

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

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In re: : Chapter 11  
: :  
SUPERIOR ENERGY SERVICES, INC., *et al.*,<sup>1</sup> : Case No. 20-35812 (DRJ)  
: :  
Debtors. : (Joint Administration Requested)  
: :  
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**DEBTORS' EMERGENCY MOTION FOR ENTRY  
OF AN ORDER (I) AUTHORIZING (A) PAYMENT  
OF PREPETITION WORKFORCE OBLIGATIONS  
AND (B) CONTINUATION OF WORKFORCE PROGRAMS ON A  
POSTPETITION BASIS, (II) AUTHORIZING PAYMENT OF PAYROLL  
TAXES, (III) CONFIRMING THE DEBTORS' AUTHORITY TO TRANSMIT  
PAYROLL DEDUCTIONS, (IV) AUTHORIZING PAYMENT OF PREPETITION  
CLAIMS OWING TO ADMINISTRATORS, AND (V) DIRECTING BANKS TO HONOR  
PREPETITION CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

**Emergency relief has been requested. A hearing will be conducted on this matter on December 8, 2020 at 1:00 pm (Prevailing Central Time) in Courtroom 400, 4th floor, United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing by audio/video connection.**

**Audio communication will be by use of the Court's regular dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Jones' conference room number is 205691.**

**You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting Code "JudgeJones" in the GoToMeeting app or click the link on Judge Jones' home page on the Southern District of Texas**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Superior Energy Services, Inc. (9388), SESI, L.L.C. (4124), Superior Energy Services-North America Services, Inc. (5131), Complete Energy Services, Inc. (9295), Warrior Energy Services Corporation (9424), SPN Well Services, Inc. (2682), Pumpco Energy Services, Inc. (7310), 1105 Peters Road, L.L.C. (4198), Connection Technology, L.L.C. (4128), CSI Technologies, LLC (6936), H.B. Rentals, L.C. (7291), International Snubbing Services, L.L.C. (4134), Stabil Drill Specialties, L.L.C. (4138), Superior Energy Services, L.L.C. (4196), Superior Inspection Services, L.L.C. (4991), Wild Well Control, Inc. (3477), and Workstrings International, L.L.C. (0390). The Debtors' address is 1001 Louisiana Street, Suite 2900, Houston, Texas 77002.



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website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select “Bankruptcy Court” from the top menu. Select “Judges’ Procedures,” then “View Home Page” for Judge Jones. Under “Electronic Appearance” select “Click here to submit Electronic Appearance”. Select the case name, complete the required fields and click “Submit” to complete your appearance.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

**Relief is requested not later than December 8, 2020.**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) respectfully state the following in support of this emergency motion (this “**Motion**”):

### **RELIEF REQUESTED**

1. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto (the “**Order**”):

- (a) authorizing the Debtors, in their discretion, and subject to the terms of the Order, to (i) pay or otherwise honor various prepetition workforce-related obligations (the “**Workforce Obligations**”)<sup>2</sup> to or for the benefit of their employees (the “**Employees**”), and, as applicable, their independent contractors (the “**Independent Contractors**,” and together with the Employees, the “**Workforce**”) for compensation, expense reimbursements, and benefits under all plans, programs, policies, and agreements maintained by, or for the benefit of, or contributed to or entered into by, the Debtors prior to the Petition Date (collectively, and as further described herein, the “**Workforce Programs**”),<sup>3</sup> and (ii) continue the Workforce Programs in the ordinary course of business during the pendency of the Chapter 11 Cases in

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<sup>2</sup> The Workforce Obligations are comprised of the Workforce Compensation Obligations, the Employee Expense Obligations and the Employee Benefits Obligations (each as defined and described herein).

<sup>3</sup> The Workforce Programs are comprised of the Workforce Compensation Programs, the Employee-Related Expenses, and the Employee Benefits Programs (each as defined and described herein).

the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of the Chapter 11 Cases;<sup>4</sup>

- (b) authorizing the Debtors to pay any and all local, state, federal, and foreign withholding and payroll-related or similar taxes, as applicable, relating to the prepetition Workforce Obligations;
- (c) authorizing, but not requiring the Debtors to continue to deduct and to transmit deductions from payroll checks, as required by any Workforce-related plan, program or policy, or as required by law;
- (d) authorizing, but not requiring, the Debtors to pay any prepetition claims owing to vendors and third party Administrators (as defined below); and
- (e) authorizing and directing all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), 541, 553, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of

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<sup>4</sup> 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, subject to the terms of the Order, to the extent that such right exists under the terms of the Workforce Program or as may be authorized by applicable law.

Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

### BACKGROUND

4. The Debtors and their indirect subsidiaries are an oilfield services provider headquartered in Houston, Texas, with operations spanning Africa, the Asia Pacific region, Europe, the Middle East, North America, and Latin America. The Debtors’ businesses serve the drilling, completion, and production-related needs of oil and gas companies through a diversified portfolio of specialized oilfield services and equipment that are used throughout the economic life cycle of oil and gas wells. In particular, the Debtors manufacture, rent, and sell specialized equipment and tools for use with well drilling, completion, production, and workover activities, and offer fluid handling and well servicing rigs. The Debtors also provide coiled tubing services, electric line, slickline, and pressure control tools and services, as well as snubbing and hydraulic workover services.

5. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Westervelt T. Ballard, Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), filed contemporaneously herewith and fully incorporated herein by reference.<sup>5</sup>

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<sup>5</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

6. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed or designated.

7. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

8. These Chapter 11 Cases are “prepackaged” cases commenced for the purpose of implementing a restructuring of the Debtors’ liabilities. As of the Petition Date, the Debtors have entered into that certain Amended and Restated Restructuring Support Agreement, dated as of December 4, 2020 (as amended, modified, or supplemented, the “**Restructuring Support Agreement**”)<sup>6</sup> with holders of approximately 85% of the outstanding principal amount of the Debtors’ senior unsecured notes (the “**Consenting Noteholders**”).

9. A plan of reorganization reflecting the terms of the Restructuring Support Agreement (as may be amended, modified, or supplemented, the “**Plan**”) was filed on the Petition Date, along with a disclosure statement with respect to the Plan (as may be amended, modified, or supplemented, the “**Disclosure Statement**”). Among other things, the Plan contemplates that all Allowed General Unsecured Claims (as defined in the Plan) against all Debtors other than Superior Energy Services, Inc. (the “**Parent**”) will be paid in full or will otherwise be unimpaired.

## **BASIS FOR RELIEF**

### **B. The Debtors’ Workforce**

10. As of the Petition Date, the Debtors’ Workforce included 1,978 Employees (consisting of 589 salaried and 1,389 hourly). None of the Debtors’ Employees is subject to a

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<sup>6</sup> The Debtors originally entered into that certain Restructuring Support Agreement, dated as of September 29, 2020, which was amended and restated by the Restructuring Support Agreement.

collective bargaining agreement or similar labor agreement. The Debtors' Workforce also includes certain Independent Contractors. The number of Independent Contractors utilized by the Debtors at any given time fluctuates based on whether the Debtors are in a peak business season and based on the Debtors' specific needs at any given time. As of the Petition Date, the Debtors' Workforce included 20 Independent Contractors. The skills, expertise, and experience of the Workforce, as well as their relationships with customers and vendors and their knowledge of the Debtors' business and infrastructure, are essential to the Debtors' operations and ability to effectively maximize the value of their businesses during the Chapter 11 Cases.

### C. Workforce Compensation Programs

11. In the ordinary course of business, the Debtors compensate their Workforce by making various payments and allowances, including, without limitation: (a) making payments on account of Employee payroll and allocating Employee Deductions (as defined below); (b) making payments on accounts of obligations due to Independent Contractors; (c) providing PTO (as defined below); and (d) making distributions in connection with the Annual Bonuses and the LTIP (each as defined below, together, the "**Bonus Programs**", and collectively with clauses (a) through (c) of this paragraph, the "**Workforce Compensation Programs**", and any obligations thereunder, the "**Workforce Compensation Obligations**"). Included in the Workforce Compensation Obligations are the payroll and benefits obligations that the Debtors pay on behalf of non-Debtor affiliate SESI Corporate, LLC ("**SESI Corporate**"). SESI Corporate's employees perform functions that are important to the Debtors' business enterprise as a whole. Although SESI Corporate and the Debtors have never entered into a formal agreement providing for such cost-sharing, the Debtors request authority by this Motion to continue to honor their arrangement with SESI Corporate, consistent with past practice, for the purpose of ensuring that the Workforce associated with both the Debtors and SESI Corporate alike is compensated for the services it

provides to the enterprise.<sup>7</sup> The Debtors' Workforce Compensation Programs are described in further detail below.

**(i)Employee Payroll and Payroll Deductions**

**a. Employee Payroll**

12. The Employees are paid wages and salaries on a bi-weekly basis and five days in arrears. In the six months prior to the Petition Date, the average payroll amount for each two-week pay period was approximately \$3,550,000, net of the Deductions (as defined below). The Debtors perform their own payroll processing related to payment of the Employees' wages and salaries. The Debtors pay their Employees in arrears for work performed prior to the Debtors' normal bi-weekly payroll. As a result, such Employees often have a significant amount of unpaid wages and other compensation that has accrued but is unpaid. The Debtors estimate that, as of the Petition Date, they owe approximately \$1,830,000 in wages and salaries to Employees, net of Deductions (as defined below). The Debtors do not believe that any Employees are owed wages or salary compensation in excess of the \$13,650 statutory cap pursuant to section 507(a)(4) of the Bankruptcy Code, nor are they seeking authority to pay any amounts in excess of such cap pursuant to this Motion.

**b. Independent Contractors' Compensation**

13. As stated above, the Debtors' Workforce occasionally includes certain Independent Contractors. The number of Independent Contractors varies depending on the Debtors' needs at

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<sup>7</sup> In light of the Debtors' arrangement with SESI Corporate, prior to the Petition Date, the Debtors funded SESI Corporate to the extent they believe necessary to address SESI Corporate's liquidity needs through February 2021. Consequently, as of the Petition Date, the Debtors do not believe they have any outstanding obligations with respect to SESI Corporate, but request authority to make such payments in the ordinary course of business to the extent necessary. In addition, as a result of the timing of the Petition Date in relation to the Debtors' payroll schedule, the Debtors have funded SESI Corporate to the extent necessary to satisfy certain of their prepetition Workforce Compensation Obligations due and owing during the week of the Petition Date. This decision was made in order to avoid any interruption to the Debtors' workforce compensation as a result of any temporary suspension of activity in the Debtors' bank accounts shortly following the Petition Date.

any given time. The Debtors pay the Independent Contractors directly. It is critical for the Debtors' business to maintain the flexibility to secure the services of their Independent Contractors as necessitated by their business needs from time to time. Remaining current on payments due to Independent Contractors is necessary for that purpose.

14. In the six months prior to the Petition Date, the Debtors spent on average approximately \$140,000 per month on account of obligations due to Independent Contractors. As of the Petition Date, the Debtors estimate that there are approximately \$95,000 in amounts due and owing to Independent Contractors.

**c. Payroll Deductions**

15. In the ordinary course of their businesses, the Debtors make deductions from Employees' paychecks for payments to third parties on behalf of Employees for various federal, state, and local income, FICA, employment insurance and other taxes, as well as for court ordered garnishments, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "**Deductions**"). In the six months prior to the Petition Date, the Debtors' average aggregate bi-weekly Deductions for Employees was approximately \$1,980,000.

16. As of the Petition Date, certain Employees are owed certain prepetition amounts related to their compensation. Where Employees are owed such amounts, 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 Employees' paychecks. The Debtors estimate that, as of the Petition Date, accrued but not remitted Deductions total approximately \$1,020,000.



**(ii)PTO**

17. As part of their overall compensation, Employees are eligible, in certain circumstances, to receive paid time off (“**PTO**”) for, among other things, vacation, illness, and personal days. Each Employee’s PTO accrues as hours are worked, but the amount of accrued PTO is not reflected in the Employees’ PTO balance until the last day of each pay period. The amount of annual PTO hours awarded varies across different Debtor entities, depending on the length of employment of the Employee in question. The number of hours accrued per pay period is the total annual allotment divided by 26 (the number of pay periods in a year). While not all the Debtors grade their PTO allotments on the same “length of employment” schedule, a typical breakdown of PTO awards is shown in the table below.

<b>Length of Employment</b>	<b>Annual PTO Entitlement</b>	<b>Hours Earned per Pay Period</b>
Less than 4 years	15 Days (120 Hours)	4.62
Between 4 and 8 years	20 Days (160 Hours)	6.15
Between 8 and 12 years	25 Days (200 Hours)	7.69
Between 12 and 16 years	30 Days (240 Hours)	9.23
More than 16 years	35 Days (280 Hours)	10.77

18. New Employees begin accruing PTO upon hiring, and are generally eligible to use their PTO after 90 days of employment. If accrued PTO has not been used by the end of the calendar year, it generally does not carry over and is forfeited, unless otherwise required by applicable law. If an Employee ceases employment for any reason, he or she will be paid for PTO accrued but not used year to date.

19. Employees are also entitled to paid bereavement leave for up to three (3) eight-hour days, paid jury and civic duty leave, and paid voting leave to the extent Employees are not able to vote outside of regular working hours.

20. The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO liability for all Employees totals approximately \$4,420,000. 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. Accordingly, unless an eligible Employee has resigned, PTO is not calculated for the purposes of the statutory priority cap under section 507(a)(4) of the Bankruptcy Code.

**(iii) The Bonus Programs**

**a. The Annual Bonuses**

21. In the ordinary course of business, to encourage and reward outstanding performance, the Debtors offer their Employees (both “**Insiders**” (as such term is defined in section 101(31) of the Bankruptcy Code) and non-Insiders) the opportunity to earn cash bonuses under an annual incentive program (the “**Annual Bonuses**”). Annual Bonuses are calculated and awarded on a discretionary basis based on each Employee’s performance. Different Debtors determine their own performance metrics for the Annual Bonuses based on the nature of their business. Annual Bonuses for each year are paid early in the next calendar year. The Annual Bonuses are not part of a retention or severance plan as contemplated by section 503(c) of the Bankruptcy Code.

**b. The LTIP**

22. Historically, the Debtors have provided certain of their Employees with the opportunity to earn additional compensation under the Long Term Incentive Plan (the “**LTIP**”) in the form of both cash and stock. In its current form, the LTIP consists of quarterly cash awards based on the amount of compensation that each Employee previously received under the LTIP in its original form.

23. As of the Petition Date, the Debtors do not believe they owe any outstanding amounts on account of the Bonus Programs, nor do they believe any amounts will come due under

the Bonus Programs during the Chapter 11 Cases.<sup>8</sup> However, out of an abundance of caution, the Debtors seek authority to make any cash payments to non-Insider Employees under the Bonus Programs in the ordinary course of business and consistent with historical practice, to the extent necessary. For the avoidance of doubt, the Debtors are not seeking authority in this Motion to make any cash payments to Insiders during the pendency of the Chapter 11 Cases under any of the Bonus Programs absent further order of the Court.

**D. Employee-Related Expenses**

24. In addition to payroll, in the ordinary course of business, the Debtors either pay or reimburse eligible members of their Workforce in connection with: (a) reimbursement of business expenses; (b) the Per-Diem and Job Bonus Program (as defined below); (c) reimbursement or payment of Mobile Expenses (as defined below); (d) Tuition Expenses (as defined below); (e) Vehicle Allowance (as defined below); and (f) payment and reimbursement of the fees and expenses of the Debtors' Directors (as defined below, and together with (a)-(e), the "**Employee-Related Expenses**") and, any obligations thereunder, the "**Employee Expense Obligations**"). The Employee-Related Expenses are described in further detail below.

**(i) Business Expenses**

25. The Debtors, in the ordinary course of their business, reimburse Employees for a variety of ordinary, necessary, and reasonable business-related expenses that Employees incur within the scope of their job duties. These include expenses for business travel (including airfare, lodging, taxi costs, automobile rentals, gas and car mileage for personal vehicles, and meals),

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<sup>8</sup> While not part of the LTIP or Annual Bonus Program, the Debtors have established an additional compensation program for approximately 57 non-Insider Employees, payable by SESI Corporate in three installments. Only the second of these installments, scheduled for January 18, 2021, will occur during the Chapter 11 Cases, and the Debtors are disclosing that payment in this motion out of an abundance of caution.

uniforms or protective clothing for work, and other general business-related expenses. Employees are expected to use sound judgment and good business sense when incurring expenses.

26. All Employees who incur reimbursable expenses are required to submit expense reports. Expense reports include supporting receipts and are approved by Employees' supervisors in order to be reimbursed. Employees are required to submit their expense data within a reasonable time after incurring business expenses. However, because Employees may not always promptly submit expense reports, it is difficult for the Debtors to determine the exact amount outstanding at any particular time.

27. On average, for the six months prior to the Petition Date, the Debtors' Employees incurred approximately \$110,000 per month in the aggregate on account of reimbursable business expenses. Taking into account potential lag time in expense report submissions, the Debtors estimate that, as of the Petition Date, their obligations to Employees for accrued, reimbursable business-related expenses (submitted and un-submitted) total approximately \$110,000.

**(ii) Per-Diem and Job Bonus Programs**

28. The Debtors provide either a per-diem stipend or a job bonus (together, the "**Per-Diem and Job Bonus Programs**") for certain Employees, generally hourly Employees, whose work involves significant travel. The criteria used by different Debtors to calculate the amount of a stipend under the Per-Diem and Job Bonus Programs vary depending on the nature of the work involved, and the Debtors' management determine the amounts on a case-by-case basis. Currently, a total of approximately 685 Employees are eligible for compensation under the Per-Diem and Job Bonus Programs. As of the Petition Date, the Debtors estimate that they owe approximately \$370,000 in connection with the Per-Diem and Job Bonus Programs.

**(iii) Mobile Expenses**

29. Certain of the Debtors' Employees are issued mobile phones for business purposes, while some Employees elect to use their personal phones. Related expenses (the "**Mobile Expenses**") are either paid directly by the Debtors or, when Employees use their personal phones for business, reimbursed up to a \$50 monthly limit. Alternatively, Employees using their personal phones may receive a stipend rather than a reimbursement. The Debtors estimate that, as of the Petition Date, approximately \$5,000 of Mobile Expenses are accrued and unpaid.

**(iv) Tuition Reimbursement Program**

30. The Debtors also reimburse their Employees for tuition incurred on account of certain classes and courses that enhance qualified Employees' work-related skills (the "**Tuition Reimbursement Program**"). As of the Petition Date, the Debtors do not believe that they have any outstanding obligations on account of Tuition Reimbursement Program.

**(v) Vehicle Allowances**

31. The Debtors provide certain Employees with a regular vehicle stipend (the "**Vehicle Allowances**") to help reimburse Employees for using their personal vehicles for work purposes. Vehicles Allowances are awarded to Employees on a case-by-case basis, depending on the Employee's role and the extent to which his or her personal vehicle will be needed in the course of his or her job. Vehicle Allowances are typically \$300 per month, and are disbursed every pay period in an Employee's paycheck. The Debtors estimate that, as of the Petition Date, approximately \$45,000 in Vehicle Allowances are accrued and unpaid.

**(vi) Director Fees and Expenses**

32. In the ordinary course of business, the Debtors pay the fees for and reimburse the expenses of the six non-Employee directors of the Parent (the "**Directors**"). The Debtors pay the

Directors cash compensation on a quarterly basis at the beginning of each quarter. Quarterly compensation for the Directors ranges from approximately \$43,750 to \$75,000. The Directors' service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all Directors' fees and any business related expenses incurred by the Directors that have accrued as of the Petition Date. As of the Petition Date, the Debtors do not believe they owe any outstanding compensation or reimbursement amounts to the Directors. Nonetheless, the Debtors request the authority to reimburse any unpaid Director expenses incurred prior to the Petition Date and to continue to pay Director expenses in the ordinary course of business on a postpetition basis.

#### **E. Employee Benefit Programs**

33. In the ordinary course of business, the Debtors offer eligible Employees, their eligible spouses and dependents, and certain former Employees various employee benefits, including, without limitation: (a) medical, prescription drug, dental, and vision coverage; (b) participation in the HSAs and FSAs (each as defined below); (c) participation in the Income Protection Plans (as defined below); (d) the ability to participate in the 401(k) Program (as defined below); (e) the ability to participate in Employee Assistance Program (as defined below); and (f) workers' compensation (collectively, the "**Employee Benefits Programs**") and, any obligations thereunder, the "**Employee Benefits Obligations**"). The Employee Benefits Programs are described in further detail below.

##### **(i) Medical Benefits, Dental Benefits, and Vision Plan**

###### **a. Medical Benefits**

34. The Debtors offer eligible Employees and their family members the opportunity to obtain basic medical and prescription drug benefits (the "**Medical Benefits**") under one of three self-funded plans that are administered by Blue Cross Blue Shield of Texas ("**BCBSTX**"): (a) two

Preferred Provider Organizations plans (the “**PPO Plans**”); and (b) a high-deductible health plan with a health savings account (the “**HDHP**” and, together with the PPO Plans, the “**Medical Plans**”). In addition, certain Employees also receive additional coverage from ArmadaCare to supplement amounts paid under their respective Medical Plan. The obligations incurred by the Debtors on account of the Medical Benefits fluctuate based on the number of Employees enrolled in the Medical Plans. During the six months period prior to the Petition Date, the Debtors incurred approximately \$1,790,000 in premiums per month in connection with the Medical Benefits. As of the Petition Date, the Debtors believe that there are approximately \$970,000 in accrued and unpaid amounts owing on account of the Medical Benefits.

35. In addition, as required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”), the Debtors provide temporary continuation of healthcare benefits at group rates to former Employees after their termination, retirement, or disability leave through BCBSTX. Meanwhile, online administration of COBRA benefits is carried out by bswift LLC (“**bswift**”). The former Employees bear all costs associated with COBRA. While the Debtors do not expect to owe former Employees any amounts on account of this benefit, and do not expect any such amounts to arise, the Debtors request that former Employees and eligible dependents retain the right to coverage in accordance with COBRA requirements and request authorization to pay obligations (if any) arising under such plans, regardless of when such obligations accrued.

#### b. **Dental Benefits**

36. The Debtors also offer eligible Employees and their family members the opportunity to obtain basic dental coverage (the “**Dental Benefits**”). The Dental Benefits are administered by Delta Dental (“**Delta**”). For the six month period prior to the Petition Date, the Debtors incurred approximately \$60,000 in premiums on average per month in connection with

the Dental Benefits. As of the Petition Date, the Debtors believe that there are approximately \$35,000 in premiums owed in connection with the Dental Benefits.

**c. Vision Plan**

37. The Debtors provide all Employees with the option to enroll in a vision insurance plan (the “**Vision Plan**”) that is administered and insured by VSP Vision Care (“**VSP**”). The Vision Plan covers Employees’ routine eye exams, eyeglass frames and lenses, and contact lenses. During the six months prior to the Petition Date, the Debtors did not incur any obligations on account of premiums in connection with the Vision Plan. As of the Petition Date, the Debtors do not believe that there are any obligations owed in connection with the Vision Plan.

**(ii) The HSAs and FSAs**

38. The Debtors offer all Employees participating in the HDHP the opportunity to contribute to health savings accounts (the “**HSAs**”) at Fidelity Investments Inc. (“**Fidelity**”) to be used for healthcare-related expenses. Each participating Employee may contribute a portion of his or her eligible earnings each year on a pre-tax basis to his or her HSA, subject to limits imposed by federal law.

39. The Debtors also offer Employees participating in the Medical Plans the opportunity to contribute, through pre-tax compensation deductions, to medical flexible spending accounts, dependent care flexible spending accounts, and limited purpose flexible spending accounts (collectively, the “**FSAs**”) at Discovery Benefits (“**Discovery**”) to be used exclusively for certain healthcare-related expenses. Employees choose how much they want deducted from their paycheck per pay period. When an Employee makes a purchase through their FSA, Discovery bills the Debtors who use the withheld funds to pay such invoices. The Debtors do not contribute to their Employees’ HSAs and therefore do not owe any obligations on account thereof.



As of the Petition Date, the Debtors estimate that approximately \$290,000 is accrued and outstanding on account of the FSAs.

**(iii)Income Protection**

40. Eligible Employees receive, at the Debtors' cost, short-term disability insurance, long-term disability insurance (together, the "**Disability Insurance Plans**"), accidental death and dismemberment insurance, and basic life insurance (together, the "**Life and AD&D Plans**"), and together with the Disability Insurance Plans, the "**Income Protection Plans**"). The Disability Insurance Plans are administered by Cigna, while the Life and AD&D Plans are administered by Securian Financial.

41. For the six months period prior to the Petition Date, the Debtors incurred approximately \$140,000 on average per month in connection with the Income Protection Plans. As of the Petition Date, the Debtors believe that approximately \$170,000 is owed on account of premiums under the Income Protection Plans.

**(iv)401(k) Plan**

42. The Debtors sponsor a 401(k) retirement savings plan (the "**401(k) Plan**") for eligible Employees. The 401(k) Plan is administered by Fidelity, who acts as co-fiduciary with the Debtors and the 401(k) trustee. Under the 401(k) Plan, an eligible Employee may contribute a portion of his or her eligible earnings each year through either pre-tax contributions, Roth contributions, or a combination thereof, to the 401(k) Plan, subject to limits imposed by federal law. These contributions are deducted from the paychecks of participating Employees and paid to Fidelity to be held in an account maintained by Fidelity on the Employee's behalf. In addition, the 401(k) Plan permits Employees to take loans against their individual 401(k) account, and the Debtors deduct loan payments from such Employee's paycheck and remit such amounts to the 401(k) Trustee. Fidelity's administrative fees in connection with the 401(k) Plan are deducted

from 401(k) Plan assets. As of the Petition Date, approximately 1,310 Employees participate in the 401(k) Plan.

43. The Debtors match Employee contributions up to 4% of the participating Employee's eligible compensation, subject to limits imposed by federal law. Matching contributions made on behalf of the Debtors' Employees to the 401(k) Plan average, on a monthly basis based on the six months prior to the Petition Date, approximately \$350,000. As of the Petition Date, the Debtors estimate that they owe approximately \$160,000 on account of prepetition matching contributions related to the 401(k) Plan.

**(v)Employee Assistance Program**

44. The Debtors also offer an employee assistance program to their Employees through ComPsych Corporation ("**ComPsych**" and the related program, the "**Employee Assistance Program**"). Through the Employee Assistance Program, Employees and their dependents have access to confidential, 24/7 counseling and guidance services on a range of psychological and personal issues. The Employee Assistance Program is entirely funded by the Debtors, who make monthly payments to ComPsych. As of the Petition Date, the Debtors have approximately \$5,000 in outstanding obligations on account of the Employee Assistance Program.

**(vi)Workers' Compensation**

45. Under the laws of the various states in which they operate, the Debtors are required to maintain workers' compensation policies and programs, or participate in workers' compensation programs administered by state governments, to provide their Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors' Employees are covered under workers' compensation policies (the "**Workers' Compensation Policies**") that are either "monopolistic" (*i.e.*, provided by a government-operated insurance provider) or "non-monopolistic" (*i.e.*, provided by a private sector insurance provider).

46. The Debtors maintain three monopolistic Workers' Compensation Policies that are overseen by the workers' compensation authorities of North Dakota, Ohio, and Wyoming (the "**Monopolistic Workers' Compensation Policy**"), and two non-monopolistic Workers' Compensation Policies (the "**Non-Monopolistic Workers' Compensation Policies**") issued by Liberty Mutual Group, Inc. and Helmsman Management Services LLC. The Workers' Compensation Policies are renewed on October 1 of each calendar year. During the year ended September 30, 2020, the total premiums paid on account of the Workers' Compensation Policies was \$2,100,000. Under the Workers' Compensation Policies, upon the filing of a verified claim ("**Workers' Compensation Claim**") by an eligible Employee, the insurance provider pays the Workers' Compensation Claim amount directly to the Employee.

47. It is critical that the Debtors be permitted to continue their workers' compensation program and to make payments in connection with outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties. To facilitate the ordinary course handling of Workers' Compensation Claims, the Debtors further request authority, in their sole discretion, to lift the automatic stay of section 362 of the Bankruptcy Code to allow Workers' Compensation Claims to proceed under the Workers' Compensation Policy and to allow the Debtors, their affiliates, their insurance providers and/or their third party administrators to negotiate, settle and/or litigate Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date. As of the Petition Date, the Debtors do not believe there is any accrued but unpaid prepetition liability.

**F. Honoring of Prepetition Workforce Obligations**

48. The Debtors request authority to pay or provide, as they become due, all prepetition Workforce Obligations that are described in Sections B, C, and D of this Motion. The Debtors estimate that the aggregate amount of the prepetition Workforce Obligations described above is approximately \$9,525,000. Estimated outstanding amounts as of the Petition Date are summarized in further detail below:

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>
<b><i>Workforce Compensation Programs</i></b>	
i. Employee payroll obligations (net of Deductions)	\$1,830,000
ii. Independent Contractors' compensation	\$95,000
iii. Deductions (payroll, Employee-funded benefits and insurance, etc.)	\$1,020,000
iv. PTO	\$4,420,000 <sup>9</sup>
v. Bonus Programs	\$0
<b>TOTAL</b>	<b>\$7,365,000</b>
<b><i>Employee-Related Expenses</i></b>	
i. Business Expenses	\$110,000
ii. Per-Diem and Job Bonus Programs	\$370,000
iii. Mobile Expenses	\$5,000
iv. Tuition Expenses	\$0
v. Vehicle Allowance	\$45,000
vi. Director Fees and Expenses	\$0
<b>TOTAL</b>	<b>\$530,000</b>
<b><i>Employee Benefits Programs (Employer Costs)</i></b>	
i. Medical Benefits, Dental Benefits, and Vision Plan	\$1,005,000

<sup>9</sup> The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO liability for all Employees totals approximately \$4,420,000. 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.

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>
ii. FSAs & HSAs	\$290,000
iii. Income Protection Plans	\$170,000
iv. 401(k) Plan	\$160,000
v. Employee Assistance Program	\$5,000
vi. Workers Compensation Policies	N/A <sup>10</sup>
<b>TOTAL</b>	<b>\$1,630,000</b>
<b>GRAND TOTAL</b>	<b>\$9,525,000</b>

49. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, the Debtors believe that the continuity and competence of their Workforce would be jeopardized if the relief requested herein is not granted. Specifically, if the Debtors fail to honor and pay prepetition Employee Compensation Obligations, Employee Expense Obligations and Employee Benefits Obligations, in the ordinary course of business, the Debtors' 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 losses in the Debtors' Workforce during the pendency of the Chapter 11 Cases and to maintaining the continuity and stability of the Debtors' operations.

<sup>10</sup> As of the Petition Date, the Debtors are not aware of any amounts due and payable in connection with the Workers' Compensation Policies. However, given the nature of such liabilities, prepetition amounts due in connection with the Workers' Compensation Policies cannot be known until claims related thereto are submitted. Accordingly, out of an abundance of caution, the Debtors request authority to pay any amounts due in connection with the Workers' Compensation Policies in the ordinary course, regardless of whether such amounts arose before or after the Petition Date.

**G. Postpetition Continuation of Workforce Programs**

50. 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 pendency of the Chapter 11 Cases, subject to the terms of the Order.

**H. Payments to Administrators**

51. With respect to the Employee compensation and benefits described above, the Debtors contract with several vendors to administer and deliver payments or other benefits to their Employees (the "**Administrators**"). The Debtors' Administrators include, but are not limited to, ArmadaCare, BCBSTX, Boals & Co., bswift, Cigna, ComPsych, CVS Caremark, Delta, Discovery, Fidelity, Newport, Securian, Symetra, and VSP. The Debtors pay certain of these Administrators' fees and expenses incurred in connection with the administration of the Workforce Programs. Specifically, based on the six months prior to the Petition Date, the Debtors paid a monthly average of approximately \$280,000 to the Administrators. As of the Petition Date, the Debtors estimate they owe approximately \$340,000 to the Administrators.

52. In conjunction with the Debtors' payment of prepetition 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 the Debtors' estates.

#### **I. Honoring of Prepetition Checks**

53. Prior to the Petition Date, the Debtors paid certain of their prepetition Workforce Obligations with checks that had not been presented for payment as of the Petition Date. In order to ensure the orderly payment of the prepetition Workforce Obligations, the Debtors request that the Court enter the Order authorizing the Debtors' banks to honor any such checks that are drawn on the Debtors' accounts, and authorizing the banks to rely on the representations of the Debtors as to which checks are subject to this Motion. To the extent that any such checks are nevertheless refused payment, the Debtors additionally request authority to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

### **APPLICABLE AUTHORITY**

#### **A. Payment of the Priority Portion of Prepetition Workforce Obligations Should be Authorized Under Section 507(a) of the Bankruptcy Code**

54. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, and vacation pay be accorded priority in payment in an amount not

to exceed \$13,650 for each individual. In chapter 11, priority claims must be paid in full. Accordingly, granting the relief requested with respect to the priority portion of prepetition Workforce Obligations will not adversely affect the Debtors' other unsecured creditors.

55. The Debtors believe that, as of the Petition Date, no Employees or Independent Contractors are owed wages or salary compensation in excess of the \$13,650 statutory cap pursuant to section 507(a)(4) of the Bankruptcy Code, and in any event, the Debtors do not seek to pay any such Employee wages or salary compensation in excess of such cap pursuant to this Motion. The amounts of certain prepetition Workforce Obligations, such as Employee Benefits Obligations, are unknown pending submission of claims and, therefore, the Debtors do not know the exact amount due on account of each Employee for the prepetition period.

**B. The Proposed Payments Are Appropriate under Section 363(b) of the Bankruptcy Code**

56. Under section 363 of the Bankruptcy Code, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. *See* 11 U.S.C. § 363(b). In order to obtain approval for the use of estate assets outside the ordinary course of business, the debtor must articulate a valid business justification for the requested use. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (holding that Section 363(b) of the Bankruptcy Code requires that "there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Section 363 of the Bankruptcy Code addresses the debtor's use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.").



57. To the extent the payment of prepetition costs such as wages, expenses and benefits is deemed to be outside the ordinary course of business, the preservation and protection of a debtor's business, the retention of a debtor's currently working employees, and the maintenance of positive employee morale provide a sufficient business justification for such payment. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Furthermore, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the "implied duty of the debtor-in-possession to 'protect and preserve the estate, including an operating business' going-concern value.'" *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Accordingly, this Court should grant the requested relief under section 363(b) of the Bankruptcy Code.

**C. Payment of Certain of the Prepetition Workforce Obligations is Appropriate under Section 541 of the Bankruptcy Code**

58. The payment of the Employee contribution component of the 401(k) Plan or payment of garnished wages and other similar other Deductions will not prejudice the Debtors' estates because such withholdings 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 Contractor Tech., Ltd.*, 343 B.R. 573, 581 (Bankr. S.D. Tex. 2006) (noting that "the estate does not become the true owner of funds held in trust upon the filing of a bankruptcy case."); *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 – for another does not become property of the estate when the 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.”). Moreover, payments that are critical to the retention and morale of the Debtors’ Workforce actually add value to the estates because an unplanned reduction in Employee retention or productivity could have disastrous effects on any potential recoveries to unsecured creditors.

**D. Payment of Prepetition Workforce Obligations is Authorized under Sections 1107 and 1108 of the Bankruptcy Code**

59. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

60. According to the *CoServ* court, there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *See id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

61. Payment of prepetition Workforce Obligations meets each element of the *CoServ* court's standard. First, any failure by the Debtors to pay prepetition Workforce Obligations would have a severe negative impact on the morale of the Debtors' Workforce at a critical time for the Debtors and their businesses. Moreover, as described above, the Employees likely maintain priority claims against the Debtors on account of many of the prepetition Workforce Obligations.

62. Second, the potential harm and economic disadvantage that would stem from the failure to pay prepetition Workforce Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid. Absent payment of prepetition Workforce Obligations, Workforce morale would decrease dramatically, likely leading to the loss of key personnel and other severe business disruptions costing far in excess of the amount of such obligations.

63. Third, the Debtors have examined other options short of payment of prepetition Workforce Obligations and have determined that to avoid significant disruption of the Debtors' business operations there exists no practical or legal alternative to payment of such obligations. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of prepetition Workforce Obligations.

**E. Section 105(a) of the Bankruptcy Code and the Doctrine of Necessity Support Payment of Prepetition Workforce Obligations**

64. The proposed payments of prepetition Workforce Obligations should be authorized pursuant to section 105(a) of the Bankruptcy Code, which authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses in order to effect a successful reorganization through, among other things, preservation of the Debtors' Workforce and its morale and

productivity, payment of prepetition Workforce Obligations as requested herein is proper in accordance with section 105(a) of the Bankruptcy Code.

65. Payment of prepetition Workforce Obligations is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization.<sup>11</sup> See *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369-70 (Bankr. S.D. Tex. 2000) (recognizing the “doctrine of necessity” and observing that “[t]he need to pay [prepetition wage claims] in an ordinary course of business time frame is simple common sense,” and that “[e]mployees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.”); see also *In re CoServ, L.L.C.*, 273 B.R. at 497 (recognizing the “doctrine of necessity”); *In re CEI Roofing, Inc.*, 315 B.R. 50, 61 (Bankr. N.D. Tex. 2004) (holding that payment of certain prepetition claims under the doctrine of necessity is “based on both common sense and the express provisions of the Bankruptcy Code.”); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2004) (authorizing the debtors to pay certain prepetition claims because “the court d[id] not wish Debtors’ businesses seriously damaged.”).

66. For the reasons discussed herein, it is evident that payment of prepetition Workforce Obligations is necessary to achieve the Debtors’ chapter 11 objectives. In particular,

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<sup>11</sup> The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport C & Sw. Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. See *id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. See *In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious, jeopardy.”).

without payment of the prepetition Workforce Obligations, the Debtors' businesses and operations will be detrimentally impacted through the reduction in Workforce morale and the potential loss of key personnel during a critical time for the Debtors and their businesses. Hence, this Court should exercise its equitable powers to grant the relief requested in this Motion.

**F. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims is Appropriate**

67. Section 362(a) of the Bankruptcy Code operates to stay "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . ." 11 U.S.C. § 362(a)(1).

68. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with Workers' Compensation Claims in the appropriate judicial or administrative forum. Staying the Workers' Compensation Claims could have a detrimental effect on the financial well-being and morale of the Employees.

69. Similarly, state law requires the Debtors to maintain the Workers' Compensation Policies and related programs. If the Debtors fail to maintain the Workers' Compensation Policies, state law may prohibit the Debtors from operating in the various states in which they operate. Payment of all amounts relating to the Workers' Compensation Policy and related programs is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring.

### **EMERGENCY CONSIDERATION**

70. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. The Debtors utilize their Workforce to support virtually all aspects of their operations. Accordingly, failure to receive the applicable relief during the first twenty-one (21) days of the Chapter 11 Cases would severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 as well as the requirements of Bankruptcy Local Rule 9013-1(i) and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

### **BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

71. 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 request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by

Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

### **RESERVATION OF RIGHTS**

72. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' or any other party in interest's 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; (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 Order once entered; or (g) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

### **CONSENT TO JURISDICTION**

73. The Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

### **NOTICE**

74. Notice of this Motion will be given to: (a) the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**"); (b) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the agent for the Debtors' prepetition secured asset-based revolving credit facility (the "**Prepetition ABL**");

**Agent**”); (d) counsel to the indenture trustee for the Debtors’ prepetition notes; (e) counsel to that certain ad hoc group of holders of prepetition senior notes (the “**Ad Hoc Noteholder Group**”); (f) the United States Attorney’s Office for the Southern District of Texas; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtors conduct business; (j) the Environmental Protection Agency; and (k) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

75. A copy of this Motion is available on (a) the Court’s website: [www.txs.uscourts.gov](http://www.txs.uscourts.gov), and (b) the website maintained by the Debtors’ proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at [www.kccllc.net/superior](http://www.kccllc.net/superior).

*[Remainder of page intentionally left blank]*



**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: December 7, 2020  
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II  
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-and-

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*Proposed Counsel for the Debtors and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I certify that on December 7, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

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

	X	
In re:	:	Chapter 11
	:	
SUPERIOR ENERGY SERVICES, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-35812 (DRJ)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

**ORDER (I) AUTHORIZING (A) PAYMENT OF PREPETITION  
WORKFORCE OBLIGATIONS AND (B) CONTINUATION OF  
WORKFORCE PROGRAMS ON A POSTPETITION BASIS, (II)  
AUTHORIZING PAYMENT OF PAYROLL TAXES, (III) CONFIRMING  
THE DEBTORS' AUTHORITY TO TRANSMIT PAYROLL DEDUCTIONS,  
(IV) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO  
ADMINISTRATORS, AND (V) DIRECTING BANKS TO HONOR PREPETITION  
CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

[Relates to Motion at Docket No. \_\_\_\_ ]

Upon the emergency motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) (i) authorizing the Debtors to (a) pay certain prepetition amounts for compensation, benefits, and reimbursable expenses owing to or for the benefit of the Debtors’ Workforce and (b) continue, postpetition, the Workforce Programs in the ordinary course of business, as such programs were in effect immediately prior to the filing of the Chapter 11 Cases; (ii) confirming that the Debtors are authorized to pay any and all local, state and federal withholding and payroll-related or similar

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Superior Energy Services, Inc. (9388), SESI, L.L.C. (4124), Superior Energy Services-North America Services, Inc. (5131), Complete Energy Services, Inc. (9295), Warrior Energy Services Corporation (9424), SPN Well Services, Inc. (2682), Pumpco Energy Services, Inc. (7310), 1105 Peters Road, L.L.C. (4198), Connection Technology, L.L.C. (4128), CSI Technologies, LLC (6936), H.B. Rentals, L.C. (7291), International Snubbing Services, L.L.C. (4134), Stabil Drill Specialties, L.L.C. (4138), Superior Energy Services, L.L.C. (4196), Superior Inspection Services, L.L.C. (4991), Wild Well Control, Inc. (3477), and Workstrings International, L.L.C. (0390). The Debtors’ address is 1001 Louisiana Street, Suite 2900, Houston, Texas 77002.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Motion.

taxes relating to prepetition periods; (iii) confirming that the Debtors are permitted, but not required, to continue to deduct and to transmit deductions from payroll checks as authorized by Employees, as required by any Workforce-related plan, program or policy, or as required by law; (iv) authorizing the Debtors to pay any prepetition claims owing to the Administrators; and (v) authorizing and directing all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant thereto; 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. §1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it 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 under the circumstances and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

**ORDERED THAT:**

1. Subject to paragraph 2 of this Order, the Debtors are authorized, but not directed, to pay or otherwise honor all prepetition Workforce Obligations to, or for the benefit of, the Workforce, including but not limited to, all prepetition amounts owed in connection with (a) the Workforce Compensation Obligations, (b) the Employee Expense Obligations, and (c) the Employee Benefits Obligations, each as described in the Motion. Notwithstanding any other provision of this Order (except from the following proviso), such payments shall not exceed

\$9,525,000 in the aggregate without further order of the Court; *provided, however*, that such payments may exceed \$9,525,000 in the event such excess payment is on account of prepetition liabilities arising under the Workers' Compensation Policies in the ordinary course for which no claim has been submitted as of the Petition Date. Such Workforce Obligations are summarized in further detail in the chart below.

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>
<b><i>Workforce Compensation Programs</i></b>	
vi. Employee payroll obligations (net of Deductions)	\$1,830,000
vii. Independent Contractors' compensation	\$95,000
viii. Deductions (payroll, Employee-funded benefits and insurance, etc.)	\$1,020,000
ix. PTO	\$4,420,000
x. Bonus Programs	\$0
<b>TOTAL</b>	<b>\$7,365,000</b>
<b><i>Employee-Related Expenses</i></b>	
vii. Business Expenses	\$110,000
viii. Per-Diem and Job Bonus Programs	\$370,000
ix. Mobile Expenses	\$5,000
x. Tuition Expenses	\$0
xi. Vehicle Allowance	\$45,000
xii. Director Fees and Expenses	\$0
<b>TOTAL</b>	<b>\$530,000</b>
<b><i>Employee Benefits Programs (Employer Costs)</i></b>	
vii. Medical Benefits, Dental Benefits, and Vision Plan	\$1,005,000
viii. FSAs & HSAs	\$290,000
ix. Income Protection Plans	\$170,000
x. 401(k) Plan	\$160,000
xi. Employee Assistance Program	\$5,000
xii. Workers Compensation Policies	N/A

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>
<b>TOTAL</b>	\$1,630,000
<b>GRAND TOTAL</b>	\$9,525,000

2. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the Ad Hoc Noteholder Group, and any statutory committee appointed in the Chapter 11 Cases if any individual in the Workforce is anticipated to receive prepetition payments under this Order in excess of the priority caps set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided*, that if the U.S. Trustee, the Ad Hoc Noteholder Group, or any statutory committee appointed in the Chapter 11 Cases objects to such payment, the Debtors shall not make such payment in excess of the priority caps set forth in sections 507(a)(4) and 507(a)(5) without further order of the Court or written consent from the U.S. Trustee, the Ad Hoc Noteholder Group, or any statutory committee appointed in the Chapter 11 Cases, as applicable. For the avoidance of doubt, the Debtors shall not make any cash payments to Insiders of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, under any bonus, incentive, or retention plan, or any severance obligation without first seeking authority from the Court.

3. Except as otherwise expressly set forth in this Order, the Debtors are authorized to (a) continue each of the Workforce Programs, including but not limited to, the Workforce Compensation Programs, the Employee-Related Expenses, and the Employee Benefits Programs, each as described in the Motion, 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 prior to 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, including but not limited to, the Workforce Compensation Programs, the

Employee-Related Expenses, and the Employee Benefits Programs, as described in the Motion, in the ordinary course of business.

4. The Debtors are authorized to reimburse the Employees for all Employee Expense Obligations incurred prior to the Petition Date consistent with historical practices. In addition, the Debtors are authorized to make direct payments to third parties on account of amounts owed in connection with the Employee Expense Obligations consistent with historical practices.

5. Before making any payments or transfers due under the Bonus Programs in excess of \$25,000 to any Insider, the Debtors shall provide two (2) days' advance notice to the U.S. Trustee, counsel to the Ad Hoc Noteholder Group, and any statutory committee appointed in the Chapter 11 Cases of (a) the title of the Claimant, (b) the amount of the proposed payment or transfer to such Claimant, and (c) the proposed payment date. The Debtors shall maintain a schedule of amounts directly or indirectly paid pursuant to the Bonus Programs, subject to the terms and conditions of this Order, including the following information: (a) the name and title of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtor shall provide a copy of such schedule to the U.S. Trustee, counsel to the Ad Hoc Noteholder Group, and any statutory committee appointed in the Chapter 11 Cases within four business days following every month-end during the pendency of these Chapter 11 Cases. Each such payment schedule shall cover payments made during the previous month, as well as payments made since entry of this Order.

6. The Debtors are authorized to continue their Workers' Compensation Policy and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees arising under the Workers' Compensation Policy and or programs in which they

participate. In addition, the automatic stay of section 362(d) of the Bankruptcy Code is hereby lifted to allow the Debtors' Employees to proceed with any Workers' Compensation Claims they may have under the Workers' Compensation Policy and to allow the Debtors' insurance providers and/or third party administrators to negotiate, settle, and/or litigate such claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

7. The Debtors are authorized to withhold, pay and/or transmit any and all amounts attributable to the Deductions, including but not limited to, paying withholding and payroll-related taxes and fees related to the Workforce Obligations, social security taxes, and Medicare taxes, as required by any Workforce-related plan, program or policy, or as required by law, whether such amounts relate to the period before or after the Petition Date.

8. The Debtors are authorized 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 to continue to pay any amounts owed to the Directors on a postpetition basis in the ordinary course of business consistent with past practice.

10. Authorization to pay, and the payment of, any amounts on account of prepetition Workforce Obligations, including any amounts on account of the Workforce Compensation Obligations, the Employee Expense Obligations, and/or the Employee Benefits Obligations, shall not affect the Debtors' right to contest the amount or validity of any prepetition Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

11. Neither the provisions of this Order, nor any payments made or not made by the Debtors pursuant to this Order, shall be deemed an assumption or rejection of any Workforce



Program, agreement or contract, or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and any member of the Workforce, or other person.

12. Notwithstanding anything to the contrary in this Order, the Debtors retain their right, with the prior written consent of the advisors to the Ad Hoc Noteholder Group and the advisors to the Prepetition ABL Agent (which consent may not be unreasonably withheld, conditioned, or delayed), to enter into any new Workforce Program or Workforce Obligations to modify or terminate any existing Workforce Program or Workforce Obligations to the extent that such right exists under the terms of the Workforce Program or Workforce Obligations or as may be required by applicable law. The Debtors will provide reasonable notice to the U.S. Trustee and any statutory committee appointed in the Chapter 11 Cases of any material changes to the Workforce Programs or Workforce Obligations or of any new programs, policies, and benefits.

13. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance, limit or change the status of any claim held by, any member of the Workforce, or other person.

14. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition amounts owed to any party in connection with the Prepetition Workforce Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. Further, the Debtors are authorized to issue new postpetition checks and initiate new postpetition electronic fund transfers to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses

that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

15. Notwithstanding anything to the contrary contained herein, (a) any payment made or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any orders approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the "**DIP Order**"), and (b) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Order).

16. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

17. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (a) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' or any other party in interest's 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; (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 Order; or (g) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law. Nothing contained in this Order shall be deemed to increase, decrease, 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 Order shall be effective and enforceable immediately upon entry hereof.

19. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

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

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

Signed \_\_\_\_\_, 2020

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THE HONORABLE DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE