

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

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

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket Nos. 9 & 75

CERTIFICATION OF COUNSEL

On January 28, 2013, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Debtors’ Motion for an Order (A) Authorizing, But Not Directing, The Debtors to Pay Certain Prepetition Wages, Compensation, and Employee Benefits and Continue Payment of Wages, Compensation, and Employee Benefits in the Ordinary Course of Business; and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No. 9] (the “Motion”). On January 30, 2013 the Court entered an order granting the Motion on an interim basis [Docket No. 75] (the “Interim Order”).

Objections to entry of an order approving the Motion on a final basis, if any, were to be filed on or before 4:00 p.m. (ET) on February 15, 2013² (as extended, the “Objection Deadline”).

Prior to the Objection Deadline, the Debtors received informal comments and requests for information from the U.S. Trustee. As the result of subsequent discussions between

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. (Wis.; 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 Extended for varying parties-of-interest.



the Debtors and the U.S. Trustee, the parties reached a consensual resolution with respect to the Trustee's concerns, the terms of which are embodied in the revised form of order (the "Revised Proposed Final Employee Wage Order"), a copy of which is attached hereto as Exhibit A. For the convenience of the Court and parties-in-interest, a blackline of the Revised Proposed Final Employee Wage Order is attached hereto as Exhibit B.

The Debtors have shared the Revised Proposed Final Employee Wage Order with the DIP Lenders,³ the Committee and the U.S. Trustee, none of which have any objection to entry of such revised order.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Final Employee Wage Order, attached hereto as Exhibit A, granting the relief requested in the Motion on a final basis at the earliest convenience of the Court without further notice or hearing.

Dated: February 22, 2013
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

Pauline K. Morgan (No. 3650)

Maris J. Kandestin (No. 5294)

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- and -

³ As defined in the Debtors' Motion for Entry of an Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) to Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) to Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, and (E) to Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligation into Postpetition Secured Obligations; (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(a) and (c); and (III) Granting Related Relief [D.I. 12].

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

EXHIBIT A

Revised Proposed Final Employee Wage 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 (KJC)

Jointly Administered

Re: Docket Nos. 9 & 75

FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY CERTAIN PREPETITION WAGES, COMPENSATION AND EMPLOYEE BENEFITS AND CONTINUE PAYMENT OF WAGES, COMPENSATION AND EMPLOYEE BENEFITS IN THE ORDINARY COURSE OF BUSINESS; AND (B) AUTHORIZING AND DIRECTING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO PROCESS, AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND TO HONOR ALL FUNDS TRANSFER REQUESTS MADE BY THE DEBTORS RELATING TO THE FOREGOING

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

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

foregoing as described more fully below; and (iii) authorizing and directing applicable banks and other financial institutions to honor and pay all checks and transfers drawn on the Debtors' bank accounts to make the foregoing payments, all as described more fully in the Motion; and the Court having heard the evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein, and the Court having found and concluded that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and the Court having previously entered the *Interim Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation and Employee Benefits and Continue Payment of Wages, Compensation and Employee Benefits in the Ordinary Course of Business, and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests Made by the Debtors Relating to the Foregoing* [Docket No. 75] (the "Interim Order") with respect to Motion; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and upon the Motion, and the First Day Declaration; and all of the proceedings held before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED on a final basis to the extent provided herein.

Except as otherwise set forth herein, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of the Employee Obligations; provided, however, that without prejudice to the Debtors' right to seek additional payments pursuant to a further motion on notice to parties-in-interest, (i) the Debtors shall not make any payments of the kind referenced in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any Employee in excess of the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and (ii) the aggregate amount of payments of the kind referenced in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code shall not exceed \$2.2 million unless further ordered by this Court; provided, further, that such payments may exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to one Employee in an amount not to exceed \$500 in the aggregate.

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

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

4. The Debtors are authorized, but not directed, to make Severance payments to non-insider Employees who are terminated postpetition (unless such termination is for cause), and to honor all obligations under the Debtors' PTO policy, including making cash payments to such non-insider Employees upon their termination with respect to unused PTO.

5. The Debtors are authorized, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor the Employee Obligations and Employee Programs incurred prior to the Petition Date, including any associated costs and fees therewith, in an amount not to exceed \$1.25 million in the aggregate unless further ordered by this Court.

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

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

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

8. Nothing in the Motion, the Interim Order or this Final Order, nor as a result of any payment made pursuant to the Interim Order or this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code, or waiver of the right of the Debtors, or shall impair the ability of the Debtors or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to the Interim Order or this Final Order.

9. Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 or any applicable provisions of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, this Final Order shall be effective and enforceable immediately upon entry thereof.

10. Notwithstanding anything to the contrary contained in this Final Order, the Interim Order or the Motion, any payment, obligation or other relief authorized by this Final Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of the interim order approving the DIP Financing [Docket No. 86], and any subsequent final order approving the DIP Financing.

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

Dated: February, ___ 2013
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Blackline of Revised Proposed Final Employee Wage Order

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<p>In re:</p> <p>SCHOOL SPECIALTY, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No 13-10125 (KJC)</p> <p><u>Jointly Administered</u> Joint Administration Requested</p> <p>Re: Docket NoNos. 9 & 75</p>
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~~INTERIM~~FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE
DEBTORS-

**TO PAY CERTAIN PREPETITION WAGES, COMPENSATION AND
EMPLOYEE BENEFITS AND CONTINUE PAYMENT OF WAGES,
COMPENSATION AND EMPLOYEE BENEFITS IN THE ORDINARY COURSE
OF BUSINESS; AND (B) AUTHORIZING AND DIRECTING APPLICABLE
BANKS AND OTHER FINANCIAL INSTITUTIONS TO PROCESS, AND PAY ALL
CHECKS PRESENTED FOR PAYMENT AND TO HONOR ALL FUNDS TRANSFER
REQUESTS MADE BY THE DEBTORS RELATING TO THE FOREGOING**

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

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

Debtors to continue payment of wages, compensation, and employee benefit programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described more fully below; and (iii) authorizing and directing applicable banks and other financial institutions to honor and pay all checks and transfers drawn on the Debtors' bank accounts to make the foregoing payments, all as described more fully in the Motion; and the Court having heard the evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein, and the Court having found and concluded that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and the Court having previously entered the Interim Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation and Employee Benefits and Continue Payment of Wages, Compensation and Employee Benefits in the Ordinary Course of Business, and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests Made by the Debtors Relating to the Foregoing [Docket No. 75] (the "Interim Order") with respect to Motion; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and upon the Motion, and the First Day

Declaration; and all of the proceedings held before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED on an ~~interim~~ final basis to the extent provided herein.
2. Except as otherwise set forth herein, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of the Employee Obligations; provided, however, that without prejudice to the Debtors' right to seek additional payments ~~at the final hearing on this Motion pursuant to a further motion on notice to parties-in-interest,~~ (i) the Debtors shall not make any payments of the kind referenced in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any Employee in excess of the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and (ii) the aggregate amount of payments of the kind referenced in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code shall not exceed \$2.2 million unless further ordered by this Court ~~pursuant to this Interim Order;~~ provided, further, that such payments may exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to one Employee in an amount not to exceed \$500 in the aggregate.
2. ~~3-~~The Debtors are authorized, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of the Independent Contractors.
3. ~~4-~~The Debtors are authorized, but not obligated or directed, to continue and maintain the Employee Programs during the Chapter 11 Cases, in their sole discretion.

4. The Debtors are authorized, but not directed, to make Severance payments to non-insider Employees who are terminated postpetition (unless such termination is for cause), and to honor all obligations under the Debtors' PTO policy, including making cash payments to such non-insider Employees upon their termination with respect to unused PTO.

5. The Debtors are authorized, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor the Employee Obligations and Employee Programs incurred prior to the Petition Date, including any associated costs and fees therewith, in an amount not to exceed \$750,0001.25 million in the aggregate unless further ordered by this Court.

6. Nothing in this ~~Interim~~Final Order shall be deemed to ~~(i) authorize the~~ payment of any amounts ~~in satisfaction of bonus or severance obligations, or~~ which are subject to section 503(c) of the Bankruptcy Code, ~~or (ii) authorize the Debtors to cash out unpaid vacation/leave time upon termination of an employee, unless applicable state law requires such payment.~~

7. ~~At the final hearing on the Motion, the Court shall address the portion of the Motion in which the Debtors seek authority to continue Severance as to current non-insider Employees who may be terminated post-petition and to make cash payments with respect to PTO for such Employees; provided, however, that this Interim Order approves the Employees' use of accrued PTO in the ordinary course of business postpetition. A final hearing on the Motion shall be held on February 25, 2013 at 11:00 a.m. (prevailing Eastern Time). Objections, if any, to entry of an order granting the relief requested in the Motion with respect to payments to non-insider Employees of Severance and cash payments of PTO upon termination shall be filed with the Court and served so as to actually be received no later than February 15, 2013 at 4:00~~

~~p.m. (prevailing Eastern Time), by the following: (i) counsel for the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Jeffrey D. Saferstein, Esq. (e-mail: jsaferstein@paulweiss.com; facsimile: (212) 757-3990) or Lauren Shumejda, Esq. (e-mail: lshumejda@paulweiss.com; facsimile: (212) 757-3990) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19899-0391, Attn: Pauline K. Morgan, Esq. (e-mail: pmorgan@ycst.com; facsimile: (302) 576-3318); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 North King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Juliet M. Sarkessian (email: Juliet.M.Sarkessian@usdoj.gov; facsimile: (302) 573-6497); and (iii) counsel to any official committee of creditors, if one has been appointed.~~

~~8. All applicable Disbursement Banks are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks, or drafts or electronic funds transfer requests drawn on the Debtors' accounts to the Employees whether those checks were issued or presented prior to or after the Petition Date, and make other transfers, provided that sufficient funds are available in the applicable accounts, whether deposited prepetition or postpetition, to make the payments.~~

~~7. 9. Authorization to pay all amounts on account of Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Employee Obligation, including without limitation, any amounts the Payroll Deductions that may be due to any taxing authority.~~

~~8. 10. Nothing in the Motion, the Interim Order or this Interim Final Order, nor as a result of any payment made pursuant to this the Interim Order or this Final Order, shall be~~

deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors; or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to ~~this~~ the Interim Order, or this Final Order.

~~11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.~~

~~9. 12. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately~~ the provisions of Bankruptcy Rules 6004 or 6006 or any applicable provisions of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, this Final Order shall be effective and enforceable immediately upon its entry.

~~13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm thereof.~~

~~10. 14. Notwithstanding anything to the contrary contained in this Final Order,~~ the Interim Order or the Motion, any payment, obligation or other relief authorized by this Interim Final Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of any the interim and/or final orders order approving the DIP Financing [Docket No. 86], and any subsequent final order approving the DIP Financing.

~~11. 15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Final Order.~~

Dated: February _____, 2013

Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE