

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,Debtors.¹

Chapter 11

Case No 13-10125 ()

Joint Administration Requested

**DEBTORS' 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**

School Specialty, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”) hereby move (the “Motion”), pursuant to sections 105(a), 363 and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”):

(i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in the ordinary course of business, to: (a) pay all prepetition employee wages, salaries, and certain other payments owed to Employees (defined below), including holiday pay and other paid time off, (b) pay all prepetition compensation owed to Independent Contractors (as defined below), (c) honor workers’ compensation obligations, (d) make all contributions to prepetition benefit

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.



programs and continue such programs, (e) make all payments for which prepetition payroll withholding deductions (including, but not limited to, payroll taxes) were made, and (f) reimburse all prepetition employee business expenses; (ii) authorizing, but not directing, the Debtors to continue payment of wages, compensation, and employee benefit programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described more fully below; and (iii) authorizing and directing applicable banks and other financial institutions to honor and pay all checks and transfers drawn on the Debtors' bank accounts to make the foregoing payments. The Debtors also request entry of an order substantially in the form attached hereto as Exhibit B (the "Proposed Supplemental Order"), to be considered at the "second day" hearing scheduled in these cases, authorizing (but not directing) the Debtors to continue their Severance policy and to make payments thereunder to all non-insider employees and to make cash payments with respect to outstanding PTO obligations (as defined below) owing to any Employee as of the date of the Employee's termination. In support of this Motion, the Debtors rely on the Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Relief (the "First Day Declaration")² and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. Venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

² The First Day Declaration has been filed contemporaneously with this Motion and is incorporated by reference herein. Capitalized terms used herein that are not defined shall have the meaning set forth in the First Day Declaration.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 363, and 507(a) of the Bankruptcy Code and Bankruptcy Rule 6003.

BACKGROUND

3. On the date hereof (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code thereby commencing the instant cases (the "Chapter 11 Cases"). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors' businesses, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

THE EMPLOYEES

6. The Debtors employ approximately 2,000 employees (collectively, the "Employees"),³ of which approximately 300 are seasonal or part-time employees. In general, the Debtors' workforce is comprised of approximately 180 managers, 600 production workers, 500 administrative employees, 400 sales representatives.⁴ The Employees are based in or out of the

³ The Debtors' two non-debtor Canadian affiliates employ an additional 96 employees.

⁴ Specifically, there are approximately 1,351 full-time Employees and 28 part-time Employees based in or out of the School Specialty, Inc.'s ("SSI") headquarters in Greenville, Wisconsin, including most of the Debtors' senior management. SSI employs approximately 100 managers, 343 production workers, 686 administrative employees and 250 sales representatives. The remainder of the Employees are based in or out of SSI's debtor subsidiaries. Califone International, Inc. ("Califone") employs approximately 26 Employees: 6 managers, 5 production workers, 12 administrative employees and 3 sales representatives in its San Fernando, California facility. Bird-in-Hand Woodworks, Inc., located in Lancaster, Pennsylvania, employs approximately 39 Employees: 4 managers, 33 full-time and seasonal production workers and 2 administrative employees. Delta Education, LLC ("Delta"), located in Nashua, New Hampshire, employs approximately 184 Employees: 28 managers, 57 production workers, 56 administrative employees and 43 sales representatives. Premier Agendas, Inc. ("Premier Agendas"), located in Bellingham, Washington, employs approximately 354 Employees: 18 managers, 110 production workers, 100 administrative employees and 126 sales representatives.

Debtors' businesses across 46 states. The Employees perform a variety of functions critical to the Debtors' operations, including, but not limited to, product manufacturing, sales, marketing, accounting, administration and management. The Debtors also employ approximately 400 independent contractors (as discussed below, the "Independent Contractors") on an "as needed" basis to provide disparate services ranging from training and professional development to trade show staffing.

7. The Employees' knowledge and understanding of the Debtors' products, operations, customer relations and infrastructure are essential to preserving the value of the Debtors' businesses. If the Debtors are to maximize the value of their estates, they must take all necessary steps to protect their Employees during the pendency of these Chapter 11 Cases.

8. Accordingly, the Debtors are requesting the relief set forth in this Motion to minimize any hardships to the Employees resulting from the commencement of the Chapter 11 Cases, ensure the Employees' continued commitment to the Debtors and mitigate any risk that Employees may leave the Debtors' employment.

9. Specifically, the Debtors seek authority to pay and honor their prepetition obligations to their Employees and Independent Contractors in the ordinary course of business, including by satisfying wage and other compensation-related obligations, paying employee withholding taxes and employer taxes (including but not limited to federal, state, employment, and other payroll and withholding taxes), honoring holiday pay and other paid time off obligations, continuing the Debtors' workers' compensation program, maintaining employee benefits and honoring all employee benefits obligations that the Debtors have traditionally provided in the ordinary course of business, continuing garnishment and Payroll Deductions (defined below) and reimbursing Employees for business expenses, (such obligations are

collectively referred to herein as the “Employee Obligations”). The Debtors also seek authority to continue the programs, plans and policies related thereto (the “Employee Programs”) postpetition.

THE EMPLOYEE OBLIGATIONS

A. Compensation and Compensation-Related Obligations

i. Wage Obligations

10. The Debtors’ workforce is divided roughly evenly into hourly Employees and salaried Employees, with sales representatives being paid on a salary-plus-commission basis.⁵

11. All Employees are paid on alternating Fridays, one week in arrears. The Debtors’ average monthly payroll is approximately \$8.5 million.⁶ The Debtors funded their most recent payroll disbursement to Automatic Data Processing, Inc. (“ADP”) on January 25, 2013, for the period from January 6, 2013 through January 19, 2013, in the amount of approximately \$3.7 million. The Debtors’ next payroll disbursement will be made on February 8, 2013, for the period from January 20, 2013 through February 2, 2013. As a result, the Debtors have not yet paid their Employees for 5 days of work performed prior to the Petition Date. In the aggregate, the Debtors estimate that the Employees have wages and salary that were earned as of the Petition Date but not funded by the Debtors (the “Unpaid Compensation”) in the aggregate amount of approximately \$1.85 million.

⁵ The majority of sales representatives are paid each pay cycle based on their salary plus commissions. Certain exceptions may exist, however, at particular businesses. For example, earned commissions are paid bi-weekly for Califone, monthly for Premier Agendas, quarterly for Delta and certain of SSI’s divisions and annually for two of SSI’s divisions. The Debtors believe that approximately \$206,500 of commissions will be owed to approximately 160 sales representatives as of the Petition Date. The Debtors believe that no sales representative is owed more than \$11,725 in commissions.

⁶ The amounts set forth in this paragraph 11 are inclusive of certain employer-funded taxes and costs.

12. Pursuant to this Motion, the Debtors seek authority to pay in the ordinary course of business the outstanding Unpaid Compensation owed to their Employees as of the Petition Date and to continue to pay their Employees for postpetition earnings in the ordinary course of business. The Debtors believe that, with one exception, no Employees will be paid Unpaid Compensation in an amount more than \$11,725 per individual Employee.⁷

13. As noted above, the Debtors also utilize Independent Contractors on an “as needed” basis to perform a wide range of services, including, but not limited to, administrative assistance, professional development, information technology, Employee training, and trade show assistance and staffing. Many of these functions are critical to the Debtors’ continued business operations. The Debtors employ up to 400 Independent Contractors. The Debtors spend approximately \$3.1 million annually on these parties in the aggregate. As of the Petition Date, the Debtors estimate that they owe approximately \$25,000 for the unpaid and accrued services of the Independent Contractors. By this Motion, the Debtors seek authority, in their sole discretion, to honor their existing contracts with their current Independent Contractors, to pay any and all prepetition amounts owing to their Independent Contractors and to continue their initiative to transition Independent Contractors to seasonal Employee status.

ii. Paid Time Off Policy

14. The Debtors have historically employed an accrual paid time off (“PTO”) policy. Under the PTO policy, full-time and part-time non-sales Employees accrued PTO throughout any given year to be used in the current year. The amount of annual PTO earned is determined based on the Employee’s length of service: Employees with less than 5 full years of

⁷ The Debtors believe that, as of the Petition Date, the amount of Unpaid Compensation owed to this one individual in excess of the \$11,725 cap is *de minimis*.

employment earn up to 3 weeks of PTO, Employees with 5 full years but less than 15 full years of employment earn up to 4 weeks of PTO, and Employees with 15 or more full years of employment earn up to 5 weeks of PTO.⁸ Pursuant to the PTO policy, Employees can carry forward up to 40 hours of unused PTO to the following year, and any amounts of earned but unused PTO in excess of 40 hours will be forfeited, except as required by state law. Upon termination, the Debtors pay Employees for unused PTO earned for use in the year of termination, including PTO rolled over from the prior year. PTO accrual for part-time Employees is pro-rated based on hours worked. The amount of outstanding PTO earned and that remains eligible for use in 2013 is approximately \$1.14 million.

15. By this Motion, the Debtors seek authority, in their sole discretion, to continue to honor their obligations under the PTO policy in the ordinary course of business.

iii. Holiday Pay

16. In addition to PTO, the Debtors offer Employees nine (9) paid holidays throughout the year plus three (3) floating holidays. Hourly Employees who work on any of the scheduled holidays receive regular pay plus certain additional amounts. Salaried Employees who work on any of the scheduled holidays receive an additional floating holiday to use within the calendar year. The Debtors seek authority, in their sole discretion, to continue to honor their paid holiday policy in the ordinary course of business.

⁸ Certain variations of this PTO policy exist at one subsidiary: Premier Agendas' Employees receive an additional 3 holidays per year to account for plant shutdowns. Premier Agendas' Employees with less than 5 full years of employment earn 2.4 weeks of PTO per year, Employees with 5 full years but less than 15 full years earn 3.4 weeks of PTO per year, and Employees with 15 or more full years of employment can earn up to 4.4 weeks of PTO per year.

iv. Other Paid Time Off

17. The Debtors offer Employees paid bereavement leave of up to three (3) days per year. In addition, the Debtors offer paid time off for Employees participating in jury duty. Finally, the Debtors allow Employees twenty-four (24) hours of Promise Hours each year for direct participation in a child's current education or school activity or for education-related charitable organizations. The Debtors seek authority, in their sole discretion, to continue to honor their paid bereavement leave policy, jury duty policy and similar policies in the ordinary course of business during these Chapter 11 Cases.

v. Employer-Paid Payroll-Related Taxes

18. In addition to gross payroll paid to their Employees, the Debtors are also responsible for paying certain employer-funded payroll taxes and obligations. These amounts include federal Medicare and Social Security taxes and federal and state unemployment taxes. The Debtors remit these amounts to ADP, the Debtors' payroll administrator, as payments are due to the applicable tax authorities, which ADP remits directly to the applicable taxing authority. The Debtors, by this Motion, seek authority to continue to pay their employer-paid payroll-related taxes in the ordinary course of business, including those amounts that may be related to prepetition periods.

vi. Payroll Administration

19. The Debtors disburse payroll through ADP. Prior to each payroll disbursement date, the Debtors remit to ADP an amount sufficient to cover the Debtors' gross payroll obligations (less voluntary deductions for Employee benefits), plus the amount of employer-responsible employment-related taxes. ADP then remits those payments to the Employees and applicable taxing authorities from accounts under ADP's control. Pursuant to their contract with

ADP, the Debtors pay ADP an average monthly fee of approximately \$27,200 for ADP to provide administrative and clerical services with respect to the Employee Obligations. The Debtors believe that, as of the Petition Date, they have a current outstanding balance of approximately \$5,000 owed to ADP. By this Motion, the Debtors seek authority, in their sole discretion, to continue to pay ADP its administrative fees, including amounts that may be owed related to the prepetition period.

B. Workers' Compensation Programs and Benefits

20. Under the laws of the states in which the Debtors operate, the Debtors are required to maintain workers' compensation liability insurance and to provide Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors provide workers' compensation benefits (the "Workers' Compensation Obligations") to their Employees by (i) participating in Ohio's state-mandated workers' compensation program administered through the Bureau of Workers Compensation ("Ohio BWC") for their Ohio-based Employees (approximately 211), (ii) participating in Washington's state-mandated workers' compensation program administered through the Washington State Department of Labor and Industries ("Washington L&I") for their Washington-based Employees (approximately 199), (iii) participating in North Dakota's state-mandated workers' compensation program administered through the North Dakota Workforce Safety & Insurance ("North Dakota S&I") for their North Dakota-based Employee (1) and (iv) maintaining a fully insured policy with Sentry Insurance (the "Workers' Compensation Policy")⁹ for the Debtors' remaining Employees.

⁹ In connection with its Workers' Compensation Policy with Sentry Insurance, SSI entered into a casualty insurance agreement (the "Casualty Insurance Agreement") with Sentry Insurance and Sentry Casualty Company (collectively, the "Insurers"), whereby SSI provided the Insurers with a letter of credit in the principal amount of \$900,000 to secure its obligations under the Workers' Compensation Policy.

21. On an annual basis, the Debtors pay approximately \$126,000 to the Ohio BWC, approximately \$144,000 to Washington L&I, approximately \$250 to North Dakota S&I and approximately \$192,000 in premiums for the Workers' Compensation Policy. The Debtors make payments to the Ohio BWC related to each semi-annual report disclosing the prior six-month period based upon the Employee wages and worker's compensation classification. The next payment to the Ohio BWC is due February 28, 2013, in the approximate amount of \$56,000. The Debtors pay Washington L&I per Employee on a quarterly basis, and the next payment is due on January 31, 2013, in the approximate amount of \$29,000. The premium to North Dakota S&I is paid on an annual basis, and the next payment is due in November 2013. Amounts owed for the Workers' Compensation Policy are paid monthly. The most recent payment under the Workers' Compensation Policy was made on January 4, 2013 in the amount of approximately \$15,600.

22. Failure to maintain workers' compensation insurance could result in the institution of administrative or legal proceedings and material fines against the Debtors and their officers and directors. The Debtors therefore seek authority to continue paying or contesting in good faith, as appropriate in the Debtors' business judgment, all outstanding amounts related to Workers' Compensation Obligations that arose prior to the Petition Date in order to fully administer and comply with the Debtors' workers' compensation programs, as such amounts become due in the ordinary course of the Debtors' businesses.

C. Employee Health and Welfare Benefits

23. The Debtors have established various plans and policies to provide Employees with medical, prescription drug, dental, life insurance, disability, retirement savings, and other benefits (collectively, the "Employee Benefits," and amounts owed under these plans, the

“Employee Benefit Obligations”). By this Motion, the Debtors seek the authority, but not the direction, to satisfy the amounts related to Employee Benefit Obligations, as discussed below, in the ordinary course of the Debtors’ business, including those that arose prior to, and that remain unpaid as of the Petition Date. The Employee Benefits include, but are not limited to, the following:

i. Health Care Programs

24. The Debtors offer several programs to Employees for medical, dental and vision coverage (the “Health Care Programs”), which are funded, in part, through contributions by the participating Employees. The Debtors’ medical, prescription drug and dental programs are a combination of self-insured and fully-insured programs. Employees based in and out of SSI’s headquarters in Greenville, Wisconsin can participate in fully-insured medical and prescription drug programs administered by Network Health. The Debtors pay Network Health approximately \$2 million annually for its services. Employees based in and out of the Debtors’ facility in Lancaster, Pennsylvania can participate in fully-insured medical and prescription drug programs administered by Health America. The Debtors pay Health America approximately \$842,000 annually for its services.

25. The remainder of the Debtors’ Employees participate in self-funded medical and prescription drug programs administered by United Medical Resources (“UMR”), and the Debtors pay UMR approximately \$360,000 annually for its services. The Debtors purchase a stop-loss insurance policy (the “Stop-Loss Policy”) from SunLife of Canada (“SunLife”) for use in conjunction with the self-funded plans. The Stop-Loss Policy provides reimbursement to the Debtors for any members’ claims that exceed \$175,000 in a plan year. The Debtors pay UMR approximately \$1.2 million annually for SunLife’s services and payment, which remits to SunLife.

26. The Debtors also offer Employees a coordinated health care program, which is administered by Coordinated Health/Care. Coordinated Health/Care helps Employees navigate the Health Care Programs offered by the Debtors, including, but not limited to, answering insurance claim inquiries and referring Employees to in-network medical professionals. In addition, Coordinated Health/Care provides assessments of the Debtors' high cost claims by demographic and manages the Debtors' claims reporting. The Debtors pay Coordinated Health/Care approximately \$458,000 per year to administer the program. The Debtors believe that no amounts are presently owed to Coordinated Health/Care. The Debtors seek authority, in their sole discretion, to continue the coordinated health care program and to continue making payments to maintain the program in the ordinary course of business, including amounts related to prepetition periods.

27. The Debtors' dental programs are administered by Delta Dental, and participating Employees are responsible for making a contribution for such benefits each pay period. There are approximately \$68,000 in premiums paid each month, funded entirely by employee contributions.

28. Employees participating in the various Health Care Programs are responsible for making a contribution for their benefits each pay period; the amount of the Employee contribution depends on the number of persons the Employee chooses to insure, the annual health assessment score¹⁰ of the Employee and spouse (if applicable), as well as whether the

¹⁰ Participation in the health assessment reduces the premiums Employees pay for their medical insurance. The Debtors pay Concert Health approximately \$100,000 per year to administer the health assessments. The Debtors are current on their payment of administrative fees to Concert Health and will receive a future invoice of approximately \$1,000 for services performed in January 2013. The Debtors seek authority, in their sole discretion, to continue the health assessment program and to continue making payments to Concert Health to administer the health assessments.

Employee has selected the high deductible plan (HDHP),¹¹ health reimbursement account (HRA),¹² Network Health Plan or Health America Plan. These amounts range from approximately \$30 to \$335 per pay period for medical and prescription coverage and from \$15 to \$50 per pay period for dental coverage.

29. The Employees are also able to obtain vision coverage through Ameritas, and participating Employees are responsible for making a contribution for such benefits each pay period. These contributions range from approximately \$1.75 to \$11 per pay period for vision coverage. The Debtors pay Ameritas approximately \$12,000 per month to administer the vision plan, which is fully funded by Employee contributions. The Debtors believe that they are current on administrative fees owed to Ameritas through the Petition Date.

30. Historically, the Debtors have paid claims of approximately \$191,400 per week in the aggregate. In 2012, the Debtors' total claims pay-out under the Health Care Programs was approximately \$9.9 million in the aggregate.

31. The Debtors believe that they are current on payments due to Network Health, Health America, UMR, SunLife, Coordinated Health/Care, Concert Health, US Bank, Delta Dental and Ameritas for administrative fees earned through the Petition Date.

¹¹ Employees who participate in the HDHP plan may contribute a portion of their compensation into a Health Savings Account ("HSA"). US Bank administers the Debtors' HSA program, and the Debtors currently owe US Bank approximately \$100 for monthly premiums and administrative fees associated with the HSA Program. Participating Employees may make before-tax contributions to the HSA Program through payroll deductions to cover reimbursements made under the program up to the maximum amount permitted by the IRS. The Debtors do not contribute any amounts on behalf of the Employees to the HSA Program. The Debtors seek authority, in their sole discretion, to continue the HSA Program and to continue making payments to US Bank to maintain the HSA Program.

¹² The Debtors contribute \$250 for single coverage and \$500 for all other levels of coverage, as applicable, into each Employee's HRA on an annual basis. Any unused balance carries forward year-to-year as long as the Employee is enrolled in the HRA plan. US Bank administers the Debtors' HRA program for a monthly fee of approximately \$3,000. The Debtors currently owe US Bank approximately \$3,000 for monthly premiums and administrative fees associated with the HRA program. The Debtors seek authority, in their sole discretion, to continue the HRA program and to continue making payments to US Bank to maintain the HRA program.

32. By this Motion, the Debtors seek authority, in their sole discretion, to (a) continue to provide the Health Care Programs for their Employees in the ordinary course of business, (b) continue to honor obligations under such benefit programs, including any administrative fees owed and payment and reimbursement of claims, and (c) pay all such amounts owed under the Health Care Programs to the extent that any may be owed related to prepetition periods.

ii. Life and Accidental Death & Dismemberment Insurance

33. The Debtors offer basic term life and accidental death and dismemberment insurance (the “Life and AD&D Policies”) to the Employees through SunLife. The amount of the benefit under the Life and AD&D Policies is equal to an Employee’s base earnings, up to \$200,000. The Life and AD&D Policies are provided at no cost to the Employees. The Debtors pay aggregate premiums to SunLife of approximately \$26,600 per month for the Life and AD&D Policies. The Debtors believe that they are current on their premium payments with SunLife for the Life and AD&D Policies.

34. The Debtors hereby seek authority, in their sole discretion, to maintain the Life and AD&D Policies, including paying any amounts owed SunLife in the ordinary course of their business, regardless of when the related costs accrued.

iii. Short-Term and Long-Term Disability

35. The Debtors provide Employees with short-term and long-term disability benefits in the event they are unable to work due to a disabling condition caused by a non-work-related illness or injury (together, the “Disability Benefits”). Employees eligible for short-term Disability Benefits receive 66.6% of their base salary, up to \$1,925 per week, for up to 26 weeks of disability. Employees eligible for long-term Disability Benefits receive 60% of their base

salary, up to a \$6,000 monthly maximum benefit. Senior executives receive 100% of their base salary for up to 26 weeks.

36. The Debtors fund the Disability Benefits directly to the Employees, and the Debtors pay UNUM a monthly fee of approximately \$3,200 per month for administrative services in connection with short-term Disability Benefits and an additional \$202,000 annually for disability insurance in connection with long-term Disability Benefits. The Debtors pay approximately \$320,000 annually for the Disability Benefits. The Debtors believe that no payments are currently owed to UNUM. As of the Petition Date, there are approximately \$9,000 in accrued and unpaid Disability Benefits that the Debtors are responsible for directly funding to the Employees.

37. The Debtors request authority, in their sole discretion, to continue the Disability Benefits in the ordinary course and continue to fund the related obligations, without regard to the date that such obligations accrued.

iv. Retirement Savings

38. The Debtors established a savings plan (the "Savings Plan"), administered by J.P. Morgan, that meets the requirements of Section 401(k) of the Internal Revenue Code of 1986.¹³ Employees may elect to make before-tax or after-tax contributions to the Savings Plan through Payroll Deductions that are then paid into the Saving Plan. Contributions from participating Employees are withheld from gross pay during each bi-weekly payroll cycle and the Debtors transfer those contributions into the Savings Plan as directed by the Employees. SSI

¹³ In addition to the Savings Plan, the Debtors also have three share-based employee compensation plans (the "Stock Incentive Plans"). The purpose of the Stock Incentive Plans is to provide directors, officers, key Employees and consultants with additional incentives by increasing their ownership interests in the Debtors. Only one of the Stock Incentive Plans has not expired and may have stock grants outstanding.

makes a discretionary match depending on company performance, but since 2008, has not historically made any contributions to the Savings Plan on behalf of Employees. The Debtors do not pay J.P. Morgan for administering the Savings Plan; instead, J.P. Morgan's administration fees are funded by revenue derived under the Savings Plan. Employee 401(k) payments are also withheld from the Employee's gross pay and transferred to the Savings Plan.

39. The Debtors seek authority, in their sole discretion, to continue the Savings Plan.

v. Severance

40. The Debtors provide severance ("Severance") to Employees who have been terminated in the ordinary course of business or for reasons not related to performance. To assist a terminated Employee's transition to unemployment, the Debtors provide severance commensurate with the Employee's tenure.

41. Employees whose employment is involuntarily terminated by the Debtors for any reason other than for a reason related to performance or for cause are entitled to Severance equal to his or her gross weekly base wages, before any withholdings or deductions, in two-week increments for every year of his or her employment, up to sixteen (16) weeks. Certain of the Debtors' senior management are entitled to Severance ranging from six (6) months to one (1) year, depending on the terms of their employment agreements.

42. Health benefits are not generally provided to Employees who are terminated. However, eligible Employees may continue to participate in the Debtors' medical, dental and vision benefits provided that he or she pays the entire cost of coverage (plus up to a two (2) percent administration fee, as allowed by state law) under the federal law known as the Consolidated Omnibus Reconciliation Act ("COBRA"). COBRA services are currently

provided by Benefit Advantage. The Debtors currently owe Benefit Advantage approximately \$800 for monthly premiums and administrative fees associated with COBRA Administration.

43. Severance payments are paid in installments, less withholdings as required by law, based on the current pay schedule of the eligible Employee at the time of separation, beginning generally within 14 days following the latest of (a) the date of termination; (b) the last day of the first pay period immediately following the pay period in which the eligible Employee returns a fully and properly executed release or separation agreement; or (c) if the eligible Employee has a right to revoke his or her execution of the release or separation agreement, the latest date as of which he or she may do so.

44. The Debtors seek authority to continue to perform their obligations in connection with the Severance of Employees terminated after the Petition Date in the ordinary course of their business, inclusive of Unpaid Compensation and any other applicable benefits.

vi. Flexible Spending

45. The Debtors offer their Employees the ability to contribute a portion of their compensation into flexible spending accounts for health and dependent care (the “Flexible Spending Program”). Participating Employees can make before-tax contributions to the Flexible Spending Program through Payroll Deductions to cover reimbursements made under the program up to \$2,500 for health care and \$5,000 for dependent care. The Debtors do not contribute any amounts on behalf of the Employees to the Flexible Spending Program. The Flexible Spending Program is administered by US Bank, and the Debtors pay US Bank approximately \$1,000 per month to administer the Flexible Spending Program. As of the Petition Date, the Debtors owe US Bank approximately \$1,000.

46. The Debtors seek authority, in their sole discretion, to continue the Flexible Spending Program and to continue making any payments related to the administration of the Flexible Spending Program, including any amounts related to prepetition periods.

vii. Employee Assistance Program

47. The Debtors offer an Employee assistance program (the “Employee Assistance Program”), to assist Employees during times of personal hardship. The Employee Assistance Program is managed by Ceridian, and the Debtors pay approximately \$60,000 annually to provide the Employee Assistance Program. As of the Petition Date, the fee for the first quarter of 2013, in the approximate amount of \$11,450, has not been paid. The Debtors seek authority, in their sole discretion, to continue the Employee Assistance Program, and to continue making any payments related to the administration of the Employee Assistance Program, including any amounts related to prepetition periods.

viii. Service Awards Program

48. The Debtors have implemented a small service awards program to honor and recognize the dedication and hard work of their Employees. Under the service awards program, each Employee is eligible for a service award after completing five (5) years of service and every five (5) years thereafter. The Debtors spend approximately \$35,000 annually for awards distributed to the Employees under the service awards program. As of the Petition Date, the approximate amount of \$7,000 due for the month of January 2013 has not been paid. The Debtors seek authority, in their sole discretion, to continue and honor all benefits to the Employees related to the Debtors’ service awards program in accordance with their prepetition practices, including honoring any amounts related to prepetition periods.

49. In addition to their service award program, the Debtors have an annual recognition program (the “PRIDE Award”). This is the highest associate recognition award presented by SSI and rewards exemplary service in the prior year. The annual cost of this program is approximately \$7,000, and recipients are selected in March of each year. The Debtors seek authority, in their sole discretion, to continue and honor all benefits to the Employees related to the Debtors’ PRIDE Award program in accordance with their prepetition practices, including honoring any amounts related to prepetition periods.

ix. Voluntary Insurance

50. Eligible Employees may voluntarily purchase additional insurance for home, automobile, supplemental life, dependent life and long-term care insurance through carriers such as SunLife, UNUM and MetLife (the “Voluntary Programs”). Employees pay 100% of the cost for all Voluntary Programs.

51. The Debtors do not believe that any amounts are owed by the Debtors as of the Petition Date in connection with the Voluntary Programs. However, out of an abundance of caution, by this Motion, the Debtors seek authority to continue providing the Voluntary Programs for their Employees in the ordinary course of business and honoring any obligations under such benefits programs, such as any administrative fees, including any amounts related to prepetition periods.

x. Relocation Expenses

52. The Debtors provide certain of their Employees with reimbursement for relocation expenses. The Debtors believe that honoring their commitments under these programs is appropriate to maintain Employee morale and to preserve normal business operations. As of the Petition Date, the Debtors do not believe that any amounts are outstanding in connection with

reimbursable relocation expenses. However, out of an abundance of caution, by this Motion, the Debtors request authority to make payments for reimbursable relocation expenses, including any amounts related to prepetition periods.

xi. Other Employee Benefits

53. The Debtors also offer certain other reimbursable benefits to the Employees. Under the Debtors' tuition reimbursement policy, for example, the Debtors will reimburse up to \$5,000 annually per Employee for qualified education programs. The Debtors pre-approve the education programs and Employees reimbursed after successful completion of the education program. The Debtors' annual expense under the tuition reimbursement policy is approximately \$120,000. The Debtors also offer Employees an adoption assistance program, which covers reimbursement for specific adoption-related expenses up to a maximum amount of \$5,000 per adoption. One adoption is currently pending. The Debtors also offer gift matching program, pursuant to which the Debtors will match each Employees' donations up to \$1,000 annually for donations that support educational needs of children. The Debtors' annual expense under the gift matching program is approximately \$4,000. The Debtors seek authority, in their sole discretion, to continue and honor all benefits to the Employees related to the Debtors' reimbursable benefit programs in accordance with their prepetition practices, including honoring any amounts related to prepetition periods.

D. Employee Payroll Garnishments/Other Payroll Deductions

54. The Debtors are required to deduct from Employee paychecks certain taxes, such as payroll and social security taxes, required to be withheld by certain federal, state, and local taxing authorities. The Debtors also may be presented with garnishment or child support orders requiring the withholding of Employee wages to satisfy such obligations of those

Employees. Additionally, as noted above, certain Employees have voluntary deductions for items such as contributions to the Health Care Program, Flexible Spending Program, and Savings Plan. These amounts are referred to herein as “Payroll Deductions.” Payments of these obligations are taken from gross payroll funded to ADP and are not an incremental cost obligation of the Debtors’ estates. In certain instances, payments of these obligations are required by law. The Debtors seek authority to continue Payroll Deductions and to cause such amounts to be paid to third parties as requested or required by law.

E. Reimbursable Business Expenses

55. As is customary with most large businesses, the Debtors reimburse their Employees who incur and pay a variety of approved business-related expenses in the ordinary course of performing their duties (“Employee Expense Obligations”). On an annual basis, the Debtors reimburse approximately \$4.3 million of Employee Expense Obligations, which include, among other things, travel, mileage, car rentals, lodging, meals, and entertainment. Most Employees initially incur and pay such expenses by using personal funds or credit cards, but are subsequently reimbursed by the Debtors after submission and approval of expense reimbursement requests. Employees are required to submit requests for reimbursement of Employee Expense Obligations through the expense reimbursement system within four weeks after the Employee Expense Obligation is incurred. After approval by the appropriate manager, the Employees are reimbursed by check or direct deposit.

56. The Debtors utilize three corporate cards (the “Corporate Credit Cards”), one issued by Bank of America and two issued by American Express. The Debtors also utilize approximately 25 purchasing cards (the “Purchasing Cards,” together with the Corporate Credit Cards, the “Corporate Cards”) issued by American Express. Employees can use the Corporate

Cards in the ordinary course of business to pay for certain business and administrative expenses, ranging from trade show reservations to office supplies. Bank of America and American Express provide monthly invoices to the Debtors, which are submitted to the Debtors' accounting department with the appropriate billing codes and paid in the ordinary course of business.

57. Other than the Corporate Cards, the Debtors believe that they are current on Employee Expense Obligations to be reimbursed to Employees that are outstanding as of the Petition Date. As of the Petition Date, the Debtors believe that approximately \$40,200 is presently due to American Express on account of the Corporate Cards. In addition, the Debtors believe that approximately \$60,000 is currently outstanding but not yet due on account of the Corporate Credit Cards.

58. It would be inequitable to require Employees to personally bear any approved business-related expenses they incurred in furtherance of their responsibilities to the Debtors. Accordingly, the Debtors request authority, in their discretion and in the exercise of their business judgment, to continue to honor all of their Employee Expense Obligations and all Corporate Cards in the ordinary course of business, regardless of when such obligations arose.

F. Other Employee-Related Service Providers

59. To support their businesses, the Debtors have also engaged a variety of employee-related third-party service providers (the "Service Providers"). The Service Providers perform a wide range of services in connection with the Debtors' workforce and Human Resources department, including but not limited to, hiring-related services such as providing software for recruiting and applicant tracking, posting open positions, performing background checks and engagement surveys; developing affirmative action plans; managing unemployment

claims; maintaining Employee records; providing temporary staffing; and performing job assessments. Historically, the Debtors have paid these various service providers approximately \$193,550 annually. The Debtors do not believe that any amounts are owed by the Debtors as of the Petition Date in connection with the Service Providers. The Debtors seek authorization, but not direction, to continue to honor all obligations to the Service Providers in the ordinary course of business.

RELIEF REQUESTED

60. To minimize the personal hardship the Employees will suffer in connection with the filing of the Chapter 11 Cases, by this Motion, the Debtors request entry of an order: (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in the ordinary course of business, to: (a) pay and honor all Employee Obligations as described in this Motion and all costs incident thereto in the ordinary course of business, (b) pay and honor all amounts owed to Independent Contractors as described in this Motion in the ordinary course of business, (c) honor Workers' Compensation Obligations, (d) make all contributions to prepetition Employee Programs and continue such Employee Programs postpetition, (e) make all payments for which prepetition Payroll Deductions were made, and (f) reimburse all prepetition Employee Expense Obligations; (ii) authorizing, but not directing, the Debtors to continue payment of Employee Obligations and Employee Programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described herein; and (iii) authorizing and directing Disbursement Banks (as defined below) to honor and pay all checks and transfers drawn on the Debtors' bank accounts to make the foregoing payments, regardless of whether such payment was issued prior to or following the Petition Date.

BASIS FOR RELIEF REQUESTED

61. The Debtors request authority to pay prepetition Unpaid Compensation and to honor their Employee Obligations in the ordinary course of their business during the pendency of these Chapter 11 Cases. Preserving and maximizing the value of the Debtors' estates depends upon a stable workforce. Thus, the Debtors submit that any significant number of Employee departures or deterioration in morale at this time will substantially and adversely impact the Debtors' efforts in chapter 11, causing immediate and irreparable harm to the Debtors' estates and their creditors. There is a real, immediate risk that if the Debtors are not authorized to continue to satisfy Employee Obligations in the ordinary course, Employees would no longer support and maintain the operations of the Debtors, thereby crippling the Debtors' ability to successfully maximize the value of their assets during these Chapter 11 Cases. Consequently, the Debtors must be authorized to continue, in the ordinary course, the Employee Programs that were in effect prior to the Petition Date, for all of their Employees.

A. The Relief Requested May Be Granted Pursuant to Sections 105 and 363(b) of the Bankruptcy Code.

62. Sections 105(a) and 363(b) of the Bankruptcy Code authorize the requested relief. Pursuant to section 105(a) of the Bankruptcy Code, the Court may "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). This permits a bankruptcy court to take whatever action "is appropriate or necessary in aid of the exercise of its jurisdiction." 2 COLLIER ON BANKRUPTCY, ¶ 105.01, at 105-5 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Similarly, section 363(b)(1) of the Bankruptcy Code authorizes a debtor to use property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1).

63. Relying upon these provisions, courts have long recognized the “necessity of payment” doctrine, which permits a debtor to honor certain prepetition obligations when payment thereof is essential to the debtor’s chapter 11 efforts and will preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport, C. & S.W. Ry. Co., 106 U.S. 286, 311 (1882) (articulating a legal theory later termed the “doctrine of necessity” or the “necessity of payment doctrine” and holding that payment of pre-receivership claims prior to reorganization were permitted to prevent stoppage of crucial business relations); In re Boston and Maine Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); Southern Ry. Co. v. Flournoy, 301 F.2d 847, 852 (4th Cir. 1962) (“The principle of necessity of payment [espoused in Miltenberger] has since been carried into different factual surroundings as the basis for granting superiority to business-operating accounts.”); Michigan Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 289 (S.D.N.Y. 1987) (affirming a bankruptcy court authorizing the debtor to pay prepetition wages, salaries and various employee benefits); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business); In re Just For Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (granting approval to pay prepetition claims of certain trade vendors which were critical to the debtors’ reorganization).

64. Debtors frequently invoke the necessity of payment doctrine early in a case when preservation of the estate proves most critical. For that reason, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims

under section 105(a) if “authorizing the payment of the prepetition debt creates ‘the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” In re Structurelite Plastics Corp., 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988); see also In re Eagle-Picher Industries, Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that “to justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the [c]hapter 11 process”); In re Ionosphere Clubs, Inc., 98 B.R. at 176 (“necessity of payment” rule “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor”).

65. The Debtors submit that paying Unpaid Compensation and honoring the Employee Obligations is necessary and appropriate under the circumstances. Any delay in paying any of their Employees could severely disrupt the Debtors’ relationship with their Employees and irreparably harm their morale at the very time that Employee dedication, confidence, support and cooperation are most critical. If the Debtors do not obtain immediate authority to pay their Employee Obligations and Unpaid Compensation, the Debtors’ operations may be severely impaired. At this critical stage, the Debtors cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale attributable to the Debtors’ failure, or worse, inability to pay, the Unpaid Compensation and Employee Obligations.

66. Moreover absent payment of the Unpaid Compensation and the ability to honor the Debtors’ Employee Obligations, Employees would suffer hardship and, in many instances, financial duress. The Debtors’ workforce depends on its employment income to meet personal

financial obligations. The Employees should not be forced to bear the costs of the Chapter 11 Cases.

67. With respect to the Employee Obligations other than Unpaid Compensation, the Debtors submit that it is also necessary and appropriate under the circumstances to permit the Debtors to continue to honor such obligations during the pendency of the Chapter 11 Cases. The Employee Programs are customary benefits that the Debtors have provided to the Employees that are consistent with benefits provided by other employers throughout the country. In many instances, the Employees are dependent on the Employee Programs, which include, among other things, health and dental coverage, and it would cause a significant hardship for the Employees if the Debtors ceased to provide the Employee Programs. Indeed, failure to continue the Employee Programs would likely result in Employees departing the Debtors' employ in favor of employers who can provide the Employees with such benefits. Such departures would imperil the Debtors' efforts in the Chapter 11 Cases to preserve their business and to maximize the value of their estates.

68. In light of such factors, courts have routinely authorized debtors to pay prepetition wage and employee claims pursuant to sections 105(a) and 363 of the Bankruptcy Code where such payment was necessary to ensure the debtor's continued, uninterrupted operation. See, e.g., In re THQ Inc., Case No. 12-13398 (MFW) (Bankr. D. Del. Dec. 20, 2012) (authorizing debtors to pay prepetition wages, salaries and other compensation); In re A123 Systems, Inc., Case No. 12-12859 (KJC) (Bankr. D. Del. Oct. 18, 2012) (same); In re Bicent Holdings LLC, Case No. 12-11304 (KG) (Bankr. D. Del. April 24, 2012) (same); In re Buffets Holdings, Inc., Case No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) (same); Perkins & Marie Callender's Inc., Case No. 11-11795 (KG) (Bankr. D. Del. June 14, 2011) (same); In re Allen Family Foods, Inc., Case

No. 11-11764 (KJC) (Bankr. D. Del. June 10, 2011) (same); In re Jackson Hewitt Tax Service, Inc., Case No. 11-11587 (MFW) (Bankr. D. Del. June 8, 2011) (same); In re Harry & David Holdings, Inc., Case No. 11-10884 (MFW) (Bankr. D. Del. March 29, 2011) (same); In re Summit Business Media Holding Co., Case No. 11-10231 (PJW) (Bankr. D. Del. Jan. 28, 2011) (same); In re Atrium Corp., Case No. 10-10150 (BLS) (Bankr. D. Del. Feb 23, 2010) (same).

The Debtors submit that the circumstances of these Chapter 11 Cases warrant granting similar relief, and that doing so is in the best interests of the Debtors, their estates and creditors.

B. Most, if Not All, of Unpaid Compensation Is Entitled to Priority Status.

69. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$11,725 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for –

- (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services, for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor . . .

11 U.S.C. § 507(a)(4).

70. The Debtors believe that most – if not all – of the Unpaid Compensation they seek to pay is entitled to priority status under sections 507(a)(4) of the Bankruptcy Code. The Debtors would therefore be required to pay these priority claims in full to confirm any plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured

claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan).

C. Applicable Non-Bankruptcy Law Mandates that the Debtors Maintain Certain of their Employee Programs.

71. Maintaining the Employee Programs and paying amounts thereunder is, in many instances, required under applicable non-bankruptcy law. For example, applicable state law mandates that the Debtors maintain a workers' compensation policy. Similarly, failure to pay payroll taxes could result in tax liabilities and penalties for both the Employees and the Debtors, and potentially the Debtors' directors and officers as well. Likewise, the failure to transmit garnishments and other similar deductions can cause hardship to certain Employees and could result in liabilities for the Debtors in instances where applicable law mandates employer deductions. Thus, if the Debtors were prohibited from transmitting such deductions, the Debtors would expect inquiries from garnishors regarding the Debtors' failure to submit, among other things, child support and alimony payments that are not the Debtors' property, but, rather, have been withheld from Employees' paychecks on such parties' behalf. And, if the Debtors could not continue to remit such amounts, the Employees could face legal action.

72. Accordingly, as authorized by sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority to pay the Employee Obligations that become due and owing during the pendency of these Chapter 11 Cases and to continue their Employee Programs with respect to their Employees as such practices, programs and policies were in effect as of the Petition Date. The Debtors submit that the relief requested herein is essential to their ability to maximize value for their creditors.

73. Notably, however, the Debtors do not seek to alter their compensation or benefit policies at this time. This Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with their prepetition policies to the extent that, without the benefit of an order approving this Motion, such payments would be inconsistent with the Bankruptcy Code.

**APPLICABLE BANKS SHOULD BE AUTHORIZED TO HONOR
AND PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS
TO PAY THE PREPETITION EMPLOYEE OBLIGATIONS**

74. The Debtors further request that the Court authorize applicable banks and other financial institutions (collectively, the “Disbursement Banks”) to honor and pay all prepetition and postpetition checks issued or to be issued, and fund transfers requested or to be requested, by the Debtors on account of the Employee Obligations regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date. The Debtors also seek authority to issue new postpetition checks, or effect new fund transfers, on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

75. As a result of the commencement of the Chapter 11 Cases, and in the absence of an order of the Court providing otherwise, the Debtors’ checks or other transfers on account of the Employee Obligations may be dishonored or rejected by the Disbursement Banks. The Debtors believe that each of these checks or transfers can be identified as relating directly to payment of the Employee Obligations and properly honored.

**SATISFACTION OF BANKRUPTCY RULE 6003
AND WAIVER OF BANKRUPTCY RULE 6004**

76. The Debtors seek immediate authorization for the relief requested in this Motion. Pursuant to Bankruptcy Rule 6003(b), the Court cannot grant “a motion to use, sell, lease or

otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within twenty-one (21) days of the filing of the petition unless the relief is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). For the reasons set forth above, the Debtors submit that the requirements of Bankruptcy Rule 6003(b) are met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as well as to the Employees themselves. The vast majority of the Employees rely exclusively on their full compensation, benefits, and reimbursement of their expenses to continue to pay their daily living expenses, and these Employees would be exposed to significant financial difficulties if the Debtors are not permitted to pay the Unpaid Compensation and Employee Obligations. The Debtors believe that if they are unable to immediately honor all Employee Obligations, Employee morale and loyalty would be jeopardized at a time when such support is critical. Therefore, the Debtors submit that, for the reasons set forth in this Motion, cause exists for the Court to grant the relief requested herein immediately, as permitted by Bankruptcy Rule 6003.

77. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

78. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors' ABL Agreement; (iii) counsel to the agent under the Debtors' Term Loan Agreement; (iv) the indenture trustee for the Debtors' convertible debentures; (iii) counsel for the *ad hoc* group of convertible debenture holders; (iv) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; (v) the Debtors' Disbursement Banks; and (v) the Internal Revenue Service. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request the entry of the Proposed Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: January 28, 2013
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

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*Proposed Counsel to the Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Order

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No 13-10125 ()

Joint Administration Requested

Re: Docket No. ____

**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**

Upon consideration of the motion (the "Motion")² of the Debtors, seeking entry of an order: (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in the ordinary course of business, to: (a) pay all prepetition employee wages, salaries, and certain other payments owed to Employees, including holiday pay and other paid time off obligations, (b) pay all prepetition compensation owed to Independent Contractors, (c) honor workers' compensation obligations, (d) make all contributions to prepetition benefit programs and continue such programs, (e) make all payments for which prepetition payroll withholding deductions (including, but not limited to, payroll taxes) were made, and (f) reimburse all prepetition employee business expenses; (ii) authorizing, but not directing, the Debtors to

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

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

continue payment of wages, compensation, and employee benefit programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described more fully below; and (iii) authorizing and directing applicable banks and other financial institutions to honor and pay all checks and transfers drawn on the Debtors' bank accounts to make the foregoing payments, all as described more fully in the Motion; 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; and it appearing that no other or further notice of the Motion need be provided; 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 after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED to the extent provided herein.
2. Except as otherwise set forth herein, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of the Employee Obligations.

3. The Debtors are authorized, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of the Independent Contractors.

4. The Debtors are authorized, but not obligated or directed, to continue and maintain the Employee Programs during the Chapter 11 Cases, in their sole discretion.

5. The Debtors are authorized, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor the Employee Obligations and Employee Programs, including any associated costs and fees.

6. All applicable Disbursement Banks are authorized, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks, drafts or electronic funds transfer requests drawn on the Debtors' accounts to the Employees whether issued or presented prior to or after the Petition Date.

7. 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, any amounts that may be due to any taxing authority.

8. 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.

9. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Order is necessary to avoid immediate and irreparable harm.

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

Dated: _____, 2013
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Supplemental Order

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,
Debtors.¹

Chapter 11

Case No 13-10125 (___)

Joint Administration Requested

Re: Docket Nos. ____

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

Upon consideration of the motion (the "Motion")² of 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; and it appearing that no other or further notice of the Motion need be

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

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 Fund Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No.] (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:

13. The Motion is GRANTED to the extent provided herein.

14. The Debtors are authorized, but not directed, to make Severance payments to non-insiders and to honor all obligations under the Debtors’ PTO policy, including making cash payments to Employees upon their termination with respect to unused PTO.

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

16. 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 postpetition, to make the payments.

17. 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.

18. 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 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.

19. 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.

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

Dated: _____, 2013
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE