

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

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

**DEBTORS’ MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

VER Technologies HoldCo LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),² respectfully state the following in support of this motion:

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and “Final Order,” respectively): (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses in an aggregate amount up to \$7.11 million pursuant to the Interim Order and up to \$10.22 million pursuant to the Final Order and

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 A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, is set forth in greater detail in the *Declaration of Lawrence Young, Chief Restructuring Officer of VER Technologies HoldCo LLC, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.

(ii) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto; and (b) granting related relief. 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 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), 362(d), 363(b), and 507(a) of title 11 of the United States Code (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 Debtors' Workforce

7. The Debtors' employees, independent contractors, and temporary workers perform a wide variety of functions critical to providing service and support to their customers, the administration of these chapter 11 cases, and the Debtors' successful reorganization. Their skills, knowledge, and understanding of the Debtors' global operations and infrastructure are essential to preserving operational safety, stability, and efficiency. In many instances, the Debtors' employees, independent contractors, and temporary workers include highly-trained personnel with specific technical skills and/or industry knowledge who are not easily replaced.

Without the continued, uninterrupted services of their employees and independent contractors, the Debtors' reorganization efforts would be materially impaired.

8. The vast majority of employees rely exclusively on their compensation and benefits to pay their daily living expenses and support their families. Thus, employees will be exposed to significant financial hardships if the Debtors are not permitted to continue paying their compensation, providing benefits, and maintaining existing employee programs. Accordingly, the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

9. The Debtors employ approximately 2,000 employees (collectively, the "Employees") throughout locations in the United States and Canada, approximately 515 of which are salaried individuals on a full-time or part-time basis, and approximately 1,485 of which are paid hourly on either a full-time or part-time basis. None of the Employees are represented by a union or collective bargaining unit. In addition to the Employees, the Debtors also regularly and continuously use the services of independent contractors (collectively, the "Independent Contractors") to complete discrete projects, as well as temporary workers sourced periodically from various staffing agencies (collectively, the "Temporary Staffing Agencies") to fulfill certain duties on a short-term basis. In addition to the Employees, the Debtors have historically used approximately 500 Independent Contractors and 13 Temporary Staffing Agencies, although this number fluctuates based on the Debtors' specific needs at any given time. The Independent Contractors and Temporary Staffing Agencies are a critical component of the Debtors' workforce.

Employee Compensation and Benefits

10. The Debtors seek to minimize the personal hardship that the Employees, Independent Contractors, and Temporary Staffing Agencies would suffer if employee obligations are not paid when due or as expected. The Debtors, therefore, seek authority to pay and honor certain prepetition claims relating to, among other things, wages, salaries, expense reimbursements, and other compensation (including compensation related to Temporary Staffing Agencies and Independent Contractors), payroll services, payroll withholding taxes and other amounts withheld (including garnishments, Employees' share of insurance premiums, taxes, and 401(k) contributions), health insurance, workers' compensation benefits and related potential liabilities, paid time off, other paid leave, unpaid leave, life and accidental death and dismemberment insurance, short- and long-term disability coverage, and other benefits that the Debtors have historically directly or indirectly provided to the Employees, Independent Contractors, and Temporary Staffing Agencies, in the ordinary course of business (collectively, the "Employee Compensation and Benefits"). In addition, the Debtors also seek to pay all costs incidental to the Employee Compensation and Benefits.

11. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Compensation and Benefits programs in the ordinary course of business. Out of an abundance of caution, the Debtors request the right to modify, change, and discontinue any of their Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

12. By this motion, the Debtors seek authority to pay the following prepetition amounts owed on account of the Employee Compensation and Benefits:

| Employee Obligation | Interim Amount | Final Amount |
|-------------------------------|-----------------------|---------------------|
| Unpaid Wages | \$2,000,000 | \$2,000,000 |
| Unpaid Contractor Amounts | \$1,250,000 | \$2,150,000 |
| Unpaid Temp Agency Amounts | \$1,100,000 | \$2,400,000 |
| Deductions | \$220,000 | \$220,000 |
| Unpaid Payroll Taxes | \$1,920,000 | \$1,920,000 |
| Payroll Fees | \$0 | \$0 |
| Expense Reimbursements | \$50,000 | \$50,000 |
| Health Insurance Programs | \$194,000 | \$194,500 |
| Life and AD&D Insurance | \$6,000 | \$6,000 |
| Disability Benefits | \$23,000 | \$23,000 |
| Workers' Compensation Program | \$0 | \$905,000 |
| 401(k) Plan | \$350,000 | \$350,000 |
| Paid Leave | \$0 | \$0 |
| Other Benefit Programs | \$0 | \$0 |
| Total | \$7,113,500 | \$10,218,000 |

13. As of the Petition Date, the Debtors estimate that the total amount outstanding on account of the Employee Compensation and Benefits is approximately \$10.22 million. The Debtors do not believe that any Employee is owed prepetition Employee Compensation (as defined below) in excess of \$12,850.

I. Compensation and Withholding Obligations.

A. Employee Compensation.

14. The Debtors pay Employees' wages, salaries, and other compensation (collectively, "Employee Compensation") on a bi-weekly basis in the United States and Canada. The Debtors pay to the Employees wage and salary obligations (collectively, "Wages") on either a salaried or hourly basis. The Employees receive approximately \$3.15 million in the aggregate on a bi-weekly basis in the United States and Canada. Because the Employees are paid in arrears, certain Employees will be owed accrued but unpaid Wages as of the Petition Date. Wages also may be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that the Debtors owe additional amounts such Employees.

15. As of the Petition Date, the Debtors estimate that they owe Employees an aggregate of approximately \$2.0 million on account of accrued but unpaid wages, salaries, overtime, and other compensation (excluding reimbursable expenses, and amounts related to the 401(k) plan) earned before the Petition Date (collectively, “Unpaid Wages”), all of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay their Employees such Unpaid Wages in the ordinary course of business consistent with past practice, and to continue paying the Employees’ Wages on a postpetition basis in the ordinary course of the Debtors’ businesses.

B. Independent Contractor and Temporary Staffing Agencies Compensation.

16. The Debtors have historically relied on up to approximately 500 Independent Contractors and approximately 13 Temporary Staffing Agencies to provide services to their customers and back office support in the ordinary course of their business. The Independent Contractors typically are individuals who engage with the Debtors directly to provide services and are generally paid bi-weekly, in the same cadence as the Debtors’ full-time Employees. The Temporary Staffing Agencies provide temporary staff for flexible engagements. Together, the Independent Contractors and the Temporary Staffing Agencies perform a wide range of services critical to the Debtors’ operations and primarily assist on specific projects, shows, tours, or other events. Without the support of the Independent Contractors and the Temporary Staffing Agencies, the Debtors’ customers would be less likely to hire the Debtors for important projects and events that are vital to the Debtors’ businesses. Additionally, if the Debtors were to hire these contractors as full-time employees, it would substantially increase the cost of the Debtors’ operations. The Debtors’ ability to rely on Independent Contractors and the Temporary Staffing Agencies allows the Debtors to flex their employee footprint to meet their customers’ needs on

large-scale projects. The Debtors believe the authority to continue paying their Independent Contractors and the Temporary Staffing Agencies is critical to minimizing disruption of the Debtors' continued business operations. On average, the Debtors spend approximately \$950,000 on the Independent Contractors and approximately \$2.4 million on the Temporary Staffing Agencies on a monthly basis.

17. As of the Petition Date, the Debtors estimate that they owe approximately \$2.15 million to the Independent Contractors on account of services rendered prior to the Petition Date (the "Unpaid Contractor Amounts"), approximately \$1.25 million of which will become due and owing within the first 25 days of these chapter 11 cases. Additionally, as of the Petition Date, the Debtors estimate they owe approximately \$2.4 million to the Temporary Staffing Agencies on account of services rendered prior to the Petition Date (the "Unpaid Temporary Staffing Agencies Amounts"), approximately \$1.1 million of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay the Unpaid Contractor Amounts and the Unpaid Temporary Staffing Agencies Amounts in the ordinary course of the Debtors' businesses, and to continue paying all amounts owed to the Independent Contractors and the Temporary Staffing Agencies on a postpetition basis in the ordinary course.

C. Withholding Obligations.

18. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, including garnishments, child support, and other pre-tax deductions payable pursuant to certain of the Health and Welfare Programs (as defined below) (collectively, the "Deductions"). All of the Deductions are forwarded to various third-party recipients.

19. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Deductions is approximately \$220,000, all of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, the Debtors seek authority to continue deducting and remitting amounts to the appropriate third parties in a manner consistent with historical practice for any unpaid Deductions and to continue to honor the Deductions in the ordinary course of business during the administration of these chapter 11 cases.

D. Payroll Taxes

20. The Debtors are required by law to withhold from the Employees' Wages amounts related to, among other things, federal, state, and local income tax, as well as Social Security and Medicare taxes, and similar taxes in Canada (collectively, "Employee Payroll Taxes") for remittance to the appropriate foreign, federal, state, and local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (together with the Employee Payroll Taxes, collectively, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to the appropriate foreign, federal, state, or local taxing authority at the same time Employees' payroll checks are disbursed.

21. Historically, the Debtors pay and remit approximately \$3.0 million in the aggregate per month on average on account of the Payroll Taxes. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Payroll Taxes is approximately \$1.92 million, all of which will become due and owing within the first 25 days of these chapter 11 cases (the "Unpaid Payroll Taxes"). Accordingly, the Debtors seek authority upon entry of the Interim Order to remit any Unpaid Payroll Taxes to the appropriate taxing

authority and to continue to honor and process the Unpaid Payroll Taxes on a postpetition basis in the ordinary course of business, consistent with past practices.

E. Payroll Processing.

22. The Debtors utilize The Ultimate Software Group, Inc. ("UltiPro"), a third-party payroll servicer and software provider, to process and administer their Payroll Taxes. Using UltiPro's software, the Debtors calculate the Payroll Taxes for each Employee and transfer funds sufficient to satisfy such obligations to UltiPro in advance of each applicable pay period. UltiPro then pays the Payroll Taxes on behalf of the Debtors. Additionally, as required by law, UltiPro submits quarterly statements and other documentation for the Debtors to comply with various federal, state, and local requirements.

23. On average, the Debtors pay approximately \$80,000 per quarter to UltiPro for the payroll-related services that it provides to the Debtors and related administrative costs (collectively, the "Payroll Fees"). As of the Petition Date, the Debtors do not believe there are any amounts outstanding and owed to UltiPro on account of Payroll Fees. However, because the failure to pay the Payroll Fees could lead to delayed disbursement of the Payroll Taxes to the appropriate third parties to the detriment of the Employees and the Debtors' operations, the Debtors seek authority, out of an abundance of caution, to remit any unpaid Payroll Fees to UltiPro and to continue administering payroll in the ordinary course of business.

F. Expense Reimbursements.

24. The Debtors reimburse Employees for certain expenses that Employees personally incur in the scope of their employment (collectively, the "Expense Reimbursements"). Expense Reimbursements typically include expenses associated with travel, lodging, purchases made on behalf of the Debtors, and other business-related expenses related to the discharge of an

Employee's duties. Expense Reimbursements are incurred by Employees primarily through the use of corporate credit cards, but also through personal payment followed by reimbursement. An Employee may be held personally liable for any unpaid obligations. Employees incur Expense Reimbursements with the understanding that they will be reimbursed. Without continued payment of Expense Reimbursements, the Employees relying on these benefits would be saddled with additional costs, potentially causing personal financial hardship and a negative impact on their credit scores. Thus, the Debtors' inability to reimburse these expenses could impose severe hardship on such individuals where the obligations were incurred for the Debtors' benefit.

25. On average, the Debtors pay Expense Reimbursements of approximately \$110,000 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$50,000 in outstanding prepetition Expense Reimbursements, all of which will become due and owing within the first 25 days of these chapter 11 cases.³ Accordingly, to avoid harming the Employees who incurred Expense Reimbursements, the Debtors seek authority to satisfy any accrued but unpaid prepetition Expense Reimbursements and to continue to pay the Expense Reimbursements on a postpetition basis in the ordinary course of business and consistent with past practices.

II. Employee Benefit Programs.

A. Health and Welfare Programs.

26. The Debtors offer several insurance policies to eligible Employees for medical, dental, and vision care coverage and certain other benefits (each, as defined herein, and collectively, the "Health and Welfare Programs"), including:

³ Although the Debtors ask that reimbursement requests be submitted promptly, sometimes submission delays occur. Accordingly, Employees may submit reimbursement requests for prepetition expenses after the Petition Date, which could result in additional amounts outstanding.

- health insurance;
- life and accidental death and dismemberment insurance;
- disability benefits;
- voluntary benefits; and
- workers' compensation.

27. By this motion, the Debtors seek authority to pay any unpaid amounts due under the Health and Welfare Programs and to continue the Health and Welfare Programs postpetition in the ordinary course of business and consistent with past practices, as further discussed herein.

1. Health Insurance Programs.

28. The Debtors historically have offered their Employees the opportunity to participate in a number of health benefit plans, including the Medical Plans, the HSAs, the FSAs, the Dental Plans, and the Vision Plan (each, as defined below, and collectively, the "Health Insurance Programs"). The Debtors also subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985.

29. The Debtors offer medical and prescription drug benefit programs (collectively, the "Medical Plans") to the Employees, which are administered by Cigna Health and Life Insurance Company ("Cigna"). Generally, the medical and prescription drug coverage in the Medical Plans differ, depending on how much an Employee contributes and the level of coverage selected by such Employee. Similarly, monthly health care premiums differ depending

on the Medical Plan in which an Employee is enrolled and whether such Employee has dependents covered by the applicable plan.⁴

30. The Employees who participate in certain of the Medical Plans may contribute a portion of their compensation into a health savings account (“HSA”), administered by Cigna, which may be used for incidental medical expenses. Participating Employees can make before-tax contributions to their HSA through payroll deductions to cover reimbursements under the program up to the maximum amount permitted by the Internal Revenue Service. Additionally, the Debtors annually contribute \$750 for an individual and \$1,500 for a family to a participating Employee’s HSA. Currently, approximately 330 Employees use an HSA, for which the Debtors pay a monthly administration fee of approximately \$1,500 to \$2,000 in the aggregate to Cigna. As of the Petition Date, the Debtors estimate that approximately \$145,000 is owed on account of accrued but unpaid HSA obligations, all of which will become due and owing within the first 25 days of these chapter 11 cases.

31. The Debtors also provide the Employees who participate in certain of the Medical Plans with access to a flexible spending account (“FSA”), administered by Discovery Benefits (“Discovery”), which can be used to cover incidental medical costs, dependent child care, up to \$255 per month for mass transit commuter costs, and up to \$255 per month for parking costs. Currently, approximately 200 Employees use an FSA for medical costs or dependent care expenses, for which the Debtors pay a monthly administration fee of approximately \$900 in the aggregate to Discovery. The Debtors do not make any contributions to any Employee’s FSA. As of the Petition Date, the Debtors estimate that approximately \$16,500 is owed on account of

⁴ The Medical Plans collectively cost the Debtors approximately \$1.1 million per month, exclusive of the Employee contributions. The Employees collectively contribute approximately \$160,000 per month on account of the Medical Plans.

accrued but unpaid FSA obligations, all of which will become due and owing within the first 25 days of these chapter 11 cases.

32. The Debtors also provide dental insurance (collectively, the “Dental Plans”) offered by Cigna, and vision insurance (the “Vision Plan”), offered by EyeMed Vision Care, LLC (“EyeMed”). The Dental Plans and Vision Plan are fully-insured. The total cost of the Dental Plans and the Vision Plan is approximately \$86,000⁵ and \$11,500⁶ per month, respectively, inclusive of the Employees’ contributions.

33. The Debtors pay approximately \$1.15 million per month in the aggregate for their contributions and the administrative and premium payments for the Health Insurance Programs. As of the Petition Date, the Debtors estimate that they owe approximately \$194,000 on account of accrued but unpaid Health Insurance Programs obligations, all of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay in a manner consistent with historical practice, unpaid amounts on account of the Health Insurance Programs and to continue administering the Health Insurance Programs in the ordinary course of business and consistent with past practice.

2. Insurance, Disability, and Workers’ Compensation Programs.

a. Life and AD&D Insurance Programs.

34. The Debtors provide life and accidental death and dismemberment insurance (the “Standard Life and AD&D Insurance”) to the Employees through Cigna. Cigna provides \$25,000 in coverage to hourly employees and an amount equal to one year’s salary for any

⁵ The Dental Plans cost the Debtors approximately \$60,500 per month, exclusive of the Employees’ contributions. The Employees collectively contribute approximately \$25,500 per month, on account of the Dental Plans.

⁶ The Vision Plan costs the Debtors approximately \$11,500 per month exclusive of the Employees’ contributions. The Employees do not contribute on account of the Vision Plan.

salaried Employee up to a maximum coverage of \$500,000 in the event of an Employee's death or dismemberment.

35. The Employees also may purchase supplemental life insurance and supplemental accidental death and dismemberment insurance (“Supplemental Life and AD&D Insurance,” and together with the Standard Life and AD&D Insurance, the “Life and AD&D Insurance”) through Cigna. The Supplemental Life and AD&D Insurance provides coverage in increments of \$10,000 in an amount up to \$500,000, or five times the Employee's annual base salary, whichever is less, and in other varying amounts for their spouse and children.⁷

36. An Employee is eligible for Life and AD&D Insurance on the first day of the month following 30 days of employment. The Standard Life and AD&D Insurance is fully paid by the Debtors, and the Supplemental Life and AD&D Insurance is fully paid by the Employee.

37. As of the Petition Date, the Debtors estimate that they owe approximately \$6,000 related to accrued and unpaid Life and AD&D Insurance obligations, all of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay, in a manner consistent with historical practice, amounts that become due on account of the Life and AD&D Insurance postpetition and to continue providing the Life and AD&D Insurance in the ordinary course of business and consistent with past practice.

b. Disability Benefits.

38. The Debtors provide certain Employees with short- and long-term disability benefits (collectively, the “Disability Benefits”). The Employees are eligible for the Disability

⁷ Employees may purchase supplemental life insurance for spouses in \$5,000 increments up to \$500,000 and for children in increments of \$2,000 up to \$10,000. Employees may purchase supplemental AD&D insurance for spouses in the amount of 100% percent of the Employee's supplemental AD&D insurance election.

Benefits on the first day of the month following 30 days of employment. Under the short-term disability benefits program, certain Employees are entitled to, among other things, a continuation of 60 percent of their base weekly earnings up to a weekly maximum of \$1,500 for up to 11 weeks in the event of qualified non-work related illness or injury (collectively, the “Short-Term Disability Benefits”). Under the long-term disability benefits program, certain Employees are entitled to, among other things, a continuation of 50 percent of their monthly earnings, and can elect optional additional coverage up to 60 percent of their base monthly earnings, up to a monthly maximum of \$10,000, in the event of qualified non-work related illness or injury (collectively, the “Long-Term Disability Benefits”). The Long-Term Disability Benefits continue for a period of up to 24 months.

39. The Short-Term Disability Benefits begin 15 days after an Employee is absent from work due to injury or illness, and the Long-Term Disability Benefits begin 90 days after an Employee is absent from work due to injury or illness. The Disability Benefits are funded by the Debtors, and the Employees have the option to purchase additional Long-Term Disability Benefits coverage of up to 60 percent of base monthly earnings, subject to the same \$10,000 monthly maximum. The Disability Benefits are fully-insured through Cigna. The Debtors pay Cigna approximately \$38,000 per month in premiums with respect to the Disability Benefits.

40. Two Employees are currently receiving the Short-Term Disability Benefits and no Employees are currently receive the Long-Term Disability Benefits. As of the Petition Date, the Debtors estimate that they owe approximately \$23,000 related to accrued and unpaid Disability Benefits premium obligations, all of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay, in a manner consistent with historical practice, any amounts that become due on account of Disability

Benefits postpetition, and, if any additional Employees become eligible for the Disability Benefits postpetition, the Debtors request the authority to continue providing the Disability Benefits in the ordinary course of business and consistent with past practice.

c. Voluntary Benefits.

41. The Debtors provide voluntary supplemental benefits for critical illness, accident, and hospital indemnity (collectively, the “Voluntary Benefits”) to the Employees in the event that an Employee is diagnosed with a critical illness, suffers an on or off the job accident, or an Employee or their family member is admitted to the hospital. The Voluntary Benefits are optional and intended to supplement existing coverage. Cigna administers the Voluntary Benefits which are paid as a lump sum benefit. The Voluntary Benefits are fully paid by the Employees as a supplemental premium, and, therefore, the Debtors do not believe that they owe any outstanding amounts on account of the Voluntary Benefits as of the Petition Date. However, out of an abundance of caution, the Debtors seek authority to continue the Voluntary Benefits and to continue paying amounts due pursuant to the Voluntary Benefits in the ordinary course of business and consistent with past practice.

d. Workers’ Compensation Program.

42. The Debtors maintain workers’ compensation insurance for the Employees at the levels required by laws in the states in which the Debtors operate (collectively, the “Workers’ Compensation Program”). All Employees are entitled to participate in the Workers’ Compensation Program which is fully insured, so that the Debtors do not incur any additional costs on account of claims brought against such insurance.

43. Coverage for the Employees is maintained through Travelers Property Casualty Company of America (“Travelers”). The Debtors pay approximately \$795,515 annually to

Travelers for maintaining the Workers' Compensation Program. As of the Petition Date, the Debtors do not believe there are any amounts outstanding related to past premium payments.

44. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁸ There are currently 41 open claims under the Workers' Compensation Program to which this would apply. The Debtors are not aware of any potential claims against them that have not yet been formally reported. As of the Petition Date, the Debtors estimate that the aggregate potential exposure of known claims under the Workers' Compensation Program is approximately \$905,000, none of which is anticipated to become due and owing in the first 25 days of these chapter 11 cases.

45. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual and legal obligations, the Debtors must continue to assess, determine, and adjudicate claims brought under the Workers' Compensation Program during these chapter 11 cases. In addition, to the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

46. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal

⁸ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations, and the Debtors' ability to meet requirements thereunder. By this motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any changes to current policy and practices that become necessary.

consequences that would disrupt the reorganization process. Thus, the Debtors request the authority, pursuant to both the Interim Order and the Final Order, to continue the Workers' Compensation Program in the ordinary course of business on a postpetition basis, and request that the Court modify the automatic stay solely to allow affected Employees to assert claims under the Workers' Compensation Program.

47. By this motion, the Debtors seek authority, but not direction, to pay any unpaid amounts on account of the Workers' Compensation Program and to continue the Workers' Compensation Program in the ordinary course of business on a postpetition basis.

B. Retirement Plans.

48. The Debtors provide all eligible Employees with the ability to participate in a standard 401(k) employee savings plan and a Roth 401(k) employee savings plan (collectively, the "401(k) Plan"). The Employees are eligible to participate in the 401(k) Plan after completing three months of service, at which point they are auto-enrolled at a 3 percent contribution rate unless they opt-out. The standard 401(k) employee savings plan generally provides for pre-tax deductions of compensation up to limits set by the Internal Revenue Code, as well as for post-tax deductions in the case of the Roth 401(k). Each participating Employee's 401(k) contributions are deducted automatically from each paycheck and transferred to a trust established under the 401(k) Plan (collectively, the "401(k) Deductions"). Participating Employees can contribute up to 90 percent of their earnings, which are immediately vested in the plan. The Debtors match 25 percent of the Employees' contributions to the 401(k) Plan for the first 6 percent of each Employees' annual income that is contributed to the 401(k) Plan (collectively, the "Matching Contributions").⁹ As of the Petition Date, the Debtors estimate that they are obligated to remit

⁹ For example, if an Employee's annual income is \$100,000, then the Debtors will match 25 percent of the Employee's contributions up to \$6,000 (*i.e.*, 6 percent of \$100,000). Therefore, if the Employee contributed

approximately \$350,000 on account of the 401(k) Deductions and the Matching Contributions, all of which will become due and owing within the first 25 days of these chapter 11 cases.

49. The 401(k) Plan currently is administered by Fidelity Investments. The Debtors currently incur approximately \$3,000 in annual costs associated with administering the 401(k) Plan (the “401(k) Administrative Fees”). The Debtors do not believe that any 401(k) Administrative Fees are outstanding as of the Petition Date.

50. Many Employees’ retirement savings solely consist of the 401(k) Plan. Thus, the Debtors believe that continuing the 401(k) Plan is essential to maintaining Employee morale and protecting Employee expectations. In addition, the Debtors believe that the 401(k) Deductions are generally held in trust by the Debtors and are not property of their estates.

51. Thus, the Debtors request the authority, but not direction, to continue to transfer the 401(k) Deductions to the trust on a postpetition basis and to continue the 401(k) Plan in the ordinary course of business on a postpetition basis.

C. Paid Leave.

52. The Debtors maintain several paid leave benefit programs for full-time Employees and part-time Employees that work approximately 30 hours per week, providing paid leave for vacation, sick leave, holidays, and other paid leave (collectively, the “Paid Leave”).

53. In the ordinary course of business, the Debtors provide paid time off for vacations to the Employees as a Paid Leave benefit (“Vacation”). Vacation accrues at a specified rate based on the specific terms of an Employee’s employment. For example, a typical Employee accrues 120 hours of Vacation per year. The Employees may accrue and carryover up to a maximum of one-and-a-half times their annual Vacation accrual. Therefore, a typical employee

\$6,000, then the Debtors would contribute \$1,500, which is 25 percent of 6 percent of the Employee’s annual income.

can accrue and carryover up to a maximum of 180 hours of Vacation. The Employees may carry over any unused Vacation into the next calendar year. The Employees who are terminated or resign are entitled to a cash payment in lieu of their accrued but unused Vacation, subject to deduction for any amounts owed to the Debtors. Accrued Vacation is not a current cash payment obligation, as the Employees are only entitled to cash payment for accrued and unused Vacation in the event the Employees leave the Debtors' employment. As of the Petition Date, the Debtors do not believe they owe any amounts on account of Vacation. However, out of an abundance of caution, and to the extent any amounts become due on account of Vacation, the Debtors seek authority to continue paying amounts due related to Vacation in the ordinary course of business and consistent with past practice.

54. The Debtors additionally offer the Employees with paid time off for themselves or a family member for the diagnosis, care, or treatment of an existing health condition or preventive care, or for an employee who is a victim of domestic violence, sexual assault, or stalking (collectively, "Sick Leave"), which accrues at the rate of one hour for every 30 hours worked, up to a maximum of 80 hours. The Employees may carry over any unused Sick Leave into the next calendar year. New Employees may not use Sick Leave until their 90th day of employment. Unlike Vacation, the Employees who are terminated or resign are not entitled to a cash payment in lieu of their accrued but unused Sick Leave.

55. In addition, the Debtors offer the Employees six paid holidays throughout the year (collectively, "Holiday"). Generally, eligible Employees are not required to work on a designated Holiday and are paid for Holiday time at their base rate of pay.

56. The Debtors also permit the Employees to take certain other paid and unpaid leaves of absence for personal reasons, many of which are required by law. The Debtors pay the

Employees for certain missed work time in the ordinary course of business for pregnancy-related disability leave, bereavement leave, and, in certain states where required by law, jury duty (collectively, “Other Paid Leave”). The Debtors also permit the Employees to take unpaid leaves of absence for family medical leaves, for military leaves, and for additional activities like voting, literacy assistance, substance abuse rehabilitation, and children’s school activities (collectively, the “Unpaid Leave”). The Employees are not entitled to cash payments for Other Paid Leave or unused Unpaid Leave.

57. The Debtors believe that the continuation of Paid Leave and Unpaid Leave policies in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend, and the continuation of those programs will not create any material cash flow obligations beyond the Debtors’ normal payroll obligations. As a result, by this motion, the Debtors seek authority to allow eligible Employees to use their Paid Leave and Unpaid Leave in the ordinary course of business on a postpetition basis, and to pay any Vacation on a final basis only in the event an Employee leaves the Debtors’ service and is entitled to cash out his or her accrued but unused Vacation.

D. Other Employee Benefit Programs.

1. Employee Assistance Program.

58. The Debtors offer full-time Employees and part-time Employees that work approximately 30 hours per week an employee assistance program provided through Cigna, which provides the Employees with services and support concerning marital or family counseling, parental guidance, child and/or senior care, legal consultation, financial counseling, emotional or mental health services, substance abuse, and stress (collectively, the “Employee

Assistance Program”). The Employee Assistance Program services and support include unlimited telephonic counseling sessions offered 24 hours a day, 7 days a week, and up to three face-to-face counseling sessions. As of the Petition Date, the Debtors do not believe they owe any amounts on account of Employee Assistance Program. Out of an abundance of caution, however, the Debtors seek authority to pay any amounts that may be outstanding and to continue the Employee Assistance Program in the ordinary course of business, so the Employees that rely on the Employee Assistance Program will continue to have access to it.

2. Equipment Loans.

59. The Debtors occasionally allow certain Employees to borrow equipment for personal use (collectively, the “Equipment Loans”). The Equipment Loans are not guaranteed, require supervisor approval, and the Employees must not receive any compensation for the equipment and labor or services associated with the Equipment Loans. The Debtors do not incur any payment obligations in connection with the Equipment Loans, but rather loan out property of the estate to the Employees. The Debtors’ Employees rely upon the Equipment Loans and consider it a part of their compensation, and, therefore, the Debtors seek authority to continue the Equipment Loans in the ordinary course of business.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits.

A. Certain Employee Compensation and Benefits Are Entitled to Priority Treatment.

60. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Employee Compensation and Benefits owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages,

salaries, or commissions, including sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein should only affect the timing of certain payments to the Employees, and should not negatively affect recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Employee Compensation and Benefits at this time enhances value for the benefit of all interested parties.

B. Payment of Certain Employee Compensation and Benefits Is Required by Law.

61. The Debtors seek authority to pay the applicable Deductions to the appropriate third-parties. These amounts principally represent Wages that governments, Employees, or judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Deductions are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions may not be property of the Debtors' estates, the Debtors request authorization to transmit the Deductions on account of the Employees to the proper parties in the ordinary course of business.

62. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may

prohibit the Debtors from operating in those states. Payment of all obligations on account of the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of the Debtors' ongoing chapter 11 process.

II. Payment of the Employee Compensation and Benefits Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

63. Section 363(c)(1) of the Bankruptcy Code expressly grants the Debtors the authority to "enter into transactions . . . in the ordinary course of business" and "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1) Therefore, the Debtors believe they are permitted to pay all postpetition amounts due pursuant to the Employee Compensation and Benefits, as such actions are in the ordinary course of the Debtors' businesses. Out of an abundance of caution, however, the Debtors seek entry of an order granting the relief requested herein to avoid any disruptions to their business operations.

64. In addition, the Court may grant authority to pay amounts arising prepetition pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor "show that a sound business purpose justifies such actions." *E.g. In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code) (internal citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In*

re Tower Air, Inc., 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

65. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of a bankruptcy court and empowers bankruptcy courts 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). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize the payment and continuation of the Employee Compensation and Benefits under the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

66. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, (3d Cir. 1981). 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* at 581 (stating 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”).

67. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where

bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”).

68. Payment of the Employee Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. The majority of the Employees, the Independent Contractors, and staff provided by the Temporary Staffing Agencies rely exclusively on the Employee Compensation and Benefits to satisfy their daily living expenses. Consequently, the Employees, the Independent Contractors, and the staff provided by the Temporary Staffing Agencies will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors’ ongoing business operations.

69. Moreover, the Employees, the Independent Contractors, and the Temporary Staffing Agencies provide the Debtors with services necessary to conduct the Debtors’ businesses, and the Debtors believe that absent the payment of the Employee Compensation and Benefits, the Debtors may experience turnover and instability at this critical time in these chapter 11 cases. The Debtors operate a highly specialized business that requires unique technical expertise. The Debtors believe that without these payments, the Employees, the Independent Contractors, and the staff provided by the Temporary Staffing Agencies may become demoralized and unproductive because of the potential significant financial strain and other

hardships they may face. Such Employees, Independent Contractors, and Temporary Staffing Agencies may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' businesses is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of the Employees, the Independent Contractors, and the Temporary Staffing Agencies as the Debtors seek to operate their business in these chapter 11 cases.

70. Indeed, courts in this district have approved relief and recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested here. *See, e.g., In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis on an interim basis); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same); *In re GST Autoleather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Oct. 3, 2017) (same); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bank. D. Del. July 6, 2017) (same); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2017) (same); *In re Aquion Energy Inc.*, No. 17-10500 (KJC) (Bankr. D. Del. Mar. 10, 2017) (same).¹⁰ Accordingly, the Debtors respectfully

¹⁰ 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 to the Debtors' proposed counsel.

request that the Court authorize the Debtors to pay and continue the Employee Compensation and Benefits in the ordinary course of business and consistent with past practice.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Program Is Appropriate in this Case.

71. Section 362(a)(1) of the Bankruptcy Code operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

72. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Employee's workers compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' businesses to the detriment of all stakeholders. In addition, as noted above, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Debtors' Workers' Compensation Program to proceed.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

73. 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 Employee Compensation and Benefits, as applicable. 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

74. 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 the Employee Compensation and Benefits 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 business 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

75. 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)

76. 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

77. The Debtors have provided 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) 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). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

78. 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 (___) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |
| | | Re: Docket No. |

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS
TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS 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 the Debtors (i) to pay prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, 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

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.

the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and 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 as set forth 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 Avenue, 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 certain of the lenders under the Debtors' debtor-in-possession

term loan facility, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts, 02110-1726, Attn: Andrew Gallo and Christopher L. Carter; (e) counsel to the agent under the Debtors' debtor-in-possession term loan facility, Alston & Bird LLP, Bank of America Plaza, 101 South Tryon Street, Suite 4000, Charlotte, North Carolina 28280-4000, Attn: Jason J. Solomon; (f) counsel to the agent under the Debtors' prepetition asset-based lending facility and debtor-in-possession asset-based financing facility, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036, Attn: Shana A. Elberg, and Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Christopher M. Dressel; (g) counsel to the lender under the Debtors' 12.0% subordinated notes, King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036, Attn: Jeffrey Pawlitz; (h) counsel to the indenture trustee for the New FTF Inc. Note, Robins Kaplan LLP, 2049 Century Park East, Suite 3400, Los Angeles, California 90067, Attn: Howard J. Weg and Michael T. Delaney; (i) counsel to any statutory committee appointed in these cases; and (j) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder, Esq.

3. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

4. The Debtors are authorized, but not directed, in their discretion, to pay and honor prepetition amounts related to the Employee Compensation and Benefits programs in an aggregate interim amount not to exceed \$7,113,000; *provided*, that pending entry of the Final

Order, the Debtors shall not honor any Employee Compensation and Benefits obligations that exceed the priority amounts set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code.

5. Nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to section 503(c) of the Bankruptcy Code. The Debtors will seek approval of any management or insider bonus or incentive programs, if any, under separate motion under section 503(c) of the Bankruptcy Code and nothing herein shall prejudice the Debtors' ability to seek such relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

6. Pursuant to section 362(d) of the Bankruptcy Code: (a) the Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

7. 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 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.

8. 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.

9. 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 Employee Compensation and Benefits.

10. 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.

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

12. 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.

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

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

15. 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

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

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

**FINAL ORDER (I) AUTHORIZING THE DEBTORS
TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS 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 a final order (this “Final Order”), (a) authorizing the Debtors (i) to pay prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto, and (b) granting related relief, 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. §§ 1408 and 1409; and

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.

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 a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.
3. Nothing herein shall be deemed to authorize the payment of any amounts which violate, implicate, or are otherwise subject to section 503(c) of the Bankruptcy Code. The Debtors will seek approval of any management or insider bonus or incentive programs, if any, under separate motion under section 503(c) of the Bankruptcy Code and nothing herein shall prejudice the Debtors' ability to seek such relief pursuant to section 503(c) of the Bankruptcy Code at a later time.
4. Pursuant to section 362(d) of the Bankruptcy Code: (a) the Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived.

This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

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 Employee Compensation and Benefits.

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