

Robert D. Albergotti
State Bar No. 009790800
Ian T. Peck
State Bar No. 24013306
Jarom J. Yates
State Bar No. 24071134
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: robert.albergotti@haynesboone.com
Email: ian.peck@haynesboone.com
Email: jarom.yates@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
§
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11
Picture People, §
§
Debtor. §

**DEBTOR’S EMERGENCY MOTION FOR AN ORDER
(I) AUTHORIZING CONTINUED USE OF EXISTING BUSINESS FORMS
AND RECORDS, (II) AUTHORIZING MAINTENANCE OF EXISTING
CORPORATE BANK ACCOUNTS AND CASH MANAGEMENT
SYSTEM, (III) AUTHORIZING PAYMENT OF PREPETITION COSTS
AND FEES ASSOCIATED WITH CUSTOMER CREDIT AND DEBIT
CARD TRANSACTIONS, AND (IV) WAIVING CERTAIN U.S. TRUSTEE
REQUIREMENTS**

TPP Acquisition, Inc. d/b/a The Picture People (“TPP” or the “Debtor”), debtor-in-possession in the above-referenced chapter 11 case, files this *Debtor’s Emergency Motion for an Order (I) Authorizing Continued Use of Existing Business Forms and Records, (II) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System, (III) Authorizing Payment of Prepetition Costs and Fees Associated with Customer Credit and Debit*



Card Transactions; and (IV) Waiving Certain U.S. Trustee Requirements (the “Motion”) and in support thereof, respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. To preserve the value of its assets and restructure its financial affairs, on September [2], 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned case (the “Chapter 11 Case”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. To date, no official committee (a “Committee”) of unsecured creditors, equity interest holders, or other parties in interest has been appointed in the Case.

4. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor’s Chapter 11 Case are set forth in greater detail in the *Statement of Background Information and Declaration of Stuart Noyes, Chief Restructuring Officer of TPP Acquisition, Inc. d/b/a The Picture People in Support of Debtor’s Chapter 11 Petition and First-Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.

A. The Debtor’s Bank Accounts

5. Prior to the Petition Date, in the ordinary course of business, the Debtor used a cash management system (the “Cash Management System”) to efficiently collect, transfer, and

disburse funds generated by its business operations. The Cash Management System consists of: (i) five accounts at Fifth Third Bank (“Fifth Third”); (ii) one account at Wells Fargo (“Wells”); (iii) one account at Bank of America (“BOA”); (iv) one account at Royal Bank of Canada (“RBC”); and (v) one account at Citizens Bank (“Citizens”). Another integral component of the Debtor’s Cash Management System is the Debtor’s card processing system (the “Card Processing System”). The Company has historically received approximately 80-85% of its receipts through credit and debit cards which are primarily processed through a credit card processing agreement with First Data Card Processing (“First Data”). The Debtor maintains an approximately \$1 million deposit held by First Data to cover charge-backs and other related expenses. The Debtor’s arrangement with First Data is critical to its operations and cash flows.

6. The U.S. accounts maintained by the Debtor at Fifth Third (the “Fifth Third U.S. Accounts”) are:

- i. A main depository account (XXXXXX-9456) (the “Depository Account”). The Depository Account is a ZBA account used for incoming wires and deposits which are swept daily into the Operating Account (defined below).
- ii. An operating-disbursements account (XXXXXX-9415) (the “Operating Account”). The Operating Account is the Debtor’s primary operating account which the Debtor uses to fund the Payroll Account (defined below) and to make other necessary disbursements.
- iii. A payroll account (XXXXXX-9423) (the “Payroll Account”). The Payroll Account is the account used to make payroll transfers. The Payroll Account is a ZBA account funded by the Operating Account.
- iv. An FSA account (XXXXXX-9431) (the “FSA Account”). The FSA Account is a ZBA account used for funding the employee flex spending claims and is funded by the Operating Account.
- v. A merchant card account (XXXXXX-9449) (the “Merchant Card Account”). The Merchant Card Account is a ZBA account used for credit card deposits, which are swept daily into the Operating Account.

7. Additionally, the Debtor maintains certain studio depository accounts at Wells Fargo Bank (account no. XXXXXX-9129), Bank of America (account no. XXXXXX-6708), Citizens Bank (account no. XXXXXX-4704), and RBC in Canada (XXX-5908) (collectively, the “Studio Depository Accounts”) which are primarily used for depositing customer payments made in the form of cash and checks at the Debtor’s various studio locations. The deposits in the Studio Depository Accounts are periodically transferred manually to the Depository Account. The Debtor still maintains its former operating account at Eagle Bank (account no. XXXXXX-1186), but does not intend to use the account at Eagle Bank during the Chapter 11 Case (together with the Fifth Third Accounts and the Studio Depository Accounts, and any other accounts authorized by an order on this Motion, the “Accounts” or “Bank Accounts”).

Relief Requested

8. By this Motion, the Debtor respectfully requests, pursuant to Bankruptcy Code §§ 105(a), 345(b), 363(c), 364(a), 1107 and 1108, the entry of an order: (i) authorizing the Debtor to continue using its existing business forms and records; (ii) authorizing the Debtor to maintain the Bank Accounts and Cash Management System (including as permitted under any interim and final orders authorizing the Debtor to obtain post-petition financing (collectively, the “DIP Financing Orders”) and in accordance with any budget approved in connection therewith (the “Budget”)); (iii) authorizing the Debtor to maintain its Card Processing System, including the payment of prepetition credit card processing fees and related charges (including as permitted under the DIP Financing Orders and Budget); (iv) granting the Debtor a waiver of certain bank account and related requirements of the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”) and Bankruptcy Code § 345(b) to the extent that such requirements are inconsistent with (a) the Debtor’s existing practices under its Cash Management

System or (b) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Chapter 11 Case.

A. The U.S. Trustee Guidelines

9. The U.S. Trustee has established its *Guidelines for Chapter 11 Cases for Region VI* (the “Guidelines”) in order to supervise the administration of chapter 11 cases. These Guidelines require debtors-in-possession to, among other things, (a) close all existing bank accounts and open new accounts, including an operating account, a tax account, a payroll account, and, if required by the Court, a cash collateral account, (b) obtain checks for all debtor-in-possession accounts that have the designation “debtor-in-possession,” and the bankruptcy case number, (c) close their books and records as of the petition date and to open new books and records, and (d) maintain their bank accounts with a depository bank approved by the U.S. Trustee. The U.S. Trustee designed these requirements to provide, among other things, a clear demarcation between prepetition and postpetition transactions and operations, which would, in theory, prevent the inadvertent postpetition payment of a prepetition claim. As explained in further detail below, the Debtor seeks a waiver of certain of these requirements in this Motion.

B. Continued Use of Existing Business Forms and Records

10. The Debtor seeks a waiver of the requirement that it open a new set of books and records as of the Petition Date. Opening a new set of books and records would create unnecessary administrative burdens and hardship and would cause unnecessary expense, utilization of resources, and delay. The Debtor, in the ordinary course of its business, uses many checks, invoices, stationery, and other business forms. By virtue of the nature and scope of the business in which the Debtor is engaged and the numerous other parties with whom it deals, the Debtor needs to use its existing business forms without alteration or change. Printing new

business forms would take an undue amount of time and expense. Fulfillment of the requirement would likely delay the payment of postpetition claims and negatively affect operations and the value of this estate. Accordingly, the Debtor respectfully requests that the Court authorize it to continue to use its existing business forms and to maintain its existing business records.

C. Continued Use of Bank Accounts and Cash Management System

11. The Debtor respectfully requests authority to maintain its existing Bank Accounts and Cash Management System in accordance with its usual and customary practices (and as required under the DIP Financing Orders and in accordance with the Budget) to ensure a smooth transition into chapter 11 with minimal disruption to operations. The Debtor also requests authority (i) to maintain its Bank Accounts subject to control agreements in form and substance satisfactory to the DIP Lender, and (ii) to grant the DIP Lender, and/or its authorized representative “view-only” electronic access to each of the Bank Accounts. In addition, the Debtor requests authority to close any of the Bank Accounts or open new bank accounts with the written consent of the DIP Lender, if, in the exercise of its business judgment, the Debtor determines that such action is in the best interest of its estate.

12. While Fifth Third is not an authorized depository in this region, Fifth Third is an authorized depository in the Western and Southern Districts of Texas as well as in the Southern District of New York and Delaware. Fifth Third’s absence from the list of authorized depositories in this region is likely due to the fact that Fifth Third’s presence is less prevalent and not due to any concerns about Fifth Third’s financial stability (as evidenced by the fact that Fifth Third has been approved in other regions). BOA and Wells, where the bulk of the Debtor’s Studio Depository Accounts are also on the authorized depository list in this region. Further, the Debtor does not hold large amounts of cash in any of the Studio Depository Accounts and the

Debtor regularly transfers funds held in the Studio Depository Accounts to the Depository Account and therefore the funds are not held in the Studio Depository Accounts for extensive periods of time.

13. In light of the other significant strains on the Debtor's personnel and resources during the coming weeks, the Debtor is concerned about unnecessary delay and disruption to the Debtor's business and a delay in receipt of funds needed for the Debtor's operations if the Debtor is required to make changes to the Cash Management System. In order to conduct its postpetition business, the Debtor needs to be able to issue checks to vendors, service providers, employees, and others. To open new accounts and obtain checks for those accounts will cause delay and disruption to the Debtor's business and a delay in receipt of funds needed for the Debtor's operations. The Debtor will add the designation "Debtor in Possession" or "DIP" to any checks in its possession and instruct the Debtor's Banks to add the designation to current and any future Accounts.

14. By preserving business continuity and avoiding operational and administrative paralysis that closing the existing Bank Accounts and opening new ones would necessarily create, all parties-in-interest will be best served and the benefit to the Debtor's estate will be considerable. To the best of the Debtor's knowledge, the Bank Accounts are in financially stable institutions that are insured by the Federal Deposit Insurance Corporation (the "FDIC")¹ up to the applicable limit. The confusion that would otherwise result could only work to the detriment of the Chapter 11 Case. No checks issued prior to the Petition Date will be honored, except as otherwise provided by separate order of this Court. The Debtor reserves its rights pursuant to Bankruptcy Code § 549 with respect to any check issued prepetition that is inadvertently honored

¹ Or in the case of RBC, by the Canadian counterpart to the FDIC.

postpetition. The Debtor will continue to maintain records respecting all transfers between and among the Bank Accounts so that all transactions can be ascertained after they have occurred.

15. The Debtor's Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtor including, among other things, the ability to (i) control funds, (ii) ensure the availability of funds when necessary, and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. Any disruption of the Cash Management System could have a severe and adverse impact upon the Debtor's reorganization efforts.

16. The Debtor's ability to maintain its existing Cash Management System is vital to ensuring the Debtor's seamless transition into bankruptcy. The relief requested herein will avoid many of the possible disruptions and distractions that could divert the Debtor's attention from more pressing matters during the initial days of the Chapter 11 Case.

D. The Debtor Should be Permitted to Satisfy Prepetition Credit Card Processing Fees and Related Charges

17. As mentioned previously, the majority of the Debtor's revenue is generated from credit and debit card sales through its Card Processing System. The Debtor therefore believes that it can only meet its fiduciary duties as a debtor in possession under Bankruptcy Code §§ 1107(a) and 1108 by having the authority, but not the direction, of this Court to maintain its Card Processing System, including authority, but not direction, to satisfy any outstanding pre-petition obligations on account of credit card processing fees, chargebacks, and other related obligations.

E. Payroll and Tax Accounts

18. The Debtor also seeks a waiver of the Guideline requiring the establishment of specific debtor-in-possession accounts for payroll. The Debtor believes that its payroll obligations may be more efficiently met through its existing Cash Management System and its

existing Bank Accounts, and that requiring the establishment of a new payroll account would be unnecessary and disruptive to its business.

19. In addition, the Debtor seeks a waiver of the Guideline requiring debtors to establish specific debtor-in-possession accounts for tax payments and to deposit in such tax accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtor's payroll. The Debtor believes that it can pay its tax obligations most efficiently from the existing Bank Accounts in accordance with its existing practices, and that the U.S. Trustee can adequately monitor the flow of funds into, between, and out of the Bank Accounts. The creation of new accounts designed solely for tax obligations would be unnecessary and inefficient. With the current system, the Debtor is current on its payroll tax obligations and anticipates remaining current on such obligations.

F. Waiver of Conflicting U.S. Trustee Guidelines or Provisions of Bankruptcy Code § 345(b)

20. Further, the Debtor seeks a waiver of the U.S. Trustee Guidelines to the extent that the requirements of such Guidelines otherwise conflict with (a) the Debtor's existing practices under the Cash Management System or (b) any action taken by the Debtor in accordance with any Order granting this Motion or other order entered in the Chapter 11 Case. The use of the Debtor's Cash Management System is an ordinary course, customary, essential business practice. Requiring that the Debtor alter its current practices beyond the alterations already contemplated in the Motion to comply with the Guidelines would risk disruption to the Debtor's business and be inefficient.

21. Pursuant to Bankruptcy Code § 105(a), the Debtor seeks a waiver of the requirements of Bankruptcy Code § 345(b). As discussed above, the Bank Accounts are and will be maintained with financial institutions that are financially stable. While Fifth Third is not an

authorized depository in this region, it is an authorized depository in many other regions and the Debtor believes it is a financially stable institution. The Debtor requests a waiver of the requirement to comply with Bankruptcy Code § 345(b)'s investment guidelines, if necessary, as the deposit of funds with the Banks should pose no substantial risk to the Debtor's estate or creditors.

22. While the Debtor believes that its cash management practices comply with Bankruptcy Code § 345(b), to the extent that that the requirements of § 345(b) are inconsistent, or otherwise conflict, with (a) the cash management practices under the Cash Management System or (b) any action taken by the Debtor in accordance with an order of this Court, the Debtor seeks a waiver of the requirements of § 345(b) to allow the Debtor to continue its existing cash management practices. The Debtor will not place funds in accounts that are not insured by the FDIC.

23. Bankruptcy Code § 345(a) authorizes deposits or investments of money of estates, such as the Debtor's cash, in a manner that "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a).

24. Due to the significant amounts of money that may be in the Bank Accounts from time to time, it would take a large amount of time for the Debtor to locate and determine, where necessary, appropriate alternative accounts that satisfy § 345(b). Requiring the Debtor to further change its deposits and other procedures could result in harm to the Debtor, its estate, and creditors because such change would further disrupt the Cash Management System. Conversely, the Debtor's estate and creditors will not be harmed by the Debtor's maintenance of the status quo as modified by the relief requested herein because of the relatively safe and prudent practices already utilized by the Debtor.

25. For each of the foregoing reasons, a waiver of the requirement to comply with the investment guidelines set forth in § 345(b) should not pose any risk to the Debtor's estate.

Basis for Relief Requested

A. Allowing the Debtor to Maintain its Cash Management System Will Benefit the Debtor's Entire Estate and is an Appropriate Exercise of the Court's Authority under Bankruptcy Code §§ 105 and 363

26. Bankruptcy Code § 105 provides in pertinent part that “[t]he court may 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). Courts have long recognized that the power granted by § 105(a) was expressly meant to be exercised to effectuate the rehabilitation of the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 16 (1977)). The relief requested in this Motion is critical to the Debtor's successful reorganization and is justified under § 105(a).

27. Extensive authority supports the relief sought in this Motion. In other chapter 11 cases, courts have recognized that strict enforcement of the U.S. Trustee Guidelines does not always serve the purposes of chapter 11. Accordingly, courts have often waived such requirements and replaced them with alternative procedures. *See, e.g., In re Spectrum Jungle Labs Corp.*, Case No. 09-50455 (RBK) (Bankr. W.D. Tex.); *In re Cornerstone E&P Company, L.P.*, Case No. 09-35228-bjh (Bankr. N.D. Tex.); *In re Manchester, Inc.*, Case No. 08-30703-bjh (Bankr. N.D. Tex.); *In re Bombay Co.*, Case No. 07-44084-dml (Bankr. N.D. Tex.); *In re Lothian Oil Inc., et al.*, Chapter 11 Case No. 07-70121 (Bankr. W.D. Tex.); *In re The Nat'l Benevolent Ass'n of the Christian Church (Disciples of Christ), et al.*, Chapter 11 Case No. 04-50948 (Bankr. W.D. Tex.); *In re Kitty Hawk, Inc.*, Case No. 00-42141-BJH (Bankr. N.D. Tex.).

28. Additionally, Bankruptcy Code § 363(c)(1) authorizes the debtor-in-possession to “use property of the estate in the ordinary course of business without notice or a hearing.”

11 U.S.C. § 363(c)(1). The purpose of Bankruptcy Code § 363(c)(1) is to provide a debtor-in-possession with the flexibility to engage in the ordinary course transactions required to operate its business without unneeded oversight by its creditors or the Court. *Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *In re Git-N-Go, Inc.*, 322 B.R. 164, 171 (Bankr. N.D. Okla 2004); *In re Enron Corp.*, No. 01-16034 (ALG), 2003 WL 1562202, at *15 (Bankr. S.D.N.Y. Mar. 21, 2003); *In re Atlanta Retail, Inc.*, 287 B.R. 849, 856 (Bankr. N.D. Ga. 2002); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). Included within the purview of § 363(c)(1) is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtor seeks authority under Bankruptcy Code § 363(c)(1) to continue the collection, concentration, and disbursement of cash pursuant to its Cash Management System described above.

B. The Debtor's Ability to Satisfy Prepetition Credit Card Processing Fees and Related Expenses is Necessary to the Preservation of the Estate and Permissible Pursuant to Bankruptcy Code §§ 105, 363, 1107, and 1108

29. It is well-established by case law that, under certain circumstances, a debtor may pay certain prepetition claims in the performance of the debtor's fiduciary duty to preserve the estate and the business's going-concern value. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of . . . [crucial] business relations"); *In re CoServ*, 273 B.R. at 497 (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of a prepetition claim in aid of preservation or enhancement of the estate"). Bankruptcy Code § 1107(a) provides that a debtor-in-possession shall perform all the functions and duties as a trustee under the Bankruptcy Code. "Implicit in the duties of a Chapter 11 trustee

or a debtor in possession as set out in Sections 1106 and 704 of the Bankruptcy Code is the duty to protect and preserve the estate, including an operating business's going-concern value." *In re CoServ*, 273 B.R. at 497. Courts have developed the "Doctrine of Necessity" (also known as the "Necessity of Payment Rule") for use in determining whether such payment of prepetition obligations is permissible. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825-26 (D. Del. 1999) (developing and discussing the doctrine); *In re CoServ*, 273 B.R. at 491-93 (discussing the doctrine). The "fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984).

30. In *CoServ*, the Bankruptcy Court for the Northern District of Texas held that a debtor must demonstrate the following three elements in order to meet the "necessity" requirement: (1) it must be critical that the debtor deal with the claimant; (2) unless the debtor 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; (3) 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.

31. Maintaining the Card Processing System, including by satisfying the credit card processing fees and related charges, including any pre-petition obligations on account thereof, meets each element of the *CoServ* court's standard. A majority of the Debtor's revenues are generated from credit and debit card sales and the Debtor cannot survive without the ability to process credit and debit card transactions. In addition, because the Debtor's systems are integrated with First Data, and because First Data holds such a large deposit, the Debtor cannot obtain the necessary services from any other vendor in a manner that would not be disruptive to

the Debtor's business. The Debtor therefore believes that it can only comply with its fiduciary duties as a debtor in possession under Bankruptcy Code §§1107(a) and 1108 by having the authority, but not the direction, of this Court to maintain its Card Processing System, including by satisfying any outstanding pre-petition obligations on account of credit card processing fees and related charges.

32. Bankruptcy Code § 363(b), in conjunction with Bankruptcy Code §§ 1107 and 1108 is an alternative legal basis upon which courts have relied in authorizing the payment of prepetition obligations where a sound business purpose exists for doing so. Bankruptcy Code § 363(b) provides that, after notice and a hearing, the trustee "may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); *see In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source of authority to make critical vendor payments, and section 105 is used to fill in the blanks."); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of pre-petition claims where the debtors "articulate some business justification, other than the mere appeasement of major creditors").

33. In light of the Debtor's need to maximize value for the benefit of all creditors, the relief requested herein is proper and should be granted. The success of the Debtor's chapter 11 efforts is dependent upon, among other things, the ability to process customer credit and debit card transactions. In the Debtor's business judgment, the ability to pay fees relating to its Card Processing System, including any related pre-petition amounts, is critical to the Debtor's successful prosecution of the Chapter 11 Case. Any inability on the Debtor's part to continue to satisfy pre-petition obligations with respect to its Card Processing System would threaten the Debtor's ability to continue to accept credit cards, thereby disrupting customers' experience and

potentially depriving the Debtor and its estate of significant revenue. Finally, because First Data holds a large deposit which it may be able to use to set off any amounts owed to it on account of prepetition charges, the Debtor's estate and creditors will not be harmed by the payment of prepetition charges relating to the Card Processing System. Accordingly, the Debtor believes that the relief requested herein is warranted and a sound exercise of business judgment.

Request for Waiver of Stay

34. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, the Debtor requests that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtor to be able to continue to operate its business and preserve the value of the estate.

Notice

35. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor and its counsel; (iii) the Debtor's secured creditors; (iv) any party whose interests are directly affected by this specific pleading; (v) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (vi) counsel for and the members of any official committees appointed by this Court; (vii) the 20 largest unsecured creditors of the Debtor; and (viii) all governmental agencies having a regulatory or statutory interest in this case. No other or further notice need be provided.

WHEREFORE the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

HAYNES AND BOONE, LLP

By: /s/ Robert D. Albergotti

Robert D. Albergotti

State Bar No. 00969800

Ian T. Peck

State Bar No. 24013306

Jarom J. Yates

State Bar No. 24071134

2323 Victory Avenue, Suite 700

Dallas, TX 75219

Telephone: 214.651.5000

Facsimile: 214.651.5940

Email: robert.albergotti@haynesboone.com

Email: ian.peck@haynesboone.com

Email: jarom.yates@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
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TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**ORDER AUHTORIZING (I) CONTINUED USE OF EXISTING BUSINESS FORMS
AND RECORDS, (II) AUTHORIZING MAINTENANCE OF EXISTING CORPORATE
BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM, (III) AUTHORIZING
PAYMENT OF PREPETITION COSTS AND FEES ASSOCIATED WITH CUSTOMER
CREDIT AND DEBIT CARD TRANSACTIONS AND (IV) WAIVING CERTAIN U.S.
TRUSTEE REQUIREMENTS**

On _____, 2016, the Court conducted a hearing to consider the *Debtor's*
Emergency Motion for an Order (I) Authorizing Continued Use of Existing Business Forms and
Records, (II) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash
Management System, (III) Authorizing Payment of Prepetition Costs and Fees Associated with

Customer Credit and Debit Card Transactions; and (IV) Waiving Certain U.S. Trustee Requirements (the “Motion”), filed by the above-captioned debtor (the “Debtor”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtor is authorized to continue using its existing Cash Management System as described in the Motion, subject to the limitations in this Order, the DIP Financing Orders and the Budget. Any change to the Cash Management System shall require the prior written consent of the DIP Lender.
3. The Debtor is authorized to continue using the Studio Depository Accounts in accordance with its pre-petition practices during the pendency of the Chapter 11 Case consistent with the requirements of the DIP Financing Orders and Budget and the relevant provisions of this Order.
4. The Debtor shall maintain records of all transfers within the Cash Management System, so that all transfers and transactions shall be adequately and promptly documented in, and ascertainable from, the Debtor’s books and records, to the same extent as maintained prior to

the commencement of the Chapter 11 Cases, and shall be made available to the DIP Lender upon request.

Cash Management System and Bank Accounts

5. The Debtor is authorized but not directed to (a) maintain and continue to use the Fifth Third U.S. Accounts in the same manner and with the same account numbers, styles, and document forms as are currently employed, (b) deposit funds in, and withdraw funds from, the Bank Accounts by all usual means, including checks, wire transfers, automated clearinghouse (“ACH”) transfers, drafts, electronic fund transfers, or other items presented, issued or drawn on the Bank Accounts, (c) pay postpetition ordinary course bank fees in connection with the Bank Accounts, (d) perform its obligations under the documents and agreements governing the Bank Accounts, and (e) treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as debtor-in-possession.

6. The Debtor is authorized but not directed to (a) maintain and continue to use the Studio Depository Accounts in the same manner and with the same account numbers, styles, and document forms as are currently employed, (b) deposit funds in, and withdraw funds from, the Studio Depository Accounts by all usual means, including checks, wire transfers, automated clearinghouse (“ACH”) transfers, drafts, electronic fund transfers, or other items presented, issued or drawn on the Studio Depository Accounts, (c) pay postpetition ordinary course bank fees in connection with the Studio Depository Accounts, (d) perform its obligations under the documents and agreements governing the Studio Depository Accounts, and (e) treat the Studio Depository Accounts for all purposes as accounts of the Debtor in its capacity as debtor-in-possession.

7. The Debtor is authorized (i) to maintain its Bank Accounts subject to control agreements in form and substance satisfactory to the DIP Lender and (ii) to grant the DIP Lender and/or its authorized representative “view-only” electronic access to each of the Bank Accounts.

8. The Debtor shall: (i) instruct its banks to add the designation, “Debtor-in-Possession” or “DIP” to its current and any future Accounts; (ii) treat the Accounts for all purposes as Accounts of the Debtor as a Debtor-in-Possession; and (iii) maintain records that recognize the distinction between prepetition and postpetition transfers.

9. All Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtor specifically issues stop payment orders in accordance with the documents governing such Bank Accounts.

10. All Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor any Debit presented, issued, or drawn on any Bank Account on account of a claim arising prior to the Petition Date (a “Prepetition Debit”) unless the payment of such claim (a) has been represented by the Debtor to have been authorized by an order of this Court, (b) has been directed by the Debtor and not otherwise prohibited by a “stop payment” request received by the relevant Bank from the Debtor, and (c) is supported by sufficient funds in the relevant Bank Account.

11. Subject to the provisions of this Order, the Banks are authorized to rely on the representations of the Debtor as to which Debits are authorized to be honored or dishonored, whether or not such Debits are dated prior to, on, or subsequent to the Petition Date, and whether or not such bank believes the payment is authorized by an order of the Court. Any Banks are further authorized to (a) honor the Debtors’ directions with respect to the opening, re-opening,

and closing of any Bank Account, and (b) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; provided, in each case, that the Debtors' Banks shall not have any liability to any party for relying on such representations. To the extent that the Debtor directs that any Debit be dishonored, the Debtor may issue replacement Debits consistent with the orders of this Court.

12. Any existing Deposit Account Control Agreements between the Debtor and the Banks shall continue to govern the postpetition cash management relationship between the Debtor and the Banks. All of the provisions of such Deposit Account Control Agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the Debtor or the Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to terms of those certain existing Deposit Account Control Agreements, including, without limitation, the opening and closing of bank accounts; provided, however, that nothing contained herein shall constitute an assumption of the Deposit Account Control Agreements pursuant to section 365 of the Bankruptcy Code.

13. For accounts not subject to a Deposit Account Control Agreement, those certain existing deposit agreements between the Debtor and its existing depository and disbursement Banks shall continue to govern the postpetition cash management relationship between the Debtor and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, (ii) either the Debtor or the Banks may, without further Order of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of

those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

14. In addition to the relief otherwise ordered or permitted by this Order, the Debtor is authorized to implement such changes to the Cash Management System, subject to the written consent of the DIP Lender (and subject to the terms of any existing Deposit Account Control Agreements), as the Debtor may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any additional bank accounts wherever the Debtor deems that such accounts are needed or appropriate (the “New Accounts”), and whether or not the banks in which such New Accounts are opened are designated depositories on the United States Trustee approved list in the Northern District of Texas and all such New Accounts shall be deemed to be Bank Accounts; provided that (a) any New Account shall be (i) with a bank that is organized under the laws of the United States of America or any state therein and that is insured by the Federal Deposit Insurance Corporation and (ii) designated a “Debtor in Possession” account by the relevant bank, and (b) the Debtor shall provide the U.S. Trustee with notice of any New Accounts. The Banks are authorized to honor the Debtor’s requests to open or close (as the case may be) such Bank Account(s). If upon receipt of notice of such New Accounts the U.S. Trustee advises the Debtor that such New Accounts are not Approved Depositories in the Northern District of Texas and/or the parties are not able to reasonably resolve disputes, if any, regarding such New Accounts, the Debtor shall seek approval of the Court, pursuant to 11 U.S.C. § 345.

15. In the course of providing cash management services to the Debtor, any Bank, without further order of this Court, is authorized to (i) charge, and the Debtor is authorized to pay or honor, both prepetition and postpetition service and other fees, costs, charges and

expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtor, and (ii) charge-back returned items to the Bank Accounts, whether such items are dated before, on, or after the Petition Date, in the ordinary course of business during the pendency of this Case.

Card Processing System

16. The Debtor is authorized (but not directed) to continue its Card Processing System with First Data. The Debtor is accordingly authorized (but not directed) to satisfy any outstanding pre-petition obligations on account of credit card processing fees, chargebacks, and other related obligations.

Waiver of U.S. Trustee Guidelines

17. The U.S. Trustee Guideline requiring that the Debtor close all existing Bank Accounts and open new debtor-in-possession accounts is waived to the extent provided herein.

18. The U.S. Trustee Guideline requiring that the Debtor open separate debtor-in-possession accounts for payroll is waived to the extent provided herein.

19. The U.S. Trustee Guidelines requiring that the Debtor open separate debtor-in-possession accounts for the payment of taxes and deposit to such specific tax accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtor's payroll are waived to the extent provided herein.

20. The Debtor is authorized to continue using check stock in the forms existing immediately prior to the Petition Date, but is required to note the Debtor's status of debtor-in-possession on any check issued. Any new checks generated during the pendency of the Chapter 11 Case other than from the Debtor's existing stock of checks, shall include a legend referring to the Debtor as a "Debtor in Possession."

21. The Debtor is authorized to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor's status as a debtor-in-possession.

22. To the extent that the U.S. Trustee Guidelines otherwise conflict with any action taken by the Debtor in accordance with this Order or any other order entered in the Debtor's Chapter 11 Case, including the DIP Financing Orders, such Guidelines are waived.

23. To the extent that the requirements set forth in Bankruptcy Code § 345(b) are inconsistent, or otherwise conflict, with any action taken by the Debtor in accordance with this Order or any other order entered in the Chapter 11 Case, including the DIP Financing Orders, such requirements are and shall be waived; provided, however, that the Debtor shall not place funds in any Bank Account that is not insured by the FDIC (or the CDIC, but only for the purpose of deposits or transfers of the Debtor's cash generated by or for the Debtor's Canadian operations).

24. For banks at which the Debtor holds bank accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this Order the Debtor shall (a) contact each bank, (b) provide the bank with each of the Debtor's employer identification numbers, (c) identify each of its bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and (d) provide the bankruptcy case number.

25. For banks at which the Debtor holds accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtor shall use its good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee

within forty-five (45) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved. The Debtor is authorized to use its existing check stock; provided, however, that once the Debtor's existing checks have been used, the Debtor shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; provided, further, however, that with respect to checks which the Debtor or its agents print themselves, the Debtor shall begin printing on such checks "Debtor-in-Possession" and, to the extent that there is sufficient space on such checks, the corresponding bankruptcy case number, within ten (10) days of the date of the entry of this Order.

Other Orders

26. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

27. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived.

28. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

29. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

30. This Order is granted on an interim basis. Parties in interest shall have fourteen days after the Initial Debtor Interview to object to any of the relief provided herein. If no such objection is timely filed, this order shall become final without further order of the Court.

31. Nothing in this Order, nor as a result of any payment made pursuant to this Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to Bankruptcy Code § 365 or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority or amount of any claim against the Debtor and its estate, or (c) shall be construed as a promise to pay a claim.

END OF ORDER

Submitted by:

Robert D. Albergotti
State Bar No. 00969800
Ian T. Peck
State Bar No. 24013306
Jarom J. Yates
State Bar No. 24071134
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: robert.albergotti@haynesboone.com
Email: ian.peck@haynesboone.com
Email: jarom.yates@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTOR