

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
STARRY GROUP HOLDINGS, INC., *et al.*,¹ : Case No. 23-10219 (KBO)
: :
Debtors. : (Joint Administration Requested)
: :
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**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE
OBLIGATIONS, (II) AUTHORIZING CONTINUANCE OF WORKFORCE
PROGRAMS, (III) AUTHORIZING PAYMENT OF WITHHOLDING AND
PAYROLL-RELATED TAXES, (IV) AUTHORIZING PAYMENT OF PREPETITION
CLAIMS OWING TO ADMINISTRATORS, AND (V) GRANTING RELATED RELIEF**

Starry Group Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (this “**Motion**”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Interim Order**”) and **Exhibit B** (the “**Proposed Final Order**”) and, together with the Proposed Interim Order, the “**Proposed Orders**”): (a) authorizing, but not directing, the Debtors in their discretion, to pay, continue, or otherwise honor various prepetition labor-related obligations to their Workforce (as defined below); (b) confirming the Debtors’ authority to continue each of the Workforce Programs

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.



(as defined below) in the ordinary course of business during the Chapter 11 Cases (as defined below); (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Deductions (as defined below) relating to the Workforce Obligations; (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators (as defined below) in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Workforce; and (e) granting related relief.

JURISDICTION

2. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 363(c), 503(c), 507(a), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6003 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**”).

4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order or judgment by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

5. On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors

are authorized to continue operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously with the filing of this Motion, the Debtors have filed with the Court a motion requesting joint administration of the Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

7. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases, is set forth in detail in the *Declaration of Chaitanya Kanojia in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed contemporaneously herewith, and is incorporated herein by reference.³

WORKFORCE AND WORKFORCE OBLIGATIONS

8. As of the Petition Date, the Debtors employ 292 employees (the “**Employees**”), of which 291 are full-time employees and one is a part-time employee.

9. In addition to the Employees, the Debtors also utilize two independent contractors and 20 per diem employees (the “**ICs**” and “**Per Diem Employees**,” respectively, and, collectively the “**Non-Salaried Workers**” and, together with the Employees, the “**Workforce**”). The Debtors source the ICs through several agencies, including, but not limited to, Robert Half (collectively, the “**Staffing Agencies**”). The Workforce is not subject to a collective bargaining agreement or similar labor agreement.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the First Day Declaration.

³ The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors’ proposed claims and noticing agent, Kurtzman Carson Consultants LLC: <http://www.kccllc.net/Starry>.

10. The Workforce provides a variety of critical functions relating to the management and day-to-day operations of the Debtors' business, including general administrative functions, service engineering, product engineering, manufacturing, marketing, sales, subscriber services, supply chain, technical operations, and general corporate. The skills, expertise, and experience of the Workforce, as well as their relationships with customers and vendors and their knowledge of the Debtors' business, are essential to the Debtors' operations and ability to effectively maximize the value of their business during the Chapter 11 Cases.

I. WORKFORCE OBLIGATIONS

11. In the ordinary course of business, the Debtors incur various labor-related obligations (the "**Workforce Obligations**") under plans, programs, policies, and agreements maintained by or for the benefit of, or contributed to or entered into by, the Debtors before the Petition Date (collectively, the "**Workforce Programs**"),⁴ including but not limited to: (a) wages, salaries, and related compensation (the "**Wage Obligations**"); (b) sales commissions; (c) retention programs for non-insider Employees; (d) deductions associated with the forgoing (the "**Deductions**"); (e) various health, financial, and welfare benefits historically provided to the Debtors' Workforce (the "**Benefits Obligations**"); (f) paid time off ("**PTO Obligations**"); (g) reimbursable expenses and related obligations (the "**Reimbursable Expense Obligations**"); and (h) compensation related to Non-Salaried Workers (the "**Non-Salaried Worker Obligations**"). In addition, in connection with the Workforce Programs, the Debtors incur and pay certain fees and expenses to third-party Administrators to administer the various Workforce

⁴ By this Motion, the Debtors do not seek to assume or reject any Workforce Program to the extent that such Workforce Program is deemed to be an executory contract within the meaning of section 365 of the Bankruptcy Code. Moreover, the Debtors do not waive their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be authorized by applicable law.

Programs. By this Motion, the Debtors are seeking authorization to pay the following aggregate amounts on account of the prepetition Workforce Obligations.

Workforce Obligations	Approximate Outstanding Prepetition Amount	Approximate Amount Due Within Interim Period
<i>Workforce Obligations</i>		
i. Wage Obligations	\$ 113,400	\$ 113,400
ii. Commissions	\$ 14,400	\$ 14,400
iii. Non-Insider Retention	\$0	\$0
iv. Deductions	\$ 28,200	\$ 28,200
v. Benefits Obligations	\$ 0	\$ 0
vi. PTO Obligations	\$ 249,600 ⁵	\$ 249,600
vii. Reimbursable Expense Obligations	\$ 12,000	\$ 12,000
viii. Non-Salaried Worker Obligations	\$ 10,800	\$ 10,800
Total	\$ 428,400	\$ 428,400
<i>Non-Employee Director Costs</i>	\$ 35,000	\$ 5,000
<i>Administrator Fees and Expenses</i>	\$ 2,400	\$ 2,400
GRAND TOTAL	\$ 495,800	\$ 435,800

A. Wage Obligations

12. The Employees are paid wages and salaries on a bi-weekly basis.⁶ The average gross payroll on account of Employees for each pay period is approximately \$1.2 million. The Debtors process payroll internally utilizing Automatic Data Processing, Inc. (“**ADP**”)’s payroll management software. The Debtors pay their Employees in arrears for work performed one or

⁵ The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO Obligations for all Employees totals approximately \$249,600. This accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible departing Employees may receive cash payments on account of unused PTO.

⁶ In order to avoid any potential delay in payment to the Employees as a result of the Chapter 11 Cases, the Debtors paid accrued wages for Employees through February 17, 2023.

two week(s) before the Debtors' normal bi-weekly payroll. Non-exempt (hourly) Employees are eligible for overtime pay at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. In order to receive overtime pay, Employees must receive prior authorization for any time worked in excess of 40 hours per week. The Debtors' overtime pay policy allows the Debtors to assign mandatory overtime work for certain Employees should business needs require.

13. The Debtors estimate that, as of the Petition Date, they owe approximately \$113,400 in Wage Obligations to their Employees, approximately all of which will become due and owing within the first 30 days after the Petition Date (the "**Interim Period**").

B. Commissions

14. In the ordinary course of business, certain of the Employees are eligible to receive sales commissions (the "**Commissions**") when certain milestones are achieved. Commissions are calculated and paid to eligible Employees on a monthly basis. The Commissions comprise a substantial portion of the total compensation received by the Employees eligible to receive the Commissions, and if the Debtors do not pay earned but unpaid Commissions then the Debtors may lose the valuable services provided by such Employees. As of the Petition Date, the Debtors estimate that approximately \$14,400 is outstanding on account of Commissions.

C. Non-Insider Retention Plan⁷

15. Before the Petition Date, the Debtors instituted a retention plan for non-insider Employees (the "**Non-Insider Retention Plan**"). Pursuant to the Non-Insider Retention Plan, 136

⁷ The Debtors previously offered certain Employees the opportunity to earn awards under a short-term incentive plan and long-term incentive plan (the "**STI Plan**" and "**LTI Plan**," respectively, and together the "**Incentive Plans**"). The STI Plan was discontinued before the Petition Date in connection with the adoption of the Non-Insider Retention Plan, and the Debtors do not seek to continue the LTI Plan. As of the Petition Date, the Debtors do not believe that there are any amounts outstanding with respect to the Incentive Plans and by this Motion the Debtors do not seek any relief with respect to the Incentive Plans.

eligible non-insider⁸ Employees qualify to receive a retention bonus in four equal installments on (a) January 27, 2023, (b) April 30, 2023, (c) July 30, 2023, and (d) October 31, 2023, provided they remain employed by the Debtors on an applicable payment date. The quarterly cost of the Non-Insider Retention Plan is approximately \$689,188.84. There are no amounts outstanding under the Non-Insider Retention Plan as of the Petition Date as the installment payments do not accrue until an applicable payment date.⁹ Subject to entry of a final order, the Debtors seek authority to continue the Non-Insider Retention Plan postpetition.

D. Deductions

16. In the ordinary course of their business, the Debtors make the Deductions from the Workforce's paychecks for payments to third parties on behalf of members of the Workforce employed in the United States, including for various federal, state, and local income, FICA, employment insurance, disability, and other taxes, as well as for court ordered garnishments, savings programs, child support orders, repayments for loans taken against the savings programs, benefit plans, insurance, and other similar programs. The Debtors' average monthly Deductions are approximately \$465,000. ADP provides the Debtors with services related to the management of the Deductions as well as certain other tax-related services. The Debtors estimate that as of the Petition Date, they owe ADP approximately \$1,200 related to management of the Deductions and other tax-related services, approximately all of which will come due and owing within the Interim Period.

⁸ Each of the participants in the Non-Insider Retention Plan has a job title that is junior to vice president and does not exercise control over the Debtors or their business.

⁹ In the interest of full disclosure, separate from and unrelated to the Non-Insider Retention Plan, the Debtors paid retention bonuses – which must be repaid if the recipient does not continue working for the applicable entity for the specified retention period – to certain insider and non-insider employees during the week ending February 3, 2023. By this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments, which were made before the Petition Date.

17. As of the Petition Date, certain Employees are owed prepetition amounts related to their compensation. Where such amounts are owed, the applicable Deductions have not yet been taken. Additionally, the Debtors may not yet have forwarded to the various third parties noted above the payments that are attributable to the Deductions that have been withheld from the Workforces' paychecks. The Debtors estimate that, as of the Petition Date, accrued, but yet unremitted Deductions total approximately \$28,200, approximately all of which will come due and owing within the Interim Period. By this Motion, the Debtors request authority to remit all amounts that are due and owing on account of Deductions in the ordinary course of business and to pay amounts owed to ADP in connection with the Deductions as they become due and owing in the ordinary course of course of business.

E. Benefits Obligations

18. The Debtors provide a wide array of benefits for their Employees, negotiated by insurance broker Marsh McLellan Agency LLC ("**Marsh**"), under a variety of benefit programs (collectively, the "**Employee Benefit Programs**"), which give rise to Benefits Obligations. Only full-time Employees (the "**Eligible Employees**") are eligible for all of the Employee Benefit Programs (unless otherwise specified in this Motion). The Debtors seek authority to, in their sole discretion, continue this practice postpetition.

19. Eligible Employees may enroll their dependents, including spouses, domestic partners, and children in several of the Employee Benefit Programs. The Employee Benefit Programs include, amongst other things, medical, dental, and vision insurance programs, the Debtors' prescription drug insurance program, and supplemental life insurance program.

20. The Debtors employ Eligible Employees in six states and all of the benefits described herein are subject to local and state laws which may require the Debtors to adjust or provide additional benefits under the Employee Benefit Programs.

1. *Medical, Dental, and Vision Plans*

a. Medical Plans

21. The Debtors' medical coverage includes several plan options in which Eligible Employees may enroll that include medical and prescription drug coverage (the "**Medical Plans**"). The Medical Plans are provided through Blue Cross Blue Shield of Massachusetts (the "**Medical Plan Provider**").

22. The Debtors generally offer three different levels of medical coverage: (a) "Blue New England," (b) "Blue Care Elect," and (c) "Blue Care Elect Saver."

23. The Blue Care Elect and Blue Care Elect Saver plans are preferred provider organization ("**PPO**") options with prescription drug copays. The Platinum Medical plan is a PPO option with prescription drug copays that covers in-network care and offers limited benefits for out-of-network care. The Blue New England plan is a health maintenance organization ("**HMO**") option with prescription drug copays that covers in-network care only.

24. The Debtors also offer hospital indemnity insurance as part of the Medical Plans into which Eligible Employees may enroll at their expense through Reliance Standard Life Insurance Company ("**Reliance**"). Eligible Employees may choose from two levels of critical illness coverage: (a) \$1,000 and (b) \$1,500, which provides them payment if they or a covered family member is hospitalized.

25. The Medical Plans are funded both through Employee contributions and by the Debtors. Approximately 90% of the cost of the Medical Plans is borne by the Debtors, and Employees contribute to the Medical Plans through payroll deductions to pay for the balance. Employee contributions are deducted from Employee paychecks 26 times per year based on the Employee's payment schedule. Thus, payments to the Medical Plans consist of both trust fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. The Debtors' total

annual cost related to the Medical Plans, based on the Debtors' most current enrollment data, is approximately \$3.3 million. The Debtors pay the Medical Plan Provider directly for the benefits it actually provides to the Employees for the relevant benefits period.

26. The Debtors also subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**") and, together with the Medical Plans and HSA (as defined below), the "**Medical Benefits**", through Benefit Resource, Inc. ("**BRI**"). The Debtors fund premiums on account of COBRA coverage in advance, COBRA participants then pay BRI directly for their coverage and BRI then sends a monthly payment to the Debtors from the amounts it receives from COBRA participants.

27. As of the Petition Date, the Debtors believe that there are no accrued and unpaid amounts owing on account of the Medical Benefits. By this Motion, the Debtors request authority to make any payments and remittances for amounts attributable to the prepetition period and related to the Medical Benefits, in the ordinary course of business and in their sole discretion and to continue the Medical Benefits, in the ordinary course of business postpetition.

b. Dental Plan

28. The Debtors also offer Eligible Employees dental care benefits (the "**Dental Plan**"). The Dental Plan is a basic PPO option that covers both in- and out-of-network care as well as major services and orthodontic expenses for children up to age 19. The Dental Plans are provided through MetLife, Inc. ("**MetLife**").

29. The Dental Plan is funded both through Employee contributions and by the Debtors. Approximately 90% of the cost of the Dental Plan is borne by the Debtors, and Employees contribute to the Dental Plan through payroll deductions to pay for the balance. Employee

contributions are deducted from Employee paychecks 26 times per year based on the Employee's payment schedule. Thus, payments to the Dental Plan consist of both trust fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. The Debtors' total annual cost related to the Dental Plan, based on the Debtors' most current enrollment data, is approximately \$320,000. The Debtors pay MetLife directly for the benefits they actually provide to the Employees for the relevant benefits period.

30. As of the Petition Date, the Debtors believe that there are no accrued and unpaid amounts owing on account of the Dental Plan. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the Dental Plan, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the Dental Plan in the postpetition in the ordinary course of business.

c. Vision Plans

31. The Debtors also offer several vision care benefits to Eligible Employees (the "Vision Plans"). Eligible Employees can choose between two levels of vision coverage: "Low Plan" and "High Plan." Both the Low Plan and the High Plan cover in-network care and provide certain reimbursements for out-of-network care. The Vision Plans are provided through EyeMed Vision Care, LLC ("Vision Care").

32. The Vision Plans are funded both through Employee contributions and by the Debtors. Approximately 90% of the cost of the Vision Plans is borne by the Debtors, and Employees contribute to the Vision Plans through payroll deductions to pay for the balance. Employee contributions are deducted from Employee paychecks 26 times per year based on the Employee's payment schedule. As of the Petition Date, the Debtors believe that there are no accrued and unpaid amounts owing on account of the Vision Plans. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition

period and related to the Vision Plans, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the Vision Plans in the postpetition in the ordinary course of business.

2. *Disability Benefits*

33. The Debtors provide, or in certain cases offer the option of purchasing, certain types of life and disability insurance, including basic life, supplemental life, dependent and spousal life insurance, short-term disability insurance, salary continuation benefits, long-term disability insurance, accidental death and dismemberment insurance, dependent accidental death and dismemberment insurance, and related programs (collectively, the “**Disability Benefits**”), to all Eligible Employees. All of the Debtors’ Disability Benefits are administered by Reliance.

34. The Debtors provide basic life insurance coverage (the “**Basic Life Insurance**”) to all Eligible Employees through a fully insured plan, administered by Reliance. Eligible Employees are entitled to an amount equal to twice such Employee’s annual earnings, rounded to the nearest one thousand dollars under the Basic Life Insurance, with a cap of \$500,000. The Basic Life Insurance is 100% funded by the Debtors. In addition, the Debtors offer all Eligible Employees supplemental life insurance coverage (the “**Supplemental Life Insurance**”). Eligible Employees who elect to receive Supplemental Life Insurance must choose a benefit amount that ranges from a minimum of \$10,000 to a maximum of \$500,000, capped at seven times the Employee’s earning, in increments of \$10,000. The Supplemental Life Insurance is 100% funded through Employee contributions and is of no cost to the Debtors. In addition, the Debtors offer dependent life insurance coverage, which allows all Eligible Employees to purchase life insurance for their spouse and dependent children (the “**Dependent Life Insurance**”). The Dependent Life Insurance, provides coverage for (a) spouses in an amount ranging from a minimum of \$5,000 to a maximum of \$250,000, capped at 50% of the Employee’s coverage, which amounts must be a

multiple of \$5,000 and (b) dependent children, ranging from \$2,000 to \$10,000 in increments of \$2,000. The Dependent Life Insurance is fully funded by Employee contributions and is therefore of no costs to the Debtors.

35. The Debtors provide short-term disability coverage for all Eligible Employees (“**Short-Term Disability**”) through a self-insured plan administered by Reliance. Short-Term Disability generally provides 100% of the Employee’s base weekly salary for the first four weeks of leave, then 60% of the Employee’s base weekly salary for weeks five through 25 of leave. The duration of the Short-Term Disability is based on the Employee’s length of full-time employment with the Debtors. In addition to the Short-Term Disability, the Debtors offer salary continuation to Employees receiving Short-Term Disability who are not receiving payments under state disability programs that, together with their Short-Term Disability, total 100% of the Employee’s base salary (“**Salary Continuation**”). Salary Continuation provides up to an additional 70% of the Employee’s base salary for up to 12 weeks.

36. The Debtors also provide each Eligible Employee with long-term disability coverage (“**Long-Term Disability**”) through a fully-insured plan administered by Reliance. The Long-Term Disability provides 60% of the Employee’s pre-disability monthly earnings. The total annual cost to the Debtors related to Long-Term Disability, based on the Debtors’ most current data, is approximately \$80,000 (inclusive of fees paid to Reliance to administer the plans described in this paragraph).

37. The Debtors also offer accidental death and dismemberment insurance (“**AD&D Insurance**”) to all Eligible Employees. Eligible Employees must elect to receive the AD&D Insurance and select a benefit amount. The benefit amount must be a minimum of \$10,000 with a maximum of \$500,000. The Debtors also offer accidental death and dismemberment

insurance for an Employee's spouse and dependent children (the "**Dependent AD&D Insurance**"). All Eligible Employees are eligible to receive the Dependent AD&D Insurance to cover their (a) spouse in an amount ranging from a minimum of \$5,000 and a maximum of \$250,000, capped at 50% of the Employee's coverage, which amounts must be a multiple of \$5,000 and (b) dependent children in an amount ranging from a minimum of \$2,000 to a maximum of \$10,000 in increments of \$2,000. The Dependent AD&D Insurance is fully funded through Employee contributions and is therefore of no costs to the Debtors.

38. The costs of the Short-Term Disability benefits, Salary Continuation, Long-Term Disability benefits, and Basic Life Insurance are borne entirely by the Debtors. The remainder of the Disability Benefits are fully funded through Employee contributions. The Debtors pay approximately \$2,600 per month to Reliance to administer the Disability Benefits. As of the Petition Date, the Debtors estimate that there are no obligations outstanding on account of the Disability Benefits. By this Motion, the Debtors seek authority to make all payments and remittances for amounts attributable to the prepetition period and relating to the Disability Benefits, in the ordinary course of business and in their sole discretion.

3. *Flexible Benefits*

39. The Debtors offer Eligible Employees the opportunity to establish flexible spending accounts which allow such Employees to set aside pre-tax wages, subject to minimum and maximum annual contributions, to pay for eligible out-of-pocket expenses (the "**FSAs**") or health savings accounts (the "**HSAs**") using BRI. There are three types of FSAs offered to Eligible Employees: general medical FSAs (the "**GMFSAs**"), limited medical FSAs (the "**LMFSAs**") and dependent care FSAs (the "**DCFSA**"). The GMFSAs allow participating Employees to set aside wages in an account to pay for out-of-pocket health care expenses that are not covered by another health care plan. The LMFSAs allow participating Employees to set aside wages in an account to

pay for out-of-pocket vision care and dental care expenses that are not covered by another vision care plan or dental care plan. The DCFSAs allow participating Employees to set aside wages in an account to pay for dependent care expenses such as day care expenses for children up to age 13 and adults unable to care for themselves. The Debtors remit to BRI on behalf of participating Employees an average of approximately \$4,700 on a weekly basis, which amounts are withheld from Employee paychecks. Remittances to BRI on account of the FSAs are based upon employee elected pre-tax payroll deductions.

40. The Debtors withhold Employee contributions to the FSAs and HSAs each pay period. In addition, the Debtors pay BRI on average approximately, \$1,450 to administer the FSAs and HSAs. As of the Petition Date, the Debtors believe that there are approximately \$1,000 in accrued amounts to be remitted on account of the FSAs and HSAs to their respective administrators. Additionally, the Debtors estimate that as of the Petition Date, they owe approximately \$600 to BRI to administer the FSAs and HSAs. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the FSAs and HSAs, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the FSAs and HSAs postpetition in the ordinary course of business.

41. In addition, the Debtors offer Employees commuter accounts, which allow participating Employees to set aside pre-tax wages, to pay for public transit and qualified parking (the “**Commuter Accounts**”). The Commuter Accounts are administered by BRI. The Debtors remit to BRI on behalf of participating Employees an average of approximately \$2,900 on a monthly basis, which amounts are withheld from Employee paychecks.

4. *Savings and Retirement Benefits*

42. Eligible Employees and part-time Employees who work 1,000 or more hours within a calendar year, are eligible to participate in a 401(k) retirement plan sponsored by the Debtors

(the “**401(k) Plan**”). The 401(k) Plan is administered by ADP. Under the 401(k) Plan, an eligible Employee may contribute a portion of his or her eligible earnings each year through pre-tax contributions to the 401(k) Plan, subject to limits imposed by federal law. The Debtors also receive 401(k) consulting services through Mayflower Advisors LLC (“**Mayflower**”), in order to ensure the 401(k) Plan complies with applicable law and regulations, which services are typically paid for from 401(k) Plan forfeitures (*i.e.*, Debtor contributions to the 401(k) Plan that have accrued, but not yet fully vested when an Employee leaves the Debtors’ employ). Mayflower also acts as the fiduciary under the 401(k) Plan.

43. In 2022, the Debtors withheld approximately \$190,000 per month from Employees participating in the 401(k) Plan. By this Motion, the Debtors request authority to continue sponsoring the 401(k) Plan and to remit all amounts withheld from Employees’ paychecks as contributions to the 401(k) Plan, and to pay any outstanding prepetition 401(k) administrative fees.

5. *Non-Insider Severance*

44. The Debtors regularly provide severance pay to certain non-insider Employees upon a qualifying termination of employment or other qualifying event (the “**Severance Benefits**”).¹⁰ Severance Benefits are typically provided in exchange for a release of liability for the Debtors. The Debtors believe it is important that they have the flexibility to maintain their current practice of providing Severance Benefits for Employee retention and morale.

45. In the 12-month period before the Petition Date, approximately 600 Employees have received Severance Benefits and the Debtors have paid approximately \$3.0 million in Severance Benefits to Employees. As of the Petition Date, the Debtors have accrued but unpaid

¹⁰ Separate and apart from the Severance Benefits, certain Employees have employment contracts with the Debtors providing for severance. By this Motion, the Debtors do not seek authority to pay severance benefits under any employment contract, although they reserve the right to do so in the future by separate motion.

liability to two former Employees on account of Severance Benefits totaling approximately \$18,000, approximately all of which is expected to become due and owing within the Interim Period. Both of the applicable former Employees are non-insiders and prepetition amounts owed to such former Employees, including Severance Benefits owed, do not exceed the priority cap set forth in section 507(a)(4) of the Bankruptcy Code. By this Motion, the Debtors seek authority to pay amounts owed on account of the prepetition Severance Benefits as described above in the ordinary course of business, and to continue providing Severance Benefits in the ordinary course of business to eligible non-insider Employees, subject to section 503(c) of the Bankruptcy Code.

F. PTO Obligations

46. The Debtors offer the Workforce other forms of compensations, including paid holidays, sick and safe leave (“**PSSL**”) or other paid and unpaid leave, vacation time, and other earned time off (collectively, “**PTO**”), which give rise to the Debtors’ PTO Obligations. Such forms of compensation are customary and necessary in order for maintaining the morale and stability of the Debtors’ workforce.

47. The Debtors provide paid holidays for several dates annually which vary by the business segment in which the Employees work. All Employees are entitled to 11 paid holidays per year, based on scheduled holidays.

48. The Debtors also provide PSSL to the Workforce. PSSL begins accruing on the first day of work and at the rate of one hour for every 30 hours worked. Each member of the Workforce may accrue up to a maximum of 40 hours of PSSL each year and may carry over 40 hours of unused PSSL from one year to the next. Members of the Workforce in California, Colorado, Massachusetts, and Rhode Island are entitled to be reimbursed for unused sick leave upon separation from the Debtors, if the Employee has been employed by the Debtors for one year or more.

49. The Debtors also provide Employees with paid vacation time. Vacation time offered to Employees accrues monthly, on the last day of each month. In general, vacation time accrues based on an Employee's length of service to the Debtors. Employees may carry over a maximum of 72 hours of unused vacation time from one year to the next. The maximum amount of vacation time that each Employee can accrue is 176 hours. Employees in California, Colorado, Massachusetts, and Rhode Island are entitled to be reimbursed for unused vacation leave upon separation from the Debtors, if the Employee has been employed by the Debtors for one year or more.

50. In addition to the above, the Debtors provide certain other paid and unpaid leave, as required by the various state laws in which the Debtors operate, including but not limited to, leave under the (a) Family and Medical Leave Act, (b) New York State Paid Family Leave Act, (c) California Paid Family Leave Law, and (d) Massachusetts Paid Family Leave Law. The type of leave provided under the laws mentioned above and in the other states in which the Debtors operate differ based on the applicable law, but in each case, the Debtors provide the minimum amount of leave required by such law.

51. The Debtors estimate that, as of the Petition Date, the aggregate accrued but unpaid PTO Obligations for all Employees total approximately \$249,600. This accrued amount, however, does not represent a true "cash" liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible Employees only receive cash payments on account of unused PTO upon termination or resignation, if at all.

52. Because PTO is an essential feature of the employment package provided to the Debtors' Employees, and failure to provide this benefit would harm Employee morale and

encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

G. Reimbursable Expense Obligations

53. In the ordinary course of business, the Debtors reimburse certain Employees in connection with business expenses, incurred by such Employees, which give rise to the Debtors' Reimbursable Expenses Obligations. By this Motion, the Debtors seek authority to pay all prepetition Reimbursable Expense Obligations (as described below) accrued and unpaid as of the Petition Date and to continue such practices on a postpetition basis in the ordinary course of business.

54. The Debtors routinely reimburse their Employees for travel, lodging, ground transportation and rental cars, meals, hotel accommodations, Wi-Fi when travelling, and other business expenses (collectively, the "**Business Expenses**"). The Debtors have issued corporate credit cards (the "**Corporate Credit Cards**"), through Silicon Valley Bank to certain Employees to pay for these Business Expenses.¹¹ Employees may also incur out-of-pocket Business Expenses and seek reimbursement for their Business Expenses from the Debtors. Generally, an Employee requesting reimbursement must submit a reimbursement request through the Debtors' reimbursement system, Expensify, within 30 days of incurring the Business Expense. All claimed Business Expenses (whether charged to the Corporate Credit Cards or out-of-pocket), are subject to a review and approval process. The Debtors estimate that, as of the Petition Date, approximately

¹¹ The Debtors are separately seeking to continue to maintain the Corporate Credit Card program and to pay prepetition amounts owing related to the Corporate Credit Cards pursuant to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue Operating Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, (II) Waiving Certain Requirements Under Section 345 of the Bankruptcy Code and the U.S. Trustee Guidelines and (III) Granting Related Relief*, filed contemporaneously herewith.

\$12,000 of out-of-pocket Business Expenses, not including amounts outstanding on the Corporate Credit Cards, are accrued and unpaid on account of Employee Business Expenses, approximately all of which will become due and owing within the Interim Period.

H. Non-Salaried Worker Obligations

55. The Debtors incur Non-Salaried Worker Obligations on account of their Non-Salaried Workers. The ICs are provided by the Staffing Agencies and the Debtors pay the Staffing Agencies on a monthly or weekly basis on account of the ICs provided by such Staffing Agency. The Per Diem Employees are paid directly by the Debtors. On average, the Debtors spend approximately \$17,040 per month on account of the Non-Salaried Workers. As of the Petition Date, the Debtors believe that approximately \$10,800 is accrued and unpaid on account of the Non-Salaried Workers. By this Motion, the Debtors seek authority to pay all amounts owed on account of the Non-Salaried Workers in the ordinary course of business.

II. HONORING OF PREPETITION WORKFORCE OBLIGATIONS

56. The Debtors request authority to pay or provide, as they become due, all prepetition Workforce Obligations that are described in this Motion. The Debtors estimate that the aggregate amount of the prepetition Workforce Obligations described above is approximately \$428,400, as set forth in the table in paragraph 11 of this Motion.

57. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, the Debtors believe that the continuity and competence of the Workforce will be jeopardized if the relief requested herein is not granted. Specifically, if the Debtors fail to honor and pay prepetition Wage Obligations, Reimbursable Expense Obligations, and Benefits Obligations, in the ordinary course of business, the Workforce will suffer extreme personal hardship and, in some cases, may be unable to pay their basic living expenses. This hardship would have a highly negative impact on Workforce morale and productivity, thereby resulting in immediate and irreparable harm to the

Debtors' continuing operations and their estates. Accordingly, the Debtors have determined that payment of these amounts is vital to preventing the loss of key members of the Workforce during the Chapter 11 Cases and to maintaining the continuity and stability of the Debtors' operations.

III. POSTPETITION CONTINUATION OF WORKFORCE PROGRAMS

58. The Debtors also request confirmation of their right to continue to honor and perform their obligations with respect to all of the Workforce Programs. The Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale, reward performance through certain incentives, minimize attrition, and preserve the continuity and stability of the Debtors' operations. The Debtors believe that the expenses associated with the Workforce Programs are reasonable and cost-efficient in light of the potential attrition, loss of morale, loss of productivity, and disruption of business operations that would occur if the Workforce Programs were discontinued. Notwithstanding the foregoing, the Debtors reserve the right to evaluate all Workforce Programs and to make such modifications, including terminating any particular plan, program, or policy, as may be necessary or appropriate during the Chapter 11 Cases.

IV. PAYMENTS TO NON-EMPLOYEE DIRECTORS

59. In the ordinary course of business, the Debtors pay fees (the "**Non-Employee Director Fees**") for the services of three non-Employee directors of the Debtors (the "**Non-Employee Directors**"). The Non-Employee Directors are paid in cash on account of their board service and service on any board committees. The Non-Employee Director Fees are paid in arrears on a quarterly basis for services conducted during the past quarter. The Debtors also reimburse the Non-Employee Directors for all properly documented out-of-pocket expenses incurred fulfilling its duties (the "**Non-Employee Director Expenses**" and, together with the Non-Employee Director Fees, the "**Non-Employee Director Costs**"). The Debtors pay

approximately \$60,000 in the aggregate per quarter to the Non-Employee Directors on account of Non-Employee Director Costs.

60. The Non-Employee Directors' service is necessary for the continued management of the Debtors. The Debtors estimate that, as of the Petition Date, they owe approximately \$30,000 in Non-Employee Director Fees to their Non-Employee Directors. Additionally, by this Motion, the Debtors request the authority, subject to entry of a final order, to reimburse any unpaid Non-Employee Director Expenses incurred by the Non-Employee Directors before the Petition Date up to \$5,000. In addition, out of an abundance of caution, the Debtors seek authority to continue to pay the Non-Employee Director Costs in the ordinary course of business on a postpetition basis.

V. PAYMENTS TO ADMINISTRATORS

61. With respect to the Workforce Programs described above, the Debtors contract with several vendors, as described in more detail above, to administer and deliver payments or other benefits to the Workforce (the "Administrators"). The Administrators include but are not limited to, Marsh, ADP, BRI, MetLife, Vision Care, and Reliance. The Debtors pay the Administrators fees and expenses incurred in connection with providing such services. As of the Petition Date, the Debtors estimate they owe approximately \$2,400 to the Administrators, approximately all of which will come due during the Interim Period.

62. In conjunction with the Debtors' payment of the Workforce Obligations and continued performance under the Workforce Programs, the Debtors believe that it is necessary to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. The Debtors believe that the Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. A

need to engage replacement Administrators postpetition likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, the Debtors submit that the payment of claims owed to the Administrators is in the best interest of their estates.

BASIS FOR RELIEF

I. HONORING ALL PREPETITION WORKFORCE OBLIGATIONS IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND THEREFORE SHOULD BE APPROVED

63. The Debtors should be authorized to honor all prepetition Workforce Obligations on the terms set forth in the Proposed Orders, as it reflects a sound exercise of their business judgment. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where 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.”); *see also 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.”).

64. For the reasons discussed herein, paying the prepetition Workforce Obligations reflects a sound exercise of business judgment. If the Debtors do not pay the prepetition Workforce Obligations, their business and operations will suffer from falling morale and potential losses of

key members of the Workforce, all at the most inopportune moment as the Debtors transition into chapter 11 and work to maximize value. On the other hand, demonstrating the Debtors' commitment to their Workforce will help engender goodwill, enthusiasm, and loyalty. Therefore, the Debtors submit that this Court should authorize the relief requested in this Motion.

II. HONORING ALL PREPETITION WORKFORCE OBLIGATIONS IS NECESSARY TO THE SUCCESS OF THE CHAPTER 11 CASES AND THEREFORE SHOULD BE APPROVED

65. In addition, the Debtors should be authorized to honor the prepetition Workforce Obligations as set forth in the Proposed Orders because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's reorganization under what is known as the “necessity of payment doctrine.” *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (“Thus, the ‘necessity of payment’ doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized...”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

66. Paying the prepetition Workforce Obligations is a necessary step for the Debtors to achieve a successful restructuring. The Workforce is a fundamental building block of the Debtors' operations, from each associate making individual sales in stores to supply chain managers overseeing the blocking and tackling of getting the Debtors' products on the shelves or delivered

to customers' doorsteps and beyond. For every member of the Workforce, resignation or just flagging performance as a result of failing to pay the prepetition Workforce Obligations has the potential to harm the value of the Debtors' estates and reduce the likelihood of a successful reorganization. Accordingly, the Debtors should be authorized to pay the prepetition Workforce Obligations under section 105(a) of the Bankruptcy Code and the necessity of payment doctrine.

III. PAYMENT OF THE PRIORITY PORTION OF THE PREPETITION WORKFORCE OBLIGATIONS WILL NOT PREJUDICE CREDITORS

67. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, severance, sick leave, sales commissions, and employee-benefit contributions be accorded priority in payment in an amount not to exceed \$15,150 for each individual. *See* 11 U.S.C. §§ 507(a)(4), (5). In chapter 11 cases, priority claims must be paid in full. Accordingly, granting the relief requested with respect to the priority portion of the prepetition Workforce Obligations will not adversely affect the Debtors' other unsecured creditors.

68. The Debtors do not believe that any individual member of the Workforce is owed prepetition amounts in excess of the priority cap. The amounts of certain prepetition Workforce Obligations are unknown pending submission of claims, and, therefore, the Debtors do not know the exact amount due on account of each member of the Workforce for the prepetition period. To the extent that any members of the Workforce are owed aggregate amounts in excess of the priority cap, or amounts that are otherwise not entitled to priority status, the Debtors submit that payment of the prepetition Workforce Obligations in such higher amounts or otherwise non-priority amounts is nonetheless justified under the authority discussed above. The Debtors do not believe that any individual Non-Employee Director is owed prepetition amounts in excess of the priority

cap, and the Debtors do not seek by this Motion seek to pay prepetition amounts to any Non-Employee Director in excess of the priority cap.

IV. CERTAIN PREPETITION WORKFORCE OBLIGATIONS ARE REQUIRED TO BE PAID BY LAW

69. The Debtors are subject to federal and state laws that require them to pay certain of the prepetition Workforce Obligations or risk suit or cancellation of their qualification to operate in certain jurisdictions. Foremost, deductions on account of income tax withholdings obligations are derived from Employee funds and held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58–59 (1990); *see also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust—either express or constructive—does not become property of estate when debtor files for bankruptcy, and stating that “Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust”); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (same). Thus, the Debtors should be authorized to pay such deductions regardless of when those deductions accrued or were withheld.

V. THE NON-INSIDER RETENTION PLAN SHOULD BE APPROVED PURSUANT TO SECTION 503(c) OF THE BANKRUPTCY CODE

70. The Non-Insider Retention Plan should be approved pursuant to section 503(c)(3) of the Bankruptcy Code. As an initial matter, the Non-Insider Retention Plan is not subject to the restrictions in section 503(c)(1) of the Bankruptcy Code because the Non-Insider Retention Plan does not involve any “insiders” as that term is defined by section 101(31) of the Bankruptcy Code.

71. 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

concluded that an employee may be an “insider” if the 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) (citation and quotation omitted). Here, all of the participants in the Non-Insider Retention Plan (the “**Non-Insider Retention Plan Participants**”) are non-insider employees.

72. Like the key employees of the Non-Insider Retention Plan this Court approved in *In re Haggen Holdings, LLC*, Case No. 15-11874 (KG) (Bankr. D. Del. 2015), the Non-Insider Retention Plan Participants here: (a) “do not attend board meetings on a regular basis”; (b) “do not have the authority to make company-wide decisions”; (c) “do not exercise control over the governance or strategic direction of the Debtors”; (d) “repor[t] to a more senior manager”; and (e) “must obtain approval from an appropriate senior manager before taking any significant action with respect to the Debtors’ corporate policies or the disposition of significant assets.” *In re Haggen Holdings, LLC*, Case No. 15-11874 (KG), *Decl. of Jonathan P. Goulding in Support of Motion of Debtors for an Order Approving Their Key Employee Retention Plan* [Docket No. 428], ¶ 11 (Bankr. D. Del. October 14, 2015); *In re Haggen Holdings, LLC*, Case No 15-11874 (KG), Hr’g Tr. at 97:16-24 (Bankr. D. Del. October 15, 2015) (approving the Non-Insider Retention Plan based on evidence in the Goulding Declaration [Docket No. 428]).

73. For the foregoing reasons, the Debtors respectfully submit that the Non-Insider Retention Plan Participants are not “insiders” as defined in the Bankruptcy Code, and therefore sections 503(c)(1) and (2) of the Bankruptcy Code do not apply to the Non-Insider Retention Plan or the payments made pursuant to the Non-Insider Retention Plan.

74. Because the Non-Insider Retention Plan Participants are not insiders, the relevant standard for evaluating the appropriateness of the Non-Insider Retention Plan is the business judgment standard under section 503(c)(3) of the Bankruptcy Code. Generally, section 503(c)(3) of the Bankruptcy Code permits payments to a debtor's employees outside the ordinary course of business if such payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3).¹² Here, because the Non-Insider Retention Plan was adopted before the Petition Date as a replacement to the discontinued STI Plan, implementation of the Non-Insider Retention Plan was within the ordinary course of business.

75. Even if the transfers pursuant to the Non-Insider Retention Plan were found to be outside the ordinary course of business, the transfers would satisfy section 503(c)(3) as a sound exercise of business judgment. Courts that have analyzed the prohibition on "other transfers" have considered whether the decision to use estate property outside of the ordinary course of business is based on a sound exercise of the debtor's business judgment. *See In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (test for compensation program under section 503(c)(3) is same as "business judgment" test). In assessing a debtor's business judgment regarding the implementation of non-insider employee retention programs, courts, including those in this District, have looked at the factors laid out in *In re Global Home-Prods.* for guidance to evaluate a proposed retention program: (a) whether a reasonable relationship existed between the proposed plan and the desired results; (b) whether the cost of the plan was reasonable in light of the overall

¹² Section 503(c)(3) of the Bankruptcy Code provides as follows:

[there shall neither be allowed, nor paid –] (3) other transfers or obligations 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.

11 U.S.C. § 503(c)(3).

facts of the case; (c) whether the scope of the plan was fair and reasonable; (d) whether the plan was consistent with industry standards; (e) whether the debtor had put forth sufficient due diligence efforts in formulating the plan; and (f) whether the debtor received sufficient independent counsel in performing any due diligence and formulating the plan. *See In re Global Home Prods.*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (citing *Dana Corp.*, 358 B.R. at 576-77). Here, the Non-Insider Retention Plan has been designed by the Debtors and their advisors, based on market comparisons, to retain non-insider employees throughout these Chapter 11 Cases at a reasonable cost, thereby allowing the Debtors' business to continue to operate and maintain going-concern value.

76. As an initial matter, there is a reasonable relationship between the Non-Insider Retention Plan and the results to be obtained—retaining the Non-Insider Retention Plan Participants—which alone satisfies the business judgment rule. *See In re Residential Capital, LLC*, 491 B.R. 73, 85-86 (Bankr. S.D.N.Y. 2013) (approving retention plan for non-insiders because of the “continuity promoted, and the institutional knowledge preserved, by the retention of such employees”). A debtor's retention plan is a proper exercise of business judgment when it allows the debtor to avoid the cost and delay associated with the loss of personnel and their institutional knowledge. *Id.* The Debtors' Non-Insider Retention Plan is designed for these purposes.

77. The Non-Insider Retention Plan was carefully constructed with the assistance of FTI to: (a) provide the Non-Insider Retention Plan Participants with job security and appropriate market compensation, (b) prevent attrition while the Debtors are implementing the restructuring and steadying the Debtors' ongoing operations, and (c) ensure that the Debtors' most critical non-insider personnel are retained through the completion of the restructuring. The Debtors' ability to

carry out their chapter 11 objectives and maximize the value of their estates will depend, in large part, on the continued employment, active participation, and dedication of the Non-Insider Retention Plan Participants through the consummation of the restructuring. If the Non-Insider Retention Plan Participants were to leave their employment with the Debtors, the Debtors' ability to preserve and maximize their value and administer the Chapter 11 Cases would be severely hampered. Thus, the costs associated with losing and replacing the Non-Insider Retention Plan Participants would far exceed the cost of the Non-Insider Retention Plan.

78. Accordingly, the Debtors respectfully submit that the Non-Insider Retention Plan is justified by the facts and circumstances of these Chapter 11 Cases, is a sound exercise of business judgment and that implementation of the Non-Insider Retention Plan is in the best interests of the Debtors, their estates, creditors, and all other stakeholders.

**DEBTORS' BANKS SHOULD BE AUTHORIZED TO
HONOR CHECKS AND ELECTRONIC FUNDS TRANSFERS**

79. The Debtors further request that the Court (a) authorize all applicable financial institutions (collectively, the "**Banks**") to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief sought herein to the extent that the Debtors have sufficient funds on deposit in their accounts with the Banks, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize the Banks to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors anticipate having sufficient funds to pay the amounts described herein. In addition, under the Debtors' existing cash management system, the Debtors can readily identify whether checks or wire transfer requests are payments authorized by the relief requested herein. Accordingly, the Debtors believe that checks,

direct debits, or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

80. Certain aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

81. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the 14 day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. Accordingly, the Debtors submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the 14-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

82. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease

pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the Proposed Orders once entered. Nothing contained in the Proposed Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

83. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Benjamin Hackman); (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (i) Sheppard, Mullin, Richter & Hampton LLP (Attn: Justin Bernbrock, Kyle J. Mathews, Bryan V. Uelk, and Catherine Jun), and (ii) Potter Anderson & Corroon LLP (Attn: L. Katherine Good); (d) the Banks; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors believe that no further notice is required.

[Remainder of page intentionally left blank.]

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

Dated: February 20, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

	X	
	:	
In re:	:	Chapter 11
	:	
STARRY GROUP HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 23-10219 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket No.

**INTERIM ORDER (I) AUTHORIZING
PAYMENT OF CERTAIN PREPETITION WORKFORCE
OBLIGATIONS, (II) AUTHORIZING CONTINUANCE OF WORKFORCE
PROGRAMS, (III) AUTHORIZING PAYMENT OF WITHHOLDING AND
PAYROLL-RELATED TAXES, (IV) AUTHORIZING PAYMENT OF PREPETITION
CLAIMS OWING TO ADMINISTRATORS, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of orders (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor the Workforce Obligations, (b) confirming the Debtors’ authority to continue each of the Workforce Programs in the ordinary course of business, (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Deductions relating to the Workforce Obligations, (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators in the ordinary course of business, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein in

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

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 February 29, 2012; and this Court having found that this is a core 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Interim Order, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. Aggregate payments authorized by this Interim Order shall not exceed \$435,800 absent further order of this Court. Such payments shall not exceed the amounts set forth in the table below in the aggregate without further order of this Court.

Workforce Obligations		Approximate Interim Amounts
<i>Workforce Obligations</i>		
i.	Wage Obligations	\$ 113,400
ii.	Commissions	\$ 14,400
iii.	Non-Insider Retention	\$0
iv.	Deductions	\$ 28,200
v.	Benefits Obligations	\$ 0
vi.	PTO Obligations	\$ 249,600

Workforce Obligations	Approximate Interim Amounts
vii. Reimbursable Expense Obligations	\$ 12,000
viii. Non-Salaried Worker Obligations	\$ 10,800
Total	\$ 428,400
<i>Non-Employee Director Costs</i>	\$ 5,000
<i>Administrator Fees and Expenses</i>	\$ 2,400
GRAND TOTAL	\$ 435,800

4. Subject to the requirements of sections 507(a)(4) and (a)(5) of the Bankruptcy Code, the Debtors are authorized but not directed to pay or otherwise honor the Workforce Obligations to, or for the benefit of, the Workforce.

5. The Debtors are authorized to (a) continue each of the Workforce Programs, in the ordinary course of business during the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately before the filing of the Chapter 11 Cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program in the ordinary course of business.

6. The Debtors are authorized to reimburse the Employees with respect to all Reimbursable Expenses Obligations incurred before the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties owed amounts in connection with such Reimbursable Expenses Obligations.

7. The Debtors are authorized but not directed to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to their prepetition Workforce Obligations and to withhold and pay amounts that are attributable to the Deductions, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether such taxes relate to the period before or after the Petition Date.

8. The Debtors are authorized but not directed to pay amounts owed in connection with claims of the Administrators in connection with administering and delivering payments or providing other services and benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators.

9. The Debtors are authorized but not directed to pay prepetition amounts due and owing to the Per Diem Employees and to the Staffing Agencies in connection with the provision of ICs, and to continue to pay the Per Diem Employees and the Staffing Agencies for such services postpetition in the ordinary course of business.

10. The Debtors are authorized to “cash out” unpaid PTO upon termination of an employee to the extent required by applicable non-bankruptcy law.

11. Subject to the following proviso, the Debtors are authorized but not directed to continue the Severance Benefits on a postpetition basis in the ordinary course of business, and to pay any accrued amounts thereunder as they become due; provided that (a) no payments with respect to any Severance Benefits shall be made pursuant to this Interim Order to any individual Employee who is an insider, (b) payments of prepetition Severance Benefits pursuant to this Interim Order shall not exceed \$18,000 in the aggregate, (c) payments of prepetition Severance Benefits to any individual former Employee shall not exceed the priority cap set forth in section 507(a)(4) of the Bankruptcy Code, and (d) nothing in this Interim Order shall be deemed to authorize the payment of any amounts in satisfaction of retention bonus or severance obligations that are prohibited by section 503(c) of the Bankruptcy Code.

12. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue

or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

13. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Interim Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

14. The Debtors are authorized but not directed to issue new postpetition checks, or effect new electronic funds transfers, to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

15. Any authorization under this Interim Order to pay, and the payment of, any amounts on account of the Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

16. Notwithstanding anything to the contrary in this Interim Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

17. Nothing in the Motion or this Interim Order, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365

of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

18. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

19. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

20. 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.

21. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

22. The final hearing (the "**Final Hearing**") on the Motion shall be held on _____, 2023, at _____, prevailing Eastern Time. On or before _____, prevailing Eastern Time, on _____, 2023, any objections or responses to entry of a final order on the Motion (a "**Final Order**") shall be filed with this Court, and served on: (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, (1) 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)) and (2) 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Jason B. Gott (jason.gott@lw.com)) and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (b) counsel to ArrowMark Agency Services LLC as DIP Agent and

Prepetition Agent, (i) Sheppard, Mullin, Richter & Hampton LLP, (1) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Mathews (KMathews@sheppardmullin.com)), and (2) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60643 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (ii) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (c) counsel to any statutory committee appointed in the Chapter 11 Cases; and (d) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)). In the event that no objections to entry of the Final Order are timely received, this Court may enter such Final Order without need for the Final Hearing.

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

EXHIBIT B

Proposed Final Order

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

	X	
	:	
In re:	:	Chapter 11
	:	
STARRY GROUP HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 23-10219 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket Nos.

**FINAL ORDER (I) AUTHORIZING
PAYMENT OF CERTAIN PREPETITION WORKFORCE
OBLIGATIONS, (II) AUTHORIZING CONTINUANCE OF WORKFORCE
PROGRAMS, (III) AUTHORIZING PAYMENT OF WITHHOLDING AND
PAYROLL-RELATED TAXES, (IV) AUTHORIZING PAYMENT OF PREPETITION
CLAIMS OWING TO ADMINISTRATORS, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of orders (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor the Workforce Obligations, (b) confirming the Debtors’ authority to continue each of the Workforce Programs in the ordinary course of business, (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Deductions relating to the Workforce Obligations, (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators in the ordinary course of business, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order, as approved by this Court; and this Court having jurisdiction to consider the

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

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 February 29, 2012; and this Court having found that this is a core 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Final Order, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized but not directed to pay or otherwise honor their prepetition Workforce Obligations to, or for the benefit of, the Workforce.
4. The Debtors are authorized but not directed to pay prepetition Non-Employee Director Fees, provided that payments on account of prepetition Non-Employee Director Fees shall not exceed \$30,000 absent further order of this Court. Additionally, the Debtors are authorized but not directed to pay prepetition Non-Employee Director Expenses, provided that payments on account of prepetition Non-Employee Director Expenses shall not exceed \$5,000 absent further order of this Court. Absent further order of this Court, payments on account of prepetition Non-Employee Director Costs to any individual Non-Employee Director shall not exceed the priority

cap set forth in section 507(a)(4) of the Bankruptcy Code. The Debtors are authorized to continue to pay the Non-Employee Director Costs on a postpetition basis in the ordinary course of business.

5. The Debtors are authorized to (a) continue each of the Workforce Programs, in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately before the filing of the Chapter 11 Cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program in the ordinary course of business.

6. The Debtors are authorized to reimburse the Employees with respect to all Reimbursable Expenses Obligations incurred before the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties owed amounts in connection with such Reimbursable Expenses Obligations.

7. The Debtors are authorized to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Workforce Obligations and to withhold and pay amounts that are attributable to the Deductions, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether such taxes relate to the period before or after the Petition Date.

8. The Debtors are authorized but not directed to pay amounts owed in connection with claims of the Administrators in connection with administering and delivering payments or providing other services and benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators.

9. The Debtors are authorized but not directed to pay prepetition amounts due and owing to the Per Diem Employees and to the Staffing Agencies in connection with the provision

of ICs, and to continue to pay the Per Diem Employees and the Staffing Agencies for such services postpetition in the ordinary course of business.

10. The Debtors are authorized to “cash out” unpaid PTO upon termination of an employee to the extent required by applicable non-bankruptcy law.

11. Subject to the following proviso, the Debtors are authorized but not directed to continue the Non-Insider Retention Plan and Severance Benefits on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due; provided that (a) no payments with respect to any Non-Insider Retention Plan and Severance Benefits shall be made pursuant to this Final Order to any individual Employee who is an insider, (b) payments of prepetition Severance Benefits pursuant to this Final Order shall not exceed \$18,000 in the aggregate, (c) payments of prepetition Severance Benefits to any individual former Employee shall not exceed the priority cap set forth in section 507(a)(4) of the Bankruptcy Code, and (d) nothing in this Final Order shall be deemed to authorize the payment of any amounts in satisfaction of retention bonus or severance obligations that are prohibited by section 503(c) of the Bankruptcy Code.

12. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors’ accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

13. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be

honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

14. Any authorization under this Final Order to pay, and the payment of, any amounts on account of the Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

15. Notwithstanding anything to the contrary in this Final Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

16. Nothing in the Motion or this Final Order, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

17. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

18. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

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