

located in foreign jurisdictions (collectively, the “Foreign Vendors”),³ (ii) prepetition claims of domestic third-party servicers or carriers who are in current possession of the Debtors’ property and who have or may assert a lien pursuant to applicable law, and (iii) amounts owing to various domestic vendors who supplied goods to the Debtors within the 20-day period immediately preceding the Petition Date (collectively, the “503(b)(9) Claimants”), thereby giving rise to claims accorded administrative priority under section 503(b)(9) of title 11 of the United States Code (the “Bankruptcy Code”) (collectively, the “503(b)(9) Claims”); and (b) granting related relief.⁴ In support of this motion, the Debtors submit the *Declaration of Lawrence Young in Support of the Debtors’ Critical Vendor Motion and Foreign and Priority Vendor Motion* (the “Young Declaration”), filed contemporaneously herewith. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the

³ Foreign Vendors shall not include vendors, service providers, and other non-governmental entities if the legal entity that is obligated to provide goods or services to the Debtors is known to have material assets within the United States that would be subject to the jurisdiction of the Court and that would be available to satisfy a judgment entered by the Court if such entity were to violate the automatic stay provisions of section 362 of the Bankruptcy Code or otherwise take any action contrary to an order of the Court or the provisions of the Bankruptcy Code.

⁴ Contemporaneously herewith, the Debtors have sought authority, but not direction, to pay certain claims held by certain prepetition creditors pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief* (the “Critical Vendor Motion”). By this motion, the Debtors do not seek authority to pay prepetition claims that may be paid pursuant to the relief requested pursuant to the Critical Vendor Motion.

Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 363, 503, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

Background

5. The Debtors are one of the largest suppliers of rental production equipment and solutions in the world. Corporate, television, cinema, live music, hotel, and sports clients rely on the Debtors for their expansive inventory of equipment, deep expertise, global reach, and culture of service. The Debtors offer their clients three primary services: pure equipment rental, creation of equipment specified to the client’s expectations through the use of internal support resources, and full-service consulting throughout the client’s specific event or process. In addition, the Debtors provide custom LED installations for corporate clients, with displays designed to meet such clients’ unique specifications. The Debtors and their affiliates operate in approximately 31 locations in North America and four locations in Europe, from which they are able to provide service and support to most of the world.

6. As of the date hereof (the “Petition Date”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to

sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Foreign Vendors

7. The Debtors are one of the largest suppliers of rental production equipment and solutions in the world. Although primarily based in the United States, the Debtors and their affiliates have multiple locations outside of the United States, and routinely enter into transactions across the globe and on six continents. The Debtors' global footprint therefore requires regular transactions with the Foreign Vendors, which includes vendors who supply equipment, parts, repair services, transportation services, component part manufacturing, and a variety of other products and services integral to the Debtors' global operations. Specifically, the Debtors regularly transact business with Foreign Vendors in Canada, Asia, Australia, and throughout the European Union. Generally, the Foreign Vendors fall into the following categories:

- **Equipment-Related Suppliers.** The Debtors purchase equipment, including cameras, lighting equipment, rigging equipment, and sound equipment (collectively, "Equipment"), parts, and Equipment repair services from global suppliers, including entities across Europe and Asia that do not have operations in the United States. The Debtors then rent the Equipment to their clients both domestically and abroad. Although the Debtors perform routine maintenance and repair work on their Equipment, the Debtors also engage certain Foreign Vendors to repair the Equipment when needed. Without a steady supply of Equipment in working condition, the Debtors' business would come to a standstill.
- **Sub-Rental Suppliers.** At times, the Debtors' clients require Equipment in an amount or type beyond that which the Debtors have available. To properly supply these clients, the Debtors turn to other rental companies to provide additional, supplemental Equipment on a short-term, order-by-order basis. These rental companies (collectively, the "Sub-Rental Vendors") allow the Debtors to effectively supply their clients despite the unpredictable ebbs and flows in demand for the Equipment. If the

Debtors were unable to utilize the Sub-Rental Vendors, they would be unable to meet the terms of existing customer contracts and would quickly begin to lose further customer orders.

- Manufacturers. The Debtors selectively source component part manufacturers as part of their research and development operations. Due to the specialized nature of each component part, the Debtors often order from suppliers primarily located in Asia. Given the significant lead time required to create these customized parts, requiring the Debtors to obtain new manufacturers would result in missed deadlines under preexisting contracts to the detriment of all stakeholders, if the Debtors could find such vendors at all.
- Contracted Labor. Certain of the Debtors' clients require Equipment installation or assistance in locations outside of the United States. In addition to sending domestic employees overseas, the Debtors also hire local foreign contractors to supplement their workforce. Without the contracted workers, the Debtors would not be able to effectively service the needs of their clients in a timely and cost-effective manner.
- Shipping and Freight. The Debtors' business hinges on their ability to ship their Equipment all over the world to support their clients' needs in local markets. Certain of the Foreign Vendors provide freight and shipping services into and out of foreign jurisdictions, without which the Debtors would be unable to service their clients' needs, resulting in lost revenue. Replacing such vendors would be time consuming and likely lead to additional costs for the Debtors. Additionally, if unpaid, such vendors may assert possessory liens over the Debtors' assets.
- Foreign Business Expenses. Because the Debtors operate on a global scale, they have a number of Foreign Vendors that provide general business services, including marketing, payroll processing, professional services, foreign insurance, and office space. These vendors allow the Debtors to efficiently and cost-effectively manage their clients' needs, and would create a significant administrative burden and cost to replace.

8. The Debtors' Equipment rental business is complex and often operates on a compressed timeline. As a result, the Debtors have taken carefully formulated measures to avoid any supply chain interruptions due to the filing of these chapter 11 cases. Nevertheless, the filing of these chapter 11 cases likely will result in many Foreign Vendors making credible threats to cease supplying Equipment, parts, and/or services, absent satisfaction of prepetition claims. Any such interruption could result in lost revenue and jeopardize the success of a successful reorganization.

9. Parties outside of the United States often have confused and guarded reactions to the chapter 11 process. For example, many of these entities are unfamiliar and uncomfortable with the unique debtor in possession mechanism that is at the heart of chapter 11. Seeking to explain the chapter 11 process to a Foreign Vendor and convince that Foreign Vendor—particularly one unfamiliar with chapter 11—to continue providing goods and services postpetition is often greeted with a high degree of skepticism and mistrust. There is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to sever its business relationship with the Debtors. Further, nonpayment of prepetition claims may cause Foreign Vendors to utilize extreme caution and to adopt a wait-and-see attitude in approaching the unfamiliar territory of chapter 11, resulting in costly delays in the provision of goods or services. The Debtors cannot afford delays of this nature.

10. Further, if prepetition Foreign Vendor Claims are not paid, the Foreign Vendors may take action against the Debtors based upon an erroneous belief that they are not subject to the automatic stay provisions of section 362(a) of the Bankruptcy Code. Although the automatic stay applies to protect the Debtors' assets wherever they are located, attempting to enforce the Bankruptcy Code in foreign jurisdictions is often a fruitless exercise. Moreover, even if the automatic stay could be enforced abroad, the automatic stay by itself would not protect assets of the Debtors' non-Debtor foreign affiliates, which could remain at risk of seizure or setoff. In the absence of enforcement of the automatic stay, the Foreign Vendors could, among other things, initiate a lawsuit in a foreign court and obtain a judgment against the Debtors to collect prepetition amounts owed to them or seek to attach or seize foreign assets of the Debtors or their non-Debtor affiliates, even prior to obtaining a judgment. Such action could be extremely

destabilizing, particularly to the non-Debtor affiliates, and could result in further insolvency filings.

11. In short, the vendors identified as Foreign Vendors supply goods and services that are vital to the Debtors' business operations. The Debtors believe that the authority to pay the Foreign Vendor Claims will be necessary to preserve operations and successfully reorganize. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date. At this juncture, the Debtors and their advisors are focusing on a smooth transition into chapter 11. At the same time, the Foreign Vendors may attempt to assert their considerable leverage and stop providing goods and services, suddenly and without notice, potentially crippling the Debtors' business. Any issue affecting the Debtors' operations would prolong the Debtors' chapter 11 cases, increase administrative expenses, and jeopardize their reorganization.

12. In light of these consequences, the Debtors have concluded that payment of certain Foreign Vendor Claims is essential to avoid disruption to the Debtors' operations during these chapter 11 cases. The Debtors' requested amount of relief on account of the Foreign Vendor Claims pales in comparison to the potential damage to the Debtors' business if their operations were to experience any delays in the shipment of Equipment or other services from the Foreign Vendors. Therefore, the Debtors, their estates, and their stakeholders would benefit from the Debtors' payments to the Foreign Vendors.

13. Further, certain of the Foreign Vendor Claims may be priority claims under section 507(a)(8) of the Bankruptcy Code, which provides that certain governmental claims are entitled to priority. Regardless of the possible application of section 507(a)(8) of the Bankruptcy

Code, however, the risks associated with non-payment of the Foreign Vendor Claims justifies the payment of the Foreign Vendor Claims in the ordinary course of business.

14. The Debtors propose to pay the Foreign Vendor Claims only to the extent necessary and only on such terms and conditions as are appropriate, in the Debtors' business judgment, to avoid disruptions to the Debtors' business. As of the Petition Date, the Debtors owe approximately \$725,000 to the Foreign Vendors on account of prepetition goods and services, approximately \$650,000 of which will become due within the first 25 days of these chapter 11 cases. Accordingly, the Debtors seek authority, but not direction, to pay and discharge, on a case-by-case basis, the Foreign Vendor Claims in the ordinary course of business. The Debtors intend to pay prepetition Foreign Vendor Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs to their estates.

Shippers and Lien Claimants

15. As discussed above, the Debtors operate on a global scale. To effectively and efficiently service their clients, the Debtors must be able to receive and distribute their rental Equipment in a timely fashion, often on a compressed timeline, throughout the world. To that end, in the ordinary course of business, the Debtors utilize common carriers, truckers, rail carriers, barge owners, and other transportation service providers (collectively, the "Shippers") to deliver goods to the Debtors' facilities and distribute Equipment to the Debtors' clients. In the ordinary course of business, the Debtors also rely on services from a number third parties (collectively, the "Lien Claimants") who may hold or claim a variety of statutory, common law, or possessory liens that, if asserted, could materially impair the Debtors' operations.

16. As of the Petition Date, the Debtors estimate that there is approximately \$4.0 million outstanding on account of claims held by Shippers and Lien Claimants, approximately \$3.4 million of which will come due in first 25 days following the Petition Date.

I. Shippers.

17. To maintain their operations and efficiently transport Equipment, the Debtors employ an extensive distribution network of domestic third-party servicers or carriers who are in current possession of, or otherwise regularly possess, the Debtors' property, and who have or may assert a lien pursuant to applicable law. The services provided by the Shippers are essential to the Debtors' daily operations and the timing of delivery is critical to meeting the needs of the Debtors' clients. At any given time, there are numerous shipments of Equipment or goods heading either to the Debtors' facilities or to the Debtors' clients that are in the Shippers' possession.

18. The laws of most states⁵ provide the Shippers, in certain circumstances, with a lien on the goods in their possession to secure the charges or expenses incurred in connection with the transportation of the goods. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Shippers, as bailees, may be entitled to adequate protection for any valid possessory lien. The Debtors expect that, as of the Petition Date, certain Shippers may have outstanding invoices for goods delivered to the Debtors before the Petition Date or for goods currently in transit. The Debtors estimate that approximately \$2.5 million on account of claims held by the Shippers (collectively, the "Shipping Claims") have accrued as of the Petition Date,

⁵ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(a) (2005).

approximately \$2.1 million of which will become due and owing within the first 25 days after the Petition Date.

19. If the Debtors do not pay the Shipping Claims on a timely basis, the Shippers may assert possessory liens on the goods or Equipment currently in their possession and refuse to deliver or release such good until their invoices are paid. The Shippers may be unwilling to unilaterally part with goods in their possession that are subject to liens without cash payments, as doing so may release any alleged security for such Shippers' prepetition claims. If the Shippers simply refuse to deliver the Debtors' goods or Equipment as a result of not being paid, it would severely disrupt the Debtors' operations and potentially cost the Debtors a substantial amount of revenue and future business. The timely delivery of goods and Equipment is vital to maintaining the Debtors' operations during their transition into, success in, and ultimately their emergence from, chapter 11.

II. Lien Claimants.

20. As noted above, the Debtors routinely transact business with a number of third-party contractors and vendors who can assert liens against the Debtors and their property if the Debtors fail to pay for the goods delivered or services rendered. The Lien Claimants generally fall into the following categories:

- Warehousemen. The Debtors store Equipment at facilities owned by other parties (collectively, the "Warehousemen") where the Debtors maintain little to no day-to-day control over the property. In the event that the Debtors fail to remit payment owed to the Warehousemen before the Petition Date, the Warehousemen may refuse to release Equipment they retain pending satisfaction of all or a portion of their claims, thereby disrupting the Debtors' operations.
- Maintenance Workers. Although the Debtors repair the majority of the Equipment in-house, certain pieces of Equipment are shipped to third parties to maintain or repair the Equipment (collectively, the "Maintenance Workers"). At any given time, the Maintenance Workers may be performing services on, and therefore be in possession

of, the Debtors' Equipment. Such workers may refuse to release the Debtors' equipment unless paid, resulting in delays which may impact the Debtors' revenue.

- Tenant Improvement Workers. On occasion, the Debtors utilize third parties to improve or maintain their various facilities (collectively, the "Tenant Improvement Workers"). While employing such parties and undergoing construction, the Tenant Improvement Workers may be in possession of the Debtors' property, or have the ability to assert a statutory mechanics or similar lien on the Debtors' property as security for their work.

21. Although the Debtors generally make timely payments to their vendors, as of the Petition Date, certain vendors may not have been paid for certain prepetition goods or services. As a result, many of the Lien Claimants may have a right to assert and perfect mechanics', warehouse, artisans', or similar statutory liens (collectively, the "Miscellaneous Liens") against the Debtors' relevant facilities or other property, including Equipment, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. In fact, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Miscellaneous Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A), is expressly excluded from the automatic stay.⁶

22. Unless the Lien Claimants are paid for outstanding prepetition amounts, the Debtors believe that the Lien Claimants may refuse to perform their ongoing obligations with the Debtor, may assert Miscellaneous Liens, or may refuse to release finished goods in their possession unless paid cash on delivery. Indeed, prior to the Petition Date, certain Lien Claimants have asserted liens against the Debtors' property on account of unpaid obligations. Moreover, the value of the Equipment in the possession of the Lien Claimants generally exceeds

⁶ Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A). Under section 547(e)(2)(A), a transfer for preference analysis purposes takes place "at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time." 11 U.S.C. § 547(e)(2)(A).

the value of their respective prepetition claims. The Debtors estimate that approximately \$1.5 million on account of claims held by the Lien Claimants (collectively, the “Lien Claims”) have accrued as of the Petition Date, approximately \$1.3 million of which will come due within the first 25 days following the Petition Date.

23. In light of the foregoing, the Debtors seek authority to pay and discharge the Lien Claims that have given or could give rise to a lien against the materials, goods, and facilities of the Debtors, regardless of whether such Lien Claimants have already perfected their interest. Notwithstanding the authority requested, the Debtors will not pay a Lien Claimant on account of any prepetition claims unless the Lien Claimant has perfected or, in the Debtors’ judgment, is or may be capable of perfecting one or more liens in respect of such claim irrespective of the automatic stay, nor shall payment of a Lien Claimant’s prepetition claim be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of such liens. The Debtors expect that they will only pay prepetition claims to the Lien Claimants when they believe, in their business judgment, the benefits of making such payments would exceed the costs, delays, and disruption associated with bringing an action to compel the turnover of goods or Equipment held by the Lien Claimants, or otherwise discharging the line in question.

Customary Trade Terms

24. Despite the critical need for the receipt of essential goods and services provided by the Foreign Vendors, Shippers, and Lien Claimants, the Debtors historically have sought to bargain with their vendors to achieve the lowest price, the best service and quality, and the most favorable payment terms possible for each necessary product or service. Nonetheless, the Debtors recognize that efficiency in procurement is critical to achieving profitability and, to that end, the Debtors have developed valued relationships with many vendors who have met the

Debtors' standards for price, service, quality, and payment terms. The Debtors hope to maintain and improve upon those vendor relationships on a postpetition basis.

25. To further ensure that the Debtors' business operations will be minimally impacted during these chapter 11 cases, the Debtors will use commercially reasonable efforts to condition payment of the Foreign Vendor Claims, Shipping Claims, and Lien Claims upon each Foreign Vendor's, Shipper's, or Lien Claimant's agreement, as applicable, to continue supplying goods and services on terms that were in place in the 120 days prior to the Petition Date or are otherwise acceptable to the Debtors in light of customary industry practices (the "Customary Trade Terms").

26. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

503(b)(9) Claimants

27. The Debtors may have received certain goods or materials from various vendors within the 20 days before the Petition Date. Many of the Debtors' relationships with the

503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors often obtain Equipment and parts on an order-by-order basis. As a result, 503(b)(9) Claimants may refuse to supply new orders without payment of their prepetition claims.

28. The Debtors also believe certain 503(b)(9) Claimants could reduce the Debtors' existing trade credit—or demand payment in cash on delivery—further exacerbating the Debtors' limited liquidity. The Debtors believe that, as of the Petition Date, they owe approximately \$1.0 on account the 503(b)(9) Claims, the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

Basis for Relief

I. Ample Authority Exists to Support Payment of the Foreign Vendor Claims.

29. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004) (recognizing that payment of prepetition claims may be permitted under section 363 of the Bankruptcy Code, but holding that the debtor's evidentiary record did not support paying the prepetition claims of vendors); *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."); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397–98 (S.D.N.Y. 1983) (allowing contractor to pay prepetition claims of suppliers who were potential lien claimants under section 363 because the payments were necessary for general contractors to release funds owed to debtors); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon section 363 of the Bankruptcy Code is "completely consistent with the Bankruptcy Code"; payments to critical

trade vendors have further support when debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”).

30. As described above, the Debtors’ businesses depend on the supply of goods, materials, and services from the Foreign Vendors. In particular, without the Foreign Vendors, the Debtors would not have the Equipment necessary to continue operations. If the Debtors do not pay certain of the Foreign Vendor Claims, the Foreign Vendors may simply refuse to do business with the Debtors unless and until they receive payment on account of their prepetition claims. Such Foreign Vendors may take other precipitous action against the Debtors based on the incorrect belief they are not bound by the automatic stay.

31. For the Debtors to survive as a business during the pendency of these chapter 11 cases and emerge from chapter 11 successfully, they must preserve their relationships with the Foreign Vendors. For similar reasons, courts in this jurisdiction have authorized the payment of prepetition foreign vendor claims in recent chapter 11 cases. *See, e.g., In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (authorizing payment of prepetition foreign vendor claims); *In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017) (same); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2017) (same); *In re BPS US Holdings Inc.*, No. 16-12373 (KJC) (Bankr. D. Del. Nov. 28, 2016) (same); *In re UCI Int’l, LLC*, No. 16-11354 (MFW) (Bankr. D. Del. June 3, 2016) (same).

II. Ample Authority Exists to Support Payment of the Lien Claims and the Shipping Claims.

32. Pursuant to section 363(e) of the Bankruptcy Code, the Shippers and the Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtors use or sell the estate property against which a Lien Claim or Shipping Claim is asserted. *See* 11 U.S.C. § 363(e). Given that the value of such property will generally far exceed the value

of the related Shipping Claim or Lien Claim, creditors will not be harmed—and, in fact, will be benefited—by the satisfaction of certain amounts owed to the Shippers or the Lien Claimants. Those payments will facilitate the use and/or sale of estate property against which liens may otherwise be asserted, helping to preserve the going-concern value of the Debtors' businesses and enabling the Debtors to smoothly transition into chapter 11.

33. Paying the Shipping Claims and the Lien Claims is unlikely to impair unsecured creditor recoveries in these chapter 11 cases. In some instances—for example, in the limited instances where a Shipper or Lien Claimant is permitted a lien—where the amount owed to the Shipper or the Lien Claimant is less than the value of the goods or Equipment that could be held to secure a lien, such parties may be fully secured creditors of the Debtors' estates. In such instances, payment now only provides such parties with what they might be entitled to receive under a plan of reorganization, only without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy and the ability of the Debtors to continue to rent Equipment and maintain customer relationships.

34. Based on the foregoing, and in order to maintain a seamless transition of the Debtors' operations into chapter 11, the Debtors respectfully submit that honoring the prepetition claims of the Shippers or the Lien Claimants is justified under the circumstances.

III. The Court Should Authorize the Debtors to Pay Foreign Vendor Claims, Shipping Claims, and Lien Claims Under the Doctrine of Necessity.

35. 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); *In re James A. Phillips, Inc.*, 29 B.R. at 398 (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 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code.

36. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries charged with "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). Inherent in a debtor in possession's fiduciary duties is the obligation to "protect and preserve the estate, including an operating business's going-concern value," which, in certain instances, can be fulfilled "only . . . by the preplan satisfaction of a prepetition claim." *Id.* Indeed, the *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.*

37. 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).⁷

38. In addition to the authority granted a debtor in possession under sections 1107(a), 1108, 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).

39. 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

⁷ 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 preplan 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).

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 the business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

40. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—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 prepetition 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”).

41. The flexible approaches developed by bankruptcy courts are particularly applicable where a prepetition creditor—here, the Foreign Vendors, Shippers, and Lien Claimants—provides vital goods or services to a debtor that would be otherwise unavailable if the debtor were unable to satisfy its prepetition obligations. As set forth above, the Debtors have

determined, in the exercise of their sound business judgment, that payment of the Foreign Vendor Claims, Shipping Claims, and Lien Claims is essential to continue the uninterrupted supply of goods and services that directly affect the viability of the Debtors' ongoing day-to-day operations. The relief requested herein is crafted to minimize the number and amount of prepetition claims that are paid and at the same time maximize the value that the Debtors receive in return for such payments. Thus, the Debtors submit that the relief requested herein is narrowly tailored to facilitate the Debtors' chapter 11 reorganization process and to ensure that the value of the Debtors' businesses as a going concern is preserved through the pendency of these chapter 11 cases.

42. Courts in this jurisdiction routinely grant authorization for chapter 11 debtors to pay claims owing to foreign entities against which the automatic stay cannot be enforced readily in the United States and as to which it would be unduly time-consuming and expensive to seek enforcement of an order of the bankruptcy court in the creditor's home country. *See, e.g., In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2017) (authorizing payment of up to \$16.28 million in prepetition foreign vendor claims); *In re UCI Int'l, LLC*, No. 16-11354 (MFW) (Bankr. D. Del. June 3, 2016) (authorizing payment of up to \$6 million in prepetition foreign vendor claims); *In re SFX Entm't, Inc.*, No. 16-10238 (MFW) (Bankr. D. Del. Mar. 4, 2016) (authorizing payment of up to \$10 million in prepetition critical vendor and foreign vendor claims); *In re School Specialty, Inc.*, No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013) (authorizing payment of up to \$4 million in prepetition foreign vendor claims on an interim basis).⁸

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

43. Additionally, it is not uncommon for courts in this district to authorize payments to prepetition creditors, and in particular to shippers, warehousemen, and other lien claimants. *See, e.g., In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2017) (authorizing payment of up to \$16.28 million in prepetition claims to lien claimants); *In re Optima Specialty Steel, Inc.*, No. 16-12789 (KJC) (Bankr. D. Del. Jan. 19, 2017) (authorizing payment of up to \$300,000 in prepetition claims to mechanics and processors); *In re SFX Entm't, Inc.*, No. 16-10238 (MFW) (Bankr. D. Del. Mar. 4, 2016) (authorizing payment of up to \$240,000 in prepetition claims to lien claimants); *In re Windsor Petroleum Trans. Corp.*, No. 14-11708 (PJW) (Bankr. D. Del. Aug. 12, 2014) (authorizing payment of up to \$2.875 million in prepetition claims to lien claimants); *In re School Specialty, Inc.*, No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013) (authorizing payment of up to \$3 million in prepetition claims to freight carriers on an interim basis).

IV. The Court Should Authorize the Payment of Claims Entitled to Priority Pursuant to Section 503(b)(9) of the Bankruptcy Code.

44. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the “value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9). The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan. Moreover, the timing of such payments lies squarely within the Court’s discretion. *See In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”). The Debtors’ ongoing

ability to obtain Equipment and other goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the goods and materials necessary to maintain the Debtors’ operations and maximize the value of the Debtors’ estates.

45. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g., In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) Hr’g Tr. 49:21-23 (“I think arguably the debtor could pay its 503(b)(9) claimants without court approval.”). Again, the timing of such payments lies squarely within the Court’s discretion. *See In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3.

46. For these reasons, courts in this district have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g., In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017) (authorizing debtors to pay claims arising under section 503(b)(9) of the Bankruptcy Code); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. Apr. 19, 2016) (same); *In re Horsehead Holding Corp.*, No. 16-10287 (CSS) (Bankr. D. Del. Feb. 3, 2016) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Jan. 11, 2016) (same); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Dec. 9, 2015) (same); *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Sept. 4, 2013) (same).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

47. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, debtor-in-possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Foreign Vendor Claims, Lien Claims, Shipping Claims, and 503(b)(9) Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

48. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, authorizing the Debtors to pay prepetition claims of certain Foreign Vendors, Shippers, Lien Claimants, and 503(b)(9) Claimants and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders.

Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

49. Nothing contained herein is intended or shall be construed as: (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 motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

50. 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

51. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the agent under the Debtors’ asset-based lending debtor-in-possession financing facility; (d) counsel to certain of the lenders under

the Debtors' debtor-in-possession term loan facility; (e) counsel to the agent under the Debtors' debtor-in-possession term loan facility; (f) counsel to the agent under the Debtors' prepetition asset-based lending facility; (g) counsel to the agent under the Debtors' prepetition term loan facility; (h) counsel to the lender under Debtors' 12.0% subordinated notes; (i) counsel to the indenture trustee for the New FTF Inc. Note; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the office of the attorneys general for the states in which the Debtors operate; (m) the Foreign Vendors; (n) the Lien Claimants; (o) the Shippers; (n) the 503(b)(9) Claimants; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

52. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Wilmington, Delaware
Dated: April 5, 2018

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)

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Proposed Counsel to the Debtors

EXHIBIT A

Proposed Interim Order

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

In re:)	
)	Chapter 11
VER TECHNOLOGIES HOLDCO LLC <i>et al.</i> , ¹)	Case No. 18-10834 (KG)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. __

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS, SHIPPERS, LIEN
CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing, but not directing, the Debtors to pay prepetition Foreign Vendor Claims, Shipping Claims, Lien Claims, and 503(b)(9) Claims, (b) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FFAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

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

1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2018, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2018, and shall be served on: (a) the Debtors, VER Technologies HoldCo LLC, 757 West California Avenue, Building 4, Glendale, California 91203, Attn: Mick Gavin, and 909 Third Ave, 30th Floor, New York, New York, 10022 Attn: Lawrence Young; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Cristine Pirro, and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Ryan Blaine Bennett and Jamie R. Netznik; (c) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti, and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn: Morton Branzburg; (d) counsel to the agent under the Debtors' debtor-in-possession financing facility; (e) counsel for the agent under the Debtors' asset-based lending facility; (f) counsel to

the agent under the Debtors' term loan facility; (g) counsel to the indenture trustee for the Debtors' subordinated 12/0% notes; (h) counsel to the indenture trustee for the New FTF Inc. Note; (i) the Foreign Vendors; (j) the Lien Claimants; (k) the Shippers; (l) the 503(b)(9) Claimants; (m) counsel to any statutory committee appointed in these cases; and (n) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder, Esq. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to pay or honor prepetition claims of the Foreign Vendors, Shippers, and Lien Claimants; *provided* that the Debtors shall only be authorized to pay Foreign Vendor Claims up to a maximum aggregate cap of \$650,000, Shipping Claims up to a maximum aggregate cap of \$2.1 million, and Lien Claims up to a maximum aggregate cap of \$1.3 million, prior to the Final Hearing on the Motion.

4. The Debtors are authorized, but not directed, to pay amounts owed to the 503(b)(9) Claimants on account of Bankruptcy Code section 503(b)(9); *provided* that, the Debtors shall only be authorized to pay 503(b)(9) Claims up to a maximum aggregate cap of \$1.0 million, prior to the Final Hearing on the Motion.

5. The Debtors are authorized, but not directed, in their reasonable business judgment, to pay the Foreign Vendor Claims, Shipping Claims, and Lien Claims, in whole or in part, upon such terms and in the manner provided in this Interim Order; *provided* that, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances,

product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date (collectively, the “Customary Trade Terms”), then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors’ sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Interim Order to the applicable party prior to such party’s acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Foreign Vendor Claim, Shipping Claim, or Lien Claim shall be deemed to have agreed to the terms and provisions of this Interim Order.

6. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim 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 Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens

(contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any prepetition claims of the Foreign Vendors, Shippers, Lien Claimants, and 503(b)(9) Claimants.

9. Notwithstanding anything to the contrary set forth herein, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto) and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

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

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

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

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

Dated: _____, 2018
Wilmington, Delaware

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay or honor prepetition claims of certain Foreign Vendors, Shippers, and Lien Claimants.
3. The Debtors are authorized, but not directed, to pay amounts owed to 503(b)(9) Claimants on account of section 503(b)(9) of the Bankruptcy Code.
4. The Debtors are authorized, but not directed, in their reasonable business judgment, to pay the Foreign Vendor Claims, Shipping Claims, and Lien Claims, in whole or in part, upon such terms and in the manner provided in this Final Order; *provided* that if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date (collectively, the "Customary Trade Terms"), then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party

shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Final Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Foreign Vendor Claim, Shipping Claim, or Lien Claim shall be deemed to have agreed to the terms and provisions of this Final Order.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity 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 Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized

to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any prepetition claims of the Foreign Vendors, Shippers, Lien Claimants, and 503(b)(9) Claimants.

8. Notwithstanding anything to the contrary set forth herein, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto) and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.

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

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

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

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

Dated: _____, 2018
Wilmington, Delaware

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE