Docket #0752 Date Filed: 09/24/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**

MOTION OF DEBTORS
FOR ENTRY OF ORDER APPROVING AND AUTHORIZING
IMPLEMENTATION OF NON-INSIDER KEY EMPLOYEE RETENTION PLAN

IF YOU OBJECT TO THE RELIEF REQUESTED YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

SpeedCast International Limited ("**Speedcast**") and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully represent as follows in support of this motion (this "**Motion**"):

Preliminary Statement

1. The Debtors commenced these chapter 11 cases with the goal of achieving a value-maximizing financial and operational restructuring on an expedited chapter 11 timeline. Since April 23, 2020 (the "**Petition Date**"), the Debtors have obtained critical first-day relief, received restructuring proposals from two of their largest lenders, Black Diamond Capital

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

Management and Centerbridge Partners, are mediating with their key stakeholders regarding such proposals, and are consensually refinancing their postpetition facility. However, because of the anticipated expedited chapter 11 timeline, the Debtors did not initially seek relief to provide its key employees with retention packages during the chapter 11 cases to support the stability of their business.

2. Despite the Debtors' progress to date, much work remains to be done. Specifically, among other things, the Debtors must: (a) continue to negotiate and implement a value-maximizing transaction and path to emergence with their key constituents; (b) closely monitor and control costs to ensure compliance with DIP covenants and maximize recoveries; (c) negotiate with their vendors, bandwidth suppliers, and other key contract counterparties; (d) satisfy reporting and other requirements under chapter 11 of the Bankruptcy Code (the "**Bankruptcy Code**") and of the United States Trustee for Region 7 (the "**U.S. Trustee**"); and (e) coordinate with their lenders, the official committee of unsecured creditors (as reconstituted on May 12, 2020, the "**Creditors' Committee**"), the Debtors' non-debtor affiliates, including the Government business, and other constituents regarding, among other things, the administration of the chapter 11 cases.

3. This work will demand extraordinary amounts of time, dedication, and focus from the Debtors' employees. None of it is achievable without the continued support of certain of the Debtors' key employees (collectively, the "**Key Employees**"), who are working tirelessly to achieve the best possible outcome for the chapter 11 cases. These employees have in-depth knowledge of the Debtors' business, assets, liabilities, counterparties and operations, and are essential to the Debtors' ability to carry out the tasks—many of which are outside of the scope of their ordinary duties—critical to the maintenance and maximization of the value of the

enterprise. Given the Debtors' longer than expected chapter 11 process , it is now more important than ever for these employees to remain in their positions and to perform their responsibilities at the highest level. Anything less could be critically damaging to the Debtors' efforts to maximize value for all stakeholders.

4. Prior to and since the Petition Date, there has been a high degree of uncertainty among the Debtors' employees generally as to their job security and the future of the Debtors' operations. Such sentiments have been heightened in light of continued negotiations between the Debtors and their key stakeholders regarding a path to emergence and the recent resignation of Speedcast's Chief Executive Officer. Indeed, essential employees are resigning at an escalating rate, including some of the Debtors' most critical and senior-level employees. Since the Petition Date, the Debtors have lost 38 valuable employees due to voluntary resignations and are at serious risk of losing more. The Debtors cannot afford such distractions or to lose critical employees at this stage of their chapter 11 cases. Maintaining and promoting morale and providing appropriate compensation incentives is essential to the Debtors' business and ability to maintain and maximize value.

Background

5. On the Petition Date, the Debtors each commenced with this Court a voluntary case under the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**").

7. The Debtors, combined with their non-debtor affiliates (collectively, the "**Company**"), are the largest provider of remote and offshore satellite communications and information technology services in the world. Speedcast's fully-managed service is delivered to more than 2,000 customers in 140 countries via a leading global, multi-access technology, multi-band and multi-orbit network of 80+ satellites and an interconnecting global terrestrial network, bolstered by on-the-ground local support from 40+ countries. Speedcast services customers in sectors such as Commercial Maritime, Cruise, Energy, Mining, Government, NGOs, Enterprise, and Media.[2]

8. On May 6, 2020, the U.S. Trustee appointed the Creditors' Committee. No trustee or examiner has been appointed in these chapter 11 cases.

Jurisdiction

9. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

10. Pursuant to sections 363(b)(1) and 503(c)(3) of the Bankruptcy Code, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**"), approving and authorizing the Debtors to implement their proposed non-insider key employee retention plan (the "**Proposed KERP**").

11. In support of this Motion, the Debtors submit the declaration of Michael Healy attached hereto as **Exhibit B** (the "**Healy Declaration**").

[2] None of the Speedcast entities associated with the Company's Government business are Debtors in these chapter 11 cases.

Development of Proposed KERP

12. With these considerations in mind, the Debtors' management, with the assistance of the Debtors' professional advisors, undertook a deliberative process to develop employee programs that would appropriately incentivize and retain employees and ensure that the Debtors' business needs would be met during the remainder of the chapter 11 process.[3] The Debtors have developed a specific and narrowly-tailored key employee retention plan, with an aggregate maximum payout of approximately $4 million for 88 non-insider Key Employees (the "**KERP Participants**")[4] and includes a discretionary pool of $300,000 for the Debtors' to distribute to additional non-insider Key Employees, in their business judgment, in light of the Company's evolving business needs.

13. The Debtors' financial and operational advisor, FTI Consulting, Inc. ("**FTI**") compared the Proposed KERP, including its scope and cost, to retention plans implemented in chapter 11 cases of companies of similar size and in similar industries to ensure that the Proposed KERP is within the range of reasonableness and consistent with market practices. The Proposed KERP has also been reviewed and approved by the independent Special Restructuring Committee of the Board of Directors.

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[3] In connection with this process, the Debtors, with the support of their advisors and guidance from the Special Restructuring Committee of the Board of Directors, are also developing an employee incentive program for certain Key Employees. The Debtors are not seeking approval of such incentive program by this Motion and will file a motion with the Court in connection therewith at a later date.

[4] For confidentiality reasons, the specific details for each KERP Participant are not included in this filing, but the Debtors will provide this information on a confidential basis to the U.S. Trustee and the Creditors' Committee, and can make it available to the Court or file it under seal if requested to do so.

I. Proposed KERP Participants

14. In identifying the KERP Participants, the Debtors' management undertook a "bottoms up" analysis of their business segments and identified the 88 non-insider employees that are critical for continued and uninterrupted operations. Although the KERP Participants are among the many employees critical to the Debtors' business, the KERP Participants were selected for the Proposed KERP based on their experience, skill set, position, uniqueness, and criticalness to their respective business segment. The KERP Participants perform a variety of important business functions for the Debtors—including accounting, human resources, business administration, engineering, finance, marketing, and operational work—that are vital to the Debtors' availability to maintain operational stability and preserve and enhance stakeholder value. Each of the KERP Participants has irreplaceable skillsets, with specialized, technical, or institutional knowledge that other employees working for the Debtors do not possess. Key Employees, if lost, would therefore cost the Debtors far more in replacement expenses and lost revenues than the amounts contemplated under the Proposed KERP. Losing such employees would challenge the Debtors' operational stability during these chapter 11 cases and the Debtors' reorganization efforts generally.

II. Terms of the Proposed KERP

15. The Proposed KERP contemplates an aggregate maximum payout of approximately $4 million, including up to approximately $3.7 million in awards for 88 Key Employees, and $300,000 for a discretionary pool that may be allocated by the Debtors, in their business judgment, to additional non-insider Key Employees. The Debtors believe that the Proposed KERP is modest, reasonable, and appropriate under the circumstances.

16. Awards under the Proposed KERP (the "**KERP Awards**") will be made in cash to KERP Participants payable in two installments. The first installment, which represents

fifty percent (50%) of the KERP Award, is payable upon the earlier of (i) confirmation of a plan of reorganization ("**Plan Confirmation**"), and (ii) entry of an order approving a sale of substantially all of the Debtors' assets pursuant to section 363(b) of the Bankruptcy Code ("**363 Sale**"). The second installment also represents fifty percent (50%) of the KERP Awards. Upon Plan Confirmation, the second installment is payable upon the earlier of (i) one month following the Debtors' emergence from chapter 11, and (ii) June 30, 2021. In the event of a 363 Sale, the second installment, is payable one month following closing of the 363 Sale.

17. In addition, the first installment of the KERP Awards is subject to clawback should the KERP Participant voluntarily resign or be terminated for "cause" prior to the payment of the second installment payment. In the event that a KERP Participant is terminated without "cause," the KERP Participant shall be entitled to receive any unpaid installment of the KERP Award at the same time as the other KERP Participants. As of the Petition Date, the Debtors had suspended their discretionary and incentive bonus plans.[5] Given the added pressures and responsibilities of the KERP Participants due to the chapter 11 cases (in addition to their ordinary responsibilities), the Debtors believe it is critical and reasonable that the Debtors implement the Proposed KERP. The loss of even a few of the KERP Participants could have a material, detrimental impact on the Debtors.

18. Accordingly, the Debtors modeled the Proposed KERP to (i) retain employees who are essential to the Debtors' ability to meet business objectives that will allow for a successful outcome in these cases, (ii) achieve an appropriate balance of retaining employees critical to the restructuring efforts while protecting creditor interests, and (iii) be consistent with market practice and the Debtors' prepetition compensation levels. The Proposed KERP helps

[5] The Debtors are required to make statutory bonus payments in certain jurisdictions in which they operate.

ensure that the KERP Participants, who are critical to the Debtors' operations and ability to properly effectuate a successful restructuring, remain with the Debtors throughout the restructuring process and beyond.

19. The Proposed KERP can be summarized as follows:

Summary of Proposed KERP	
Maximum Amount of KERP	$3,996,608 ($3,696,608 for KERP Participants and $300,000 for a discretionary pool)
KERP Participants	88 non-insider Key Employees
KERP Awards	KERP Awards represent fixed cash amounts payable in two installments, contingent on continued employment in good standing of the KERP Participant through the applicable KERP Award payment dates (unless KERP Participant is terminated without cause)
Discretionary Pool	$300,000 distributable by the Debtors, in their business judgment to additional non-insider Key Employees. Terms of awards granted with discretionary pool funds to be consistent with the structure and payment levels awarded to the KERP Participants
Payment Dates	First Installment (50% of KERP Award): Payable upon the earlier of (i) Plan Confirmation, and (ii) entry of order approving 363 Sale Second Installment (50% of KERP Award): Payable, as applicable, (A) following Plan Confirmation, the earlier of (i) one month following the Debtors' emergence from chapter 11, and (ii) June 30, 2021, or (B) one month following closing of a 363 Sale
Clawback	The first installment of the KERP Awards is subject to a clawback should the KERP Participant voluntarily resign or be terminated for "cause" prior to the Debtors' emergence from chapter 11
Other Terms	KERP Participants will not be eligible to participate in any Key Employee Incentive Plan or similar program

Basis for Relief

A. Proposed KERP is a Sound Exercise of the Debtors' Business Judgment and Authorized Under Bankruptcy Code Sections 363(b)(1) and 503(c)(3)

20. The Proposed KERP satisfies the standards under sections 363(b)(1) and 503(c)(3) of the Bankruptcy Code. As detailed herein, the Proposed KERP is essential to the Debtors' restructuring efforts, and their cost is more than offset by their benefits. Thus, the Proposed KERP reflects a sound exercise of the Debtors' business judgment under section 363(b)(1) of the Bankruptcy Code, which empowers the Court to allow the debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

21. Section 503(c)(3) of the Bankruptcy Code prohibits certain transfers "that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition." The standards for approval under sections 503(c)(3) and 363(b) are the same—a court will approve a transfer if made as a result of a sound exercise of the debtor's business judgment. *See, e.g.*, *In re Viking Offshore (USA), Inc.*, No. 08-312-H3-11, 2008 WL 1930056, at *2 n.1 (Bankr. S.D. Tex. Apr. 30, 2008) (noting the standard under section 503(c)(3) is substantially similar to business judgment test); *In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("Courts have held that the 'facts and circumstances' language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."); *In re Global Home Prods.*, 369 B.R. 783, 786 (Bankr. D. Del. 2007) ("If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.").[6]

[6] Section 503(c)(1)'s limitation on certain retention payments to "insiders" is not applicable, as the Proposed KERP is directed solely to non-insider employees. 11 U.S.C. § 503(c)(1).

22. The estate's property may be used other than in the ordinary course of business if the debtor can show a "sound business purpose" for such use. *See, e.g.*, *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("For the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Viking Offshore (USA), Inc.*, 2008 WL 1930056, at *2 (holding debtor's proposed bonus payments were for proposed uses outside ordinary course of business and therefore subject to business judgment standard); *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving employee bonus programs as "valid exercise of their business judgment" under section 363(b)).

23. If a debtor shows a valid business purpose for using property other than in the ordinary course of business, most courts apply the business judgment rule—a presumption "that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *see also In re Gulf Coast Oil Corp.*, 404 B.R. 407, 415 (Bankr. S.D. Tex. 2009) (noting that a debtor-in-possession has authority to exercise business judgment given to officer or director of corporation when engaging in a section 363(b) sale of property of the estate outside the ordinary course of business); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (noting that the variety of factors considered by courts when evaluating a section 363(b) transfer "essentially represent a 'business judgment test'") (citation omitted); *see also In re Cont'l Air Lines, Inc.*, 780 F.2d at 1226 ("[F]or the debtor-in-possession

or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.").

24. Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task."). In fact, when applying the business judgment rule, courts show great deference to a debtor's business decisions and are "loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence." *Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *see also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985) ("More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially.").

25. Here, the Proposed KERP easily satisfies the business judgment standard, as the plan is demonstrably in the best interests of the Debtors, their estates, and their creditors. As described in more detail above, the efforts of the Debtors' employees during the chapter 11

cases will be critical to preserving the value of the Debtors' estates and maximizing value for all stakeholders. It is imperative that those employees in a position to drive the outcome of a value maximizing transaction be retained during the chapter 11 cases. It is equally critical that the Debtors' business operations run smoothly and that employees throughout the Debtors' ranks remain focused on performing their job functions and motivated during the Debtors' chapter 11 process.

26. Implementation of the Proposed KERP is a valid exercise of the Debtors' business judgment because the plan is specifically designed, with the input of the Debtors' professional advisors, to prevent attrition of essential employees during the chapter 11 cases to preserve the value of the Debtors' assets for the benefit of all stakeholders. If the KERP Participants were to resign, the value and benefits of these employees' experience would be lost, and the Debtors' operations and their pursuit of a value-maximizing transaction would be significantly impaired. The resignation of the KERP Participants would further deplete estate resources by causing the Debtors to spend significant time and expense to hire and train replacement employees, which would, in turn, be detrimental to their efforts to quickly and efficiently reorganize. The Proposed KERP is also reasonable in light of the size of the Debtors' business and the comparability of program costs and terms to other chapter 11 retention and incentive plans.

B. Proposed KERP is Justified by Facts and Circumstances

27. 503(c)(3) of the Bankruptcy Code prohibits certain transfers "that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition." As discussed above, Proposed KERP clearly satisfies the business judgment test. However, some courts have interpreted section

503(c)(3) to require a slightly higher bar. *See, e.g., In re Pilgrim's Pride Corp.*, 401 B.R. 229, 236–37 (Bankr. N.D. Tex. 2009) (requiring proposed transfer be in best interests of creditors and debtor's estate in addition to satisfying business judgment standard); Hr'g Tr. at 40:17–41:2, *In re Dura Automotive Sys., Inc.*, No. 06-11202 (Bankr. D. Del. Apr. 25, 2007) [D.I. 1170] (describing 503(c)(3) standard as "something above the business judgment standard but maybe not much farther above it").

28. Courts that have applied this slightly higher bar in assessing employee programs under section 503(c)(3) have held that whether a proposed transaction is in the best interests of the creditors and the debtor's estate depends on the facts of the case. *In re Pilgrim's Pride*, 401 B.R. at 237. A court "need only determine that Debtors have provided a sound business reason for the [transaction] and that, even at [its] projected cost, the benefit to creditors and Debtors' estates is of commensurate value." *Id*. at 237 n.14. In evaluating plans under § 503(c)(3), courts consider (1) whether the plan is calculated to achieve the desired performance; (2) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (3) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (4) whether the plan is consistent with industry standards; (5) whether the debtor performed due diligence in investigating the need for the plan; and (6) whether the debtor received independent counsel in performing due diligence, creating, and authorizing the plan. *See In re Global Home Prods.*, 369 B.R. at 786; *In re Dana Corp.*, 358 B.R. 567, 576–77 (Bankr. S.D.N.Y. 2006). As set forth below, the Proposed KERP satisfies all of these factors.

29. First, the Proposed KERP is structured to achieve the desired performance. The Debtors and their advisors designed the Proposed KERP to avoid the loss of personnel key to ongoing operations and motivate and reward the KERP Participants for their significant efforts

given the increased demands placed upon them in connection with the chapter 11. A failure to retain the KERP Participants would likely cause the Debtors' financial performance to suffer. It would also cause the Debtors to incur significant time and expense to hire and train replacement employees, which would, in turn, be detrimental to their efforts to quickly and efficiently emerge from the chapter 11 cases.

30. Second, the cost of the Proposed KERP is reasonable in light of the Debtors' assets, liabilities, and revenues and is consistent with, and within the range of reasonableness of, similar programs implemented in chapter 11 cases with debtors of similar size. As discussed above and in the Healy Declaration, the Debtors' advisors engaged in a comprehensive benchmarking analysis to assist the Debtors with the design of the Proposed KERP.

31. Third, the scope of the Proposed KERP is fair and reasonable. The KERP Participants represent a reasonable percentage of the Debtors' total employee base. The Debtors undertook a careful selection process and received input from their advisors in determining which employees should be eligible.

32. Fourth, as discussed in the Healy Declaration, the Proposed KERP is consistent with industry standards and is reasonable under the circumstances with respect to eligibility, total cost, and performance metrics.

33. Finally, the Debtors actively sought the advice of FTI and their other advisors in designing an appropriate retention plan for their non-insider employees. As discussed above, FTI conducted an analysis to confirm that the Proposed KERP were consistent with the terms of retention plans approved in other chapter 11 cases. Similarly, the Debtors engaged their advisors in the selection process to ensure that no KERP Participant was an "insider" and that each KERP Participant was essential to the Debtors' ongoing business and restructuring.

34. Courts in this district and elsewhere have routinely approved similar programs under similar circumstances. *See In re Bristow Grp. Inc.*, Case No. 19-32713 (DRJ) (Bankr. S.D. Tex. Aug. 22, 2019) [D.I. 588]; *In re EXCO Res., Inc.*, Case No. 18-30155 (MI) (Bankr. S.D. Tex. Aug. 18, 2018) [D.I. 962]; *In re Ultra Petrol. Corp.*, Case No. 16-32202 (MI) (Bankr. S.D. Tex. June 23, 2016) [D.I. 362]; *In re CDX Gas, LLC*, Case No. 08-37922 (LZP) (Bankr. S.D. Tex. Mar. 17, 2009) [D.I. 368].

C. Section 503(c)(1) Does Not Apply to Proposed KERP

35. Section 503(c)(1) is not applicable in evaluating the Proposed KERP, because none of the KERP Participants are "insiders" as such term is defined in section 101(31) of the Bankruptcy Code. The Bankruptcy Code defines an "insider" to include, among other things, an "officer of the debtor" and a "person in control of the debtor." 11 U.S.C. § 101(31). Courts have also concluded that an employee may be an "insider" if such employee has "at least a controlling interest in the debtor or . . . exercise[s] sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets." *In re Velo Holdings, Inc.*, 472 B.R. 201, 208 (Bankr. S.D.N.Y. 2012) (citations omitted). It is well-established that an employee's job title, alone, does not make such employee an "insider" as defined by the Bankruptcy Code. *See In re Borders Grp. Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (noting that "[c]ompanies often give employees the title 'director' or 'director level,' but do not give them decision-making authority akin to an executive" and concluding that certain "director level" employees in that case were not insiders).

36. First, none of the KERP Participants has discretionary control over any substantial budgetary amounts or the ability to dictate company policy. Second, although certain of the KERP Participants hold titles such as "director", "senior vice president", or "head," such employees must obtain approval from senior management before taking any action with respect to

the disposition of significant assets. Third, none of the KERP Participants is a member of the Board of Directors of Speedcast International Limited (the "**Board**") or participates in the Debtors' corporate governance. Although three of the KERP Participants are directors of certain subsidiaries within the Speedcast corporate structure, such individuals do not have authority akin to an "executive" and do not have authority to dictate corporate policy or the disposition of corporate assets. Finally, none of the KERP Participants had any say or input whatsoever on any aspect of the Proposed KERP or its ultimate formulation. Accordingly, Section 503(c)(1) is inapplicable in evaluating the Proposed KERP.

Reservation of Rights

37. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

38. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Local Rule 9103-1(d).

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 24, 2020
Houston, Texas

Respectfully submitted,

/s/ Alfredo R. Pérez

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Certificate of Service

I hereby certify that, on September 24, 2020, a true and correct copy of the foregoing document was served as provided by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**
	§	**Re: Docket No. ___**

ORDER APPROVING AND AUTHORIZING
IMPLEMENTATION OF NON-INSIDER KEY EMPLOYEE RETENTION PLAN

Upon the motion, dated September 24, 2020 (the "**Motion**")[2] of SpeedCast International Limited and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), for an order approving and authorizing implementation of the Debtors' proposed non-insider key employee retention plan (the "**KERP**") pursuant to sections 363 and 503(c)(3) of title 11 of the United States Code (the "**Bankruptcy Code**"), as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and upon the Healy Declaration; and upon the record herein and upon all

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[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of the proceedings had before the Court; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized pursuant to sections 363 and 503(c)(3) of the Bankruptcy Code to implement the KERP.

2. The KERP is approved in its entirety.

3. The Debtors are authorized, but not directed, to take all actions necessary to implement the KERP on the terms and conditions set forth in the Motion, including making any payments pursuant to the terms of the KERP.

4. Nothing contained in this Order or any payment made pursuant to the authority granted by this Order is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

5. The Debtors are authorized to take all steps necessary or appropriate to carry out the relief granted in this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2020
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Healy Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**

DECLARATION OF MICHAEL HEALY IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY OF ORDER APPROVING AND AUTHORIZING IMPLEMENTATION OF NON-INSIDER KEY EMPLOYEE RETENTION PLAN

I, Michael Healy, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is following is true and correct to the best of my knowledge, information, and belief:

1. I submit this Declaration in support of the *Motion of Debtors for Entry of Order Approving and Authorizing Implementation of Non-Insider Key Employee Retention Plan* (the "**Motion**")[2].

2. I am the Chief Restructuring Officer ("**CRO**") of Speedcast International Limited ("**Speedcast**," together with its debtor affiliates in the above captioned chapter 11 cases, as debtors and debtors in possession, the "**Debtors**").

3. Except as otherwise indicated, the facts set forth in this declaration (the "**Declaration**") are based upon my personal knowledge, my review of the relevant documents, information provided to me by employees working under my supervision or by the Debtors'

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[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

professional advisors, or my opinion based upon experience, knowledge, and information concerning the Debtors' operations and financial condition, and my discussions with other employees of FTI and with Speedcast's restructuring advisors—Weil, Gotshal & Manges LLP ("**Weil**") as global counsel to Speedcast, Moelis Australia Advisory Pty Ltd and Moelis & Company LLC ("**Moelis**") as investment banker, and Herbert Smith Freehills LLP ("**HSF**" and, together with Weil, FTI, and Moelis, the "**Advisors**"). If called upon to testify, I would testify to the facts set forth in this Declaration.

4. If called upon to testify, I would testify competently to the facts set forth in this Declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis. I have reviewed the Motion or have otherwise had its contents explained to me, and it is my belief that the relief sought therein is reasonable and necessary and in the best interest of the Debtors, the Debtors' estates, and all stakeholders in the chapter 11 cases.

Professional Background and Qualifications

5. In addition to serving as Speedcast's CRO, I am a Senior Managing Director at FTI Consulting, Inc. ("**FTI**"), a leading global business advisory firm with 103 offices worldwide and over 5,500 professionals. I have more than 20 years of restructuring experience, and have advised companies, lenders, creditors, corporate boards, and equity sponsors across a diverse range of industries both domestically and internationally. My experience includes advising on complex restructuring and turnaround situations in out-of-court restructurings and in formal bankruptcy proceedings. Specific areas of my experience include business plan development, cash flow forecasting, cash management, development and implementation of cost reduction plans, negotiating restructuring plans, bankruptcy planning, and negotiating business and asset sales. I

have advised companies, lenders, and investors in a variety of industries and in select instances served as Chief Restructuring Officer, including F+W Media, Inc., All American Group, Inc., and TransCentra, Inc.

6. I am familiar with the Debtors' current situation, short- and long-term business plan, management team, and historical and current compensation programs. I have also gathered relevant market data on incentives and retention payments in chapter 11 cases, assisted the Debtors in developing the Proposed KERP, and analyzed whether the Proposed KERP is consistent with typical competitive practice.

7. Based on my analysis, I have concluded that the payouts proposed under the Proposed KERP are reasonable and consistent with competitive practice. This conclusion is based upon a comparison (discussed below) of the proposed payouts under the Proposed KERP with market data regarding retention payments for other companies in chapter 11. I have also concluded that the structure of the design, structure, cost, and award opportunities available under the Proposed KERP are reasonable given the facts and circumstances of these chapter 11 cases.

Proposed KERP

8. The Proposed KERP contains the following primary design features:

Summary of Proposed KERP	
Maximum Amount of KERP	$3,996,608 ($3,696,608 for KERP Participants and $300,000 for a discretionary pool)
KERP Participants	88 non-insider Key Employees
KERP Awards	KERP Awards represent fixed cash amounts payable in two installments, contingent on continued employment in good standing of the KERP Participant through the applicable KERP Award payment dates (unless KERP Participant is terminated without cause)
Discretionary Pool	$300,000 distributable by the Debtors, in their business judgment to additional non-insider Key Employees. Terms of awards granted with discretionary pool funds to be consistent with the structure and payment levels awarded to the KERP Participants
Payment Dates	First Installment (50% of KERP Award): Payable upon the earlier of (i) Plan Confirmation, and (ii) entry of order approving 363 Sale Second Installment (50% of KERP Award): Payable, as applicable, (A) following Plan Confirmation, the earlier of (i) one month following the Debtors' emergence from chapter 11, and (ii) June 30, 2021, or (B) one month following closing of a 363 Sale
Clawback	The first installment of the KERP Awards is subject to a clawback should the KERP Participant voluntarily resign or be terminated for "cause" prior to the Debtors' emergence from chapter 11
Other Terms	KERP Participants will not be eligible to participate in any Key Employee Incentive Plan or similar program

Analysis of the Proposed KERP

9. In assessing the reasonableness of the Proposed KERP, I worked with my team to analyze non-insider retention plans authorized and approved in recent chapter 11 cases of twelve companies with prepetition assets between 16.6 percent to 431.5 percent of the Debtors' assets. In conducting this analysis, I relied upon my significant consulting experience in the analysis and design of postpetition retention plans and the expertise of other professionals at FTI.

10. In evaluating the Proposed KERP, my team and I analyzed the Proposed KERP awards for the KERP Participants, expressed as a percentage of prepetition asset size, to the compensation peer group. On average, the awards to the KERP Participants (excluding the discretionary pool) is at the 70th percentile of market, when comparing the total cost of the Proposed KERP as a percent of prepetition assets. As of the Petition Date, the Debtors had suspended their discretionary and incentive bonus plans, so awards under the Proposed KERP are the only compensation to be earned by the KERP Participants in addition to their base salaries.[3]

11. The general structure of the Proposed KERP comports with that of retention plans of the Debtors' chapter 11 peers. For example:

- Post-petition non-insider compensation arrangements are common;
- The Proposed KERP award opportunities, expressed as a percentage of asset size, are within the range of market practice; and
- The installment payout feature and the discretionary pool are consistent with market practice.

12. For these reasons and based on my experience with retention-based compensation plans employed by companies in chapter 11, I believe the design, structure, cost and

[3] The Debtors are required to make statutory bonus payments in certain jurisdictions in which they operate.

award opportunities of the Debtors' Proposed KERP are reasonable and consistent with market practice.

Conclusion

13. Based on my education, experience, and the work I have done in this case and in similar cases, I believe that the design, structure, cost, and award opportunities available under the Proposed KERP are reasonable given the facts and circumstances of these chapter 11 cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: September 24, 2020
Houston, Texas

By: */s/ Michael Healy*
Name: Michael Healy
Title: Chief Restructuring Officer