

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
CARESTREAM HEALTH, INC., et al.,1)
) Case No. 22-10778 ()
)
Debtors.) (Joint Administration Requested)
)

DEBTORS' MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors")
respectfully state as follows in support of this motion:2

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms
attached hereto as Exhibit A and Exhibit B (respectively, the "Interim Order" and "Final Order"),
(a) authorizing the Debtors to (i) pay all prepetition wages, salaries, Commissions, other
compensation, and Reimbursable Expenses on account of the Compensation and Benefits
(each as defined herein) and (ii) continue to administer the Compensation and Benefits in the

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification
number, are: Carestream Health, Inc. (0334); Carestream Health Acquisition, LLC (0333); Carestream Health
Canada Holdings, Inc. (7700); Carestream Health Holdings, Inc. (7822); Carestream Health International
Holdings, Inc. (5771); Carestream Health International Management Company, Inc. (0532); Carestream Health
Puerto Rico, LLC (8359); Carestream Health World Holdings, LLC (1662); and Lumisys Holding Co.
(3232). The location of the Debtors' service address is: 150 Verona Street, Rochester, New York 14608.

2 A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to
the Debtors' chapter 11 cases, is set forth in the Declaration of Scott H. Rosa, Chief Financial Officer of
Carestream Health, Inc., in Support of Chapter 11 Petitions and First Day Motions (the "First Day Declaration"),
filed contemporaneously herewith. Capitalized terms used but not defined in this motion have the meanings
ascribed to them in the First Day Declaration or in the contemporaneously filed Joint Prepackaged Chapter 11
Plan of Reorganization of Carestream Health, Inc. and Its Debtor Affiliates (as amended, supplemented, or
otherwise modified from time to time, the "Plan"), as applicable.



ordinary course of business, including payment of prepetition obligations related thereto; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately thirty-five days after the commencement of these chapter 11 cases to consider entry of the Final Order.

Jurisdiction and Venue

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

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

4. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

5. The Debtors, together with their non-Debtor affiliates (collectively, “Carestream” or the “Company”), are a leading provider of medical imaging and non-destructive testing products with over 100 years of industry experience. The Company is a partner of choice to approximately 8,000 direct customers and approximately 900 dealers in more than 130 countries. Its products

are used by prominent health systems, hospitals, imaging centers, specialty practices and industrial companies worldwide. Headquartered in Rochester, New York, Carestream employs a global workforce of approximately 3,410 employees with approximately 180 contractors.

6. Carestream, like many businesses, faced significant headwinds in 2020, principally as a result of changing product and customer trends and the global COVID-19 pandemic, which, in light of the Debtors' capital structure, placed substantial strain on the Debtors' businesses. To alleviate the strain, the Debtors executed a voluntary amend-and-extend transaction in early 2020 that extended the maturities of their first lien revolver and term loan and second lien term loan debt. The amend-and-extend transaction provided the Debtors with time to meaningfully examine various strategic alternatives, including sale transactions and debt-for-equity exchanges to deleverage the Company.

7. Ultimately, the Debtors determined that a substantial deleveraging combined with new capital investment was the best path forward for their business. To implement the foregoing, the Debtors negotiated, and ultimately agreed, with a majority of their prepetition secured lenders and their equity sponsor on the terms of a comprehensive financial restructuring. The terms of the proposed restructuring are memorialized in a restructuring support agreement (the "RSA") that serves as the foundation of the Debtors' prepackaged Plan. Under the RSA, the Debtors will eliminate approximately \$470 million of prepetition funded debt and raise up to \$75 million of new equity capital, while also leaving general unsecured claims unimpaired. As of August 23, 2022 (the "Petition Date"), the Debtors have fully solicited their Plan, which was accepted by all creditor classes entitled to vote, including lenders collectively holding approximately 73% of the Debtors' prepetition first lien revolver and term loan debt and approximately 98% of the Debtors' prepetition second lien term loan debt.

8. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). 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 official committees have been appointed or designated.

The Debtors' Workforce

9. As of the Petition Date, the Debtors employ approximately 1,545 employees (the "Employees"), over approximately ninety-eight percent of whom are full-time Employees. The Employees include personnel who are intimately familiar with the Debtors' business, processes, and systems, and possess unique skills and experience with respect to the Debtors' core business segments. Many of these Employees have developed relationships with wholesalers and distributors that are essential to the Debtors' business. Without the continued, uninterrupted services of the Employees, the Debtors' business operations will be halted and the administration of the estates materially impaired. In addition to the Employees, the Debtors' workforce also includes approximately one-hundred independent contractors (the "Independent Contractors"), who perform necessary quality assurance and research and development support for the Debtors.

10. The vast majority of the Employees and Independent Contractors rely on their compensation and benefits to pay their daily living expenses. These workers will be unfairly harmed if the Debtors are not permitted to continue paying compensation and providing health and other benefits during these chapter 11 cases. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

11. To minimize the personal hardship that Employees and Independent Contractors could suffer if prepetition Employee and Independent Contractor-related obligations remain unpaid during these chapter 11 cases, the Debtors seek authority to: (a) pay and honor certain prepetition claims relating to, among other things, Wage/Pay Obligations, Withholding Obligations, payroll processing, Reimbursable Expenses, Health and Welfare Coverage and Benefits, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions), Paid Leave Benefits, the Non-Insider Employee Incentive Program, the Non-Insider Severance Program and Non-Insider Severance Benefits, and certain other benefits that the Debtors have provided in the ordinary course (each as defined herein, and collectively, the "Compensation and Benefits"); and (b) pay all costs related to or on account of the Compensation and Benefits.

12. Subject to the Court's approval, the Debtors intend to continue their prepetition Compensation and Benefits in the ordinary course of business. Out of an abundance of caution, the Debtors further request confirmation of their right to modify, change, and/or discontinue any of their Compensation and Benefits and/or to implement new programs, policies, and benefits in the Debtors' sole discretion and in the ordinary course during these chapter 11 cases (subject in all respects to the terms of the Order) and without the need for further Court approval, subject to applicable law.

I. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.

A. Wage/Pay Obligations.

13. In the ordinary course of business, the Debtors have incurred obligations to their Employees for Employee Compensation, Independent Contractor Obligations, and Commissions

(each as defined below and collectively, the “Wage/Pay Obligations”). As of the Petition Date, the Debtors estimate that they owe approximately \$5,244,000 on account of accrued but unpaid Wage/Pay Obligations. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor the Wage/Pay Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business.

i. Unpaid Employee Compensation.

14. In the ordinary course of business, the Debtors incur obligations to their Employees for wages, overtime, and similar obligations (the “Employee Compensation”). Because Employees are generally paid in arrears, certain Employees are owed accrued but unpaid Employee Compensation as of the Petition Date (the “Unpaid Employee Compensation”). Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees, or as a result of Employees holding uncashed paper paychecks as of the Petition Date.

15. The majority of the Debtors’ payroll is made by direct deposit through electronic transfer of funds to the Employees’ bank accounts or other electronic means on a bi-weekly calendar, and Employee Compensation accrues on either a salaried or hourly basis. As of the Petition Date, the Debtors estimate that they owe approximately \$3,397,000 on account of accrued but Unpaid Employee Compensation.

ii. Independent Contractor Obligations.

16. Typically, the Debtors hire Independent Contractors through third-party contracting agencies, and in the ordinary course of business, incur payment obligations to their Independent Contractors for services rendered to the Debtors (the “Independent Contractor

Obligations”). The Debtors pay their Independent Contractors on either a weekly or monthly basis at an agreed rate, depending on the terms of the Debtors’ agreement with the contracting agency, as well the Independent Contractor’s role listed on the contracting agency’s invoice. The Independent Contractors perform critical staff augmentation for positions such as quality assurance technician roles for research and design manufacturing, variable plant roles, IT project managers, IT subject matter experts or specialists, and warehouse positions that support the Debtors’ Employees and operations. The Debtors believe that the authority to continue paying their Independent Contractors is critical to maintaining and administering their estates.

17. Through July 31, 2022, the Debtors have spent approximately \$686,300 per month on average on Independent Contractor Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$821,000 in accrued but unpaid Independent Contractor Obligations (the “Unpaid Independent Contractor Obligations”).

iii. Unpaid Commissions.

18. The Debtors pay sales-based commissions to approximately 105 Employees. These Employees market the Debtors’ products and services and generally receive commission payments on a monthly, in-arrears basis in varying percentages based on the sales tied to their individual efforts (the “Commissions”). The Debtors generally pay Commissions in arrears based on the Employees’ sales performance in the prior month. The Commissions are an important part of such Employees’ overall compensation packages and motivate the Employees to maximize their sales performance. Many of the Employees rely on the Commissions for their daily living expenses such that the failure to pay such Commissions would impose undue hardship. On average, the Debtors spend approximately \$485,000 per month on Commissions. As of the Petition Date, the Debtors owe approximately \$1,026,000 in accrued but unpaid Commissions (the “Unpaid Commissions”).

19. As of the Petition Date, the Debtors do not believe that the accrued prepetition Wage/Pay Obligations exceed the statutory cap set forth in section 507(a)(4) of the Bankruptcy Code (the “Statutory Cap”). However, due to the particular importance of Commissions to the Debtors’ business, including their ability to maintain workforce morale and sales momentum during these chapter 11 cases, the Debtors are seeking authority, but not direction, to pay all outstanding prepetition Wage/Pay Obligations in full, including Commissions, as they become due and payable in the ordinary course of the Debtors’ business.

B. Withholding Obligations.

20. In the ordinary course of business, the Debtors incur obligations on account of Payroll Deductions and Payroll Taxes (each as defined below and collectively, the “Withholding Obligations”). During the 2021 calendar year, the Debtors incurred a monthly average of approximately \$3,148,369 of Withholding Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$1,774,000 of Withholding Obligations. The Debtors respectfully request that the Court authorize the Debtors to continue to honor their Withholding Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business.

i. Payroll Deductions.

21. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees’ paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee’s share of healthcare benefits and insurance premiums, 401(k) contributions, legally ordered deductions, and miscellaneous deductions (collectively, the “Payroll Deductions”), and forward the Payroll Deductions to various third-party recipients. The Debtors retain only those Payroll Deductions related to the Employees’ share of

health care benefits and insurance premiums. As of the Petition Date, the Debtors estimate that they owe approximately \$559,000 on account of the Payroll Deductions.

ii. Payroll Taxes.

22. In addition to the Payroll Deductions, certain federal and state laws require that the Debtors withhold amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities (collectively, the "Employee Payroll Taxes"). The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (collectively, the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities in accordance with remittance intervals and deadlines established by those taxing authorities. As of the Petition Date, the Debtors estimate that they owe approximately \$1,215,000 on account of the Payroll Taxes.³

C. Payroll Processing.

23. Certain Withholding Obligations for the Debtors' Employees are processed and administered by Ceridian HCM, Inc. and SAP SuccessFactors. During the 2021 calendar year, the Debtors incurred a monthly average of approximately \$100,000 on account of these payroll processing and application hosting services. Additionally, as of the Petition Date, the Debtors estimate they owe approximately \$220,000 on account of prepetition payroll processing services (the "Unpaid Payroll Processing Fees"). Accordingly, the Debtors respectfully request that the

³ In addition to the Payroll Taxes noted above, the Debtors deferred approximately \$3,000,000 of Employer Payroll Taxes pursuant to the Coronavirus Aid, Relief and Economic Security Act. These deferred Employer Payroll Taxes are payable as of December 31, 2022.

Court authorize the Debtors to continue to honor their Unpaid Payroll Processing Fees and to pay any prepetition claims with respect thereto in the ordinary course of business.

D. Reimbursable Expenses.

24. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed certain Employees for pre-approved expenses incurred on behalf of the Debtors within the scope of their employment (the “Reimbursable Expenses”). Reimbursable Expenses include, among other expenses, travel-related expenses such as air travel, meal allowances, car mileage allowances, and business-related entertainment expenses.⁴ Employees who pay for their own Reimbursable Expenses up-front (*i.e.*, not via a Company credit card) apply for reimbursement of such expenses by submitting an expense report to the Debtors. Once the Debtors determine that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for any such expenses.

25. The Debtors’ inability to reimburse the Reimbursable Expenses could impose a hardship on the Employees where such individuals incurred obligations for the Debtors’ benefit. Employees incurred the Reimbursable Expenses as business expenses on the Debtors’ behalf and with the understanding that such expenses would be reimbursed.

26. During the 2021 calendar year, the Debtors incurred a monthly average of approximately \$303,500 on account of Reimbursable Expenses. As of the Petition Date, the Debtors estimate that they owe approximately \$437,000 on account of Reimbursable Expenses. The Debtors will not seek to pay any outstanding Reimbursable Expenses or fees related thereto

⁴ The Reimbursable Expenses also include certain credit card expenses. The Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions and (II) Granting Related Relief (the “Cash Management Motion”), filed contemporaneously herewith, describes the Debtors’ Credit Card Program (as defined in the Cash Management Motion).

in advance of the date they come due. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Reimbursable Expenses and to pay any prepetition claims with respect thereto in the ordinary course of business.

II. Health and Welfare Coverage and Benefits.

27. The Debtors have offered their Employees the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, medical and prescription, life and disability insurance, dental insurance, vision insurance, and savings and spending account programs and other employee benefit plans (collectively, the “Health and Welfare Coverage and Benefits”). The Health and Welfare Coverage and Benefits are, in each case, available to Employees depending on factors including their level with the Company and their length of service (the “Eligible Employees”).

28. The Debtors’ Health and Welfare Coverage and Benefits include:

- (a). **Medical and Prescription Coverage:** The Debtors provide Eligible Employees with self-insured medical and prescription coverage programs through carriers Excellus Blue Cross Blue Shield (“BCBS”) and OptumRX, Inc. (“OptumRX,” together with BCBS, the “Medical and Prescription Coverage”), respectively. Employees have the option to waive coverage if they are covered under another insurance plan. With respect to the BCBS plan, the Employees can choose to participate in high-deductible health plans with a Health Savings Account, or alternatively, low-deductible, higher premium health plans, with Consumer Directed Health Plan (“CDHP”) and PPO options. Moreover, under the Medical and Prescription Coverage, the Debtors bear the full cost of the insurance plans other than the amounts deducted from Employee paychecks on account of insurance and amounts paid by Employees on account of any co-pays under the Medical and Prescription Coverage. On average, the Debtors cover approximately 75 percent of the cost of premiums, while the Employees cover the remaining 25 percent. Legal spouses, domestic partners, and children are eligible dependents. Approximately 80 percent of Employees enroll in Medical and Prescription Coverage. The annual cost of the Medical and Prescription Coverage to the Debtors is approximately \$15,410,000. As of the Petition Date, the

Debtors estimate they owe approximately \$2,608,000 on account of incurred but yet unpaid (a) Medical and Prescription Coverage premiums and (b) medical claims, pharmacy claims, and medical stop loss claims.

- (b). **Life Insurance and Other Related Coverage:** The Debtors provide basic life insurance (at an amount calculated based on 100 percent of the Employee's salary, up to a fixed maximum amount), basic accidental death and dismemberment insurance (at an amount calculated based on 100 percent of the Employee's salary, up to a fixed maximum amount), long- and short-term disability insurance to all active Employees who are working twenty or more hours per week, as well as supplemental, spouse, and child life products offered on a voluntary, Employee-paid basis (collectively, the "Life Insurance and Other Related Coverage"), which are paid in arrears and are administered by MetLife, Inc. The average annual cost of the Life Insurance and Other Related Coverage to the Debtors is approximately \$835,687. As of the Petition Date, the Debtors estimate they owe approximately \$172,000 on account of unpaid Life Insurance and Other Related Coverage.
- (c). **Dental Insurance Coverage:** The Debtors offer Eligible Employees two types of dental PPO plans administered by Delta Dental: (a) a basic PPO plan (the "Basic PPO Plan"); and (b) an enhanced PPO plan (the "Enhanced PPO Plan," together with the Basic PPO Plan, the "Dental Insurance Coverage"). The Dental Insurance Coverage allows the freedom to use providers in and out of the network. Unlike the Basic PPO Plan, the Enhanced PPO Plan covers orthodontia. Approximately 70 percent of the Basic PPO Plan premium is employer-paid. Approximately 45 percent of the Enhanced PPO Plan premium is employer-paid, with some fluctuation in percentage depending on whether an Employee elects an individual versus a family plan. The average annual cost of the Dental Insurance Coverage to the Debtors is approximately \$571,000. As of the Petition Date, the Debtors estimate they owe approximately \$100,000 on account of unpaid Dental Insurance Coverage.
- (d). **Vision Insurance Coverage:** The Debtors offer vision insurance plans provided by EyeMed (the "Vision Insurance Coverage"). One-hundred percent of the vision premium is employee-paid. The average annual cost of the Vision Insurance Coverage to the Debtors is approximately \$118,500. As of the

Petition Date, the Debtors estimate they owe approximately \$11,000 on account of unpaid Vision Insurance Coverage.

- (e). **Flex Spending Accounts and Health Savings Accounts:** The Debtors provide Employees with the opportunity to contribute to two types of flexible spending accounts: the Health FSA (for those who enroll in the health savings account medical plan) and the Dependent Care FSA (each, an “FSA”), or to a health savings account (the “HSA”) administered by Lifetime Benefit Solutions, to make pre-tax contributions through payroll deductions to pay for certain health and welfare needs. The Debtors do not contribute to Employees’ FSAs and believe the FSA amounts are generally held in trust by the Debtors and are not property of their estates. The Debtors contribute either \$250 or \$500 to each HSA, depending on the Employee’s healthcare plan, totaling approximately \$110,000 per year. The Debtors deduct an average of \$170 from each participating U.S. Employee’s Wage Obligations on account of the U.S. Employee contributions to the FSA and the HSA on a monthly basis. Currently, approximately 378 Employees contribute to the FSAs, and approximately 286 Employees contribute to the HSA. As of the Petition Date, the Debtors estimate that there are approximately \$46,000 in accrued amounts to be remitted on account of the FSA (the “Unremitted FSA Amounts”). As of the Petition Date, there are approximately \$9,000 in accrued amounts to be remitted on account of the HSAs (the “Unremitted HSA Amounts”). The Debtors pay approximately \$9,000 per month to Lifetime Benefit Solutions in HSA and FSA administrative fees. As of the Petition Date, the Debtors owe approximately \$49,000 on account of accrued but unpaid FSA and HSA fees (together with the Unremitted FSA Amounts and the Unremitted HSA Amounts, the “Unpaid FSA and HSA Costs”). As a result, the Debtors seek authority to pay and/or remit the Unpaid FSA and HSA Costs and continue the FSAs and the HSAs in the ordinary course of business on a postpetition basis.

29. As described above, failure to continue the Health and Welfare Coverage and Benefits could cause Employees to experience severe hardship and make it difficult to retain the Debtors’ workforce. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Health and Welfare Coverage and Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

III. Workers' Compensation.⁵

30. The Debtors maintain workers' compensation insurance for their Employees at the statutorily required level for each state in which they have Employees (collectively, and as described herein, the "Workers' Compensation Program"). As part of the Workers' Compensation Program, the Debtors maintain a workers' compensation insurance policy with Everest Premier Insurance Company (the "Workers' Compensation Insurance Policy").

31. The Debtors must continue claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁶ There are currently thirty-one active open claims under the Workers' Compensation Program.⁷ To the extent any Employees assert claims arising under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with such claims. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

⁵ In addition to the Workers' Compensation Insurance Policy (as defined below), the Debtors maintain numerous other insurance policies, which are described in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage Entered Into Prepetition and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage, and (II) Granting Related Relief*, filed contemporaneously herewith and incorporated herein by reference.

⁶ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any necessary modifications thereto.

⁷ For the avoidance of doubt, the Workers' Compensation deductible is \$250,000. Three of the open claims have exceeded the applicable deductible, and therefore the Debtors incur no further obligations for such claims. Moreover, one claim is currently within approximately \$17,000 of the \$250,000 deductible; once the deductible limit is reached, the Debtors will incur no further obligations for this claim.

32. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. As of the Petition Date, the Debtors believe they owe approximately \$108,365 on account of accrued but unpaid Workers' Compensation Program obligations. The Debtors request authority to (a) pay prepetition amounts due on account of the Workers' Compensation Program and consistent with past practice, (b) continue the Workers' Compensation Program in the ordinary course of business, and (c) to the extent applicable, modify the automatic stay solely to allow Employees to assert claims under the Workers' Compensation Program.

IV. The 401(k) Plan.⁸

33. The Debtors maintain a retirement savings plan for the benefit of their Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the "401(k) Plan"). The 401(k) Plan is administered by T. Rowe Price and allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code.

34. The Debtors match Employees' 401(k) contributions at a dollar-for-dollar rate for every dollar contributed by the Employee for the first 3 percent contributed, and then at a 50 percent rate for the next 2 percent contributed by the Employee, for an annual matching cap of 5 percent (collectively, the "401(k) Matching Contributions"). A Debtor discretionary contribution of up to 2 percent may be made based on annual Debtor performance and other

⁸ In addition, the Debtors maintain a non-qualified deferred compensation plan (the "Deferred Compensation Plan"). Under the Deferred Compensation Plan, certain executives defer a portion of their income and invest it in the same investment opportunities available under the 401(k) Plan. For the avoidance of doubt, by this motion, the Debtors are not seeking authority to make any disbursements under the Deferred Compensation Plan during these chapter 11 cases.

pertinent factors. The 401(k) Matching Contributions are made in each pay period. The discretionary contribution, if any, is made in the following plan year.

35. During the 2021 calendar year, the Debtors incurred approximately \$7,063,982 on account of 401(k) Matching Contributions. As of the Petition Date, the Debtors estimate that they owe approximately \$1,746,000 on account of 401(k) Matching Contributions, which includes amounts accrued during the 2022 calendar year. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their 401(k) Matching Contributions and to pay any prepetition claims with respect thereto in the ordinary course of business.

V. Paid Leave Benefits.

36. The Debtors have, in the past, provided paid time off to certain eligible Employees as a benefit (the "Paid Leave Benefits"). The Debtors' Paid Leave Benefits program combines flexible time off, vacation, sick, holiday, voting, jury duty, military service, parental leave, and bereavement leave. When an Employee elects to use Paid Leave Benefits, that Employee is paid his or her regular hourly or salaried rate. Paid Leave Benefits generally accrue at specified rates up to a maximum amount based on the Employee's level, area of employment, and years of service. Upon an Employee's termination, the Debtors will cash out the Employee's Paid Leave Benefits to the extent required by applicable law or consistent with internal policy.

37. The Debtors believe that the continuation of the Paid Leave Benefits policies in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. As of the Petition Date, the Debtors estimate that there is approximately \$5,489,000 in accrued but unpaid Paid Leave Benefits, all of which is related to accrued vacation time. The Debtors respectfully request that the Court authorize the Debtors to continue to honor their obligations on account of Paid Leave Benefits, including to cash out accrued benefits at

termination, if and when they come due in the ordinary course of business, to the extent required by applicable law or consistent with internal policy.

VI. Additional Benefit Programs.

38. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of general, ancillary benefits, including, among other things: (a) a vehicle lease program; (b) an employee assistance program, whereby Employees may seek, *inter alia*, counseling sessions, legal referrals, and financial coaching; (c) personal umbrella liability insurance coverage for certain Employees; and (d) leadership training courses (collectively, the “Additional Benefit Programs”).⁹ During the 2021 calendar year, the Debtors spent approximately \$1,915,000 on account of the Additional Benefit Programs. As of the Petition Date, approximately \$297,000 is accrued and outstanding under the Additional Benefit Programs.

VII. Non-Insider Employee Incentive Program.

39. In the ordinary course of business, to encourage and reward outstanding performance, the Debtors incur obligations to their Employees for quarterly bonuses, which are targeted at a range between four and thirty-five percent of annual bonus eligible earnings, pro-rated based on the Employee’s hire date (the “Non-Insider Employee Incentive Program”). The Non-Insider Employee Incentive Program is based on metrics that are set each year by the Debtors depending on an Employee’s role. The Debtors believe the Non-Insider Employee Incentive Program is necessary to properly motivate Employees to outperform and drive value for all stakeholders and that the authority to continue to maintain the Non-Insider Employee Incentive

⁹ For the avoidance of doubt, the Debtors also incur several administrative expenses for, *inter alia*: (i) retirement planning recordkeeping, (ii) paying the Debtors’ retirement plan fiduciary; and (iii) paying the Debtors’ benefits broker. Because the amounts accrued and outstanding for such administrative expenses are *de minimis*, the Debtors request authority to continue to pay these expenses postpetition. As such, these expenses are included in the amounts accrued and outstanding as of the Petition Date under the Additional Benefit Programs.

Program and pay all obligations thereunder is critical to maintaining Employee morale and to avoid disruption to their workforce.

40. As of the Petition Date, approximately \$931,000 is accrued and outstanding under the Non-Insider Employee Incentive Program. The Debtors seek authority to continue honoring the Non-Insider Employee Incentive Program. The Debtors are not seeking relief to pay any Employee that is an insider, as such term is defined in section 101(31) of the Bankruptcy Code, under the Non-Insider Employee Incentive Program.

VIII. Non-Insider Severance Program.

41. In the ordinary course of business, the Debtors maintain a severance program and provide certain COBRA benefits for the benefit of certain non-insider Employees (together, the “Non-Insider Severance Program”). Under the Non-Insider Severance Program, certain full-time and part-time Employees may be eligible for payment of severance if their employment is terminated due to a workforce adjustment or any not-for-cause employer-initiated termination. Such severance payments (the “Non-Insider Severance Benefits”) are calculated by reference to a terminated Employee’s compensation level (based on the Employee’s job position) in accordance with standard Debtor-instituted guidelines. These guidelines provide that non-insider Employees accrue Non-Insider Severance Benefits based on length of service, subject to a maximum accrual period of twelve weeks. Non-Insider Severance Benefits are paid on a bi-weekly basis based on the eligible Employee’s length of service.

42. The Debtors’ maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors’ workforce, which will undermine the Debtors’ ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

43. As of the Petition Date, the Debtors believe that six former Employees are entitled to Non-Insider Severance Benefits. The Debtors estimate that, as of the Petition Date, there is approximately \$207,000 outstanding under the Non-Insider Severance Program, including \$30,000 in COBRA benefits. The Debtors respectfully request that the Court authorize the Debtors to continue to pay amounts on account of the Non-Insider Severance Program if and when they come due in the ordinary course of business.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Certain of the Compensation and Benefits Are Entitled To Priority Treatment.

44. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits to priority treatment to the extent such payments do not exceed \$15,150 for each individual as provided for under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Employee is owed more than \$15,150 on account of certain Compensation and Benefits (and specifically, Unpaid Commissions), the Debtors submit that the full payment of such obligations

in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

45. The Debtors' Employees and Independent Contractors are essential to the Debtors' business, and payment of the Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors' ordinary-course operations. Finding, attracting, and training new qualified talent would be extremely difficult, particularly given current labor market conditions. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees. Further, in light of the prepackaged nature of these chapter 11 cases and the unimpaired treatment of Compensation and Benefits and other General Unsecured Claims under the Plan, delaying payment of Compensation and Benefits risks a needless, value-destructive disruption of the Debtors' businesses.

B. Payment of Certain Compensation and Benefits Is Required by Law.

46. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 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 Withholding Obligations may not be property of the Debtors' estates, the Debtors request authorization to transmit the Withholding Obligations to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998).

47. 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 obligations related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

48. The Debtors, therefore, respectfully request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

II. Payment of the Compensation and Benefits Is Warranted Under Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

49. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *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). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

50. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 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); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

51. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers 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 authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts 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 Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

52. These standards are satisfied here. The Debtors submit that the payment of the Compensation and Benefits in the ordinary course represents a sound exercise of the Debtors’ business judgment and is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying the Compensation and Benefits in the ordinary course will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to operate their businesses and, likely, diminishing stakeholder confidence in the Debtors’ ability to successfully reorganize. The loss of valuable Employees and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on

stabilizing their business operations. Accordingly, the Debtors must do their utmost to retain their workforce by, among other things, paying Compensation and Benefits in the ordinary course.

53. In addition, many Employees and Independent Contractors rely exclusively on the Compensation and Benefits to satisfy their daily living expenses. Consequently, Employees and Independent Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to pay Compensation and Benefits in the ordinary course. Moreover, failure to timely satisfy such obligations will jeopardize workforce morale and loyalty at this critical time, when needed most. Furthermore, if this Court does not grant the relief requested herein, Employees will not receive health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need all Employees to perform their best. 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 this critical juncture.

54. The importance of a debtor's workforce to its operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Alex and Ani, LLC*, No. 21-10918 (CTG) (Bankr. D. Del. Jul. 14, 2021) (same); *In re HighPoint Res. Corp.*, No. 21-10565 (CSS) (Bankr. D. Del. Mar. 26, 2021) (same);

In re Town Sports Int'l, LLC, No. 20-12168 (CSS) (Bankr. D. Del. Sept. 16, 2020) (same);
In re Extraction Oil and Gas, Inc., No. 20-10548 (Bankr. D. Del. July 13, 2020) (same).¹⁰

55. Additionally, courts in this district and others have authorized payments of prepetition commission obligations in excess of the Statutory Cap to non-insiders. *See, e.g., In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) (authorizing the debtors to continue employee compensation and benefit programs and pay certain prepetition obligations in the ordinary course, including amounts due on account of commission obligations in excess of the Statutory Cap); *In re APC Auto. Techs. Intermediate Holdings, LLC*, No. 20-11466 (CSS) (Bankr. D. Del. June 23, 2020) (same); *In re Millennium Lab Holdings II, LLC*, No. 15-12284 (LSS) (Bankr. D. Del. Dec. 14, 2015) (same); *In re Quiksilver, Inc.*, No. 15-11890 (BLS) (Bankr. D. Del. Oct. 7, 2015) (same); *In re Allen Systems Group, Inc.*, No. 15-10332 (KJC) (Bankr. D. Del. Feb. 19, 2015) (same). Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue the Compensation and Benefits and pay related obligations in the ordinary course of business.

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

56. Section 362(a) of the Bankruptcy Code operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1).

57. In accordance with section 362(d) of the Bankruptcy Code, the Debtors seek to modify the automatic stay to permit Employees to proceed with their workers’ compensation claims in the appropriate judicial or administrative forum. Cause exists here to modify the automatic stay because staying the workers’ compensation claims could have a detrimental effect on the financial wellbeing and morale of certain Employees and lead to the departure of Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors’ businesses, which would be to the detriment of all parties in interest.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

58. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any 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. Therefore, the Debtors respectfully request that the Court 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 in this motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

59. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, the Debtors believe an immediate and orderly

transition into chapter 11 is critical to the viability of their operations, and the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

60. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order

is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

61. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

62. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the DIP Agent; (d) counsel to the First Lien Agent and Second Lien Agent; (e) counsel to the Crossover Group; (f) the office of the attorney general for each of the states in which the Debtors operate; (g) the United States Attorney's Office for the District of Delaware; (h) the Internal Revenue Service; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. 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 Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Dated: August 23, 2022
Wilmington, Delaware

/s/ Laura Davis Jones

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

In re:)	
)	Chapter 11
CARESTREAM HEALTH, INC., <i>et al.</i> , ¹)	Case No. 22-10778 (___)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. _

**INTERIM ORDER (I) AUTHORIZING THE
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) to continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Carestream Health, Inc. (0334); Carestream Health Acquisition, LLC (0333); Carestream Health Canada Holdings, Inc. (7700); Carestream Health Holdings, Inc. (7822); Carestream Health International Holdings, Inc. (5771); Carestream Health International Management Company, Inc. (0532); Carestream Health Puerto Rico, LLC (8359); Carestream Health World Holdings, LLC (1662); and Lumisys Holding Co. (3232). The location of the Debtors’ service address is: 150 Verona Street, Rochester, New York 14608.

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

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth in this Interim Order.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2022, at __:__.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2022. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtors are authorized, but not directed, to continue and/or modify the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and to honor and pay any prepetition amounts related thereto as and when such obligations are due, in an aggregate amount not to exceed \$13.8 million; *provided* that the Debtors shall not make any payments in excess of the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any individual Employee or Independent Contractor without further order of this Court; *provided further* that (a) the Debtors

shall seek Court approval, on notice, of any modification or change that would implicate any portion of section 503(c) of the Bankruptcy Code; and (b) nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to section 503(c) of the Bankruptcy Code. If the Debtors seek to pay any amounts that are subject to section 503(c) of the Bankruptcy Code, the Debtors will seek approval of such payments, if any, by separate motion under section 503(c) of the Bankruptcy Code.

4. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

6. The Debtors are authorized, but not directed, to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the Unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments to outside professionals.

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

8. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of an Employee, if applicable nonbankruptcy law requires such payment.

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

10. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

11. The Debtors are authorized, but not directed, 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 the relief granted herein.

12. The Debtors have demonstrated that the requested relief is “necessary to avoid immediate and irreparable harm,” as contemplated by Bankruptcy Rule 6003.

13. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

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

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

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

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

Exhibit B

Proposed Final Order

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

In re:)	
)	Chapter 11
CARESTREAM HEALTH, INC., <i>et al.</i> , ¹)	Case No. 22-10778 (___)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. _

**FINAL ORDER (I) AUTHORIZING THE DEBTORS
TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) to continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Carestream Health, Inc. (0334); Carestream Health Acquisition, LLC (0333); Carestream Health Canada Holdings, Inc. (7700); Carestream Health Holdings, Inc. (7822); Carestream Health International Holdings, Inc. (5771); Carestream Health International Management Company, Inc. (0532); Carestream Health Puerto Rico, LLC (8359); Carestream Health World Holdings, LLC (1662); and Lumisys Holding Co. (3232). The location of the Debtors’ service address is: 150 Verona Street, Rochester, New York 14608.

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

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

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized, but not directed, to continue and/or modify the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and to honor and pay any prepetition amounts related thereto as and when such obligations are due; *provided* that the Debtors shall not make any payments in excess of the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any individual Employee or Independent Contractor without further order of this Court; *provided further* that (a) the Debtors shall seek Court approval, on notice, of any modification or change that would implicate any portion of section 503(c) of the Bankruptcy Code; and (b) nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to section 503(c) of the Bankruptcy Code. If the Debtors seek to pay any amounts that are

subject to section 503(c) of the Bankruptcy Code, the Debtors will seek approval of such payments, if any, by separate motion under section 503(c) of the Bankruptcy Code.

3. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

4. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

5. The Debtors are authorized, but not directed, to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the Unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments to outside professionals.

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

7. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of an Employee, if applicable nonbankruptcy law requires such payment.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized

to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

10. The Debtors are authorized, but not directed, 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 the relief granted herein.

11. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

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

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

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

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