

Andrew G. Dietderich
Brian D. Glueckstein
Benjamin S. Beller
Noam R. Weiss
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Proposed Counsel to the Debtors

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

_____	x	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , ¹	:	Case No. _____ ()
	:	
Debtors.	:	Joint Administration Pending
	:	
	:	
_____	x	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO PAY PREPETITION
TAXES AND FEES, (II) AUTHORIZING APPLICABLE BANKS AND OTHER
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS AND (III) GRANTING RELATED RELIEF**

Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “Interim Order”), and a final order, substantially in the form attached hereto as Exhibit B (the “Final Order” and, together with

¹ The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.



the Interim Order, the “Orders”), pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay (or use tax credits to offset) the Taxes and Fees (as defined below), (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (c) granting certain related relief, including scheduling a hearing to consider approval of the Motion on a final basis (the “Final Hearing”). The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Sean Deason in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Deason First Day Declaration”) and the *Declaration of Scott Tandberg in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Tandberg First Day Declaration”) and, together with the Deason First Day Declaration, the “First Day Declarations”). In further support of the Motion, the Debtors respectfully state as follows:

Background

1. Garrett Motion Inc. is a Delaware corporation established in 2018, with its headquarters located in Rolle, Switzerland. The Debtors design, manufacture and sell highly engineered turbocharger, electric-boosting and connected vehicle technologies.
2. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under the Bankruptcy Code. Each Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion with the Court pursuant to Bankruptcy Rule 1015 seeking joint

administration of the Debtors' cases (the "Chapter 11 Cases"). No creditors' committee has been appointed in these Chapter 11 Cases.

3. Additional factual background relating to the Debtors' businesses and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declarations.

Facts Specific to the Relief Requested

4. In the ordinary course of business, the Debtors collect, withhold and incur various sales, use, income, franchise, property, intellectual property, foreign, heavy vehicle use, fuel, commercial activity, import and customs and other taxes, duties, fees and other expenses, including tax administration obligations, as described further below (collectively, the "Taxes and Fees").² The Debtors remit the Taxes and Fees to various foreign and domestic, federal, state and local government entities, service providers or Tax Administrators (as defined below) (collectively, the "Taxing Authorities").

5. Although the Debtors believe that they are substantially current on all of the Taxes and Fees that have become due as of the Petition Date, because many such Taxes and Fees are paid on a periodic basis (and in arrears), there is often a lag between the time when the Debtors incur an obligation to pay the Taxes and Fees and the date such Taxes and Fees become due and payable. The principal categories of these Taxes and Fees, as well as the estimated accrued and unpaid amounts with respect to such Taxes and Fees as of the Petition Date, are described in greater detail below:

² Contemporaneously herewith, the Debtors have filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, Prepetition Payroll Taxes and Other Compensation and (B) Maintain Employee Compensation and Benefits Programs and Pay Related Administrative Obligations, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (III) Granting Related Relief*, by which the Debtors seek authority to pay and remit various federal, state, and local income taxes, Social Security, Medicare taxes and federal and state unemployment insurance and withholdings to applicable authorities related to their employees and directors. Accordingly, this Motion does not cover this separately requested relief.

6. Sales and Use Taxes. In the ordinary course of business, the Debtors incur, collect and remit foreign and domestic sales, value-added and goods and services taxes and other similar taxes to various Taxing Authorities in connection with the operation of the Debtors' businesses and sale and distribution of products (the "Sales Taxes"). The Debtors further incur use taxes when they purchase materials and services from a vendor that is not registered to collect sales taxes for the jurisdiction where the property is delivered or the services are provided (the "Use Taxes" and, together with the Sales Taxes, the "Sales and Use Taxes"). In this circumstance, the Debtors, as purchasers, must self-assess and pay the Use Taxes, when due, to the appropriate Taxing Authorities. As of the Petition Date, approximately \$4.6 million in Sales and Use Taxes have accrued for the prepetition period and remain unpaid, approximately \$4.6 million of which will become due and payable within the first 30 days of these Chapter 11 Cases.

7. Income Taxes. In the ordinary course of operating their businesses, the Debtors incur foreign and domestic federal, state and local income taxes (collectively, the "Income Taxes"). As of the Petition Date, approximately \$15.5 million in domestic Income Taxes and \$12.8 million in foreign Income Taxes have accrued for the prepetition period and remain unpaid, and approximately \$6.1 million in domestic Income Taxes and \$500,000 in foreign Income Taxes will become due and payable within the first 30 days of these Chapter 11 Cases.

8. State and Local Franchise Taxes and Fees. The Debtors are also required to pay state and local franchise taxes or fees in certain taxing jurisdictions (collectively, the "Franchise Taxes"). Franchise Taxes are typically assessed by Taxing Authorities against the applicable business for the privilege of doing business within a particular jurisdiction. The

Franchise Taxes paid by the Debtors are based on capital employed. Certain jurisdictions assess both Franchise Taxes and Income Taxes, while others assess either Franchise Taxes or Income Taxes depending on which results in a higher tax. Other Taxing Authorities assess only Income Taxes or only Franchise Taxes. Franchise Taxes are remitted on a semi-annual basis to the relevant Taxing Authority. As of the Petition Date, the Debtors estimate that they owe approximately \$50,000 in Franchise Taxes. Of this sum, the Debtors do not estimate that any amount is due within the first 30 days of these Chapter 11 Cases.

9. Real and Personal Property Taxes. Where the Debtors have operations and real and personal property, the Debtors are subject to property taxes levied by state and local governments (the “Real and Personal Property Taxes”). In order to avoid the imposition of statutory liens on their properties, the Debtors typically pay real and personal property taxes in the ordinary course of business as such taxes are invoiced. As of the Petition Date, approximately \$120,000 in Real and Personal Property Taxes have accrued and remain unpaid, approximately \$70,000 of which will become due and payable within the first 30 days of these Chapter 11 Cases.

10. Intellectual Property Fees. The Debtors have approximately 1,600 patents registered in five jurisdictions, 684 trademarks registered in 95 jurisdictions and 85 top-level domain names registered with one domain name service provider, MarkMonitor. The Debtors pay domain name maintenance fees to MarkMonitor (the “Domain Name Maintenance Fees”) and rely on domestic and foreign counsel and trademark associates to monitor and prevent expiration or abandonment of their intellectual property, by, among other things, facilitating payment of regulatory and filing fees on behalf of the Debtors to regulatory agencies and Taxing Authorities (together with the Domain Name Maintenance Fees, the “Intellectual Property

Fees”). In certain circumstances, the Debtors pay fees owed to MarkMonitor, regulatory agencies and other Taxing Authorities directly; however, the remaining fees are paid by the Debtors’ counsel and trademark associates who are subsequently reimbursed for payment of the fees by the Debtors. Failure to pay these amounts could severely compromise the Debtors’ ability to protect and utilize this intellectual property both domestically and abroad. As of the Petition Date, approximately \$400,000 in Intellectual Property Fees have accrued and remain unpaid, approximately \$280,000 of which will become due and payable within the first 30 days of these Chapter 11 Cases.

11. Import and Customs Taxes, Duties and Fees. The Debtors are required to pay both import duties and customs duties and other incidental import and related expenses in the ordinary course of operating their businesses (collectively, the “Import and Customs Duties”). The Debtors pay Import and Customs Duties themselves or through customs brokers, domestic and foreign commercial common carriers, movers, shippers, freight forwarders and consolidators, delivery services, postal services, shipping auditing services, distributors, and other third-party service providers (the “Customs Brokers”) on a monthly, quarterly or annual basis. As of the Petition Date, the Debtors estimate that approximately \$600,000 in Import and Customs Duties have accrued and remain unpaid to the relevant Taxing Authorities and Customs Brokers, approximately \$600,000 of which will become due and payable within the first 30 days of these Chapter 11 Cases.

12. Other Taxes and Fees. The Debtors also pay certain other taxes and tax-related fees, including heavy vehicle use and fuel taxes, commercial activity taxes, gross receipts taxes, business licenses taxes, freight licensing taxes, environmental taxes, annual reporting fees, and miscellaneous state tax fees in the ordinary course of business (the “Other Taxes”). As of

the Petition Date, approximately \$400,000 in Other Taxes have accrued and remain unpaid, approximately \$360,000 of which will become due and payable within the first 30 days of these Chapter 11 Cases.

13. Tax Administration Obligations. The Debtors employ the services of a number of entities (the “Tax Administrators”) to assist the Debtors with the administration of certain taxes, fees, and other charges, including the preparation of audits and tax returns. The Tax Administrators charge the Debtors fees for their services (the “Tax Administration Obligations”). The Debtors rely heavily on the Tax Administrators to facilitate the payment of certain taxes and assessments, including certain Real and Personal Property Taxes, foreign and domestic federal, state and local Franchise and Income Taxes. As of the Petition Date, the Debtors estimate that approximately \$420,000 of Tax Administration Obligations have accrued and remain unpaid, approximately \$420,000 of which will become due and payable within the first 30 days of these Chapter 11 Cases. Failure to pay the Tax Administration Obligations could impact the Debtors’ ability to pay certain of the Prepetition Taxes and Fees. Accordingly, the Debtors request authority to pay the Tax Administration Obligations accrued prior to the Petition Date.

14. Taxes for Which Directors and/or Officers May Be Personally Liable. Many federal, state and local Taxing Authorities impose personal liability on directors and/or responsible officers of entities obligated to collect or pay certain taxes or fees, in the event such taxes or fees are not remitted. Although the Debtors believe that all taxes for which the Debtors’ directors and/or responsible officers may be personally liable are described above, it is possible that other such prepetition tax obligations may be uncovered by the Debtors subsequent to the filing of this Motion. To the extent such prepetition tax obligations exist, the Debtors seek

authority to treat them as Taxes and Fees and pay them as they are discovered or become payable.

15. The amounts of the Taxes and Fees listed above are good faith estimates based on the Debtors' books and records and remain subject to potential audits and other adjustments.³ Based upon these estimates and the projected timing of when the Taxes and Fees are likely to come due, the Debtors are requesting authority to pay the above prepetition Taxes and Fees. This amount includes (a) Taxes and Fees accrued or incurred prepetition but not paid prepetition, or paid in an amount less than actually owed; (b) payments made prepetition by the Debtors that were lost or otherwise not received in full by any of the Taxing Authorities; and (c) Taxes and Fees incurred for prepetition periods that become due after the commencement of these Chapter 11 Cases.

Jurisdiction

16. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003.

Relief Requested

17. By this Motion, the Debtors request entry of the Interim and Final Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively,

³ In the ordinary course of business, the Debtors sometimes undergo audits and reviews conducted by the various Taxing Authorities. Although the estimates of outstanding Taxes and Fees are based on a good-faith assessment of the existing amounts due on a prepetition basis, there is a possibility—because of audit rights—that one or more of the various Taxing Authorities may determine at a later date that the Debtors owe additional prepetition Taxes and Fees. The Debtors request authority to pay any amounts that are later determined to be due as prepetition Taxes and Fees.

(a) authorizing, but not directing, the Debtors, in their sole discretion, to pay (or use tax credits to offset) Taxes and Fees due and owing to the Taxing Authorities that accrued prior to the Petition Date,⁴ (b) authorizing applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' accounts and other transfers to the extent that those checks or transfers relate to any of the foregoing, and whether such checks and transfers were presented prior to or after the Petition Date, and (c) granting certain related relief, including scheduling the Final Hearing.

Basis for Relief

I. Cause Exists to Authorize the Payment of Prepetition Taxes and Fees.

18. There are several reasons to grant the relief requested herein. First, a portion of the Taxes and Fees may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code and therefore must be paid in full under any plan of reorganization. *See* 11 U.S.C. § 1129(a)(9)(C). Therefore, with respect to any such claims, payment at this time would only affect the timing of the payment for the amounts at issue and would not unduly prejudice the rights and recoveries of junior creditors. Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Taxing Authorities may attempt to assess interest and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). The Debtors' failure to pay the prepetition Taxes and Fees as they come due may ultimately increase the amount of priority

⁴ For the avoidance of doubt, the relief requested herein is without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds the Debtors deem appropriate, which rights are hereby expressly reserved.

claims held by the Taxing Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors.

19. Second, in some or all of the jurisdictions in which the Debtors do business, liens can attach to real and personal property on which the Debtors have unpaid Taxes and Fees, thus potentially entitling the relevant Taxing Authorities to a secured claim against property of the relevant Debtor's estate. To the extent such claims are over-secured by the relevant property, payment of those Taxes and Fees will therefore affect only the timing of the payments and not the amounts that would ultimately be payable to the applicable Taxing Authorities.

20. Third, certain Taxing Authorities may assert that certain of the Taxes and Fees are so-called "trust fund" taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of such Taxing Authorities. *See, e.g.*, 26 U.S.C. § 7501 (stating that certain taxes and fees are held in trust); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (holding that sales and excise taxes collected by sellers from their customers were held in trust). To the extent that the Debtors collect such Taxes and Fees from their customers on behalf of the Taxing Authorities, those Taxes and Fees may not constitute property of the estate. *See* 11 U.S.C. § 541(d) (limiting extent to which property in which the debtor holds only legal title as of the petition date becomes "property of the estate"); *see also Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference because such funds are not property of the debtor's estate); *In re Al Copeland Enters., Inc.*, 991 F.2d 233, 235 (5th Cir. 1993) (noting that it was undisputed that state's sales tax revenues constituted trust funds under state law and thus, for purposes of § 541(d), such funds were "merely held in trust by the [debtor's] estate" and

belonged to the state); *Kelly v. N.Y. State Dep't of Taxation & Fin.*, 61 B.R. 674, 675 (W.D.N.Y. 1985) (noting that “trust fund” taxes are not dischargeable); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 105-06 (Bankr. E.D. Pa. 1987) (holding that unpaid excise and withholding taxes were held in trust and were not property of the estate under § 541(d)). As a consequence, the Debtors would not have an equitable interest in such Taxes and Fees and, assuming they could be adequately identified and traced, such amounts would not constitute property of the Debtors' estates and would not be subject to the automatic stay. As such, payment of such Taxes and Fees does not prejudice the rights of any of the Debtors' other creditors, and the Debtors should be authorized to pay any Taxes and Fees that constitute trust fund taxes as they become due and payable.

21. Even if some of the Taxes and Fees would not ordinarily be considered trust fund taxes in a particular jurisdiction, payment of such Taxes and Fees should nevertheless be authorized because some Taxing Authorities may audit the Debtors if such Taxes and Fees are not timely paid. Such audits would needlessly divert the Debtors' attention from their reorganization efforts. In addition, like unpaid property taxes, some Taxing Authorities may also seek to impose liens on the Debtors' assets on account of unpaid “trust fund” Taxes and Fees, which liens would require time, effort and expense for the Debtors to challenge and remove. An improper lien or the failure to pay certain Taxes and Fees might also affect the Debtors' good standing in a particular state, potentially affecting the Debtors' ability to continue operating in the ordinary course. Timely payment of the Taxes and Fees is necessary to avoid such distractions and is thus in the best interests of the Debtors and their estates.

22. Fourth, some jurisdictions hold responsible officers personally liable in various circumstances for unpaid sales and use taxes. *See, e.g., Schmehl v. Helton*, 662 S.E.2d

697, 699, 707 (W. Va. 2008) (affirming decision holding that corporate officer could be held liable for sales taxes corporation collected from consumers but failed to remit to taxing authority); John F. Olson et al., *Director and Officer Liability: Indemnification and Insurance* § 3:22 (2015) (“[S]ome states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause” (citing W. Va. Code § 11-15-17 and Ohio Rev. Code Ann. § 5739.33)). To the extent that any such taxes remain unpaid by any of the Debtors, their officers could be subject to civil liability or criminal prosecution during the pendency of these Chapter 11 Cases. The possibility of any such lawsuit or criminal prosecution would distract the Debtors and their officers in their efforts to implement a successful reorganization strategy, to the detriment of all parties-in-interest.

II. Payment of the Taxes and Fees Is Appropriate Under Sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code.

23. The relief requested is appropriate under sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code. The Debtors are operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code, and they are therefore fiduciaries “holding the bankruptcy estate[s] and operating the business for the benefit of . . . [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Consistent with a debtor’s fiduciary duties to preserve the estate, courts have authorized payment of prepetition obligations pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that section 363(b) provides “broad flexibility” for a debtor to satisfy prepetition claims where supported by a proper business justification); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del.

1999) (“Section 105(a) of the Code provides a statutory basis for the payment of pre-petition claims.”). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. at 497.

24. Section 363(b) of the Bankruptcy Code empowers the Court to allow the debtor, in the exercise of its sound business judgment and after notice and a hearing, to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. § 363(b)(1); *see also Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143, 145 (2d Cir. 1992) (holding that a court may approve an application under section 363(b) upon a showing of a good business reason for the disposition). For a court to approve the use, sale or lease of estate property under section 363(b) of the Bankruptcy Code, the debtor must “articulate some business justification, other than mere appeasement of major creditors” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (holding that the debtor’s payment of prepetition claims was necessary to protect its business and to ensure successful reorganization). 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.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175.

25. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its

equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Under section 105(a), 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); *see also In re Just for Feet, Inc.*, 242 B.R. at 825 (“To invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor’s reorganization.”).

26. Courts in this district have recognized the “necessity of payment” doctrine. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (recognizing “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” and stating 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-reorganizational claims shall have been paid”); *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991) (stating that the doctrine of necessity “stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization”).

27. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment

of creditors in full or at least proportionately”); *In re Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[A] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”).

28. The relief requested in this Motion represents a sound exercise of the Debtors’ business judgment and is necessary for the preservation of the resources and going-concern values of their estates. Payment of the prepetition Taxes and Fees is critical to the Debtors’ uninterrupted operations. Nonpayment of these obligations may cause certain Taxing Authorities to take precipitous actions, including, but not limited to, initiating audits, preventing the Debtors from conducting business in applicable jurisdictions, seeking to modify the automatic stay, attempting to file liens against the Debtors’ real and personal property, and/or pursuing other remedies, all of which would disrupt the Debtors’ day-to-day operations, hinder the Debtors’ efficient and effective administration of these Chapter 11 Cases, and burden the Debtors’ estates with unnecessary expenses. Certain of the Debtors’ directors and officers might also be subject to personal liability—even if the nonpayment of Taxes and Fees was not a result of any malfeasance on their part—which would distract such key personnel from their duties related to the Debtors’ restructuring. Further, payment of the prepetition Taxes and Fees may actually reduce the amounts ultimately paid to the Taxing Authorities, and thus expand the Debtors’ estates, because penalties and interest will be avoided by prompt payment.

Accordingly, for these reasons, and the supporting authority found in sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors submit that the relief requested is essential, appropriate, and in the best interests of their estates and should be granted.

29. Courts in this district have routinely granted relief similar to the relief requested herein. *See, e.g., In re Centric Brands Inc.*, 20-22637 (SHL) (May 20, 2020), D.I. 66 (authorizing debtors to pay prepetition taxes); *In re LSC Communications, Inc.*, 20-10950 (SHL) (Apr. 15, 2020), D.I. 39 (same); *In re Hollander Sleep Prods., LLC*, 19-11608 (MEW) (July 2, 2019), D.I. 165 (same); *In re Windstream Holdings, Inc.*, 19-22312 (RDD) (Apr. 22, 2019), D.I. 385 (same); *In re Trident Holding Co., LLC*, 19-10384 (SHL) (Mar. 8, 2019), D.I. 167 (same); *In re Aegean Marine Petrol. Network Inc.*, 18-13374 (MEW) (Dec. 6, 2018), D.I. 81 (same).

III. Cause Exists to Authorize Applicable Banks and/or Financial Institutions to Honor Checks and Electronic Fund Transfers.

30. The Debtors further request that the Court authorize and direct all applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn or electronic funds transfers requested to pay Taxes and Fees, whether such checks were presented prior to or after the Petition Date; *provided, however*, that such checks or electronic funds transfers are identified by the Debtors as relating directly to the authorized payment of the Taxes and Fees. The Debtors also seek authority to issue new postpetition checks, or effect new electronic funds transfers, on account of such claims to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected as a result of the commencement of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any prepetition Taxes and Fees.

Bankruptcy Rule 6003 Is Satisfied

31. In order for a debtor to obtain relief to make preplan payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003—namely, the relief requested is necessary to avoid “immediate and irreparable harm.” If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2009) (finding that relief requested by the debtors was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operation of the debtors’ businesses).

32. Immediate and irreparable harm would result if the relief requested herein is not granted. As described above, if the Debtors are not authorized to pay the Taxes and Fees in the ordinary course of business, certain Taxing Authorities may initiate certain actions, such as conducting audits, filing liens or seeking relief from the automatic stay, that would severely disrupt the Debtors’ day-to-day operations, burden the Debtors’ estates and stymie the efforts of the Debtors to efficiently reorganize. For the reasons discussed herein, the relief requested is essential to the preservation of the value of the Debtors’ businesses, properties and assets and their ability to successfully prosecute these Chapter 11 Cases. Accordingly, the Debtors respectfully submit that they have satisfied Bankruptcy Rule 6003 as it relates to the relief requested herein.

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

33. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the

14-day stay under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise.” For the reasons described above, the relief requested is essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize.

Reservation of Rights

34. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors, their estates, or any other party to contest the validity, priority or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors. Any payment made pursuant to an order of the Court granting the relief requested herein is not intended to be, nor should it be construed as, an admission as to the validity of any claim or a waiver of the Debtors’ or any other party’s rights to subsequently dispute such claim.

Notice

35. No creditors’ committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to Citibank, N.A., as administrative agent for the DIP credit facility, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153,

Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com) and Candace M. Arthur, Esq. (candace.arthur@weil.com); (c) counsel to JPMorgan Chase Bank, N.A., as administrative agent for the Debtors' prepetition credit facility, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Kristopher M. Hansen (khansen@stroock.com), Jonathan D. Canfield (jcanfield@stroock.com), Joanne Lau (jlau@stroock.com) and Alexander A. Fraser (afraser@stroock.com); (d) counsel to the ad hoc group of lenders under the Debtors' prepetition credit facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Steven A. Domanowski (sdomanowski@gibsondunn.com) and Matthew G. Bouslog (mbouslog@gibsondunn.com); (e) counsel to KPS Capital Partners, LP, as stalking horse bidder, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Joshua Y. Sturm (joshua.sturm@davispolk.com); (f) counsel to the ad hoc group of bondholders, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Matthew M. Roose (matthew.roose@ropesgray.com) and Mark I. Bane (mark.bane@ropesgray.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; (h) the Internal Revenue Service; and (i) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

No Prior Request

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

Conclusion

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as Exhibit A, (b) enter the Final Order, substantially in the form attached hereto as Exhibit B, and (c) grant such other and further relief as is just and proper.

Dated: September 20, 2020
New York, New York

/s/ Andrew G. Dietderich
Andrew G. Dietderich
Brian D. Glueckstein
Benjamin S. Beller
Noam R. Weiss
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
E-mail: dietdericha@sullcrom.com
gluecksteinb@sullcrom.com
bellerb@sullcrom.com
weissn@sullcrom.com

Proposed Counsel to the Debtors

EXHIBIT A

Proposed Interim Order

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

<hr/>		x
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , ¹	:	Case No. ____ ()
	:	
Debtors.	:	Jointly Administered
	:	
	:	
<hr/>		x

**INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO PAY PREPETITION TAXES AND FEES,
(II) AUTHORIZING APPLICABLE BANKS AND OTHER
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (this “Interim Order”) (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay (or use tax credits to offset), in the ordinary course of business, the Taxes and Fees, (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (c) granting related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in

¹ The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

accordance with the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay and remit (or apply tax credits to offset) any and all prepetition Taxes and Fees due and owing to Taxing Authorities and related to periods prior to the Petition Date, including any Taxes and Fees or related penalties or fees subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, at such time when the Taxes and Fees are payable.
3. To the extent the Debtors have not yet remitted payment to the Taxing Authorities for Taxes and Fees that have come due prepetition, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment to the Taxing Authorities to the extent necessary to pay Taxes and Fees.
4. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in

respect of payments authorized by this Interim Order that are dishonored or rejected after the Petition Date.

5. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary, to implement and effectuate the relief granted in this Interim Order.

6. In accordance with this Interim Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires or transfers are dated prior to, on or subsequent to the Petition Date, without any duty to inquire otherwise and without any liability for following the Debtors' instructions.

7. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments, and the Debtors are only authorized under this Interim Order to pay amounts that are due and owing prior to the final hearing on the Motion.

8. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an agreement or obligation to pay any claims, a waiver of any claim or causes of action which may exist against any creditor or interest holder, an admission as to the validity of any lien satisfied pursuant to this Motion, an approval

or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or any other party or any claims or causes of action which may exist against any Taxing Authority, or shall impair or limit the ability of the Debtors, to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Interim Order.

9. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and authorizing the use of cash collateral (any such order, a "DIP Order"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Interim Order and the terms of any DIP Order, the terms of the DIP Order will govern.

10. The requirements set forth in Local Rule 9013-1(b) are satisfied.

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

12. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

13. This Interim Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

14. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Interim Order.

15. The final hearing with respect to the relief requested in the Motion shall be held on _____, 2020 at _____ (prevailing Eastern Time) (the "Final Hearing"). Any objections or responses to entry of the proposed Final Order shall be filed on or before 4:00 p.m.

(prevailing Eastern Time) on _____, 2020 and served on the following parties: (a) the Debtors, Garrett Motion Inc., 47548 Halyard Drive, Plymouth, MI 48170, Attn: General Counsel; (b) proposed counsel to the Debtors, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004, Attn: Noam R. Weiss; (c) counsel to Citibank, N.A., as administrative agent for the DIP credit facility, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com) and Candace M. Arthur, Esq. (candace.arthur@weil.com); (d) counsel to JPMorgan Chase Bank, N.A., as administrative agent for the Debtors' prepetition credit facility, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Kristopher M. Hansen (khansen@stroock.com), Jonathan D. Canfield (jcanfield@stroock.com), Joanne Lau (jlau@stroock.com) and Alexander A. Fraser (afraser@stroock.com); (e) counsel to the ad hoc group of lenders under the Debtors' prepetition credit facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Steven A. Domanowski (sdomanowski@gibsondunn.com) and Matthew G. Bouslog (mbouslog@gibsondunn.com); (f) counsel to KPS Capital Partners, LP, as stalking horse bidder, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Joshua Y. Sturm (joshua.sturm@davispolk.com); (g) counsel to the ad hoc group of bondholders, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Matthew M. Roose (matthew.roose@ropesgray.com) and Mark I. Bane (mark.bane@ropesgray.com); (h) counsel to any statutory committee appointed in these Chapter 11 Cases; (i) the Office of the United States Trustee for the Southern District of New York; and (j) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002.

Dated: _____
New York, New York

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

<hr/>		x
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , ¹	:	Case No. ____ ()
	:	
Debtors.	:	Jointly Administered
	:	
	:	
<hr/>		x

**FINAL ORDER (I) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO PAY PREPETITION TAXES AND FEES,
(II) AUTHORIZING APPLICABLE BANKS AND OTHER
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Garrett Motion, Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (this “Final Order”) (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay (or use tax credits to offset), in the ordinary course of business, the Taxes and Fees, (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers, and (c) granting related relief; and this Court having entered the *Interim Order (I) Authorizing, but not Directing, Debtors to Pay Prepetition Taxes and Fees, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (III) Granting Related Relief* [D.I. [●]]; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these

¹ The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay and remit (or apply tax credits to offset) any and all prepetition Taxes and Fees due and owing to Taxing Authorities and related to periods prior to the Petition Date, including any Taxes and Fees or related penalties or fees subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, at such time when the Taxes and Fees are payable, without further order of the Court.
3. To the extent the Debtors have not yet remitted payment to the Taxing Authorities for Taxes and Fees that have come due prepetition, the Debtors are authorized, but

not directed, to issue checks or provide for other means of payment to the Taxing Authorities to the extent necessary to pay Taxes and Fees.

4. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in respect of payments authorized by this Final Order that are dishonored or rejected after the Petition Date.

5. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary, to implement and effectuate the relief granted in this Final Order.

6. In accordance with this Final Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires or transfers are dated prior to, on or subsequent to the Petition Date, without any duty to inquire otherwise and without any liability for following the Debtors' instructions.

7. Nothing in the Motion or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an agreement or obligation to pay any claims, a waiver of any claim or causes of action which may exist against any creditor or interest

holder, an admission as to the validity of any lien satisfied pursuant to this Motion, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or any other party or any claims or causes of action which may exist against any Taxing Authority, or shall impair or limit the ability of the Debtors or any other party, to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Final Order.

8. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and authorizing the use of cash collateral (any such order, a "DIP Order"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Final Order and the terms of any DIP Order, the terms of the DIP Order will govern.

9. The requirements set forth in Local Rule 9013-1(b) are satisfied.

10. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

11. This Final Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

12. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Final Order.

Dated: _____
New York, New York

United States Bankruptcy Judge