

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

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In re:	:		Chapter 11
	:		
PENSON WORLDWIDE, INC., <i>et al.</i> , ¹	:		Case No. 13-10061 (PJW)
	:		
Debtors.	:		(Jointly Administered)
	:		
	:		Ref. Docket Nos. 7 and 34
-----	X		

**CERTIFICATION OF COUNSEL REGARDING ORDER
AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY
(A) AMOUNTS OWING TO NON-INSIDERS UNDER THE SEVERANCE PLAN,
AND (B) CASH PAYMENTS WITH RESPECT TO UNPAID PAID
TIME OFF UPON TERMINATION**

On January 11, 2013, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Motion for an Order (A) Authorizing, but Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation, and Employee Benefits and Continue Payment of Wages, Compensation, and Employee Benefits in the Ordinary Course of Business; and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No. 7] (the “Employee Motion”²). On January 15, 2013, the Court entered an Order approving the relief requested in the Employee Motion with the exception of payments of amounts owing to non-insider Employees under the Severance Plan and cash payments with respect to unpaid PTO (the “Supplemental Employee Relief”).

Objections to the Supplemental Employee Relief, if any, were to be filed on or before 4:00 p.m. (ET) on February 1, 2013, however, this deadline was extended for the Official

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Penson Worldwide, Inc. (6356); SAI Holdings, Inc. (3657); Penson Financial Services, Inc. (3990); Penson Financial Futures, Inc. (6207); Penson Holdings, Inc. (4821); Penson Execution Services, Inc. (9338); Nexa Technologies, Inc. (7424); GHP1, Inc. (1377); GHP2, LLC (1374); and Penson Futures (6207). The Debtors’ mailing address is 800 Klein Road, Suite 200, Plano, Texas 75074.

² Terms not otherwise defined herein shall be give the meanings ascribed to them in the Employee Motion.



Committee of Unsecured Creditors (the "Committee") until February 20, 2013 (the "Objection Deadline").

No formal objections to the Supplemental Employee Relief were filed. However, prior to the applicable Objection Deadline, the Committee provided an informal response with respect to the relief requested. As the result of subsequent discussions between the Debtors and the Committee, the parties reached a consensual resolution with respect to the Committee's concerns, the terms of which are embodied in the revised form of order (the "Revised Order"), attached hereto as Exhibit A. For the Court's convenience a blackline of the Revised Order is attached hereto as Exhibit B.

Accordingly, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, granting the Supplemental Employee Relief at its earliest convenience.

Dated: February 22, 2013
Wilmington, Delaware

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Counsel to the Debtors and Debtors in Possession

EXHIBIT A

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

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In re:	:	Chapter 11
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PENSON WORLDWIDE, INC., <i>et al.</i> , ¹	:	Case No. 13-10061 (PJW)
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Debtors.	:	(Jointly Administered)
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	:	Ref. Docket Nos. 7 and 34
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**ORDER AUTHORIZING, BUT NOT DIRECTING, THE
DEBTORS TO PAY (A) AMOUNTS OWING TO NON-INSIDERS UNDER
THE SEVERANCE PLAN, AND (B) CASH PAYMENTS WITH RESPECT
TO UNPAID PAID TIME OFF UPON TERMINATION**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), seeking, among other things, entry of an order authorizing, but not directing, the Debtors to pay (a) amounts owing to non-insiders under the Debtors’ Severance Plan, and (b) cash payments with respect unpaid PTO upon termination; and the Court having heard the evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

provided; and the Court having previously entered the *Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation and Employee Benefits and Continue Payment of Wages, Compensation and Employee Benefits in the Ordinary Course of Business; and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process, and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No. 15] (the “Order”) with respect to Motion; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and upon the Motion, and the First Day Declaration; and all of the proceedings held before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to make payments (the “Payments”) to non-insiders under the Severance Plan and honor all obligations under the Debtors’ PTO policy, including making cash payments to Employees upon their termination with respect to unused PTO, subject to the following terms and conditions:

- a. The sale of Nexa Technologies, Inc. (“Nexa”): (i) closes on substantially similar, or more favorable, terms than those set forth in the asset purchase agreement (the “Purchase Agreement”) filed with *Debtors’ Motion for Entry of (I) an Order (A) Approving and Authorizing Bidding Procedures in Connection with the Sale of Substantially All the Assets Related to the Direct Access Trading Technology and Online Brokerage Solutions of Penson Worldwide, Inc. and Nexa Technologies, Inc., (B) Approving the Stalking Horse Bid Protections, (C) Scheduling the Related Auction and Hearing to Consider Approval of the Sale, (D) Approving Procedures Related to the Assumption and Assignment of Certain of the Debtors’ Executory Contracts and Unexpired Leases, (E) Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II) an Order Approving and*

Authorizing (A) the Sale of Substantially All of the Assets Related to the Direct Access Trading Technology and Online Brokerage Solutions of Penson Worldwide, Inc. and Nexa Technologies, Inc. Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Asset Purchase Agreement, (C) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases as Part of the Sale, and (D) Granting Related Relief [Docket No. 207]; or (ii) results in Nexa being solvent such that all claims allowed at Nexa will be paid in full pursuant to a chapter 11 plan;

- b. For each terminated Employee, the successful purchaser of Nexa does not offer such Employee a position with substantially the same or better salary, title, and responsibilities as his or her current position with the Debtors; and
- c. For each terminated Employee, such Employee signs a release and waiver of all claims against the Debtors in exchange for the Payments.

3. To the extent the successful purchaser of Nexa offers an Employee a position with substantially the same or better salary, title, and responsibilities, and assumes tenure for purposes of its severance policy, such Employee's claims under the Severance Policy are deemed satisfied regardless of whether such Employee accepts the purchaser's employment offer.

4. If the sale of Nexa fails to close on substantially similar, or more favorable, terms than those set forth in the Purchase Agreement, or on terms that do not result in Nexa being solvent such that all claims allowed at Nexa will be paid in full pursuant to a chapter 11 plan, the Debtors will only be authorized to pay any terminated Employee prior to confirmation of a chapter 11 plan his or her outstanding claims under the Severance Plan and PTO policy to the extent that: (a) such payments do not exceed the cap set forth in section 502(b)(7) of the Bankruptcy Code; or (b) such claims constitute administrative expenses under section 503 of the Bankruptcy Code.

5. Nothing set forth in this Order shall be deemed to prevent the Debtors from making cash payments under the PTO policy where such payments are required by applicable state law.

6. Nothing in this Order shall be deemed to authorize the payment of any amounts which are subject to section 503(c) of the Bankruptcy Code.

7. All applicable Disbursement Banks are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks or drafts drawn on the Debtors' accounts to the Employees whether those checks were issued or presented prior to or after the Petition Date, and make other transfers, provided that sufficient funds are available in the applicable accounts, whether deposited prepetition or post-petition, to make the payments.

8. Authorization to pay all amounts on account of Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Employee Obligation, including without limitation, the Payroll Deductions that may be due to any taxing authority.

9. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, 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 shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

10. Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 or any applicable provisions of the Local Rules of Practice and Procedure of the United States

Bankruptcy Court for the District of Delaware, this Order shall be effective and enforceable immediately upon entry thereof.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: February ____, 2013
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge

EXHIBIT B

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

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PENSON WORLDWIDE, INC., <i>et al.</i> , ¹	:	Case No. 13-10061 (—PJW)
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Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), seeking, among other things, entry of an order authorizing, but not directing, the Debtors to pay (a) amounts owing to non-insiders under the Debtors’ Severance Plan, and (b) cash payments with respect unpaid PTO upon termination; and the Court having heard the evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein, ~~and the Court having found and concluded that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates;~~ and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due notice of the Motion having been provided;

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and it appearing that no other or further notice of the Motion need be provided; and the Court having previously entered the *Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation and Employee Benefits and Continue Payment of Wages, Compensation and Employee Benefits in the Ordinary Course of Business; and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process, and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No. 15] (the “Order”) with respect to Motion; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and upon the Motion, and the First Day Declaration; and all of the proceedings held before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to make payments (the “Payments”) to non-insiders under the Severance Plan and honor all obligations under the Debtors’ PTO policy, including making cash payments to Employees upon their termination with respect to unused PTO, subject to the following terms and conditions:

- a. The sale of Nexa Technologies, Inc. (“Nexa”): (i) closes on substantially similar, or more favorable, terms than those set forth in the asset purchase agreement (the “Purchase Agreement”) filed with Debtors’ Motion for Entry of (I) an Order (A) Approving and Authorizing Bidding Procedures in Connection with the Sale of Substantially All the Assets Related to the Direct Access Trading Technology and Online Brokerage Solutions of Penson Worldwide, Inc. and Nexa Technologies, Inc., (B) Approving the Stalking Horse Bid Protections, (C) Scheduling the Related Auction and Hearing to Consider Approval of the Sale, (D) Approving Procedures Related to the Assumption and Assignment of Certain of the Debtors’ Executory Contracts and Unexpired Leases, (E)

Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II) an Order Approving and Authorizing (A) the Sale of Substantially All of the Assets Related to the Direct Access Trading Technology and Online Brokerage Solutions of Penson Worldwide, Inc. and Nexa Technologies, Inc. Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Asset Purchase Agreement, (C) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases as Part of the Sale, and (D) Granting Related Relief [Docket No. 207]; or (ii) results in Nexa being solvent such that all claims allowed at Nexa will be paid in full pursuant to a chapter 11 plan;

- b. For each terminated Employee, the successful purchaser of Nexa does not offer such Employee a position with substantially the same or better salary, title, and responsibilities as his or her current position with the Debtors; and
- c. For each terminated Employee, such Employee signs a release and waiver of all claims against the Debtors in exchange for the Payments.

3. To the extent the successful purchaser of Nexa offers an Employee a position with substantially the same or better salary, title, and responsibilities, and assumes tenure for purposes of its severance policy, such Employee's claims under the Severance Policy are deemed satisfied regardless of whether such Employee accepts the purchaser's employment offer.

4. If the sale of Nexa fails to close on substantially similar, or more favorable, terms than those set forth in the Purchase Agreement, or on terms that do not result in Nexa being solvent such that all claims allowed at Nexa will be paid in full pursuant to a chapter 11 plan, the Debtors will only be authorized to pay any terminated Employee prior to confirmation of the Plan his or her outstanding claims under the Severance Plan and PTO policy to the extent that: (a) such payments do not exceed the cap set forth in section 502(b)(7) of the Bankruptcy Code; or (b) such claims constitute administrative expenses under section 503 of the

Bankruptcy Code.

5. Nothing set forth in this Order shall be deemed to prevent the Debtors from making cash payments under the PTO policy where such payments are required by applicable state law.

6. ~~3-~~ Nothing in this Order shall be deemed to authorize the payment of any amounts which are subject to section 503(c) of the Bankruptcy Code.

7. ~~4-~~ All applicable Disbursement Banks are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks or drafts drawn on the Debtors' accounts to the Employees whether those checks were issued or presented prior to or after the Petition Date, and make other transfers, provided that sufficient funds are available in the applicable accounts, whether deposited prepetition or post-petition, to make the payments.

8. ~~5-~~ Authorization to pay all amounts on account of Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Employee Obligation, including without limitation, the Payroll Deductions that may be due to any taxing authority.

9. ~~6-~~ Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, 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 shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

10. ~~7-~~ Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 or any applicable provisions of the Local Rules of Practice and Procedure of the United States

Bankruptcy Court for the District of Delaware, this Order shall be effective and enforceable immediately upon entry thereof.

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Dated: February , 2013
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge