

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

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	:		
In re:	:		Chapter 11
	:		
THQ INC., <i>et al.</i> ,	:		Case No. 12 - 13398 (___)
	:		
Debtors. ¹	:		(Joint Administration Requested)
	:		
	-----X		

**DEBTORS' MOTION FOR ORDER AUTHORIZING
THE DEBTORS TO PAY CERTAIN PREPETITION TAXES AND FEES**

THQ Inc. (“THQI”) and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an order, substantially in the form annexed hereto as **Exhibit A**, pursuant to sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 6003, 6004(a), and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), authorizing the Debtors to remit and pay sales and use, property, and franchise taxes (collectively, the “**Taxes**”), and business license, permit, and other similar fees or charges (collectively, the “**Fees**”). In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Brian Farrell in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “**Farrell First Day Declaration**”), which was filed with the Court concurrently herewith. In further support of this Motion, the Debtors respectfully represent:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



BACKGROUND

1. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

2. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (the “**Chapter 11 Cases**”) pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules. No trustee, examiner, or official committee of unsecured creditors has been appointed in these cases.

3. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the Farrell First Day Declaration.

THE DEBTORS’ TAX OBLIGATIONS

4. In the ordinary course of business, the Debtors: (a) incur and/or collect Taxes; (b) incur Fees in connection with obtaining licenses and permits necessary to operate their businesses; and (c) remit such Taxes and Fees to various taxing, licensing, and other governmental authorities (collectively, the “**Authorities**”). A list of the Authorities is attached hereto as **Exhibit B**. The Debtors pay the Taxes and Fees monthly, quarterly, or annually, in each case as required by applicable laws and regulations.

I. Sales and Use Taxes

5. The Debtors incur sales, use, and miscellaneous similar taxes in connection with the operation of their business and services to their customers (the “**Sales and Use Taxes**”). Generally, sales taxes are remitted to the Authorities in the month or quarter

following acquisition or transportation of the corresponding goods. Although the Debtors are timely with respect to Sales and Use Taxes, they estimate that, as of the Petition Date, approximately \$25,000 of Sales and Use Taxes have accrued and are unpaid.

II. Personal Property Taxes

6. State and local laws in some of the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors' personal property. To avoid the imposition of statutory liens on their personal property, the Debtors typically pay these taxes in the ordinary course of business on a monthly basis. The Debtors estimate that, as of the Petition Date, approximately \$60,000 in personal property taxes have accrued and are unpaid.

III. Business License, Permits and Other Similar Fees

7. Certain state and local taxing Authorities require the payment of Fees for the authority to conduct business within their jurisdictions. The Fees are typically for business licenses, permits, and other similar charges and assessments. Depending on the jurisdiction, the Debtors remit these Fees on a monthly, quarterly, or annual basis. The Debtors believe they are current with respect to these Fees and estimate that, as of the Petition Date, there are no Fees accrued and are unpaid.

JURISDICTION

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b),

507(a)(8), and 541 of the Bankruptcy Code.

RELIEF REQUESTED

9. By this motion, the Debtors seek the entry of an order authorizing, but not directing, the payment of Taxes and Fees in the ordinary course of business, without regard to whether such obligations accrued or arose before or after the Petition Date.

BASIS FOR RELIEF REQUESTED

I. Payment of the Taxes and Fees is Necessary and Appropriate.

10. The Debtors' payment of Taxes and Fees in the ordinary course of business is justified because, among other things, certain of the Taxes and Fees are not property of the estate pursuant to section 541(d) of the Bankruptcy Code. In addition, the Debtors' directors and officers may be held personally liable for the non-payment of certain taxes. Certain Authorities may take precipitous action against the Debtors' directors and officers for unpaid Taxes, which would distract the Debtors from maintaining successful business operations and preserving value for the Debtors' stakeholders.

A. Certain of the Taxes and Fees May Not Be Property of the Debtors' Estates.

11. Section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors' legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

12. Some of the Taxes and Fees constitute "trust fund" taxes, which the Debtors are required to collect and/or hold in trust for payment to the Authorities. Courts have held that such taxes are not part of a debtor's estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not a

transfer subject to avoidance because such funds are not the debtor's property); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3rd Cir. 1994) (withheld taxes were subject to a trust); *DuCharmes & Co. v. Mich. (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *Shank v. Wash. State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (stating that sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dep't of Revenue (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983); *W. Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (same). To the extent these "trust fund" Taxes are collected, they are not property of the Debtors' estates under section 541(d). See, e.g., *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104–105 (Bankr. E.D. Pa. 1987); *In re Dameron*, 155 F.3d 718, 721–22 (4th Cir. 1998) (stating that funds from various lenders held by closing agent in trust for designated third parties not property of debtor's estate). The Debtors, therefore, generally do not have an equitable interest in such funds, and they should be permitted to pay those funds to the Authorities as they become due.

B. Payment of the Taxes and Fees Will Avoid Unnecessary Distractions in These Chapter 11 Cases.

13. Any regulatory dispute or delinquency that affects the Debtors' ability to conduct business could have a wide-ranging and adverse effect on the Debtors' operations as a whole. Specifically, the Debtors' failure to pay the Taxes and Fees could adversely affect their business operations because, among other things: (a) the Authorities could audit the Debtors or prevent the Debtors from continuing their businesses, which, even if unsuccessful, would unnecessarily divert the Debtors' attention away from the reorganization process; (b) the Authorities could attempt to suspend the Debtors' operations, file liens, seek to lift the automatic

stay, and pursue other remedies that will harm the estates; and (c) certain directors and officers might be subject to personal liability—even if such a failure to pay such Taxes and Fees was not a result of malfeasance on their parts—which would undoubtedly distract those key individuals from their duties related to the Debtors’ restructuring. Accordingly, the Debtors must continue to pay the Taxes and Fees as they become due to ensure that their officers and directors remain focused during these Chapter 11 Cases on operating the businesses and implementing a successful restructuring.

C Certain of the Taxes and Fees May Constitute Secured or Priority Claims Entitled to Special Treatment Under the Bankruptcy Code.

14. Payment of certain of the Taxes and Fees likely will give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that otherwise might accrue on the Taxes and Fees during these Chapter 11 Cases.

15. Claims for some of the Taxes and Fees are or may be priority claims entitled to payment prior to general unsecured creditors. *See* 11 U.S.C. § 507(a)(8). Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(b) of the Bankruptcy Code, the governmental units also may attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Thus, the payment of the Taxes and Fees at this time only affects the timing of the payment for the vast majority of the amounts at issue and, therefore, should not unduly prejudice the rights of other creditors.

D. Payment of the Taxes and Fees is Warranted Under the Doctrine of Necessity.

16. Courts generally acknowledge that, under appropriate circumstances, they

may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor’s business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 363(b) and 105(a) of the Bankruptcy Code.

17. Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

18. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court 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). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are

essential to the continued operation of the debtor's business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors' business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

19. In addition to the authority granted a debtor in possession under sections 363(b) and 105(a) of the Bankruptcy Code, courts have developed the "doctrine of necessity" or the "necessity of payment" rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor's reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not "helpless" to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

20. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of

payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *Just for Feet*, 242 B.R. at 824–25 (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

21. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); see also *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 3 Collier on Bankruptcy § 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

22. The necessity of payment doctrine is designed to foster the rehabilitation

of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 3 Collier on Bankruptcy § 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

23. Moreover, in numerous chapter 11 cases, bankruptcy courts in this district, as well as other districts have exercised their powers to authorize chapter 11 debtors to pay prepetition taxes and fees. *See, e.g., In re Friendly’s Ice Cream Corp.*, No. 11-13167 (Bankr. D. Del. Oct. 5, 2011); *In re SSI Grp. Holding Corp.*, No. 11-12917 (Bankr. D. Del. Sept. 15, 2011); *In re Neb. Book Co.*, No. 11-12005 (Bankr. D. Del. June 28, 2011); *In re L.A. Dodgers LLC*, No. 11-12010 (Bankr. D. Del. June 28, 2011); *In re Stallion Oilfield Servs. Ltd.*, No. 09-13562 (Bankr. D. Del. Nov. 16, 2009); *In re Visteon Corp.*, No. 09-11786 (Bankr. D. Del.

May 29, 2009); *In re Dayton Superior Corp.*, No. 09-11351 (Bankr. D. Del. Apr. 21, 2009); *In re Sun Times Media Grp., Inc.*, No. 09-11092 (Bankr. D. Del. Apr. 1, 2009); *In re Masonite Corp.*, No. 09-10844 (Bankr. D. Del. Mar. 17, 2009); *In re Portola Packaging, Inc.*, No. 08-12001 (Bankr. D. Del. Aug. 29, 2008); *In re ACG Holdings, Inc.*, No. 08-11467 (Bankr. D. Del. July 16, 2008); *In re Pierre Foods, Inc.*, No. 08-11480 (Bankr. D. Del. Aug. 13, 2008); *In re Tropicana Entm't, LLC*, No. 08-10856 (Bankr. D. Del. May 6, 2008); *In re Leiner Health Prods. Inc.*, No. 08-10446 (Bankr. D. Del. Apr. 4, 2008); *In re Wickes Holdings, LLC*, No. 08-10212 (Bankr. D. Del. Feb. 5, 2008). The Debtors submit that similar relief is warranted in these Chapter 11 Cases.²

CAUSE EXISTS TO AUTHORIZE THE DEBTORS' FINANCIAL INSTITUTIONS TO HONOR CHECKS AND ELECTRONIC FUND TRANSFERS

24. The Debtors have sufficient funds to remit the amounts described herein in the ordinary course of business by virtue of the anticipated access to debtor in possession financing. Also, under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and the Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

25. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief

² Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

26. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors' customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of "immediate and irreparable harm" generally. *Cf.* Bankruptcy Rule 4001(b)(2), (c)(2) (referring to "irreparable harm to the *estate*") (emphasis added). Indeed, the "irreparable harm" standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Collier on Bankruptcy §4001.06[3] (15th ed. rev. 2004) (discussing source of "irreparable harm" standard under Rule 4001(c)(2)). Courts will routinely consider third party interests when granting such relief. *See, e.g., Capital Ventures Int'l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

27. As discussed above, the Authorities may assert that the Debtors' directors and officers are personally liable if the Debtors fail to meet the obligations imposed upon them to remit Taxes and Fees. Thus, if the relief is not granted, the Debtors' directors and officers may be subject to personal tax-related lawsuits that would cause the Debtors' estate immediate and irreparable harm by detracting from the reorganization efforts. Moreover, pending entry of a final order, the Debtors only intend to remit Taxes and Fees to the extent that nonpayment may cause immediate and irreparable harm. Accordingly, the Debtors meet the "immediate and

irreparable harm” standard of Bankruptcy Rule 6003.

SATISFACTION OF BANKRUPTCY RULES 6004(a) AND 6004(h)

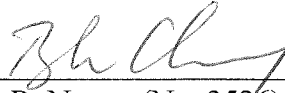
28. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

29. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors’ forty (40) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) counsel for Wells Fargo Capital Finance, LLC; (d) counsel to the ad hoc committee of Debtors’ prepetition unsecured noteholders; (e) counsel to Clearlake Capital Group, L.P., the proposed “stalking horse” purchaser; (f) each of the Authorities; and (g) the Banks. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 19, 2012
Wilmington, Delaware



Michael R. Nestor (No. 3526)
M. Blake Cleary (No. 3614)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

Oscar Garza (CA No. 149790)
Jeffrey C. Krause (CA No. 94053)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-1512
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

*Proposed Counsel to the Debtors and
Debtors in Possession*

101427083.2

**EXHIBIT A
PROPOSED ORDER**

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

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In re: : Chapter 11
 :
THQ INC., *et al.*, : Case No. 12 - 13398 (____)
 :
 : Jointly Administered
Debtors.¹ :
 :
 : RE: Docket No. ____
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**ORDER AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION
TAXES AND FEES**

Upon the Motion² of THQ Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code, authorizing the Debtors to remit and pay Taxes and Fees; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED in its entirety.
2. The Debtors are authorized, but not directed, to pay and remit certain prepetition Taxes or Fees to various Authorities, including, but not limited to, all of those Taxes and Fees subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, in an amount not to exceed \$85,000, absent further order of the Court.
3. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the Taxes and Fees described in the Motion is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related thereto to the extent that sufficient funds are on deposit in such accounts.
4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of Taxes and Fees that are dishonored or rejected.
5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the

Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

6. Notwithstanding anything to the contrary contained herein, (i) any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving debtor-in-possession financing (a "**DIP Order**"), and (ii) any claim for which payment is authorized pursuant to this Order that is treated as an administrative expense of the Debtors' estates shall be and is subject and subordinate to any and all claims, liens, security interests, and priorities granted to the DIP Secured Parties (as defined in the DIP Order) in accordance with and subject to the terms of the applicable DIP Order, and payment on any such claim shall be subject to any and all restrictions on payments in the DIP Order and any other order of the Court authorizing the Debtors' use of cash collateral.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: December __, 2012
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B
U.S. TAXING AUTHORITIES

U.S. Taxing Authorities

TAXING AUTHORITY	ADDRESS	CITY	STATE	ZIP CODE
Phoenix City Treasurer	PO Box 29690	Phoenix	AZ	85038-9690
New York State Sales Tax	JAF Building, PO Box 1205	New York	NY	10116-1205
Minnesota Department of Commerce	PO Box 64622	St. Paul	MN	55164
Michigan Department of Treasury	Department 78172, PO Box 78000	Detroit	MI	48278-0172
Texas State Comptroller of Public Accounts	PO Box 149354	Austin	TX	78714
Maricopa County Treasurer	PO Box 85072	Phoenix	AZ	85072
Travis County Tax Office	PO Box 149328	Austin	TX	78714