

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

In re  
Eastern Outfitters, LLC, *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11  
  
Case No.: 17-10243 (LSS)  
  
(Joint Administration Requested)

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE  
PAYMENT OF PREPETITION SALES, USE, AND FRANCHISE TAXES AND  
SIMILAR TAXES AND FEES AND (II) AUTHORIZING BANKS  
AND OTHER FINANCIAL INSTITUTIONS TO RECEIVE,  
PROCESS, HONOR, AND PAY CHECKS ISSUED AND  
ELECTRONIC PAYMENT REQUESTS MADE RELATING TO THE FOREGOING**

Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), hereby move the Court (the “Motion”) for entry interim and final orders (the “Interim Order”)<sup>2</sup>, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a), 507(a)(8) and 541(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtors to pay certain prepetition taxes, including sales and use taxes, franchise taxes, and similar taxes and fees in the ordinary course of business, as the Debtors, in their sole discretion, deem necessary, (ii) authorizing banks and other financial institutions (the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (iii) granting related relief. In support of the Motion, the Debtors rely on the *Declaration of Mark*

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

<sup>2</sup> The Debtors will present a final order to the Court before the final hearing on this Motion.



*T. Walsh in Support of First Day Motions* (the “First Day Declaration”)<sup>3</sup> filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

**Jurisdiction**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Cases and the Motion 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 as of February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court of the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 507(a)(8), and 541(d) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

**Background**

4. The Debtors’ operating business consists of Bob’s Stores and Eastern Mountain Sports (“EMS”), each of which is a regional multi-channel retailer engaged in the apparel, footwear, and sporting goods lines of business. Prior to the Petition Date, each of the two retailers was comprised of two primary units: (a) a retail store business; and (b) an e-commerce business. Collectively, the Debtors currently manage 86 retail stores in the Northeast. The

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<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

Debtors employ approximately 2600 full, part-time and temporary employees across their operations.

5. The Debtors, like other retail companies, have faced various obstacles in the challenging retail environment. Since the Debtors acquired their primary assets out of bankruptcy in July 2016, the Debtors' vendors have imposed very restrictive credit terms thereby depressing inventories. Significantly, unit inventories in some categories are down as much as 30% since the prior sale closed. Largely as a result of inventory pressure, the Debtors have been unable to meet their sales plan. Facing these operational challenges along with tightening liquidity, since September 2016, the Debtors, along with their advisors, have been engaged in a robust prepetition process to explore and solicit interest in a number of potential alternatives including, without limitation, the sale of all or a material business unit of the Debtors, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction, potential liquidity enhancing acquisitions, and liquidation sales.

6. After extensive negotiations with two parties and on the eve of proceeding with a liquidation alternative, the Debtors were able to secure an offer from Sportsdirect.com Retail Ltd. ("Sportsdirect"), the United Kingdom's largest sporting goods retailer, to purchase substantially all of the Debtors' assets. The Debtors commenced these Cases to consummate the sale transaction which will save nearly 1900 employee jobs, close the Debtors' stores not being sold to Sportsdirect and facilitate an orderly liquidation and wind-down.

7. On February 5, 2017 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee

has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware.

8. A full description of the Debtors' acquisition of their primary assets and their business, corporate structure, prepetition indebtedness, and events leading to these Cases is set forth in the First Day Declaration.

**Relief Requested**

9. By this Motion, the Debtors request that the Court enter an order, pursuant to sections 105(a), 507(a)(8), and 541(d) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to pay certain prepetition taxes, including sales and use taxes, franchise taxes, and similar taxes and fees in the ordinary course of business, as the Debtors, in their sole discretion, deem necessary, (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (c) granting related relief.

10. In the ordinary course of business, the Debtors incur or collect and remit certain taxes including, among others, sales, use, franchise, property, business and occupation, as well as certain similar fees, charges, and assessments (the "Taxes and Fees"). The Debtors remit the Taxes and Fees to various federal, state, and local taxing and other governmental authorities and/or certain municipal or governmental subdivisions or agencies of those states (the "Taxing Authorities") in connection with the operation of their businesses and the sale of their products or services at store locations, or through shipments of products purchased through the Debtors' websites to customers. The Taxes and Fees are paid monthly, quarterly, semi-annually, or annually to the respective Taxing Authorities, depending on the given Tax or Fee and the relevant Taxing Authority to which it is paid. As of the Petition Date, the Debtors

estimate that they owe approximately \$753,000 in unremitted Taxes and Fees, which are comprised entirely of current tax obligations, and are not in respect of “catch-up” payments.

11. The Debtors seek authority, but not direction, to pay all prepetition Taxes and Fees owed to the Taxing Authorities as they come due in the ordinary course of business. The Debtors estimate that the amount of accrued and unpaid Taxes and Fees payable should not exceed \$800,000.

12. The Debtors also request that all Banks on which checks to third parties are drawn and/or electronic payments are made pursuant to this Motion be authorized to receive, process, honor, and pay any and all such checks (whether issued or presented prior to or after the Petition Date) and electronic payments, and to rely on the representations of the Debtors as to which checks are authorized to be paid.

### **Basis for Relief Requested**

#### **A. Certain of the Taxes and Fees Are Not Property of the Debtors’ Estates**

13. The Debtors’ payment of the Taxes and Fees is justified in large part because certain of these amounts are not property of the Debtors’ estates pursuant to section 541(d) of the Bankruptcy Code. Certain of the Prepetition Taxes, such as sales and use taxes, are “trust fund taxes” that, by definition, are held by the Debtors in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Specifically, section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section *only* to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d) (emphasis added).

14. As such, these prepetition “trust fund taxes” are not property of the Debtors’ estates within the meaning of section 541 of the Bankruptcy Code. *See Begier v. Internal Revenue Serv.*, 496 U.S. 53, 55–56, 59–61, 66–67 (1990) (holding that taxes such as excise taxes are property held by a debtor in trust for another and, as such, do not constitute property of its estate); *see also, e.g., DuCharmes & Co., Inc. v. United States (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (per curiam) (stating that withheld taxes were subject to a trust); *Shank v. Wash. State Dept. of Rev. (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (stating that sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge); *DeChiaro v. N. Y. State Tax Comm’n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dept. of Rev. (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983) (same); *W. Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (same).

15. Here, the Taxes and Fees may constitute amounts held in trust, which the Debtors are required to collect and/or hold for payment to the Taxing Authorities. To the extent these Taxes and Fees constitute “trust fund” taxes, they are not property of the Debtors’ estates under section 541(d) of the Bankruptcy Code. *See In re Am. Int’l Airways, Inc.*, 70 B.R. 102, 104–05 (Bankr. E.D. Pa. 1987); *see also Old Republic Nat’l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721–22 (4th Cir. 1998) (stating that funds from various lenders held by closing agent in trust for designated third parties were not property of debtor’s estate).

#### **B. Payment of the Taxes and Fees Will Avoid Unnecessary Distractions**

16. Any regulatory dispute or delinquency that impacts the Debtors’ ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors’ operations as a whole. Specifically, the Debtors’ failure to remit the Taxes and Fees could adversely affect the Debtors’ business operations because, among other things: (a) the

Taxing Authorities could initiate audits of the Debtors or seek to prevent the Debtors from continuing their businesses and administering their estates, which, even if unsuccessful, would unnecessarily divert the Debtors' attention from the process of maximizing the value of their estates; (b) the Taxing Authorities could attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the estates; (c) some of the Taxing Authorities may seek to collect penalties, cancel franchises or other licenses, or undertake other unfavorable enforcement actions if the Debtors do not pay the Taxes and Fees; and (d) certain of the Debtors' directors, officers, and employees might be subject to personal liability, even if such a failure to remit such Taxes and Fees was not a result of malfeasance on their part, which would undoubtedly distract these key people from their duties related to the Debtors' restructuring. In fact, the Taxing Authorities may take such actions regardless of these chapter 11 filings. *See, e.g.*, 11 U.S.C. §§ 362(b)(9) (permitting tax audits and assessments), 362(b)(18) (allowing creation or perfection of liens for property taxes).

17. Accordingly, the Debtors respectfully request the authority to remit the Taxes and Fees in order to ensure that they and their directors, officers, and employees remain focused on operating their business and maximizing the value of their estates for the benefit of their creditors.

**C. Certain of the Taxes and Fees May Constitute Priority Claims**

18. In addition, the Debtors submit that authorizing the payment of the Taxes and Fees is in the best interests of their creditors and estates because substantially all of the Taxes and Fees likely constitute priority claims under section 507(a)(8) of the Bankruptcy Code. As such, payment of the Taxes and Fees will not prejudice the rights of general unsecured creditors.

19. Moreover, to the extent that such claims are entitled to priority treatment under section 507(a)(8) of the Bankruptcy Code, the respective Taxing Authorities may attempt to

assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

**D. Payment of the Taxes and Fees is Warranted Under the Doctrine of Necessity**

20. The Court also may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “doctrine of necessity.” *See id.*

21. The United States Court of Appeals for the Third Circuit recognized the doctrine of necessity in *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating 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 Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors

may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

22. The rationale for the doctrine of necessity—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process.”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.”); Collier on Bankruptcy ¶ 105.02[4][a] (Alan N. Resnick & Henry J. Sommer Eds., 16th ed. 2016)

(discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

23. Here, the Debtors’ payment of the Taxes and Fees is an exercise of sound business judgment and is necessary to preserve the value of the Debtors’ estates for the benefit of their creditors. The Debtors operate a nationwide business, and any disputes that could adversely affect their ability to conduct business in a particular jurisdiction could have wide-ranging and negative effects on the Debtors’ operations as a whole and their efforts to efficiently administer their estates and maximize distributions to their creditors. If the Debtors do not continue paying the Taxes and Fees when they come due on a timely basis, it is very possible that Taxing Authorities, or those parties who ordinarily collect the Taxes and Fees, may interfere with the Debtors’ businesses and the efficient administration of the estates.

**E. Processing of Checks and Electronic Fund Transfers Should be Authorized**

24. The Debtors also request that the Court authorize all applicable Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Taxes and Fees, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved pursuant to this Motion.

**Immediate Relief is Necessary**

25. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The Debtors believe that, among other things, the success of their chapter 11 efforts will require them remaining in good standing with the Taxing Authorities, as well as the focused and fully devoted efforts of their directors and officers to these proceedings, rather than attending to

any issues related to any failure to pay the Taxing Authorities on account of the Taxes and Fees. Thus, if the relief requested herein is not granted, the Debtors' failure to satisfy the Taxes and Fees would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

26. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**Waiver of Any Applicable Stay**

27. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**Reservation of Rights**

28. Nothing in the Proposed Order or this Motion (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

**Notice**

29. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 40 largest unsecured claims, excluding insiders, against the Debtors (on a consolidated basis); (c) counsel to PNC Bank, National Association, as prepetition first lien agent and lender; (d) the Internal Revenue Service; (e) the Office of the United States Attorney for the District of Delaware; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) Sportsdirect.com Retail Ltd. as prepetition second lien lender, proposed postpetition lender, and proposed purchaser of certain of the Debtors' assets; and (i) the Taxing Authorities. As this Motion is seeking "first day" relief on an expedited basis, 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). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**No Prior Request**

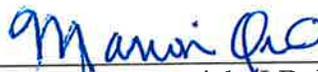
30. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and granting such other relief as is just and proper.

Dated: February 6, 2017  
Wilmington, Delaware

**COLE SCHOTZ P.C.**



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*Proposed Counsel for Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

<p>In re</p> <p>Eastern Outfitters, LLC, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No.: 17-10243 (LSS)</p> <p>(Joint Administration Requested)</p> <p><b>Related to Docket No. ____</b></p>
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**INTERIM ORDER (I) AUTHORIZING THE PAYMENT OF PREPETITION SALES, USE, AND FRANCHISE TAXES AND SIMILAR TAXES AND FEES AND (II) AUTHORIZING BANKS AND OTHER FINANCIAL INSTITUTIONS TO RECEIVE, PROCESS, HONOR, AND PAY CHECKS ISSUED AND ELECTRONIC PAYMENT REQUESTS MADE RELATING TO THE FOREGOING**

Upon the motion (the “Motion”)<sup>2</sup> of Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Cases”), for entry of an order, pursuant to sections 105(a), 507(a)(8) and 541(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtors to pay certain prepetition taxes, including sales and use taxes, franchise taxes, and similar taxes and fees in the ordinary course of business, as the Debtors, in their sole discretion, deem necessary, (ii) authorizing banks and other financial institutions (the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration and the record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended*

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

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

*Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and after a hearing on the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Taxes and Fees due and owing, including, without limitation, through the issuance of postpetition checks or wire transfer requests, as the Debtors, in their sole discretion, deem necessary, in an amount not to exceed \$800,000.
3. Nothing in this Order shall be construed as authorizing the Debtors to pay any amounts on account of past-due Taxes.
4. Subject to the terms of this Court's Order approving Debtors' continued use of their cash management system, the Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks

may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and Banks shall not be liable to any party on account of: (a) following the Debtors' instructions or representations as to any order of this Court; (b) the honoring of any prepetition check or other item drawn on any account that is the subject of this Interim Order in a good faith belief that the Court has authorized such prepetition check or item to be honored; and (c) an innocent mistake made despite implementation of reasonable itemhandling procedures.

5. Nothing in this Order, nor as a result of any payment made pursuant to this Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

6. The Debtors are authorized to issue postpetition checks, or to effectuate postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Cases with respect to prepetition amounts owed in connection with the Taxes and Fees.

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

8. Bankruptcy Rule 6003(b) has been satisfied.

9. Notwithstanding anything to the contrary contained herein, any payment made or to be made, and authorization contained in this Order shall be subject to the requirements imposed on the Debtors under any approved debtor in possession financing facility, any order

regarding the Debtors' postpetition financing or use of cash collateral, and any budget in connection therewith.

10. The Final Hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on \_\_\_\_\_ at \_\_\_\_\_ .m. (ET).

11. If no objections to the Motion are timely filed, served and received in accordance with the Motion and this interim order, the interim order shall be deemed a final order upon expiration of the Objection Deadline without further notice or hearing, and the Motion shall be granted on a final and permanent basis.

12. If objections are timely filed and served as set forth herein, the Court will consider such objection at the Final Hearing and the Debtors shall, on or after the Objection Deadline, submit to the Court a final order.

13. Notwithstanding anything to the contrary contained herein, any payment made or to be made, and authorization contained in this Order shall be subject to the requirements imposed on the Debtors under any approved debtor in possession financing facility, any order regarding the Debtors' postpetition financing or use of cash collateral, and any budget in connection therewith.

14. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

15. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
February \_\_, 2017

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THE HONORABLE LAURIE SELBER SILVERSTEIN