

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re** : **Chapter 11**  
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**PACIFICCO INC., et al.,** : **Case No. 23-10470 (PB)**  
 :  
**Debtors.<sup>1</sup>** : **(Jointly Administered)**  
 : **Re: ECF Nos. 16 & 50**  
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**FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, AND (III) MODIFYING THE AUTOMATIC STAY**

Upon the motion, dated March 28, 2023 (the “**Motion**”)<sup>2</sup> of PacificCo Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of a final order (the “**Final Order**”), pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 4001–2 and 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), (a) authorizing the Debtors to use cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”) of Prepetition Secured Parties (as defined herein); (b) providing adequate protection to the Prepetition Secured Parties to the extent set forth herein; and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Catalina Marketing Corporation (9007); PacificCo Inc. (1563); PacificCo Intermediate Corp. (8394); PacificCo Acquisition Corp. (4852); Catalina Marketing Procurement, LLC (9333); Catalina Marketing Technology Solutions, Inc. (8728); Modiv Media, LLC (3507); Cellfire LLC (5599); Catalina Marketing Worldwide, LLC (9687); Catalina-Pacific Media, L.L.C. (3931); CMJ Investments L.L.C. (0561); Supermarkets Online, Inc. (6998); Supermarkets Online Holdings, Inc. (1736); Catalina Marketing Loyalty Holdings, Inc. (3746); and Catalina Digital Holdings, LLC (3488). The Debtors’ principal offices are located at 200 Carillon Parkway, Suite 200, St. Petersburg, FL 33716.

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



(c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code (the “**Automatic Stay**”) to the extent necessary to implement and effectuate the terms and provisions of the Final Order, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having entered an order granting the requested relief on an interim basis [ECF No. 50] (the “**Interim Order**”); and this Court having held a hearing to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and upon the *Declaration of Michael Huffmaster Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York* and the *Declaration of Robert A. Del Genio in Support of Debtors’ Chapter 11 Petitions and First Day Relief* (together, the “**First Day Declarations**”) and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND  
CONCLUSIONS OF LAW:<sup>3</sup>**

A. Petition Date. On March 28, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

B. Debtors in Possession. The Debtors are continuing in the management and operation of their business and properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date hereof, no trustee or examiner or official committee of unsecured creditors (the “**Creditors’ Committee**”) has been appointed in the Debtors’ chapter 11 cases.

C. Jurisdiction and Venue. This Court has jurisdiction over the Debtors, the Debtors’ estate, this proceeding, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors have consented to entry of a final order by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Debtors’ Representations. Without prejudice to the rights of any other party, but in each case subject to the limitations contained in paragraph 4 below, the Debtors represent, admit, stipulate, and agree (collectively, the “**Debtors’ Stipulations**”) as follows:

- (i) *Super Priority Senior Credit Facility*.

Prior to the Petition Date, the Debtors entered into that certain Super Priority Senior Term Loan Agreement, dated as of February 27, 2023 (as amended, modified or otherwise supplemented from time to time prior to the Petition

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052.

Date, the “**Super Priority Credit Agreement**,” the loans thereunder, the “**Super Priority Senior Credit Facility**,” and, collectively with (A) that certain Super Senior Intercreditor Agreement, dated as of February 27, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the Petition Date, the “**Intercreditor Agreement**”), by and among Catalina Marketing Corporation, the other Debtors party thereto, GLAS Americas (as defined herein), in its capacity as collateral agent under the Super Priority Loan Documents (as defined herein) and GLAS Americas (as defined herein), in its capacity as collateral agent under the Subordinated Loan Documents (as defined herein) and (B) all other agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, each as amended, modified or otherwise supplemented from time to time prior to the Petition Date, the “**Super Priority Loan Documents**”), by and among Catalina Marketing Corporation, as borrower (the “**Super Priority Borrower**”), various guarantors party thereto from time to time (the “**Super Priority Guarantors**” and, together with Super Priority Borrower, the “**Super Priority Loan Parties**”), various lenders party thereto from time to time (the “**Super Priority Lenders**”), GLAS USA LLC (“**GLAS USA**”), as administrative agent, and GLAS Americas LLC (“**GLAS Americas**”), as collateral agent (GLAS USA and GLAS Americas, collectively, in their respective capacities as administrative agent and collateral agent under the Super Priority Loan Documents, the “**Super Senior Agent**,” and together with the Super Priority Lenders, the “**Super Priority Secured Parties**”). Each Super Priority Loan Document is valid, binding, and, subject to applicable bankruptcy law, enforceable against the parties thereto in accordance with its terms. Prior to the Petition Date, the Super Priority Secured Parties made certain loans, advances, and other extensions of credit pursuant to the Super Priority Loan Documents in the aggregate principal amount of \$30 million. As of the Petition Date, Super Priority Loan Parties were justly and lawfully indebted and liable (including pursuant to guarantee obligations) to the Super Priority Secured Parties, without defense, counterclaim, or offset of any kind, in an aggregate principal amount of not less than \$36 million in principal amount (inclusive of \$6 million in the form of commitment fees which were paid in kind in connection with each funding under the Super Priority Loan Documents) plus accrued and unpaid interest, expenses, fees, disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the applicable agreements or applicable law.

(ii) *Senior Subordinated Credit Facility.*

- a. Prior to the Petition Date, the Debtors entered into that certain Senior Term Loan Credit Agreement, dated as of February 15, 2019 (as amended,

modified or otherwise supplemented from time to time prior to the Petition Date, the “**Subordinated Credit Agreement;**” the first-out loans thereunder, the “**First-Out Facility;**” and the last-out loans thereunder, the “**Last-Out Facility;**” and the First-Out Facility and Last-Out Facility, collectively, the “**Subordinated Credit Facility;**”), and, collectively with (A) the Intercreditor Agreement and (B) all other agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, each as amended, modified or otherwise supplemented from time to time prior to the Petition Date, the “**Subordinated Loan Documents**” and, together with the Super Priority Loan Documents, the “**Loan Documents**”), by and among Catalina Marketing Corporation, as borrower (the “**Subordinated Borrower**”), various guarantors party thereto from time to time (the “**Subordinated Borrower Guarantors**” and, together with Subordinated Borrower, the “**Subordinated Loan Parties**”), various lenders party thereto from time to time (the “**Subordinated Term Loan Lenders**”), and GLAS USA, as administrative agent, and GLAS Americas, as collateral agent (GLAS USA and GLAS Americas, collectively, in their respective capacities as administrative agent and collateral agent under the Subordinated Loan Documents, the “**Subordinated Agent**”, and , together with the Subordinated Term Loan Lenders, the “**Subordinated Secured Parties**” and, together with the Super Priority Secured Parties, the “**Prepetition Secured Parties**”). Each Subordinated Loan Document is valid, binding, and, subject to applicable bankruptcy law, enforceable against the parties thereto in accordance with its terms. Prior to the Petition Date, the Subordinated Secured Parties made (or were deemed to have made) certain loans, advances, and other extensions of credit pursuant to the Subordinated Loan Documents in the aggregate principal amount of \$125 million with respect to the First-Out Facility and \$150,967,572.92 with respect to the Last-Out Facility. As of the Petition Date, the Subordinated Loan Parties were justly and lawfully indebted and liable (including pursuant to guarantee obligations) to the Subordinated Secured Parties, without defense, counterclaim, or offset of any kind, in an aggregate principal amount of not less than \$110 million with respect to the First-Out Facility and \$224 million with respect to the Last-Out Facility, in each case, plus accrued and unpaid interest, expenses, fees, disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the applicable agreements or applicable law.

- b. *Liens and Collateral.* Pursuant to and as more particularly described in the Loan Documents, the Debtors’ obligations under (I) the Super Priority Loan Documents (the “**Super Priority Prepetition Obligations**”) are secured by, among other things, properly perfected, continuing first priority liens in favor of the Super Priority Secured Parties (the “**Prepetition Super**

**Priority Liens**”) in the Debtors’ Collateral (as defined in the applicable Loan Documents) (the “**Prepetition Collateral**”) and (II) the Subordinated Loan Documents (the “**Subordinated Prepetition Obligations**” and, together with the Super Priority Prepetition Obligations, the “**Prepetition Obligations**”) are secured by, among other things, properly perfected, continuing second priority liens in favor of the Subordinated Secured Parties (the “**Prepetition Subordinated Liens**” and, together with the Prepetition Super Priority Liens, the “**Prepetition Priority Liens**”) in the Prepetition Collateral, in each case, subject to any valid, perfected, and unavoidable lien or security interest otherwise existing as of the Petition Date, including pursuant to section 546(b) of the Bankruptcy Code, that is senior to the Prepetition Priority Liens of the Prepetition Secured Parties (collectively, the “**Permitted Prior Liens**” and each a “**Permitted Prior Lien**”). The Prepetition Super Priority Liens are senior to the Prepetition Subordinated Liens pursuant to the Intercreditor Agreement and, pursuant to the applicable terms of the Subordinated Credit Agreement (the “**Subordination Provisions**”), the Last-Out Facility ranks junior to the First-Out Facility in right of payment.

(iii) *Validity of Prepetition Priority Liens and Prepetition Obligations.* The Prepetition Priority Liens are (a) valid, binding, perfected, duly recorded, continuing and enforceable liens on, and security interests in, all of the Debtors’ right, title, and interest in, and to, the Prepetition Collateral, and (b) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, recoupment, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity, except the Permitted Prior Liens and, in the case of the Prepetition Subordinated Liens, the Prepetition Super Priority Liens. The Prepetition Priority Liens were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted in consideration of the making and/or continued making of loans, commitments, and/or other financial accommodations under the Loan Documents. No portion of the Prepetition Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Loan

Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable nonbankruptcy law.

(iv) *Adequate Protection.* As a result of the authorization for the Debtors to use Cash Collateral, the use, sale, or lease of the Prepetition Collateral, and the imposition of the Automatic Stay, the Prepetition Secured Parties are entitled to receive adequate protection pursuant to Bankruptcy Code sections 361, 362, and 363 for any diminution in the value, from and after the Petition Date, of their interests in the Prepetition Collateral (including the Cash Collateral) resulting from the Automatic Stay and/or from the Debtors' use, sale or lease of the Prepetition Collateral, or otherwise during the chapter 11 cases. As adequate protection, the Prepetition Secured Parties will receive the adequate protection described in this Final Order (including the adequate protection set forth in paragraph 8 hereof). In light of such adequate protection, the Prepetition Secured Parties have consented to the Debtors' use of Cash Collateral, solely on the terms and conditions set forth in this Final Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary to obtain such consent.

E. Section 552(b); Section 506(c). Prepetition Secured Parties are entitled to a waiver of (a) any "equities of the case" exception under Bankruptcy Code section 552(b); and (b) the provisions of Bankruptcy Code section 506(c).

F. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested the entry of this Final Order pursuant to Bankruptcy Rules 2002, 4001(b)(2), and 9014. The Debtors have an immediate need to use Cash Collateral to, among other things, preserve and

maximize the value of the Debtors' estate, absent which immediate and irreparable harm will result to the Debtors, the estate, and creditors. The preservation and maintenance of the Debtors' assets and business are necessary and appropriate to maximize values available for distribution to creditors. Absent the Debtors' ability to use Cash Collateral, the Debtors would not have sufficient available sources of working capital and would be unable to administer the estate, pay operating expenses, maintain assets, or effectuate the contemplated sale of the Debtors' Japanese business, all to the detriment of the Debtors' estate and creditors. Additionally, the use of Cash Collateral avoids the need for the Debtors to obtain debtor-in-possession financing, which may require the Debtors to, among other things, engage in a priming fight with the Prepetition Secured Parties, incur fees in connection with such financing and otherwise will result in additional expense for the Debtors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtors' ability to maximize the value of the chapter 11 estate, (ii) in the best interests of the Debtors and the estate, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and their assets.

G. Good Cause. Good cause has been shown for entry of this Final Order, and the entry of this Final Order is in the best interests of the Debtors, the estate, and creditors. Among other things, the relief granted herein will permit the Debtors to preserve and maintain the value of their assets. The stipulated terms of the Debtors' use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Final Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with its fiduciary duties.

H. Good Faith. The Debtors' use of Cash Collateral has been negotiated in good faith and at arms' length among the Debtors and the Prepetition Secured Parties and the Prepetition



Secured Parties consent to the Debtors' use of Cash Collateral, and such use on the terms set forth herein shall be deemed to have been negotiated in "good faith."

I. Notice. The Debtors have caused notice of the Motion, the relief requested therein, and the Hearing to be served by email, overnight courier, or hand delivery on the following parties (collectively, the "**Notice Parties**"): (i) the Office of the U.S. Trustee for Region 2; (ii) the holders of the 30 largest unsecured claims against the Debtors; (iii) counsel for GLAS USA and GLAS Americas; (iv) the United States Attorney's Office for the Southern District of New York; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission and any other federal, state or local governmental agency to the extent required by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of this Court; (vii) the state attorneys general for all states in which the Debtors conduct business; (viii) all parties who are known, after reasonable inquiry, to have asserted a lien, interest, encumbrance, or claim in the Prepetition Collateral, including Cash Collateral; (ix) the Debtors' cash management banks (the "**Banks**"); (x) Wachtell, Lipton, Rosen & Katz, as counsel to Mudrick Capital Management, LP ("**Mudrick**"), and (xi) any party that requested service pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (d).

**BASED UPON THE STIPULATED TERMS SET FORTH HEREIN, AND FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Motion Granted. The Motion is GRANTED to the extent provided herein on an interim basis. Any objection to the interim relief requested in the Motion to the extent not withdrawn or resolved is hereby overruled on the merits.

2. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the Court hereby authorizes the Debtors to use existing and hereafter acquired Cash Collateral during the period beginning with the Petition Date and ending on the Termination Date (as defined herein) (such period, the “**Budget Period**”), for the disbursements set forth in the cash disbursements and receipts budget (which budget shall include a weekly forecast of bankruptcy costs and capital expenditures) attached as Exhibit 1 hereto (as such budget may be modified from time to time by the Debtors with the prior written consent of lenders holding at least 50.1% of the Super Priority Senior Credit Facility (“**Required Super Senior Lenders**”) as set forth in this paragraph and in paragraph 3(a) of this Final Order (the “**Budget**”), and for no other purposes.

3. Budget.

(a) Subject to the deviation allowance(s) provided below (each a “**Permitted Deviation**”), the Debtors will not permit for any applicable Measurement Period (as defined herein) the actual operating disbursements during such Measurement Period to exceed one hundred ten percent (110%) of the projected operating disbursements for that Measurement Period as set forth on the Budget for such Measurement Period; *provided that*, if the Debtors can reasonably demonstrate that any such non-compliance is due to a change in timing of anticipated disbursements, then the Debtors shall have an additional week to return to compliance with the Budget prior to such non-compliance resulting in an Event of Default (as defined herein). The Debtors shall be permitted to carry forward unused amounts to successive weeks for purposes of Budget testing set forth in this paragraph 3(a), with no carry-over surplus to a Subsequent Budget Period (as defined herein), if any, except to the extent agreed to in writing as set forth in this paragraph. Required Super Senior Lenders may, in their sole discretion, agree in writing to use

of Cash Collateral (i) in a manner or amount which does not conform to the Budget (other than Permitted Deviations) (each such approved non-conforming use of Cash Collateral, a “**Non-Conforming Use**”) or (ii) for the period following the occurrence of the Termination Date pursuant to paragraph 5 of this Final Order (such period, the “**Subsequent Budget Period**”). If such written consent is given, the Debtors shall be authorized pursuant to this Final Order to use Cash Collateral for any such Non-Conforming Use or any such Subsequent Budget Period in accordance with a subsequent Budget (a “**Subsequent Budget**”) without further Court approval, and the Prepetition Secured Parties shall be entitled to all of the protections specified in this Final Order for any such use of Cash Collateral; *provided* that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes.

(b) During any Remedies Notice Period (as defined herein), the Debtors may only use Cash Collateral to pay the following amounts and expenses solely in accordance with the respective Budget line items: (i) the Carve Out (as defined herein); (ii) obligations for unpaid and accrued payroll and sales taxes; (iii) any other payments authorized pursuant to a First Day Order (as defined herein); and (iv) any such other obligations subject to the prior written consent of Required Super Senior Lenders.

(c) Notwithstanding anything to the contrary set forth in this Final Order, the Cash Collateral and the Carve Out may not be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against the Prepetition Secured Parties or seek relief that would impair the rights and remedies of the Prepetition Secured Parties under the Loan Documents or this Final Order, including, without limitation, for the payment of any services rendered by the professionals

retained by the Debtors or any Creditors' Committee (if any) in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of the Prepetition Secured Parties to recover on the Prepetition Obligations or seeking affirmative relief against the Prepetition Secured Parties; (B) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Prepetition Obligations or Prepetition Priority Liens on the Prepetition Collateral; or (C) for monetary, injunctive, or other affirmative relief against the Prepetition Secured Parties or the Prepetition Priority Liens on the Prepetition Collateral that would impair the ability of the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Obligations; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, lien, or interests (including the Prepetition Priority Liens) held by the Prepetition Secured Parties; (iii) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any action commenced, or that may be commenced pursuant to chapter 5 of the Bankruptcy Code (including sections 544, 545, 547, 548, 549, 550, or 551 of the Bankruptcy Code) or applicable state law (such actions, "**Avoidance Actions**"), against the Prepetition Secured Parties; or (iv) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Priority Liens or any other rights or interests of the Prepetition Secured Parties; *provided, however*, an amount up to \$50,000 of Cash Collateral nevertheless may be used by the Creditors' Committee (if any) solely to investigate the foregoing matters within the Challenge Period (as defined herein).

4. Effect of Stipulation on Third Parties.

(a) *Generally.* The representations, admissions, stipulations (including the Debtors' Stipulations), agreements, releases (including the releases set forth in paragraph 16), and waivers set forth in this Final Order (collectively, the "**Prepetition Lien and Claim Matters**") are and shall be binding on the Debtors, the Debtors' estate and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors), creditors, responsible persons, examiners with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest and assigns, including, without limitation, the Creditors' Committee (if any), unless, and solely to the extent that, (a) a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined herein) is irrevocably waived and relinquished) has timely and properly filed the appropriate papers, and timely and properly commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in paragraph 3(c) of this Final Order), challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") by no later than the earlier of (x) the deadline to object to confirmation of the *First Amended Joint Prepackaged Chapter 11 Plan of PacificCo Inc. and Its Affiliated Debtors* [Docket No. 73] (as amended, from time to time, with the consent of the Required Super Senior Lenders, the "**Plan**"), and (y) (i) with respect to parties in interest other than the Creditors' Committee, seventy-five (75) calendar days from the date of entry of the Interim Order and (ii) with respect to the Creditors' Committee, if any, sixty (60) calendar days from entry of the Final Order, as each applicable period may be extended by the Court for good cause shown pursuant to any application filed by a party

in interest with standing and requisite authority before the expiration of the Challenge Period (as defined herein), unless such date is extended in writing by the Required Super Senior Lenders, as may be done from time to time without further order of the Court (as applicable for clauses (x) and (y), the “**Challenge Period**”); and (b) the Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal; provided that any pleading filed in any Challenge proceeding shall set forth with specificity the basis for such Challenge (and any Challenges not so specified prior to the end of the Challenge Period shall be deemed forever waived, released and barred).

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced during the Challenge Period by a party with requisite standing, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Final Order, become binding, conclusive, and final on the Debtors, the Debtors’ estate, all creditors, any person, entity, or party in interest in the chapter 11 cases, and their successors and assigns, and in any Successor Cases for all purposes and shall not be subject to challenge or objection by any party in interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors’ estate. More specifically, as to (i) any parties in interest, including the Creditors’ Committee (if any), who fail to file a Challenge within the Challenge Period, or if any such Challenge is filed and overruled, or (ii) any and all matters that are not expressly the subject of a timely Challenge: (A) any and all such Challenges by any party

(including, without limitation, the Creditors' Committee (if any), any chapter 11 trustee, any examiner or any other estate representative appointed in the chapter 11 case, or any chapter 7 trustee, any examiner or any other estate representative appointed in any Successor Cases) shall be deemed to be forever waived and barred, (B) all of the findings, Debtors' Stipulations, waivers, releases, affirmations, and other stipulations hereunder as to the priority, extent, validity, and enforceability as to the Prepetition Secured Parties' claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors' bankruptcy estate and all creditors, interest holders, and other parties in interest in the chapter 11 cases and any Successor Cases, and (C) the Prepetition Secured Parties and each their respective agents, officers, directors, employees, attorneys, consultants, professionals, successors, and assigns shall be deemed released and discharged from all claims and causes of action arising out of or in any way relating to the Prepetition Lien and Claim Matters and shall not be subject to any further objection or challenge by any party at any time.

(c) *No Standing*. Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including the Creditors' Committee (if any), standing or authority to pursue any claim or cause of action belonging to the Debtors and/or their bankruptcy estate, including, without limitation, any Challenge with respect to the Loan Documents or the Prepetition Obligations.

5. Termination Date. The Debtors' authorization, and the Prepetition Secured Parties' consent to use Cash Collateral in accordance with this Final Order shall terminate on the earliest to occur of (the "**Termination Date**"): (i) May 31, 2023, unless such date is extended pursuant to the written consent of Required Super Senior Lenders; (ii) the termination or non-consensual modification of this Final Order or the failure of this Final Order to be in full force and effect;

(iii) the entry of an order of this Court terminating the Debtors' right to use Cash Collateral; (iv) the dismissal of the chapter 11 cases or the conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code ( "**Successor Cases**"); (v) the appointment of a trustee or an examiner with expanded powers; (vi) the delivery of a Termination Date Declaration (as defined herein) by Required Super Senior Lenders, as set forth in paragraph 14 below; and (vii) the consummation of the Plan or an Acceptable Plan (as defined herein).

6. Reporting Requirements/Access to Records. The Debtors shall provide each of the Super Senior Agent and the Subordinated Agent, for distribution to the other Super Priority Secured Parties and the other Subordinated Secured Parties, as applicable, with all reporting and other information required to be provided to the Super Priority Secured Parties and/or the Subordinated Secured Parties under the applicable Loan Documents (other than any reporting required pursuant to Section 6.01(a) of the Subordinated Credit Agreement). In addition, the Debtors shall provide:

(a) Weekly (or more or less frequently as may be agreed to between the Debtors and Mudrick) calls with Mudrick and its advisors;

(b) To the Super Senior Agent and the Subordinated Agent, for distribution to the other Super Priority Secured Parties and the other Subordinated Secured Parties, and to Mudrick and its advisors, by no later than 5:00 p.m. New York City time on the Thursday of every other calendar week commencing with the second (2<sup>nd</sup>) full calendar week ending after the Petition Date (which for the avoidance of doubt, shall be April 13, 2023), an updated rolling weekly cash flow forecast of the Debtors substantially in the form of the Budget (each, a "**Proposed Budget**"), with copy to counsel to any creditors committee appointed, which Proposed Budget, upon written approval by Required Super Senior Lenders, shall become the new Budget;



(c) To the Super Senior Agent and the Subordinated Agent, for distribution to the other Super Priority Secured Parties and the other Subordinated Secured Parties, and to Mudrick and its advisors, by no later than 5:00 p.m. New York City time on the Thursday of each calendar week commencing with the second (2<sup>nd</sup>) full calendar week ending after the Petition Date (which for the avoidance of doubt, shall be April 13, 2023) (each such Thursday, a “**Variance Report Date**”), a line-item variance reconciliation report (a “**Variance Report**”) setting forth, in reasonable detail, on a weekly basis for the prior week and on a cumulative basis for the applicable Measurement Period (as defined herein) any differences between actual amounts for each line item (as presented to the Prepetition Secured Parties prior to the Petition Date) in the Budget for the Measurement Period versus projected amounts set forth in the Budget for each line item (as presented to the Prepetition Secured Parties prior to the Petition Date) included therein on a cumulative basis for such Measurement Period, with a copy to counsel to any creditors committee appointed; and

(d) The Debtors shall, to the extent practicable, provide copies of all substantive motions, applications, other pleadings, and proposed forms of order with respect thereto (all of which shall be in form and substance reasonably acceptable to Required Super Senior Lenders) to the Super Priority Secured Parties at least five (5) calendar days prior to the filing of any such substantive motions, applications, other pleadings, and proposed forms of order with respect thereto with the Court.

(e) “**Measurement Period**” shall mean the two-week calendar period up to and through the Saturday of the week most recently ended prior to the applicable Variance Report Date; provided that, the first Measurement Period shall include the entire period from the Petition

Date through the Saturday of the week most recently ended prior to the applicable Variance Testing Period (i.e, from the Petition Date through April 8, 2023).

7. Insurance. At all times, the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the Collateral (as defined herein) on substantially the same basis as maintained prior to the Petition Date.

8. Adequate Protection. In consideration for the Debtors' use of the Prepetition Collateral (including Cash Collateral), the Super Priority Secured Parties and Prepetition Secured Parties (as applicable) shall receive the following adequate protection, subject to the subordination and other provisions set forth in the Intercreditor Agreement (including Section 6.03 thereof) and the Subordination Provisions:

(a) *Adequate Protection Liens*. Pursuant to Bankruptcy Code sections 361, 363(e) and 364, and in consideration of the stipulations and consents set forth herein, as adequate protection for and solely to the extent of any diminution in the value, from and after the Petition Date, of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) resulting from, among other things: (i) the use, sale, or lease of the Prepetition Collateral; and (ii) the imposition or enforcement of the Automatic Stay (together, the "**Adequate Protection Obligations**"), the Debtors hereby grant to each of (A) the Super Senior Agent, for the benefit of the Super Priority Lenders, and (B) the Subordinated Agent, for the benefit of the Subordinated Term Loan Lenders, an additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected, *nunc pro tunc* to the Petition Date, postpetition security interest in and liens on (the "**Adequate Protection Liens**"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all of the rights, title and

interest of the Debtors and their “estate” (as created pursuant to Bankruptcy Code section 541(a)) in, to, and under all present and after-acquired property and assets of the Debtors of any nature whatsoever, whether real or personal, tangible or intangible, wherever located, including, without limitation, all cash and Cash Collateral of the Debtors, and any investment of such cash and Cash Collateral, accounts receivable and other rights to payment, whether arising before or after the Petition Date, inventory, general intangibles, chattel paper, real property and leaseholds and proceeds thereof (*provided, however*, Adequate Protection Liens shall only be granted on the leaseholds if expressly permitted under the lease), plants, fixtures, machinery, equipment, commercial tort claims, deposit accounts, cash and cash equivalents, rights under letters of credit, capital stock and other equity or ownership interest held by the Debtors, including equity interests in subsidiaries and all other investment property, investments, patents, trademarks, trade names, copyrights, licenses, rights under license agreements and other intellectual property, inter-company notes or receivables due to the Debtors, all of the Collateral (as defined in the applicable Loan Documents), and all proceeds from Avoidance Actions of the Debtors or the estate, and as to all of the foregoing, all rents, issues, products, proceeds and profits generated by any of the foregoing (collectively, the “**Collateral**”). The Adequate Protection Liens are subject or subordinate only to (1) the Carve Out, (2) the Permitted Prior Liens, and (3) in the case of Adequate Protection Liens granted to the Subordinated Agent, for the benefit of the Subordinated Term Loan Lenders, the Adequate Protection Liens granted to the Super Senior Agent, for the benefit of the Super Priority Lenders. Moreover, the Adequate Protection Liens shall not be subject or subordinate to or made *pari passu* with (x) any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estate under Bankruptcy Code section 551, or (y) any other lien or security interest under Bankruptcy Code sections 361, 363, or 364 or otherwise except

as expressly provided in this Final Order. The Prepetition Priority Liens under the Loan Documents shall be subordinate to the Adequate Protection Liens, the Carve Out, the Permitted Prior Liens.

(b) *Superpriority Claims.* Pursuant to Bankruptcy Code section 507(b), each of (i) the Super Senior Agent, for the benefit of the Super Priority Lenders and (ii) the Subordinated Agent, for the benefit of the Subordinated Term Loan Lenders, effective as of the entry of this Final Order, is hereby further granted an allowed superpriority administrative expense claim (each, a “**Superpriority Claim**” and collectively the “**Superpriority Claims**”) in the chapter 11 cases or any Successor Cases, for the diminution in the value (as determined under applicable bankruptcy law) of the Prepetition Collateral, if any, subsequent to the Petition Date, which claims shall be junior only to (x) the Carve Out and (y) in the case of Superpriority Claims granted to the Subordinated Agent, the Superpriority Claims granted to the Super Senior Agent and subject to the Subordination Provisions, but shall, to the extent provided by section 364(c)(1) of the Bankruptcy Code, be senior to and have priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 552(b), 726, and 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment) and all other claims against the Debtors or the estate in the chapter 11 cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever. The Superpriority Claims shall be payable from and have recourse to all assets and properties of the Debtors. Except for (x) the Carve Out and (y) in the case of Superpriority Claims granted to the Subordinated Agent, the Superpriority Claims granted to the Super Senior Agent and subject to the Subordination Provisions, the Superpriority Claims shall

not be made subject to, or *pari passu* with, any claim heretofore or hereinafter granted or created in the chapter 11 cases or any Successor Cases, and shall be valid and enforceable against the Debtors, the estate, and any successors or assigns thereto, including, without limitation, any trustee appointed in the chapter 11 cases or any Successor Cases. Notwithstanding anything contained herein or otherwise, any recovery on account of the Superpriority Claims granted to the Subordinated Agent for the benefit of the Subordinated Term Loan Lenders shall be subject to the Subordination Provisions.

(c) *Accrual of Interest.* Interest shall accrue on (i) the Super Priority Senior Credit Facility and (ii) the Subordinated Credit Facility, in each case, at the default interest rate specified in the applicable Loan Documents.

9. Modification of Automatic Stay. The Automatic Stay is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to provide the adequate protection provided herein; (b) permit the Debtors to perform such acts as Required Super Senior Lenders may reasonably request to assure the perfection and priority of the Adequate Protection Liens granted herein; and (c) authorize the Debtors to make payments in accordance with the terms of this Final Order.

10. Cash Management. The Debtors shall maintain their cash management arrangements in a manner consistent with the interim or final order granting the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(A), 363(B), 363(C), 364(A), and 503(B)(1) and Fed. R. Bankr. P. 6003 and 6004 for Interim and Final Orders (I) Authorizing Debtors to (A) Continue Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Business Forms and Existing Bank Accounts; and (II) Granting Related Relief* entered or to be entered substantially contemporaneously herewith. The Debtors shall not use, sell

or lease any material assets outside the ordinary course of business, or seek authority of this Court to do any of the foregoing, without the prior written consent of Required Super Senior Lenders.

11. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral or the Collateral outside of the ordinary course of business without the prior written consent of Required Super Senior Lenders, unless such sale, transfer, lease, encumbrance or other disposition is approved by the Court and results in the indefeasible payment in full in cash of the Prepetition Obligations.

12. Milestones. The Prepetition Secured Parties have conditioned the Debtors' use of Cash Collateral on compliance with the following requirements by the applicable date set forth below (together, the "**Milestones**"):

(a) entry by the Court of the Final Order within forty (40) days after the Petition Date;

(b) entry by the Court of an order approving the disclosure statement for the Plan within sixty (60) days after the Petition Date;

(c) entry by the Court of an order confirming the Plan within sixty (60) days after the Petition Date; and

(d) the occurrence of the Effective Date of the Plan (as defined in the Plan) within seventy (70) days after the Petition Date.

13. Events of Default. The occurrence of any of the following events, unless waived in writing (email being sufficient) by Required Super Senior Lenders, shall constitute an event of default (each, an "**Event of Default**"):

(a) the Debtors' continued use of Cash Collateral after the Termination Date without the written consent of Required Super Senior Lenders, except during the Remedies Notice Period to the extent permitted by paragraph 3(b);

(b) the Debtors' failure to (i) comply with the Budget, as required by paragraph 3(a) hereof, and related reporting and covenant requirements, as required by paragraph 6 hereof, (ii) perform, in any material respect, any of their obligations under this Final Order, (iii) dispose of Prepetition Collateral or Collateral in compliance with paragraph 11 hereof, or (iv) comply with the Milestones under paragraph 12 hereof;

(c) the Debtors obtaining postpetition credit or incurring postpetition indebtedness that is (i) secured by a security interest, mortgage or lien on all or any portion of the Prepetition Collateral or Collateral which is equal to or senior to, any security interest, mortgage or lien of the Prepetition Secured Parties in the Prepetition Collateral or the Adequate Protection Liens in the Collateral, or (ii) entitled to priority administrative status which is equal to or senior to the Superpriority Claims;

(d) any lien or security interest purported to be created under the Loan Documents shall cease to be, shall be asserted by the Debtors not to be, or shall otherwise be determined by the Court not to be a valid and perfected lien on or security interest in any Prepetition Collateral, with the priority required by the Loan Documents or herein;

(e) the failure by the Debtors to deliver to the appropriate Prepetition Secured Parties any of the documents or other information required to be delivered pursuant to this Final Order when due or any such documents or other information contains a material misrepresentation;

(f) dismissal of the chapter 11 cases, conversion of the chapter 11 cases to chapter 7, or the appointment of a chapter 11 trustee or examiner with expanded powers in the chapter 11 cases;

(g) entry of an order staying, reversing, vacating, amending, or rescinding any of the terms of this Final Order without the consent of Required Super Senior Lenders;

(h) the filing by the Debtors of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the Prepetition Obligations or asserting any cause of action against and/or with respect to the Prepetition Obligations, the Prepetition Collateral securing the Prepetition Obligations or any of the Prepetition Secured Lenders (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party);

(i) the entry of an order or judgment by this Court or any other court: (i) modifying, limiting, subordinating, or avoiding the priority of the obligations of the Debtors under this Final Order, the obligations of the Debtors under the Loan Documents, or the perfection, priority, or validity of the Prepetition Priority Liens or the Adequate Protection Liens; and (ii) imposing, surcharging, or assessing against the Prepetition Secured Parties' claims or the Prepetition Collateral or the Collateral, any costs or expenses, whether pursuant to Bankruptcy Code section 506(c) or otherwise;

(j) the Restructuring Support Agreement is terminated for any reason (other than by its terms on the Effective Date of the Plan) or is modified, amended or waived in any manner materially adverse to the Prepetition Secured Parties without the prior written consent of the Required Super Senior Lenders;



(k) the filing of a chapter 11 plan (other than the Plan) which does not provide for the indefeasible payment in full of the Prepetition Obligations on the effective date of such plan (an “**Acceptable Plan**”);

(l) the filing of a motion to use Cash Collateral that does not either have the prior written consent of the Required Super Senior Lenders or provide for the payment of the Prepetition Obligations in full and in cash;

(m) the Court shall enter an order (i) approving payment of any prepetition claim other than (x) as provided for in any interim and final orders entered with respect to the “first day pleadings” filed on or around the Petition Date (the “**First Day Orders**”), (y) as otherwise contemplated hereunder and by the Budget (including Permitted Deviation thereto) or (z) as otherwise consented to by the Required Super Senior Lenders in writing in their reasonable discretion, or (ii) granting relief from the Automatic Stay to any holder (other than the Prepetition Secured Parties) of any security interest to permit foreclosure on any assets of the Debtors;

(n) the entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Super Senior Lenders; or

(o) any Cash Collateral or the Carve Out is used, whether or not pursuant to Court order, in a manner not permitted by this Final Order, including paragraph 3 hereof.

14. Exercise of Remedies. Upon the occurrence and at any time during the continuation of an Event of Default, the Debtors shall immediately cease using Cash Collateral (except to the extent permitted by paragraph 3(b) hereof) and Required Super Senior Lenders may, upon five (5) business days’ (the “**Remedies Notice Period**”) written notice to counsel to the Debtors, counsel to the Creditors’ Committee, if any, and the U.S. Trustee (which such notice may be by

electronic mail) (a “**Termination Date Declaration**”) and in accordance with the terms and conditions of this Final Order, exercise the rights and remedies available under the Loan Documents, this Final Order and applicable law, including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Collateral in order to collect any amounts payable to the Prepetition Secured Parties and apply the same to such obligations. The Automatic Stay shall be deemed immediately modified and vacated to the extent necessary to permit such actions. The Debtors shall be entitled to seek an emergency hearing with the Court during the Remedies Notice Period to contest whether an Event of Default has occurred and/or is continuing. Unless during such Remedies Notice Period the Court determines that an Event of Default has not occurred or has occurred and is not continuing, upon the expiration of the Remedies Notice Period the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the Loan Documents, and as otherwise available at law without further order of or application or motion to the Court. Any delay or failure of the Prepetition Secured Parties to exercise rights under any Loan Documents or this Final Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. Notwithstanding the occurrence of the Termination Date or anything contained herein or otherwise, all of the rights, remedies, benefits and protections provided to the Prepetition Secured Parties under this Final Order shall survive the Termination Date.

15. Carve Out; Payment of Estate Professionals.

(a) *Generally.* As used in this Final Order, the “**Carve Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up

to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code and the Creditors’ Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”) at any time before or on the first business day following delivery by the Required Super Senior Lenders of a Carve Out Trigger Notice (as defined herein) whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$375,000 incurred after the first business day following delivery by Required Super Senior Lenders of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amount set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**”); *provided*, that, the Carve Out shall not include any bonus, transaction, success fees, completion fees, substantial contribution fees, or any other fees of similar import of any of the foregoing for Professional Persons; *provided further*, that nothing herein shall waive the right of any party to object to the allowance of any such fees and expenses. For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by Required Super Senior Lenders to the Debtors, the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, if any, which notice may be delivered following the occurrence and during the continuation of an Event of Default.

(b) *Payment of Allowed Professional Fees Prior to the Carve Out Termination Declaration Date.* Any payment or reimbursement made in respect of any Allowed Professional

Fees incurred prior to the day on which a Carve Out Trigger Notice is given by Required Super Senior Lenders (the “**Carve Out Termination Declaration Date**”) shall not reduce the Post-Carve Out Trigger Notice Cap.

(c) *No Direct Obligation To Pay Allowed Professional Fees.* None of the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the chapter 11 cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. For the avoidance of doubt, nothing in this paragraph 15(d) shall negate or nullify the Carve-Out.

(d) *Payment of Carve Out On or After the Carve Out Termination Declaration Date.* Any payment or reimbursement in respect of any Allowed Professional Fees incurred on or after the occurrence of the Carve Out Termination Declaration Date shall permanently reduce the Post-Carve Out Trigger Notice Cap on a dollar-for-dollar basis.

16. Bank Authorization. Each of the Banks are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, electronic funds or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, electronic funds or automated clearing house transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

17. Release. Subject to paragraph 4 of this Final Order, each of the Debtors on behalf of itself and its estate (including any successor trustee or other estate representative in the chapter 11 cases or any Successor Cases) and any party acting by, or through, any of the Debtors or their respective estates, hereby, to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully, forever waives and releases the Prepetition Secured Parties, and each of their respective former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of any and all “claims” (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights that existed on the Petition Date relating to any of the Prepetition Collateral and any of the Loan Documents or the transactions contemplated under such documents, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, arising at law or in equity, including, without limitation, any so-called “lender liability,” recharacterization, subordination, Avoidance Action or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law and any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the Prepetition Secured Parties.

18. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Final Order shall not affect the validity or enforceability of any Adequate Protection Liens, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Adequate Protection Obligations, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification,

vacatur, or stay (a) this Final Order shall govern, in all respects, any use of Cash Collateral and the Adequate Protection Liens and Superpriority Claims incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Prepetition Secured Parties shall be entitled to all the benefits and protections granted by this Final Order with respect to any such use of Cash Collateral or such Adequate Protection Liens or Superpriority Claims incurred by the Debtors.

19. Reservation of Rights. Notwithstanding anything to the contrary herein, the entry of this Final Order and the transactions contemplated hereby shall not constitute an admission nor be deemed an admission by the Prepetition Secured Parties that absent their consent to the Debtors' use of Cash Collateral under this Final Order their interest in the Prepetition Collateral would be adequately protected. Except as otherwise expressly set forth herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) the Prepetition Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors, including the right to seek additional adequate protection; (b) any of the Prepetition Secured Parties' rights under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the Prepetition Secured Parties to (i) request modification of the Automatic Stay, (ii) request dismissal of the chapter 11 cases, conversion of the chapter 11 cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Prepetition Secured Parties.

20. No Waiver for Failure to Seek Relief. The failure or delay of the Prepetition Secured Parties to seek relief or otherwise exercise any of their rights and remedies under this

Final Order, the Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Prepetition Secured Parties.

21. Section 507(b) Reservation. Subject to the Carve Out, nothing herein shall impair or modify the application of Bankruptcy Code section 507(b) in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for the Adequate Protection Obligations during the chapter 11 cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the Prepetition Secured Parties, that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against any diminution in value of their interests in and against the Prepetition Collateral (including the Cash Collateral).

22. Section 552(b) Waiver. The Prepetition Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b) and the “equities of the case” exception shall not apply.

23. Section 506(c) Waiver. The Debtors and their estates waive any claim under Bankruptcy Code section 506(c) for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Prepetition Secured Parties upon the Prepetition Collateral or Collateral.

24. No Marshalling/Application of Proceeds. In no event shall the Prepetition Secured Parties be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral or Collateral or any proceeds thereof.

25. Good Faith. Based on the findings set forth in this Final Order and the record made during the Interim Hearing, pursuant to Bankruptcy Code sections 105, 361, 363, and 364, the Debtors and the Prepetition Secured Parties are hereby found to be entities that have acted in “good

faith” in connection with the negotiation and entry of this Final Order and are entitled to the protections afforded by Bankruptcy Code section 363(m).

26. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

27. Master Proof of Claim. The Prepetition Secured Parties shall not be required to file proofs of claim in the chapter 11 cases or any Successor Cases, and the Debtors’ Stipulations shall be deemed to constitute a timely filed proof of claim against the Debtors. Notwithstanding the foregoing, GLAS (on behalf of the Prepetition Secured Lenders) is hereby authorized and entitled, but not required, in its sole discretion, to file (and amend and/or supplement, as it sees fit) a master proof of claim for any claims of the Prepetition Secured Parties arising from the applicable Loan Documents; *provided* that nothing herein shall waive the right of any Prepetition Secured Lender to file its own proofs of claim against the Debtors.

28. Intercreditor Agreement and Subordination Agreement. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement, the Subordination Provisions, and any other applicable intercreditor or subordination provisions contained in any of the Loan Documents (i) shall remain in full force and effect, and (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties.

29. Binding Effect of Final Order. The provisions of this Final Order shall be binding upon all parties in interest in the chapter 11 cases, including the Prepetition Secured Parties, any statutory committees that may be appointed in the chapter 11 cases, and the Debtors and their respective successors and assigns and shall inure to the benefit of the Prepetition Secured Parties, the Debtors and their respective successors and assigns. This Final Order shall bind any trustee



hereafter appointed or elected for the Debtors' estate whether in the chapter 11 cases or in the event of the conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. Such binding effect is a benefit of the Prepetition Secured Parties' bargain in connection with the Debtors' use of Cash Collateral and is an integral part of this Final Order. Any payments to be made by the Debtors under any order (including any First Day Order) shall be made in accordance with this Final Order and the Budget.

30. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any chapter 11 plan, (ii) converting the chapter 11 cases to chapter 7 cases, or (iii) dismissing the chapter 11 cases. The terms and provisions of this Final Order, including, for the avoidance of doubt, the provisions in paragraph 4 hereof, as well as the adequate protection granted pursuant to this Final Order shall continue in full force and effect notwithstanding the entry of any of the foregoing orders, and such claims and liens shall maintain their priority as provided by this Final Order, the Loan Documents and to the maximum extent permitted by law until all of the Prepetition Obligations are indefeasibly paid and satisfied in full in cash.

31. Effect of Dismissal. If the chapter 11 cases are dismissed or converted, then neither the entry of this Final Order nor the dismissal or conversion of the chapter 11 cases shall affect the rights of the Prepetition Secured Parties (including, without limitation, to the extent of the adequate protection provided hereunder) under the Loan Documents or this Final Order, and all rights and remedies of the Prepetition Secured Parties thereunder and hereunder (with respect to the adequate protection provided hereunder, subject to the Carve Out) shall remain in full force and effect as if the chapter 11 cases had not been dismissed or converted. If an order dismissing the chapter 11 cases is entered, the Debtors agree to propose an order that shall provide (in accordance with

Bankruptcy Code sections 105 and 349) that (i) the adequate protection granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until the Adequate Protection Obligations have been satisfied, and (ii) to the fullest extent permitted by law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the adequate protection provided for herein. The provisions of this Final Order, and any actions taken pursuant hereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any chapter 11 plan, dismissing the chapter 11 cases or converting the chapter 11 cases from chapter 11 to chapter 7.

32. Findings of Fact and Conclusions of Law. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

33. Order Effective upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

34. Retention of Jurisdiction. The Court has and will retain jurisdiction and power to enforce this Final Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Final Order.

Dated: April 28, 2023  
New York, New York

/s/ Philip Bentley  
THE HONORABLE PHILIP BENTLEY  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Budget**

Catalina Cash Flow Budget (\$ in Thousands)	Actual 3/17/2023	FILING		EMERGE				Forecast Total
		1 Forecast 3/24/2023	2 Forecast 3/31/2023	3 Forecast 4/7/2023	4 Forecast 4/14/2023	5 Forecast 4/21/2023	6 Forecast 4/28/2023	
Operating Receipts	\$ 8,224	\$ 4,872	\$ 2,629	\$ 1,383	\$ 3,514	\$ 2,059	\$ 2,571	\$ 17,028
Total Operating Disbursements	\$ (4,363)	\$ (7,551)	\$ (3,375)	\$ (7,841)	\$ (3,637)	\$ (5,760)	\$ (3,425)	\$ (31,589)
<b>Operating Cash Flow</b>	<b>\$ 3,862</b>	<b>\$ (2,679)</b>	<b>\$ (746)</b>	<b>\$ (6,458)</b>	<b>\$ (123)</b>	<b>\$ (3,701)</b>	<b>\$ (854)</b>	<b>\$ (14,561)</b>
<u>Bankruptcy Related</u>								
Professional Fees	\$ (1,466)	\$ (734)	\$ (1,075)	\$ -	\$ -	\$ -	\$ (4,625)	\$ (6,434)
Utility Deposits	-	-	(50)	-	-	-	-	(50)
<b>Total</b>	<b>\$ (1,466)</b>	<b>\$ (734)</b>	<b>\$ (1,125)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (4,625)</b>	<b>\$ (6,484)</b>
<b>Net Cash Flow</b>	<b>\$ 2,396</b>	<b>\$ (3,413)</b>	<b>\$ (1,871)</b>	<b>\$ (6,458)</b>	<b>\$ (123)</b>	<b>\$ (3,701)</b>	<b>\$ (5,479)</b>	<b>\$ (21,045)</b>
Beginning Book Cash	\$ 9,688	\$ 12,083	\$ 18,670	\$ 16,799	\$ 10,341	\$ 10,218	\$ 6,517	\$ 12,083
Net Cash Flow	2,396	(3,413)	(1,871)	(6,458)	(123)	(3,701)	(5,479)	(21,045)
Bridge Draw	-	10,000	-	-	-	-	-	10,000
<b>Ending Book Cash</b>	<b>\$ 12,083</b>	<b>\$ 18,670</b>	<b>\$ 16,799</b>	<b>\$ 10,341</b>	<b>\$ 10,218</b>	<b>\$ 6,517</b>	<b>\$ 1,038</b>	<b>\$ 1,038</b>