

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
Eastern Outfitters, LLC, *et al.*,¹
Debtors.

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

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION
EMPLOYEE CLAIMS, INCLUDING WAGES, SALARIES,
AND OTHER COMPENSATION, (II) AUTHORIZING PAYMENT
OF CERTAIN EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO
CONTINUE EMPLOYEE BENEFIT PROGRAMS ON A POSTPETITION
BASIS, (III) AUTHORIZING PAYMENT OF REIMBURSEMENTS TO
EMPLOYEES FOR PREPETITION EXPENSES, (IV) AUTHORIZING PAYMENT
OF WITHHOLDING AND PAYROLL-RELATED TAXES, (V) AUTHORIZING
PAYMENT OF PREPETITION CLAIMS OWING TO ADMINISTRATORS AND
THIRD PARTY PROVIDERS, AND (VI) DIRECTING BANKS TO HONOR
PREPETITION CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

Eastern Outfitters, LLC (“EOLLC”), 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 of an order, substantially in the form annexed hereto as **Exhibit A** (the “Proposed Order,”), pursuant to sections 105(a), 363(b), 507(a), and 541 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001(d), 6004, 7062, and 9014 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing, but not directing, the Debtors: (a) to pay any accrued prepetition wages, salaries, and other compensation to their Employees (as defined

¹ 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.



below), to the extent any are unfunded, and to continue to honor in the ordinary course of business (but not assume) certain practices, programs and policies with respect to such Employee claims; (b) to honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors' vacation and sick time policies, severance policy, employee benefit plans and programs, and retirement savings program, as described below; (c) to reimburse Employees for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business; (d) to pay all related prepetition payroll taxes and other deductions; and (e) to the extent that any of the foregoing programs is administered, brokered, insured or paid through a third-party administrator or provider, to pay any prepetition claims of such administrator and provider in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Employees; and (ii) authorizing banks and other financial institutions (collectively, the "Banks") to honor and process check and electronic transfer requests related to the foregoing. In support of the Motion, the Debtors rely on the *Declaration of Mark T. Walsh in Support of First Day Motions* (the "First Day Declaration")² 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

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

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 Local Rule 9013-1(f), 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), 362, 363(b), 507(a), and 541 of the Bankruptcy Code, Bankruptcy Rules 4001(d), 6004, 7062, and 9014, and Local Rule 9013-1.

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 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 the Proposed Order authorizing, but not directing, the Debtors, in their sole discretion: (a) to pay to the Employees all accrued prepetition wages, salaries, and other compensation and to pay to the Contractors (as

defined below) all prepetition amounts earned (collectively, the “Employee Claims”), and continue to honor in the ordinary course of business (but not assume) certain practices, programs and policies with respect to such Employee Claims; (b) to honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ vacation and sick time policies, severance policy, employee benefit plans and programs, and retirement savings program (collectively, the “Employee Benefits”), as described below; (c) to reimburse Employees for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business (the “Employee Expenses”); (d) to pay all related prepetition Payroll Taxes (as defined below) and Employee Withholdings (as defined below); and (e) to the extent that any Employee Benefit is administered, brokered, insured or paid through a third-party administrator or provider, to pay any prepetition claims of such administrator and provider in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Employees (the “Employee Administrator Obligations” and, together with the Employee Claims, the Employee Benefits, the Employee Expenses, the Payroll Taxes, and the Employee Withholdings, the “Prepetition Employee Obligations”).³

10. The Debtors also request authority for the Banks to honor and process check and electronic transfer requests related to the foregoing.

³ Contemporaneously herewith, the Debtors are filing a motion relating to the Debtors’ insurance programs (the “Insurance Motion”). The Insurance Motion seeks, among other things, authority for the Debtors to administer their workers’ compensation program and honor all obligations in connection therewith in the ordinary course of business. That program is not included herein, and the maximum allowances for payment of prepetition employee obligations listed in this Motion are exclusive of any amounts for which payment authority may be sought in the Insurance Motion.

A. Employee Claims: Wages, Salaries, and Other Programs

a. Payroll and Ordinary Course Compensation

11. The Debtors' workforce is comprised of full time salaried employees ("Full Time Salaried Employees"), full time hourly employees ("Full Time Hourly Employees") and together with the Full Time Salaried Employees, the "Full Time Employees", part-time hourly employees ("Part Time Employees"), and temporary hourly employees ("Temporary Employees" and, together with the Full Time Employees and Part Time Employees, the "Employees"). As of the Petition Date, the Debtors employed approximately (a) 403 salaried Full Time Employees and 350 hourly Full Time Employees, for a total of approximately 753 Full Time Employees; (b) 1,665 Part Time Employees; and (c) 198 Temporary Employees. In addition, approximately 12 Full Time Employees are currently on leave. Of the Debtors' current workforce (including any on leave), 865 are employed by EMS and 1,763 are employed by Bob's. Each of the two retailers has its own payroll system.⁴

12. All Employees are paid bi-weekly for the prior two weeks ending on the Saturday of any payroll week. Currently, the Debtors utilize three methods of payment: direct deposit, pay cards (debit cards funded on payroll date), and "live" paper checks. About 95 Employees currently receive paper checks.

13. The Debtors utilize Automated Data Processing ("ADP") as its third-party payroll administrator to process payroll and distribute direct deposit payments, as well as to administer

⁴ Certain of the Debtors' Employees provide shared services to the two retailers. They are predominantly located in the Debtors' headquarters (the "Home Office Employees"). These Home Office Employees are employed by Bob's Stores and administered under the Bob's Stores' payroll system. In addition, the Debtors contract with approximately 6 additional workers, who are either independent contractors or employees leased from temporary placement agencies (the "Contractors"). These Contractors are compensated outside of the Debtors' payroll system, and receive, in the aggregate, approximately \$25,000 per week. Because the Contractors are critical to operations at the Debtors' businesses, the Debtors seek authorization to pay prepetition amounts owing to the Contractors and to continue to employ and compensate them in the ordinary course during the pendency of these Cases.

certain “back end” payroll matters, such as the remittance of Payroll Taxes to local state and federal agencies. In addition, the Debtors use ADP for the administration of unemployment services.

14. In 2016, the average gross amount funded by the Debtors with respect to Employee payrolls to their payroll administrators in each two-week period was approximately \$2.1 million.

15. The Debtors’ ability to preserve the value of their assets depends on the service of their Employees. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, the Debtors believe that the morale and performance of their Employees may be adversely affected. The Debtors simply cannot operate without competent, knowledgeable Employees. If the Debtors fail to pay the Employee Claims in the ordinary course, their Employees will suffer personal hardship and, in some cases, may be unable to pay their basic living expenses. This result would have a highly negative impact on workforce morale and likely would result in unmanageable performance issues, thereby resulting in immediate and irreparable harm to the Debtors and their estates. Just as the Debtors depend on their Employees, they also depend on the Debtors. Indeed, the vast majority of these individuals rely exclusively on payments from the Debtors to meet their basic living necessities.

16. The Debtors believe that, as of the Petition Date, there are no accrued but unfunded amounts with respect to Employees on account of prepetition wages and salaries. Nevertheless, out of an abundance of caution, the Debtors seek authority to pay any accrued prepetition wages and salaries.

b. Independent Manager Fees

17. On January 30, 2017, Subortis Retail Financing, LLC, the sole owner of EOLLC reconstituted its limited liability company agreement (the “LLC Agreement”) to appoint a board

of managers (the “Board”), comprised the Debtors’ Chief Executive Officer, Chief Operating Officer, and Matthew Kahn, an independent manager. Mr. Kahn has more than 20 years of experience in private equity, structured lending, and credit investing, as well as four years of experience as a senior financial executive of two public companies. He currently serves as an advisor, consultant, and director at MRSAKAHN LLC, where he advises on restructuring matters and section 363 acquisitions. Accordingly, Mr. Kahn is uniquely qualified to continue assisting the Debtors in their restructuring efforts postpetition.

18. The Debtors agreed to pay Mr. Kahn \$4,000 per month and \$10,000 per quarter services (the “Independent Manager Fees”). To the extent there are any prepetition amounts on account of the Independent Manager Fees owing to Mr. Kahn, the Debtors request authority, but not direction, to pay those prepetition amounts, and, out an abundance of caution, to continue to pay Mr. Kahn for his Independent Manager Fees accruing postpetition, in the ordinary course of business.

c. Other Compensation Programs

19. Prior to the Petition Date, in order to ensure optimal performance by the Employees, the Debtors implemented a number of bonus and incentive programs (collectively, the “Employee Bonus Programs”) as follows:

- a. EMS Store Managers’ Incentive Program. EMS maintains two store managers’ incentive plans, one that is only applicable to store managers at certain high volume stores, and one that is applicable to store managers at all other EMS stores (together, the “EMS Store Managers’ Incentive Program”). Under both plans, store managers may earn payouts for meeting or exceeding target store sales for the month. Once a monthly sales goal is attained, commissions are awarded depending on the month. Store managers at high volume stores are eligible for slightly higher commissions than store managers at other EMS stores, and are subject to higher sales targets. If sales targets are missed for one or two months but achieved for the quarter, then store managers may be paid out for the months comprising that quarter. For all stores, sales managers may also earn payouts for exceeding planned customer data capture rates, planned conversion rates, planned new customer sign up

rates, or units of Superfeet units sold as a percentage of footwear units sold. Aggregate payments on account of the EMS Store Managers' Incentive Program for calendar year 2016 were approximately \$46,000. As of the Petition Date, the Debtors believe there are no accrued but unpaid amounts owing to Employees under the EMS Store Managers' Incentive Program.

- b. Bob's Stores Performance Incentive Program. Bob's Stores maintains a field bonus program for store managers, assistant store managers, department managers, asset protection managers, and senior asset protection managers (together, the "Bob's Performance Incentive Program"). Department managers are eligible for payouts if they meet certain sales and other store-related targets in Bob's Stores. Eligible managers are also eligible for payouts on the basis of meeting targets for AP survey scores. Aggregate payments on account of the Bob's Performance Incentive Program for calendar year 2016 were approximately \$7,700. As of the Petition Date, the Debtors believe there are no accrued but unpaid amounts owing to Employees under the Bob's Performance Incentive Program.
- c. Bob's Stores Tuition Assistance Program. Bob's Stores offers tuition assistance (the "Tuition Assistance Program") to encourage Full Time Employees to further their education and professional development through job related coursework or work related degree programs. Tuition assistance is only granted for courses directly related to work or that go toward a job related degree. All Full Time Employees are eligible to apply for tuition assistance after completing six months of continuous service. Reimbursements under the plan are made at 75% of the total cost of tuition and lab fees up to an annual maximum of \$5,000. If an Employee voluntarily terminates his or her employment within one year of accepting tuition assistance, he or she may be required to reimburse the company up to a certain amount. The Debtors' approximate tuition disbursement under the Tuition Assistance Program is \$3,000 per month. As of the Petition Date, the Debtors believe there is approximately \$1,500 in accrued but unpaid amounts owing to Employees under the Tuition Assistance Program.

20. The Debtors do not believe any prepetition amounts on account of the Employee Bonus Program will come due within 21 days of the Petition Date. To the extent there are prepetition amounts owed under the Employee Bonus Programs, the Debtors request authority to pay those amounts postpetition and to honor the Employee Bonus Programs in the ordinary course of business during the pendency of these Cases. No bonus or incentive payments will be

made to any insiders (as defined in section 101(31) of the Bankruptcy Code) unless separately authorized by the Court.

B. Employee Benefits

a. Paid Time Off

21. *Vacation Time.* The Debtors have varying vacation policies for their Employees who are awarded or accrue vacation time and paid time off (together, “Vacation”) throughout the year:

- a. Bob’s Stores. Bob’s Stores field Full Time Employees are awarded vacation time annually based on years of service attained at the time of the award. Vacation time is awarded, not accrued. Full Time Hourly Employees (who have worked an average of 30 or more hours per week in the previous vacation calendar year (February 1 – January 31) and hold a position classified by the company as full time) and Full Time Salaried Employees are eligible for vacation awards in accordance with the company’s award schedule. For Full Time Salaried Employees, the award schedule provides for two weeks of vacation for one year of service, for three weeks of vacation for two years of service, and for four weeks of vacation for ten years of service. For Full Time Hourly Employees who hold a position classified by the company as full time, the award schedule provides for one week of vacation for one year of service, for two weeks of vacation for two years of service, for three weeks of vacation for five years of service, and for four weeks of vacation for ten years of service. Vacation awards for Full Time Hourly Employees are made based on the average weekly number of hours worked for all Full Time Hourly Employees during the previous vacation calendar year. Awarded vacation not used at the end of the vacation year is forfeited. Vacation award balances that remain unused at the time of separation are not paid out unless otherwise directed by state law.
- b. EMS. EMS field Full Time Employees earn paid time off based on years of service. Earnings are prorated by the percentage of full time (40) hours worked each week (for example, if an employee works only 30 hours a week, that employee will earn 75% of the time a person working 40 hours a week would). Vacation days are earned on the following schedule: a maximum of ten days after 0-4 years of service, a maximum of 15 days after 5-9 years of service, a maximum of 20 days after 10-19 years of service, and a maximum of 25 days after 20+ years of service. Part Time Employees and Full Time Employees are paid for time away for bereavement (with benefits prorated for part-time employees). Paid bereavement leave is limited to five days for immediate family, three days for extended family, one day for other relatives, and one-half day for coworkers. Upon termination of employment, Employees

are paid for any accrued, unused vacation time. EMS Full Time Employees are also eligible for an Adventure Leave program, which allows for up to 30 days of unpaid leave for participation in an outdoor experience, subject to prior management approval.

- c. Home Office Employees. Regular full time Home Office Employees (which, as noted above, are administered under the Bob's Stores payroll) with 30 consecutive days of full time employment accrue vacation time based on accumulated service, ranging from two days for two-four months of service to 26 days for ten or more years of service. For Home Office Employees in their second through ninth year (beginning February 1), 21 vacation days are accrued for each fiscal year. Paid time off is paid at normal base salary or hourly rate. Remaining unused hours/days are not carried over into the new fiscal year, and Home Office Employees are not paid out for unused paid time off, unless required by applicable law, specifically in Massachusetts and Rhode Island.

22. At any point in time, Vacation is accruing or being used by Employees, making it difficult to quantify the cost of accrued Vacation as of the Petition Date. However, as of the Petition Date, the Debtors estimate that Employees had approximately \$480,000 in the aggregate of accrued and unused Vacation. The Debtors seek authorization to continue their Vacation policy and to honor, in the ordinary course of business, all unused Vacation time accrued prior to the Petition Date and consistent with past practices.

23. *Sick Leave*. The Debtors provide paid accrued sick time ("Sick Leave") to their Full Time and Part Time Employees as and where dictated by state law (Sick Leave Policy"). In addition, the Debtors' hourly Home Office Employees are eligible for up to four sick days each fiscal year, starting February 1 in their second year of service, which do not carry over at the end of the fiscal year, and are not paid out when employment ends.

24. As of the Petition Date, the Employees had approximately \$200,000 in the aggregate of accrued and unused Sick Leave. The Debtors do not believe any prepetition amounts on account of the Sick Leave Policy come due within 21 days of the Petition Date. The Debtors seek authorization to continue their Sick Leave Policy and to honor, in the ordinary

course of business, all unused Sick Leave time accrued prior to the Petition Date, but not to make cash payments on account of accrued but unused Sick Leave time, except at separation of employment and where required by state law.

b. Non-Insider Severance Policy

25. The Debtors maintain a severance policy for certain of their non-insider Full Time Employees (the “Severance Policy”). In particular, Employees in the positions of vice president, director, associate vice president, manager, supervisors, and individual contributor (“Severance Participants”) are eligible to receive severance payments equal to a certain number of weeks’ base pay, according to a matrix that provides for service factors of between 1.00 and 2.00. For vice presidents, the number of weeks ranges from thirteen to twenty-six, for directors and associate vice presidents, the number of weeks ranges from ten to twenty, for managers, the number of weeks ranges from eight to sixteen, for supervisors and salaried individual contributors, the number of weeks ranges from six to ten, and for hourly individual contributors, the number of weeks ranges from four to eight.

26. As of the Petition Date, there are no unpaid amounts due to terminated Employees on account of prepetition Severance Policy obligations.

27. The Debtors’ Employees have a range of responsibilities, including with respect to merchandising, marketing, and store operations that are necessary to the successful sale and preservation of estate value. As such, the Debtors seek authorization to continue honoring the Severance Policy, consistent with past practices, during the pendency of these Cases and to make cash payments for severance pay in accordance with the Severance Policy upon separation of employment; provided, however, that (a) severance payments will only be made to Severance Participants employed by the Debtors from and after the Petition Date; and (b) no severance

payments will be made to any insiders (as defined in section 101(31) of the Bankruptcy Code), unless separately authorized by the Court.

c. Employee Benefits Programs

28. As part of their Employee Benefits, prior to the Petition Date, the Debtors offered their Full Time Employees various standard employee benefits plans and programs (the “Benefit Programs”), including, without limitation, (a) health insurance, (b) dental insurance, (c) vision plan, (d) life insurance, (e) accidental death and dismemberment insurance, (f) short-term and long-term disability insurance, (g) COBRA coverage; (h) flexible spending accounts, (i) an employee assistance program, and (j) employee discounts and pro deals. Some of these benefits are only available to Full Time Employees.

29. Many of the Benefit Programs amongst Employees of Bob’s Stores and EMS overlap. Unless stated otherwise, the amounts set forth below reflect the approximate prepetition cost of such Benefit Programs in the aggregate, which the Debtors seek to continue paying in the ordinary course of their businesses during the pendency of these Cases.

30. *Medical Insurance Program.* The Debtors offer a self-insured medical and prescription drug program (the “Health Plan”) to their Full Time Employees, which is administered by Cigna. The Health Plan is approximately 70% paid by the Debtors and 30% paid by the Debtors’ Full Time Employees through paycheck withholding. The Debtors also maintain a stop-loss insurance policy (the “Stop-Loss Policy”) to provide protection against catastrophic losses under their self-insured medical insurance program, which is administered by Cigna. The Debtors use the brokerage services of Mercer LLC (“Mercer”) in connection with the management and maintenance of their Health Plan.

31. The average cost (after taking into account Employee contributions) of maintaining the Health Plan, including administrative costs and premiums, is approximately

\$380,000 in the aggregate per month. The average monthly cost of maintaining the Stop-Loss Policy, including administrative costs and premiums, has been approximately \$47,000.

32. The Health Plan administrator draws on an account maintained by the Debtors on a daily basis on account of claims paid by the administrators on the Debtors' behalf. The Debtors are unable to estimate with specificity the prepetition amounts owing in respect of the Health Plan, due to the fact that there is lag time of approximately 60 days on Employees' submissions of medical claims. However, based on historical data, the Debtors estimate that as of the Petition Date approximately \$730,000 was outstanding in respect of "incurred but not reported" claims under the Health Plan and related administrative costs and premiums in respect of the Stop-Loss Policy (excluding amounts paid through Employee deductions), and approximately \$120,000 outstanding in respect of filed claims that have not yet been paid. The Debtors seek authorization to pay these prepetition amounts in respect of the Health Plan and to continue to pay postpetition costs of the Health Plan, including premiums in respect of the Stop-Loss Policy, in the ordinary course of business during the pendency of these Cases.

33. *Dental Insurance Program.* The Debtors offer a fully-insured dental program (the "Dental Plan") to their Full Time Employees, which is administered by Cigna Dental. The Dental Plan is approximately 39% paid by the Debtors and 61% paid by the Debtors' Full Time Employees through paycheck withholding. The average cost (after taking into account Employee contributions) of maintaining the Dental Plan, including administrative costs, has been approximately \$30,000 per month. The Debtors are unable to estimate with specificity the prepetition amounts owing in respect of the Dental Plan, due to the fact that there is lag time of approximately 60 days on Employees' submissions of dental claims. However, the Debtors do not believe any prepetition amounts on account of the Dental Plan will come due within 21 days

of the Petition Date. To the extent there are any prepetition “incurred but not reported” amounts owed under the Dental Plan (excluding amounts paid through Employee deductions), the Debtors request authority to pay those amounts postpetition and to continue paying postpetition costs of the Dental Plan in the ordinary course of business during the pendency of these Cases.

34. *Vision Insurance Program.* The Debtors offer vision insurance to their Full Time Employees through EyeMed (the “Vision Plan”). Full Time Employees participating in the Vision Plan pay 100% of the plan premium. The average cost of maintaining the Vision Plan has been approximately \$4,000 per month. The Debtors estimate that as of the Petition Date they owe approximately \$4,000 on account of unpaid prepetition costs in respect of the Vision Plan. The Debtors do not believe any such prepetition amounts are due within 21 days of the Petition Date. However, to the extent there are any prepetition amounts owed under the Vision Plan, the Debtors request authority to pay those amounts postpetition and to pay postpetition costs of the Vision Plan in the ordinary course of business during the pendency of these Cases.

35. *Life and Accidental Death and Dismemberment Insurance Coverage.* The Debtors provide their Full Time Employees with basic life insurance, accidental death and dismemberment insurance, and short-term and long-term disability insurance, all of which are provided by Cigna (collectively, the “Life and Disability Plans”). The Debtors pay 100% of the costs of the Life and Disability Plans (except with respect to optional supplemental life insurance, which is 100% paid by Employees who elect such insurance benefits). In the aggregate, the average monthly cost of maintaining the Life and Disability Plans has been approximately \$30,000. The Debtors estimate that as of the Petition Date they owe approximately \$30,000 on account of unpaid prepetition costs in respect of the Life and Disability Plans. The Debtors do not believe such amounts will come due within 21 days of the

Petition Date. To the extent, however, there are any prepetition amounts owed under the Life and Disability Plans, the Debtors request authority to pay those amounts postpetition and to continue paying postpetition costs of the Life and Disability Plans in the ordinary course of business during the pendency of these Cases.

36. *COBRA*. The Debtors seek to continue to perform any obligations under Section 4980B of the Internal Revenue Code to administer Continuation Health Coverage (26 U.S.C. § 4980B) (“COBRA”) in respect of former Employees and their covered dependents. Discovery Benefits, Inc. (“Discovery Benefits”) is the third-party COBRA administrator for the Debtors. The Debtors do not believe any prepetition amounts on account of their COBRA administration obligations will come due within 21 days of the Petition Date.

37. *Flexible Spending Accounts*. The Debtors offer their Full Time Employees the use of flexible spending accounts for various medical claims not otherwise covered or payable by the Health Plan. The Debtors pay approximately \$20,000 in the aggregate per month for these flexible spending benefits (the “Flex Benefits”). The Flex Benefits are administered by Discovery Benefits. The Debtors do not believe any prepetition amounts on account of Flex Benefits will come due within 21 days of the Petition Date. To the extent there are any prepetition amounts owed on account of Flex Benefits, the Debtors request authority to pay those amounts postpetition and to continue paying postpetition costs of their Flex Benefits in the ordinary course of business during the pendency of these Cases.

38. *Employee Assistance Program*. The Debtors offer their Full Time Employees and their family members counseling services to help resolve personal issues (the “EAP”) through CMG Associates. The EAP has been funded at an average monthly cost to the Debtors of \$1,000. The Debtors do not believe any prepetition amounts on account of the EAP will come due within

21 days of the Petition Date. To the extent there are any prepetition amounts owed on account of the EAP, the Debtors request authority to pay those amounts postpetition and to continue paying postpetition costs of the EAP in the ordinary course of business during the pendency of these Cases.

39. *Employee Discounts and Deal Programs.* Prior to the Petition Date, the Debtors offered all of their Full Time Employees and Temporary Employees, their dependents, and their immediate family members cross-brand discounts at each of the Bob's Stores and EMS locations, as well as online. The discounts range between 10-50% of the original product price, subject to certain exclusions. The Debtors also offered all of their Full Time Employees and Temporary Employees certain "Pro Deals" discounts on product offered directly through third-party vendors. "Pro Deals" can be obtained directly from the applicable vendor or through a third-party website.

40. In addition, prior to the Petition Date, EMS Full Time Employees and Temporary Employees could rent sports equipment for free, subject to certain exceptions. At EMS, Full Time Employees and Temporary Employees could also take up to two free lessons per year for rock and ice climbing, kayaking, and telemark skiing. The Debtors seek authority to continue these discount, rental, and free lessons policies, at the applicable retailers and as described above, in the ordinary course of business during the pendency of these Cases. For the avoidance of doubt, there are no amounts owing to Employees with respect to these policies as of the Petition Date.

41. *Honoring of Prepetition Benefits.* As of the Petition Date, certain of the Benefit Programs described above remained unpaid or not yet provided because certain obligations of the Debtors under the applicable plan, program or policy accrued either in whole or in part prior

to commencement of these Cases, but will not be required to be paid or provided in the ordinary course of the Debtors' business until a later date. The Debtors seek authority to pay or provide as they become due all amounts in respect of the Benefit Programs described above that have already accrued. Failing to honor these obligations would have devastating consequences on the preservation of the Debtors' estates.

42. *Continuation of Benefit Programs Postpetition.* The Debtors request confirmation of their right to continue to perform their obligations with respect to these Benefit Programs for the duration of their Cases. These programs are an important component of the total compensation offered to the Employees, and are essential to the Debtors' efforts to maintain Employee morale and minimize attrition among those whose retention is important for the Debtors' success. The Debtors believe that the expenses associated with the Benefit Programs are reasonable and necessary in light of the potential attrition, loss of morale and loss of productivity that would occur if the Benefit Programs were discontinued. The Debtors also seek to minimize the unique personal hardship the Debtors' Employees will suffer if their employee-related obligations are not paid when due.

d. Retirement Savings Program

43. The Debtors maintain a 401(k) plan (the "Retirement Plan"), administered by Prudential Retirement, through which qualified and participating Employees may defer a portion of their salary to help meet their financial goals and accumulate savings for their future. The Retirement Plan is funded by Employee contributions, and Employees pay Prudential Retirement's administrative and consulting fees. The Debtors do not match Employee contributions. The Debtors believe that the Retirement Plan is important to maintaining Employee morale.

44. The Debtors pay approximately \$45,000 in the aggregate each year for audits of the Retirement Plan. However, there has been no audit for plan year 2016, and there will not be one until Summer 2017. The Debtors do not believe they owe any prepetition amounts on account of the Retirement Plan audit, nor will any prepetition amounts come due within 21 days of the Petition Date. To the extent there are any prepetition amounts owed on account of the Retirement Plan audit, however, out of an abundance of caution, the Debtors request authority to pay those amounts postpetition and to continue to pay postpetition costs of the Retirement Plan audit in the ordinary course of business during the pendency of these Cases.

C. Employee Expenses

45. Prior to the Petition Date, the Debtors directly or indirectly reimbursed their Employees for expenses incurred on behalf of the Debtors in the scope of their employment (the “Employee Expenses”). The Employee Expenses are incurred in the ordinary course of the Debtors’ business operations and include, without limitation, expenses for meals, travel, automobile mileage and other business-related expenses. In addition, the Debtors maintain certain cardholder-paid credit cards issued by American Express (the “Employee Cards”) on which cardholder Employees incur and pay expenses, and are subsequently reimbursed by the Debtors after submission and approval of expense reimbursement requests.

46. The Debtors allow Employees to utilize two methods for submitting Employee Expenses reimbursement requests. First, Employees can use an online expense report software to submit expense reports and receive reimbursement for approved Employee Expenses directly to their bank accounts. Alternatively, Employees can submit expense reports directly and receive a paper check for approved Employee Expenses in lieu of a direct deposit payment.

47. Historically, approximately \$180,000 has been paid on account of Employee Expenses each month. Because a delay often occurs between the time such expenses are incurred

and the time a charge is posted, or an expense reimbursement request (in the case of the Employee Cards) is submitted, it is difficult to determine with precision the aggregate amount of outstanding Employee Expenses. However, the Debtors estimate that, as of the Petition Date approximately \$50,000 in Employee Expenses may remain unpaid.

48. Absent authority to pay the Employee Expenses incurred prepetition, the Debtors' Employees could be obligated to pay such amounts out of their personal funds, which would be unfair and would hurt morale. The Debtors therefore seek authority to pay all outstanding prepetition Employee Expenses and to continue the foregoing policy (including with respect to all remaining Employees holding Employee Cards) in the ordinary course of business during the pendency of these Cases.

D. Employee Withholdings

49. The Debtors routinely deduct certain amounts from Employees' compensation that represent earnings that judicial or government authorities or the Employees have designated for deduction, including, for example, various federal, state and local income, Federal Insurance Contribution Act ("FICA") and other taxes, support payments and tax levies, savings programs contributions, benefit plans insurance programs and other similar programs (collectively, the "Employee Withholdings"). The amount deducted and remitted by the Debtors in respect of Employee Withholdings is approximately \$900,000 in the aggregate per month. All deductions that have accrued prepetition have been funded.

50. In addition, the Debtors are responsible for remitting to ADP, for their own account, various taxes and fees associated with payroll pursuant to the FICA and federal and state laws regarding unemployment and disability taxes ("Payroll Taxes"). The Debtors pay approximately \$1,168,000 in the aggregate for employer-obligated Payroll Taxes each month. As of the Petition Date, the Debtors believe that all Payroll Taxes have been paid.

51. The Debtors seek authority to continue to deduct and remit Employee Withholdings and to remit Payroll Taxes in the ordinary course of business during the pendency of these Cases.

E. Employee Administrator and Broker Obligations

52. As discussed above, the Debtors utilize ADP as payroll administrators for the Debtors' retail businesses. For these administrative services, the Debtors pay approximately \$45,000 in the aggregate per month. The payroll administrators typically bill the Debtors in arrears for associated payroll costs. Accordingly, as of the Petition Date, approximately \$45,000 is owing to ADP in the aggregate in respect of prepetition costs and fees for payroll and administration fees.

53. As discussed above, the Debtors utilize Cigna as their Health Plan, Dental Plan, Vision Plan, and Life and Disability Plan administrator. The Debtors pay Cigna approximately \$15,000 per month for these administrative services. As of the Petition Date, the Debtors believe that approximately \$15,000 remains owing to Cigna in respect of prepetition costs and fees for administrative services.

54. As discussed above, the Debtors utilize CMG Associates as their EAP administrator, at a cost of \$1,000 in the aggregate per month. As of the Petition Date, the Debtors believe that approximately \$3,000 is owing to CMG Associates in respect of prepetition costs and fees for these administrative services.

55. In addition, as discussed above, the Debtors use the brokerage services of Mercer in connection with the management and maintenance of their Health Plan. The Debtors pay Mercer approximately \$6,000 in the aggregate per month for these brokerage services. As of the Petition Date, the Debtors believe that approximately \$6,000 is owing to Mercer in respect of prepetition costs and fees for these brokerage services.

56. Finally, as discussed above, the Debtors utilize Discovery Benefits as their COBRA and Flex Benefits administrator, at a cost of approximately \$1,000 per month. As of the Petition Date, the Debtors believe that approximately \$1,000 is owing to Discovery Benefits in respect of prepetition costs and fees for their administrative services.

57. The Debtors do not believe any prepetition amounts on account of these Employee Administrator Obligations will come due within 21 days of the Petition Date. To the extent there are any prepetition amounts owing in respect of these Employee Administrator Obligations, the Debtors seek authority to pay those amounts postpetition and to continue to make payments in respect of the Employee Administrator Obligations in the ordinary course during the pendency of these Cases.

F. Direction to Banks

58. Finally, the Debtors seek an order authorizing the Banks to receive, process, honor and pay all of the Debtors' prepetition checks and fund transfers on account of any Prepetition Employee Obligations, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Prepetition Employee Obligations. The Debtors also seek an order authorizing them to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

G. Summary

The Debtors seek authority to continue to honor and implement the Employee-related policies and practices as described above and to pay the prepetition amounts described not to exceed those set forth below:

Employee Claims	\$0
Independent Manager Fee	\$4,000
Employee Bonus Programs	\$1,500
Vacation (only at separation and consistent with past practices) ⁵	\$480,000
Sick Leave (only at separation and where required by state law) ⁶	\$200,000
Health Plan	\$900,000
Dental Plan	Unable to determine at this time
Vision Plan	\$4,000
Life and Disability Plans	\$30,000
COBRA	\$0
Flex Benefits	\$0
EAP	\$1,000
Retirement Plan	\$0
Employee Expenses	\$50,000
Employee Withholdings	\$0
Payroll Taxes	\$0
Employee Administrator Obligations	\$70,000

⁵ As discussed above, at any point in time Vacation is accruing or being used by Employees and the Debtors expect that at least a portion of the amounts accrued prior to the Petition Date will burn off in the regular course of business.

⁶ As discussed above, the Debtors do not make payments on account of accrued but unused Sick Leave, except at separation of employment and only where required by state law.

Basis for Relief Requested

59. To maintain their operations and preserve the value of their estates, it is essential that the Debtors continue to operate, to the extent possible, in the ordinary course of their business. To achieve that result, the Debtors must retain the uninterrupted service and loyalty of their employees. The maintenance and continuation of employee programs, as well as the payment of amounts owing in respect thereof, is essential to this goal. Accordingly, the Debtors submit that the relief requested herein is critical to their ability to operate effectively and to preserve the value of their estates throughout these Cases, and therefore, is in the best interest of the Debtors, their estates, and their creditors.

A. The Proposed Payments are Accorded Priority Under Bankruptcy Code Section 507

60. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave and employee benefit contributions be accorded priority in payment in an amount not to exceed \$12,850 in the aggregate for each employee (to the extent such amounts accrued within 180 days of the Petition Date). To the extent that such claims are afforded priority status, the Debtors must pay these claims in full prior to payment of general unsecured creditors under a plan. *See* U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions, including vacation, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan); 11 U.S.C. § 507(a)(5) (providing that “allowed unsecured claims for contributions to an employee benefit plan . . . ,” with offsets for payments made under section 507(a)(4), are entitled to a fifth priority). Accordingly, granting the relief sought with respect to compensation will affect only the timing of payments to Employees and will not have any material negative impact on recoveries for general unsecured creditors.

61. Because of the large number of Employees working for the Debtors, and because of the inherent uncertainty regarding the amounts owed to Employees pending submission of claims with respect to the Benefit Programs (such as the Health Plan, Dental Plan, Vision Plan, etc.), the Debtors do not know the exact amount due to each Employee on account of all Prepetition Employee Obligations. However, no Employees are owed more than \$12,850 in the aggregate for Employee Claims. Thus, granting the relief requested is consistent with the Bankruptcy Code's purpose in ensuring employees are paid in full on account of the priority status of their claims.

B. Payment of Certain Prepetition Employee Obligations is Appropriate Under Section 541 of the Bankruptcy Code

62. The Debtors also seek authority to pay certain deductions, withholdings and payroll taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain deductions, including contributions to various Benefit Programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b); *cf. Old Republic Nat'l Title Ins. Co. v. Tyler (In re Demeron)*, 155 F.3d 718, 721–22 (4th Cir. 1998) (holding funds from various lenders held by closing agent in trust for designated third parties were not property of the debtor's estate); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104–05 (Bankr. E.D. Pa. 1987) (explaining that funds held by the debtor to be paid for federal taxes are held in trust and are not property of the estate).

63. Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97

(3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. United States (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (per curiam) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes).

64. These unremitting Employee Withholdings are not property of the Debtors' estates, and, accordingly, the Debtors request that this Court authorize the Debtors to transmit the Employee Withholdings to the proper parties during the pendency of these Cases.

C. The Proposed Payments are Appropriate Under Sections 363 and 105(a) of the Bankruptcy Code, and the Doctrine of Necessity

65. Courts generally acknowledge that it is appropriate to authorize the payment of prepetition obligations when necessary to protect and preserve the estate. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (authority to pay prepetition claims of suppliers).

a. The Court May Authorize Payment of the Prepetition Employee Obligations Under Section 363 of the Bankruptcy Code

66. Under section 363(b) of the Bankruptcy Code, after notice and a hearing, a bankruptcy court may authorize a debtor to use property of the estate other than in the ordinary course of business. Under the same section, a court should authorize non-ordinary course business transactions when the debtor has articulated a valid business justification for the requested use of estate assets. *See Ionosphere Clubs*, 98 B.R. at 175 (section 363(b) gives the court "broad flexibility" to make payments outside of ordinary course of business as long as the debtor articulates a business justification); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In

determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.”); *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”).

67. Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

68. Payment of the Prepetition Employee Obligations serves the sound business purpose of maximizing the value of the Debtors’ estates. The Debtors’ success in these Cases hinges in large part on the morale and continued efforts of the Employees. Through the payment of the Prepetition Employee Obligations, the Debtors seek to motivate and encourage the Employees to continue to support the Debtors during the pendency of these Cases. Accordingly, this Court should grant the requested relief under section 363(b) of the Bankruptcy Code.

69. In addition, because the Debtors pay the Prepetition Employee Obligations in the ordinary course of business, the Debtors submit that Court approval to continue their existing policies, programs, and related payments postpetition is not necessary, because of the authority granted by section 363(c) of the Bankruptcy Code. Nonetheless, for the avoidance of doubt, the Debtors request that the Court grant the relief requested herein and enter the Proposed Order,

authorizing the payment of the Prepetition Employee Obligations, and permitting the Debtors, in their discretion, to continue their practices, programs, policies, and plans for their Employees as were in effect as of the Petition Date, subject to modification, termination, amendment, or supplement from time to time hereafter.

b. Proper Application of the Doctrine of Necessity

70. Section 105(a) of the Bankruptcy Code, which codifies the inherent 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). A Bankruptcy Court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175. Moreover, “[u]nder Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). The authority to pay such prepetition obligations is known as the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *Ionosphere Clubs*, 98 B.R. at 176.

71. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh and New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). Moreover, the doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. *See In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just For Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory

on eve of debtor's key sales season); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers' claims when such suppliers agree to provide postpetition trade credit); *Official Comm. of Unsecured Creditors of Motor Coach Indus. Int'l, Inc. v. Motor Coach Indus. Int'l, Inc. (In re Motor Coach Indus. Int'l, Inc.)*, No. 08-12136 BLS, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the doctrine of necessity in the Third Circuit)

72. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *See, e.g., In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 9, 2015) (authorizing debtors to pay prepetition employee wages, benefits, and granting related relief.); *In re Samson Resources Corporation, et al.*, No. 15-11934 (CSS) (Bankr. D. Del. Sept. 16, 2015) (same); *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

73. Moreover, courts have recognized the applicability of the doctrine of necessity with respect to the payment of prepetition employee compensation and benefits. *See, e.g., Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–89 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it is appropriate for bankruptcy court to defer to Debtors' business judgment in permitting payment of certain

workers' compensation claims); *Ionosphere Clubs*, 98 B.R. at 176 (“This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.”).

74. Therefore, the relief requested represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is therefore justified under the applicable authority. Paying prepetition wages, employee benefits and similar items will benefit the Debtors' estates and their creditors by allowing the Debtors to conduct these Cases effectively. Indeed, the Debtors believe that without the relief requested herein being granted, there is great risk that the Employees will seek alternative opportunities. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to successfully conduct these Cases.

75. Accordingly, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

Waiver an Any Applicable Stay

76. 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

77. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors and their estates, a waiver of the rights of the Debtors and their estates to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors and their estates expressly reserve their rights to dispute any claim asserted by an Employee under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the rights of the Debtors and their estates to dispute such claim subsequently.

Notice

78. 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; and (h) Sportsdirect.com Retail Ltd. as prepetition second lien lender, proposed postpetition lender, and proposed purchaser of certain of the Debtors' assets. 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

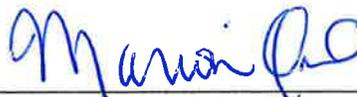
79. No prior motion for the relief requested herein has been made to this or any other court.

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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 7, 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**

In re
Eastern Outfitters, LLC, *et al.*,¹
Debtors.

Chapter 11
Case No.: 17-10243 (LSS)
(Joint Administration Requested)
Related to Docket No. ____

ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION EMPLOYEE CLAIMS, INCLUDING WAGES, SALARIES, AND OTHER COMPENSATION, (II) AUTHORIZING PAYMENT OF CERTAIN EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO CONTINUE EMPLOYEE BENEFITS ON POSTPETITION BASIS, (III) AUTHORIZING PAYMENT OF REIMBURSEMENT TO EMPLOYEES FOR PREPETITION EXPENSES, (IV) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-RELATED TAXES, (V) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO ADMINISTRATORS AND THIRD PARTY PROVIDERS, AND (VI) DIRECTING BANKS TO HONOR PREPETITION CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS

Upon the motion (the "Motion")² of 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"), for entry of an order (this "Order"), pursuant to sections 105(a), 363(b), 507(a), and 541 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 4001(d), 6004, 7062, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing, but not directing, the Debtors: (a) to pay accrued prepetition Employee Claims and continue to honor in the ordinary course of business (but not assume) certain practices, programs, and policies with respect to such

¹ 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.

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

Employee Claims; (b) to honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors' Employee Benefits; (c) to reimburse Employees for prepetition Employee Expenses; (d) to pay all related prepetition Payroll Taxes and Employee Withholdings; and (e) to the extent that any of the foregoing programs is administered, brokered, insured or paid through a third-party administrator or provider, to pay any prepetition Employee Administrator Obligations; and (ii) authorizing banks and other financial institutions (collectively, the "Banks") to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration and the entire 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 Standing Order of Reference* from the United States District Court for the District of Delaware dated as of 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. Upon entry of this Order, the Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or

administration of the Prepetition Employee Obligations), in their sole discretion, the Prepetition Employee Obligations and Independent Manager Fees as and when such obligations are due; *provided, however*, that no Employee shall be paid more than \$12,850 in the aggregate for Employee Claims.

3. Nothing herein shall be deemed to (a) authorize the payment of any amounts in satisfaction of severance obligations or bonus obligations (except for payments under the Employee Bonus Programs and Severance Policy to non-insiders), or which are subject to section 503(c) of the Bankruptcy Code; or (b) authorize the Debtors, upon separation of employment, to cash out accrued unpaid Vacation or Sick Leave time to Employees in amounts in excess of the caps set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, unless applicable state law requires such payment.

4. Except to the extent otherwise set forth in this Order, the Debtors are authorized, but not directed, in their discretion, to honor and continue their Employee Bonus Programs, Employee Expense policies, Employee Withholding policies, the Employee Administrator Obligations, and the Employee Benefits that were in effect as of the Petition Date, including but not limited to Vacation time, Sick Leave, Severance Policy obligations, the Health Plan, the Dental Plan, the Vision Plan, the Life and Disability Plans, COBRA, the Flex Benefits, the EAP, and the Retirement Plan.

5. 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 the 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 item handling procedures.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Prepetition Employee Obligations that are dishonored or rejected.

7. The Debtors may pay any and all withholding, including social security, FICA, federal and state income taxes, garnishments, health care payments, retirement fund withholding, and other types of withholding, whether these relate to the period prior to or after the Petition Date.

8. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

9. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall (a) be construed as a request for authority to assume or the assumption of any executory contract under section 365 of the Bankruptcy Code; (b) waive, affect or impair any of the rights, claims or defenses of the Debtors and their estates, including, but not limited to, those arising from section 365 of the Bankruptcy

Code, other applicable law and any agreement; (c) grant third-party beneficiary status or bestow any additional rights on any third party; or (d) be otherwise enforceable by any third party.

10. 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.

11. 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.

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

Dated: February __, 2017
Wilmington, Delaware

THE HONORABLE LAURIE SELBER SILVERSTEIN