

9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought in this Motion are sections 105, 345, 363, 503, 1107, and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2015-2 and 4001-3.

Background

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in this chapter 11 case.

5. A more detailed description of the business and operations of the Debtor, and the events leading to the commencement of this chapter 11 case, is provided in the *Declaration of Frank Waterhouse in Support of First Day Motions*, filed concurrently herewith (the “Declaration”) and incorporated herein by reference.²

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration.

A. Cash Management System

6. The Debtor’s cash management system described below (the “Cash Management System”) facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtor’s business. The Cash Management System currently consists of six accounts (collectively, the “Bank Accounts”) held in the name of the Debtor at BBVA USA (“BBVA”) and NexBank, SSB (“NexBank”). BBVA and NexBank are together referenced herein as the “Banks.”

7. BBVA is a bank regulated by the Federal Reserve, and its deposits are insured by the Federal Deposit Insurance Corporation (the “FDIC”). NexBank is Texas-based savings bank that is regulated by the FDIC, and its deposits are FDIC-insured. NexBank is indirectly owned by James Dondero and Mark Okada. Mr. Dondero is an insider of the Debtor and the owner of 100% of the equity in the Debtor’s general partner, Strand Advisors, Inc. Mr. Dondero also has an indirect interest in the Debtor’s Class A limited partnership interests. Mr. Okada is an insider of the Debtor and has an interest in the Debtor’s Class A limited partnership interests.

8. The following chart sets forth the Bank Accounts and their balances as of the close of business on October 15, 2019:

Bank	Account Type	Account No.	Balance
NexBank	Checking Account	XXXX735	\$1,453.40
NexBank	Checking Account	XXXX668	\$0.00
NexBank	Checking Account	XXXX513	\$291,309.27
NexBank	Certificate of Deposit	XXXXXX891	\$135,205.21

NexBank	Money Market Deposit Account	XXXX130	\$190.82
BBVA	Checking Account	XXXXXXXX342	\$2,125,975.28

9. Master Operations Account. The Debtor's main operating account is its account at BBVA (Account No. 342) (the "Master Account"). Except for payment of certain intercompany expenses discussed below, all proceeds from the Debtor's operations flow into the Master Account and, on average, the Debtor receives approximately \$8 million in deposits into the Master Account every month though deposits can vary significantly on a month-to-month basis. Virtually all of the Debtor's expenses, including payroll expenses, are paid from the Master Account either through the issuance of paper checks or via wire or other electronic transfers. As described below, the Debtor also uses the Master Account to fund certain Intercompany Transactions (as defined below).

10. Money Market Account. The Debtor maintains a money market deposit account at NexBank (Account No. 130) (the "Money Market Account"). Although the Debtor does not have a specific policy governing the Money Market Account, the Debtor generally sweeps excess cash from the Master Account into the Money Market Account in order to earn additional interest.³ Conversely, if the Debtor needs additional funds to pay expenses, it will transfer money from the Money Market Account to the Master Account. The Debtor also receives payments into the Money Market Account from certain of its non-Debtor affiliates in consideration for providing certain services, such as back office support, pursuant to the terms of

³ The Money Market Account is a money market deposit account, not a money market fund. As such, amounts deposited in the Money Market Account are not invested in any other securities, like certificates of deposits. Rather, the Money Market Account is a demand deposit account with a higher interest rate than a regular checking or savings account.

various contracts. The Debtor generally does not pay expenses from the Money Market Account, except for employee bonuses with respect to newly-granted awards paid each February.

11. Insurance Account. The Debtor maintains a self-funded health insurance plan for its employees and the employees of certain of its affiliates. To facilitate this plan, the Debtor maintains an account with NexBank (Account No. 513) (the “Insurance Account”). The Debtor transfers the monthly insurance premiums for its employees from the Master Account to the Insurance Account, and certain of the Debtor’s affiliates that participate in the health insurance plan also fund money into the Insurance Account. The amounts held in the Insurance Account are then used to pay health insurance claims made by the Debtor’s or its affiliates’ employees. If a claim is made against the Insurance Account by an employee of a Debtor affiliate, the Debtor affiliate is billed for the amount of the claim. Besides health insurance claims, the only payments made from the Insurance Account are those made to Blue Cross Blue Shield, which administers the health insurance plan.

12. Certificate of Deposit. The Debtor has a certificate of deposit (Account No. 891) at NexBank (the “Certificate of Deposit”). The Certificate of Deposit was originally opened in June 2008 with a principal balance of \$1,400,000. The current balance is \$135,205.21. The Certificate of Deposit is renewed every June and currently accrues interest at a rate of 2.67% per annum.

13. The Debtor’s remaining two accounts at NexBank – Account No. 735 and Account No. 668 – are legacy accounts that have not been utilized in many years. Account No.

735 holds a *de minimis* amount of cash and is accruing interest. Account No. 668 has a balance of zero dollars.

B. Prime Brokerage Account

14. The Debtor maintains a prime brokerage account (the “Prime Account”) with Jefferies LLC (“Jefferies”). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

15. As of October 11, 2019, the Debtor held approximately \$87 million in liquid and illiquid equity and debt securities (the “Securities”) in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies against the Securities. As of October 11, 2019, the Debtor had approximately \$9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court.

C. Intercompany Transactions.

16. As noted above, the Debtor occasionally engages in intercompany cash transactions with certain of its affiliates. These transfers include (a) the movement of cash to and from the Insurance Account to fund the payment of health insurance claims and (b) the receipt of cash in the Master Account in connection with the provision of services to certain non-Debtor

affiliates. In addition to the foregoing, the Debtor also funds the following using the Master Account:

a. **Highland Multi Strategy Credit Fund, L.P.** The Debtor serves as the investment manager for Highland Multi Strategy Credit Fund, L.P. (“MCSF”) and is also a limited partner in MCSF. MCSF invests in and holds certain life settlement policies that require regular payment of premiums (generally monthly) to keep the policies from lapsing. If the policies were to lapse, MCSF would be unable to collect when the proceeds of such policies become realizable and, consequently, its ability to make distributions to the Debtor as a limited partner or pay amounts owed to the Debtor as the investment manager would be impaired. Because MCSF has limited liquidity, the Debtor provides MCSF the funding required to pay the premiums on its life settlement policies, among other expenses, in the amount of approximately \$1 million per month. In return, MCSF issues on demand, zero interest notes to the Debtor, which will be repaid once MCSF’s investments become liquid.

b. **Highland Capital Management Korea Limited.** Highland Capital Management Korea Limited (“HCM Korea”) is a wholly-owned subsidiary of the Debtor and an affiliated investment advisor domiciled in South Korea. HCM Korea is the advisor for, and minority limited partner in, an investment fund (the “HCM Korea Fund”). Each limited partner in the HCM Korea Fund, including HCM Korea, is required to provide capital when called by the HCM Korea Fund, and the failure to fund capital calls could lead to a default under the HCM Korea Fund’s partnership agreement. Because of HCM Korea’s limited liquidity, the Debtor has provided HCM Korea with a revolving note pursuant to which the Debtor has

extended up to \$20 million in credit for HCM Korea to use to fund its commitments to the HCM Korea Fund. The note is at zero percent interest, and there is currently approximately \$3.06 million outstanding on the note. The Debtor anticipates that HCM Korea will draw an additional \$3 million on the note over the next one to two years and will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to its investors.

c. **Highland Capital Management Latin America, L.P.** Highland Capital Management Latin America, L.P. ("HCM Latin America") is a wholly owned subsidiary of the Debtor and an affiliated investment advisor domiciled in the Cayman Islands. HCM Latin America is the advisor for an investment fund investing primarily in Argentina (the "SA Fund"). HCM Latin America employs several consultants to assist in advising and marketing the SA Fund. However, because of the recent instability in the Argentinian market, the value of the SA Fund dropped precipitously and consequently, the SA Fund does not currently generate sufficient fees to cover the cost of these consultants. In addition to its original equity contribution, the Debtor has been contributing equity to HCM Latin America to help cover its costs during the downturn. To date, the Debtor has provided approximately \$0.7 million in additional equity to cover such operating costs. The Debtor anticipates that HCM Latin America will require additional equity contributions of between \$1 million to \$1.5 million per year until the Argentinian market recovers. However, because of HCM Latin America's fee structure, there are opportunities for HCM Latin America to make outsized returns depending on the SA Fund's performance, and, in the event of an Argentinian recovery and a concomitant uptick in the SA Fund, HCM Latin America's fee revenue and profitability will also increase. Consequently, the

Debtor believes that contributing equity now will lead to increased returns on its investment in HCM Latin America going forward.

d. **Highland Capital Management (Singapore) Pte Ltd.** Highland Capital Management (Singapore) Pte Ltd. is a wholly owned subsidiary of the Debtor based in Singapore (“HCM Singapore”). Historically, HCM Singapore has been a marketing office that has solicited investments in the Debtor’s managed funds from Asian-based institutional investors. To facilitate HCM Singapore’s marketing efforts, the Debtor agreed to cover HCM Singapore’s costs. The Debtor agreed to this arrangement as any capital raised by HCM Singapore would directly increase the management fees – and potentially long-term incentive fees – earned by the Debtor. The Debtor believes such increased revenue, should it materialize, would more than offset the costs paid by the Debtor.

e. **Expense Allocations.** As is customary among investment advisors, the Debtor tasks its employees with researching and evaluating potential investments and opportunities for the Debtor’s clients. The Debtor also provides certain back office support for its clients from time to time. In order to provide such services, the Debtor has directly contracted with various service providers and is required to pay for such services. However, pursuant to the Debtor’s expense allocation policy, such expenses are then allocated amongst the Debtor and its various clients either pro rata based on the assets owned by a client or otherwise in a manner consistent with the policy. Consequently, although the Debtor fronts these costs, the Debtor is reimbursed for a portion of such costs by its clients. On a monthly basis, the Debtor

generally expects to pay approximately \$450,000 for such services and is reimbursed for a substantial majority of such costs by its clients or affiliates.

17. The transactions described in the foregoing paragraphs 16.a through 16.e are referred to collectively as the “Intercompany Transactions.”

18. By this Motion, and out of an abundance of caution, the Debtor seeks authority to make the Intercompany Transactions and to satisfy postpetition obligations associated with the Intercompany Transactions. Moreover, the Debtor seeks authority, to the extent required, to transfer funds between the Bank Accounts as described above.

Relief Requested

19. By this Motion, through interim and final orders, the Debtor seeks (a) authority to continue the use of its existing Cash Management System and the Prime Account, (b) authority to continue to make the Intercompany Transactions; (c) a limited waiver of the requirements pursuant to section 345(b) of the Bankruptcy Code to the extent required, and (d) the related relief set forth herein.

Basis for Relief

A. The Court Should Authorize the Debtor to Maintain the Existing Bank Accounts and Prime Account

20. The United States Trustee for the District of Delaware has established certain operating guidelines (the “UST Guidelines”) for debtors in possession. One such provision requires chapter 11 debtors in possession to close all existing bank accounts and open new bank accounts. The guidelines also require that debtors maintain new bank accounts in certain financial institutions designated as authorized depositories by the United States Trustee.

This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date.

21. The Debtor seeks a waiver of the United States Trustee's requirement for the closure of the Bank Accounts (and potentially the Prime Account) and opening of new postpetition bank accounts at depositories authorized by the United States Trustee. If strictly enforced in this chapter 11 case, the requirement to close and open new bank accounts could cause a severe disruption in the Debtor's activities and could impair the Debtor's ability to operate under chapter 11 of the Bankruptcy Code. Maintenance of the Bank Accounts, the Prime Account, and the Cash Management System generally will greatly facilitate the Debtor's operations for the duration of this chapter 11 case.

22. If the Bank Accounts were closed, the Debtor would need to undertake the laborious effort of opening new bank accounts and, with respect to the Prime Account, establishing a new brokerage account to hold and maintain the Securities, which would require the satisfaction of any outstanding margin balances. Any disruption to the Debtor's operations would severely impact its ability to operate at this critical juncture. If the Debtor were required to close the Bank Accounts and the Prime Account, and open new debtor in possession accounts, the Debtor would be forced to reconstruct its cash management system in its entirety. Moreover, as noted above, the closure of the Prime Account would trigger the repayment of the approximately \$30 million that has been borrowed against the Securities.

23. To minimize expenses to the chapter 11 estate, the Debtor also requests permission to maintain and continue to use its business forms, including check stock, electronic forms and paper forms, preprinted labels, letterhead, and related documents (collectively, the “Business Forms”) substantially in the forms existing immediately before the Petition Date. Strict compliance with the UST Guidelines, which require reprinting such documents, would unnecessarily increase the expenses to the estate. Accordingly, the Debtor believes that it is appropriate to continue to use all Business Forms as such forms were in existence prior to the Petition Date, without any reference to the Debtor’s current status as debtor in possession.

24. Courts in this district have consistently allowed debtors to use their prepetition checks and other forms without the “debtor in possession” label. *See, e.g., In re White Eagle Asset Portfolio LP*, Case No. 18-12808 (KG) (Bankr. D. Del Feb. 12, 2019); *In re Aquion Energy, Inc.*, Case No. 17-10500 (KJC) (Bankr. D. Del. March 10, 2017); *In re Malibu Lighting Corporation, et al.*, Case No. 15-12082 (KG) (Bankr. D. Del. Oct. 9, 2015).

25. The Debtor respectfully submits that any benefits of its strict compliance with the UST Guidelines or Local Rule 2015-2(a) would be far outweighed by the resulting expense, inefficiency, and disruption to the Debtor’s business. Accordingly, the Debtor requests authority to maintain its Bank Accounts, Prime Account, and Business Forms during this chapter 11 case.

B. The Court Should Authorize the Debtor to Continue Its Existing Cash Management System

26. The Debtor seeks authority to continue to use the Cash Management System as such system may need to be modified by the Debtor in accordance with the relief

requested in the Cash Collateral Motion and Budget. For the reasons set forth above, the Cash Management System constitutes an essential business practice and was created and implemented in the ordinary course of business of the Debtor. The continued use of the Cash Management System will avoid unnecessary distractions that would inevitably be associated with a substantial disruption of the Cash Management System.

27. Further, in another context, the bankruptcy court in the *Columbia Gas* chapter 11 case explained that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff’d in part, rev’d in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 114 S. Ct. 1050 (1994). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061. *See also In re Southmark Corp.*, 49 F.3d 111, 114 (5th Cir. 1995) (cash management system allows debtors “to administer more efficiently and effectively their financial operations and assets”); *In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

28. Section 363(c)(1) of the Bankruptcy Code authorizes debtors in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtors in possession with the flexibility to engage in the ordinary transactions required to operate their business without undue oversight by creditors or the court. *Medical Malpractice*

Ins. Ass'n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997). Included within the purview of section 363(c) is a debtors' ability to continue the "routine transactions" necessitated by a debtors' cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtor seeks authority under section 363(c)(1) of the Bankruptcy Code to continue the collection and disbursement of cash pursuant to its existing Cash Management System. Additionally, the Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). Continuing the Cash Management System without interruption is vital to the success of this chapter 11 case.

29. In other cases in this District, courts have granted relief substantially similar to that requested in this Motion. *See, e.g., In re White Eagle Asset Portfolio LP*, Case No. 18-12808 (KG) (Bankr. D. Del Feb. 12, 2019); *In re Life Settlements Absolute Return I, LLC, et al.*, Case No. 17-13030 (MFW) (Bankr. D. Del. February 1, 2018); *In re Aquion Energy, Inc.*, Case No. 17-10500 (KJC) (Bankr. D. Del. March 10, 2017); *In re Basic Energy Services, Inc., et al.*, Case No. 16-12320 (KJC) (Bankr. D. Del. October 26, 2016); *In re Key Energy Services, Inc., et al.*, Case 16-12306 (BLS) (Bankr. D. Del. October 25, 2016); *In re Malibu Lighting Corporation, et al.*, Case No. 15-12082 (KG) (Bankr. D. Del. Oct. 9, 2015).

Accordingly, the Debtor requests that the Court approve the continued use of the Cash Management System.

C. The Court Should Authorize the Payment of Outstanding Routine Prepetition Expenses Relating to the Operation of the Cash Management System

30. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtor incurs routine charges and fees relating to the administration of the Cash Management System. While it is difficult to readily determine the aggregate amount of unpaid prepetition account fees and charges as of the Petition Date, on average, the Debtor pays BBVA approximately \$4,500 in quarterly fees and charges. The Debtor does not pay fees to NexBank. The Debtor seeks authority, in its sole discretion, to pay any such routine and ordinary course prepetition fees and charges, and to continue the postpetition payment of such fees and charges in the ordinary course of business.

D. The Debtor Should Be Allowed to Continue Certain Intercompany Transactions

31. The Debtor may utilize the Cash Management System for the Intercompany Transactions. Other than as described herein, no other Intercompany Transactions occur. The Debtor believes that the Intercompany Transactions described herein are beneficial to its estate and creditors and other parties in interest and, therefore, should be authorized by the Court.

E. The Court Should Grant a Waiver Pursuant to Section 345(b) of the Bankruptcy Code

32. Section 345(a) authorizes deposits or investments of money “as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” Section 345(b) provides:

Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and

credit of the United States, the trustee shall require from an entity with which such money is deposited or invested --

- 1) a bond –
 - A. in favor of the United States;
 - B. secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and
 - C. conditioned on --
 - i) a proper accounting of all money so deposited or invested and for any return on such money;
 - ii) prompt repayment of such money and return; and
 - iii) faithful performance of duties as a depository; or
- 2) the deposit of securities of the kind specified in section 9303 of title 31 unless the court for cause orders otherwise.

33. As noted above, the Bank Accounts are with NexBank and BBVA.

However, neither Bank is on the list of approved depositories for funds of debtors in possession by the United States Trustee for Region 3. The deposits of each Bank, however, are insured by the FDIC up to the full amount permissible, and each Bank is a bank in good standing with its applicable regulator. Further, Jefferies is a “qualified custodian” for purposes of the Investment Advisors Act of 1940 and a member of the Securities Investor Protection Corporation (“SIPC”), which provides limited protection for the securities and cash held in the Prime Account. Jefferies, however, is also not on the list of approved depositories. Assuming that the Court enters the interim order, attached hereto as Exhibit A, the Debtor will work with the United

States Trustee following entrance of that order to ensure that all necessary requirements with respect to the Banks, Jefferies, the Bank Accounts, and the Prime Account are met.

34. Although the Banks are each fully insured by the FDIC and Jefferies is a member of the SIPC, the Debtor is requesting a limited waiver of any security or bonding requirements prescribed by section 345(b) of the Bankruptcy Code to the extent necessary.

Waiver of Bankruptcy Rules 6003 and 6004

35. Pursuant to Bankruptcy Rule 6003(b), “a motion to pay all or part of a claim that arose before the filing of the petition” shall not be granted by the Court within 21 days of the Petition Date “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm” Fed. R. Bankr. P. 6003(b). For the reasons described more fully above, and to the extent that the relief requested herein implicates Bankruptcy Rule 6003(b), the Debtor submits that the requirements of Bankruptcy Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

36. Finally, to implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable.

Notice

37. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor’s twenty largest unsecured

creditors; (d) the Debtor’s principal secured parties; (e) NexBank; (f) BBVA; and (g) Jefferies.

As the Motion is seeking “first day” relief, within two business days after the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-1(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

38. The Debtor respectfully request that the Court enter interim and final orders, substantially in the form attached hereto as **Exhibit A** granting the relief requested herein.

Dated: October 16, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O’Neill

Richard M. Pachulski (CA Bar No. 62337)
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Maxim B. Litvak (CA Bar No. 215852)
James O’Neill (DE Bar No. 4042)
919 North Market Street, 17th Floor
Wilmington, DE 19899 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
E-mail: rpachulski@pszjlaw.com
jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
mlitvak@pszjlaw.com
joneill@pszjlaw.com

*Proposed Counsel for the Debtor
and Debtor in Possession*

EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Case No. 19-12239 (CSS)
)	
Debtor.)	
)	

INTERIM ORDER AUTHORIZING (A) CONTINUANCE OF EXISTING CASH MANAGEMENT SYSTEM, (B) CONTINUED USE OF THE PRIME ACCOUNT, (C) LIMITED WAIVER OF SECTION 345(b) DEPOSIT AND INVESTMENT REQUIREMENTS, AND (D) GRANTING RELATED RELIEF

Upon consideration of the *Motion of Debtor for Interim and Final Orders*

Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the "Motion")² filed by the above-captioned debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case; and this Court finding that (a) the relief granted in this Order is in the best interests of the Debtor's estate and creditors and other parties in interest on an interim basis; (b) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (c) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (d) due and adequate notice of the Motion was given under the circumstances; and after due deliberation and cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on an interim basis as set forth herein.

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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

2. The Debtor is authorized to continue operating the Cash Management System as described in the Motion and in a manner consistent with the Debtor's prepetition practices and this Order.

3. The Debtor is authorized, but not directed, in the reasonable exercise of its business judgment, to: (a) designate, maintain and continue to use, with the same account numbers, the Bank Accounts and the Prime Account in existence as of the Petition Date; (b) treat the Bank Accounts and the Prime Account for all purposes as debtor in possession accounts; and (c) use all existing Business Forms without reference to the Debtor's status as "debtor in possession" until such supply is depleted, after which the Debtor will use new Business Forms with the "debtor in possession" reference.

4. The Banks – NexBank, SSB, and BBVA USA – are authorized to continue to service and administer the Bank Accounts as debtor in possession accounts without interruption and in the usual and ordinary course of business, and to receive, process, honor, and pay any and all checks and drafts drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check that the Debtor advises to have been drawn or issued by the Debtor before the Petition Date may be honored only if specifically authorized by order of this Court.

5. Except as modified by this Order, the Debtor's existing agreements with the Banks and with respect to the transfers to and from the Bank Accounts shall continue to govern the postpetition cash management relationship between the Debtor and the Banks. In the course of providing cash management services to the Debtor, the Banks are authorized, without further

order of this Court, to continue to deduct from the appropriate accounts of the Debtor, their routine and ordinary course fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtor.

6. The Debtor shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System. In connection with the ongoing utilization of its Cash Management System, the Debtor shall continue to maintain records in the ordinary course of business with respect to all transfers so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts and distinguished between prepetition and postpetition transactions.

7. Nothing contained herein shall prevent the Debtor from closing any Accounts as they may deem necessary, and any relevant Bank is authorized to honor the Debtor's request to close such Accounts, and the Debtor shall give notice of the closure of any Accounts to the U.S. Trustee.

8. The Debtor is authorized to open new bank accounts; provided, however, that all accounts opened by the Debtor on or after the Petition Date at any bank shall, for purposes of this Order, be deemed a Bank Account as if it had been listed in the Motion; provided, further, that (a) any such new bank account shall be opened at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at a bank that is willing to immediately execute such an agreement, (b) any such new bank account shall be designated as a "debtor in possession" account by the relevant bank, and (c) such opening shall be timely indicated on the Debtor's

monthly operating report and notice of such opening shall be provided within 14 days to the U.S. Trustee and counsel to any statutory committee appointed in this chapter 11 case.

9. The Debtor is authorized to make the Intercompany Transactions consistent with the Motion and this Order.

10. The Debtor is authorized to continue using the Prime Account as described in the Motion and in a manner consistent with the Debtor's prepetition practices and this Order.

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

12. Nothing herein shall, or is intended to, (i) create any rights in favor of or enhance the status of any claim held by any party or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

13. The requirements of 11 U.S.C. § 345(b) are waived, on an interim basis, with respect to the Bank Accounts and the Prime Account to the extent necessary.

14. The notice requirements under Bankruptcy Rule 6004(a) and the stay under Bankruptcy Rule 6004(h) are hereby waived, to the extent that they apply.

15. This Order shall be served promptly by the Debtor on the Banks and all parties in interest who were served by the Motion and all other parties who file a request for notice under Bankruptcy Rule 2002.

16. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on

_____, 2019, and shall be served on: (a) proposed counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O’Neill, Esq.; (b) counsel to any statutory committee appointed in this case; and (c) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

17. This Court shall retain jurisdiction to hear and determine all matters arising from the enforcement, implementation, or interpretation of this Order.

Dated: October ____, 2019

UNITED STATES BANKRUPTCY JUDGE