

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

In re:

SCHOOL SPECIALTY, INC. *et al.*,¹

Debtors.

Chapter 11

Case No. 13-10125 ()

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN
SUPPLIERS, FREIGHT CARRIERS AND SECTION 503(B)(9) CLAIMANTS**

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 interim order substantially in the form attached hereto as Exhibit A (the "Interim Order") and a final order substantially in the form attached hereto as Exhibit B (the "Final Order"), pursuant to sections 105, 363, 503(b)(9), 506(b), and 507(a)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to pay, in their sole discretion, the prepetition claims of certain critical suppliers, foreign suppliers, freight carriers and suppliers who provided goods to the Debtors in the 20-day period prior to the Petition Date (as defined below). In support of this motion (the "Motion"), the Debtors rely

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.



upon the Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and Various First Day Applications and Motions (the “First Day Declaration”)² and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to hear the Motion 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 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105, 363 and 506(b) 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.

² The First Day Declaration is being filed contemporaneously with this Motion and is incorporated herein by reference. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the First Day Declaration.

THE DEBTORS' VENDORS AND SERVICE PROVIDERS

6. As described in detail in the First Day Declaration, the Debtors are one of the largest suppliers of supplemental educational products, equipment and standards-based curriculums to the preK-12 market in the United States. They endeavor to provide substantially all of the supplies and products that a school district or educator may need, and offer more than 75,000 different items for sale to their customers. These products range from basic school supplies, such as markers and erasers, to classroom and other school furnishings, which the Debtors purchase from more than 5,000 different vendors across the United States and other countries. The Debtors also offer for sale products of their own manufacture such as wooden school furnishings and proprietary branded products such as agendas and curriculum programs. In fiscal year 2012, the Debtors believe that they supplied approximately 70% of the estimated 130,000 schools in the United States, reaching a majority of the 3.8 million teachers at those schools.

7. To process products from the Debtors' broad vendor base and ship those products to customers across the country in a timely and efficient basis, the Debtors utilize a sophisticated supply and distribution network. This network includes both the use of a business system platform and a number of websites for online ordering, as well as third party logistics providers and freight vendors who are responsible for the Debtors' shipments. The Debtors believe that of this capability for efficient and timely supply and distribution of products to customers garners them significant competitive advantages in the highly fragmented market space in which they operate.

8. In preparation for the commencement of these Chapter 11 Cases, the Debtors, with the assistance of their advisors, carefully examined all aspects of the Debtors' operations – and, in particular, their supply chain – to determine how best to ameliorate the adverse impact of

these Chapter 11 Cases on the Debtors' business operations and their trade credit terms postpetition. Specifically, the Debtors undertook a thorough review of their accounts payable and their list of prepetition vendors and service providers, and worked with business leaders for each of their divisions and departments, to identify those parties who are most essential to the Debtors' operations. In evaluating these vendors and service providers, the Debtors considered, among other things, (a) whether the vendor in question is a "sole-source" or "limited source" provider, (b) what the overall impact on the Debtors' revenue and operations would be if the particular vendor ceased or delayed shipments or services, and (c) whether payment would ameliorate immediate and irreparable harm to the Debtors' business operations, particularly with respect to certain long term strategic partnerships or other key relationships.

9. After evaluating these criteria, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors if the vendors refused to extend trade terms postpetition without such payment. Based on these and other considerations, the Debtors identified certain key vendors who are essential to the Debtors' ongoing business operations. These parties fall into four categories: (1) sole source suppliers, manufacturers and other critical vendors; (2) suppliers who are located outside of the United States; (3) freight carriers who ship goods to the Debtors' customers; and (4) suppliers who provided goods to the Debtors in the 20-day period prior to the Petition Date (collectively, as each as described in detail below, the "Critical Vendors"). For the reasons described below, the Debtors believe that the cessation of deliveries or services by any of the Critical Vendors would have an immediate adverse impact on the Debtors' businesses and cause irreparable harm.

A. Branded and Curriculum Product Suppliers

10. To operate their business, the Debtors rely heavily on the manufacturers of the Debtors' own branded and proprietary products and the vendors involved in the development of the Debtors' curriculum programs (collectively, the "Key Products").

11. The Debtors gain significant competitive advantages by offering their own products for sale as part of their comprehensive school supply and product offerings. If there is any disruption to the Debtors' ability to obtain these products from manufacturers – or, indeed, if there is any concern that the Debtors may have difficulty in doing so – the Debtors risk losing that competitive advantage and, in so doing, may jeopardize their ability to satisfy the entirety of a school's supply order. As such, the Debtors' ongoing relationships with the manufacturers of the Debtors' own brand name products are critically important.

12. In particular, certain of the vendors that manufacture or otherwise support the Debtors' branded products ship those products directly to the Debtors' customers, which enables the Debtors' customers to receive goods in the most efficient and timely manner possible. As such, these direct suppliers represent an important aspect of the Debtors' vendor base and supply chain; by virtue of this direct-ship structure, the Debtors believe that any refusal or delay in shipment by these suppliers in particular would have an immediate adverse impact on the Debtors' overall business.

13. Time is also a factor with respect to many of these parties. At present, the Debtors' various curriculum businesses are in the process of finalizing bids and other responses to new curriculum adoptions by major states. The Debtors have a very limited timeframe in which they can create and submit for adoption these curriculums; as such, any disruption or delay in respect of these processes caused by the Debtors' failure to pay prepetition claims of the

parties providing these essential curriculum products would have a long-lasting and material negative impact on the Debtors' curriculum businesses.

14. For these reasons, the Debtors believe, in their business judgment, that any refusal by these critical vendors to continue to work with and provide goods and services to the Debtors postpetition would have an immediate and devastating effect on the Debtors' ability to operate in the normal course of business. Accordingly, the Debtors seek authorization to pay the prepetition claims of certain suppliers of these Key Products (collectively, the "Key Product Claims") to ensure that they continue to manufacture and provide the Key Products to the Debtors during the pendency of these Chapter 11 Cases without disruption or delay, so that the Debtors will be able to continue to operate in the ordinary course of business as a single source supplier for their customers. The Debtors estimate that, as of the Petition Date, the aggregate amount of Key Product Claims to be satisfied pursuant to this Motion (exclusive of claims that are otherwise entitled to priority treatment, as discussed below) is approximately \$2.3 million.

B. Foreign Suppliers

15. In the ordinary course of business, the Debtors obtain certain critical products and supplies from manufacturers located outside of the United States (the "Foreign Suppliers"). If these Foreign Suppliers are not paid, they could withhold goods from the Debtors, terminate supply contracts and cause other potential interruptions, for which the Debtors may not have effective recourse. The resulting service interruption could have disastrous consequences on the Debtors' business operations due to the lack of alternative suppliers, or the amount of time needed to locate and convert to alternative supply sources.

16. Moreover, many of the Foreign Suppliers may lack minimum contacts with the United States and, therefore, would not likely be subject to the jurisdiction of this Court or

provisions of the Bankruptcy Code that otherwise protect the Debtors' assets and business operations. Based on the substantial experience of the Debtors' personnel in the industry, and their knowledge of the Foreign Suppliers, the Debtors believe there is a risk that the Foreign Suppliers holding claims against the Debtors may consider themselves to be beyond the jurisdiction of this Court, disregard the automatic stay and engage in conduct that disrupts the Debtors' operations. Notably, foreign entities that believe the automatic stay does not govern their actions may exercise self-help (if permitted under local law), which could include shutting down the Debtors' access to essential supplies of goods and services.

17. Furthermore, Foreign Suppliers may also sue one or all of the Debtors in a foreign court to recover prepetition amounts owed to them. If they are successful in obtaining a judgment against the Debtors, the Foreign Suppliers may exercise post-judgment remedies which could include withholding vital supplies from the Debtors. Since the Debtors would have limited, if any, effective and timely recourse and no practical ability to remedy this situation (absent payment of amounts sought), their businesses could be irreparably harmed by any such action to the detriment of their estates and their creditors.

18. Accordingly, by this Motion, the Debtors seek authorization to pay certain prepetition claims of the Foreign Suppliers (the "Foreign Supplier Claims") to enable them to continue to receive the services of, and eliminate the risk of potential collection attempts by, the Foreign Suppliers. The Debtors estimate that, as of the Petition Date, the aggregate amount of Foreign Supplier Claims to be satisfied pursuant to this Motion (exclusive of claims that are otherwise entitled to priority treatment, as discussed below) is approximately \$4.0 million.

C. Freight Carriers

19. As a supply company, the Debtors rely heavily on certain third-party freight carriers (the "Freight Carriers") to transport products to their customers. At any point in time, the Freight Carriers are likely be in possession of certain of the Debtors' goods and have claims for transportation and related services related thereto. It is essential to the Debtors' continued viability and the success of their business that they maintain the reliable and efficient flow of products to their customers. Moreover, the Debtors believe that the Freight Carriers could, in certain instances, argue they are entitled to possessory or similar liens for the storage and/or transport of the goods in their possession as of the Petition Date, and might refuse to deliver or release such goods before their claims have been satisfied and their liens discharged.

20. Accordingly, it is imperative that the Debtors be authorized to pay the prepetition claims owed to the Freight Carriers (the "Freight Claims") to ensure the essential services provided by the Freight Carriers are available to the Debtors without interruption, and preserve to the fullest extent possible the Debtors' relationships with their customers and, in turn, the value of the Debtors' business for the benefit of their estates and their creditors. The Debtors estimate that, as of the Petition Date, the aggregate amount of Freight Claims to be satisfied pursuant to this Motion is approximately \$3.0 million.

D. Section 503(b)(9) Claimants

21. Finally, certain Key Product Suppliers, Foreign Suppliers or other suppliers and manufacturers who provide goods to the Debtors likely will be entitled to administrative priority treatment in respect of all or a portion of their prepetition claims (collectively, the "Section 503(b)(9) Claimants"). Specifically, sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code provide that prepetition claims on account of goods that are actually received by the Debtors in the 20-day period prior to the Petition Date are entitled to administrative priority. 11 U.S.C. §§

503(b)(9), 507(a)(2). In turn, section 1129(a)(9)(A) of the Bankruptcy Code provides that such prepetition claims must be paid *in full* in order for a debtor to confirm a chapter 11 plan. *Id.* at § 1129(a)(9)(A).

22. The Debtors have conducted a thorough analysis of the Section 503(b)(9) Claimants and the goods they provide to the Debtors. Based on that analysis, the Debtors believe that, unless the claims of certain Section 503(b)(9) Claimants (the “Section 503(b)(9) Claims” and collectively with the Key Product Claims, Foreign Supplier Claims, and the Freight Claims, the “Critical Vendor Claims”) are paid at this time, those parties will be unlikely to provide the Debtors with postpetition trade credit and may refuse to continue providing the Debtors with the necessary goods and supplies after the Petition Date. Given the importance to the Debtors’ business of the goods that these Section 503(b)(9) Claimants provide, any such refusal or disruption of continued provision of goods would have an immediate adverse impact of the Debtors’ business operations, to the detriment of all parties in interest. Accordingly, by this Motion, the Debtors also seek authorization to pay certain Section 503(b)(9) Claims as they deem necessary to ensure that the Section 503(b)(9) Claimants continue to ship essential goods to the Debtors during the pendency of these Chapter 11 Cases without disruption or delay. The Debtors estimate that, as of the Petition Date, the aggregate amount of Section 503(b)(9) Claims to be satisfied pursuant to this Motion is approximately \$5.2 million.

RELIEF REQUESTED

23. By this Motion, the Debtors seek entry of the Interim Order and the Final Order authorizing the Debtors to pay, in their discretion, Key Product Claims in the amount of approximately \$2.3 million, Foreign Supplier Claims in the amount of approximately \$4.0 million, Freight Claims in the amount of approximately \$3.0 million, and Section 503(b)(9) Claims in the amount of approximately \$5.2 million.³ Specifically, the Debtors seek authority, (a) upon entry of the Interim Order, to pay up to an aggregate amount of \$8 million (the “Interim Claims Cap”) on account of such Critical Vendor Claims and (b) upon entry of the Final Order, to pay up to the aggregate amount of \$14.5 million (the “Final Claims Cap” and, together with the Interim Claims Cap, the “Claims Caps”) on account of such Critical Vendor Claims.

24. The Debtors propose to condition the payment of all such Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and/or services to the Debtors on terms that are consistent with the historical trade terms between the parties (the “Customary Trade Terms”). However, the Debtors reserve the right to negotiate different trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, to the extent the Debtors determine that such trade terms are (i) necessary to procure essential goods and/or services or (ii) otherwise in the best interests of the Debtors’ estates.

25. The Debtors propose that a letter be sent to the Critical Vendors, along with a copy of the Interim or Final Order, that sets forth the following information and terms:

- (a) The amount of such Critical Vendor’s estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Interim or Final Order and shall not be deemed a

³ The Debtors reserve the right to seek to increase the Claims Caps if necessary, subject to this Court’s approval and the consent of the DIP Agents.

claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);

- (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods and/or services provided to the Debtors prior to the Petition Date, and that, to the extent the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Interim Order or, if entered, the Final Order, and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The Critical Vendor's agreement that it has received payment of a prepetition claim, but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent the aggregate amount of such payments exceed

the postpetition obligations then outstanding, without the right of setoff or reclamation.

26. Such a letter, once agreed to and accepted by a Critical Vendor, shall be the agreement between the parties that governs their postpetition trade relationship (the "Trade Agreement"). The Debtors hereby seek authority to enter into Trade Agreements with the Critical Vendors to the extent that the Debtors determine, in their discretion, that such an agreement is necessary to their postpetition operations. In the event the Debtors do not or are unable to enter into a Trade Agreement with any Critical Vendor, however, the Debtors nevertheless seek authority to pay such vendor's Critical Vendor Claim if the Debtors determine, in their sole discretion, that such payment is necessary to prevent irreparable harm to the Debtors' business operations.

27. For those Critical Vendors who have agreed to provide goods and/or services to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis.

28. If a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority to, in their discretion and without further order of the Court, (i) declare that any Trade Agreement between the Debtors and such Critical Vendor is terminated (if applicable), and (ii) declare that any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, be deemed to have been in payment of then-outstanding postpetition claims of such Critical Vendor without further order of the Court.

29. In the event the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Critical Vendor against which the Debtors exercise such

rights be required to immediately return to the Debtors any payments made on account of its Critical Vendor Claim to the extent such payments exceed the postpetition amounts then owed to such Critical Vendor, without giving effect to any rights of setoff or reclamation. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of the Order in the event a Trade Agreement is terminated or a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim.

BASIS FOR RELIEF

30. The goods and services provided by the Critical Vendors are vital to the Debtors' ongoing operations, specifically, to their ability to provide supplies and equipment to their customers on a timely and uninterrupted basis. If the relief requested herein is not granted, the Critical Vendors may refuse to provide goods or services, causing immediate harm to the Debtors and their estates. For this reason, the Debtors believe that, in the exercise of their sound business judgment, payment of the Critical Vendor Claims as set forth herein is necessary and appropriate under the circumstances.

31. The relief requested herein may be granted by the Court under the Court's general equitable powers as codified in section 105(a) of the Bankruptcy Code. This section empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court "can permit pre-plan payment of a prepetition obligation

when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization.”) (internal quotation omitted).

32. The “necessity of payment” rule further supports the relief requested in this Motion. See, e.g., In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (authorizing payment of prepetition claims of trade creditors that continue customary trade terms). The “necessity of payment” doctrine “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.” Ionosphere Clubs, 98 B.R. at 176; see also In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987); In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); In re Penn Central Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or materials essential to the conduct of the business until their pre-reorganization claims have been paid”); In re Just For Feet Inc., 242 B.R. 821, 824 (D. Del. 1999) (authorizing payment of prepetition claims of trade creditors that continue customary trade terms and recognizing “the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-192 (Bankr. D. Del. 1994) (noting that the debtors “may pay pre-petition claims that are essential to continued operation of business”); Ionosphere Clubs, 98 B.R. at 176 (necessity of payment rule applies to chapter 11 debtors) (citing Dudley v. Mealey, 147 F.2d 268 (2d Cir. 1945), cert. denied, 315 U.S. 873 (1945)). Accordingly, payment of prepetition claims

under this doctrine, where, as here, they are necessary to the continued business performance of a debtors, is consistent with the paramount goal of chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor” Ionosphere Clubs, 98 B.R. at 176.

33. The Court also may authorize the Debtors to pay the Critical Vendor Claims as set forth herein pursuant to section 363(b)(1) of the Bankruptcy Code. This section authorizes the trustee 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). A debtor’s decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. See In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992); Ionosphere Clubs, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). Here, the Debtors believe that payment of the Critical Vendor Claims is essential to the Debtors’ business performance during these Chapter 11 Cases, in particular, by maintaining the Debtors’ ability to timely and fully supply and distribute goods to its customers. Thus, because the relief requested is based on the Debtors’ sound business judgment and will benefit the Debtors and all parties in interest, it is authorized under section 363(b) of the Bankruptcy Code.

34. Finally, the Debtors believe that approximately \$5.2 million of the Final Claims Cap amount requested in this Motion – equal to 35% of the total Critical Vendor Claims described herein – are entitled to priority treatment pursuant to section 503(b)(9) of the Bankruptcy Code. As noted above, the Bankruptcy Code requires that, in order to confirm a chapter 11 plan, the Debtors pay, in full, prepetition claims on account of goods that were received by the Debtors in the ordinary course of business during the 20-day period prior to the Petition Date. See 11 U.S.C. §§ 503(b)(9); 507(a)(2); 1129(a)(9)(A) (requiring payment in full of priority claims).

35. Where a debtor's payment of critical vendor, shipper and priority claims proves essential to a successful chapter 11 case, courts in this District have granted relief similar to that requested here. See, e.g., In re THQ Inc., Case No. 12-13398 (MFW) (Bankr. D. Del. Jan. 11, 2013); In re LC Holding Company, Inc., Case No. 12-13319 (KG) (Bankr. D. Del. Dec. 13, 2012); In re A123 Systems, Inc., Case No. 12-12859 (KJC) (Bankr. D. Del. Nov. 8, 2012); In re Pemco World Air Service, Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. April 3, 2012); In re Buffets Restaurant Holdings, Inc., Case No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012); In re Allen Family Foods, Inc., Case No. 11-11764 (KJC) (Bankr. D. Del. June 10, 2011); In re Summit Business Media Holding Co., Case No. 11-10231 (PJW) (Bankr. D. Del. Jan. 28, 2011); In re Atrium Corp., Case No. 10-10150 (BLS) (Bankr. D. Del. Feb. 22, 2010).

36. In addition to the foregoing, with respect to the Freight Carriers specifically, the Debtors believe their failure to pay Freight Claims could result in the assertion of possessory Lien by the respective Freight Carriers under applicable state law with respect to any goods in their possession. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Lien, to the extent consistent with section 546(b) of the Bankruptcy Code,⁴ is expressly excluded from the automatic stay otherwise imposed by section 362(a) of the Bankruptcy Code.

37. In fact, to protect their asserted Lien rights, the Freight Carriers may refuse to release goods or equipment in their possession unless and until their prepetition claims for

⁴ Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . ." 11 U.S.C. § 546(b)(1)(A).

services have been satisfied. Therefore, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, the Freight Carriers could be entitled to assert and perfect Liens against the Debtors' property, which would entitle them to payment ahead of general unsecured creditors in any event; and could hold the property subject to the asserted Liens pending payment, to the direct detriment of the Debtors and their estates.

38. Furthermore, to the extent that the amount of a Freight Claim is less than the value of any property securing such claim, the Freight Carrier holding Lien rights would arguably be a fully secured creditor. In general, pursuant to section 506 of the Bankruptcy Code, fully secured creditors are entitled to receive (i) payment in full of their prepetition claims pursuant to any confirmed plan(s) of reorganization, and (ii) the postpetition interest accruing on such claims to the extent such claims are oversecured. Consequently, payment of such claims will: (a) give the Freight Carriers no more than that to which they otherwise would be entitled under a plan and (b) save the Debtors the interest costs that otherwise may accrue on the claims during these Chapter 11 Cases.

39. For all of the foregoing reasons, the Debtors seek authority, pursuant to sections 105(a), 363, 503(b)(9), 506(b), and 507(a)(2) of the Bankruptcy Code, to (a) pay, in the Debtors' sole discretion, the undisputed amounts owed by the Debtors on account of outstanding Critical Vendor Claims, and (b) discharge any Liens asserted against the Debtors' property.

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

40. 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). The Debtors believe that obtaining immediate authorization to pay Critical Vendor Claims is vital to their continued viability. Specifically, the Debtors believe that any delay or interruption in supply of the goods and services provided by the Critical Vendors, however temporary it might be, would severely harm the Debtors’ business operations given the importance of the key products and supply chain services these parties provide. Thus, 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.

41. 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 (14) day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

42. Nothing in this Motion is intended or should be construed: (a) as an admission as to the validity of any claim or Lien against the Debtors or their estates; (b) as a waiver of the Debtors’ right to dispute any claim or Lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors’ rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

NOTICE

43. Notice of this Motion will be provided to: (i) the United States 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; (vi) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; and (vii) the Debtors' Banks. Notice of this Motion and any Interim or Final 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.

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

Dated: Wilmington, Delaware
January 28, 2013

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

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- and -

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EXHIBIT A

Proposed Interim Order

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

In re:

SCHOOL SPECIALTY, INC. *et al.*,¹

Debtors.

Chapter 11

Case No. 13-10125(____)

Joint Administration Requested

Re: Docket No. ____

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN
SUPPLIERS, FREIGHT CARRIERS AND SECTION 503(B)(9) CLAIMANTS**

Upon the Motion² 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 interim and final orders pursuant to sections 105, 363, 503(b)(9), 506(b), and 507(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing, but not directing, the Debtors, in their discretion, to pay the prepetition claims of certain Key Product Suppliers, Foreign Suppliers, Freight Carriers, and Section 503(b)(9) Claimants; and it appearing that jurisdiction is proper 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 is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that such relief is necessary to avoid

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 meanings ascribed to them in the Motion.
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immediate and irreparable harm meaning that the requirements of Rule 6003 of the Federal Rules of Bankruptcy Procedure have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED on an INTERIM BASIS to the extent provided herein.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Key Product Claims, Foreign Supplier Claims, Freight Claims and Section 503(b)(9) Claims (collectively, the "Critical Vendor Claims"), subject to the conditions set forth in this Interim Order.
3. The Interim Claims Cap applicable to payment of the Key Product Claims, Foreign Supplier Claims, Freight Claims and Section 503(b)(9) Claims upon entry of this Interim Order shall not exceed \$8.0 million in the aggregate unless otherwise ordered by the Court and with the consent of the DIP Agents.
4. The Debtors are authorized to pay the Critical Vendor Claims in the ordinary course of business, when due, and not on an accelerated basis; provided, however, that any Critical Vendor that accepts payment pursuant to the authority granted in this Interim Order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on such other favorable terms as are acceptable to the Debtors.
5. Any Critical Vendor that accepts payment pursuant to the authority granted in this Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim Order and (b) have waived, to the extent paid, any and all prepetition claims against the Debtors, their asserts and their properties.

6. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Interim Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods and/or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of this Interim Order and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

- (g) The Critical Vendor's agreement that it has received payment of a prepetition claims but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

7. The Debtors shall consult with Bayside in respect of the terms of any material Trade Agreements.

8. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

9. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods and/or services to the Debtors on Customary Trade Terms during the pendency of these Chapter 11 Cases, the Debtors may, in their discretion, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding postpetition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the

status quo in effect as of the date of entry of this Interim Order with respect to all prepetition claims if a Trade Agreement is terminated.

10. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by the Debtors.

11. Upon the Debtors' payment of the Freight Claims, any Lien securing such Freight Claim shall be immediately released, void and of no further force and effect, without further action by the Debtors.

12. The Debtors' Banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Vendor Claims, provided that sufficient funds are available in the applicable accounts to make the payments.

13. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to the validity of any claim or Lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or Lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

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

15. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the

relief in the Motion is necessary to avoid immediate and irreparable harm.

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

Dated: Wilmington, Delaware
January __, 2013

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re:

SCHOOL SPECIALTY, INC. *et al.*,¹

Debtors.

Chapter 11

Case No. 13-10125 ()

Joint Administration Requested

Re: Docket Nos. ____

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN
SUPPLIERS, FREIGHT CARRIERS AND SECTION 503(B)(9) CLAIMANTS**

Upon the Motion² 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 interim and final orders pursuant to sections 105, 363, 503(b)(9), 506(b), and 507(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing, but not directing, the Debtors, in their discretion, to pay the prepetition claims of certain Key Product Suppliers, Foreign Suppliers, Freight Carriers, and Section 503(b)(9) Claimants; and it appearing that jurisdiction is proper 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 the Interim Order having been entered by this Court; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest;

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and it appearing that such relief is necessary to avoid immediate and irreparable harm meaning that the requirements of Rule 6003 of the Federal Rules of Bankruptcy Procedure have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED on a FINAL BASIS to the extent provided herein.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Key Product Claims, Foreign Supplier Claims, Freight Claims and Section 503(b)(9) Claims (collectively, the "Critical Vendor Claims"), subject to the conditions set forth in this Final Order.
3. The Final Claims Cap applicable to payment of the Key Product Claims, Foreign Supplier Claims, Freight Claims and Section 503(b)(9) Claims shall not exceed \$14.5 million in the aggregate unless otherwise ordered by the Court and with the consent of the DIP Agents.
4. The Debtors are authorized to pay the Critical Vendor Claims in the ordinary course of business, when due, and not on an accelerated basis; provided, however, that any Critical Vendor that accepts payment pursuant to the authority granted in this Final Order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on such other favorable terms as are acceptable to the Debtors.
5. Any Critical Vendor that accepts payment pursuant to the authority granted in this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent paid, any and all prepetition claims against the Debtors, their asserts and their properties.

6. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Final Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods and/or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of this Final Order and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

- (g) The Critical Vendor's agreement that it has received payment of a prepetition claims but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

7. The Debtors shall consult with Bayside in respect of the terms of any material Trade Agreements.

8. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Final Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

9. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods and/or services to the Debtors on Customary Trade Terms during the pendency of these Chapter 11 Cases, the Debtors may, in their discretion, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding postpetition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the

status quo in effect as of the date of entry of this Final Order with respect to all prepetition claims if a Trade Agreement is terminated.

10. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by the Debtors.

11. Upon the Debtors' payment of the Freight Claims, any Lien securing such Freight Claim shall be immediately released, void and of no further force and effect, without further action by the Debtors.

12. The Debtors' Banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Vendor Claims, provided that sufficient funds are available in the applicable accounts to make the payments.

17. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim or Lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or Lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

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

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the

relief in the Motion is necessary to avoid immediate and irreparable harm.

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

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE