Smith (*pro hac vice* pending)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: Joshua.sussberg@kirkland.com
Allyson.smith@kirkland.com

- and -

Alexandra Schwarzman (*pro hac vice* pending)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: alexandra.schwarzman@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

In re:)	
)	Chapter 11
ALEX AND ANI, LLC, <i>et al.</i> , ¹)	
)	Case No. 21-10918 (___)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Related to Docket No. ____

**INTERIM ORDER (I) AUTHORIZING, BUT NOT
DIRECTING, THE DEBTORS TO (A) PAY PREPETITION
EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION,
AND REIMBURSABLE EMPLOYEE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing, but not directing, the Debtors to (i) pay certain prepetition employee wages, salaries, other compensation, reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto; and (b) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939); Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215); Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477); and Alex and Ani South Seas, LLC (8592). The Debtors’ headquarters and mailing address is: 10 Briggs Drive, East Greenwich, RI 02818.

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

District of Delaware, dated February 29, 2012; and the Debtors consenting to entry of a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on [____], 2021, at [____], prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on [____], 2021, and shall be served on: (a) the Debtors, Alex and Ani, LLC, 10 Briggs Drive, East Greenwich, RI 02818; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. (Joshua.sussberg@kirkland.com) and Allyson B. Smith (Allyson.smith@kirkland.com) and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Alexandra Schwarzman (Alexandra.schwarzman@kirkland.com) and Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti (dpacitti@klehr.com) and Michael W. Yurkewicz (myurkewicz@klehr.com); (c) co-counsel to the

Consenting Sponsor, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 6th Avenue New York, New York 10019, Attn: Paul M. Basta (pbasta@paulweiss.com), Elizabeth R. McColm (emccolm@paulweiss.com), Grace Hotz (ghotz@paulweiss.com) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan (pmorgan@ycst.com) and Sean Greecher (sgreecher@ycst.com); (d) counsel to the agent under the Debtors' secured credit facilities, Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, GA 30309-3424, Attn: David Wender (David.wender@ralston.com); (e) counsel to any statutory committee appointed in these cases; (f) Office of The United States Trustee, 844 King Street, Suite 2207, LockBox 35, Wilmington, Delaware 19801, Attn: David L. Buchbinder (David.L.Buchbinder@usdoj.gov). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, in their sole discretion, to continue the Employee Compensation and Benefits and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits, irrespective of whether such obligations arose prepetition or postpetition, including payments due to or on account of, as applicable, the Employee Compensation, the Unpaid Compensation (including, for the avoidance of doubt, any Unpaid Compensation due to any former employee that is unpaid as of the Petition Date), the Withholding Obligations, the Unpaid Payroll Processing Fees, the Reimbursable Expenses (including, for the avoidance of doubt, any Reimbursable Expenses due to any former employee that is unpaid as of the Petition Date), the Payroll Taxes, and the Employee Benefit Programs

(including but not limited to the Health Benefit Plans, the Workers' Compensation Program, the Life, AD&D, Disability, the 401(k) Plan, and Paid Time Off); *provided that* no payments on account of Unpaid Compensation, or Paid Time Off shall exceed \$13,650 in the aggregate per individual in accordance with sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

4. Notwithstanding anything to the contrary herein, pending entry of the Final Order, the Debtors are authorized, but not directed, in their sole discretion, to pay, remit, or reimburse, as applicable, not more than: (a) \$240,000 on account of prepetition Employee Compensation; (b) \$97,000 on account of prepetition Withholding Obligations; (c) \$1,500 on account of prepetition Payroll Processing Fees; (d) \$3,000 on account of prepetition Reimbursable Expenses; and (e) \$580,000 on account of the prepetition Employee Benefits Programs.

5. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

6. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

7. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Compensation and Benefits obligations, including all administrative and processing costs and payments to outside professionals.

8. Nothing in the Motion or the Interim Order shall be deemed to (i) authorize the payment of any amounts that are subject to section 503(c) of the Bankruptcy Code, or (ii) violate or permit a violation of section 503(c) of the Bankruptcy Code; *provided that* nothing in this Interim Order shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits obligations.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any prepetition amounts owed to their Employees.

12. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in

this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. Notwithstanding anything to the contrary contained herein, any payment to be made and any authorization contained hereunder shall be subject to (x) any order approving the Debtors' use of cash collateral (the "Cash Collateral Order"), the documentation in respect of any such use of cash collateral, the budget governing any such use of cash collateral; and (y) any and all claims, liens, security interests and priorities granted in connection with such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

Delaware, dated February 29, 2012; and the Debtors consenting that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to continue the Employee Compensation and Benefits and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits, irrespective of whether such obligations arose prepetition or postpetition, including payments due to or on account of, as applicable, the Employee Compensation, the Unpaid Compensation (including, for the avoidance of doubt, any Unpaid Compensation due to any former employee that is unpaid as of the Petition Date), the Withholding Obligations, the Unpaid Payroll Processing Fees, the Reimbursable Expenses (including, for the avoidance of doubt, any Reimbursable Expenses due to any former employee that is unpaid as of the Petition Date), the Payroll Taxes, and the Employee Benefit Programs (including but not limited to the Health Benefit Plans, the Workers' Compensation Program, the

Life, AD&D, Disability, the 401(k) Plan, and Paid Time Off); *provided that* no payments on account of Unpaid Compensation, or Paid Time Off shall exceed \$13,650 in the aggregate per individual in accordance with sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

3. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not directed, in their sole discretion, to pay, remit, or reimburse, as applicable, not more than: (a) \$240,000 on account of prepetition Employee Compensation; (b) \$97,000 on account of prepetition Withholding Obligations; (c) \$1,500 on account of prepetition Payroll Processing Fees; (d) \$3,000 on account of prepetition Reimbursable Expenses; and (e) \$580,000 on account of the prepetition Employee Benefits Programs.

4. Pursuant to section 362(d) of the Bankruptcy Code, employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Compensation and Benefits obligations, including all administrative and processing costs and payments to outside professionals.

7. Nothing in the Motion or the Final Order shall be deemed to (i) authorize the payment of any amounts that are subject to section 503(c) of the Bankruptcy Code, or (ii) violate or permit a violation of section 503(c) of the Bankruptcy Code; provided that nothing in this Final Order shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

8. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits obligations.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any prepetition amounts owed to their Employees.

11. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in

this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

12. Notwithstanding anything to the contrary contained herein, any payment to be made and any authorization contained hereunder shall be subject to (x) any order approving the Debtors' use of cash collateral (the "Cash Collateral Order"), the documentation in respect of any such use of cash collateral, the budget governing any such use of cash collateral; and (y) any and all claims, liens, security interests and priorities granted in connection with such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.