

**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 AUTHORIZING THE
DEBTORS TO HONOR CERTAIN PREPETITION CUSTOMER
OBLIGATIONS AND TO CONTINUE PREPETITION CUSTOMER
PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS**

School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), hereby move this Court for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a), 363, 1107(a) and 1108 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”), authorizing the Debtors to honor certain prepetition obligations to customers and certain third parties and to continue their prepetition customer programs and practices in the ordinary course of business. In support of this motion (the “Motion”), the Debtors rely upon 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:

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 The First Day Declaration is being filed substantially contemporaneous with this Motion and is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.



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 Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code.

BACKGROUND

3. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition 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.

RELIEF REQUESTED

6. By this Motion, the Debtors request entry of an order granting them the authority to:

(a) honor their prepetition obligations related to their existing customer programs; (b) continue, renew, replace, modify and/or terminate any of the customer programs in the ordinary course of

business without the need for a further court order; and (c) perform and pay obligations, including obligations arising from third-party arrangements, related thereto.³

THE DEBTORS' CUSTOMER PROGRAMS

7. In the ordinary course of their business, the Debtors engage in certain practices (each a "Customer Program" and collectively, as described below, the "Customer Programs") to develop and sustain a positive reputation with their customers and in the marketplace for their products and to secure access to customers who purchase the Debtors' products using various third party arranged contracts and agreements. The Debtors' Customer Programs are typical in their industry and have been a part of the Debtors' normal business operations for many years. While there is substantial variation among the specific Customer Programs that may be offered, in general, they are designed to address competitive pressures, encourage sales, ensure customer satisfaction, and generate goodwill for the Debtors. As such, the Debtors believe that the Customer Programs play an important role in enabling the Debtors to retain existing customers, to attract new customers, and ultimately, to enhance the Debtors' overall profitability. An overview of the primary Customer Programs the Debtors maintain is provided below.⁴

³ Notwithstanding anything to the contrary in this Motion or order, nothing herein constitutes, or shall be deemed to constitute, a request to assume or adopt any executory contract under any customer program. The Debtors expressly reserve all rights with respect to the continuation or termination of any contract with any customer, and expressly reserve the right to contest, in the ordinary course of business, any amounts claimed to be due, if any, by any customer.

⁴ The description of Customer Programs contained in this Motion is intended to be a summary of the key Customer Programs presently in effect. As detailed below, terms of specific Customer Programs often vary by customer and are left to the discretion of sales force members or other employees of the Debtors with responsibility for working with customers or developing and promoting new products. To the extent of any inconsistency between the descriptions contained herein and any written documentation regarding such programs, the terms of the written documentation shall control.

A. Bid Process Discounts and Purchasing Cooperative Fees

8. To ensure that schools and school districts obtain the most favorable possible rates when purchasing high volume, frequently used products, applicable state and local law frequently requires that schools and school districts utilize a competitive bid process. Through this process, suppliers such as the Debtors submit bids that detail the prices at which they are prepared to sell a specific grouping of commonly-utilized products to the schools or school districts (this grouping of commonly-used products is known as a “basket”); as is common in the industry, these bids customarily include material pricing discounts or other forms of price concession. Bids, including the discount pricing offered on the baskets, are generally submitted by members of the Debtors’ bid departments, who follow pre-set guidelines regarding the size and value of the pricing discounts they can offer. Schools can then generally satisfy their state and local bid process requirements by accepting a bid and purchasing supplies and furniture through one of these pre-arranged baskets.⁵

9. This process can be administered on a centralized basis by regional and national purchasing cooperatives (collectively, the “Purchasing Cooperatives”), such as The Cooperative Purchasing Network, the Association for Educational Purchasing Agencies, and the National Joint Powers Alliance. While any sale premised upon a negotiated basket is a direct arrangement between the vendor and the school or school district in question, suppliers typically compensate the Purchasing Cooperatives for facilitating this process by paying them a percentage of the sales garnered through the Purchasing Cooperatives’ work as a form of agency fee. On an annual basis, the Debtors pay approximately \$2.2 million in such fees to the Purchasing Cooperatives and, as of

⁵ The pre-arranged basket items are offered at a reduced ‘fixed’ price and the bids will often contain a specified percentage discount from published prices for all other items offered by the Debtors. The Debtors believe that the basket is a required component of the sale that incentivizes customers to purchase additional items.

the Petition Date, the Debtors believe that approximately \$600,000 was due and owing to the Purchasing Cooperatives in respect of open or completed sales.

10. The Debtors generate a significant portion of their overall sales by engaging in such competitive bid processes, which may also be administered at a state, local, and/or school district level. Moreover, the Debtors' ability to obtain large-scale purchase orders from schools that are subject to these bidding requirements depends on their ability to participate in these bid processes, including working with the Purchasing Cooperatives who administer them. Absent the Purchasing Cooperatives' roles as intermediaries, the Debtors would not constitute an eligible seller from whom these schools could purchase their necessary supplies and furniture, and the Debtors would thus instantly lose a sizable segment of their customer base.

11. As such, it is critical that the Debtors be authorized to continue, in the ordinary course of business, their existing bid processes, including honoring any discounts already offered or accepted to customers and honoring the arrangements with the Purchasing Cooperatives, including paying over to the Purchasing Cooperatives the fees they have earned on a quarterly basis. The payment of such fees is an ordinary and customary part of their industry practice. By this Motion, the Debtors therefore request the authority, but not the direction, to honor all of their bid process obligations, including honoring discounts or other price incentives and paying fees to the Purchasing Cooperatives, whether the Debtors' obligations under these arrangements arose before or after the Petition Date. The Debtors further request the authority to continue to enter into and honor such arrangements during the Chapter 11 Cases in the ordinary course of business.

B. Product Promotions and Other Pricing Incentives

12. In the ordinary course of business, and as is customary in their industry, the Debtors offer their customers a variety of discounts, rebates and other pricing incentives. This includes

incentives offered as part of promotional efforts, as well as incentives offered to specific customers, or group of customers, in connection with a particular sale.

13. The Debtors' standard pricing practice includes an educator price ("Educator Price") under which customers are automatically entitled to a 25% discount off the Debtors' list price ("List Price") of the products they buy. The Debtors' printed catalogs often reflect both the List Price and Educator Price to demonstrate the discounting available to the customer, while the Debtors' primary e-commerce website reflects only the Educator Price. Depending on the needs of the customer and the type of product, the Debtors may offer additional discounts from either the List Price or from the Educator Price.

14. Promotional discounts and offers typically have strategic goals, such as promoting certain products or increasing sales in particular markets or at certain times of the year. Thus, they are typically developed and implemented by the Debtors' marketing department in consultation with business leaders or other key individuals at the company. For example, the Debtors typically offer "Back to School" incentive programs in advance of the start of a school year. These programs offer limited-time discounts or other product rebates that are intended to promote sales at this critical time of year. Similarly, the Debtors may offer coupons to attendees of trade shows that are specifically targeted at educational consumers, which may be redeemed to obtain a price reduction off of any purchases of the Debtors' goods.

15. In contrast, the Debtors may also offer discounts and other pricing incentives in the course of negotiating a particular sale with a specific customer or group of customers. Such discounts and incentives are a normal part of the Debtors' sales process. The most common form of pricing incentive offered in this context is a percentage discount off the published price of the supplies or furniture being ordered. However, prices may be adjusted in many ways, depending on

the Debtors' relationship with a particular customer or the circumstances of a specific sale. Thus, members of the Debtors' sales force may offer discounts in the form of free shipping or, in certain instances, rebates that customers can earn based upon volume requirements or other factors. Rebates, when offered, typically entitle the customer to redeem the rebate for additional products, rather than a cash rebate; however, cash rebates may be offered in certain limited circumstances.

16. Individually-negotiated discounts are generally applied at the time of sale to reduce a customer's price. Rebates, on the other hand, are typically offered or paid directly to the customer on a quarterly basis. In 2012, the Debtors offered and paid approximately \$500,000 in primarily product rebates to their customers, and as of the Petition Date, the Debtors believe that customers have accrued approximately \$300,000 in earned but unredeemed or unpaid rebates. Additionally, as of the Petition Date, the Debtors estimate that they have in excess of 3,000 separate negotiated pricing discounts or other pricing modifiers in place of the type described herein.

17. These and similar incentives and promotions are a normal part of the Debtors' marketing and sales efforts and are common in the industry. They play an important role in maintaining the Debtors' competitive position in the markets in which they operate. As such, by this Motion, the Debtors request the authority, but not the direction, to honor all such promotions, discounts and other pricing incentives, whether the Debtors' obligations arose before or after the Petition Date, and to continue to offer and honor such promotions, discounts and other pricing incentives during the Chapter 11 Cases in the ordinary course of business.

C. Gift Certificates and Gift Cards

18. In the ordinary course of business, the Debtors offer various gift certificates and gift cards which may be redeemed and applied towards a future purchase of the Debtors' goods. These certificates and cards are offered for sale to customers; they also may be offered on a complementary

basis to certain customers by members of the Debtors' sales or marketing teams. Recently, for example, in response to the events at Sandy Hook Elementary School, the Debtors sent gift cards to each teacher at that school which may be used towards the purchase of any of the Debtors' products. As of the Petition Date, the Debtors believe that approximately \$507,000 in gift cards and certificates had been purchased by or provided to customers but not yet redeemed. By this Motion, the Debtors request the authority, but not the direction, to honor all outstanding gift certificates and gift cards, whether the Debtors' obligations arose before or after the Petition Date, and to continue to offer and honor such gift certificates and gift cards during the Chapter 11 Cases in the ordinary course of business.

D. Customer Convenience Programs

19. In the ordinary course of business, the Debtors offer a variety of programs as a convenience to their customers. These programs generally arise out of the Debtors' business lines in the Accelerated Learning Group to support their curriculum and other product offerings.

20. By way of example, through the Debtors' science division, the Debtors provide schools with substantially all of the materials and equipment necessary to conduct a science class. However, while schools generally purchase all of the equipment and materials they will need in advance of a school year, schools may not have the ability (or the desire) to store particular equipment or material (in particular, living materials such as live plant, animal, and insect specimen that will be utilized in experiments). Therefore, as a convenience to their customers, the Debtors typically provide customers with coupons that they can redeem when they are ready to use the living materials; only upon receipt of a coupon will the living materials be shipped. As of the Petition Date, the Debtors believe that approximately \$1.14 million in coupons for living materials and similar programs have been purchased but not yet redeemed by their customers.

21. Similarly, through the Debtors' Reading and EPS divisions, the Debtors sell certain software and other curriculum products. These products are typically sold on a subscription basis, and typically usually include free customer support or hosting services. These ancillary services (which may be contracted out by the Debtors to third party vendors) function as another service offered to customers as a convenience.

22. The Debtors believe that it is important to maintaining the goodwill and loyalty of their customer base that they be able to continue such services. Accordingly, by this Motion, the Debtors request the authority, but not the direction, to honor all such programs, whether the Debtors' obligations arose before or after the Petition Date, and to continue to offer and honor such programs during the Chapter 11 Cases in the ordinary course of business.

E. Third Party Obligations

23. Finally, in the ordinary course of business, the Debtors rely on the services of certain third parties to facilitate their sales, in particular, internet retailers such as Amazon. These third party internet retailers are in some instances the most convenient method for the Debtors' customers to make a purchase. Moreover, they enable the Debtors to reach as wide a customer base as possible. The Debtors' ability to provide this option to their customers depends on the continuation of their arrangements with these parties. These parties earn fees based on the sales they generate for the Debtors, which they then net out from the sales proceeds they remit to the Debtors. Approximately \$500,000 in such fees were earned by these providers in 2012. As such, by this Motion, the Debtors request the authority, but not the direction, to honor all such obligations, whether the Debtors' obligations arose before or after the Petition Date, and to continue to do so during the Chapter 11 Cases in the ordinary course of business. As of the Petition Date, the Debtors

believe that approximately \$12,000 in fees have been earned by these providers due in respect of such services.

BASIS FOR RELIEF

24. Section 363(c) of the Bankruptcy Code authorizes a debtor-in-possession to operate its business and to use property of the estate in the ordinary course of business without having to provide notice or obtain a court hearing. See In re Roth American, 975 F.2d 949, 952 (3rd Cir. 1992) (stating that “the framework of section 363 is designed to allow a [debtor in possession] the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary”); In re Nellson Nutraceutical, Inc., 369 B.R. 787, 796 (Bankr. D. Del. 2007) (explaining that “the discretion for a debtor in possession to act with regard to ordinary business matters without prior court approval has been said to be at the heart of the powers of a debtor in possession, and courts have shown a reluctance to interfere, in the making of routine, day-to-day business decisions”) (citations omitted).

25. The Bankruptcy Code does not provide guidance as to whether a particular transaction was conducted “in the ordinary course of business,” but courts have applied a two-step “horizontal and vertical test” that considers the reasonableness of a particular transaction from both an industry-wide perspective and from the viewpoint of a creditor. In re Blitz U.S.A., Inc., 475 B.R. 209, 214 (Bankr. D. Del. 2012). “The inquiry deemed horizontal is whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry The inquiry deemed vertical . . . analyzes the transactions from the vantage point of a hypothetical creditor and the inquiry is whether the transaction subjects a creditor to economic risk of a nature

different from those he accepted when he decided to extend credit.” In re Roth American, Inc., 975 F.2d at 953 (citations omitted).

26. The Debtors’ Customer Programs are typical in their industry, have been a part of the Debtors’ business operations for many years and are programs offered in the ordinary course of the Debtors’ business. Accordingly, continuing, renewing, replacing, initiating, and/or terminating such Customer Programs falls well within the scope of permitted activities under sections 363(c) of the Bankruptcy Code.

27. However, to the extent that payment of prepetition obligations owed pursuant to the Customer Programs would be deemed to constitute a use of property outside of the ordinary course of business, this Court may also authorize continuation of the Customer Programs under section 363(b) of the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in this and other circuits have stated that use of property outside the ordinary course of business is proper when the debtor articulates “some business justification, other than the mere appeasement of major creditors.” In re Ionosphere Clubs, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that section 363(b) gives the court “broad flexibility” in authorizing the use of funds outside the ordinary course of business but noting that the debtor must articulate some business justification, other than mere appeasement of major creditors, for doing so); see also Law Debenture Trust Co. v. Calpine Corp. (In re Calpine Corp.), 356 B.R. 585, 594 (S.D.N.Y. 2007) (explaining that the court must find a good business reason exists to allow use of property other than in the ordinary course of business).

28. As noted above, the Customer Programs are an important part of the Debtors’ business and strategy. The Debtors operate in a competitive and volatile market and their business

depends on the quality and strength of their customer relationships, as well as their ability to attract new customers. The continuation of the Customer Programs is critical to maintain such customer support and loyalty and therefore necessary for the maximization of value in the Chapter 11 Cases. The Debtors believe that any failure to honor their existing obligations under the various Customer Programs will undermine the Debtors' relationships with their customers and impair the Debtors' ongoing ability to effectively participate in a competitive marketplace. Accordingly, by this Motion, the Debtors request the authority, but not the direction, to honor all of their Customer Programs, including related third party arrangements, whether the Debtors' obligations under such programs arose before or after the Petition Date, and to continue them in the ordinary course of business during the Chapter 11 Cases.

29. Section 105(a) of the Bankruptcy Code provides an additional basis to grant the requested relief. Section 105(a) of the Bankruptcy Code allows the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code.]" 11 U.S.C. § 105(a). It 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 (16th ed. rev. 2011).

30. The well-settled "necessity of payment" doctrine also supports the requested relief. This rule authorizes postpetition payment of prepetition obligations where necessary to 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 a pre-receivership claim prior to reorganization was permitted to prevent stoppage of crucial business relations); In re Lehigh & N. E. R. Co., 657 F.2d 570 (3d Cir. 1981) (adopting the "necessity of

payment” doctrine for the Third Circuit); In re Boston and Me. 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.”); 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’ chapter 11 case); 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).

31. Debtors frequently invoke the necessity of payment doctrine early in a chapter 11 case when preservation of the estate proves most critical. Bankruptcy courts, in turn, routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims under section 105(a) of the Bankruptcy Code 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 Sharon Steel Corp., 159 B.R. 730, 737 (Bankr. W.D. Pa. 1993) (stating that to justify payment of a prepetition claim “the Debtor is required to show that the payment is necessary to avert a serious threat to the Chapter 11 process”); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (stating that the “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”).

32. Where customer loyalty and patronage proves critical to a debtor's successful chapter 11 case, courts in this district have routinely granted relief similar to that requested here. See, e.g., In re THQ, Inc., Case No. 12-13398 (MFW) (Bankr. D. Del. December 20, 2012); In re A123 Sys., Inc., Case No. 12-12859 (KJC) (Bankr. D. Del. October 18, 2012); In re Ritz Camera & Image, L.L.C., Case No. 12-11868 (KG) (Bankr. D. Del. June 25, 2012); In re Pemco World Air Servs., Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. March 6, 2012); In re Buffets Restaurants Holdings, Inc., Case No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) (authorizing the debtors to honor certain prepetition obligations to customers); In re Jackson Hewitt Tax Service, Inc., Case No. 11-11587 (MFW) (Bankr. D. Del. June 30, 2011) (same); In re 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 Harry & David Holdings Inc., Case No. 11-10884 (MFW) (Bankr. D. Del. March 29, 2011) (same).

33. Prepetition claims arising from or related to the Customer Programs meet the requirements for postpetition payment because, if they are not satisfied, the Debtors' goodwill and going concern value will be adversely impacted. See In re CoServ, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (stating that the debtor-in-possession has a fiduciary duty to protect and preserve the estate, including preservation of the operating business's going-concern value, and that there are "occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim," such as customer refund claims). The success and viability of the Debtors' business depends upon the development and maintenance of customer loyalty. The commencement of these Chapter 11 Cases may create some apprehension on the part of certain customers or potential customers regarding their willingness to continue or commence doing business with the Debtors. The Debtors

believe that the requested relief will ease these concerns, thus helping the Debtors stabilize their businesses and preserving the loyalty of their customers.

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

34. The Debtors seek immediate authorization for the relief contemplated by 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.

35. Furthermore, given the nature of the relief requested herein, the Debtors respectfully request a waiver of (i) the notice requirements under Bankruptcy Rule 6004(a) and (ii) the 14-day stay under Bankruptcy Rule 6004(h).

NOTICE

36. 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; (v) counsel for the *ad hoc* group of convertible debenture holders; and (vi) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis. Notice of this Motion and any order entered hereon will be served in accordance with 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.

NO PRIOR REQUEST

37. No prior request for the relief sought herein has been made to this or any other court.

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

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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 AUTHORIZING THE DEBTORS TO HONOR CERTAIN PREPETITION
CUSTOMER OBLIGATIONS AND TO CONTINUE PREPETITION CUSTOMER
PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), requesting entry of an order pursuant to sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, authorizing the Debtors to honor certain prepetition obligations to customers and to continue their prepetition customer programs and practices in the ordinary course of business; and upon consideration of the Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Relief (the “First Day Declaration”); and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein 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; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a

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 All capitalized terms used and not defined herein shall have the meaning ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED to the extent provided herein.
2. The Debtors are authorized, but not directed, to honor and perform their obligations under the Customer Programs, as described in motion, including obligations arising under any related third party arrangements, in their sole discretion, without regard to whether the Debtors' obligations under any such Customer Programs arose before or after the Petition Date.
3. The Debtors are authorized, but not directed, to revise, extend, renew, supplement or change the Customer Programs, including related third party arrangements, in their sole discretion, to the extent necessary and consistent with the practices and procedures in effect prior to the Petition Date; provided that the Debtors will consult with the DIP Agents in respect of any material change to their overall customer program policies, or implementation thereof.
4. The Debtors are authorized, but not required, to pay all rebates, administrative fees and other obligations arising in respect of the Customer Programs, in their sole discretion, including those obligations that were due and payable or related to the period prior to the commencement of these Chapter 11 Cases.

5. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

6. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors. The requirements of Bankruptcy Rules 6004(a) and 6004(h) are waived.

7. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

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

Dated: January __, 2013
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE