

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	X
In re:	: Chapter 11
	:
SEQUENTIAL BRANDS GROUP, INC., <i>et</i>	: Case No. 21-11194 (JTD)
<i>al.</i> , <sup>1</sup>	:
	: (Jointly Administered)
Debtors.	:
	: Ref. Docket No. 9
	: Objection Deadline: Sept. 17, 2021 at 4:00 p.m. (ET)
	: Hearing Date: Sept. 24, 2021 at 10:00 a.m. (ET)
	X

**NOTICE OF HEARING ON DEBTORS' MOTION SEEKING ENTRY OF A FINAL ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND POSTPETITION TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on August 31, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors' Motion Seeking Entry of a Final Order (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* [Docket No. 9] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). A copy of the Motion is attached hereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that any response or objection to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **September 17, 2021 at 4:00 p.m. prevailing Eastern Time**.

<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1518), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.



**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response or objection upon: (i) counsel to the Debtors, (a) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 USA, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com) and Joshua K. Brody (jbrody@gibsondunn.com), and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com) and Timothy P. Cairns (tcairns@pszjlaw.com); (ii) counsel to the Prepetition Term B Agent, (a) James-Bates-Brannan-Groover-LLP, 3399 Peachtree Road NE, Suite 1700, Atlanta, Georgia 30326, Attn: Sara Kate Rumsey (SKRumsey@JamesBatesLLP.com) and Doroteya Wozniak (DWozniak@JamesBatesLLP.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Derek Abbott (dabbott@morrisonichols.com) and Curtis Miller (cmiller@morrisonichols.com); (iii) counsel to the Required Lenders, (a) King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, Attn: Roger Schwartz (rschwartz@kslaw.com) and Peter Montoni (pmontoni@kslaw.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Robert J. Dehney (rdehney@morrisonichols.com); (iv) counsel to the Prepetition BAML Parties, (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Julia Frost-Davies (julia.frost-davies@morganlewis.com), Marjorie S. Crider (marjorie.crider@morganlewis.com) and Christopher L. Carter (christopher.carter@morganlewis.com) and (b) Robinson + Cole LLP, 1201 N. Market Street, Suite 1406, Wilmington, DE 19801, Attn: Rachel J. Mauceri (rmauceri@rc.com); and (v) the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Richard Schepacarter (Richard.Schepacarter @usdoj.gov).

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **SEPTEMBER 24, 2021 AT 10:00 A.M. PREVAILING EASTERN TIME** VIA ZOOM VIDEOCONFERENCE BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY COURT JUDGE, AT BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.**

Dated: September 2, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

*/s/ Laura Davis Jones*

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Laura Davis Jones (Bar No. 2436)  
Timothy P. Cairns (Bar No. 4228)  
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-and-

**GIBSON, DUNN & CRUTCHER LLP**

Scott J. Greenberg (*pro hac vice* pending)  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT 1**

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

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In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**DEBTORS’ MOTION SEEKING ENTRY OF A FINAL ORDER  
(I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND  
POSTPETITION TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of a final order, substantially in the form attached hereto as **Exhibit A** (the “Final Order”): (a) authorizing, but not directing, the Debtors, to remit and pay Taxes and Fees (as defined herein) without regard to whether such obligations accrued or arose before or after the Petition Date, including those obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, and (b) granting related relief. Such

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Lorraine DiSanto in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not immediately defined shall have the meanings ascribed to them elsewhere in this motion or in the First Day Declaration, as applicable.

relief will be without prejudice to the Debtors' rights to contest the amount of any Taxes and Fees (as defined herein) on any grounds they deem appropriate.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 6004, and Local Rule 9013-1(m).

### **Background**

5. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases

pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

6. Information regarding the Debtors' history and business operations, capital structure, primary indebtedness, and the events leading up to the commencement of these chapter 11 cases can be found in the First Day Declaration.

### **The Debtors' Tax and Fee Obligations**

#### **I. Overview of the Debtors' Tax and Fee Obligations.**

7. In the ordinary course of business, the Debtors collect, incur, and pay franchise tax, excise tax, business and occupancy tax, commercial activities tax, personal and real property tax, income tax and commercial rent tax, along with various other taxes, fees, and assessments (collectively, the "Taxes and Fees").<sup>3</sup> The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing authorities (collectively, the "Authorities"). A schedule identifying the Authorities is attached hereto as **Exhibit B**.<sup>4</sup> Taxes and Fees are remitted and paid by the Debtors through checks, electronic transfers, and automated clearing house transfers that are processed through their banks and other financial institutions.

8. The Debtors believe that no Taxes and Fees are due and owing as of the Petition Date, and no Taxes and Fees will become due and owing between the Petition Date and the twenty-first day following the Petition Date. However, the Debtors estimate that approximately \$215,333 in Taxes and Fees related, in whole or in part, to the prepetition period may come due during the

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<sup>3</sup> The Debtors do not seek the authority to collect and remit state and federal employee-related withholding taxes by this motion. Such relief is instead requested in the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Compensation and Benefits Programs and (B) Pay Prepetition Claims Related Thereto and (II) Granting Related Relief*, which has been filed substantially contemporaneously herewith.

<sup>4</sup> Although **Exhibit B** is intended to be comprehensive, the Debtors may have inadvertently omitted one or more Authorities. By this motion, the Debtors request relief applicable to all Authorities, regardless of whether such Authority is specifically identified on **Exhibit B**.



12 month period immediately following the Petition Date, and file this motion out of an abundance of caution in order to ensure they are permitted to timely pay such amounts when due. For the avoidance of doubt, the relief requested herein includes authority to pay Taxes and Fees assessed by the Authorities with respect to the prepetition period, including those Taxes and Fees that (i) accrued prepetition but were not paid in full as of the Petition Date, or (ii) were incurred, in whole or in part, with respect to the prepetition period but which will not come due until after the Petition Date. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees accrued or incurred postpetition and Taxes and Fees for so-called “straddle” periods.<sup>5</sup>

9. The Debtors may be subject to audit investigations on account of tax returns and/or tax obligations in prior years (collectively, the “Audits”). The Audits may result in prepetition Taxes and Fees being assessed against the Debtors (such Taxes and Fees, the “Assessments”). Further, the Authorities may conduct additional Audits in the future, resulting in additional Assessments on account of prepetition Taxes and Fees. By this Motion, the Debtors seek authority to pay or remit any Assessments as they arise in the ordinary course of the Debtors’ business, including as a result of any settlements of issues addressed in an Audit.

10. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors’ business operations in several ways, including that: (a) the Authorities may attempt to suspend the Debtors’ operations, file liens, seek to lift the automatic stay, and/or pursue

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<sup>5</sup> Claims for so-called “straddle” Taxes and Fees may be entitled to administrative claim treatment pursuant to Section 503(b)(1)(B). A recent Delaware bankruptcy court decision held that the portion of a “straddle” tax claim that is attributable to the prepetition portion of a “straddle” period is not entitled to either administrative priority or priority under Section 507(a)(8)(A). See *In re Affirmative Ins. Holdings, Inc.*, 607 B.R. 175, 188 (Bankr. D. Del 2019). Nevertheless, because the Debtors could be subject to late payment penalties and interest in the event they do not pay such “straddle” Taxes and Fees and a court ultimately concludes that such taxes are entitled to administrative treatment, the Debtors are seeking the authority to pay such “straddle” Taxes and Fees as they become due under applicable law. The Debtors reserve their rights with respect to the proper characterization of such “straddle” Taxes and Fees and to seek reimbursement of any portion of a payment that was made that ultimately is not entitled to administrative or priority treatment.

other remedies that would harm the estates; (b) certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract them from their duties related to the Debtors' restructuring; and (c) failing to pay certain of the Taxes and Fees may result in penalties, the accrual of interest, or the Debtors losing their ability to conduct business in certain jurisdictions.

11. The following table categorizes and describes the Taxes and Fees.

<b>Category</b>	<b>Description</b>	<b>Estimated Prepetition Amount Coming Due During 12 Month Period Following Petition Date</b>
Franchise Tax and Fees	The Debtors remit certain taxes, fees and charges required to conduct business in the ordinary course pursuant to state and local laws. Franchise tax can be based on a flat fee, net operating income, gross receipts, or capital employed. Some states will refuse to qualify a debtor to do business in such state if franchise taxes have not been timely paid in full. Generally, the Debtors pay franchise taxes on an annual basis, in arrears, but some jurisdictions require estimated franchise taxes to be remitted on a quarterly basis if such estimated liability exceeds a certain threshold.	\$0
Personal & Real Property Tax	The Debtors lease limited office space in California and New York. Pursuant to the corresponding lease agreements, the Debtors are responsible to pay or reimburse a portion of the (i) real estate taxes and fees and (ii) personal property taxes and fees assessed by the applicable taxing authorities with respect to the units occupied by the Debtors and the improvements and chattels installed and/or maintained by the Debtors therein. These lease agreements remain unexpired. As such, the Debtors submit that they are subject to assumption or rejection pursuant to Section 365 of the Bankruptcy Code.	\$0

Category	Description	Estimated Prepetition Amount Coming Due During 12 Month Period Following Petition Date
Commercial Rent Tax	The Debtors incur commercial rent tax solely on account of their occupancy and lease of space in the borough of Manhattan, south of 96 <sup>th</sup> Street. Subject to limited exemptions, all large commercial tenants leasing space in this geographic area must pay commercial rent tax to the City of New York.	\$10,000
Excise Tax	The Debtors are obligated to pay excise tax to the state of Massachusetts on account of their ongoing operations in that state. Generally, all corporations with a sufficient nexus to the state of Massachusetts (including the Debtors) are obligated to pay a corporate excise tax, which is calculated as a fixed percentage of the subject corporation's (i) taxable net income apportioned to Massachusetts and (ii) taxable net worth, each as determined in accordance with state law rules and regulations.	\$0
Business & Occupation Tax	The Debtors are obligated to pay a business and occupation tax assessed by the state of Washington based on the portion of the Debtors' taxable gross receipts attributable to operations in that state. Generally, all corporations doing business in Washington are required to pay this business and occupation tax.	\$5,334
Commercial Activities Tax	The Debtors are obligated to pay commercial activities tax assessed by the state of Ohio. Corporations doing business in the state of Ohio with a sufficient nexus to the state and with taxable gross receipts in excess of \$150,000 per year must pay this commercial activities tax, which is calculated as a percentage of such taxable gross receipts.	\$0
Income Tax, Various Other Governmental Tax, Fees, and Assessments	The Debtors incur federal and state income taxes and various other governmental assessments related to the Debtors' taxable income, each of which they pay on a periodic basis.	\$200,000 <sup>6</sup>

<sup>6</sup> This amount is comprised solely of estimated federal income tax liability related to the Debtors' prepetition divestiture of (i) the Heely's brand, which closed on April 21, 2021, and (ii) the Ellen Tracy and Caribbean Joe

**Basis for Relief**

12. Payment of the Taxes and Fees is necessary to avoid irreparable harm to the Debtors' estates and is otherwise permissible under the Bankruptcy Code.

**I. Certain of the Taxes and Fees Are Not Property of the Debtors' Estates.**

13. Certain of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. *See, e.g.*, 26 U.S.C. § 7501 (stating that certain taxes and fees are held in trust). As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See* 11 U.S.C. § 541(d); *Begier v. IRS*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference because such funds are not the debtor's property); *In re First Pay, Inc.*, 773 F.3d 583, 590 (4th Cir. 2014) (same); *DuCharmes & Co. v. Mich. (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *see also In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (finding that a debtor's liability for sales tax required by non-bankruptcy law to be collected by the debtor from its customers constituted a non-dischargeable "trust fund" tax obligation); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same). Because the Debtors do not have an equitable or property interest in any of the "trust fund" Taxes and Fees, these amounts are not property of the Debtors' estates, and instead belong to the Authorities.

**II. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment under the Bankruptcy Code.**

14. Claims for certain of the Taxes and Fees are, or may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment

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brands, each of which closed on July 30, 2021. These sales are further described in the First Day Declaration.

under the Bankruptcy Code, the respective Authorities may, in turn, assert priority status on account of any penalties resulting from non-payment thereof. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Additionally, in certain cases, non-payment of the Taxes and Fees may result in the Authorities asserting a lien against the Debtors’ assets, rendering the underlying claim secured. *See* 11 U.S.C. § 362(b)(18) (excepting from the automatic stay the creation and perfection of certain statutory tax liens).

15. Where they are afforded either priority of secured status, the Taxes and Fees must be satisfied in full prior to payment of any general unsecured obligations. In this way, prompt payment of the Taxes and Fees affects only the timing of such payments, and would not substantively prejudice the rights and entitlements of the Debtors’ junior creditors.

### **III. Payment of the Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors’ Business Judgment.**

16. The Court may authorize the Debtors to pay the Taxes and Fees under section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code). To do so, courts require that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). 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." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

17. Moreover, section 105(a) of the Bankruptcy Code provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, pursuant to the "doctrine of necessity." 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under the doctrine of necessity); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). 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." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty to "protect and preserve the estate" can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

18. The doctrine of necessity is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *Ionosphere Clubs*, 98 B.R., 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as "necessary to avert a serious threat to the Chapter 11 process"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

19. The standard underlying the doctrine of necessity is satisfied here, as payment of the Taxes and Fees is crucial to the success of these chapter 11 cases. Indeed, failure to pay the Taxes and Fees could materially disrupt the Debtors' business and restructuring efforts in several ways. First, such neglect may compel the Authorities to suspend the Debtors' operations, file liens, seek to lift the automatic stay, or pursue other remedies that would harm the estates. Second, the authorities may seek to pursue claims directly against the Debtors' officers and the directors on account of non-payment of certain Taxes and Fees, which would further distract these key individuals from their core mandate of maximizing value for the benefit of the Debtors' stakeholders. *See e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) ("[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees. . . .") (citing *United States v. Energy Res. Co.*,

495 U.S. 545, 547 (1990)). Third, and lastly, failure to pay certain of the Taxes and Fees may result in the assessment of penalties, the accrual of interest, or revocation of the Debtors' ability to conduct business in certain jurisdictions, each of which could both materially reduce general unsecured creditor recoveries and more broadly threaten the Debtors' restructuring efforts.

20. Recognizing similar justifications and principles of necessity, courts in this district have routinely authorized the payment of prepetition taxes and fees in complex chapter 11 cases. *See, e.g., In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) [D.I. 133] (Bankr. D. Del. Jan. 21, 2020) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) [D.I. 108] (Bankr. D. Del. Dec. 3, 2019) (same); *In re Destination Maternity Corporation*, No. 19-12256 (BLS) [D.I. 223] (Bankr. D. Del. Nov. 12, 2019) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) [D.I. 338] (Bankr. D. Del. Oct. 28, 2019) (same); *In re Furie Operating Alaska, LLC*, No. 19-11781 (LSS) [D.I. 54] (Bankr. D. Del. Aug. 12, 2019); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) [D.I. 165] (Bankr. D. Del. Aug. 9, 2019) (same).<sup>7</sup>

**Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

21. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, the proposed debtor-in-possession financing, and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks, wire transfer requests, or automated clearing house transfers with respect to authorized payments related to this motion, as applicable. Accordingly, the Debtors believe that

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<sup>7</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.



checks, wire transfer requests, or automated clearing house transfers that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, wire transfer requests, or automated clearing house transfers in respect of the relief requested in this motion.

**Reservation of Rights**

22. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Final Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

**Bankruptcy Rules 6004(a) and 6004(h)**

23. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and

that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

24. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the United States Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) counsel to the BoA Credit Agreement agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Marjorie Crider, Esq. (marjorie.crider@morganlewis.com); Julie Frost-Davies, Esq. (julia.frost-davies@morganlewis.com)), and (ii) Robinson & Cole LLP, 1201 N. Market Street, Suite 1406, Wilmington, DE 19801 (Attn: Rachel J. Mauceri (rmauceri@rc.com)); (g) counsel to the Term B Lenders and DIP Lenders, (i) King & Spalding, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Roger Schwartz, Esq. (rschwartz@kslaw.com); Peter Montoni, Esq. (pmontoni@kslaw.com); Timothy Fesenmyer, Esq. (tfesenmyer@kslaw.com)); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, DE 19801, (Attn: Robert J. Dehney (rdehney@morrisnichols.com)); (h) the Authorities and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m).

**No Prior Request**

25. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry a final order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as is just and proper.

Dated: August 31, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ Laura Davis Jones

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-and-

**GIBSON, DUNN & CRUTCHER LLP**

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Final Order**

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

In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**FINAL ORDER (I) AUTHORIZING THE  
PAYMENT OF CERTAIN PREPETITION AND  
POSTPETITION TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not directing, the Debtors, to remit and pay Taxes and Fees without regard to whether such obligations accrued or arose before or after the Petition Date, including those obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and this Court having found that this is a core

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used in this Final Order but not immediately defined have the meaning given to such terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to: (a) negotiate, pay, and remit any Taxes and Fees, including any Assessments, that arose in the ordinary course of business prior to the Petition Date and that have or will become due and owing during the pendency of these chapter 11 cases in an aggregate amount not to exceed \$250,000, and (b) negotiate, pay and remit all Taxes and Fees that arise or accrue in the ordinary course of business after the Petition Date.
3. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any

particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Taxes and Fees.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.



**EXHIBIT B**

**Taxing Authorities**

<u>Taxing Authority</u>	<u>Jurisdiction</u>	<u>Address</u>
State of California Franchise Tax Board	CA	Franchise Tax Board P.O. Box 942857 Sacramento, CA 94257-0500
Colorado Department of Revenue	CO	Colorado Department of Revenue Denver, CO 80261-0004
Department of Revenue Services – State of Connecticut	CT	Department of Revenue Services – State of Connecticut P.O. Box 2974 Hartford, CT 06104
Massachusetts Department of Revenue	MA	Massachusetts Department of Revenue P.O. Box 419272 Boston, MA 02241
Maine Revenue Services	ME	Maine Revenue Services P.O. Box 1064 Augusta, ME 04332-1064
Michigan Department of Treasury	MI	Michigan Department of Treasury P.O. Box 30803 Lansing, MI 48909
Minnesota Department of Revenue	MN	Minnesota Revenue Mail Station 1250 St. Paul, MN 55145-1250
New Hampshire Department of Revenue Administration	NH	NH DRA P.O. Box 637 Concord, NH 03302
New Mexico Taxation and Revenue Department	NM	Corporate Income and Franchise Tax P.O. Box 25127 Santa Fe, NM 87504-5127 or Correspondence for the Secretary’s Office, Legal and Other General Information P.O. Box 630 Santa Fe, NM 87504-0630

<u>Taxing Authority</u>	<u>Jurisdiction</u>	<u>Address</u>
Oregon Department of Revenue	OR	Oregon Department of Revenue P.O. Box 14790 Salem, OR 97309-0470
Department of Taxation and Finance – New York State	NY	New York State Dept of Taxation and Finance Bankruptcy Section P.O. Box 5300 Albany, NY 12205-0300
NYC Department of Finance	NYC	NYC Department of Finance Correspondence Unit One Centre Street, 22 <sup>nd</sup> Floor New York, NY 10007
NJ Treasury – Division of Taxation	NJ	NJ Division of Taxation Bankruptcy Section P.O. Box 245 Trenton, NJ 08695-0245
Department of Revenue – Washington State	WA	Washington State Department of Revenue Treasury Management P.O. Box 47464 Olympia, WAS 98504-7464
Ohio Department of Taxation	OH	Business Tax Division Commercial Activity Tax P.O. Box 16158 Columbus, OH 43216-6158