

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 11-[ ] ( )  
)  
) (Joint Administration Requested)  
)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES AND OTHER  
COMPENSATION AND REIMBURSABLE EXPENSES, (B) PAY AND HONOR  
OBLIGATIONS RELATED TO EMPLOYEE MEDICAL AND SIMILAR BENEFITS  
AND (C) CONTINUE THEIR EMPLOYEE MEDICAL AND SIMILAR BENEFITS**

Blitz U.S.A., Inc. ("**Blitz**") and certain of its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), file this motion (this "**Motion**") for entry of an order, substantially in the form attached hereto as Exhibit A (the "**Order**"), authorizing the Debtors to: (a) pay prepetition wages, salaries and other compensation, taxes, withholdings and related costs and reimbursable expenses, (b) pay and honor obligations relating to employee medical, insurance and other benefits programs, and (c) continue their employee medical, insurance and other benefits programs on a postpetition basis. In support of the Motion, concurrently herewith, the Debtors submit the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**") and respectfully state as follows:

**Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware (the "**Court**")

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.



has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

3. The statutory bases for the relief requested herein are sections 105(a), 362, 363, and 507(a)(4)-(5) of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 6003, 7062, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Bankruptcy Rules*”).

### Introduction

4. As described in the First Day Declaration, the Debtors are the industry leader in portable fuel containment. Since its inception as the supplier of the traditional, olive-drab jerry can to the U.S. military throughout WWII, Blitz and its predecessor companies have evolved into the producer of the best fuel containment products in the world. Today, the red plastic jerry can is an American icon. With their global headquarters in Miami, Oklahoma, the Debtors employ approximately 250 employees and achieve annual sales of approximately \$80 million. Through end of fiscal year 2011, the Debtors generated \$80 million in revenue and \$6 million in EBITDA.

5. Notwithstanding its industry leading position and time-tested product line, the Debtors have recently become the subject of over 35 pending lawsuits alleging, among other things, certain product deficiencies. Despite the Debtors’ firm belief that their products are safe and free of deficiencies, on the date hereof (the “*Petition Date*”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to address the challenges posed by the overwhelming pending litigation. The Debtors are operating their businesses and

managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. 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. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

### **Relief Requested**

6. The Debtors' employees perform critical functions, including acquiring raw material, manufacturing, assembling, performing quality control tests, selling the Debtors' products, providing customer service, and a variety of administrative, legal, finance, management and related tasks. The skills and experience of the Debtors' employees with the Debtors' operations and infrastructure, and their relationships with customers and vendors are essential to the Debtors' continued operations and ability to effectively reorganize their businesses. The vast majority of the Debtors' employees rely exclusively on their wages to pay their living expenses. To minimize the hardship that the Debtors' employees would personally suffer if prepetition employment-related obligations were not paid when due or as expected by the Debtors' employees, and to maintain morale and enhance employee retention at this critical juncture, the Debtors request the authority, to be exercised in their sole discretion, to pay and honor certain prepetition claims, honor obligations and continue programs, in the ordinary course of business and consistent with past practice, relating to, among other things: (a) employee unpaid compensation, deductions and payroll taxes, independent contractor compensation, temporary employee compensation, (b) reimbursable expenses (including corporate credit card expenses and director expenses), and (c) employee benefits programs (each as described herein, and collectively, the "***Employee Obligations***") and to pay all costs incident to the foregoing,

including any prepetition amounts due to benefit providers, plan administrators, custodians and payroll administrators. As of the date hereof, the Debtors estimate that they owe approximately \$300,000.00 on account of prepetition Employee Obligations.

7. Additionally, the Debtors request that the Court enter the Order granting, in addition to the relief requested above, the authority to: (a) pay and honor certain prepetition claims, honor obligations and continue programs, in the ordinary course of business and consistent with past practice, including those relating to free family counseling; and (b) to modify, change or discontinue any of the Employee Obligations, and the policies related thereto, and to implement new Employee Obligations in the ordinary course of business during these chapter 11 cases in their sole discretion without the need for further Court approval.

8. To the extent payments made hereunder are dishonored by the Debtors' financial institutions, the Debtors also request authority for such financial institutions to receive, process and honor and pay any and all replacement checks or wire transfer requests made in accordance with the relief requested herein. Finally, to the extent any of the Debtors' Employees are asserting claims under the Workers Compensation Program (as defined herein), the Debtors request that the Court modifies the automatic stay under section 362 of the Bankruptcy Code to permit those Employees to proceed with their claims under the Workers Compensation Program. This modification of the automatic stay pertains solely to claims under the Workers Compensation Program.

#### **The Debtors' Workforce and Wage and Benefit Obligations**

9. The Debtors produce gas containers through Blitz and automotive accessories, storage and organization and lawn and garden products through F3 Brands LLC ("**F3 Brands**").

As of the Petition Date, Blitz employs approximately 126 employees (the “*Blitz Employees*”) and F3 Brands employs approximately 103 employees (the “*F3 Employees*”).

10. In addition to the Blitz Employees and F3 Employees, both Blitz and F3 Brands supplement their workforce by utilizing: (a) approximately 20 temporary employees (the “*Temporary Employees*”); and (b) approximately 20 independent contractors (the “*Independent Contractors*”).<sup>2</sup> The Temporary Employees assist in production when demand levels are high. The Debtors procure services from the Temporary Employees through Adecco USA, Inc. (“*Adecco*”), a temporary staffing agency, through individualized contracts that set forth the terms of their retention, including remuneration. Independent Contractors, on the other hand, are composed of two categories of workers: (a) those who perform specialized repairs and maintenance at the Debtors’ facilities; and (b) certain sales representatives who travel nationally to promote the Debtors’ products.

11. Additionally, the Debtors include three (3) employees on their payroll on behalf of their non-debtor affiliate, Reliance Products, Inc. (the “*Reliance Employees*,” and collectively with the Blitz Employees and F3 Employees, the “*Employees*”). The Debtors include the Reliance Employees on their payroll to ease an administrative tax reporting burden — these employees reside in and work from the United States, while Reliance Products, Inc.’s operations are in Canada.

**I. Wages, Salaries, and Compensation.**

**A. Unpaid Compensation.**

12. In the ordinary course of business, the Debtors generally pay their Employees on Thursday of each week, except with respect to approximately 11 Employees who are paid on the

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<sup>2</sup> None of the Employees are unionized and none of the Debtors are party to a collective bargaining agreement.

last Thursday of every month. The Debtors maintain a payroll payment process under which Employees receive their compensation one week in arrears.

13. The Debtors' payroll obligations generally include wages, salaries and overtime compensation. On average, the Debtors' gross payroll per weekly pay period totals approximately \$170,000. The Debtors' payroll is made primarily by direct deposit through electronic transfer of funds to the Employee's accounts.

14. The Debtors' most recent payroll was made on November 4, 2011 and covered compensation owing for the period through October 24, 2011 through October 28, 2011. Notwithstanding the Debtors' recent payroll, some prepetition compensation remains due and owing to some Employees as of the Petition Date, because, among other things: (a) the chapter 11 petitions were filed two business days after the last payroll period and (b) Employees are paid in arrears and, therefore, have not been paid all of their salaries or wages for services performed prior to the Petition Date. As of the Petition Date, the Debtors estimate they owe approximately \$170,000 on account of accrued wages, salaries and overtime compensation (excluding reimbursable expenses and vacation pay) that was earned prior to the Commencement Date (the "*Unpaid Compensation*"). The Debtors do not intend to pay any Employee Unpaid Compensation<sup>3</sup> in excess of the \$11,725 cap imposed by section 507(a)(4) of the Bankruptcy Code pursuant to the Order.

**B. Gross Pay Deductions, Governmental Withholdings, and Payroll Taxes.**

15. For each applicable pay period, the Debtors routinely deduct, directly, certain amounts from Employee paychecks, including: (a) garnishments, child support, service charges, and similar deductions; and (b) other pre- and post-tax deductions payable pursuant to certain of

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<sup>3</sup> Included in the Unpaid Compensation are uncashed and outstanding checks for prepetition wages, salaries, and other cash compensation that the Debtors believe certain Employees may possess as of the Petition Date (the "*Uncashed Checks*").

the Employee benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, 401(k) contributions, legally ordered deductions and miscellaneous deductions) (collectively, the "***Deductions***"). On average, the Debtors deduct a total of approximately \$23,000.00 from Employees' paychecks per weekly pay period and a total of approximately \$9,000.00 per monthly pay period, which the Debtors remit to the appropriate third-party recipients. The Debtors, however, may not have forwarded certain of the Deductions to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority to forward prepetition Deductions (and to continue to forward Deductions on a postpetition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business and consistent with past practice.

16. In addition to the Deductions, federal, state, and local laws require the Debtors to withhold amounts related to federal, state, and local income taxes, Social Security, and Medicare taxes for remittance to the appropriate federal, state, or local taxing authority (collectively, the "***Withheld Amounts***"). The Debtors must then match from their own funds for Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (together with the Withheld Amounts, the "***Payroll Taxes***"). In the aggregate, the Payroll Taxes, including both the Employee and employer portions, total approximately \$22,000.00 per weekly pay period and approximately \$18,500.00 per monthly pay period.

17. To the extent any of the Deductions or Payroll Taxes may not have been forwarded to the appropriate third-party recipients, the Debtors seek authority to forward prepetition Deductions and Payroll Taxes (and to continue to forward Deductions and Payroll

Taxes on a postpetition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business and consistent with past practice.

## **II. Supplemental Workforce Obligations.**

### **A. Temporary Employee Compensation.**

18. When necessary in the ordinary course of business, the Debtors employ the services of Temporary Employees who are placed with the Debtors through Adecco, a temporary staffing agency that handles projects or overflow work, who perform a variety of tasks that are essential to the Debtors' businesses. The Temporary Employees provide assistance with production of the Debtors' products and primarily work on the factory floor to ensure that demand from customers is met. The Debtors remit compensation to the Temporary Employees on a weekly basis through payment to Adecco (the "*Temporary Employee Compensation*"). On average, the Debtors pay approximately \$15,000.00 per month on account of Temporary Employee Compensation. As of the Petition Date, the Debtors estimate they owe Adecco approximately \$25,000.00 for prepetition services provided by Temporary Employees, inclusive of Adecco's percent-above-rate fee. The Debtors believe it is necessary to pay Adecco for these amounts so it will continue to provide adequate staffing to the Debtors and, therefore, the Debtors are requesting authority to pay, in their discretion, the Temporary Employee Compensation in the ordinary course of business and consistent with past practices. The Debtors do not seek authority to pay Adecco amounts for individual employees in excess of the \$11,725 priority cap.

### **B. Independent Contractor Compensation.**

19. In the ordinary course of business, the Debtors employ Independent Contractors who perform a variety of tasks that are essential to the Debtors' businesses. The Independent Contractors are composed of traveling salesmen on whom the Debtors rely to monitor sales,



maintain key relationships, manage booths at national trade shows, and interact with the Debtors' customers.

20. The Debtors remit compensation to the Independent Contractors (the "***Independent Contractor Compensation***") through their accounts payable process. On average, the Debtors pay a total of approximately \$100,000.00 per month to the Independent Contractors. As of the Petition Date, the Debtors believe that they owe approximately \$25,000.00 to the Independent Contractors for prepetition services.

### **III. Reimbursable Expenses and Corporate Card Expenses.**

21. In the ordinary course of business, the Debtors reimburse Employees for reasonable and customary expenses incurred on behalf of the Debtors in the scope of their employment (collectively, the "***Reimbursable Expenses***"), including expenses related to: (a) home office expenses; (b) business travel; (c) professional development; (d) business entertainment; (e) communications (i.e., use of cellular telephone, PDA and internet access for business purposes); (f) Director Expenses and (g) other expenses allowed pursuant to the Debtors' travel and entertainment policy. These Reimbursable Expenses are either paid personally by the Employee or charged to an American Express Corporate Card (described below).

22. The Debtors heavily rely on their Employees to monitor activity and sales with multiple customers. To effectively do this, and to maintain key relationships with customers, the Employees must travel to the corporate headquarters for the stores throughout the year. Without continued reimbursement of these expenses, the Employees would be saddled with additional cost, causing personal financial hardship. Any expense reimbursements relative to insiders or senior management are payable pursuant to the above circumstances or were specifically covered in employment agreements.

23. Although the Debtors request that reimbursement requests be submitted promptly, not all of the Employees do so. Thus, the Debtors are unable to provide a detailed listing of unpaid prepetition Reimbursable Expenses at this time because it is likely that requests for expenses incurred prepetition will be submitted to the Debtors after the Petition Date. Based on historical practice, the Debtors estimate they owe Employees approximately \$15,000.00 on account of prepetition Reimbursable Expenses.

**A. Corporate Credit Cards.**

24. To streamline payment of Reimbursable Expenses, the Debtors provide approximately 8 Employees corporate credit cards issued by American Express for business expense purchases (the “*Corporate Credit Cards*”). These expenses are ordinary course expenses that Employees incur in performing their job functions. The Debtors pay monthly statements directly to American Express. Based on historical practice, the Debtors estimate they owe less than \$100,000.00 on account of the Corporate Credit Cards.<sup>4</sup>

**B. Director Expenses.**

25. The Debtors reimburse each of the Debtors’ directors who are not an Employee for reasonable out-of-pocket expenses in connection with board meeting attendance (“*Director Expenses*”). In anticipation of the commencement of these chapter 11 cases, board meetings were held on November 3, 2011 and November 7, 2011. As a result of these meetings, the Debtors estimate that approximately \$10,000.00 of accrued but unpaid Director Expenses are due to their directors as of the Petition Date. The Debtors will not pay any director any prepetition amounts in excess of the cap imposed by section 507(a)(4) of the Bankruptcy Code.

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<sup>4</sup> Although the Debtors pay invoices directly to American Express for the Corporate Credit Cards, the accounts are held in the names of individual employees and, therefore, to the extent the Debtors fail to remit payment to American Express for valid and legitimate charges, the Employees may be personally liable for the same.

#### IV. Employee Benefit Programs.

26. In the ordinary course of business, the Debtors maintain various employment benefit plans and policies, including, without limitation, health care, dental and prescription drug plans, flexible spending accounts, workers compensation benefits, the 401(k) plan, life insurance coverage, accidental death and dismemberment insurance, voluntary supplemental life insurance coverage, short-term disability and voluntary long-term disability insurance (collectively, the “**Employee Benefit Programs**”). All Employees are eligible for the Employee Benefit Programs (the “**Eligible Employees**”).<sup>5</sup> By this Motion, the Debtors seek to pay prepetition claims (if applicable), honor obligations and to continue programs, in the ordinary course of business and consistent with past practice, relating to the Employee Benefit Programs.

##### A. **Health Care Plans.**

27. Eligible Employees are eligible to receive medical, dental, and prescription drug insurance coverage (collectively, the “**Health Care Plan**”).<sup>6</sup> As the Health Care Plan is self-insured, the Debtors pay all associated fees and claims costs net of Employee contributions. The following is a brief summary of the Health Care Plan and related stop-loss insurance:

- a) **Medical Plan.** The Debtors offer Eligible Employees a self-insured, point-of-service health medical plan (the “**Medical Plan**”), administered through UMR Inc. (“**UMR**”) which includes prescription drug coverage. On account of the Medical Plan, the Debtors pay approximately \$145,000.00 per month, net of employee contributions. Specifically, the Debtors (i) pay approximately \$142,530.25 per month in claims, and (ii) pay \$5,927.80 in administrative fees to UMR on behalf of medical, dental, administration, and life insurance. As of the Petition Date, the Debtors estimate that they have incurred but not reported claims and have reserved approximately \$150,000.00 in respect of such employee medical claims.

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<sup>5</sup> The Debtors’ Employee Benefits are available to Full-Time Employees only, subject to any eligibility requirements described herein. Independent Contractors do not participate in the Debtors’ Employee Benefits.

<sup>6</sup> Full-time Employees are eligible for Health Benefits starting on the first day of the month following the month when employment commences.

- (i) **Stop-Loss Insurance.** As part of the Medical Plan, the Debtors have purchased stop-loss insurance through Symetra Financial (“*Symetra*”) that provides additional protection against large claims made by Employees that are above deductibles under the self-insured Medical Plan (the “*Stop Loss Insurance*”). Stop Loss Insurance is an integral part of the Debtors’ management of the risk of the self-insured medical plan and loss of the coverage would subject the Debtors to undue risk. The Debtors pay approximately \$14,428.00 per month to Symetra in premiums for stop loss insurance. As of the Petition Date, the Debtors owe a *de minimis* amount to Symetra for prepetition amounts for premiums on the Stop Loss insurance.<sup>7</sup> Out of an abundance of caution, the Debtors request authority to pay any prepetition amounts that may be outstanding.
- b) **Dental Plan.** UMR also administers the Debtors’ self-insured dental plan provided through the Delta Dental Plan of Oklahoma for Eligible Employees (the “*Dental Plan*”). On account of the Dental Plan, on a monthly basis, the Debtors (i) pay approximately \$225.00 in claims. The payments to UMR on account of the Dental Plan are consolidated with those payments related to the Health Plan, administrative costs and life insurance. Accordingly, the authority to pay any amounts due as of the Petition Date on account of the Dental Plan is sought above.
- c) **Vision Plan.** Through VSP Vision Care, the Debtors offer Eligible Employees a voluntary, fully-insured vision plan (the “*Vision Plan*”). Premiums for the Vision Plan are paid exclusively by the Employees. Premiums for the Vision Plan are paid through regular payroll deductions from the participating Employees’ paychecks.

28. As of the Petition Date, the Debtors provide Health Plan coverage to approximately 214 Eligible Employees. Certain prepetition benefits relating to the Health Care Plan were owed but remain unpaid as of the Petition Date because these obligations have accrued either in whole or in part prior to the Petition Date, but will not become payable in the ordinary course of business until a later date. The Debtors seek authority to pay all prepetition amounts that, as of the Petition Date, had accrued but remained unpaid.

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<sup>7</sup> Concurrently herewith, the Debtors are filing that certain Motion for Entry of an Order Authorizing the Debtors to (a) Continue Prepetition Insurance Coverage and (b) Enter into New Insurance Policies (the “*Insurance Motion*”). The Insurance Motion does not seek any relief relating to the Stop Loss Insurance.

**B. Flexible Spending.**

29. The Debtors also offer Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts to pay for eligible out-of-pocket health care and dependent care expenses (the “*Flexible Spending Plan*”). Family Health America, L.C. (“*Empower*”) administers the Flexible Spending Plan. There is a \$2,500.00 limit on the Flexible Spending Plan (health care and dependent care). Currently, approximately 21 Blitz Employees participate.<sup>8</sup> The Debtors pay approximately \$5.00 per month per participant to Empower on a monthly basis to administer the Flexible Spending Plan and the Debtors withhold approximately \$2,000.00 monthly on account of Employee contributions to the Flexible Spending Plan. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of administrative costs relating to the Flexible Benefit Plan, and have no collections on account of Employee contributions to the Flexible Benefit Plan. Out of an abundance of caution, the Debtors request authority to pay any prepetition amounts that may be outstanding.

**C. Workers Compensation.**

30. The Debtors provide self-funded workers compensation insurance for their Employees at the statutorily required levels and pay claims directly on a pay-as-you-go basis (the “*Workers Compensation Program*”). The Debtors pay Mutual Assurance Administrators, Inc. (“*MAA*”) approximately \$834.00 on a monthly basis to administer the Workers Compensation Program. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Workers Compensation Program. Out of abundance of caution, however, the Debtors request authority to pay any prepetition amounts that may be outstanding.

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<sup>8</sup> The Debtors are in the process of enrolling F3 Brands Full-Time Employees into the Flexible Spending Plan, which is planned to take effect on January 1, 2012.

31. Because the Debtors pay and administer workers compensation claims directly, the Debtors have obtained excess loss insurance through Midwest Employers Casualty Company (“*MECC*”) that provides protection against large claims made by Employees that are above a \$300,000 deductible per occurrence (the “*Workers Compensation Insurance*”). The Workers Compensation Insurance is critical to the Debtors’ management of the risk of workers compensation liability and loss of the coverage would subject the Debtors to undue risk. On October 1, 2011, the Debtors paid approximately \$40,000.00 to MECC in premiums for excess loss insurance, covering the Debtors through September 30, 2012. However, out of an abundance of caution, although the Debtors do not believe they owe any prepetition amounts on account of the Workers Compensation Program, the Debtors request authority to pay any prepetition amounts that may be outstanding.

32. In addition, in Indiana, Georgia, Minnesota and Florida, the Debtors make certain payments in accordance with applicable state law to provide workers compensation coverage to their Employees pursuant to state-administered workers compensation programs. The Debtors’ annual payments in connection with these programs are approximately \$3,000.00 in the aggregate. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts to these states on account of the Workers Compensation Program. Out of an abundance of caution, the Debtors request authority to pay any petition amounts that may be outstanding.

**D. Paid Vacation, Leave of Absence and Sick Leave.**

33. The Debtors provide paid vacation time to their Employees, which begins to accrue after an Employee completes one day of service (the “*Vacation Time*”) as a paid time off benefit (the “*Paid Vacation*”). The amount of Vacation Time available to a particular Employee ranges from four days to five weeks and is determined by the Employee’s length of service. If an Employee leaves the Debtors’ employ, whether voluntarily or involuntarily, his or her accrued

and unused Vacation Time, if any, will be calculated and cashed out in the Employees' final paycheck. As of the Petition Date, the Debtors estimate that their Employees have accrued approximately \$190,000.00 on account of unused Vacation Time. This amount, however, is not a current cash payment obligation, as Employees only are entitled to be paid for accrued and unused Vacation Time in the event the Employees leave the Debtors' employ. By this Motion, the Debtors are requesting authority to pay and honor accrued and unused Vacation Time in the ordinary course and consistent with past practice.

34. The Debtors also allow Employees to take certain other leaves of absence for personal reasons, many of which are required by law (collectively, the "***Leaves of Absence***"). Leaves of Absence include family medical leave, maternity leave, military leave, bereavement leave, jury duty, voting leave, personal leave, sick leave and disability leave. Employees also receive ten paid holidays per year. Employees are neither permitted to carry over unused personal days from one year to the next, nor to cash out their unused personal days upon termination or resignation.

**E. Short-Term Leave.**

35. In addition, in the ordinary course of business, Employees may be eligible for unpaid short-term leave for illness, injury or other emergency situations (the "***Short-Term Leave***"). Employees do not accrue Short-Term Leave and it is not paid out at termination. Accordingly, such amounts are not reflected as a liability on the Debtors' balance sheet.

36. By this Motion, the Debtors request that they be authorized to continue to honor their Paid Vacation, Leave of Absence and Sick Leave policies in the ordinary course of business, and to honor and pay any prepetition amounts related thereto. Moreover, even if Employees do utilize accrued Paid Vacation, Leaves of Absence and Sick Leave in the ordinary

course of business, it should not affect cash flow materially beyond the Debtors' normal payroll obligations.

**F. 401(k) Retirement Plan.**

37. The Debtors maintain a qualified defined contribution savings plan for the benefit of all eligible Employees meeting the requirements of section 401(k) of the Internal Revenue Code (the "**401(k) Plan**"). Approximately 189 Employees participate in the 401(k) Plan. The Debtors estimate that they withhold on average approximately \$27,000.00 each week and \$13,000.00 each month from such Employees' paychecks for 401(k) contributions. To induce Employees to participate in the 401(k) Plan, the Debtors have established a limited matching program that provides for 100% matching of an Employee's initial 3% in contributions, and 50% for the next 2% of contributions, capped at a total 4% of the Employee's salary (the "**Matching Obligation**"). On average, the Debtors pay approximately \$20,000.00 on account of Matching Obligations on a monthly basis. The Bank of Oklahoma administers the 401(k) Plan and is the record keeper for the 401(k) Plan. The Bank of Oklahoma's administration fees are derived exclusively from routine management of the invested funds and the Debtors pay the Bank of Oklahoma approximately \$7,000.00 on a quarterly basis for such service. Approximately 39 Employees have borrowed against their 401(k) accounts, and the Debtors withhold approximately \$2,500.00 on a weekly basis on account of repayment of these loans. As of the Petition Date, the Debtors do not believe they owe any amounts on account of Employee contributions to the 401(k) Plan, but do owe approximately \$3,000.00 to the Bank of Oklahoma on account of administration fees.



**G. Life, Voluntary Supplemental Life, Accident and Dismemberment, and Disability Insurance.**

38. The Debtors provide the Employees with term life, accidental death and dismemberment, and disability insurance coverage through Prudential Insurance. This coverage is fully paid by the Debtors, and Employees are eligible for term life, accidental death and dismemberment insurance on their first day of service.

39. On average, life insurance coverage ("*Life Insurance*") and the accidental death and dismemberment insurance (the "*AD&D Insurance Coverage*") costs the Debtors approximately \$1250.00 per month. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of basic term life insurance. Out of an abundance of caution, the Debtors request authority to pay any prepetition amounts that may be outstanding.

40. In addition to the coverage described above, Employees are also eligible to purchase supplemental life insurance. This supplemental group life insurance coverage is available for Employees and eligible dependants, but must be elected by the first of the month following the date of employment and premiums are paid exclusively by the Employees. Premiums for this coverage are paid through regular payroll deductions from the participating Employees' paychecks.

41. The Debtors also provide qualified Employees with AD&D Insurance Coverage. This coverage generally provides payment of a certain percentage of the Employee's base pay up to a set maximum amount, depending on the Employee's level of employment, to an Employee or the Employee's beneficiaries. Benefits are determined by a set schedule depending on the severity of the disability. As of the Petition Date, the Debtors provide AD&D Insurance Coverage to all Employees. On average, the Life Insurance and AD&D Insurance Coverage cost the Debtors approximately \$1250.00 per month, respectively. As of the Petition Date, the

Debtors do not believe they owe any prepetition amounts on account of AD&D Insurance Coverage. Out of an abundance of caution, the Debtors request authority to pay any prepetition amounts that may be outstanding.

42. Additionally, the Debtors provide three (3) Employees with short term disability benefits (“***Short-Term Disability Coverage***”). Employees are eligible for Short Term Disability Coverage, which generally pays two-thirds of the Employee’s base pay, upon sickness or other disability that prevents the Employee from performing the duties of his or her occupation.

**H. The Employee Assistance Program.**

43. The Debtors offer an employee assistance program (the “***Employee Assistance Program***”) at no cost to Employees. The Employee Assistance Program offers free and confidential access to licensed psychiatrists and social workers to Employees and their immediate family members. The Debtors pay approximately \$3,000.00 per year, in advance, on account of the Employee Assistance Program, and last renewed the program in February of 2011. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Employee Assistance Program. Out of an abundance of caution, the Debtors request authority to pay any prepetition amounts that may be outstanding.

**Basis for Relief**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor Employee Wage and Benefit Obligations.**

**A. Certain of the Employee Wages and Benefits are Entitled to Priority Treatment.**

44. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of Unpaid Compensation and other Employee related obligations to priority treatment. To confirm a chapter 11 plan, the Debtors must pay priority claims in full. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions,

including vacation, severance, and sick pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein affects only the timing of payments to Employees, and does not negatively affect recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of Employee claims at this time enhances value for the benefit of all interested parties.

**B. Payment of Certain of the Employee Wages and Benefits is Required by Law.**

45. The Debtors also seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee 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 another party's 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 that the Court authorize them to transmit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

46. 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 workers compensation amounts, therefore, is crucial to the Debtors' continued operations.

**II. Payment of the Employee Wages and Benefits is Warranted Under the Doctrine of Necessity.**

47. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were potential lien claimants). In authorizing payments of certain prepetition obligations, courts have relied on several legal theories, rooted in sections 363(b) and 507 of the Bankruptcy Code.

48. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *Id.*

49. Consistent with a debtor's fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b); relief appropriate where payment was needed to "preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale."); *see also Armstrong*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). Specifically, the business judgment standard requires that a debtor "articulate some business justification, other than the mere appeasement of major creditors." *In re Ionosphere Clubs*, 98 B.R. at 175.

50. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. 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). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor's business. Specifically, the Court may use its power under section 105(a) to authorize payment of prepetition obligations pursuant to 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).

51. The United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh & New England 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. 09-078, 2009 WL 330993, at \*3 (D. Del. Feb. 10, 2009) (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the 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 the 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 have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–845 (Bankr. D. Del. 1999) (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

52. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Id.*; *see also In re Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition

unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition worker’s compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 3 COLLIER ON BANKRUPTCY, 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

53. Courts also have permitted postpetition payment of prepetition claims pursuant to section 105(a) in other situations, such as if nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

54. This flexible approach is particularly critical where prepetition creditors—here, the Employees and related third parties—provide vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. For example, in *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary ‘to permit

the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.” *Id.* (citation omitted). The court explained that “a per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932.

55. The Debtors submit that the relief requested represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is therefore justified under section 363(b), as well as under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003. Paying prepetition wages, employee benefits and similar items will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, the Debtors believe the without the relief requested herein being granted, their Employees may seek alternative opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to meet their customer obligations and, likely, diminishing stakeholder confidence in the Debtors’ ability to successfully reorganize. The loss of valuable Employees and resulting recruiting of new personnel that would be necessary to find replacements (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. Accordingly, there can be no doubt that the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefit and related obligations, including the wages and benefits that accrued prepetition.

56. In addition, the majority of the Debtors’ Employees rely exclusively on their compensation, benefits and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Court



does not permit the Debtors to honor their Employee Wages and Benefits. Moreover, failure to satisfy such obligations will jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors' businesses. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the insurance programs, the Employees will not receive health coverage and, thus, may become obligated to pay certain health care claims in cases where the Debtors have not paid the respective insurance providers. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency. Similarly, if the Debtors are unable to pay the outstanding reimbursable expenses, Employees will be forced to shoulder a significant financial burden and will be reluctant to undertake essential business activities going forward that require them to incur out-of-pocket expenses, which could hamper the Debtors' reorganization. Additionally, as set forth above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture.

57. For all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption. The importance of a debtor's employees to its operations has been recognized by courts in this district in granting relief similar to the relief requested herein. *See, e.g., In re Friendly Ice Cream Corp.*, No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011); *In re Neb. Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. Jul. 21, 2011); *In re Barnes Bay Dev., Ltd.*, No. 11-10792 (PJW) (Bankr. D. Del. Mar. 21, 2011); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 18, 2011); *In re OTC Holdings Corp.*, No. 10-12636 (BLS)

(Bankr. D. Del. Aug. 27, 2010); *In re Stallion Oilfield Servs. Ltd.*, No. 09-13562 (BLS) (Bankr. D. Del. Nov. 16, 2009).<sup>9</sup>

**III. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

58. The Debtors have sufficient funds to remit the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor in possession financing. Also, under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and the Court should authorize 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 herein.

**The Requirements of Bankruptcy Rule 6003 are Satisfied**

59. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

60. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors' customers and other third parties. Unlike

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request of the Debtors' counsel.

Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. Cf. Bankruptcy Rule 4001(b)(2), (c)(2) (referring to “irreparable harm to the *estate*”) (emphasis added). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. See 9 COLLIER ON BANKRUPTCY ¶ 4001.06[3] (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider third party interests when granting such relief. See, e.g., *Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); see also *Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

61. As described above, the Debtors’ Employees are integral to their operations. Failure by the Debtors to satisfy their obligations with respect to their Employees in the ordinary course of business during these chapter 11 cases will jeopardize Employee loyalty and trust, possibly causing Employees to leave the Debtors’ employ and severely disrupting the Debtors’ operations at a critical juncture. Moreover, the Debtors’ Employees rely on their compensation, benefits, and reimbursement of expenses to pay their living expenses and the effect 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 the Employee Wages and Benefits.

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

62. 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**

63. The Debtors have provided notice of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition secured lenders; (e) the Internal Revenue Service; and (f) any party that may have a particular interest in this motion. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Bankruptcy Rule 9013-1(m). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: November 9, 2011  
Wilmington, Delaware

**RICHARDS, LAYTON & FINGER, P.A.**



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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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

In re:

BLITZ U.S.A., Inc., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 11-[\_\_\_\_\_] (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)

**ORDER AUTHORIZING THE DEBTORS TO  
(A) PAY CERTAIN PREPETITION WAGES AND REIMBURSABLE  
EMPLOYEE EXPENSES, (B) PAY AND HONOR EMPLOYEE MEDICAL AND  
OTHER BENEFITS AND (C) CONTINUE EMPLOYEE BENEFITS PROGRAMS**

Upon the motion (the “*Motion*”)<sup>2</sup> of Blitz U.S.A., Inc. (“*Blitz*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) authorizing the Debtors to: (a) pay prepetition wages, salaries and other compensation, taxes, withholdings and related costs and reimbursable expenses, (b) pay and honor obligations relating to employee medical, insurance and other benefits programs, and (c) continue their employee medical, insurance and other benefits programs on a postpetition basis; and upon the Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors’ Chapter 11 Petitions and First Day Motions (the “*First Day Declaration*”); and the Court having found that: (i) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (ii) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; (iii) the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; (iv) notice of the Motion was

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

adequate and appropriate under the circumstances; and (v) no other or further notice need be provided; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the “*Hearing*”); and the 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 the Court having found that relief requested in the Motion is necessary to prevent immediate and irreparable harm; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to pay and honor all prepetition obligations associated with the Employee Obligations and to continue the Employee Benefit Programs in the ordinary course of business to the extent requested in the Motion; *provided, however*, that, the Debtors may not pay (a) any Employee more than \$11,725 on account of Unpaid Compensation; (b) Temporary Employee more than \$11,725 on account of Temporary Employee Compensation; or (c) Independent Contractor more than \$11,725 on account of Independent Contract Compensation; provided, further, that the aggregate amount of prepetition obligations paid pursuant to the relief granted by this Order shall not exceed \$300,000.00 absent further order of the Court.
3. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Deductions and Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors’ stated policies and prepetition practices.



4. The Debtors are authorized to continue to honor their obligations, including any prepetition obligations, to Employees and applicable third-parties for Reimbursable Expenses, including those through the Corporate Credit Cards.

5. The Debtors are authorized to honor the Employee Benefit Programs, including, without limitation, the: (a) Health Care Plan (and related Stop Loss Insurance); (b) the Flexible Spending Plan; (c) the Workers Compensation Program (and related Workers Compensation Insurance); (d) Paid Vacation; (e) Leaves of Absence; (f) Short-Term Leave; (g) the 401(k) Plan; (h) Life Insurance; (i) AD&D Insurance Coverage; (j) Short-Term Disability Coverage; and (k) the Employee Assistance Program. The Debtors are to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto, including the Stop Loss Insurance and Workers Compensation Insurance.

6. Pursuant to Section 362(d) of the Bankruptcy Code, (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers Compensation Program and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the Automatic Stay pertains solely to claims under the Workers Compensation Program.

7. The Debtors are authorized to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Employee Obligations.

8. To the extent that any of the payments authorized to be made pursuant to this Order are of the kinds described in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code,

payments to any individual Employee shall not exceed the applicable caps set forth in such sections.

9. Nothing herein shall be deemed to authorize the payment of any amounts that may be subject to section 503(c) of the Bankruptcy Code.

10. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations the Debtors are authorized to pay pursuant to this Order is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to the Employee Obligations to the extent that sufficient funds are on deposit in such accounts.

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 Employee Obligations authorized to be paid by this Order.

12. Nothing contained herein is intended or should be construed to create and administrative priority claim on account of Employee Obligations.

13. Nothing contained in the Motion or this Order shall be deemed or construed as an admission to the validity of priority of any claim against the Debtors or any approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

15. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

16. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

18. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2011  
Wilmington, Delaware

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United States Bankruptcy Judge