

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-<u>10274</u>
)	
Debtors.)	(Joint Administration Requested)
)	

DEBTORS’ EMERGENCY MOTION TO AUTHORIZE PAYMENT OF PRE-PETITION WAGES, PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS AND RELATED EXPENSES, AND OTHER COMPENSATION TO EMPLOYEES

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”) file this *Emergency Motion to Authorize Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits and Related Expenses, and Other Compensation to Employees* (this “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

BACKGROUND

A. The Debtors' Bankruptcy Cases

3. On February 23, 2018 (the "Petition Date"), the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors' commencement of these cases is set forth in detail in the *Declaration of David Leach in Support of First-Day Motions and Applications* (the "First-Day Declaration"),² filed on the Petition Date and incorporated herein by reference.

5. The Debtors have continued in possession of their properties and continue to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. As of the date of this filing, no official committee of unsecured creditors has been appointed in these cases, and no request has been made for the appointment of a trustee or examiner.

B. The Employee Obligations

7. As of the Petition Date, the Debtors directly employ 68 people (the "Employees"), of whom all work at the Facility. Of the Employees, 23 are employed on a full-time salaried basis and 48 are employed on a full-time hourly basis.³

8. In June 2016, the Debtors made significant revisions to their employee benefit plans in light of the contemplated shutdown and decommissioning. These revisions, made with input from their benefits consultants, were designed to provide employees with benefits

² Capitalized terms that are used but not defined in this Motion have the meanings ascribed to such terms in the First-Day Declaration.

³ In addition to the employees, the Debtors have outsourced certain maintenance and construction services from Austin Maintenance & Construction, Inc., whose employees are compensated comparably to similarly-situated Employees.

consistent with prevailing market conditions in the Debtors' industry and took into consideration the contemplated shutdown.

9. Because the shutdown and decommissioning requires skilled employees to safely and cost-effectively decommission the Debtors' facility, Employees are vital to the shutdown process. By this Motion, the Debtors seek authority to pay certain wages, compensation, and benefits more fully described below (the "Employee Obligations") that become payable prior to and during the pendency of these chapter 11 cases and to continue at this time their practices, programs, and policies with respect to the Employees, as such practices, programs, and policies were in effect as of the Petition Date.

10. Even though the Debtors have incurred certain Employee Obligations prior to the Petition Date, certain of the Employee Obligations will become due and payable in the ordinary course of the Debtors' businesses on and after the Petition Date. The Employee Obligations include, without limitation: (i) wages, salaries, and other compensation; (ii) payroll taxes; (iii) vacation programs; (iv) qualified 401(k) plan obligations; (v) health and welfare benefits; (vi) retention; and (vii) performance incentive bonus. The Employee Obligations are more specifically described as follows:⁴

- *Wages, salaries, and other compensation.* These obligations consist of pre-petition wages, salaries, and commissions owed to the Employees (the "Payroll Obligations"). The Debtors pay their payroll biweekly for salaried and hourly Employees. The average biweekly gross amount of the Payroll Obligations is approximately \$245,600. This gross amount includes certain deductions described separately below, such as payroll taxes owed by the Employees and 401(k) contributions. The Payroll Obligations due to Employees are deposited directly into the Employees' bank accounts and are not paid by check, with the exception of a new hire's first paycheck. As of the Petition Date, the Debtors

⁴ In addition to the employee benefits described herein, the Debtors maintain a workers' compensation plan, which is discussed in the *Debtors' Emergency Motion for Authority to Continue Pre-Existing Insurance Programs and to Pay Pre-Petition Premiums and Related Obligations*.

estimate that they owe approximately \$245,579 in Payroll Obligations. These amounts do not include employer payroll taxes.

- *Payroll taxes.* These obligations consist of federal, state, and local income taxes, social security, and Medicare taxes. The payroll taxes include the amounts owed by Employees that the Debtors withhold from the gross amount of the Employees' wages or salary as well as the amounts separately owed by the Debtors. The Debtors' average biweekly payroll tax liability is approximately \$73,963. This includes approximately \$18,105 for the employer obligation and \$55,858 for the Employee component. As of the Petition Date, the Debtors estimate that they owe approximately \$73,963 in payroll taxes.
- *Unemployment taxes.* The Debtors also pay certain state and federal unemployment taxes. As of the Petition date, the Debtors owe approximately \$4,010 in unemployment taxes.
- *Vacation, sick leave and holiday programs.* These obligations consist of time off for vacation, sick leave and company holidays. The Debtors recognizes nine holidays per year. In addition, Employees receive paid time off ("PTO"), which includes vacation and sick leave, as follows:
 - PTO for the upcoming year is accrued on January 1 of each calendar year.
 - Employees receive PTO based upon years of service as follows: (i) first year of service receives PTO prorated based on first full month of employment; (ii) for service years 1 to 4, an Employee receives 120 hours (day) or 124 hours (shift); (iii) for service years 5 to 9, an Employee receives 160 hours (day) or 164 hours (shift); (iv) for service years 10-19, an Employee receives 200 hours (day) or 204 hours (shift); (v) for service years 20-30, an Employee receives 240 hours (day) or 244 hours (shift). The annual maximum PTO that carries over from year to year is 48 hours.
 - As of the Petition Date, the Debtors estimate that they owe approximately \$734,241 in total unused PTO pay, including Federal Insurance Contributions Act ("FICA") tax, that can be used or will be due to Employees at the time of separation. PTO is subject to forfeiture upon voluntary exit by Fibrant Employees prior to their scheduled separation date.
- *401(k) plan obligations.* The Debtors maintain a 401(k) plan, under which Employees may defer a portion of their salary. Beginning on their first day of employment, employees can contribute any portion of their annual pay (up to the annual maximum deferral amount permitted by law). The Debtors make matching contributions of up to 5%, which are defined on an annual basis. As of the Petition Date, the Debtors owe Employees approximately \$9,576 for matching 401(k) contributions.

- *Expense Reimbursements.* The Debtors reimburse certain of their Employees and Directors for certain expenses incurred in connection with Employees' work, including travel expenses. As of the Petition Date, the Debtors estimate that they owe approximately \$1,000 in expense reimbursements.
- *Health and Welfare Benefits.* The Debtors provide several health and welfare benefit plans for the Employees, including insurance plans relating to medical, health, prescription, dental, disability, and life insurance. These plans were revised as of part of the shutdown and decommissioning process on or about July 1, 2016.
 - *Health Care Plan.* The Debtors maintain and provide a High Option PPO, a Low Option PPO, and a Consumer Directed Health Plan (collectively, the "Health Plans") administered by Cigna to all Employees (eligibility determined by a 20-hour minimum work week). The Consumer Directed Health Plan includes a health savings account into which the Debtors make a yearly contribution. The Health Plans are fully insured. Employees are automatically enrolled in a prescription drug and vision plans if they are covered under the Health Plans. There are 16 former employees covered under COBRA (covered 18 months from departure). The Debtors' average monthly premiums and administration fees (which include all of the premiums and administration costs associated with the health care, prescription, employee assistance program, and dental plans) are approximately \$78,000 in connection with the Health Plans, including reinsurance, COBRA fees, PPO fees, network fees and similar expenses. The Debtors believe that approximately \$78,352 is due and outstanding under the Health Plans for services provided prior to the Petition Date. For the remainder of 2018, the Debtors estimate that the Health Plans will cost \$790,000, which includes the monthly premiums, administration fees and estimated cost of claims.
 - *Dental.* The Debtors maintain and provides a dental plan for all Employees. The dental plan cost to the Debtors is estimated at \$72,400 for 2018. As of the Petition Date, the Debtors owe approximately \$6,032 for services provided prior to the Petition Date.
 - *Basic Life Insurance.* The Debtors provide life insurance to Employees at no cost to the Employee. Basic Life Insurance is equal to 2 times the Employee's annual base pay, rounded up to the next highest \$1,000, with a maximum benefit of \$1,000,000. The Debtors' average monthly premium is approximately \$1,129. As of the Petition Date, the Debtors owe approximately \$1,129. Employees are able to purchase spousal, child and additional employee optional life insurance. As of the Petition Date, approximately \$4,653 is due in premiums for optional life insurance.

- *Accident Death and Dismemberment Insurance.* The Debtors provide Accident Death and Dismemberment Insurance (“AD&D Insurance”) to all Employees at no cost to the Employee. The coverage is equal to 2 times the Employee’s annual base pay, rounded up to the next highest \$1,000, with a \$1,000,000 maximum benefit. The average monthly cost to the Debtors is \$255. As of the Petition Date, the Debtors owe approximately \$255. Employees are able to purchase optional self, spousal and child AD&D Insurance. As of the Petition Date, approximately \$86 is due in premiums for this optional AD&D Insurance.
- *Short Term Disability.* After three months of employment, the Debtors provide Short Term Disability Insurance to Employees at no cost to the Employee. The Short Term Disability Insurance pays 100% of the Employee’s salary up to six months. This benefit is available beginning three months from each employee’s date of hire. As of the Petition Date, the Debtors owe approximately \$221 in administrative services.
- *Long-term Disability.* The Debtors provide Long-Term Disability Insurance to Employees. If an Employee’s disability extends past 26 weeks, they receive 60 percent of their monthly base pay, up to a maximum of \$10,000 per month (with an optional “buy-up” of additional coverage.) As of the Petition Date, the Debtors hold approximately \$1,712 in premiums collected from employees but not yet remitted to the carrier.
- The following are “pass-through” programs for which the Debtors makes no contributions or payments. The Debtors withhold the necessary amounts from the Employee’s paycheck and remit the amounts to the benefit providers. Accordingly, the Debtors ask for authority to remit amounts collected from the Employees before the Petition Date but not yet remitted to the carrier.
 - *Vision.* The Debtors permit Employees to enroll in a vision plan administered by VSP. The Debtors collect funds from the enrolled Employees and remit the funds to VSP, but do not provide any reimbursement for this program. There is no material cost to the Debtors for this program. As of the Petition Date, \$816 is owed to VSP on account of the Employees’ participation in the vision plan.
 - *Flexible Spending Accounts.* The Debtors offer the Employees the option to contribute a portion of their pre-tax wages into tax-exempt flexible spending accounts (“FSA”). The amounts contributed may be used for certain qualified expenses such as medical expenses and dependent care expenses not otherwise covered by insurance. As employees incur eligible expenses, they submit a claim to be reimbursed from their FSAs. As of the Petition Date, the Employees have contributed approximately \$515 to their FSAs for the current calendar year. There is no material cost to the Debtors for this program. This does not include the FSA that

is part of the Consumer Directed Health Plan discussed above, which includes a yearly contribution by the Debtor.

- *Health Savings Accounts.* The Debtors offer Employees the option to contribute a portion of their pre-tax wages into tax-exempt flexible spending accounts (“HSA”). The amounts contributed may be used for certain qualified medical expenses. As Employees incur eligible expenses, they submit a claim to be reimburse from their HSAs. There is no material cost to the Debtors for this program. As of the Petition Date, approximately \$120 is owed to the HSAs.
- *Other Benefits.*
 - *Safety Glasses.* All employees are eligible to receive one pair of prescription safety glasses per year. The Debtors have two vision providers (Dr. John Smith and One Hour Optical) who provide prescription safety glasses and direct bill the Debtors on a monthly basis as employees submit eyeglass vouchers. As of Petition Date, approximately \$150 is due to the prescription safety glass vendors.
 - *Car Allowance.* Certain employees are paid a bi-weekly car allowance based on position in the organization or job requirements. The bi-weekly car allowance is \$500 per pay period and involves 2-3 employees. Car allowances are paid during the normal payroll cycle. As of the Petition Date, approximately \$1500 is owned to employees for car allowances.
 - *Leased Vehicle.* Certain employees as part of normal compensation based on job position are provided a company leased vehicle or are provided allowances for vehicles. As of the Petition Date, the car lease program had one active employee in the plan and the Debtors owe the lease vehicle vendor approximately \$890.
- *Outplacement and COBRA Assistance.* Employees are eligible for outplacement assistance for three months, provided by a third-party outplacement service, and COBRA assistance of up to \$2,276 per person if they remain employed through their final termination date, as designated by the Debtors. As of the Petition Date, approximately 68 Employees remain on the Site supporting decommissioning, creditor cure, or remediation operations. These employees have approximately \$170,000 in outplacement and COBRA assistance that will be paid out.
- *Performance Bonus.* In order to align the interests of all Employees with the safe and efficient decommissioning of the ammonium sulfate assets and other Facility infrastructure during the remaining winddown period, prior to the Petition Date the Debtors adopted a performance bonus plan (“Performance Bonus Plan”). The Performance Bonus Plan is designed around common targets specific to the Facility winddown and is focused on the safe, environmentally sound, timely and cost-effective closure. There are approximately 68 Employees who are eligible to participate in the Performance Bonus Plan. The plan includes both base and

stretch targets and will not eligible to be paid until the decommissioning of the Facility is fully completed, in approximately June 2018. As of the Petition Date, approximately \$656,820 is owed to the Employees based on agreed upon targets. Employer FICA obligations related to this amount total approximately \$50,247.

RELIEF REQUESTED

11. By this Motion, the Debtors seek authority to pay the Employee Obligations that become payable during the pendency of these chapter 11 cases and continue at this time the practices, programs, and policies with respect to their Employees, as such practices, programs, and policies were in effect as of the Petition Date. Furthermore, because it is difficult for the Debtors to determine with precision the accrued pre-petition amount for many of the Employee Obligations, to the extent that the Debtors subsequently determine that there are any additional outstanding Employee Obligations related to the programs and policies described herein, the Debtors request authority to pay such pre-petition amounts. The Debtors similarly request that they be authorized to pay any cost or penalty incurred by any recipient of Employee Obligations in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

BASIS FOR RELIEF

A. Cause Exists to Authorize the Payment of the Employee Obligations.

12. Pursuant to Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, Employees' claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are afforded unsecured priority status to the extent the claims do not exceed \$12,850. 11 U.S.C. § 507(a)(4), (5).

13. Pursuant to Section 105(a) of the Bankruptcy Code, a bankruptcy court has broad authority to enforce the provisions of the Bankruptcy Code either under the specific statutory language of the Bankruptcy Code or under equitable doctrines.

14. Moreover, courts have authorized debtors to pay pre-petition amounts pursuant to Section 363(b) when sound business justification exists and the payments are necessary to the bankruptcy process. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991). Such relief has not been limited to the payment of employee benefits. *See In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 21 (Bankr. M.D. Fla. 2005) (allowing payment of pre-petition amounts owed to vendors critical to success of ongoing business operations).

15. Other courts also have recognized the applicability of the “necessity of payment” doctrine with respect to the payment of pre-petition employee compensation and benefits. *See, e.g., In re Chateaugay Corp.*, 80 B.R. 279, 282 (S.D.N.Y. 1987) (concluding that it is appropriate for bankruptcy court to defer to debtor’s business judgment in permitting payment of certain workers’ compensation claims); *In re Braniff, Inc.*, 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998) (noting that debtors may pay pre-petition wages when necessary to ensure employees remain on the job post-petition); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (“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.”); *In re Gulf Air, Inc.*, 112 B.R. 152, 153–54 (Bankr. W.D. La. 1989) (authorizing debtor-in-possession to pay pre-petition employee wages, benefits, and health, life, and workers’ compensation insurance premiums). The Debtors submit that, as

illustrated below, application of the “necessity of payment” doctrine is wholly warranted in these cases.

16. The cost-effective decommissioning of ammonium sulfate equipment, the minimization of environmental and business expense, and the disposal of remaining assets requires the wholehearted cooperation of Employees tasked to carry out the complex process of completing inventory processing, shutting down production, and safely decommissioning the Facility. Any delay in paying Employee Obligations will adversely impact the Debtors’ relationships with their Employees and will irreparably impair the morale, dedication, confidence, and cooperation of the very people upon whom the Debtors rely in order to effectively wind down the business. The Debtors must have the support of the Employees in order for the Debtors’ efforts in these chapter 11 cases to succeed.

17. Moreover, absent an order granting the relief requested in this Motion, the Debtors’ Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the obligations in question are needed to enable certain of the Employees to meet their own personal financial obligations. The stability of the Debtors will thus be undermined, perhaps irreparably, by the possibility that otherwise loyal Employees will seek other employment alternatives.

18. The Debtors do not seek to alter their compensation, vacation, and other benefit policies in this Motion, and this Motion is not to be deemed an assumption or adoption of any agreement or policy providing for any such benefits. Instead, this Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with those policies, and to permit the Debtors, in their discretion, to continue to honor the practices, programs, and policies with respect to the Employees, as such practices, programs, and policies were in effect as of the Petition Date.

19. Relief similar to that requested herein has been granted by courts in other substantial chapter 11 cases in Georgia. *See, e.g., In re AstroTurf, LLC*, No. 16-41504 (Bankr. N.D. Ga. July 8, 2016) (Bonapfel, J.) [Docket No. 59]; *In re S. Reg. Health Sys., Inc.*, No. 15-64266 (Bankr. N.D. Ga. Aug. 5, 2015) (Hagenau, J.) [Docket No. 39]; *In re Cagle's, Inc.*, No. 11-80202 (Bankr. N.D. Ga. Oct. 20, 2011) (Bihary, J.) [Docket No. 30]; *In re Sea Island Co.*, Case No. 10-21034 (Bankr. S.D. Ga. Aug. 12, 2010) (Dalis, J.) [Docket No. 65]; *In re TitleMax Holdings, LLC*, Case No. 09-40805 (Bankr. S.D. Ga. Apr. 23, 2009) (Davis, J.) [Docket No. 31]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (Bankr. N.D. Ga. Nov. 16, 2007) (Diehl, J.) [Docket No. 39]; *In re Allied Holdings, Inc.*, Case No. 05-12515 (Bankr. N.D. Ga. Aug. 2, 2005) (Drake, J.) [Docket No. 58]; *In re Rhodes, Inc.*, Case No. 04-78434 (Bankr. N.D. Ga. Nov. 8, 2004) (Diehl, J.) [Docket No. 61]; *In re Galey & Lord, Inc.*, Case No. 04-43098 (Bankr. N.D. Ga. Aug. 19, 2004) (Diehl, J.) [Docket No. 20]; *In re Dan River Inc.*, Case No. 04-10990 (Bankr. N.D. Ga. Apr. 1, 2004) (Drake, J.) [Docket No. 54]; *In re Sport Court, Inc.*, Case No. 04-41107 (Bankr. N.D. Ga. Mar. 18, 2004) (Bonapfel, J.) [Docket No. 17]; *In re Sw. Recreational Indus., Inc.*, Case No. 04-40656 (Bankr. N.D. Ga. Feb. 17, 2004) (Bonapfel, J.) [Docket No. 23]; *In re iPcs, Inc.*, Case No. 03-62695 (Bankr. N.D. Ga. Feb. 25, 2003) (Diehl, J.) [Docket No. 32]; *In re Centennial Health Care Corp.*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 24, 2002) (Massey, J.) [Docket No. 40]; *In re New Power Co.*, Case No. 02-10835 (Bankr. N.D. Ga. July 12, 2002) (Drake, J.) [Docket No. 164].

B. The Debtors' Banks Should Be Authorized to Honor and Pay Checks Issued and to Make Other Transfers in Respect of the Employee Obligations.

20. If the Court grants the relief sought herein, the Debtors request that their bank and other financial institutions be authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to pay the Employee Obligations, whether those checks were presented prior

to or after the Petition Date, and make other transfers necessary to implement these transactions provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors represent that each of these checks can be readily identified as relating directly to the authorized payment of Employee Obligations. Accordingly, the Debtors believe that checks and transfers other than those relating to such authorized payments will not be honored inadvertently.

21. The Debtors similarly request that they be authorized to pay any cost or penalty incurred by a person to which Employee Obligations are owed in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy case. Though the Debtors estimate any such costs or penalties to be *de minimis* in amount, if the Debtors are not authorized to pay such costs or penalties, then their Employees will suffer the exact type of harm that this Motion seeks to prevent, and the Debtors will suffer from loss of Employee goodwill.

22. Based on the foregoing, the Debtors submit the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

23. The Debtors submit that the facts cited herein and the *Declaration of David Leach in Support of First-Day Motions and Applications*, filed contemporaneously herewith, illustrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Based on the foregoing, Bankruptcy Rule 6003, to the extent it is applicable, has been satisfied.

24. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Motion, the Debtors request that such stay be waived.

NOTICE

25. Notice of this Application has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter an order in the form attached hereto as Exhibit A authorizing payment of the Employee Obligations and authorizing the applicable financial institutions to honor and process all checks relating to Employee Obligations; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 23, 2018
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands

Georgia Bar No. 258623

pferdinands@kslaw.com

Jonathan W. Jordan

Georgia Bar No. 404874

jjordan@kslaw.com

Sarah L. Primrose

Georgia Bar No. 532582

1180 Peachtree Street

Atlanta, Georgia 30309-3521

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.

Georgia Bar No. 556005

jco@klosinski.com

1229 Augusta West Parkway

Augusta, GA 30909

Telephone: (706) 863-2255

Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. ____) is GRANTED.
2. The Debtors are authorized, but not directed, to pay to their Employees all Employee Obligations that have accrued by virtue of the services rendered by their Employees prior to the Petition Date. The Employee Obligations that the Debtors are authorized to pay are described in the Motion and include, without limitation, the following Employee Obligations: (i) wages, salaries and other compensation; (ii) payroll taxes; (iii) vacation programs; (iv) qualified 401(k) plan obligations; (v) health and welfare benefits; and (vi) other benefit programs.
3. Except as set forth herein, the Debtors are authorized (but not directed) to make payments consistent with their practices, programs, and policies with respect to the Employees, as such practices, programs, and polices were in effect as of the Petition Date.
4. The Debtors' banks are authorized and directed to honor any check or draft representing an Employee Obligation that may be presented for payment and to make other transfers necessary to implement these transactions, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors are further authorized to pay any cost or penalty incurred by their Employees in the event that a check

issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

5. The banks and other financial institutions that process, honor, and pay any and all checks on account of Employee Obligations shall rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall: (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; or (iii) impose any administrative, pre-petition, or post-petition liabilities upon the Debtors.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

8. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

9. Counsel for the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant

to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands

Georgia Bar No. 258623

pferdinands@kslaw.com

Jonathan W. Jordan

Georgia Bar No. 404874

jjordan@kslaw.com

Sarah L. Primrose

Georgia Bar No. 532582

sprimrose@kslaw.com

1180 Peachtree Street

Atlanta, Georgia 30309-3521

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

AND

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.

Georgia Bar No. 556005

jco@klosinski.com

1229 Augusta West Parkway

Augusta, GA 30909

Telephone: (706) 863-2255

Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-10274
)	
Debtors.)	Jointly Administered
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**ORDER (A) AUTHORIZING PAYMENT OF PRE-PETITION WAGES,
PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS AND RELATED
EXPENSES, AND OTHER COMPENSATION TO EMPLOYEES, AND (B)
SCHEDULING FINAL HEARINGS ON PAYMENT OF EMPLOYEE
OBLIGATIONS AND PERFORMANCE BONUS PROGRAM**

This matter is before the Court on the *Emergency Motion to Authorize Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits and Related Expenses, and Other Compensation to Employees* (the "Motion") of Fibrant, LLC and its affiliated debtors-in-

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

possession (collectively, the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion, the *Declaration of David Leach in Support of First-Day Motions and Applications*, and the matters reflected in the record of the hearings held on the Motion on March 1, 2018 and March 7, 2018. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant’s assets; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving the “first-day” motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. 10) is GRANTED in part, and CONTINUED in part, as set forth in this Order.
2. Except for obligations associated with the Performance Bonus Plan, the Debtors are authorized, but not directed, to honor and pay the Employee Obligations, subject to (and capped at), with respect to each employee, an amount equal to the statutory limitation of \$12,850 set forth

in 11 U.S.C. §§ 507(a)(4) and 507(a)(5). The Debtors are authorized to exceed the \$12,850 cap only under the following circumstance: If the Debtors' obligation to pay an Employee the value of his or her unused PTO becomes due and payable prior to April 13, 2018, the Debtors are authorized to pay the amount that exceeds the \$12,850 cap, so long as the amount that exceeds the \$12,850 cap is less than the value of the compensation and benefits that would be payable to such Employee from such Employee's scheduled separation date through April 13, 2018 (assuming that such Employee were to be actively employed on such dates). The Employee Obligations that the Debtors are authorized to pay are described in the Motion and include the following Employee Obligations: (i) wages, salaries and other compensation; (ii) payroll and unemployment taxes; (iii) vacation, sick leave and holiday programs; (iv) 401(k) plan obligations; (v) expense reimbursements; (vi) health and welfare benefits (including vision, FSA and HSA benefits); (vii) other benefit programs (including safety glasses, car allowance, and leased vehicles); and (viii) outplacement and COBRA assistance. Retention or performance bonus benefits are not authorized by this Order.

3. A hearing on the Motion, solely to the extent it seeks authority to pay Employee Obligations in excess of the limitations set forth in paragraph 2 of this Order, is scheduled for **April 13, 2018 at 10:00 a.m.** before the Honorable Susan Barrett, United States Bankruptcy Judge, at The United States Bankruptcy Courthouse, 600 James Brown Blvd, Plaza Bldg., Augusta, Georgia 30901.

4. A hearing on the Motion, solely to the extent it requests approval of the Performance Bonus Plan, is scheduled for **April 24, 2018 at 10:00 a.m.** before the Honorable Susan Barrett, United States Bankruptcy Judge, at The United States Bankruptcy Courthouse, 600 James Brown Blvd, Plaza Bldg., Augusta, Georgia 30901.

5. Except as set forth herein, the Debtors are authorized (but not directed) to make payments consistent with their practices, programs, and policies with respect to the Employees, as such practices, programs, and policies were in effect as of the Petition Date.

6. The Debtors' banks are authorized and directed to honor any check or draft representing an Employee Obligation that may be presented for payment and to make other transfers necessary to implement these transactions, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors are further authorized to pay any cost or penalty incurred by their Employees in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

7. The banks and other financial institutions that process, honor, and pay any and all checks on account of Employee Obligations shall rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall: (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; or (iii) impose any administrative, pre-petition, or post-petition liabilities upon the Debtors.

9. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

10. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

11. Counsel for the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jonathan W. Jordan
Georgia Bar No. 404874
jjordan@kslaw.com
Sarah L. Primrose
Georgia Bar No. 532582
sprimrose@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5100

AND

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.
Georgia Bar No. 556005
jco@klosinski.com
1229 Augusta West Parkway
Augusta, GA 30909
Telephone: (706) 863-2255
Facsimile: (706) 863-5885

*PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION*

OFFICE OF THE UNITED STATES TRUSTEE:

/s/ Joel Paschke

Joel Paschke
Illinois Bar No. 6275662
Joel.Paschke@usdoj.gov
2 East Bryan Street, Suite 725
Savannah, Georgia 31401
Telephone: (912) 652-4112

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-10274
)	
Debtors.)	Jointly Administered
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**FINAL ORDER AUTHORIZING PAYMENT OF PRE-PETITION WAGES,
PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS AND RELATED
EXPENSES, AND OTHER COMPENSATION TO EMPLOYEES**

This matter is before the Court on the *Emergency Motion to Authorize Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits and Related Expenses, and Other Compensation to Employees* (the “Motion”) of Fibrant, LLC and its affiliated debtors-in-possession (collectively, the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

The Court has considered the Motion, the *Declaration of David Leach in Support of First-Day Motions and Applications*, and the matters reflected in the record of the hearings held on the Motion on March 1, 2018, March 7, 2018, and April 24, 2018. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. 10) is GRANTED on a final basis.
2. The Debtors are authorized, but not directed, to pay to their Employees all Employee Obligations that have accrued by virtue of the services rendered by their Employees prior to the Petition Date. The Employee Obligations that the Debtors are authorized to pay are described in the Motion and include, without limitation, the following Employee Obligations: (i) wages, salaries and other compensation; (ii) payroll and unemployment taxes; (iii) vacation, sick leave and holiday programs; (iv) 401(k) plan obligations; (v) expense reimbursements; (vi)

health and welfare benefits (including vision, FSA and HSA benefits); (vii) other benefit programs, including obligations associated with the Performance Bonus Plan; and (viii) outplacement and COBRA assistance.

3. The Debtors are authorized (but not directed) to make payments consistent with their practices, programs, and policies with respect to the Employees, as such practices, programs, and policies were in effect as of the Petition Date.

4. The Debtors' banks are authorized and directed to honor any check or draft representing an Employee Obligation that may be presented for payment and to make other transfers necessary to implement these transactions, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors are further authorized to pay any cost or penalty incurred by their Employees in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

5. The banks and other financial institutions that process, honor, and pay any and all checks on account of Employee Obligations shall rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall: (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; or (iii) impose any administrative, pre-petition, or post-petition liabilities upon the Debtors.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

8. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

9. Counsel for the Debtors are directed to serve a copy of this Order on parties listed on the Master Service List within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jonathan W. Jordan
Georgia Bar No. 404874
jjordan@kslaw.com
Sarah L. Primrose
Georgia Bar No. 532582
sprimrose@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5100

AND

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.
Georgia Bar No. 556005
jco@klosinski.com
1229 Augusta West Parkway
Augusta, GA 30909
Telephone: (706) 863-2255
Facsimile: (706) 863-5885

COUNSEL FOR THE
DEBTORS-IN-POSSESSION