

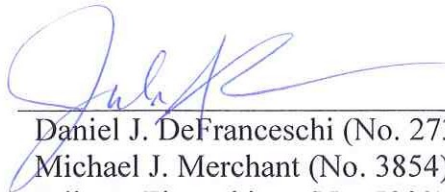
PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, objections or responses to the final relief requested in the Motion, if any, must be made in writing, filed with the Bankruptcy Court, and served so as to be received by the proposed undersigned attorneys for the Debtors on or before **November 30, 2011 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, the final hearing with respect to the Motion, if required, will be held before The Honorable Peter J. Walsh at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801 on **December 5, 2011 at 9:30 a.m. (Eastern Standard Time)**.

[remainder of page intentionally left blank]

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 10, 2011
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)

Michael J. Merchant (No. 3854)

Julie A. Finocchiaro (No. 5303)

Amanda R. Steele (No. 5530)

RICHARDS, LAYTON & FINGER, P.A.

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone: (302) 651-7700

Facsimile: (302) 651-7701

Email: DeFranceschi@rlf.com

Merchant@rlf.com

Finocchiaro@rlf.com

Steele@rlf.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

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

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO MAINTAIN AND ADMINISTER CUSTOMER
PROGRAMS AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

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 "**Interim Order**"), and a final order, substantially in the form attached hereto as **Exhibit B** (the "**Final Order**"), authorizing, but not directing, the Debtors to (a) maintain and administer customer programs, (b) honor prepetition obligations earned by and owing to their customers related thereto in the ordinary course of business and in a manner consistent with past practice and (c) schedule a final hearing (the "**Final Hearing**") to consider entry of the Final Order. 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:

¹ 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.

Jurisdiction and Venue

1. 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. 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), 363, 1107(a) and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 9013-1(m) 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 their inception as the supplier of the traditional, olive-drab jerry can to the U.S. military throughout World War II, Blitz U.S.A., Inc. and their 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 adjusted EBITDA.

5. Notwithstanding their industry-leading position and time-tested product line, the Debtors have recently become the subject of over 36 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. By this Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to: (a) maintain and administer the Customer Programs (as defined herein); and (b) honor prepetition obligations related thereto in the ordinary course of business and in a manner consistent with past practice. As of the Petition Date, the Debtors estimate that the amount owed on account of the Customer Programs, except the Indemnification Obligations (as defined herein), is approximately \$2.25 million.

The Debtors' Customer Programs

7. As set forth in the First Day Declaration, the key to Blitz's business model is its ability to deliver a high quality product on a "just-in-time" basis to a highly-concentrated customer base (each, a "*Customer*" and collectively, the "*Customers*"). The Debtors' business is centered on sales to some of the nation's largest retailers, including Wal-Mart, Sears, Home Depot, Lowe's, Ace Hardware and Target. The Debtors also sell to automotive retail stores such as Advance Auto Parts, Autozone and Pep Boys, as well as convenience stores such as gas stations and 7-11. The Debtors do not sell their product directly to the consumer. In fiscal 2011, the Debtors' top four customers accounted for approximately 60%, and top ten customers accounted for approximately 80%, of the Debtors' gross sales. Because Blitz does not sell its products directly to the consumer, the ability of the Debtors to supply the general public rests on

the long-standing relationships they have developed with their key customers. These long-standing relationships are among the most valuable assets (if not the most valuable asset) of the Debtors' estates. Indeed, without these relationships, the Debtors would have no channel through which to place their products into the marketplace.

8. The Debtors believe that one of the most critical factors in the purchase decision of their Customers is the Debtors' reputation for high quality products and good customer service, including the Debtors' Customer-related programs (as described herein, collectively, the "*Customer Programs*"). Currently, the Debtors sell between 12 and 14 million gas containers per year, representing a market share of approximately 70%. The Debtors estimate that there are approximately 150 million Blitz-brand gas containers currently in circulation. To maintain such a widespread Customer base and reputation, the Debtors request authorization to continue to honor their obligations under the Customer Programs in the ordinary course of business.

9. In addition, the Debtors would not be the only party to suffer if the chapter 11 process impaired their long-standing relationships with Customers. The Customers and consumers of the Debtors' gas containers would also be negatively impacted. The Debtors' next largest competitor only accounts for 20% of the market for gas containers. Even if Customers were to look to the Debtors' competitors to manufacture gas cans to meet demand unfilled by the Debtors, it is unlikely that any competitor would have the capacity to fill such demand and definitely would be unable to offer the cost advantages provided by the Debtors' Customer Programs.

10. The Debtors have designed their Customer Programs to encourage new purchases, enhance Customer satisfaction, sustain goodwill and ensure that the Debtors remain competitive in their markets. The programs, which are implemented and modified from time to time in the

ordinary course of business, range in scope from volume rebates to trade promotions. The Customer Programs help ensure customer satisfaction and develop customer loyalty.

11. In addition, failure by the Debtors to honor certain of the Customer Programs may violate terms agreed upon between the Debtors and their Customers. The Debtors have supplier agreements in place with many of their Customers that set forth the standards and terms to which the Debtors must adhere when supplying gas containers to their Customers. These supplier agreements form the basis of the Debtors' customer programs and, if violated, could severely impede the Debtors' ability to sell their containers. As such, the Debtors intend to continue the Customer Programs during these chapter 11 cases.

A. Volume Rebates and Trade Promotions.

12. In the ordinary course of business, and as agreed upon in individual supplier agreements, the Debtors offer certain volume rebates to their Customers (the "*Volume Rebates*"). Such Volume Rebates are granted to customers whose shipment activity or revenue levels reach a certain threshold. The amount of the Volume Rebates accrued at any given time varies based on the number and size of the shipments and the previously agreed upon Volume Rebates. The determination and payment of the Volume Rebates are calculated on a monthly basis while taking into account past business levels. The Debtors' obligations with respect to Volume Rebates vary from month-to-month and are calculated in arrears. The Debtors believe that Customers consider the Volume Rebates when calculating the net cost of the Debtors' gas containers. As a result, the Debtors' failure to pay the Volume Rebates would result in higher net prices, thereby dissuading customers from using the Debtors' services in the future, and potentially causing them to utilize the Debtors' competitors, virtually all of which have similar programs.

13. In addition, as set forth in detail in each of the individual supplier agreements, the Debtors agree to participate in certain Customers' promotions and advertising, including store circulars, media advertisements, and sponsorship of certain Customer events (collectively, the "*Trade Promotions*"). Trade promotions have a long history in the consumer goods industry. The Debtors and their Customers typically agree in advance as to how to use the funds. Although the terms of the Trade Promotions vary by Customer, the overall principle of these programs is the same. Customers deduct the cost of the Trade Promotions from the cost of an applicable shipment of the Debtors' containers.

14. During the fiscal year 2011, the Debtors estimate that the aggregate cost of the Volume Rebates and Trade Promotions was \$4.3 million. As of the Petition Date, the Debtors believe that they owe \$1.8 million on account of the Volume Rebates and Trade Promotions.

B. Manufacturing Warranties.

15. As manufacturer of the red plastic jerry cans and other products for sale by over 175 Customers, the Debtors provide a product liability warranty to the consumers of the containers (the "*Manufacturing Warranties*"). The Debtors provide a one-year limited warranty as required by law. Consumers reach out directly to the Debtors to request replacement parts or whole containers through the Manufacturing Warranties. If the Debtors failed to honor the Manufacturing Warranties, penalties for breaching the Manufacturing Warranties could include customer product liability claims and product recalls initiated by the Debtors, retailers or government regulators. Per year, the Debtors receive only a few requests for replacement parts or products on account of the Manufacturing Warranties. As such, the aggregate costs of maintaining and honoring the Manufacturing Warranties is *de minimis*. Accordingly, the Debtors seek authority to continue to honor the Manufacturing Warranties in the ordinary course of business, whether arising prepetition or postpetition, consistent with past practices.

C. Return Obligations.

16. The Debtors' Customer Programs include ordinary course return obligations with their various Customers (the "***Return Obligations***"). Consistent with standard industry practice, the Debtors accept returns of their product related to quality issues, such as mislabeling or damaged product. In certain circumstances, the Debtors also accept the return of unsold containers. Often times, however, the Debtors will attempt to mitigate their costs of unsold products by engaging in markdown promotions. Before new models of gas cans are released, the Debtors will provide cash to enable the Customer to lower the price of older models and induce Consumers to buy the older products. In addition, the Debtors, as part of their supplier agreements have built in a fixed return allowance (the "***Return Allowance***") with certain of their Customers. A Return Allowance is a flat annual percentage of sales that is returned to certain Customers without the Customer going through the trouble of sending back damaged or unused goods. Based on historical returns, the Debtors estimate the cost of their Customer Programs as they relate to Return Obligations is approximately \$1.5 million annually. The Debtors estimate that approximately \$450,000.00 was outstanding as of the Petition Date.

D. Consumer Refunds.

17. The Debtors' Customer Programs also include ordinary course refunds issued directly to individual consumers who purchase products from the Debtors' Customers (the "***Consumer Refunds***"). Typically, when a consumer is not satisfied with one of the Debtors' products, he or she will return the product to the Customer from which they have purchased the product. In some circumstances, the individual consumer will directly contact the Debtors.

18. On average, the Debtors receive less than 100 inquiries directly from consumers per year. As such, the aggregate amount of Consumer Refunds issued per year is *de minimis*. Accordingly, the Debtors seek authority to honor any prepetition obligations that remain

outstanding on account of Consumer Refunds as of the Petition Date and to continue to honor Consumer Refunds during the pendency of these chapter 11 cases.

E. Indemnification Obligations.

19. In connection with the Debtors' sale of products to retail customers, the Debtors may agree in the supplier agreements to indemnify those retail customers for losses, including attorneys' fees and court costs, that result from the sale of the Debtors' containers (the "*Indemnification Obligations*"). In addition, as set forth under the applicable supplier agreements, the Debtors are contractually obligated to use their own lawyers to defend the Customers and any cases against the Customers that represent a direct action against Blitz's containers.

20. The Debtors and some of their retail customers currently are subject to 36 product liability lawsuits that were commenced prepetition. Concurrent with this Motion, the Debtors have filed *Blitz U.S.A., Inc.'s Motion for Order Enjoining and Staying the PFC Litigation and Future Actions Against Third-Party Defendants* to stay the pending litigation. As such, the Debtors do not believe that any Indemnification Obligations to Customers will arise during these chapter 11 cases, but in an abundance of caution are asking the court for the authority to honor these Indemnification Obligations. The Debtors believe that failure to honor their Indemnification Obligations to their retail Customers would have a detrimental effect on their ongoing business relationship with such Customers.

Basis for Relief

A. The Doctrine of Necessity Authorizes the Debtors to Maintain the Customer Programs and Honor Customer Programs Obligations.

21. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See*,

e.g., *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 363(b) and 105(a) of the Bankruptcy Code.

22. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g.*, *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

23. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to 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 such payments are essential to the continued operation of the debtor's business and, in particular, where

nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors' business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *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).

24. In addition to the authority granted a debtor in possession under sections 363(b) and 105(a) of the Bankruptcy Code, courts have developed the "doctrine of necessity" or the "necessity of payment" rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor's reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding that the court was not "helpless" to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

25. In *Lehigh*, 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 that 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 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”); *Just for Feet*, 242 B.R. at 824–25 (noting that debtors may 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).

26. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *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.”); *see also 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) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 3 COLLIER ON BANKRUPTCY ¶ 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

27. The relief requested herein satisfies the doctrine of necessity standard. 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. The necessity of the Customer Programs in the Debtors' industry cannot be overstated. Many of the Customer Programs are standard practice in the Debtors' industry. If the obligations under the Customer Programs are not honored, the Debtors risk alienating their Customers and encouraging them to obtain services from the Debtors' competitors. The failure to honor the Customer Programs could erode the Debtors' hard-earned reputation and brand loyalty, adversely affecting the Debtors' prospects for a successful reorganization.

28. The Debtors believe that the relief requested herein will pay dividends with respect to the long-term reorganization of their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of these chapter 11 cases. Courts in this district recognize that retaining patronage and customer loyalty is critical to a debtor's prospects for a successful reorganization and, accordingly, routinely approve relief similar to that requested herein. *See, e.g., In re Neb. Book Co.*, No. 11-12005 (Bankr. D. Del. July 25, 2011) (granting customer programs relief up to \$23 million); *In re L.A. Dodgers LLC*, No. 11-12010 (Bankr. D. Del. June 28, 2011) (granting immediate final relief on first-day customer programs motion); *In re Ambassadors Int'l, Inc.*, No. 11-11002 (Bankr. D. Del. April 5, 2011) (same); *In re Ultimate Acquisition Partners, LP*, No. 11-10245 (Bankr. D. Del. Feb. 23, 2011); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (Bankr. D. Del. Jan. 20, 2011); *In re Summit Bus. Media Holding Co.*, No. 11-10231 (Bankr. D. Del. Jan. 28, 2011); *In re Constar Int'l Inc.*, No. 11-10109 (Bankr. D. Del. Jan. 13, 2011) (granting customer programs relief up to \$4.71 million).²

² 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' proposed counsel.

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

29. 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. 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 on account of the Customer Programs. 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

30. 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).

31. As described above, the Customer Programs are integral to the Debtors' operations and are necessary to maintain the confidence and goodwill of the Debtors' Customer base, all of which are critical to the success of these chapter 11 cases. As explained above, the Debtors do not sell directly to the consumers of their products. Thus, the Debtors rely entirely on their Customers to be able to put their products into the marketplace. Failure to satisfy

obligations with respect to the Customer Programs in the ordinary course of business during the first 21 days of the chapter 11 cases will jeopardize Customer loyalty and trust, and the ability of the Debtors to sell their gas containers.

32. Accordingly, to the extent that the Debtors are required to make any payments related to prepetition obligations with respect to the immediate payment of prepetition obligations related to the Customer Programs, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of such obligations.

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

33. 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

34. 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 further relief as is just and proper.

Dated: November 9, 2011
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.



Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
Julie A. Finocchiaro (No. 5303)
Amanda R. Steele (DE No. 5530)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: defranceschi@rlf.com
merchant@rlf.com
finocchiaro@rlf.com
steele@rlf.com

*Proposed 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:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

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

**INTERIM ORDER AUTHORIZING THE DEBTORS TO MAINTAIN
AND ADMINISTER CUSTOMER PROGRAMS AND HONOR
PREPETITION OBLIGATIONS RELATED THERETO**

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*”) authorizing, but not directing, the Debtors to (a) maintain and administer customer programs, (b) honor prepetition obligations earned by and owing to their customers related thereto in the ordinary course of business and in a manner consistent with past practice and (c) schedule a final hearing (the “*Final Hearing*”) to consider entry of the Final Order, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having found that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; (iv) the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; (v) notice of the Motion was adequate and appropriate under the circumstances; and (vi) no other or further notice need be provided; and this Court having reviewed the Motion and having heard statements

¹ 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.

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

in support of the Motion at a hearing held 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 this 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 Final Hearing shall be held on _____, 2011 at __:__ a.m./p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before _____, 2011 at 4:00 p.m. and served on parties in interest as required by the Local Rules.
3. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs, including the Volume Rebates, the Manufacturing Warranties, the Trade Promotions, Return Obligations, Return Allowances, Consumer Refunds and to pay any prepetition amounts outstanding thereunder, in an aggregate amount not to exceed \$1 million for all Customer Programs other than the Indemnifications Obligations. With respect to the Indemnifications Obligations, the Debtors are authorized to pay any prepetition amounts outstanding thereunder.
4. The Debtors are authorized, but not directed, to pay and/or otherwise honor their obligations owing to Customers in connection with, relating to, or based upon the Customer Programs outstanding as of the Petition Date, to the extent provided herein.
5. In accordance with this Interim Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor and pay all

checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, and have no duty to inquire otherwise.

6. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Interim Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

9. 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.

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

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

Dated: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

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

**FINAL ORDER AUTHORIZING THE DEBTORS TO MAINTAIN
AND ADMINISTER CUSTOMER PROGRAMS AND HONOR
PREPETITION OBLIGATIONS RELATED THERETO**

Upon the motion (the "*Motion*")² of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*"), for entry of a final order (this "*Final Order*") authorizing the Debtors to (a) maintain and administer customer programs and (b) honor prepetition obligations earned by and owing to their customers related thereto in the ordinary course of business and in a manner consistent with past practice, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having entered an interim order approving the Motion on an interim basis on [], 2011 [Docket No.] (the "*Interim Order*"); and this Court having found that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and notice of the Motion appearing adequate and

¹ 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.

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

appropriate under the circumstances; and this Court having found that no other or further notice need be provided; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held 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 this 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, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs, including the Volume Rebates, the Manufacturing Warranties, the Trade Promotions, Return Obligations, Return Allowances, Consumer Refunds and to pay any prepetition amounts outstanding thereunder, in an aggregate amount not to exceed \$2.25 million for all Customer Programs other than the Indemnifications Obligations, inclusive of the relief granted in the Interim Order. With respect to the Indemnifications Obligations, the Debtors are authorized to pay any prepetition amounts outstanding thereunder.
3. The Debtors are authorized to pay and/or otherwise honor their obligations owing to customers in connection with, relating to or based upon the Customer Programs outstanding as of the Petition Date, to the extent provided herein.
4. In accordance with this Final Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor and pay all

checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, and have no duty to inquire otherwise.

5. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

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

7. 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.

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

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

Dated: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 11-13603 (PJW)
)
) (Joint Administration Requested)
)
) Re: Docket No. 9

INTERIM ORDER AUTHORIZING THE DEBTORS TO MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS AND HONOR PREPETITION OBLIGATIONS RELATED THERETO

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*") authorizing, but not directing, the Debtors to (a) maintain and administer customer programs, (b) honor prepetition obligations earned by and owing to their customers related thereto in the ordinary course of business and in a manner consistent with past practice and (c) schedule a final hearing (the "*Final Hearing*") to consider entry of the Final Order, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having found that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; (iv) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; (v) notice of the Motion was adequate and appropriate under the circumstances; and (vi) no other or further

¹ 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.

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

notice need be provided; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held 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 this 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 Final Hearing shall be held on December 5, 2011 at 9:30 a.m./p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before December 30, 2011 at 4:00 p.m. and served on parties in interest as required by the Local Rules.
3. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs, including the Volume Rebates, the Manufacturing Warranties, the Trade Promotions, Return Obligations, Return Allowances, Consumer Refunds and to pay any prepetition amounts outstanding thereunder, in an aggregate amount not to exceed \$1 million for all Customer Programs other than the Indemnifications Obligations. Subject to entry of a final order, with respect to the Indemnifications Obligations, the Debtors are authorized to pay any prepetition amounts outstanding thereunder. For avoidance of doubt, the Debtors are not authorized to pay any prepetition Indemnification Obligations pursuant to this Order, provided that the Debtors' right to seek such relief at the Final Hearing (and any party's right to ^{object to} such relief) are fully reserved.

4. The Debtors are authorized, but not directed, to pay and/or otherwise honor their obligations owing to Customers in connection with, relating to, or based upon the Customer Programs outstanding as of the Petition Date, to the extent provided herein.

5. In accordance with this Interim Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, and have no duty to inquire otherwise.

6. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Interim Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

9. 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.

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

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

Dated: November 10, 2011
Wilmington, Delaware



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE