

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
	§	Case No. 20-43597-399
	§	
BRIGGS & STRATTON CORPORATION, <i>et al.</i> ,	§	(Joint Administration Requested)
	§	
Debtors. ¹	§	Hearing Date: July 21, 2020
	§	Hearing Time: 10:00 a.m. (Central Time)
	§	Hearing Location: Courtroom 5 North, 111 S.
	§	10th St., St. Louis, MO 63102

**MOTION OF DEBTORS FOR ORDER
(I) AUTHORIZING PAYMENT OF PREPETITION CLAIMS
OF SHIPPERS, WAREHOUSEMEN, IMPORT/EXPORT PROVIDERS, AND OTHER
LIEN CLAIMANTS, (II) AUTHORIZING PAYMENT OF SUCH OBLIGATION IN THE
ORDINARY COURSE OF BUSINESS, AND (III) GRANTING RELATED RELIEF**

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):

Background

1. On the date hereof (the “Petition Date”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors’ corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company’s products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Ficks Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. By this Motion, the Debtors seek entry of an order (the “**Proposed Order**”),³ pursuant to sections 105(a) and 363 of the Bankruptcy Code, for authority to pay

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

³ Copies of the Proposed Order will be made available on the Debtors’ case information website at <http://www.kcellc.net/Briggs>.

(i) Shipping and Warehousing Charges, (ii) Import/Export Charges, (iii) Other Lien Claims (each as defined below), and (iv) other related relief.⁴

The Debtors' Supply Chain

5. Briggs & Stratton is the world's largest producer of gasoline engines for outdoor power equipment and is a leading designer, manufacturer, and marketer of power generation, pressure washer, lawn and garden, turf care, and job site products. Briggs & Stratton products are designed, manufactured, marketed, and serviced in over 100 countries on six continents. The Engines Segment manufactures engines and parts at the following locations: Auburn, Alabama; Statesboro, Georgia; Poplar Bluff, Missouri; Wauwatosa, Wisconsin; and Chongqing, China. The Engines Segment also has parts distribution centers in Menomonee Falls, Wisconsin and Wijchen, Netherlands. The Products Segment's manufacturing facilities are located in Sherrill, New York; Munnsville, New York; Wauwatosa, Wisconsin; Holdrege, Nebraska; Lee's Summit, Missouri; and Kemp's Creek, Australia. In operating their manufacturing and distributions processes, the Debtors must ensure that their facilities (the "**Facilities**") are continuously replenished with a supply of raw materials, parts, components, finished goods, shipping materials, and other related goods (collectively, the "**Goods**").

A. Shipping and Warehousing Charges

6. As part of their operations, the Debtors utilize the services of various steamship lines, freight forwarders (ground and air), shippers, delivery services, postal services, distributors, and other third-party transportation service providers (collectively, the "**Shippers**")

⁴ Contemporaneously herewith, the Debtors have sought authority, but not direction, to pay claims held by certain third party vendors pursuant to the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Obligations in the Ordinary Course of Business to (A) Critical Vendors, (B) Foreign Creditors, and (C) 503(b)(9) Claimants; and (II) Granting Related Relief* (the "**Critical Vendor Motion**"). In this Motion, the Debtors do not seek authority to satisfy any prepetition claim that may be paid pursuant to the Critical Vendors Motion.

to ship, transport, deliver, and otherwise facilitate the movement of the Debtors' Goods between their business segments domestically and internationally and to their customers globally. The Debtors also utilize the Shippers for inbound deliveries of certain raw materials, component parts, and other items necessary for the Debtors' manufacturing processes.

7. The Debtors require countless shipments of Goods between the various locations within their distribution and supply network. For example, the Debtors transport raw materials, components parts, and semi-finished parts between their domestic production facilities and their China manufacturing facility. The Debtors also transport finished engines and engines parts from their U.S. manufacturing facilities to their distribution centers in the United States and in the Netherlands, which ship directly to customers. At any given time, the Debtors may owe the Shippers fees related to a number of different shipments and the Shippers may have multiple vehicles in transit carrying Goods on behalf of the Debtors.

8. To facilitate its distribution and storage needs, the Debtors also utilize domestic and international third party logistics providers and warehousemen (the "**Warehousemen**"). Specifically, the Debtors' inventory is held in four (4) warehouses owned by third parties—two in Wisconsin, one in Alabama, and one in Canada. As noted above, finished products are shipped from the warehouses directly to customers.

9. The Debtors expect that, as of the Petition Date, certain of the Shippers and Warehousemen will have outstanding invoices or have accrued but unbilled charges relating to Goods that were delivered to or sent by the Debtors prior to the Petition Date (such payments, collectively, the "**Shipping and Warehousing Charges**"). In the event the Debtors fail to pay the Shipping and Warehousing Charges, applicable non-bankruptcy law permits the Shippers and Warehousemen to assert statutory liens against any products in their possession that are the subject

of any delinquent charges to secure such charges, potentially blocking the Debtors' access to such Goods. Thus, to maintain access to the Goods that are essential to the continued viability of the Debtors' operations and to preserve the value of such Goods, the Debtors seek authority to honor outstanding invoices related to the Shipping and Warehousing Charges associated with services provided to the Debtors prior to the Petition Date.

B. Import/Export Charges

10. As mentioned above, in the ordinary course of their business, the Debtors receive component parts and a portion of their finished engines from their production facility in China as well as finished Goods from certain of their foreign contract manufacturers (collectively, the "**Imported Goods**"). The Debtors export component parts to their facility in China to support manufacturing, as well as various Goods to their Foreign Subsidiaries which then sell directly to their customers (collectively, the "**Exported Goods**"). Timely receipt of the Imported Goods and timely delivery to the Debtors' Foreign Subsidiaries of the Exported Goods are critical to the Debtors' business operations. Any disruption or delay in receipt of the Imported Goods or the Exported Goods would adversely affect the Debtors' business operations.

11. In connection with the import and export of goods, the Debtors may be required to make certain payments to the applicable governmental agencies and authorities (the "**Import/Export Providers**") for charges, including, but not limited to, U.S. customs duties, tariffs, freight forwarding or consolidation charges, and other similar obligations (the "**Import/Export Charges**").

12. As of the Petition Date, the Debtors had both Imported Goods and Exported Goods in transit. The Debtors seek authority to pay, either directly or through a third party administrator, any and all necessary and appropriate Import/Export Charges incurred on account of prepetition transactions, to the extent the Debtors determine, in the exercise of their business

judgment, that such payment is necessary or appropriate to secure the import or export of their Goods.

13. The Debtors estimate that, as of the Petition Date, there are approximately \$3,500,000 in aggregate Shipping and Warehousing Charges and Import/Export Charges outstanding, of which approximately \$2,950,000 will come due within the first thirty (30) days of these chapter 11 cases.

C. Other Lien Claimants

14. The Debtors regularly make improvements and repairs to their property (including the Facilities owned by the Company) and their equipment, including custom tooling, die casting, and other manufacturing equipment. To do so, the Debtors contract with a number of third parties (the “**Other Lien Claimants**”) along with certain subcontractors that provide services to the Other Lien Claimants (the “**Subcontractors**”).

15. Absent payment of their prepetition claims, the Other Lien Claimants could potentially assert liens under applicable non-bankruptcy law, including mechanic’s liens, artisan’s liens, and materialman’s liens against the Debtors’ property for amounts owed to these third parties by the Debtors (the “**Other Lien Claims**” and, collectively with the Shipping and Warehousing Charges and the Import/Export Charges, the “**Lien Claims**,” and the holders of the Lien Claims, collectively, the “**Lien Claimants**”). The Debtors spend an average of approximately \$3,000,000 per month on maintenance costs related to manufacturing equipment, all of which may be subject to mechanics liens in the event of non-payment by the Debtors.

16. Thus, if the Debtors fail to pay the Other Lien Claims, the Debtors risk losing access to equipment and other property that are critical to the continued operation of the Facilities. For example, even a short delay in repairs to a single manufacturing system could result in lost product of significant value and lost sales of significantly more. Additionally, any delay in

repairs and distribution could harm the Debtors' distribution business in the long term. Accordingly, the Debtors seek authority to pay and discharge, on a case-by-case basis, Other Lien Claims that the Debtors believe have or could give rise to, a lien against the Debtors' property or equipment, regardless of whether such Other Lien Claimants have already perfected their security interests.⁵ The relief requested herein includes authority to remit such payments to the Other Lien Claimants for their services as well as services rendered by their respective Subcontractors, and to pay the Other Lien Claimants' any applicable administrative fees.

17. The Debtors estimate that, as of the Petition Date, there are approximately \$3,750,000 of Other Lien Claims outstanding, of which approximately \$2,500,000 will come due and owing within the first thirty (30) days of these chapter 11 cases.

Proposed Procedures on Account of Lien Claimant

18. The Debtors propose that any payments on account of Lien Claims be subject to the following:

- (i) If a Lien Claimant accepts payment pursuant to an order granting the relief requested in this Motion, such party is deemed to have agreed to release any liens it may have on the Debtors' Goods or any other property.
- (ii) If a Shipper, Warehouseman, or Other Lien Claimant accepts payment pursuant to an order granting the relief requested in this Motion, such party is deemed to have agreed to continue to provide goods or services to the Debtors on the same trade terms given to them prior to the Petition Date or upon new trade terms (to the extent agreed to by the applicable Lien Claimant, the "**Agreed Terms**") during the pendency of these chapter 11 cases.
- (iii) If any Shipper, Warehouseman, or Other Lien Claimant that has been paid pursuant to an order granting the relief requested in the Motion fails to comply with the Agreed Terms, the Debtors shall have the right to seek to cause any payment made to such Lien Claimant on account of its Lien Claim to be deemed to have been in payment of then outstanding postpetition

⁵ To the extent that the Debtors make any payment with respect to an Other Lien Claim, however, such payment shall not be deemed a waiver of the Debtors' rights to challenge the extent, validity, perfection, or possible avoidance of such lien.

obligations owed to such party and require such party to repay immediately to the Debtors any payments made, to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

- (iv) Prior to making a payment to any Lien Claimant in accordance with an order granting the relief requested in this Motion, the Debtors may, in their absolute discretion, settle all or part of the prepetition claims of such party for less than their face amount, without further notice or hearing. The Debtors may elect to only pay part of a prepetition claim, leaving the remainder of the claim to be addressed pursuant to the Debtors' chapter 11 plan.

Relief Requested Should Be Granted

A. Payment of Prepetition Claims of Lien Claimants Is in the Best Interest of the Debtors' Estates and Warranted Under the Doctrine of Necessity

19. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). A debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code must be supported by sound business reasons. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997)); *see also In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (“Under the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the best business judgment in those circumstances.”).

20. The Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

21. Further, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a); *In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor”); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees).

22. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

23. Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

24. Further, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such a lien, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁶ As such, if the Debtors fail to pay the Lien Claims, the Debtors risk losing access to equipment and other property that are critical to the Debtors’

⁶ Under section 546(b), a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection” 11 U.S.C. § 546(b)(1)(A).

distribution business. For example, if customers experience a delay in receiving Goods, they might turn to the Debtors' competitors to supply their inventory, resulting in lost sales.

25. The relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying the Lien Claimants will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. The Lien Claimants, all of which either ship, store, or maintain and repair the Debtors' Goods and equipment, may have statutory possessory liens or mechanic's liens against the Debtors' Goods and equipment under applicable state law. The Lien Claimants may be unwilling to release the Goods in their possession, because releasing possession of the Goods may convert their claims against the Debtors from secured to unsecured claims. Moreover, some Lien Claimants may not have a possessory lien but may have mechanic's liens and may also refuse to provide repair and maintenance services to the Debtors. Further, the requested relief is also necessary to ensure the timely delivery of the Debtors' Goods and, in turn, to maintain customer goodwill and preserve existing customer relationships. Therefore, unless the Court authorizes the Debtors to pay the Lien Claimants, it is unlikely the Debtors will continue to have access to the Goods in the possession of the Lien Claimants. If the Lien Claimants possess lien rights or have the ability to exercise "self-help" remedies to secure payment of their claims, failure to satisfy the Lien Claimants' claims could have a material adverse effect on the Debtors' business operations to the detriment of the Debtors' creditors.

26. Payment of the Import/Export Charges is critical to ensure the uninterrupted flow of Imported Goods and Exported Goods. Absent such payment, parties to which Import/Export Charges are owed may have the ability to interfere with the shipping of such

Imported Goods or Exported Goods. If the flow of Imported Goods were to be interrupted, the Debtors would be deprived of the materials necessary to complete orders already placed by their customers, which orders are worth far more to the Debtors (both in terms of future receipts and the maintenance of valuable good will) than the aggregate amount of incurred, but unpaid, Import/Export Charges. Similarly, the Debtors must continue to deliver the Exported Goods internationally to maintain valuable customer relationships abroad and to generate accounts receivable.

27. In addition, the relief requested herein should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amounts owed to the Lien Claimants are less than the value of the Goods that could be held to secure the claims of the Lien Claimants, such parties may be fully-secured creditors of the Debtors' estates. In such instances, payment at this time only provides such parties with what they would be entitled to receive under a plan of reorganization, only without any interest costs that might otherwise accrue during these chapter 11 cases.

28. Similarly, some portion of the Import/Export Charges would likely be paid in full under any plan of reorganization pursuant to section 507(a)(8) of the Bankruptcy Code, which provides eighth priority status to the claims of a governmental unit based on a customs duty arising out of the importation of certain merchandise. Thus, payment of some of the Import/Export Charges as proposed in the Motion merely accelerates the payment that the Import/Export providers would receive in any event upon confirmation of a plan. Granting the Motion with respect to the Import/Export Charges, therefore, would have no substantial effect on the relative recoveries of the Debtors' stakeholders.

29. The Debtors will maintain a matrix (the “**Lien Claimant Payment Matrix**”) summarizing (i) the name of each Lien Claimant the Debtors seek to pay on account of the terms set forth in any order approving this Motion, (ii) the amount of each made payment, and (iii) a brief description of the goods and services provided by the Lien Claimant for which such payment will be made. Upon entry of the Proposed Order, the Debtors will provide the full Lien Claimant Payment Matrix to (a) the United States Trustee for the Eastern District of Missouri; (b) counsel to any official committee of unsecured creditors that may be appointed in these chapter 11 cases (if any committee has been appointed); and (c) counsel to the lenders under the Debtors’ postpetition debtor in possession secured credit facility. Upon entry of the Proposed Order, the Debtors will provide a list of any changes to the Lien Claimant Payment Matrix to the above parties every two weeks during the first month of these chapter 11 cases and monthly thereafter. Provision of the Lien Claimant Payment Matrix and any subsequent changes by email shall be sufficient. Recipients of the Lien Claimant Payment Matrix shall keep the Lien Claimant Payment Matrix strictly confidential with access to the actual details limited to attorneys and financial advisors and shall not disclose the Lien Claimant Payment Matrix or any portion thereof to any individual or entity without the Debtors’ prior written consent.

30. This Court has granted similar relief with respect to the payment of prepetition claims of shippers, warehousemen, and other lien claimants in other chapter 11 proceedings. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KAS) (Bankr. E.D. Mo. Mar. 13, 2020) [ECF No. 115] (approving payment of prepetition claims related to shipping, warehousing, and servicing); *In re Payless Holdings LLC*, No. 19-40883 (KAS) (Bankr. E.D. Mo. Feb. 19, 2019) [ECF No. 88] (same); *In re Payless Holdings LLC*, No. 17-42267 (KAS) (Bankr. E.D. Mo. Apr. 6, 2017) [ECF No. 94] (same); *In re Peabody Energy, Corp.*, No. 16-42529 (BSS)

(Bankr. E.D. Mo. Apr. 15, 2016) [ECF No. 150] (same); *In re Noranda Aluminum*, No. 16-10083 (BSS) (Bankr. E.D. Mo. Feb. 10, 2016) [ECF No. 97] (same); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 14, 2016) [ECF No. 93] (same); *In re Bakers Footwear Grp., Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Oct. 9, 2012) (same).

31. Accordingly, the Debtors submit that the proposed relief with respect to the Lien Claimants' claims is warranted in these chapter 11 cases.

**Applicable Financial Institutions Should Be
Authorized to Receive, Process, Honor, and Pay Checks Issued
and Transfers Requested to Pay Obligations Owed to Lien Claimants**

32. The Debtors further request that the Court authorize applicable financial institutions (the “**Banks**”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the obligations owed to the Lien Claimants, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition obligations owed to the Lien Claimants dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

33. The Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the Ficks Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition

smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

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

34. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

Reservation of Rights

35. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

36. Notice of this Motion will be provided to (i) the Office of the United States Trustee for Region 13; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and

collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Eastern District of Missouri; (vii) the Securities and Exchange Commission; (viii) the Banks; (ix) Lien Claimants; and (x) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

37. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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